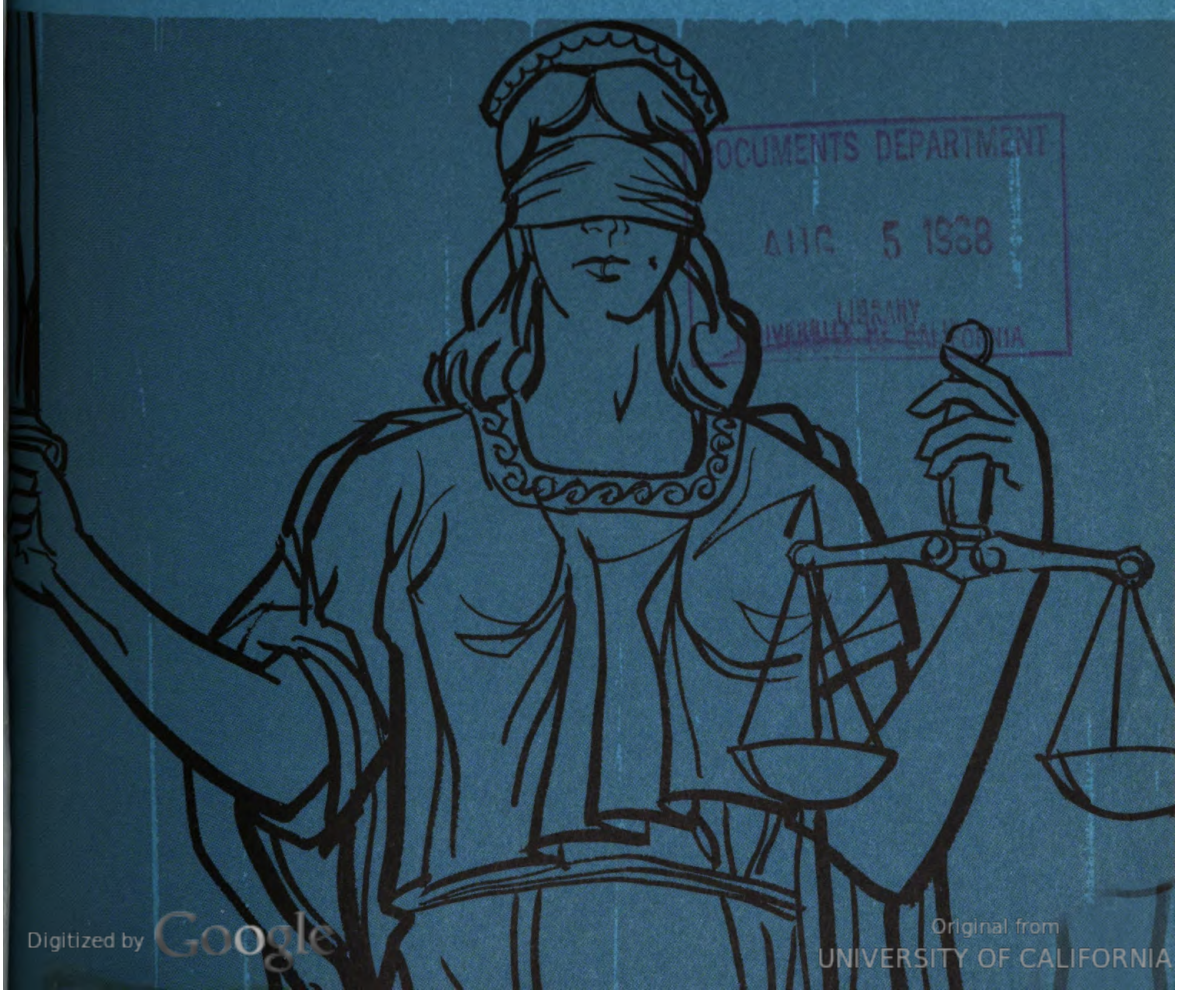
Preliminary report

New York (State).
New York, 1968

STATE OF NEW YORK

Preliminary Report of the GOVERNOR'S SPECIAL COMMITTEE ON CRIMINAL OFFENDERS



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June 1968

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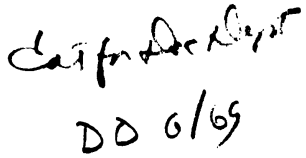
New York, N. Y.



June 24, 1968

To the honorable NELSON A. ROCKEFELLER,

Governor of the State of New York

We have the honor to submit herewith the preliminary report of your Special Committee on Criminal Offenders, containing a summary of its activities from inception to date, and its tentative recommendations and conclusions.

Respectfully submitted,

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Co-Chairmen

Members of the Governor's Special Committee

On Criminal Offenders

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Introduction

The Governor's Special Committee on Criminal Offenders was established by Governor Nelson A. Rockefeller in the early part of 1966* to seek better ways of coping with criminal and delinquent recidivism through increasing the effectiveness of government in dealing with persons convicted of or adjudicated for criminal or delinquent behavior. In directing the Committee to concentrate on this one part of the total effort in the war against crime and delinquency – *i.e.,* the post adjudicatory treatment system – Governor Rockefeller stated:

> ". . . greater efforts must be made and more imaginative new approaches must be studied to reduce the regularity with which these offenders come into future contact with the law. Any way we can rehabilitate more of these criminal offenders and reduce the number of repeaters will have a significant impact on our crime rate in New York State."

The members of the Committee are the heads of the agencies that have responsibility for administration of all of the post adjudicatory functions performed by the State, and responsibility for overseeing the post adjudicatory operations of local government (*e.g.,* probation, county jails). The central thought was that these administrators could pool their talents and their many years of experience and make an intensive appraisal of the entire post adjudicatory system. The product sought through this process was not recommendations on day to day administrative problems, but an analysis of the operating philosophy of the entire system. Each member of the Committee regularly submits information and recommendations on administrative problems, and the various members frequently consult with each other and with the Governor on such matters. The purpose of the Committee was to step back from these problems and to look at them in a much larger perspective—*i.e.,* to cope with the system as a whole.

In other words, the thrust of the charge to the Committee was to examine the system on a different level than the one used for day to day problems. Such problems are customarily

*The members were named on December 12, 1965. Funds were made available in mid-February, 1966; and the offices of the Committee were opened on March 1, 1966.

dealt with on a level that requires solution within the framework of the existing system. The opportunity given to the Committee was to examine the system on a level that would permit evaluation of the framework itself; and the heart of this task was, as stated by the Governor, the development of "imaginative new approaches."

In keeping with this charge, the Committee proceeded to examine the post adjudicatory treatment system on three conceptual levels: (1) the theory of the system; (2) the organization of the system; and (3) methodology for prevention of recidivism. The results of this examination are set forth in three separate but interrelated Parts of the Report, each of which contains an analysis of one of the levels.

Before discussing this examination further, certain other significant aspects of the Committee's work and history should be noted.

The Development of the Committee's Work

When the Committee was first formed, two years ago, no specific deadline had been set for the period of its existence and, hence, its original plans contemplated the establishment of various operational projects that would directly or indirectly be administered through the Committee while the examination of the system went forward.

Thus, the original plans of the Committee called for a three-front approach: action projects, long range development projects, and community involvement projects. The action projects were to deal mainly with legislative proposals and governmental pilot programs involving steps that the members—through their experience in disciplines dealing with the post adjudicatory aspects of crime and delinquency—believed should be taken as soon as possible. The long range development projects were to involve depth studies analyzing the present system and presenting recommendations for change. The community involvement projects were to develop greater community participation in programs for the rehabilitation of offenders both within and outside of institutions.

Approximately one year after commencement of the work, Governor Rockefeller directed the Committee to focus its attention upon "an in-depth evaluation of a program to coordinate and combine all of the State's efforts concerned with

the treatment and rehabilitation of criminal offenders, including the consolidation of all of the State's institutional programs and field services in this area." Additionally, the Governor directed the Committee to report its recommendations in the early part of 1968.

At the same time, the Governor proposed to the Legislature the formation of the New York State Crime Control Council which would be a permanent agency to devote *continuous attention to comprehensive planning* in the prevention and control of crime; and to stimulate, develop and coordinate improved crime control programs throughout the State. The Legislature passed the Governor's bill and the Crime Control Council is presently in operation.

Consequently, the Governor's Special Committee on Criminal Offenders terminated two of its three approaches and devoted its full attention to the single problem of formulating a plan to point the way to the future for the post adjudicatory treatment system.

It is important to note, however, that the termination of other aspects of its work by the Committee did not mean the end of that work, as such. The Crime Control Council will carry on certain portions of the work planned by the Committee, and the various departments and agencies involved will carry on other portions of the Committee's work.

The Committee's Action Projects

Prior to modification of its work plan, the Committee formulated seven bills which were enacted into law (five in 1966 and two in 1967) and established and planned for several projects of major potential significance. A brief description of these bills and projects is as follows.

Clinton Prison Diagnostic and Treatment Center

The Clinton Prison Diagnostic and Treatment Center was established in 1966 pursuant to a plan and legislation drawn by the Committee (Chapter 653 of the laws of 1966; Correction Law, §71-a). The Center is a pilot project directly administered by the State Department of Correction in cooperation with the State Division of Parole. Its basic purposes are as follows:

(a) intensive therapy for inmates of State correctional

facilities who, though not mentally ill, have serious mental and emotional problems;

(b) intensive diagnostic evaluation of inmates for pre-parole purposes;

(c) scientific study to establish adequate standards for sentencing and parole; and

(d) training for State personnel in new methods of correctional treatment.

The Center utilizes the therapeutic community approach (milieu therapy) in an attempt to get its inmates to behave in a manner that is as close as possible—considering the institutional setting—to the manner in which they would behave in the free community. This permits the therapists to gain insight into the basic problems of the inmates for diagnostic and treatment purposes.

The Committee has participated actively in the planning and in the recruiting of special consultants and treatment personnel. One of the most important features of the new Center is that it is being run in cooperation with McGill University, which is located in nearby Montreal. McGill and the Committee have worked together in the planning of the Center and McGill is participating with the Department of Correction and the Division of Parole in furnishing diagnostic, treatment and research services. McGill's participation is under the direction of Bruno Cormier, M.D., Director of McGill's Department of Forensic Psychiatry. Personnel and students from the State University at Plattsburgh also have played a major role. They have conducted lectures, art courses, educational courses, physical education programs, drama programs and other activities with both inmates and staff.

The Center received its first group of fifty inmates in October, 1966, and is presently serving one hundred inmates. It is now fully operational with a highly trained and competent staff. The remaining work on this project is a program of research to show whether or not this method of treatment is more effective than the normal institutional treatment, and preparation of a research design for this purpose is presently under consideration by the staff of the Crime Control Council.

Amelioration of Restrictions Automatically Imposed Upon Offenders by Law

The Committee formulated legislation to permit discretionary relief from automatic restrictions upon rights and privileges of offenders (Chapter 654 of the laws of 1966; Correction Law, Article 23).

The laws of the State of New York are permeated with restrictions that automatically deprive an offender who has been allowed to remain in, or who has been returned to, the community of a wide variety of job opportunities and of the most important method of expressing himself as a member of society—the right to vote. Certain of these restrictions can be removed after five years by action of the State Board of Parole, but the intervening period is clearly the most critical in the rehabilitation process.

The Committee's amelioration bill, which took effect on October 1, 1966, permits the courts and the Board of Parole to issue certificates to first offenders preserving or restoring the right to vote and preventing automatic forfeiture of other rights, such as the right to retain or to apply for licenses. Under this law, the court has discretionary authority to issue "a certificate of relief from disabilities" to a first offender who receives a sentence other than one involving commitment to a State correctional institution, and the State Board of Parole has discretionary authority to issue the certificate to a first offender who has been sentenced to a State correctional institution. The certificate may be issued by the court at the time sentence is pronounced or any time thereafter, and it may be issued by the Board at any time while the offender is under its supervision. A certificate of relief from disabilities may cover all automatic forfeitures and disabilities imposed by law, or may be limited to certain specified forfeitures and disabilities. It is deemed temporary—and may be revoked—during any period that the court or the Board has the right to revoke suspension of sentence or parole and, if not revoked, it becomes permanent upon expiration of such period. The certificate is not a pardon and does not limit the discretion of any licensing body. Its purpose is to cope with the indirect sanctions that accompany conviction and which are automatically imposed without regard to the individual merits of the case.

During the first eighteen months of operation (to March

31, 1968), approximately eight hundred fifty certificates have been issued and only three certificates have been revoked.

State Administered Parole System for Persons Sentenced to County Institutions

The Committee formulated legislation and proposed a plan for the administration of parole for persons sentenced to county jails and penitentiaries (Chapter 324 of the laws of 1967; Correction Law, Article 25). Working in consultation with the Temporary Commission on Revision of the Penal Law and Criminal Code, the Governor's Committee designed a system under which the State Division of Parole would have jurisdiction to release and supervise inmates sentenced to local correctional institutions.

This plan extended the concept of parole to all inmates with terms in excess of sixty days, and permitted centralized administration of parole by a single State agency.

The law became effective on September 1, 1967, and the State Division of Parole is presently administering the program throughout the State.

Beacon State Institution and Equal Justice for Mentally Defective Offenders

The Committee recommended the establishment of Beacon State Institution for defective delinquents and formulated legislation for the purpose. This law (Chapter 819 of the laws of 1966; Correction Law, Article 16-A) established a new institution for mentally retarded offenders and authorized the conversion of the old institution used for such offenders into a reformatory.

The new institution located on the grounds of, but separate from, Matteawan State Hospital at Beacon utilizes psychiatric, psychological and other therapeutic services, made available by a reduction of the inmate-patient population of the Hospital as a result of the Supreme Court's decision in *Baxstrom v. Herold* (383 U.S. 107). In addition, a special program provides appropriate education, vocational training, counseling, occupational therapy, physical education and recreation.

Establishment of the new institution has enabled the State to provide better care for mentally retarded offenders committed to the Department of Correction, through maximum utilization of existing staff and facilities, and introduction of a program based upon the most advanced knowledge in this

specialized area of treatment. (At the same time the State has the benefit of additional reformatory space for other offenders.)

The Beacon State Institution commenced operations during the fall of 1966. Several months later the Committee's staff made a survey of the records of the inmates there who had been committed during the past five years. As a result of this survey the Committee recommended legislation that made sweeping changes in the laws for sentencing, commitment and retention of mentally defective offenders.

The legislation (Chapter 477 of the laws of 1967, amending Correction Law, Articles 17 and 17-A) eliminated the provisions that permitted indefinite life sentences for mental defectives and gave mental defectives the same right to freedom that society accords other offenders who have served their terms. Under the law that was eliminated, a person could be sentenced to a correctional institution for his entire life, even though his offense was slight (*e.g.*, petit larceny, disorderly conduct), merely because he was mentally defective. Under the changes made by the Committee's bill, the mental defective who has the capacity to stand trial must be sentenced as any other offender, and civil measures are provided for the further care and custody of those who are unable to reside in the community. The Committee's bill also permits the use of the Beacon State Institution for care and custody of mental defectives sentenced to short terms that would ordinarily be served in county jails and penitentiaries which have no special programs for such persons.

Good Behavior Allowances for Mentally Ill and Mentally Defective Prisoners

Another bill drafted by the Committee expanded the State's "good time" laws by permitting mentally ill and mentally defective prisoners who are serving indeterminate sentences in special institutions under the jurisdiction of the State Department of Correction to earn the same "good time" allowances against their maximum term as prisoners who are serving such sentences in State prisons (Chapter 652 of the laws of 1966; Correction Law, §230 subd. 4). Under prior law such allowances were available only to persons confined in the prisons.

The Committee believes that the opportunity to earn "good time" helps to eliminate a major cause of resistance to transfers to such institutions, and also provides important additional incentive for achievement while in the institutions.

Residential Treatment Facility

The Committee designed a plan and drafted legislation for the establishment of the first community-based correctional institution to operate with male adult felons in the State of New York. Although the bill was signed into law and a considerable amount of effort was expended in selection of a site and planning, funds were not made available for this project (Chapter 655 of the laws of 1966; Correction Law, Article 3-B).

"Sociopath" Research Experiment

One of the most difficult problems in prevention of recidivism is treatment of persons who are called "sociopaths" or "psychopaths". Such persons seem to have little regard for their obligations to society or for the threat of conviction and incarceration. It is generally believed that when their behavior takes the form of law violation, they will continue to offend again and again and thus will be persistent offenders. Recent research has suggested that these persistent offenders do not learn as readily as other people from punishing circumstances, but that with the administration of certain medications their ability to learn can be improved. If this be so, and if conviction and incarceration or some other sanction can be equated with the laboratory simulation of punishment (*e.g.*, mild electric shock), chemotherapy may supply an important aid in preventing the recidivism of this hitherto undeterrable group.

The central hypothesis of this experiment is that the so-called "sociopath" has a deficiency in the production of a hormone (adrenalin), and that such deficiency retards the ability to learn inhibiting impulses from fear-producing experiences. Hence, conviction and imprisonment, even when previously experienced, would not be a fear-producing device to inhibit future anti-social conduct (*i.e.*, individual deterrence).

The Committee has initiated an experiment seeking to explore this hypothesis in terms of both the extent and duration of increased ability to learn from unpleasant experience when the hormone, adrenalin, is administered. This experiment is presently being conducted at Clinton Prison under the direction of Ernest G. Poser, Ph.D., Professor of Psychology at McGill University in conjunction with the medical staff of Clinton Prison.

The Committee believes that this research has enormous

potential significance in preventing the recidivism of a group heretofore considered hopeless.

The Method Used to Examine the Post Adjudicatory Treatment System

The bulk of the Committee's energies and resources have been concentrated in the examination and analysis of the various functions of the post adjudicatory treatment system. The specific operations studied were: sentencing and adjudication, probation, incarceration, and parole.

There are many different agencies administering these operations and all of them were studied (the courts, probation agencies and county jails were evaluated through study of representative samples). The agencies involved in the post adjudicatory treatment system—and hence in the Committee's study—exclusive of courts are as follows:

1. Sixty-nine separate and distinct probation departments.
2. The State Division for Youth.
3. The State Department of Social Services.
4. The State Department of Correction.
5. The State Division of Parole.
6. Fifty-seven separate and distinct county jails, five separate and distinct county penitentiaries, and the Department of Correction of the City of New York (penitentiary, workhouse and reformatory).
7. The State Narcotic Addiction Control Commission.
8. The State Probation Commission.
9. The State Commission of Correction.
10. The State Board of Social Welfare.
11. The State Judicial Conference (in relation to probation).
12. The New York City Parole Commission (terminated on recommendation of the Committee with functions and personnel transferred to State Division of Parole, 9/1/67).

The Committee adopted a somewhat novel methodology for performing this study. Rather than looking at each agency from the standpoint of its being an autonomous operating unit, the Committee examined the agencies from the standpoint of the functions that are and ought to be performed by government in rendering post adjudicatory services.

The initial step was to retain various organizations to examine and render opinions upon matters within their particular fields of expertise. In carrying out this step the Committee was fortunate in being able to obtain the services of outstanding professionals. The National Council on Crime and Delinquency examined parole and probation (field services), and the Division for Youth. The American Correctional Association examined the State Department of Correction, the county jails and penitentiaries, and the New York City Department of Correction. The Division of Juvenile Delinquency Service of the U.S. Department of Health, Education and Welfare examined institutions for juveniles.* And Cresap, McCormick and Paget (a management consulting firm) examined the general organization and management of the system. The staff of the Committee made certain independent examinations, many of which were in connection with areas covered by the professional organizations and some of which were in areas not covered by the organizations. During this step of the work approximately forty professionals toured the State visiting various facilities, interviewing administrators and personnel, and examining records.

Reports, working papers, oral and written opinions and suggestions for further examination were submitted to the Committee and were studied intensively. Additionally, public hearings were held at Rochester, Syracuse and New York City, and many other thoughts and recommendations were added. The results of this work led to the second step, which consisted of detailed evaluations of issues raised through intensive study of work done in the first step.

The second step was primarily performed by the staff of the Committee under the guidance of the Co-Chairmen. During this step the staff consulted with approximately thirty independent social scientists—sociologists, psychologists and social workers. The staff also received the opinions and reactions of personnel in the various departments and agencies on the issues raised through study of the first step.

The third step consisted of writing the Report herein presented. The material in the Report represents a focused distillation of the vast amount of material and thinking that emerged

*The U.S. Department of Health, Education and Welfare provided this service without recompense for staff salaries or traveling or other expenses.

from the first two steps. The Report is considered a separate step because additional issues were raised during the writing and this required additional consultations and additional field trips.

Each section of the Report was examined and evaluated by the Committee as it was produced so that the staff would have guidance as to direction at all times. Two of the members did not agree with certain aspects of the Report, and their partial dissents are set forth at the end of the Summary and Conclusions.

Description of the Report

As previously stated, the Committee has examined the post adjudicatory treatment system on three conceptual levels: (1) theory of the criminal system; (2) organization of the total system for dealing with anti-social behavior; and (3) methodology for prevention of recidivism. Consequently, the Report is divided into three separate but interrelated parts, each of which deals with one of the levels.

Part One, the theory of the system, sets forth a complete conceptual analysis of the principles of the criminal system. Although this part speaks on a theoretical level, it is based upon the realities of modern day needs. As with the other parts of the Report, the Theory Part is a distillation of information and experience accumulated by the Committee. It combines knowledge of the past and the present and moves from this base to modern day needs. It contains neither speculation nor new knowledge, but consists solely of a focusing of present knowledge. Nevertheless, the Committee believes that Part One is a landmark presentation of basic principles to guide the post adjudicatory treatment system.

It is perhaps relevant to observe that Part One was undertaken because the Committee was unable to find a comprehensive focused statement of the principles of the system anywhere. Without a comprehensive theoretical baseline and a set of conceptual definitions, it was impossible to perform a rational evaluation. Hence, the Committee had to formulate the theories itself. Thus, this Part of the Report serves two purposes: it is (1) an independent statement and (2) a guide to terminology and concepts utilized in the other two parts of the Report.

Part Two, the organization of the system, sets forth an analytical overview of the present New York State methods of

administering post adjudicatory treatment for anti-social behavior and the Committee's recommendations for change. These recommendations are based partially upon the explication of theory stated in Part One and partially upon the principle of functional administration.

The basic point in the principle of functional administration is that a treatment system should be organized in accordance with the functions to be served rather than in accordance with juridical labels attached to persons for adjudicatory purposes (see pp. 25-29 Summary and Conclusions).

Part Two of the Report does not delve into the details of administration of the system or of any agency to a point beyond that which is necessary for an understanding of the Committee's recommendations. The Committee has prepared a separate detailed appendix setting forth analyses of many of the agencies studied, and this will be available shortly after publication of the Report.

Part Three, dealing with prevention of recidivism, analyzes the basic problems in coping with recidivism. This Part of the Report covers the relationship between prevention of recidivism and other functions of the system, the basic theories of crime causation and suggestions for use of the theories in aligning treatment methods with treatment needs, a discussion of the research and information needs of the system, and an outline of two suggested research designs for acquiring knowledge to increase the effectiveness of treatment.

An additional and important dimension of Part Three is a treatment evaluation survey that was undertaken by the Committee. This survey, to be published as a separate appendix, provides a compilation of research-based knowledge on the effectiveness of treatment administered to persons adjudicated or convicted for criminal and delinquent behavior. The survey is based upon virtually all published research in the field from the year 1945 through 1967. In addition to sources within the United States, many foreign works are included.

The heart of Governor Rockefeller's mandate to the Committee was to find better ways to rehabilitate offenders; and the survey was undertaken to create a knowledge base for this purpose. This type of compilation has never been made before and the Committee believes it will have great utility for all concerned with the problem of recidivism.

Other appendixes to Part Three consist of a detailed analysis of the various theories of crime causation, and the details of a suggested system for aligning treatment methods with treatment needs. Also presented is a detailed plan for performing ongoing evaluative research on this subject.

Summary and Conclusions

The purpose of the Report is to recommend improvements in the post adjudicatory treatment system, and the theme of the Report is constructive criticism. Because of this—and in an effort to confine ourselves to basic issues—the Report contains few, if any, bouquets. Consequently, it is appropriate to preface our remarks with some general comments.

Judged on a comparative basis, with other states, the federal government and many other nations, the New York post adjudicatory treatment system is one of the finest to be found anywhere. To be sure it has weak spots, but on the whole it is widely recognized as outstanding. The members of the Committee—the administrators of the system—are honored to serve the system and to work with the many thousands of devoted and talented people who operate the system. It is with great restraint, therefore, that we refrain from dwelling upon the accomplishments of these people, and upon the high quality of the New York State system.

Our Report is devoted to the principle that a good system can be made better. The fact that we were asked to perform this task is in and of itself indicative of the leadership role the State of New York has consistently taken in this and other fields. It is also a tribute to the wisdom and courage of Governor Nelson A. Rockefeller who directed the Committee to analyze the system with no holds barred.

It should be noted that the Report is based primarily upon the laws, resources, procedures and services available as of December 31, 1967. In a dynamic system, such as we have in New York State, changes are made almost daily; and, thus, some of the comments in this Report may not reflect important developments after that date.

I

The Principles

In order to set the Report in perspective, it is important to recognize that we will be dealing with two related but distinct sets of principles: one set of principles relates to the theoretical

bases for exercising control over people—*i.e.*, "civil", "quasi-criminal", and "criminal" principles; the other set of principles relates to the manner in which treatment services are to be organized for administrative purposes. Each of the theoretical bases for exercising control over people is a rationale for executing a particular set of functions. (For example, the "civil" system for care and custody of certified narcotic addicts is a rationale for exercising control over and imposing treatment upon persons who are addicted to narcotics.) Organization for administration of treatment services, on the other hand, has as its objective effective and efficient management of the functions to be executed under the various theoretical bases for exercising control over people. Since government has more than one such basis, the question arises as to whether each theoretical basis for exercising control must be managed within a separate administrative agency or whether the functions to be carried out should be grouped and administered functionally (*i.e.*, functional administration).

There has been a strong tendency in New York State and elsewhere to overlook the principle of functional administration and to organize treatment services in accordance with the theoretical bases for exercising control over people. In fact, one might say that there has been a fixation upon thinking of treatment services as "civil", "quasi-criminal" and "criminal". Thus, the theoretical basis for exercising control has come to dominate the treatment field to the extent that we are sometimes misled into thinking that there are such things as "civil therapy" and "criminal therapy". Obviously, treatment administered to habilitate or to rehabilitate human beings is focused upon their problems, and these problems are frequently the same where the theoretical basis for treatment is "civil" as they are where the theoretical basis for treatment is "criminal". Failure to distinguish between principles of organization for administration of treatment and the sets of principles comprising the various theoretical bases for subjecting persons to treatment is perhaps the main source of difficulty in our present operations. Hence, it is essential to focus clearly upon the distinction.

There are two basic rationales for subjecting persons to treatment: one is called the "civil" system; and the other is

called the "criminal" system.* The key concept in distinguishing these two is the notion of criminal responsibility. The criminal system is a set of functions relating to actual and potential crime by persons who are not excused from criminal responsibility. The civil system is a set of functions relating to state intervention for the purpose of administering special custody and care to persons who are in need of same for their own protection or for the protection of the community or both (*e.g.*, civil commitment of the mentally ill or of narcotic addicts, and commitment or placement of juvenile delinquents). The criminal system addresses itself solely to crime, while the civil system addresses itself to other problems, and to criminal conduct where there is no criminal responsibility for the conduct (*e.g.*, a crime committed by a mentally ill person).

In New York State the concept of criminal responsibility covers persons sixteen years of age or more who are not, by reason of mental disease or defect, bereft of substantial capacity to know or appreciate either the nature and consequences of their conduct or that such conduct is wrong. This concept has many important uses, but it is essentially a juridical concept and is of little use as a guide for organization of treatment services. Such services have to be organized on the basis of the functions to be performed if government is to operate in a rational and efficient manner.

To illustrate, when a person who is sixteen years of age commits a robbery, the conduct is dealt with under the principles of the criminal treatment system; but, if the person were fifteen years and eleven months, the same conduct would not be dealt with under the principles of the criminal treatment system because there is no criminal responsibility at that age. Nevertheless, the fifteen year old may be a danger to society and the State may have to place him in official custody. Hence, the device of juvenile delinquency is used. Irrespective of whether this is considered a "civil" or a "quasi-criminal" device, the functions performed with respect to the fifteen year old are quite similar to those performed with respect to the sixteen year old who is dealt with under the rationale of the criminal treatment system. Both may be placed under probation supervision, both may be confined in institutions and both may be placed

*The "quasi-criminal" rationale is a hybrid of the civil and criminal models.

under parole supervision. Further, both may receive the same form of training, and the same type of therapy and other services while in custody.

If treatment services are organized in accordance with the theoretical or juridical bases for subjecting persons to treatment—which is presently the case—one agency, or one set of agencies, administers services for the person who commits a robbery when he is fifteen years and eleven months and another agency, or set of agencies, administers services for the person who commits a robbery when he is sixteen years of age.

Such organizational separation of functions is frequently said to be justified on the ground that there is a maturity-level dividing line between the population treated in the two agencies. In other words, it is thought that one agency administers treatment to "children" and the other agency administers treatment to "adults." This assumption is the fallacious result of the tendency to equate the juridical basis for administering treatment with treatment needs. The law considers the person a child because he was under sixteen at the time of the act but he may not be under sixteen at the time of treatment. The fifteen year old might not be apprehended until after his sixteenth birthday or he might be kept in custody until he is eighteen or older.

The clearest illustration of the point is that the Division of Children's Services in the Department of Social Services has approximately 3,200 "children" sixteen through eighteen years of age (juvenile delinquents and persons in need of supervision) under institutional and aftercare custody, while the State Department of Correction and the State Division of Parole—the "adult" services— have a combined total of approximately 2,300 "adults" sixteen through eighteen years of age under institutional and aftercare custody.* The prime distinction is the fact that one group was considered to have criminal responsibility at the time of the conduct involved and the other group was not considered to have criminal responsibility at the time of the conduct involved.

*The proportion of eighteen year olds to the total is, of course, much higher for Correction and Parole. Also, almost all of the 17 and 18 year olds in Social Service Department custody are under aftercare or "parole" supervision (see further comment on pp. 48-49, *infra*).

Thus, it is essential to recognize that when we speak of the principles of the criminal treatment system we are not necessarily speaking of organizational principles for administration of treatment services; but merely of a set of functions designed to deal with actual and potential crime by persons who are not excused from criminal responsibility. These functions can and should be administered conjointly with certain similar functions that are required by the civil system, within a single unified post adjudicatory treatment agency. Failure to recognize this can result in and has led to: overlapping of functions; obfuscation of agency objectives; gaps in agency services; a labyrinth of channels for transfer, communication, research, etc.; a plethora of juridical statuses; fragmentation of treatment; lack of flexibility; tortured legal definitions of juridical statuses; and obscure justifications for prolonging treatment.

The above point will be developed further in this section of Summary and Conclusions; but the rationale for mentioning it at the outset is that one must bear it in mind in focusing upon any and all of the material herein set forth.

The Principles of the Criminal Treatment System

The objectives of the criminal treatment system are to prevent crime and to prevent public unrest that stems from failure of government to demonstrate a determination to uphold certain standards of conduct (*i.e.*, prevention of anomie). The system comprises all functions from and including sentencing through parole; and it carries out its objectives as follows:

1. By administering sanctions that have a sufficient degree of unpleasantness to
   (a) demonstrate to the public at large that the threats annexed to prohibitions cannot be ignored without consequences (*i.e.*, general deterrence), and
   (b) reinforce the confidence of the public in the fact that the state is determined to uphold norms, through a demonstration of action taken against wrongdoers (*i.e.*, prevention of anomie); and
2. By preventing recidivism through the use of sanctions as a vehicle for administering
   (a) rehabilitative techniques to bring offenders to the

point where they will voluntarily observe the prohibitions set forth in the criminal law, and

(b) preventive force through incarceration or close community supervision of the offender so as to limit his opportunity to offend again, and

(c) punishment to make the threats a reality to the individual offender so that he will be more responsive to them in the future (*i.e.*, individual deterrence).

In the context of the criminal treatment system the term "sanction" comprises formal community condemnation, deprivation of rights or privileges, and forfeiture of property for a purpose other than restitution or reparation, imposed and carried out by the state as a direct consequence of conduct that violates a prohibition promulgated by the state. The justification for the use of sanctions stems from the fact that the individual has violated a prohibition formally expressed by the state. In simplest terms sanctions serve as threats and rights—threats in the sense that they say to the public at large, "if you violate the law, certain consequences will follow"; rights in the sense that they permit the state to impose treatment upon persons without proof that such persons are likely to constitute a future danger to society (*i.e.*, to commit future crimes).

The sanctions presently acceptable for the criminal treatment system are: conviction, fine, field supervision, incarceration and death. Conviction causes shame, blemishes reputation and, in many cases, deprives the offender of rights or privileges. A fine, of course, is forfeiture of property for a purpose other than restitution or reparation. Field supervision (*i.e.*, probation, parole or "aftercare") interferes with the right to self-determination. And incarceration can mean total deprivation of liberty.

The right to use sanctions is the concomitant of criminal responsibility; and the major difference between the criminal treatment system and the civil treatment system is that the former uses the sanctioning power as a legal justification for imposing treatment, while the latter uses the condition of the person as a legal justification for imposing treatment. Under the criminal treatment system, a sanction may be imposed without proof that the person has any particular condi-

tion — *i.e.,* without proof that he is a danger to society. All that is needed is proof of the fact that he committed a crime. Under the civil treatment system, treatment cannot be imposed unless it can be shown that the individual has a particular condition defined by law as a basis for imposing care and custody.

Two prime distinctions emerge: (1) that the criminal treatment system can apply treatment (*i.e.,* sanctions) for purposes unrelated to the question of whether the individual, himself, requires care and custody; and (2) that even where treatment under the criminal system is justifiable on the ground that the individual represents a danger to society, little or no proof of such ground is required if the extent of the treatment or custody is within the bounds of the sanction the state has the right to impose.

The first distinction relates to the objectives of general deterrence and prevention of anomie. Theoretically, such objectives are not valid considerations unless criminal responsibility is present. For example, the state cannot impose a sanction upon mentally ill persons, who commit crimes, to deter potential crime by other mentally ill persons, and there is no need to demonstrate a determination to preserve norms when the norm is violated by a person who is mentally ill. In cases where criminal responsibility is present, however, the theory is that an offender may be sanctioned to deter others who are similarly situated and to reassure the community that the state is determined to uphold the norm that has been violated. This may occur irrespective of whether the offender in fact requires treatment to correct his course of conduct.

The second distinction relates to the objective of prevention of recidivism. Once a person has committed a crime, society has the right to weigh the value of his freedom against the risk that he may commit another crime. The evaluation of this risk does not involve a demonstration that he has any particular condition, but merely consists of a judgment based upon his background, his personality and various other factors. It might be noted in this connection that no one has yet devised a method of determining whether a particular individual is likely to commit a crime or to recidivate. Under the criminal treatment system, the justification for treating the condition of the individual is the fact that he has engaged in criminal

conduct. The civil treatment system, on the other hand, administers to persons on the basis of particular conditions which may or may not be related to crime, and its objective is not to prevent crime but to cure the condition. Therefore, proof as to condition is required to justify treatment under the civil system and is not required under the criminal system.

The criminal system utilizes three basic concepts in prescribing sanctions: (1) the concept of the authorized sanction; (2) the concept of the appropriate sanction range; and (3) the concept of the actual sanction.

The authorized sanction is the maximum sentence specified in the law. This represents a balancing of the value of the liberty of the individual against the harmfulness of a particular *category* of conduct (*e.g.*, robbery, rape, murder, petit larceny, etc.).

The appropriate sanction range is the maximum sentence justified for the particular conduct involved. Any category of crime may be committed in a number of ways, some of which are not as grievous as others. For example, robbery in the first degree can be committed as follows: (a) where a gang of men enter a bank armed with sub-machine guns and forcibly take money from the clerks; or (b) where a youth with metal knuckles in his pocket takes a bicycle from another youth by pulling it away from him against his will. The maximum authorized sanction in both cases is twenty-five years of incarceration, but the gravity of the latter conduct is obviously less than the gravity of the former. Consequently, the appropriate sanction range would be less in the latter case than it would be in the former, irrespective of the condition of the offender. (We could not justify a twenty-five year sentence in the latter case on the ground that the offender appears likely to recidivate.) The appropriate sanction range, therefore, is the justifiable or usable portion of the authorized sanction.

The actual sanction is the sanction within the appropriate range to be imposed upon a particular individual in a particular case. This is based upon the need for general deterrence, the need to demonstrate determination to uphold the particular norm involved, and the risk of recidivism. These factors are judged in large part on the basis of what may be called — in a general sense — the condition of the individual (*e.g.*, mental, physical, developmental and social).

General deterrence is viewed in terms of the need to maintain or strengthen its existing level. The theory is that since offenders are constantly being convicted and sentenced, the public has a general impression as to the severity of the system and it is not necessary to sanction each offender to the upper limit of the appropriate range in order to maintain the necessary level. Further, each offender is dealt with in terms of the sanction needed to deter potential offenders who are similarly situated. Thus, for example, it is not necessary to impose a severe sanction on a first offender to deter persons who are potential second offenders: the sanctions imposed upon second offenders serve this need.

The need to demonstrate determination to uphold the norm (*i.e.,* prevention of anomie) is usually viewed in the same terms as general deterrence; for that which will make a man afraid to violate the law should be sufficient to convince him that the law is being enforced. However, there are important exceptions to this rule which apply where the crime is particularly shocking in terms of core values or core institutions of society. In such situations it is necessary to consistently reassure the entire community by demonstrating to the community *in each case* that the state is determined to uphold the norm. Thus, for example, in the case of murder the state has a need to demonstrate to the entire community that the state is determined to uphold the norm and this requires a substantial mandatory minimum period of incarceration in each case. The same reasoning requires the use of a sentence involving some guaranteed period of incarceration where a high public official receives a bribe to influence his official action, or where a bank officer embezzles a substantial sum. In such cases, however, the point of the state's action is to reinforce confidence in the operation of a vital institution rather than a core value.

Risk of recidivism involves a determination as to whether the offender is likely to commit another crime. The three basic methods of preventing recidivism are: rehabilitation, punishment (*i.e.,* individual deterrence) and preventive force (*i.e.,* incarceration and field supervision). These can be applied through the two types of sanctions, custodial and non-custodial. Non-custodial sanctions comprise conviction, fine, and intermittent jail (reporting to jail on weekends or on certain nights, etc.). Custodial sanctions comprise incarceration and field

supervision (probation and parole). The non-custodial sanctions are used primarily for punishment, but custodial sanctions generally serve all three methods of preventing recidivism.

Before discussing the manner in which these principles relate to each other and the manner in which they should be applied, it is necessary to discuss certain of the Committee's conclusions with respect to custodial sanctions.

The term "custody", as used in this report, means control exercised pursuant to law over an individual. Custody is characterized by three factors: (1) restrictions upon liberty not applicable to the public at large; (2) coercive power for enforcement of the restrictions; and (3) a tangible instrumentality for execution, such as field supervision or incarceration.

The custodial aspect of the criminal treatment system presently consists of a trichotomy — composed of probation, incarceration and parole — rather than a single unified operation. The reason for this is the fact that, historically, incarceration was viewed as being focused upon punishment, and probation and parole developed in relation to this focus — probation developing as a method of avoiding the infliction of punishment, and parole developing as a method of relieving punishment. Thus, probation developed outside the punishment process and parole developed as an integral part of the punishment process. The separation between incarceration and the field services (probation and parole) was crystallized by the fact that they were conceived to be entirely distinct methods of treatment for entirely distinct purposes. And the separation between the two field services was crystallized by the fact that they were viewed as being in different spheres of the treatment system. Probation was looked upon as comprising one sphere — the pre-punishment system — and incarceration and parole as comprising the other sphere. The gulf between spheres was emphasized by the fact that the judiciary administered one and the executive branch administered the other.*

As correctional theory evolved, it became obvious that incarceration should be used as a setting for the administration of rehabilitative programs and that institutional custody had

*Since the function of the executive branch of government, in the area of post adjudicatory treatment, was viewed as consisting of the administration of the infliction of punishment, it is only natural that probation developed as an improvised adjunct of the judicial branch which was concerned with saving "worthy" offenders from punishment.

three purposes: (1) confinement for rehabilitative purposes; (2) direct preventive force; and (3) punishment. It also became obvious that total incarceration was not always necessary for these purposes, and there has been much sentiment in favor of developing programs that involve partial institutional custody (*e.g.,* half-way house, work release, etc.). At the same time, the field service agencies recognized the reciprocal of this thinking—*i.e.,* that programs involving partial institutional custody could be of assistance in rehabilitating and supervising persons who are on probation or parole—and attempted to develop institutional programs.

However, the very separation of concepts underlying the trichotomy, which permitted the system to progress to its present position, is now working as an impediment to further progress. Programs that involve partial institutional custody are viewed as aberrations on the concept of field supervision and on the concept of incarceration. Further, parole and probation which now share precisely the same goals and use precisely the same techniques are administered as totally separate and distinct operations requiring duplication of staff and transfer of jurisdiction over an individual from one field service agency to another if institutionalization intervenes.

The essence of our present difficulty in developing the treatment system is that we are utilizing three separate concepts of custody rather than a single overall concept. We are viewing custody in terms of three concepts corresponding to three distinct operational segments of the system and relying upon these separate operations for conceptual changes, rather than utilizing a single concept to develop the operations. Apart from the fact that no system can develop effectively without an underlying cohesive theoretical base, the resulting identity of concept and operation — *i.e.,* each defined in terms of the other — creates inflexibility in both, because we tend to operate in terms of the concept and to conceive in terms of the operation and it is difficult to break the cycle.

By using a general concept of custody, we can eliminate the arbitrary lines established by existing concepts of probation, incarceration and parole, and utilize the custodial aspect of the treatment system in a more rational and efficient manner.

In thinking about rational and efficient use of custody under the criminal treatment system, it is important to observe

that since custody is based upon the right of the state to impose a sanction for particular conduct, and since the upper limit of the sanction is determined by the gravity of that conduct, the period or term of custody is arbitrary when viewed in relation to the likelihood of recidivism. For example, the maximum authorized term of custody for petit larceny is one year; and, irrespective of whether a person appears likely to recidivate, he cannot be sentenced to a term in excess of one year or be held beyond one year. This would not be the case in the civil system where the sole theoretical basis for custody is the condition of the individual. Under the civil system, the state can hold an individual in custody for so long as the condition persists and custody is needed.

The significance of the above observation is that almost every offender must be returned to the community free from custodial restraint at some point, and termination of custody can well occur at a time when the offender is most in need of custody. This truism is the basis for many of the most important principles of the criminal treatment system. Foremost among these principles are the related concepts of flexibility and fluidity in utilization of custodial instrumentalities.

Flexibility relates to legal authority, and fluidity relates to operational capability, to utilize field supervision or institutional custody or part one and part the other as and when needed in changing the behavior pattern of the individual. These two concepts conflict, at times, with the need for sufficiently unpleasant sanctions to serve the purposes of general deterrence and prevention of anomie (*i.e.*, the need for "severity"). The manner in which this conflict is resolved is explained at length in Part One of the Report. Suffice it to note here that the conflict cannot be resolved by generally favoring one side over the other: it can only be resolved by narrowing the area of difference.

Another major principle that flows from the above stated truism is the concept of risk taking. Since almost all offenders will eventually be free of custodial restraint, it makes sense in many cases to place offenders in the community under supervision as soon as possible. By so doing, the system has the opportunity to have them under observation in their natural habitats and the system can react with appropriate treatment for

unsatisfactory behavior patterns while there is still time to do so (*i.e.*, while the custodial period is in force). This, of course, involves a risk that they will commit new crimes during a period when they could have been within the institution; but the risk is a necessary one and the offenders are screened as carefully as possible.

A significant corollary of the principles of flexibility, fluidity and risk taking is that the basic treatment decisions must be left, to the greatest extent possible, in the hands of treatment administrators. This requires a set of laws under which the legislature concentrates on certain factors, the judiciary concentrates on certain other factors, and custodial and treatment decisions are vested in the executive branch. Such laws must permit the executive branch latitude (*i.e., flexibility*) in utilization of custodial instrumentalities so that persons may be released from institutions and returned to institutions in accordance with the needs of the case.

In this connection it is relevant to observe that the whole concept of institutional custody would have to be changed. Presently, the concept of incarceration is viewed in terms of an institution in which a person is placed and in which he remains for a fixed or a substantial period of time. This is based upon historical practice. In a modern system, the concept of incarceration includes using the institution for custody during the day or during the night or on weekends or for a week or a month or more in accordance with the needs of the case. New York State law does not presently incorporate this dimension.*

Distribution of Decision Making Functions

The relationships among all of these principles and the manner in which they should be applied can be illustrated through a discussion of the manner in which decision making functions should be distributed. The Committee's conclusions with respect to this may be summarized as follows.

*It might be noted, however, that several bills are pending in the 1968 Legislature to establish "work release" programs and programs for release of inmates for training and educational purposes. Such programs, while representing steps away from a narrow concept of institutional custody, still reflect a fixation upon the trichotomy described on pp. 34-35, above.

Legislative

The legislative branch of government expresses the basic tenets of public policy for the operations of the system and also distributes the decision making powers. Certain decisions are mandated upon the system by the legislature as matters of public policy, and certain decisions are left to the discretion of the judicial and executive branches. Where decisions are left to discretion, the legislature prescribes which of the two branches should exercise the discretion, and sometimes prescribes criteria for the exercise of discretion. In sum, it is suggested that the legislature's decision making role in the context of the criminal treatment system (*i.e.*, from sentence through discharge from custody) is as follows:

1. To prescribe the maximum authorized sanction for the various categories of conduct.
2. To mandate that a judgment of conviction, expressing community condemnation, be imposed in every case where there is a verdict or a plea of guilty.
3. To mandate a sanction beyond conviction for crimes that shock core values (*e.g.*, murder and kidnapping).
4. To mandate custodial supervision for persons who commit very serious crimes.
5. To distribute authority for all other decisions between the judicial and executive branches.

Judicial

The basic role of the judicial branch of government is to interpret laws in the context of particular fact situations and to assure that disputes are resolved by means of a just procedure. The judicial branch also is particularly suited for determining the extent of the sanction necessary for general deterrence and prevention of anomie, because the primary factor here is an intimate knowledge of the manner in which the community views particular situations.

In sum, the role of the judicial branch of government in the context of criminal treatment decision making should be as follows:

1. To impose the conviction or the adjudication as required by legislative mandate after a determination of criminal responsibility.
2. To determine the appropriate sanction range, within

the authorized maximum, based upon the conduct of the offender.

3. To determine the degree of sanction, within appropriate range, necessary for general deterrence or prevention of anomie.
4. To determine whether or not there is a reasonable risk of recidivism, based upon the condition of the offender; or, where the crime is so serious that custodial supervision is mandatory, to commit the offender to custody.
5. To impose sentence based upon the foregoing determinations.

If the appropriate sanction range does not include a term of custody, or if a term of custody is not required for any purpose of the system, the sentence may consist of conditional or unconditional discharge (see Penal Law, §§65.05, 65.20), or of a fine, or may direct intermittent jail. This, of course, does not preclude use of more than one sanction where appropriate, *e.g.*, fine plus intermittent jail.

Where the appropriate sanction range does include a term of custody, but custody is not required for general deterrence or for prevention of anomie, risk of recidivism should be dealt with as follows:

(a) If there is no risk, and the crime is not one that calls for mandatory custody, custody should not be used;

(b) If there is little reason to believe that the offender presents a risk of recidivism, and the crime is not one that calls for mandatory custody, a deferred sentence with an order of supervision should be used.* (This could be coupled with a fine or with intermittent jail or with both.);

(c) If the offender presents a risk of recidivism, or if the crime is one that calls for mandatory custody, the maximum term of custody – within the appropriate range – should be imposed. The reason for use of the

*Under this procedure the court would not have to make a decision on risk at the time of sentencing. The court could defer sentencing the offender for a reasonable period (*e.g.*, 3 months in the case of a misdemeanor and 1 year in the case of a felony) and direct the field service agency to report upon his behavior. This would differ from probation in terms of focus. Probation is a treatment method and a custodial instrumentality. Supervision under a deferred sentence would not involve treatment or the general concept of custody.

maximum term, within the appropriate range, is that there is no way to forecast the effect that treatment will have and the duration of the risk. Hence, the maximum should be used, for public protection, and the executive branch should have the authority to discharge the offender at such time as he no longer appears to present a risk of recidivism.

Where the appropriate sanction range does include a term of custody and custody is needed for general deterrence or for prevention of anomie, the decision should be made in accordance with the following reasoning:

(a) If custody is not necessary for prevention of recidivism, the sentence should consist of a specified term of incarceration;*

(b) If custody is necessary, or mandated, for prevention of recidivism, then the question is whether a minimum term of incarceration should be imposed and this would be determined as follows:

(i) When a statutory minimum is prescribed, the minimum imposed would have to be at least the statutory minimum, and any excess would depend upon items (ii) and (iii) below,

(ii) Where the crime is particularly shocking, a minimum term of incarceration would be used in order to guarantee a meaningful demonstration of determination to uphold the norm, and in such case the generally accepted standard is that the minimum should not exceed one-third of the entire custody term; and

(iii) In all other instances, a minimum term of incarceration should only be used, or increased above the statutory minimum, where the general sanction level needed for general deterrence or for prevention of anomie has not been sustained by other cases, and the one-third rule would still apply.

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*It should be noted that the term "incarceration" when specified in a sentence would mean confinement in an institution under a residential program, *i.e.*, a program that requires the offender to spend at least all of his non-waking and leisure hours in the institution.

Executive

All decisions not mandated by statute or allocated to the judiciary must, of course, be vested in the remaining branch of government — the executive branch. This would mean that when a person is committed to custody, decision making would be as follows:

(1) If no term of incarceration is specified in the sentence, whether incarceration or field supervision or a combination of both should be used;

(2) If a term of incarceration is imposed, where such term is to be served and the particular program to be administered (subject to the limitation that it must be a residential program, see footnote on p. 40, *supra*);

(3) If a term of custody is imposed with a minimum term of incarceration, the decisions specified in item one, above, after the minimum period of imprisonment has been served;

(4) All decisions as to specific details of treatment (*e.g.*, therapy, education, training, special rules of conduct, intensity of field supervision, etc.); and

(5) When to discharge the offender, limited, of course, by the fact that the minimum term of incarceration, if any, must be served and by the fact that he cannot be held beyond the maximum term of custody.

It is important to note that all of the above decisions should be based upon considerations involved in prevention of recidivism, and that the executive branch should not base its decisions upon the needs of general deterrence or prevention of anomie. Those needs are determined and provided for by the judicial branch of government; and, where mandatory sentences are involved, by the legislature.

Civil Treatment System Functions That Should Be Administered Conjointly With Criminal Treatment System Functions

In appraising the various theoretical bases for subjecting persons to custody and treatment, it is possible to group them in two general functional categories: (1) certain legally recognized illnesses, or, for juveniles, dependency; and (2) crime, or, for juveniles, anti-social behavior patterns. There is, of

course, no clear dividing line between these two categories because one may give rise to the other (*i.e.*, illness may give rise to anti-social behavior patterns) or one may be indicative of the other (*i.e.*, anti-social behavior patterns may be indicative of illness). As a practical matter, however, when the state administers treatment for illness or care for dependency, it does so in accordance with specialized operations relating to specific conditions, but when it administers for anti-social behavior it does not.

Thus, for example, looking at the concept of illness, the mentally ill have generally been handled by a special department and kept in institutions devoted solely to the care of the mentally ill. The mentally defective have generally been dealt with by the same department, but kept in institutions devoted solely to the care of the mentally defective. Narcotic addicts for the most part are dealt with by a special commission and kept in programs (institutional and aftercare) devoted solely to the care of narcotic addicts.

When dealing with anti-social behavior problems—both in cases where there is criminal responsibility and in cases where there is no criminal responsibility—if the problems are not handled under the concept of illness or dependency, there is no concept of specialized function. Anti-social behavior is dealt with by and large as a single conceptual category. Thus, for example, the child of twelve who stabs another child and is shown to be in need of custodial treatment receives treatment in the same institution and under the same field service setup as the child who is incorrigible and beyond the lawful control of his parents or other lawful authority. If the child is fifteen at the time he stabs another child, he may be sent to the State Department of Correction for treatment even though there is no criminal responsibility. Youngsters who are cared for by the State Department of Correction because they were sixteen or more at the time of the conduct involved, may be transferred to an institution in the Department of Social Services. Thus, the concept in all such cases—regardless of the agency—is care and custody of persons who are involved in anti-social behavior.

Perhaps the clearest example of this concept can be seen in the operations of the State Division for Youth. That agency administers treatment to persons labeled as: persons in need of supervision; juvenile delinquents; wayward minors; youth-

ful offenders; misdemeanants; and felons. It even administers treatment to troubled youths who are referred to it without court action and who have no labels.

Within the two functional categories, the various rationales for exercising control over people are invariably characterized by juridical labels such as the ones mentioned in the paragraph above. The reason for this is that the state cannot impose treatment upon a person unless the basis for the treatment is established through legal proceedings; and juridical labels indicate the basis of the treatment and the rationale for imposing it. The labels that denote anti-social conduct (as distinguished from special illness) and the juridical categories which the Committee believes should be dealt with under a single functional concept within a single executive agency are as follows: (these are terms taken directly from the present law, or resulting from the present law, which are analyzed extensively in the text of the Report) :*

—Person in Need of Supervision
—Juvenile Delinquent
—Wayward Minor
—Youthful Offender
—Misdemeanant
—Felon
—Convicted Narcotic Addict

Before passing to the principles of organization, where some conclusions are stated as to the manner in which these juridical categories would be handled, it is important to recognize certain implications that follow when the non-criminal categories are viewed in terms of criminal responsibility versus no criminal responsibility.

The first four juridical categories (person in need of supervision ["PINS"], juvenile delinquent, wayward minor and youthful offender) are not considered "criminal", although some seem to be more criminal than others. The juvenile delinquent and youthful offender categories are rooted in the fact that the person engaged in criminal conduct and the

*Another category consists of the non-criminal violation. This is basically used for minor matters that offend community interests and the state applies the machinery of the criminal law as an expeditious method of controlling such conduct (*e.g.*, traffic infractions, littering, hunting out of season, etc.). This category is dealt with summarily and custody is not customarily used. The usual disposition is a fine or license revocation or both.

PINS and wayward minor categories are rooted in patterns of behavior which are not permitted for minors. The juvenile delinquent and youthful offender categories are prime illustrations of the failure to come to grips with the problem of criminal responsibility and to deal with it on a rational basis.

There can be no question that the present law exempts persons under sixteen from criminal responsibility. Yet the law defines two categories of persons under sixteen who engage in anti-social behavior: juvenile delinquents and PINS. Although the former is rooted in criminal conduct and the latter is rooted in patterns of behavior which are not permitted for minors, neither category can be used and no adjudication can be made unless it is found that the youngster requires "supervision or treatment" (in the case of PINS) or "supervision, treatment, or confinement" (in the case of juvenile delinquency). Thus, both categories require the same basic ultimate finding and persons in both categories can be placed under probation supervision or sent to State training schools.

Where the disposition is custody in a State institution, the juvenile delinquent may be "committed" or "placed" but the PINS can only be "placed". The distinction between commitment and placement is that the former is for an indefinite period up to three years and is not renewable, while the latter is for an indefinite period up to eighteen months and is renewable or extendable until the eighteenth birthday for a male, or the twentieth birthday for a female. It is obvious that the concept of placement is based upon the need for treatment and that the concept of commitment is not.

When taken together, the fact that juvenile delinquency is rooted in the concept of a criminal act, and the fact that juvenile delinquents may be "committed", reveal a reluctance to part with the concept of criminal responsibility for persons between the ages of seven and sixteen who commit criminal acts. If there is no criminal responsibility, the fact that the youngster committed a crime is merely an indication that he may need supervision, and this is no different from the concept underlying PINS. Further, the use of commitment rather than placement is irrational. Placement is related to the needs of the youngster and may be continued while those needs are

present (at least until he reaches a certain age). Commitment is technically related to the needs of the youngster but is obviously a criminal sanction. It cannot be continued to a certain age and it bears no relationship to the actual needs. As an illustration, if a thirteen year old burglarizes a home and it is found that he needs supervision, "commitment"—which is technically the more severe disposition—will only provide supervision until he is sixteen. "Placement"—which is technically less severe—can provide supervision until he is eighteen. The paradox can only be explained on the ground that "commitment" is more in the nature of a criminal sanction.

The Committee does not quarrel with the policy of exempting persons under sixteen from criminal responsibility. The point made here is that all such persons should be treated in accordance with a single concept of child in need of supervision. We cannot and should not continue to maintain a system that announces a policy of no criminal responsibility, but nevertheless continues to apply concepts of criminal responsibility.

Turning to the youthful offender category, the failure to come to grips with the problem of criminal responsibility becomes even more harmful. Under the youthful offender procedure *some* "worthy" youths (16 to 19 years of age) are excused from criminal responsibility, depending primarily upon the discretion of the court and the district attorney. The custodial dispositions available for youthful offenders are: (a) an indefinite period of probation supervision that can last up to five years (perhaps coupled with a requirement that the offender spend up to two years of such period in a facility of the State Division for Youth); or (b) an indefinite reformatory term that can mean up to four years of incarceration or four years of incarceration and parole. No special proof of any condition is required to show that the youth is in need of such custody. It is clearly imposed under the rationale of a criminal sanction. Thus, the youth who commits a misdemeanor, and who seeks to save himself from a criminal record, must trade the risk of a heavy sanction for the boon of exemption.

Further, the youth who commits a more serious crime and who presents a serious risk to society is unlikely to receive

youthful offender treatment, because the four year period of custody may not be sufficient for general deterrence, prevention of anomie or risk of recidivism. Here we see three related paradoxes: (1) that criminal responsibility depends upon the type of offense committed rather than the condition of the offender; (2) that the period of custody needed governs the question of criminal responsibility; and (3) that a device generally believed to be quite helpful in rehabilitating youth—*i.e.,* withholding of the criminal label or "record"—is not used in dealing with the youths who present the more serious problems.

The central difficulty with the youthful offender procedure is that the basis for the adjudication and the basis for the disposition are not rationally related to each other. The youthful offender procedure is some sort of quasi-criminal procedure with elements of both sides intermixed; and the trouble is that there has been no attempt to align the criminal elements of the adjudication with the criminal elements of the disposition. Since the adjudication is based solely upon the criminal act, the extent of the sanction permitted should be gauged to the gravity of the conduct involved. This means that the present sanction is too high for a misdemeanor and, perhaps, not high enough for a grevious felony. On the other hand, if the state has the right to administer treatment to PINS for anti-social conduct until they reach the age of eighteen (or twenty in the case of a female), and has the right to administer treatment to juvenile delinquents until they are nineteen or older (see discussion, *infra,* pp. 236-238), it would be irrational to conclude that the longest period of custody the state ought to exert over a sixteen year old misdemeanant should be one year. Hence, there has to be a provision that permits some extension of custody for such persons on a showing of need for supervision.

The solution recommended by the Committee involves two elements: (1) a method of combining the civil and criminal rationales so as to align the disposition with the basis of the disposition; and (2) a set of authorized sanctions that reflect the fact we are dealing with young people and that sentences of fifteen and twenty-five years (for class C and B felonies) are not needed for general deterrence or prevention

of anomie (hence, a concept of "modified criminal responsibility"). This plan would apply to all youths in the 16 to 19 year age group. The youth would be tried for the conduct and, if found guilty, he would still be adjudicated as a youthful offender. The major differences would be: (a) the procedure would apply to all youths (except, perhaps, in the cases of murder and kidnapping in the first degree); (b) no youth could be subjected to custody for a period in excess of the appropriate sanction for the conduct, unless there is proof that such extended period is necessary because the youth needs supervision—but in no case would any such *extension* be granted beyond a certain age (perhaps 19 or 20);* and (c) a scaled down version of the authorized sentences for felonies would be used.

Principles of Organization for Administration of Post Adjudicatory Treatment Services

The basic principles recommended by the Committee for organization of treatment services are as follows:

1. That services administered by government should be grouped, for administration, in accordance with the functions performed ("functional administration") rather than in accordance with the juridical labels attached to the persons under treatment (*e.g.*, juvenile delinquent, misdemeanant, probationer, parolee, etc.).
2. That services should be organized so as to avoid fragmentation of treatment functions under a single adjudication or commitment, and that it is irrational and inefficient to have part of the treatment administered by a county agency (*e.g.*, probation) and part of the treatment administered by a state agency (*e.g.*, parole) when treating a single individual.
3. That services should be organized so as to avoid fragmentation of treatment functions arising out of the juridical label assigned to the individual on each occasion that he is convicted or adjudicated.
4. That custody should be administered under a single

*Extensions would not be relevant where the conduct is serious enough to justify a long sanction (*e.g.*, 7 years). The primary use of extensions would be in misdemeanor cases where the maximum sanction is one year.

general concept, consisting of gradations ranging from full time field supervision to full time incarceration.

5. That decisions as to the appropriate form of custody (*i.e.*, field supervision or incarceration or a combination of both), and the appropriate institution should basically be within the province of the administrators directing treatment operations.

The principle of functional administration and the manner in which it differs from our present theory of organization is outlined at the beginning of this section of the Summary (pp. 25-29). However, one vital aspect of this principle should be noted at this point. Under the plan recommended by the Committee, the varying age groups would be handled on a maturity level basis. The Committee believes that there are major differences in the problems presented in treatment of children, youths and adults. These differences justify the establishment of separate divisions or spheres within the treatment agency. Thus, children would be handled in a children's division, youths would be handled in a youth division and adults would be handled in an adult division.

In this connection it is essential to recognize that the three divisions must be linked together under a single administrative umbrella. One of the major reasons for this is to permit transfer between them—the child may mature to a youth while under treatment and the youth may mature to an adult; also, it is not always possible to tell the maturity level of a person from his chronological age, and persons who are sent to one division on the basis of age (*e.g.*, a 14 year old to a children's program) may need to be cared for in another division (*e.g.*, a youth program). Other reasons for using a single administrative structure include: the need to pursue a comprehensive treatment plan for persons who mature while in custody; the need for a unified treatment information file containing all material on successive treatment phases for individuals who are committed for treatment several times during their life; and the need to perform comprehensive research.

One example of the type of situation that can result through failure to link treatment programs for persons of various maturity levels can be seen by looking at the parole function of the Department of Social Services. The Department's institutional programs are designed for persons in the

sixteen and under age group; and the Department also administers aftercare ("parole") for persons released from the institutions. At the present time the Department has approximately 1,200 youngsters in the 17 and 18 year age group under parole supervision and only approximately 33 youngsters in this age group in institutions. The reason for this vast difference in aftercare and institutional populations is that the Department has no suitable institutional program for 17 and 18 year olds. Hence, when a 17 or 18 year old youngster is unresponsive to field supervision, he is discharged from supervision as unimproved rather than returned to an institution for more intensive care and supervision. He is not discharged because of lack of concern, or lack of apprehension that he will commit a crime: the Department is forced to discharge him, because there simply is no place to send him.

There are only two possible solutions to problems of this sort: (1) the system advocated in this report; or (2) three grossly overlapping systems performing substantially the same function.

The second principle—that services should be organized so as to avoid fragmentation of treatment functions—merely involves recognition of the fact that although a single offender may pass through a number of different treatment operations, he is still one individual. He is not one person when he is under county probation, another person when he is under State institutional care and a third person when he is released under parole supervision. It simply makes no sense to transfer him from agency to agency for treatment purposes: treatment must be administered as a continuum.

The third principle—that services should be organized so as to avoid fragmentation of treatment functions arising out of the juridical label assigned to the individual on each occasion—involves recognition of the fact that a single person may be convicted or adjudicated on more than one occasion. It simply makes no sense to have the question of which agency administers treatment depend upon whether the latest crime is a felony or a misdemeanor, or upon whether it happens to have been committed in county A or county B. Under our present system the multiple offender (and especially the offender who travels throughout the State) may be treated during his lifetime by thirty or forty different State and local agencies under various

commitments (see page 19 of the Introduction). With such gross fragmentation we can never hope for an effective approach to the problem of recidivism. At one time in his life a person may be a fourteen year old juvenile delinquent; at another time he may be a twenty year old felon; at a third time, a twenty-five year old misdemeanant; and at a fourth time, a forty year old felon. But at all times, and in whatever county he happens to be, he is still a single person. Hence, it is irrational and inefficient to bounce him back and forth among separate treatment agencies on the basis of the particular label attached to him each time or the particular county in which the offense is committed.

The fourth principle—that custody should be administered under a single general concept—is explained to some extent in pages 34-37, above. This principle applies to both the civil and the criminal systems, and utilization of the general concept of custody will facilitate utilization of custodial instrumentalities in accordance with need. Such utilization implies a capability to move persons from field supervision to incarceration and back to field supervision as and when needed for particular purposes. This capability cannot be achieved under a system that is fixated at the level of viewing custody in terms of separate juridical statuses such as "probationer", "inmate", and "parolee".

It might be noted that the general concept of custody is even more useful when treatment is administered under a civil system rationale than it is when treatment is administered under the criminal system rationale. The needs of general deterrence and prevention of anomie—expressed in the form of a minimum term of incarceration—limit flexibility and fluidity under the criminal system, but do not impose such limitation under the civil system.

The fifth principle—that decisions as to the appropriate form of custody and the appropriate institution for incarceration are basically within the province of administrators directing treatment operations—reflects recognition, perhaps for the first time, that the field of treatment is a separate and distinct field of endeavor. Up to the present time the court has been responsible for making many treatment decisions that are unrelated to the basic responsibilities of the adjudicatory function. In the area of juvenile delinquency, for example, the court

determines whether field supervision or institutional custody should be used; and, where institutional custody is used, the court selects the institution. We have reached a point where we now recognize that the form of custody selected and the institution used are vital treatment decisions. Accordingly, we also should recognize that such decisions should be made by administrators who specialize in this area, and who are also intimately familiar with the vast array of programs available.

II

Diagnosis, Assignment to Program, Prevention of Recidivism and Related Matters

Within the framework of the basic principles, there is another level of problems which relate to the methods used for rehabilitating persons or preventing recidivism. The present level of knowledge in this area is woefully inadequate and we are unable to state at the present time with demonstrable certainty whether any particular treatment method is effective in preventing recidivism. The most hopeful recommendation we can offer consists of an organizational structure for more rational administration of treatment services and a method of proceeding that will yield the badly needed knowledge.

One thing seems fairly certain and this is that the solution does not lie in any one form of treatment or in any one combination of treatments for every offender. The question is not so much whether we need more teachers or psychiatrists or social workers, but rather one of matching treatment needs of the individual to treatment methods known or available. Without a basic understanding of which method of treatment is most likely to be helpful in a particular case, it is illogical to believe that any particular form of treatment will help to prevent an individual's recidivism. In fact, there is some

evidence that certain forms of rehabilitative treatment may, when generally applied, actually enhance the chance of recidivism.

For these reasons the Committee did not focus its efforts upon appraising such matters as caseloads, number of teachers, training of personnel, number of psychiatrists and psychologists, etc. In our opinion the problem lies much deeper. We are not prepared to say for example—as is said in other reports—that parole or probation caseloads should be 35, 40, 50 or more or less; or that half-way houses work; or that work release helps or does not help in preventing recidivism. We are prepared to say that it is high time a system were created in some jurisdiction with the capability of answering such questions; and we strongly believe that we are recommending such a system for this State. Moreover, the system proposed by the Committee offers a more efficient and more rational approach to treatment.

First and foremost there must be a strong program of systematic evaluative research. Such a program has to be structured so as to play an integral role in policy making, planning and development.

Secondly, we must develop a system for diagnosis that is capable of utilizing the wide range of available skills. This would involve diagnosis of each offender by an interdisciplinary panel prior to any decision as to disposition. In other words, rather than having a social worker decide—in formulating the pre-sentence report—whether the offender should be referred for psychiatric examination, or whether the offender's criminality is related to poor familial relationships combined with identification with a delinquent gang, and then recommend a proper course of treatment to a judge, we would establish what seems to be a more rational system for these decisions. True it is that the use of panels of experts will not in and of itself improve the level of knowledge, but it will bring the best knowledge available to bear; and, when combined with research, it offers the prospect of a better level of knowledge.

Third, we must develop the capability for organizing a treatment plan, following it through, and periodically re-evaluating it. This must be done on a continuum from point of adjudication to final discharge.

Fourth, we must develop a system for interdisciplinary case management in treatment. This would mean the use of treatment teams with each member performing a specialized function. We should move from a system where the social worker is the vortex of treatment planning and implementation to a system where the social worker is a vital member of a treatment team. We cannot, for example, afford to perpetuate a system where a parole officer, who may have a master's degree in social work or a law degree, does treatment planning, casework, investigative verification, surveillance and even makes arrests. Many of these functions are a waste of valuable and scarce talents when performed by highly trained persons; and many times various functions are not matched to the skills of the individual. Treatment—whether within or outside of institutions—should be performed by teams with specific functions assigned to each member.

The composition of such teams would depend upon the groupings of problems involved. In the field service area, for example, one team might consist of an investigator, a group therapist, a vocational counselor and a social worker; another team might consist of an investigator and a psychiatrist; a third type of team might consist of an investigator and a social worker. Each team would work with a case coordinator, who would receive a treatment plan from a diagnostic panel. The managerial or administrative details would of course vary, and would have to be tailored to the size of the office and the resources available.

The Committee recommends the establishment of regional centers throughout the State. Each center would have a diagnostic panel; and, where the caseload is large enough, there would be specialized panels for children, youth and adults. Additionally, each center would have detention facilities and would also have minimum security facilities for programs involving partial institutional custody. (These would, of course, be constructed so as to separate children, youth and adults.) There would also be three central control boards in Albany—one for each maturity level.* All of these operations, plus all

*The regional panels would basically be composed of persons in charge of the various treatment operations of the center; and each central board would consist of four or five outstanding professionals in the area of treatment for the specific maturity level involved.

operations of institutions and field services would be under the direction of a single administrator.

Each central control board would set policy, subject to the approval of the administrative head of the agency, for the institutional and field service operations dealing with persons in the maturity level it controls. The children's board would set policy for treatment of children, the youth board would set policy for treatment of youth and the adult board would set policy for treatment of adults. These central boards would also review and finalize individual treatment plans.

When a person is found guilty of an offense, or when the family court decides that a dispositional hearing is necessary, the case would be referred to a regional center for diagnosis. The diagnostic team would submit its findings to a regional panel and the panel would prepare a report and a tentative treatment plan. This would be sent to the court as the pre-sentence or pre-disposition report. If the court imposes custody, the panel would send the treatment plan to the central board and, upon approval, it would be executed. Where the plan includes full time incarceration and the offender or juvenile is sent to an institution, an institutional panel would perform periodic reevaluations and when the person seems ready for transfer to another program—*e.g.*, back to the regional center for a combination of institutional care and field supervision—a recommendation would be made to the central board. Upon approval, the case would be transferred.

Some of the major features of the methodology recommended by the Committee which are not implied from prior discussion are as follows. There would be a unified file so that if the offender had ever been referred to the system before, the treatment plan could be built on prior information and experience. Apart from the obvious saving in redoing and rewriting case histories each time the offender is convicted or adjudicated, we would, for the first time, have a rational method of handling offenders who are sentenced for short terms. At the present time, when a person receives a sixty day sentence there is no time for diagnosis, treatment planning and like matters. Under the system proposed, we would have information on the repeater and treatment could be *resumed* rather than *initiated*. Each period of custody would be looked upon as a building block for treatment rather than as an isolated

experience. Further, treatment would have an overall focus from adjudication to discharge. Additionally, the whole process from point of conviction or adjudication to point of commencement of treatment would be speeded.

The body of the Committee's Report and appendixes to the Report contain extensive analyses relating to the causes of crime and delinquency and the present level of knowledge with respect to treatment effectiveness. This material also includes proposed research designs for accumulating knowledge on these subjects; a methodology for systematizing diagnosis and treatment instructions; and an analysis of the problems of risk.

In connection with treatment effectiveness, one further point should be noted. Although there is an absence of demonstrable knowledge as to treatment effectiveness, the treatment system must nevertheless continue to function. Hence, the basic hypothesis generally used is the one accepted by the Committee for the present. This hypothesis is that the treatment system must apply the type of treatment that seems most likely to help individuals to overcome problems that seem to impede adjustment to the community. This may be called the *theory of rehabilitation,* which can be stated as follows:

1. There are certain personal characteristics that impede an individual's ability to function at a generally acceptable level in one or more basic social areas.
2. The difficulty in performing at a generally acceptable level in such areas significantly contributes to criminal conduct.
3. Treatment should be directed at overcoming the aforesaid personal characteristics.

Thus, the aim of rehabilitation is to treat those characteristics of the offender which are inconsistent with the basic characteristics needed to function acceptably. It is felt that, if the treatment has a positive impact, the offender will be more likely to satisfy his needs through socially acceptable conduct and the likelihood of his return to crime will be reduced.

III

Overall Organization

The major organizational recommendation in the Report is that the State should establish a unified post adjudicatory treatment agency (a Department of Rehabilitative Services). This agency would administer services for *all persons* convicted of crimes or adjudicated as juvenile delinquents, persons in need of supervision, wayward minors, youthful offenders, etc.

The simplest way to present the organizational implications of this recommendation is to view it in terms of functions performed by State and local governmental agencies presently operating in this area.

Probation

At the present time "probation" is a term that has no generally applicable meaning when viewed in terms of the functions performed. Such functions range from adoption investigations and marital counseling to field supervision of convicted felons. Certain aspects of probation are properly part of court services (*e.g.*, intake) and certain aspects are properly part of the post adjudicatory treatment system. The former would be left under the judicial system and the latter would become part of the unified post adjudicatory treatment service.

The functions of probation that would be included in the unified post adjudicatory treatment system are: pre-sentence and pre-disposition reports; and field supervision of adjudicated persons. Such field supervision would, of course, be merely a level of custody and a form of treatment under a general concept of custody; and "probation", as such, would not be an independent status. Stated otherwise, there would no longer be any separate concept of probation.

Parole

The parole functions of the State Division of Parole, the State Department of Social Services and the State Division for Youth would be included in the unified agency. Also included would be the function of providing aftercare for convicted narcotic addicts who presently are sent to the State Narcotic Addiction Control Commission.

As in the case of probation, parole would also be administered merely as a level of custody and a form of treatment within the general concept of custody; and, as such, parole would have no independent juridical or organizational status.

The State Board of Parole would be dissolved, because the functions and the members of the Board would be absorbed by the panel and board system described above.

Institutionalization

The function of caring for all sentenced or adjudicated persons in the area of crime and delinquency includes, of course, the duty of providing institutional care where mandatory or appropriate. Thus, the unified treatment agency would operate institutions for juvenile delinquents and persons in need of supervision presently administered by the State Department of Social Services; the institutions presently administered by the State Division for Youth; and the institutions presently administered by the State Department of Correction. In addition, the agency would provide institutional services for convicted persons presently sentenced to county jails and penitentiaries, and for convicted narcotic addicts presently sentenced to the Narcotic Addiction Control Commission.

As previously noted, some of these functions would be handled through the establishment of regional centers throughout the State, and this move might include the possibility of acquiring some of the county institutions.* Institutional services would, of course, be administered in accordance with the general concept of custody, and this would require establishment of community-based treatment facilities, perhaps in addition to the various regional centers.

Further, there would no longer be artificial, juridically based, distinctions between types of institutions (*e.g.*, prison, reformatory, penitentiary, jail, training school, etc.). Institutions would be used in accordance with program needs and the

*It might be noted that as of December 31, 1967, there was a total of approximately 1,200 prisoners incarcerated in local institutions outside the City of New York (5 penitentiaries and 56 county jails). In the City of New York there was approximately 6,000 sentenced prisoners (only 5,000 for crimes). Out of this latter 5,000 inmate figure, the State was paying reimbursement for the expenses of caring for 2,200. In fact, the reimbursement paid by the State to the City is equal to one-half the cost of operating Rikers Island, *including* debt service and fringe benefits for employees.

maturity level of the inmates served. One exception to this would have to be made. Certain institutions would be reserved for exclusive use in connection with persons convicted of crimes (*e.g.*, primarily those serving long sentences with minimum terms). This would not mean that such persons could not be kept in other institutions, but only that a person could not be confined in the reserved institutions unless he had been convicted. This would preserve the aura of severity that seems to be needed for general deterrence and prevention of anomie. At some future time, in an even more enlightened stage of society, perhaps this could be discontinued.

Care and Custody of Convicted Narcotic Addicts

The Narcotic Addiction Control Commission would be continued but it would only receive civilly certified addicts from the courts.

All convicted addicts would be sent to the unified treatment system, and the central board would decide whether the addict's needs and the needs of society are better served by care and custody under the unified treatment system or by care and custody under a Narcotic Addiction Control Commission program. Where the latter is selected, the case would be transferred, subject to return at the request of the Commission. The Commission would be able to transfer its own civil cases to the unified treatment system in the same manner, and there would be an interchange arrangement for treatment files (of course, such civilly certified persons would not be confined in institutions reserved for convicted persons).

Special Note on Youth Services

At the present time the State of New York has no general service that is devoted exclusively to the needs of the youth group. The State Division for Youth initiates and operates experimental programs which can accept a relatively small and select number of youth; but this is not a general youth service. Apart from this, youth are distributed between adult and children's agencies.

If implemented, the recommendations of the Committee would result in a true post adjudicatory youth service to cope

with the special problems of that maturity level group.

The State Division for Youth would be continued as an agency to perform its valuable work in the area of prevention of delinquency and funding of local projects. The facilities and aftercare programs would be absorbed by the unified treatment agency; and the general function of experimenting with new post adjudicatory methods would be borne by a research and development unit within the unified agency.

Special Note on Children's Services

At the present time the State of New York has no general service that is devoted exclusively to the needs of delinquent children. The State Department of Social Services and the various probation agencies have as many persons in custody 15 and over as they do in the under 15 age group.

The recommendations of the Committee would result in a special division that would focus exclusively upon the problems of delinquent children. In this connection, the Committee recommends preservation of the important use of private agencies as treatment resources. The only major change would be that children would be placed with such agencies by the central board (for children) rather than by individual family court judges.

Sentencing, Adjudication and Commitment

In the adult criminal system, the sentencing structure would remain basically the same. The only major differences would be that: (a) the general concept of custody would absorb the concept of probation, and when a person is committed to custody the question of the instrumentality to be used would be an administrative decision; (b) there would be a deferred sentence available [see footnote, p. 39]; and (c) there would be an additional disposition consisting of intermittent jail.

In the youth field, the youthful offender procedure would be changed as outlined on pages 46-47, above. Also, all youth committed to custody, whether received from the criminal courts or the family court, would be placed in programs by the central board for youth, and the court would play no role in this aspect of treatment.

Children would be handled as described in the above special note on children's services. The major difference, therefore, would be that once the court has prescribed custody, the central board for children would select the appropriate treatment plan rather than the court. Also, the status of "juvenile delinquent" would be merged with the general category of child in need of supervision. It might be noted that the present system of having the court retain jurisdiction to terminate or extend the custodial period would be continued.

Concerning Boards and Commissions

The Judicial Conference would no longer have administrative supervision of the probation functions that are absorbed into the unified treatment system.

The State Probation Commission would no longer have any role to fulfill, as probation would no longer exist except as part of a general concept of custody.

The State Commission of Correction would continue its constitutionally assigned independent "watchdog" role through visitation and inspection, but its other functions (*e.g.*, standard setting for local institutions) would be performed by the unified treatment agency.

The State Board of Social Welfare—which functions in areas from medicaid and public assistance to training schools —would continue its present role for all institutions serving children, but would not set standards for programs operated by the unified treatment agency.

IV
Statement in Conclusion

The Committee is aware of the fact that its recommendations involve far reaching changes. This is the primary reason that our Report is being released in the form of a draft. It is our hope that this draft will undergo a searching appraisal by our Citizens' Advisory Committee, by professionals in the treatment and criminological fields, by the judiciary, by the legislature, and by interested members of the public. Therefore,

we have not been so presumptuous as to develop and present detailed plans for implementation. Such plans would involve additional time and expense which we feel should not be invested prior to receipt and evaluation of the views of all.

If the substance of the Report is approved, the Committee recommends implementation in stages. Some changes could be made without extensive further study, some changes would require detailed planning, and some changes should be tested on a pilot project basis prior to general implementation.

The Committee believes that it has set forth an analysis, a model, a framework and a charter for the future. We urge that the process of implementation be commenced forthwith.

V

Dissents to Certain Aspects of the Report

Opinion of Hon. George K. Wyman Commissioner, Department of Social Services

I am not in agreement with certain aspects of the conclusions. There is an underlying assumption that is repeatedly reflected, an assumption expressed most clearly on page 182 (The Organization and Operations of Probation):

> . . . the only practicable solution lies in recognizing that services involving crime and delinquency seem to be part of a distinct conceptual system. . . .

Such an assumption leads logically to *including* within that system everything which deals with "crime and delinquency" and *excluding* everything which does not. It identifies *similar* services (probation and parole, prisons, jails, reformatories and training schools, services for adults and services for children) as *identical* services. I believe this line of reasoning contains fallacies which ignore important historical and philosophical distinctions.

Historically, a whole social movement from John Howard on worked to separate children from adults and to treat them differently. The first institution for delinquent children in America, the New York House of Refuge, was originally intended for children and youth *after* leaving prison but became at its establishment a place for children *instead* of a prison. It was years later that in similar fashion we moved children out of almshouses into children's institutions and foster homes. The entire history of institutions for delinquent children in New York State especially has been interwoven with the history of institutions for children. Sixteen private institutions and the sixteen schools and centers of the Department of Social Services now authorized or in operation represent a specialized form of child care and are an integral part of the *child welfare services* of New York State.

Similarly "parole" in the training schools has had an entirely different history from parole in the adult corrections field. It began with the personal efforts of superintendents by correspondence to find jobs for children who needed them and homes for children who had none. It expanded as a service by chaplains and finally became a separate program first of aftercare only and later of broader community-based services. It has followed the mainstream of social work traditions. It has never been primarily a tool of surveillance nor a means of mitigating a term of incarceration, any more than "parole" from a state mental hospital.

Philosophically, this Department is not merely a convenient framework in which to place services for delinquent children as against a separate organizational structure for dealing with crime and delinquency. Children's needs are reflected in recognized and broadly-grouped services for meeting those needs: education, mental health, medical, and social. Child welfare deals with children whose problems arise from social situations and are reflected in dependency, neglect and delinquency. Its services range from financial aid, family case work and other measures to strengthen the child's own home to foster family homes, group care, and institutions which on a temporary or long-term basis substitute for his home.

This range of concerns is also reflected in the new Family Court which has the power to intervene in the affairs of fami-

lies and children when their situation (not the acts they have done) require it to. The Court deals with neglect, support, paternity, custody termination, adoption and family offenses, as well as with delinquency in children.

The distinction drawn in the Family Court Act between "juvenile delinquents" and "persons in need of supervision" was not intended to increase the *categories* of child problems but to remove any stigma from acts which were related only to childhood (truancy, behavioral problems in school and home) by distinguishing them from acts which in an adult would constitute crime or delinquency. And yet, the term "which in an adult" itself implies a considerable distinction in the degree of responsibility involved and in the kind of social intervention permitted. In practice, there is no significant difference between the categories so far as behavior patterns and treatment needs are concerned, and children in both groups can be found in training schools or centers, in private institutions primarily for problem children, and in private institutions primarily for dependent children.

In fact, in a broad program of children's services, we are moving more strongly away from labels toward determining children's needs and providing services to meet those needs. The distinction implied in Rule 5.18 of the State Board of Social Welfare (see pages 183-184 of the Report) has become an archaic carryover from an earlier period and we plan to eliminate it.

We have long recognized the inherent child welfare function of the state training schools and in recent years, we have taken concrete steps on the one hand to integrate them more closely with other child welfare programs, and on the other hand to strengthen all child welfare services in their capacity to deal with a wider range of children's problems. Specifically:

1. The responsibility for the training schools has been placed in the Department's Division of Children's Services.
2. The supervision of training school programs and of 15 major private institutions primarily caring for delinquent children is carried out by a single unit in the Bureau of Children's Institution Services.
3. We have twice proposed a revision of Article 7 of the

Social Services Law to (a) provide for placement of children with the Department rather than in specific institutions; (b) permit the placement of children by Public Welfare Commissioners as well as by Family Court Judges; (c) eliminate the term "training school"; (d) replace the term "parole" by "release."

4. Children are no longer transferred to institutions in the Department of Correction.
5. We have endorsed a legislative proposal of the State Narcotics Commission to permit the transfer for care of addicted children under 16 to state training schools. This would be unthinkable if the training schools were correctional institutions.
6. A year ago, jointly with the Judicial Conference, we brought together in a series of workshops all the Family Court Judges, law guardians, and representatives of public and private children's agencies, welfare departments, and schools to increase common concern and effort in providing resources and services for neglected and delinquent children.
7. Local public welfare departments have increased the number of delinquent children received from Family Courts for placement in foster homes. An amendment to the Social Services Law last year permits local departments of social services to establish group homes, a program of special value for adolescent and problem children.
8. The parole services of the training schools have been organized into two major Community Services Bureaus. These bureaus represent renewed efforts to treat children within the context of their family relationships where possible and through other direct care services (foster homes, group homes and residences) where this is needed. With increased staff and reduced case loads the bureaus will provide a decentralization of offices upstate to bring them into closer relationship with Family Courts, schools and local public and private child welfare services; and a dispersal of offices in New York City to work with and strengthen neighborhood services to children. We have already been requested to provide cooperative services for some of the private

institutions who do not have such services and cannot presently obtain them. In the long run, we hope that this will stimulate the expansion and strengthening of local child welfare programs.

I see an enormous job to be done for children labeled "delinquent," within the context of the broad partnership of state, local and private child welfare programs. I do not believe that services to this group of children or of a part of this group of children will be improved, but on the contrary decreased, by transferring the responsibility for them to an agency which is primarily concerned with the problems of adult crime and with the rehabilitation of the adult offender.

Rationally we draw a distinction between children and adults. Practically, however, there is no clearly accepted point at which childhood ends and adult responsibilities begin. An individual may leave school, drive a car, marry, be liable for military service and be allowed to vote at different ages in different states and in different countries. In New York State we draw the line of criminal responsibility at age 16; and yet, we are not completely satisfied with this. The Family Court includes girls in need of supervision up to age 18 and we would accept them in training schools if we had space for them. Some youths over 16 in reformatories may be transferred for more appropriate care to training schools and we are exploring a plan to make this into a broader program. The Division for Youth is a major agency which bridges the overlapping ages 15-18 to provide a variety of preventive and treatment services. Under the state reorganization act of 1928, the reformatories were originally placed within the then State Department of Social Welfare and transferred to the Correction Department only after their closer identity with its program was clear.

I have hesitated to suggest, but it may be worth considering, the advantages that might result from an inclusion of the programs of the Division for Youth within the Department of Social Services. This Division supports and encourages broad local programs for children and youth which are directed toward the same disadvantaged and underprivileged children with whom our public social services departments are concerned. It takes a step beyond the age of childhood to the transitional period of youth, where the greatest gaps in human services lie and where our own public social programs are increasingly

drawn. We have given less service to this group than we should. We have increased boarding care programs for older dependent children. We have responsibilities for providing services for unmarried mothers. I think if we read correctly the signs in the social response of youth today we will recognize our great responsibility to give more protection, guidance and assistance to youth. Public welfare concerns are shifting strongly toward those social services that are over and beyond financial assistance. We have a Division of Family Services and we have a Division of Children's Services, but so far we have not really faced up to the special needs of youth.

I bring this up in the framework of my concern as a member of this Committee because it seems to me the report is searching toward a more effective way of bringing together the scattered and uncoordinated agencies which are working toward common goals. I think that perhaps there are closer natural relationships among some services than others: between courts and probation; between reformatories and jails and prisons; between correctional institutions and parole. But as we look at new unions of services, we need also to look closely at the separations of services that would occur in the process. In the case of both the training school programs and the programs of the Division for Youth, I strongly believe that the loss of resources by separating services to delinquent children and youth from services to other children and youth in need would be serious and a long step backward.

Opinion of
Hon. Thomas F. McCoy
State Administrator, Judicial Conference

I feel that I must record my dissent to a portion of the Report of the Special Committee. I dissent in relation to the Special Committee's basic determination that Probation be divided on a *vertical* basis into (1) an auxiliary court service and (2) a post-adjudicatory service.

As I have advised the Committee, I feel that some change in the area of probation is warranted and necessary. However, whether such change should be (1) a *horizontal* differentiation of intake and pre-sentence services, or (2) the establishment of a sentencing board which would utilize pre-sentence investigation and post-adjudicatory services, would require further

study by the Special Committee. However, I feel quite strongly that *vertical* differentiation, as the Report recommends, is not workable.

Administratively, the task of establishing *vertical* integration will prove most difficult. Naturally, the larger the office concerned, the simpler the task will be since, as the draft Report notes, large offices are presently organized into units which handle these different functions. However, as the size of the office decreases, the frequency of individuals doing more than one type of function, within the probation framework, increases. Vertical division in this situation will present severe problems.

Also complicating the situation is the fact that, while the judge's present function includes ultimate responsibility for intake, pre-sentence investigation and post-sentence supervision, the proposal would remove from the judge supervision of the personnel performing the latter two functions—both of which are concerned with judicial discretion—and place it in an agency of a different branch of government. Such a dichotomy of responsibility violates a basic concept of sound administration: that the person responsible for performance of a function be vested with the supervision of those who assist him. Indeed, the report itself seems to recognize this fact. Discussing the intake procedure, it states that a judge "might well feel uneasy about relying upon informational reports furnished by personnel who are not subject to the supervision and control of the judiciary." Is not the same reasoning applicable to pre-sentence and post-adjudicatory services? It seems to me that it is. Indeed, if this statement is a valid one, the vertical division now proposed could well lead in time to the creation, within the court structure, of an investigatory section—about which the court would not feel "uneasy"—for pre-sentence investigation.

I must also indicate that in addition to the foregoing, I am in basic agreement with the partial dissent to the Report which has been made by Hon. George K. Wyman, Commissioner of Social Services.

Moreover, and I urge this most vigorously, this most important Report and its subject-matter should properly be referred for study to the Crime Control Council which will soon succeed this Special Committee. The personnel of both groups

is roughly the same; nothing would be lost and much could be gained by such a referral.

For these reasons, and to the extent indicated, I dissent.

Part One
Theory of the Modern Post Adjudicatory Criminal Treatment System

The purpose of this Part of the Report is to set forth the concepts that are the foundations of our modern day system for dealing with persons who have been adjudged to have committed a criminal offense, and to show the relationships these concepts have to one another. A clear understanding of these concepts and their interrelationships is essential in appraising the system and fundamental in formulating recommendations for change.

I
Basic Principles

The State's Power to Prohibit Certain Conduct

In essence, the criminal post adjudicatory system is simply a method of enforcing the criminal law. And the criminal law is simply a set of prohibitions upon conduct. Therefore, it is necessary to start with an examination of the role of the state in establishing prohibitions upon conduct.

The state's power to establish prohibitions upon conduct finds its justification in the duty of the state to perform certain functions, such as: protection of the person and property of each member of the community; providing for the common good; and preserving the effectiveness of the state itself.

In considering conduct that interferes with the rights of others, the common good or the effectiveness of the state, it is

relevant to note that not all such conduct is prohibited. The state makes value judgments as to the extent to which particular conduct strikes at the core of the peace and security of the community and groups unacceptable conduct into two general categories. The first category consists of conduct recognized as grievance-producing but not basically violative of the peace and security of the community. In dealing with this category the state merely provides a machinery through which an individual may obtain compensation for the harm he has suffered or a direct remedy for a continuing wrong. Such machinery is called "civil procedure".

The second category of unacceptable conduct—conduct that strikes at the peace and security of the community—is the category with which the criminal law is concerned.*

Such conduct is considered to be too damaging to individuals, to the norms of the community and to the interests of the state to be permitted, irrespective of whether the harm done can be compensated for and irrespective of whether there is a direct method of curing the harm. Therefore, in dealing with this category of conduct, the state does not limit itself to providing a machinery for reparations; the state goes further and prohibits the conduct itself. Thus, as stated in the New York Penal Law's declaration of purposes, the criminal law proscribes "conduct" which "causes or threatens substantial harm to individual or public interests." (§1.05 subd. 1)

Enforcement of the Criminal Law

In analyzing the state's method of enforcing the criminal law, it is helpful to postulate four levels or concepts of enforcement. The first level can be called the self executing level, and this involves the utility of the prohibition itself as a control upon the conduct of individuals. The second level can be called the threat level, and this involves use of the threat of community condemnation and of officially imposed sanctions as a fear producing device. The third level can be called the police intervention level, and this involves the use of the police

*It should be noted that there is a third category consisting of a hybrid called "non-criminal offense". This is basically used for minor matters that offend community interests and the state applies the machinery of the criminal law as an expeditious method of controlling such conduct (*e.g.*, parking violations, littering, hunting out of season).

as direct force to prevent the act from occurring or from being completed. The fourth level can be called the treatment level, and this involves both the use of formal adjudication ("conviction") as a fulcrum for community condemnation of law violators and the steps taken by the state with respect to the individual who has been adjudicated.

While it is impossible to appraise the extent to which the self-executing level is effective as a control upon conduct, there are, no doubt, many people who regard the proscriptions contained in the criminal law as the outer bounds of acceptable conduct and refrain from crossing them for reasons other than fear of the ramifications of community condemnation, fear of official sanction, or the presence of the police. It is generally accepted, however, that in our society we cannot rely upon the self-executing level. Therefore, the next and most simple step is to annex a threat to the prohibition. Where these fail, intervention through direct preventive measures (*i.e.*, police force) must be resorted to. Finally, the treatment level is used for the dual purpose of giving teeth to the threat so that the community at large will not regard it as an empty one, and for the administration of some form of treatment to the offender with a view toward lessening the possibility that he will offend again.

In considering levels of enforcement, it is relevant to observe that there is a level of control that operates above the level of the criminal law (*i.e.*, the moral level).* This involves the willingness of a person to refrain from engaging in certain types of conduct merely because such conduct is repugnant to his way of life and without regard to the fact that the conduct is proscribed by law. The moral level, plus the four levels of enforcement, may all be relevant in controlling the conduct of a single human being. A person may refrain from one type of prohibited conduct because it is repugnant to his way of life (*e.g.*, murder or robbery), refrain from another type of prohibited conduct because the law enunciates a prohibition—self-executing level (*e.g.*, carrying a weapon, speeding, statutory rape), refrain from a third type of conduct because of the threat of sanctions, and he may not be prevented by his way of life, the law, or threats from engaging in a fourth type of pro-

*The moral level is perhaps the single most important factor in controlling crime.

hibited conduct, in which case, if the act is not prevented by the presence of the police, the treatment level will become operative.

Purposes of the Treatment System

The criminal treatment system,* although a distinct method of law enforcement, may be thought of as primarily a supporting operation for the other three levels of law enforcement and for the moral level. In a gross sense, the objective of the treatment system is the same as the objective of the other levels of law enforcement—prevention of crime—and the ideal of the treatment system is to bring offenders to the moral level. The role of the system in prevention of crime is twofold: (a) general deterrence, and (b) prevention of recidivism. General deterrence is the instrumentality of the threat level; and the various methods of preventing recidivism are aimed at either restraining the offender (a variation of the police intervention level) or at bringing him to the point where he will observe the self-executing level or, ideally, to the moral level.

Hence, the other three levels of law enforcement, and the moral level, furnish the key to all but one of the goals toward which treatment is directed and, therefore, form a large part of the framework of the functions of the treatment system.

The rest of the framework is formed by a concept that can be called prevention of anomie. The term "anomie" as used in this Report means a condition of society in which its members feel that normative standards of conduct and belief are weak or lacking. The aspect of anomie that the criminal treatment system is concerned with can be defined as a feeling on the part of the public that government is permitting certain community values and norms to deteriorate.

When government promulgates a prohibition against harmful conduct and assumes the role of protecting the community from such conduct, it also assumes the role of guardian of the particular community norm that is to be protected from attenuation by that conduct. Because of this role, it must not only enforce the law but also demonstrate to the public that the law

*In this Report we use the term "treatment system", for want of a better term, as meaning the entire post adjudicatory system; from and including conviction or adjudication to final discharge from custody.

is being enforced. If the state, as the avowed guardian of a norm, does not demonstrate an interest in enforcing it, the public—should it feel strongly about the norm—will become anxious through fear that the norm is deteriorating. The public will then focus upon the avowed protector of the norm as the cause of its anxiety and unrest and the result will be lack of faith in government with all the ramifications that may follow.

Inasmuch as both prevention of anomie and threat of sanctions (general deterrence) are aimed at producing reactions in the general public, it is appropriate at this point to articulate the distinction between them. The distinction is that general deterrence is a method of enforcing the law, while prevention of anomie is aimed at maintaining the faith of the public in the law.*

Thus, the objectives of the criminal treatment system are to prevent crime and to prevent anomie. The system carries out these objectives as follows:

1. By administering sanctions that have a sufficient degree of unpleasantness to
   (a) demonstrate to the public at large that the threats annexed to prohibitions cannot be ignored without consequences (*i.e.*, general deterrence), and to
   (b) reinforce the confidence of the public in the fact that the state is determined to uphold norms, through a demonstration of action taken against

*It is important to note the relationship of the concept of retaliation or retribution to the functions of the treatment system. The exaction of retaliation or retribution has no inherent value as a goal of the treatment system and is relevant only to the extent that it bears upon the function of preventing anomie.

The administration of justice in a civilized society does not include the principle of harming one individual for the purpose of placating another. Furthermore, vengeance taken for the sake of vengeance does not assist in law enforcement. Therefore, whatever its historical relationship to the system of criminal justice may be, it is clear that the concept of retribution is not one of the inherent goals of the modern treatment system.

The desire for retribution is, however, a factor in causing anomie, and prevention of anomie is a legitimate goal of the treatment system. When sanctions inflicted by the state are not severe enough to satisfy public desire for revenge, that unsatisfied desire translates into a belief that the state is not fulfilling its responsibility in upholding the norm. Therefore, the state must take the retributive feelings of the public into account to the extent that such feelings bear upon anomie. This involves appraisal of the extent of anomie, or loss of faith in government, that will be risked rather than direct assessment of the degree of retaliation that should be exacted for the criminal act.

wrongdoers (*i.e.*, prevention of anomie); and

2. By preventing recidivism through the use of sanctions as a vehicle for administering
   (a) rehabilitative techniques to bring offenders to the point where they will voluntarily observe the prohibitions set forth in the criminal law, and
   (b) preventive force through incarceration or close community supervision of the offender so as to limit his opportunity to offend again—a variation of the police intervention concept, and
   (c) punishment to make the threats a reality to the individual offender so that he will be more responsive to them in the future (*i.e.*, individual deterrence).

II

General Principles Underlying The Use Of Sanctions

In the context of the criminal treatment system, the term "sanction" comprises formal community condemnation, deprivation of rights or privileges, and forfeiture of property for a purpose other than restitution or reparation, imposed and carried out by the state as a direct consequence of conduct that violates a prohibition promulgated by the state.

The sanctions presently acceptable for the criminal treatment system are: conviction, fine, field supervision, incarceration and death.* Conviction causes shame, blemishes reputa-

*There is another disposition commonly used, and in New York State it is called "conditional discharge" (see Penal Law, §§65.05, 65.10). Under this form of disposition an offender is discharged, after conviction, subject to certain conditions. If he fulfills the conditions during a specified period of time, no sanction beyond conviction is imposed. If he violates the conditions during that period of time, the court may impose any sanction it originally could have imposed. Conditional discharge cannot be considered a sanction even though fulfillment of the conditions may require that the offender refrain from exercising rights or privileges (*i.e.*, options) he would ordinarily be free to exercise. When conditional discharge is used, fulfillment of the conditions does not involve submission to treatment imposed or administered by the criminal system. The offender has the option of avoiding criminal treatment beyond the conviction level by performing conditions outside of, and not officially supervised by, the system.

tion and, in many cases, deprives the offender of rights or privileges. A fine, of course, is forfeiture of property for a purpose other than restitution or reparation. Field supervision (*i.e.*, probation, parole or "aftercare") interferes with the right to self-determination. And incarceration can mean total deprivation of liberty. Thus, in varying degrees, all sanctions interfere with the ordinary liberties enjoyed by the public at large.

As previously indicated, the business of the criminal treatment system is to administer sanctions, and it is, therefore, important to consider the principles by which the extent and severity of sanctions are gauged.

Conduct and Condition

Two basic factors are utilized in applying criminal sanctions to individuals: conduct and condition. Conduct means the specific act for which the offender has been convicted, and condition means the offender's personal characteristics (*e.g.*, mental, physical, developmental, and social). Conduct is the basis or trigger mechanism of the system. Conduct is also the basis for the maximum authorized sanction and for the appropriate sanction range in individual cases. Condition determines the sanction actually imposed within the appropriate sanction range.*

Conduct as the Basis of the System

The fundamental precept of the criminal treatment system is that it can only be set in motion with respect to an individual if the individual has been found guilty of specific proscribed conduct. The condition of the individual, no matter how dangerous and no matter how closely related to criminal conduct (*e.g.*, addiction to a substance that is illegal to possess such as heroin), cannot trigger the mechanism of the criminal system. The relevance of this precept is that it serves as the point of departure for distinguishing between the criminal treatment system and the civil treatment system. Such distinction is vital because there is and has been a tendency to confuse the rationale of the two systems by applying the civil model to the criminal

*Condition, of course, may be evidenced by behavior, and in this sense the terms conduct and condition as used herein might be confused. However, the distinction is that behavior is merely a factor that serves as an indication of something else: *i.e.*, condition. While "conduct", as used herein, means a specific criminal act, which is in itself a sufficient basis for action by the state.

system; and the danger in this is that such application may unjustifiably interfere with basic liberties of the individual.

As used herein the term "civil treatment" means mandatory treatment imposed by the state upon certain individuals who have not been found guilty of a criminal offense. The term is intended to apply to such measures as: quarantine of those with communicable diseases; institutionalization and aftercare and out-patient treatment (under threat of institutionalization) of the mentally ill, the mentally defective and the addicted; and institutionalization and aftercare and probation treatment (under threat of institutionalization) of children who are "habitually truant, incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority" (see N.Y. Family Court Act, §712[b]). Whatever the historical origin of the right of the state to impose civil treatment may be (*e.g.*, the doctrine of *parens patriae,* the right to deal with obnoxious or dangerous persons, or some duty of society to care for those who cannot care for themselves), it is generally accepted today that the state has the right to impose such treatment. The right to do so, however, proceeds from the condition of the individual rather than—as under the criminal treatment system—from any specific conduct. In order to set the civil treatment system in motion it is necessary to prove that the individual is in a particular condition, and treatment must cease when the condition terminates.

The civil treatment system is similar to the criminal treatment system in that both systems utilize incarceration and both systems administer habilitative and rehabilitative services under coercive circumstances. Moreover, the training of persons for both civil system and criminal system habilitative and rehabilitative services is basically the same, and the same persons often work in both systems (*e.g.*, psychiatrists, psychologists, sociologists, social workers, educators), focusing, naturally, upon condition, rather than conduct, in both systems. These factors often lead practitioners and others to believe that the rationales of the two systems, so far as the right to impose treatment is concerned, are the same. What is overlooked is the fact that a person's condition is not a basis for imposing treatment under the civil system, unless the condition is one the law specifically recognizes as a basis for imposing treatment. The civil system can mandate treatment only if a particular, legally recognized,

condition can be shown (*e.g.*, mental illness), while the criminal system can mandate treatment on the basis of conduct without the need to prove that a legally recognized condition exists. The danger lies in applying a principle of the civil system—*i.e.*, treatment based upon condition and lasting for duration of the condition—to a conduct-based system. In other words the danger lies in extending the period of treatment, under the criminal system, beyond the period warranted by conduct, for the purpose of treating a condition. Treatment can be mandated for duration of a condition only where the condition is one that is recognized by the civil system.

Examples may be found in the current problem of dealing with prostitutes and deteriorated alcoholics. In both of these cases—at least under present New York law—the civil system does not recognize the condition of the individual as a basis for mandatory treatment. The only justification for mandating treatment is conduct (*i.e.*, public intoxication or the offense of prostitution). However, the conduct is not considered grievous enough to warrant criminal system treatment for more than fifteen days, and it is unlikely that any effective rehabilitative impact can be made on the offender's condition in that period of time. Hence, there is substantial support for the position that the permissible criminal sanction for these offenses (*i.e.*, the maximum period of treatment) should be longer. The rationale for such support is that a longer period of time is required to treat the condition. This overlooks the fact that mandatory treatment must be justified on the basis of either conduct, or a condition recognized by the civil system. If it cannot be justified on the basis of either, it represents an unwarranted deprivation of the individual's basic right to self-determination.

Conduct as the Basis for the Maximum Authorized Sanction

In addition to serving as the trigger for the mechanism of the criminal treatment system, conduct is also the sole criterion for the permissible maximum sanction. The legislature evaluates the relative harmfulness of particular conduct and expresses its evaluation in terms of the authorized sanction (*i.e.*, the upper limits of the sentence). This process involves a weighing of the harmfulness of the conduct against the value of the indi-

vidual's right to be free from the restraints of the treatment system (*i.e.*, sanctions). The greater the harm, the greater the right of the state to deprive the offender of his liberty.

The process of prescribing authorized sanctions does not involve assumptions or conclusions with respect to the condition of offenders. Such assumptions and conclusions are the business of the agencies that administer the treatment system. The legislature merely determines—and expresses in terms of the authorized sentence—the maximum power that the treatment system is permitted to exercise for all or any of its functions; and the sole basis for this determination is conduct.

The principle that conduct is the sole basis for the maximum permissible sanction is a useful tool in analyzing the nature of statutes that permit completely indefinite treatment as an alternative to a fixed term or that authorize extended terms (*e.g.*: so called "sexual psychopath" laws; the American Law Institute Model Penal Code, "MPC" [§§6.07, 7.03]; the NCCD Model Sentencing Act, "MSA" [§5]). Where the maximum legal term of imprisonment for specific conduct is a fixed number of years, but a person can receive an indefinite sentence that could amount to mandatory treatment for life (*e.g.*, former N.Y. Penal Law, §§2010, 2189-a) or a sentence of six times the ordinary maximum (*e.g.*, MSA §5) or twice the ordinary maximum (*e.g.*, MPC §6.07) because, in addition to having committed the crime, he has failed to measure up to some undefined standard of normality (former N.Y. law), or is found to have "a severe personality disorder indicating a propensity toward criminal activity" (MSA), the question arises as to whether the indefinite or extended treatment is based upon conduct or condition (*i.e.*, whether the civil model is being applied to the criminal system). The answer is furnished by the observation that, if the indefinite or extended treatment were based upon conduct, all persons who are convicted of such conduct would be subject to it; and, obviously, only those of the ones convicted who are found to have a certain condition are subject to it.

However, the harmfulness of conduct cannot be judged by the condition of the offender; and the fact that an offender is abnormal does not depreciate the value of his liberty. Such legislation permits the condition of the offender to trigger the operation of an added and distinct portion of treatment to be

administered under the criminal system; and this violates the fundamental precept of the system. The danger in creating a part of the system which is not based upon conduct alone is the same as the danger in overlooking the precept that conduct is the sole basis of the entire criminal system: namely, that of unjustifiably interfering with the basic liberties of individuals. Whenever deprivation of liberty is legislated upon the basis of condition, such deprivation must proceed within the framework of the civil system and the individual is entitled to be treated, in every respect, in accordance with the concepts of the civil system; not the least of which is that the period of custody is governed by the duration of the condition, and that the various concomitants of a criminal sentence do not apply. If the condition is one that can be proved through a procedure that meets fundamental due process requirements, and the condition makes the individual dangerous to the community, the individual can and should be dealt with under provisions similar to those we have for dealing with the dangerous mentally ill. A law that utilizes condition as the basis for criminal treatment violates the principle of equal protection (see *Baxstrom* v. *Herold,* 383 U. S. 107 [1966]), and the prohibition against cruel and inhuman punishment (see *Robinson* v. *California,* 370 U. S. 660 [1962]).

The type of legislation discussed in the foregoing paragraphs can, perhaps, be distinguished, to some extent, from statutes that permit life imprisonment because of prior convictions (persistent felony offender legislation, *e.g.*, N.Y. Penal Law, § 70.10). Such multiple offender legislation seems to be based upon the theory that present conduct, taken together with past conduct, supplies legal justification for overcoming any right the offender otherwise would have had to further freedom. Stated otherwise, the cumulation of convictions seems to negate the obligation of society to take further risks with the offender (this obligation being the reciprocal of the value of his right to be free from the interference of the treatment system).

Conduct as the Basis for the Appropriate Sanction Range

Once the authorized maximum has been prescribed for a category of conduct, the appropriate sanction range must be

determined. This is done for the purpose of ascertaining the degree of sanction that would be appropriate for the offender's actual conduct. The determination is needed because the maximum authorized sanction is based upon the harmfulness of conduct as defined by statute in general terms, and this covers a range of ways in which the offense can be committed. In a conduct-based system the appropriate sanction must be based upon the actual facts and circumstances of the offense.

The object here is to determine where, within the range of the general statutory definition of the proscribed conduct, the offender's actual conduct falls, and to determine whether there are any aggravating or extenuating circumstances that would tend to make such conduct more or less shocking. In considering the actual facts and circumstances, there are three considerations: (1) that the statute defining the proscribed conduct, and fixing the maximum sanction, covers a range of ways in which the crime can be committed, some of which are more serious than others; (2) that the conviction may be for a crime which is less serious than the actual conduct (*e.g.*, a case where a lesser plea is taken); and (3) that there may be extenuating circumstances.

An example of the first consideration would be the crime of Robbery in the First Degree. Under New York law (Penal Law, §160.15), this crime may be committed by forcibly stealing property while armed with a deadly weapon; and the term deadly weapon includes both a machine gun and metal knuckles (§10.00). Therefore, when a number of men enter a bank armed with sub-machine guns and forcibly take money from the clerks, the crime is Robbery in the First Degree. The same crime is committed, however, if a person, with metal knuckles in his pocket, forcibly steals a bicycle from a ten year old in the park. The maximum sanction is twenty-five years of custody in both cases; but the degree to which each strikes at the peace and security of the community is quite different.

The facts in the bicycle case can also be used to illustrate the second consideration. If the bicycle robber is permitted to plead to the count of the indictment that charges him with possession of the knuckles (in satisfaction of all charges for his conduct), the appropriate sanction range would be higher—within the limits of the maximum sanction authorized for such possession—than would be the case if his actual conduct con-

sisted merely of possession. In so determining the appropriate sanction range, we would be considering his actual conduct as an aggravating circumstance of the crime for which he was convicted. Here the theory is that the plea was accepted with the thought in mind that the authorized sanction for possession is adequate to cover the actual conduct.

The third consideration can be illustrated by the crime of Assault in the Second Degree (N. Y. Penal Law, §120.05). This crime is committed when one person intentionally—and without lawful justification—inflicts serious physical injury upon another. Provocation is not lawful justification. Therefore the crime is technically the same in an unprovoked assault as it is where the assault was provoked by the victim. Yet the community is much more disturbed in the former situation than it is in the latter.

Condition as the Key Factor in Determining the Actual Sanction

The determination as to the appropriate sanction range, which gives us the maximum sanction justified for any or all of the purposes of the system, is based solely upon conduct. However, the key factor in determining the actual sanction to be applied, within the appropriate range, is the condition of the individual offender. The process of determining the actual sanction involves selection of the best method of fulfilling the purposes of the system (*i.e.*, general deterrence, prevention of anomie and prevention of recidivism), and the condition of the offender serves as the gauge of what is needed for these purposes.

The relationship between the condition of the offender and prevention of recividism is obvious. The determination with respect to risk of recidivism is, in substance, a prediction as to future conduct based upon present condition (mental, emotional, physical, habits, attitudes, family life, employment, tendency to drug or alcohol abuse, etc.), including the effect that the present conviction has had as a deterrent to his future conduct. If it appears that the offender is likely to commit another offense, then a sanction beyond the conviction level must be selected from among those available in the appropriate range.

Of course, selection of the actual sanction to be used for prevention of recidivism depends upon a number of other decisions, which also utilize condition as a key determinant, such as

(1) the needs of general deterrence and prevention of anomie, (2) whether prevention of recidivism in a particular case can best be accomplished by use of a non-custodial sanction (*i.e.*, a fine or intermittent jail) or whether custody is needed as a vehicle for rehabilitation or for preventive force, and (3) whether the term of custody justified for the conduct (*e.g.*, 15 day maximum) would be meaningful for rehabilitation or for preventive force, or would only serve the purpose of punishment. These and other matters are resolved on the basis of principles discussed in subsequent sections of this Part of the Report.

The relationship between the condition of the offender and general deterrence is that the sanction required for general deterrence is one which will have a value in deterring those who have the same degree of integration into the law-abiding community ("social integration") as the offender from committing similar crimes. Social integration is the aspect of the offender's condition that is represented by his contacts and ties with other parts of the law-abiding community (*i.e.*, reputation, employment, family relationships, group memberships, licenses and other privileges).

Social integration is utilized as a factor in determining the extent of the sanction appropriate for general deterrence because one of the hypotheses of general deterrence is that the less a person has to lose the less he will be deterred by threats. For example, if a person has already been convicted of one crime, and therefore has lost a certain degree of his reputation, the threat of conviction alone may not be a deterrent for him, while it might deter a person who has never been convicted. In applying this hypothesis, it is important to observe that general deterrence does not require the sanctioning of each offender at the level that would be used to fulfill the need of deterring the most hardened offender. The sanction applied for hardened offenders is used as a deterrent for other hardened offenders. Thus, for the purpose of general deterrence, it is appropriate to ascertain just what the offender has to lose at each level of sanction and the underlying assumption is that people in like circumstances will be impressed by the threat of that loss to the same extent as the loss is felt by the offender.

A person's degree of social integration is the best indicator of what he has to lose through a sanction. Social integration

represents the offender's cohesion to other parts of the law-abiding community. These contacts can be affected by reputation and proximity. A conviction may affect reputation to the extent of causing loss of face in the community. This makes it more difficult for the offender to maintain social and business community acceptance and may even result in loss of employment. If the offender has close family ties, the pain to him is more severe because it is also felt by his family; and if he is removed from the community, by virtue of incarceration, loss of face is greater, loss of employment is usually automatic, and additional pain is inflicted because of separation from loved ones. The primary thing to bear in mind is that the social integration of each offender must be viewed in proportion to his own sphere of activity. The reason for this is that the essence of a sanction is the manner in which the recipient or potential recipient feels or would feel the infliction. Thus, the man whose contacts do not reach beyond his immediate neighborhood and a blue collar job should generally be viewed as having the same *relative degree* of social integration as the president of a large corporation who belongs to many exclusive clubs. The pain felt by the former in relation to conviction and imprisonment is as meaningful as the pain felt by the latter in relation to these factors.*

The considerations that apply in determining the level of sanction required for prevention of anomie are substantially the same as those that apply in the case of general deterrence. As indicated earlier, the distinction between general deterrence and prevention of anomie is that deterrence is a method of enforcing the law while prevention of anomie is aimed at maintaining the faith of the public in the law. In an area that cannot, in any event, be measured with mathematical precision, it would be cutting principles too fine to maintain that there is a practical distinction between what will make a man afraid to break the law and what will make a man believe that government is enforcing the law. There is, however, an important exception to this rule. In certain situations the shock of a crime to core values, or to core institutions, of society is such

*The same principle applies where fines are concerned, but in such case we are not dealing with a factor that has the same value to persons in all social spheres; *i.e.*, human feelings. Therefore, in applying fines, the poor are more likely to be deterred by a small fine than the wealthy.

that it is necessary to reassure the entire community in each case that the state is determined to uphold the norm. This would require disregarding the social integration principle, and the use of sanction—for prevention of anomie—that is impressive to all members of the community. Such sanction might well be greater than the sanction needed for general deterrence.

The Role of Punishment, Rehabilitation and Preventive Force

All sanctions serve the purposes of general deterrence and prevention of anomie in varying degrees. Therefore, in utilizing sanctions for these purposes, we judge the appropriate sanction solely on the basis of the degree of unpleasantness needed. Moreover, there is a tendency to use the term sanction and the term punishment interchangeably. However, prevention of recidivism requires another dimension of thought. Here we recognize that treatment is applied to accomplish varying purposes with respect to the condition of the individual offender and that punishment is only one of three purposes. Prevention of recidivism also requires rehabilitation and preventive force; and, unless we separate the three concepts, we have no way—other than by degree of unpleasantness—to determine the sanction that should actually be applied. For example, it would be anomalous to state that we are placing a person who needs "rehabilitation" under probation supervision for "punishment." The thought must be that we are applying the sanction of field supervision for rehabilitation.

Therefore, in operationalizing the use of sanctions, it is essential to understand the differences between punishment, rehabilitation and preventive force, so that we can pinpoint our purpose or purposes and select the appropriate instrumentality for same.

The Concept of Punishment

Punishment can best be characterized by two factors: (1) an intention to make the sanction unpleasant for the offender; and (2) recognition on the part of the offender that the sanction is unpleasant. The reason intent must be present, if a sanction is to be considered punishment, is that punishment is *aimed at* unpleasantness. Rehabilitation and preventive force

may also have the effect of inflicting unpleasantness, but they are not aimed at that purpose. The reason that recognition of the unpleasantness is required is that unless the offender feels a substantial adverse impact, the sanction is not punishment. For example, a person who has two prior felony convictions would probably not view the conviction level of sanction as punishment; and the same would be true of all persons with a similar level of social integration.

It is important to recognize that the modern operational concept of punishment is focused upon interference with liberty and not upon corporal punishment. Therefore, when we speak of "levels of punishment" or of "an intention to make the sanction unpleasant for the offender", we are referring to steps taken to decrease normal liberties. Thus, punishment for individual deterrence varies from conviction, at one end of the scale, to "solitary confinement" at the other end of the scale.

Under our present system punishment is administered on three general levels: conviction, fine and incarceration.*

Punishment at the conviction level consists of formal community condemnation of the individual. Punishment at this level stems from two factors: (a) the feeling of shame felt by the individual; and (b) the assumptions that are made about his character (negative inferences) by the community from the time of conviction on. The first may be said to be the direct result of the conviction and the second the indirect result. It is important to recognize the distinction between direct and indirect results because the indirect results are usually more severe and more lasting and may, in fact, militate against the offender's chances of remaining or becoming a useful member of the community. The state recognizes this in its treatment system

*The death penalty could be included as a form of punishment if such sanction were justifiable as a method of preventing recidivism. However, it seems more in accordance with modern thinking to view the death penalty as having value solely in the context of general deterrence and prevention of anomie. Therefore, the death penalty must be viewed as an extreme sanction rather than as punishment in the operational sense, because punishment in that sense is viewed as one of three methods of preventing recidivism.

It might also be noted that the death penalty, the last resort of the treatment system, is falling into increasing disuse in our society. The arguments pro and con with respect to this sanction have been the subject of lengthy and heated controversy, and the question of whether the death penalty should or should not be part of a modern treatment system has not as yet been definitively resolved.

and there are many devices for preventing or ameliorating the effects of the indirect results. *E.g.*: youthful offender laws that require a formal adjudication but provide for the sealing of all records pertaining thereto and permit the offender to state that he has never been convicted of a crime; laws that permit the issuance of certificates that prevent mandatory forfeiture of licenses and remove mandatory bars to employment and licensing (see N. Y. Correction Law, Art. 23); and laws that permit the granting of amnesty or pardons.

The fine level involves the principle of using direct pecuniary deprivation. A fine is a necessary form of punishment in cases where the conviction itself is not of the type that would ordinarily result in a great deal of shame or community condemnation (*e.g.*, traffic offenses, conservation law violations). In these cases a fine is almost invariably used, except where mitigating or aggravating circumstances are found. A fine is also commonly used where the offender gained money or property through commission of the crime, or where the crime was committed while transacting some form of otherwise legitimate business (*e.g.*, anti-trust violations, housing violations). In some of these cases the theory is that the fine will take the profit out of the transaction, and in others that the crime was motivated by greed and that pocket book punishment strikes at the heart of the matter. Of course, fines also are used for other types of offenses on the theory that some form of punishment in addition to conviction is needed but that imprisonment is too severe.

The instrumentality of the incarceration level is institutional confinement. This may take the form of total incarceration or incarceration during certain hours of the day or night or on certain days of the week. When incarceration is inflicted, the punishment is deprivation of liberty and the infliction of additional shame along with the probability that the assumptions made by the community about the character of the offender will be even more damaging to him than those that would flow from the conviction itself.

The Concept of Rehabilitation

When considering rehabilitation, it is first necessary to recognize that the term "rehabilitation", as used in the treatment field, covers more than a literal interpretation would de-

note. Literally, the term denotes restoration to a former condition. In the treatment system, the term means assisting an offender to raise himself to the point where he can function on an acceptable level in the community. Thus, in the treatment system, rehabilitation connotes restoration if the previous condition of the offender was satisfactory, and in all other cases the term connotes "habilitation."

The objectives of punishment for individual deterrence and of rehabilitation are somewhat similar (both seek to keep the offender from recidivating), and this can be a source of confusion. A firm understanding of the distinction between punishment and rehabilitation is vital, however, in considering whether various treatment instrumentalities, such as probation and parole, are punishment or not and in coping with one of the fundamental problems of our correctional institutions, *i.e.*, administering punishment and rehabilitation simultaneously. Both involve treatment, but punishment is focused upon deprivation and is aimed at creating fear, while rehabilitation is focused upon accretion and is aimed at developing positive values, reactions and goals.

The theory of rehabilitation may be stated as follows:

1. There are certain personal characteristics that impede an individual's ability to function at a generally acceptable level in one or more basic social areas.

2. The difficulty in performing at a generally acceptable level in such areas significantly contributes to criminal conduct.

3. Treatment should be directed at overcoming the aforesaid personal characteristics.

Thus, the aim of rehabilitation is to treat those characteristics of the offender which are inconsistent with the basic characteristics needed to function acceptably. It is felt that, if the treatment has a positive impact, the offender will be more likely to satisfy his needs through socially acceptable conduct and the likelihood of his returning to crime will be reduced.

Preventive Force

In the criminal treatment system preventive force means coercion applied to a specific offender for the purpose of limiting his opportunity to offend again. This may take the form of incarceration (full or part time); or a set of special rules to

guide the offender's general activities in the community, enforced by threat of incarceration and by field supervision.

Preventive force may be characterized as a neutral concept. It is aimed at restraint of the offender and not at punishment or at rehabilitation. In some cases the objectives of punishment or the objectives of rehabilitation may coincide with the need for restraint and in some cases this may not be so. The distinction between situations where the needs of preventive force coincide with the needs of punishment or rehabilitation, and cases where they do not is crucial in developing and selecting appropriate instrumentalities for carrying out sanctions; for example, in determining whether a custodial instrumentality (*i.e.*, incarceration or field supervision) is necessary, and in making rational and efficient use of custodial instrumentalities.

Custodial and Non-Custodial Sanctions

In order to focus upon the general principles underlying the use of sanctions, it is necessary to consider one more dimension; *i.e.*, that from an operational standpoint, the sanctions used by the modern post adjudicatory criminal treatment system are divided into two aspects: custodial and non-custodial. The custodial sanctions are probation, incarceration and parole. The non-custodial sanctions are conviction, fine, intermittent jail* and capital punishment.

Non-custodial sanctions are relatively simple to apply and to understand, since they are aimed solely at punishment and do not require a continuous course of dealing with the offender. The custodial aspect of the system is much more complex and difficult to understand. When invoked, the custodial sanctions may involve years of dealing with an offender and can serve the purposes of punishment, rehabilitation and preventive force. The major resources of the system are concentrated in

*Intermittent jail is not presently used in New York State's criminal treatment system. Under this form of sanction a person is required to spend weekends or nights or specific days or parts of days in jail for punishment. A person who is sentenced to intermittent jail is not in custody or under any form of supervision. He reports to the jail in accordance with the order of the court and he cannot be forced to remain in the jail during the time not covered by the order of the court. If he refuses to report as ordered, or if he refuses to comply with jail rules while there, the court would have to have the power to revoke the intermittent sentence and impose a custodial sanction.

the operations of the custodial aspect, and the larger part of the hopes of society in coping with the problems of recidivism are pinned upon custodial programs.

The Concept of Custody

The term "custody", as used in the criminal treatment system, means control, exercised pursuant to law, over an individual who has committed a criminal act. From a general, conceptual standpoint, custody is characterized by three factors: (1) restrictions upon liberty not applicable to the public at large; (2) coercive power for enforcement of the restrictions; and (3) a tangible instrumentality for execution, such as field supervision or incarceration.

The custodial aspect of the treatment system presently consists of a trichotomy—composed of probation, incarceration and parole—rather than a single unified operation. The reason for this is the fact that, historically, incarceration was viewed as being focused upon punishment, and probation and parole developed in relation to this focus; probation developing as a method of avoiding the infliction of punishment, and parole developing as a method of relieving punishment. Thus, probation developed outside the punishment process and parole developed as an integral part of the punishment process. The separation between incarceration and the field services (probation and parole) was crystallized by the fact that they were conceived to be entirely distinct methods of treatment for entirely distinct purposes. And the separation between the two field services themselves was crystallized by the fact that they were viewed as being in different spheres of the treatment system. Probation was looked upon as comprising one sphere—the pre-punishment system—and incarceration and parole as comprising the other sphere. The gulf between spheres was emphasized by the fact that the judiciary administered one and the executive branch administered the other.*

As correctional theory evolved, it became obvious that incarceration should be used as a setting for the administration

*Since the function of the executive branch of government, in the area of post adjudicatory treatment, was viewed as consisting of the administration of the infliction of punishment, it is only natural that probation developed as an improvised adjunct of the judicial branch which was concerned with saving "worthy" offenders from punishment.

of rehabilitative programs and that institutional custody had three purposes: (1) punishment; (2) detention for rehabilitative purposes; and (3) direct preventive force. It also became obvious that total incarceration was not always necessary for these purposes, and there has been much sentiment in favor of developing programs that involve partial institutional custody (*e.g.*, half-way house, work release, etc.). At the same time, the field service agencies recognized the reciprocal of this thinking—*i.e.*, that programs involving partial institutional custody could be of assistance in rehabilitating and supervising persons who are on probation or parole—and attempted to develop institutional programs.

However, the very separation of concepts, underlying the trichotomy, which permitted the system to progress to its present position is now working as an impediment to further progress. Programs that involve partial institutional custody are viewed as aberrations on the concept of field supervision and on the concept of incarceration. Further, parole and probation which now share precisely the same goals and use precisely the same techniques are administered as totally separate and distinct operations, requiring duplication of staff and transfer of jurisdiction over an individual from one field service agency to another if institutionalization intervenes.

The essence of our present difficulty in developing the treatment system is that we are utilizing three separate concepts of custody rather than a single overall general concept. We are viewing custody in terms of three concepts corresponding to three distinct operational segments of the system, and relying upon these separate operations for conceptual changes rather than utilizing a single concept to develop the operations. Apart from the fact that no system can develop effectively without an underlying cohesive theoretical base, the resulting identity of concept and operation—*i.e.*, each defined in terms of the other—creates inflexibility in both, because we tend to operate in terms of the concept and to conceive in terms of the operation and it is difficult to break the cycle.

By using a general concept of custody, such as the one set forth above (p. 89), we can eliminate the arbitrary lines established by existing concepts of probation, incarceration and parole and utilize the custodial aspect of the treatment system in a more rational and efficient manner.

Utilization of Custody

Rational and efficient utilization of custody requires rational and efficient utilization of the instrumentalities of custody. The best way to accomplish this is to identify the purpose or purposes to be served, the requirements of same and the appropriate instrumentality to fill those requirements.

Custody can be used for all of the purposes of the criminal treatment system: *viz;* general deterrence, prevention of recidivism and prevention of anomie. The requirement served in the case of general deterrence is unpleasantness that can be used as a threat. The requirements served in the case of prevention of recidivism are: coercion to secure submission to rehabilitative programs, unpleasantness where needed for individual deterrence, and preventive force for public protection. The requirements served in connection with prevention of anomie are: unpleasantness that can be used as a means of demonstrating to the public that the state is determined to uphold norms, and effectiveness in prevention of crime (the system's role in this latter context is performed through general deterrence and prevention of recidivism).

Both instrumentalities of custody—incarceration and field supervision—furnish unpleasantness, coercion and preventive force in varying degrees to serve these requirements. The selection of one, as against the other, depends upon the degree of unpleasantness, coercion or preventive force needed: incarceration furnishing the higher degree and field supervision furnishing the lower degree of each.

For example, where there is a clear need for severity to serve general deterrence or to demonstrate the strength of the state's determination to uphold the norm (prevention of anomie) incarceration would be used and there would have to be some assurance that the incarceration would last for at least a certain period of time (*e.g.,* a minimum term). Where the need for severity is not so clear, field supervision could be used; but if this did not furnish sufficient preventive force or sufficient coercion for submission to rehabilitative programs, incarceration would be appropriate. It should be noted that a significant difference between the use of incarceration in the two cases is that where it is used for the purpose of general deterrence or prevention of anomie, a minimum duration is determined in advance, gauged by an evaluation of public reaction; and where

it is used for any other purpose, its duration is gauged solely by the progress of the individual.

An essential point to bear in mind when utilizing custody is that the requirements needed to fulfill the purposes of the system rarely remain constant throughout the duration of the term of custody in any given case. Thus, for example, two years of incarceration may be deemed to be essential for general deterrence and prevention of anomie, but when the two years are served that degree of severity is no longer necessary for those purposes. The instrumentalities may then be used, as needed, for prevention of recidivism. This could, of course, mean additional incarceration for preventive force, individual deterrence or coercion; or it could mean field supervision, or field supervision followed by return to incarceration if additional coercion or preventive force appeared necessary. The nub of the point is, however, that the decisions must be made in accordance with the purpose to be served at any one particular time.

The difficulty in applying this is that, in most cases, the three purposes (general deterrence, prevention of recidivism and prevention of anomie) must be served at the same time, and the requirements for fulfillment involve an inherent conflict. The heart of rational and efficient decision making in the use of custody is the art of resolving this conflict or, at least, of narrowing the area of conflict.

The two basic factors that conflict are: (1) the need for sufficiently unpleasant sanctions; and (2) the need to use field supervision and incarceration as and when required for treatment purposes. For convenience in further discussion, we can characterize the former as "severity" and the latter as "flexibility." The conflict lies in the fact that severity may require a period and type of custody (*e.g.*, 5 years in an institution) that would impair the chances to affect a desirable change in the behavior of the individual offender.

Severity is used for general deterrence and also for prevention of anomie. The object of general deterrence is to discourage potential law breakers, and one method of so doing is to make the consequences of criminal conduct unpleasant. The object of prevention of anomie is to reinforce public confidence in the state, and the mission of the treatment system in this context is twofold: (a) to demonstrate to the public that the state is determined to uphold the norms; and (b) to be effective in preven-

tion of crime. Severity serves the former as a type of action through which the state can demonstrate the strength of its determination to uphold the norm. Its role in serving the latter is problematical. To the extent the public believes punishment is the most effective method of crime prevention, severity creates the illusion of effectiveness; and to the extent that severity interferes with needed flexibility, the resulting recidivism dispels that illusion.

Flexibility is generally believed to be an essential element in programs aimed at prevention of recidivism. In order to focus upon the role of flexibility, however, some initial observations are necessary.

Apart from general deterrence, the system's basic methods of preventing recidivism are: rehabilitation, punishment (for individual deterrence), and preventive force (through incarceration or field supervision). The first two methods seek to change the individual and the third method restrains him. Except in the case of heinous crimes, where long term custody such as twenty-five years or life may be appropriate, the third method — preventive force — must be viewed as only an interim measure, because the offender can be expected to return to society at some point in his life free of any custodial restraint. Therefore, the focus in prevention of recidivism is upon changing the offender through rehabilitation and through individual deterrence. Preventive force is used, as necessary, to minimize risk.

The single most important factor to bear in mind when considering the problems involved in changing an offender is that the ultimate change sought is not adjustment to institutional life, but rather adjustment to freedom in the community. And it is well known that there is little if any correlation between the two. An offender who seems to have changed for the better because he has become a model prisoner may become worse than he was before when he is released to the community; and an offender who is unable to adjust to institutional life may have been so affected by the experience that he will never risk it again. Therefore, it is important to work with the offender under supervision in the community to the maximum extent possible. In this way unsatisfactory tendencies can be noted while he is still in custody and the system has a chance to modify or intensify treatment.

It should also be noted that incarceration has both useful and harmful aspects. It may be useful for individual deterrence or to coerce submission to rehabilitative programs or for preventive force; and it may be harmful in that it destroys the favorable or supportive elements in the offender's level of adjustment to community life (*e.g.*, employment, family ties, school program, etc.). Further, even where incarceration for some period is considered useful, the duration of the incarceration has to be judged by its impact upon the offender, because if continued for too long it may cause bitterness rather than willingness to comply or deterioration rather than readiness to go into the community.

From these observations we can conclude that in the context of prevention of recidivism the orientation of the custody system must be one that permits the offender to remain in the community to the maximum extent possible, and utilizes incarceration only where necessary. The determination of when to use incarceration and for how long, and the determination of when to use field supervision, or of when to use a combination of both, must be based upon an evaluation of the day to day progress or regression of the offender balanced against risk to the community. This requires the utmost flexibility possible.

The only way that the conflict could be resolved would be to establish priorities among the purposes of the system based upon importance to society. However, this cannot be done. Each of the objectives is an essential mission of the system and no one of them can be shown to be more important than the other. General deterrence and prevention of recidivism are both methods of preventing crime. The former might, at first glance, seem more important because it is aimed at the public at large; but the latter deals with persons who have not been deterred and we have no reliable evidence at present to show whether the majority of crimes are committed by first offenders or by recidivists. Prevention of crime and prevention of anomie caused by crime are obviously so interrelated that the relative importance of each cannot be an issue. Prevention of anomie deals with public confidence in the state, and—insofar as the confidence is based upon the state's *ability* to uphold the norm—such confidence varies with the crime rate. Therefore, the best method of preventing crime is also the

best method of preventing the anomie caused by crime. The other aspect of prevention of anomie—*i.e.*, the need to demonstrate determination to uphold norms—presents a somewhat different problem. This need is present irrespective of the crime rate. However, to consider whether it is more important than prevention of crime would be to ponder the imponderable.

Thus, rational and efficient use of the custody system involves narrowing the area of conflict between severity and flexibility rather than resolving the conflict by consistently serving one at the expense of the other. There are three primary methods that can be used to narrow the area of conflict. We can call these, for the sake of convenience: (1) utilization of the feedback effect; (2) use of severity as reserve power; and (3) intermixing of instrumentalities.

The feedback effect stems from the similarity between the concept of sanctions and the concept of punishment. As previously stated, in the context of the criminal treatment system, the term "sanction" comprises formal community condemnation, deprivation of rights or privileges, and forfeiture of property for a purpose other than restitution or reparation imposed by the state because of particular conduct. Punishment is an operational term and requires two additional factors: an intention to make the sanction unpleasant for the individual offender, and a recognition on the part of the individual offender that the sanction is unpleasant. All sanctions are viewed by the public as unpleasant to one degree or another and tend to be characterized as punishment even though a particular sanction (*e.g.*, field supervision) is not being used for punishment in a particular case. Therefore, treatment administered for rehabilitation or for preventive force will frequently be sufficient – when taken in conjunction with the conviction itself—to satisfy the needs of general deterrence and the aspect of prevention of anomie that requires a demonstration of determination to uphold norms. Thus, for example, although field supervision would not be used for the purpose of punishment,* field supervision is viewed as having a certain degree of unpleasantness and, therefore, has a

*Field supervision is used for rehabilitation and preventive force. Placing an offender under field supervision for the purpose of punishment would be a waste of valuable resources and would amount to nothing more than pointless harassment.

"feedback" effect as a general deterrent and in prevention of anomie.

The use of severity as reserve power means that restrictions upon flexibility (*i.e.*, a minimum term of incarceration) should be imposed only when: (1) necessary to close a gap between the general public impression of the punitive effect of criminal treatment (achieved through feedback) and what seems necessary for general deterrence and prevention of anomie; or (2) a distinct and conspicuous reaction is required to demonstrate the strength of the state's determination to uphold a norm because the crime is particularly shocking.

In the first situation we think of feedback in terms of general levels, and severity is used as reserve power in order to raise a general level. In this connection it is important to recognize that the feedback effect is based upon the operations of the custody system in dealing with thousands of offenders. Incarceration for a fairly extensive period is frequently deemed necessary for the purpose of preventive force, administering rehabilitative services or coercing submission to same, or as punishment for individual deterrence. Therefore, the feedback effect should be fairly substantial and, in the ordinary case, there should be no reason to inhibit flexibility. Reserve power comes into play when the cumulative effect of the treatment administered by the custody system is not sufficient for general deterrence and prevention of anomie. At that point, restrictions have to be placed upon flexibility in order to fulfill the needs of general deterrence and prevention of anomie. This would call for a fairly consistent use of minimum terms (the exercise of reserve power) until such time as the balance is restored.

The second situation is related only to prevention of anomie and can arise even where the general feedback seems sufficient for general deterrence and prevention of anomie with respect to persons on the same level of social integration as the offender. In this situation the shock of the crime to core values or core institutions of society is such that it is necessary to consistently reassure the entire community by demonstrating to the entire community *in each case* that the state is determined to uphold the norm. Thus, for example, in the case of murder —which shocks the most important human value—the state has a need to demonstrate, to both those who would feel that ten

years of mandatory incarceration is a severe reaction and to those who would not be impressed by such action, that the state is determined to uphold the norm, and this requires guaranteed severity in each case. The same general reasoning would apply where a high public official receives a bribe to influence his official action, or where a bank officer embezzles a substantial sum. In such cases, however, the point of the state's action is to reinforce confidence in the operations of a vital institution rather than a core value.

Intermixing of instrumentalities means the use of programs that involve both incarceration and field supervision. In this type of program a person would be under incarceration for part of the day, or on certain days, and in the community under field supervision for part of the day, or on certain days. This narrows the conflict further, because it can add to severity within the bounds of flexibility. The present choice—fostered by our trichotomous concept of custody—is basically limited to either field supervision or incarceration. With this limited choice, if we wish to work with the offender in the community at all, we must do so under circumstances where he is in the community exclusively, and if we wish to use incarceration for any purpose (*i.e.,* preventive force, rehabilitation or punishment) we must use it exclusively. Since, as previously noted, the goal in prevention of recidivism is to change the offender so that he will behave satisfactorily *in the community,* it is necessary to resolve many doubtful cases in favor of field supervision. With intermixing of instrumentalities, these doubts could be resolved by using part time incarceration and part time field supervision. This would increase the feedback level to help satisfy the needs of severity. (For further discussion of this see special note on incarceration, *infra.*)

Special Note on Incarceration

Before proceeding to discuss the relationship between utilization of custody and utilization of a general concept of custody, it is necessary to take a more precise look at the concept of incarceration. This concept is the pivotal factor in both the historical and future development of custody.

Historically, we view incarceration in terms of an institution in which a person is placed and in which he remains, without leaving, for a fixed or substantial period of time. As

previously stated, probation developed on one side of this concept—as a method of avoiding incarceration—and parole developed on the other side of this concept—as a method of ameliorating incarceration. The evolution of parole and probation as operations completely separate and distinct from incarceration strengthened the historical view of incarceration and fostered an ever widening gulf between incarceration and field supervision. Transfer of an offender from one to the other came to be viewed as transfer from withholding of punishment to punishment (*i.e.,* probation to incarceration) and as transfer from substantial freedom to no freedom for a fixed or a considerable period of time (*i.e.,* field supervision to incarceration). This, of course, made any such transfer a major traumatic event. The law eventually recognized the clear difference in statuses, and insulated field supervision by establishing it as a privilege which, when once granted, became a right that could not be revoked without formal legal procedure. As a result of this, probation, incarceration and parole became juridical statuses and the separation became absolute.

However, incarceration can no longer be viewed solely in terms of its historical meaning. An examination of modern operational thinking reveals that the term incarceration all but defies any attempt at a uniform operational definition. Certainly, we cannot think of the so-called "half-way house" operation as being incarceration any more than we can think of it in terms of field supervision. Similarly, so-called "work release" programs, where an offender is not under institutional custody during a major portion of his waking hours, certainly cannot be called incarceration in the traditional sense. Release furloughs, where offenders go home to visit for weekends, or for a week or more to arrange for future employment, also are not consistent with incarceration. Nor can such innovations as the so-called community-based "residential treatment facility" be called either incarceration or field supervision (see *e.g.,* N. Y. Correction Law, §66). Under the latter type program, an offender is in the community to the extent he is able to constructively use such freedom and receives institutional custody during the hours and for the problems that he has not learned to handle or to cope with under circumstances of relative freedom in the community.

There are two basic aspects to the historical concept of

incarceration: (1) that the offender remain within the institution without leaving, unless under guard; and (2) that the period of incarceration is either fixed or substantial. As demonstrated in the preceding paragraph, the first aspect is clearly crumbling, and this furnishes the key for substantial modification of the second aspect. If we can permit offenders to leave institutions while they are technically under incarceration, it seems anomalous to cling to the principle that incarceration must always be for a fixed or substantial period of time. Except where a fixed period of incarceration is mandated for general deterrence or prevention of anomie, incarceration should be used as and where necessary. This might mean two days or a week in a case where a person under field supervision is slipping, or where needed immediately following conviction for individual deterrence, or where appropriate for any other purposes. Once this is recognized, the stage is set for a general concept of custody which can facilitate fluidity between the two basic instrumentalities (*i.e.*, interchange between incarceration and field supervision).

The central point in achieving fluidity is to view incarceration as an instrumentality rather than as a distinct concept. In this way the system can control it, rather than having it control the system.

Application of a General Concept of Custody to Rational and Efficient Utilization of Custody

Once fluidity of movement is established, we will be able to use our instrumentalities in accordance with specifically identified purposes. If we wish to use incarceration as punishment for individual deterrence, or for preventive force, or to coerce submission to rehabilitative programs, or to take an offender out of the community for "a breather", or to narrow the margin of risk to the community where we are not sure that field supervision is adequate, or where part of a rehabilitative program is best administered in an institutional setting (*e.g.*, a forestry camp), we can use it for a day, a week, a month or a year or more, or we can use it for part of a day, or on certain days of the week, as needed in the individual case. Stated otherwise, we will be able to pick and choose in our use of instrumentalities in accordance with the particular purpose or purposes to be served.

Such fluidity can also eliminate the need for mandatory minimum terms of imprisonment in many cases. For example, a court could impose a term of custody and instead of directing, for severity, that a minimum period of imprisonment be served, direct that the offender serve *at least* two days a week under total incarceration, or every night in an institution, permitting administrators flexibility in deciding how to use their instrumentalities during the rest of the time.

The point is, however, that the only way in which this can be done is to eliminate the arbitrary lines between probation, incarceration and parole that cause them to be conceptualized as distinct types of custody. By eliminating the necessity of moving an offender from one distinct juridical status to another, and from one distinct operating agency to another, whenever we wish to change instrumentalities, we can establish the free flow that is necessary for fluidity (assuming, of course, that we first set up institutions and procedures to handle this smoothly). This is the essence of the utility of a general concept of custody.

III

Distribution of Decision Making Functions

Section I of this Part of the Report covers the fundamental concepts of the criminal treatment system and section II covers the basic principles involved in applying sanctions to individuals. There remains, however, the question of how responsibility for decision making in the system may be distributed among the various agencies involved (legislative, judicial, executive). It is essential to consider this question in order to come to grips with the functions of each of those agencies, and thus to have a tool for appraising each and formulating recommendations for change.

Legislative Function

As noted earlier, it is necessary to have some agency determine which conduct shall be proscribed, and to evaluate the relative harm of the various types of proscribed conduct for

the purpose of establishing the maximum authorized sanction (see discussion pp. 77-78, *supra*). Under our tripartite system of government this function is reserved to the legislative branch, which has been designed specifically and solely for the purpose of furnishing the best possible expression of the community viewpoint.

The question that arises in connection with the legislature's role, in the context of the criminal treatment system, is whether and to what extent the legislature should prescribe mandatory sanctions, as opposed to permitting the judicial and executive branches to individualize sanctions. In considering this question, the primary thing to bear in mind is that the legislature is not designed for case by case decision making and does not operate in a maner that permits it to consider the actual facts and circumstances of each offense or the individual condition of each offender. Therefore, there are only two possible bases for a legislative decision to prescribe a mandatory sanction for an offense: (a) that the needs of general deterrence or prevention of anomie require a certain degree of severity in every case where a person is found guilty of the offense, and that such needs outweigh the possible benefits for prevention of recidivism to be gained through flexibility; or (b) that a certain level of sanction is necessary to cope with risk of recidivism in every case.

The generally accepted instances where the first of the two bases applies are: the conviction level; and where murder or kidnapping is involved (*i.e.*, the most heinous of all crimes). In most states, the court is required to impose a formal finding of guilt in the form of an adjudication or a "judgment of conviction" in every case where there is a plea or verdict of guilty.* This requirement can be supported on the ground that it is necessary for prevention of anomie and does not materially interfere with flexibility. So also, in most states, the need for prevention of anomie is considered, as a matter of policy, to justify a mandatory sentence in the case of murder or kidnapping. These two crimes so deeply shock the community that the legislature must guarantee a specific demonstration of

*It should be noted, though, that in some states the judgment may be deferred if there are extenuating circumstances or if the offender's degree of social integration is high, and after a period of good conduct the indictment is dismissed and the offender escapes conviction completely.

determination that will be meaningful to all members of society. Apart from the foregoing instances, the modern trend seems to be for legislatures to refrain from interfering with flexibility and, it is submitted, this trend reflects the ever increasing acceptance of the theory that criminal treatment is most effective when administered in accordance with individualized criteria.

It might also be noted that laws mandating "stiffer sentences" in the form of mandatory minimum terms of incarceration for the purpose of increasing general deterrence and/or preventive force often lead to the opposite result, because courts and prosecutors are forced to make allowances for individual circumstances by granting a lesser plea, which in turn lowers the maximum authorized sanction and cuts down the time the system has for treatment of the offender.

The only generally accepted instance where the second of the two bases applies (*i.e.*, that a certain level of sanction is necessary for prevention of recidivism) is in the case of a crime that is so serious that the perpetrator should always be subjected to some form of supervision for a reasonable period (*e.g.*, forcible rape). In such case the legislature cannot, of course, prescribe a formula that would be best for each individual, but it can at least assure the public that no person who is found guilty of such crime will be turned loose without supervision. Thus, for example, the New York Penal Law prohibits the release of anyone who is convicted of a class B felony or of the sale of narcotics without, at least, field supervision.

In sum then, it is suggested that the legislature's decision making role in the context of the criminal treatment system is as follows:

1. To prescribe the maximum authorized sanction for various categories of conduct;
2. To mandate the conviction or adjudication level of sanction for all cases;
3. To mandate a severe sanction for heinous crimes;
4. To require that persons who are found guilty of very serious crimes receive supervision; and
5. To distribute authority for all other decisions among the judicial and executive branches.

Judicial Function

The appropriate role of the judicial branch of government in the criminal treatment system should be defined in terms of the particular competence expected of the judiciary. The function of the judicial branch is to interpret laws in the context of particular fact situations and to assure that disputes are resolved by means of a just procedure. This requires more than simply a technical knowledge of the law and analytical skill; it also requires an intimate knowledge of community mores and folkways, and a sense of what is considered fair and reasonable by society. Facts cannot be interpreted in a vacuum, and due process—a juridical term for fair play—is more than an abstract concept: both are inextricably interwoven with the entire fabric of everyday life in the community.

Hence, the judicial branch of government is particularly suited for determining the appropriate sanction range and for determining the extent of the sanction necessary for general deterrence and prevention of anomie. It is particularly suited for determining the former, because this involves ascertainment of the actual facts and circumstances of the offender's conduct and an evaluation as to where, within the range of the general statutory definition of proscribed conduct, the offender's conduct falls. It is particularly suited for determining the latter (*i.e.*, the extent of the sanction necessary for general deterrence and prevention of anomie), because the primary skill required here is the ability to sense the pulse of the community, and that ability stems from an intimate knowledge of mores and folkways and an intimate knowledge of what is considered fair and reasonable by society.

Legal training and the judicial orientation do not, however, concentrate upon the criteria that are applied to determine whether a person is likely to recidivate and what the best form of treatment might be to prevent recidivism. Such decisions fall more within the province of behavioral science experts: people who are specifically trained and experienced in detecting symptoms of and dealing with aberrant behavior patterns. Therefore, the decision as to whether a particular sanction, within the appropriate range, is best for prevention of recidivism is not a matter that we should properly expect the judiciary to resolve.

Before reaching any conclusion regarding the appropriate

role of the judiciary, it is relevant to consider one more basic question; and that is where the responsibility should lie for determining whether an offender does, or does not, appear likely to recidivate. If technical competence on this point were the only issue involved, the path to resolution would be clear and the decision making authority would properly be placed in the hands of the behavioral scientists, ergo the executive branch of government. This would mean that *every offender* would be subject to an *administrative determination* as to whether custody is necessary for prevention of recidivism, irrespective of whether custody is necessary for general deterrence or prevention of anomie. Thus, all offenders would run the risk of being placed in custody—and perhaps incarcerated—without a judicial determination that custody is necessary for some purpose. This raises the issue of whether and when we can permit deprivation of liberty to be decided, in the first instance, by administrators. The heart of the issue is that we regard liberty as so precious that even when a person is convicted of a crime we require some reasonable additional justification for depriving him of his liberty. The judicial branch of government is traditionally viewed as the guardian of liberty because its decisions are focused upon and made in the light of the issue of liberty; while the executive branch—although not by any means insensitive to the question of liberty—is more focused upon accomplishing its purpose, in this case, treatment. Therefore, there is much to be said for vesting the judiciary with the sole power to determine, in the first instance, whether the offender does or does not present a risk of recidivism; based, of course, on evidence gathered and presented by behavioral experts.

A reasonable solution to the problem, and one that gives recognition to the need for public protection as well as the need for preservation of individual liberty, is to authorize the judicial branch to make the decision as to whether custody is appropriate where the crime is not highly grievous (*e.g.*, class D felony or less) and where the offender has not been previously found guilty of criminal conduct; and to vest the executive branch with decision making power as to risk in all other cases. The reason for separating highly grievous from less grievous crimes, and thus relying upon conduct as the pivotal point, is that in a conduct-based system the degree of risk to

the community has to be gauged in terms of the type of crime the offender is likely to commit, and the crime for which he is convicted is the only fair method of determining this question. This principle also fits into what is said, *supra,* with respect to the legislative role; *i.e.,* to require that persons who are found guilty of very serious crimes receive supervision. The reason for including the factor of whether the offender has previously been found guilty of criminal conduct is somewhat similar; because in such case the offender's previous criminal conduct justifies an assumption that his present conduct is not an isolated incident in an otherwise law-abiding life and, hence, that he does present a recognizable risk of recidivism.

However, it is often difficult to tell, at the moment of sentence, whether the offender does or does not present a risk. And, unless we assume that there is some compelling urgency for the judicial branch to make a final decision at that moment, there is no reason to compel the decision to be made then and there. Hence, we should permit the judicial branch to defer the determination in cases where it has decision making power on the question of risk (if the court has some doubt about risk and custody is not necessary for general deterrence and prevention of anomie) and subject the offender to supervision for a reasonable period (*e.g.,* 3 months in the case of a misdemeanor and one year in the case of a felony) to determine risk of recidivism.*

The foregoing proposal might seem to resemble the present concept of probation quite closely, and perhaps it does, but there is an essential difference in focus. Under the present system, probation is a treatment method and a custodial instrumentality. Supervision under a deferred sentence would not involve rehabilitative treatment or the general concept of custody. Under the proposed system, the deferred sentence with

*The proposed New York Criminal Procedure Law separates the concept of conviction and sentence, but provides that a sentence is required for completion of judgment (§1.20 subds. 6, 7, 8) and does not permit appeal from a "conviction" (§230.10). It does, however, permit appeal from a "sentence" (*id,* subd. 2). The offender's rights in a case where sentence is deferred could easily be protected by permitting appeal from the conviction (which would be new), and a subsequent appeal from the sentence if he later were aggrieved by same. This would be no different, in substance, from the present law or the proposed criminal procedure law (*i.e.,* where a person receives a "sentence of probation" and the sentence is subsequently revoked and a sentence of imprisonment is imposed).

supervision would be used to determine whether there is reason to believe that the offender presents a risk and once it is determined that he does, the risk can be handled under a general concept of custody.

It might be noted that conviction, fine and intermittent jail (non-custodial sanctions) are not relied upon as methods of preventing recidivism where the risk is substantial, although they are considered punishment and, therefore, are useful for individual deterrence. The primary uses of these sanctions are: (1) general deterrence; (2) prevention of anomie; and (3) individual deterrence, where the offense is not grave enough to justify custodial deprivation of liberty, or where the risk of recidivism seems slight but some exposure to punishment seems necessary. Therefore, decision making with respect to these sanctions should properly be left in the hands of the judicial branch. Moreover, insofar as conviction is concerned, it would be difficult if not impossible to separate this sanction from the judicial proceeding; and it is appropriate that community condemnation be expressed by the agency of government that is surrounded with the aura of the majesty of justice.

In sum then, the role of the judicial branch of government, in the context of criminal treatment decision making should be as follows:

1. To impose the conviction or the adjudication (*e.g.*, youthful offender adjudications) as required by legislative mandate, after a determination of criminal responsibility.

2. To determine the appropriate sanction range, within the authorized maximum, based upon the conduct of the offender.

3. To determine the degree of sanction, within appropriate range, necessary for general deterrence or prevention of anomie. This is resolved on the basis of the offender's degree of social integration; except where the crime is such that it shocks core values or institutions of society, in which case social integration may be disregarded and a sentence that is impressive to the entire community may be used for prevention of anomie.

4. To determine whether or not there is a reasonable risk of recidivism, based upon the condition of the offender; or, where the crime is so grievous that the risk should be decided by behavioral science experts, to commit the offender to custody.

5. To impose sentence based upon the foregoing determinations.

If the appropriate sanction range does not include a term of custody, or if a term of custody is not required for any of the purposes of the system, the sentence may consist of conditional or unconditional discharge (see footnote, p. 74), or of a fine, or may direct intermittent jail with power reserved to revoke the sentence and impose a more severe sanction if the offender does not report to the jail as directed. This, of course, does not preclude use of more than one sanction where appropriate; *e.g.*, fine plus intermittent jail.

Where the appropriate sanction range does include a term of custody, but custody is not required for general deterrence or for prevention of anomie, risk of recidivism should be dealt with as follows:

(a) If there is no risk, and the crime is not one that calls for mandatory custody, custody should not be used;

(b) If there is little reason to believe that the offender presents a risk of recidivism, and the crime is not one that calls for mandatory custody, a deferred sentence with an order of supervision should be used. (This could be coupled with a fine or with intermittent jail or with both.);

(c) If the offender presents a risk of recidivism, or if the crime is one that calls for mandatory custody, the maximum term of custody—within the appropriate range—should be imposed. The reason for use of the maximum term, within the appropriate range, is that there is no way to forecast the effect that treatment will have and the duration of the risk. Hence, the maximum should be used, for public protection, and the executive branch should have the authority to discharge the offender at such time as he no longer appears to present a risk of recidivism.

Where the appropriate sanction range does include a term of custody and custody is needed for general deterrence or for prevention of anomie, the decision should be made in accordance with the following reasoning:

(a) If custody is not necessary for prevention of recidiv-

ism, the sentence should consist of a specified term of incarceration;*

(b) If custody is necessary, or mandated, for prevention of recidivism, then the question is whether a minimum term of incarceration should be imposed and this would be determined as follows:

(i) When a statutory minimum is prescribed, the minimum imposed would have to be at least the statutory minimum, and any excess would depend upon items (ii) and (iii) below,

(ii) Where the crime is particularly shocking, a minimum term of incarceration would be used in order to guarantee a meaningful demonstration of determination to uphold the norm, and in such case the generally accepted standard is that the minimum should not exceed one-third of the entire custody term; and

(iii) In all other instances, a minimum term of incarceration should only be used, or increased above the statutory minimum, where the general feedback level is not sufficient for general deterrence or for prevention of anomie, and the one-third rule would still apply.

Executive Function

All decisions not reserved by the legislature or allocated to the judiciary must, of course, be vested in the remaining branch of government—the executive branch. This would mean that when a person is committed to custody, decision making would be as follows:

1. If no term of incarceration is specified in the sentence, whether incarceration or field supervision or a combination of both should be used;
2. If a term of incarceration is imposed, where such term is to be served and the particular program to be administered (subject to the limitation that it must be a residential program, see footnote on this page);

*It should be noted that the term "incarceration" when specified in a sentence would mean confinement in an institution under a residential program; *i.e.*, a program that requires the offender to spend at least all of his non-waking and leisure hours in the institution.

3. If a term of custody is imposed with a minimum term of incarceration, the decisions specified in item one, above, after the minimum period of incarceration has been served. (This includes what is now known as release on parole and revocation of parole, as modified by application of the general concept of custody.) ;
4. All of the decisions as to specific details of treatment (*e.g.*, therapy, education, training, special rules of behavior, intensity of field supervision, etc.) ; and
5. When to discharge the offender, limited, of course, by the fact that the minimum term of incarceration, if any, must be served and by the fact that he cannot be held beyond the maximum term of custody.

It is important to note, however, that all of the above decisions should be based upon considerations involved in prevention of recidivism, and that the executive branch should not base its decisions upon the needs of general deterrence or prevention of anomie. Those needs are determined and provided for by the judicial branch of government; and, where mandatory sentences are involved, by the legislature.

Part Two

Concerning the Organizational Structure of the Post Adjudicatory System for Administering Treatment to Persons Convicted of Crimes or Adjudicated on the Basis of Anti-Social Behavior

The purpose of this Part of the Report is to set forth a critique of the organizational structure of the present New York State operations that administer treatment for persons who have been convicted of crimes or adjudicated on the basis of anti-social behavior (the "post adjudicatory treatment system") and to suggest a structure that appears to hold the promise of greater efficiency.

The suggestions herein set forth are based partially upon the explication of "criminal system" theory stated in Part One, partially upon the principles of functional administration developed throughout this Part of the Report, and partially upon the needs of the State in preventing recidivism as stated in Part Three of the Report.

In order to set this Part of the Report in perspective, it is recommended that pages 25-29 and 41-51 of the Report

(Summary and Conclusions) be used as an outline guide for the basic organizational focus of the Committee.

I

An Overview of the Present Structure

At the present time the organizational structure of the New York State post adjudicatory treatment system consists of a vast network of independent, unrelated and frequently overlapping agencies; some of which are administered by counties and cities and some of which are administered by the State. This picture is further complicated by the roles these post adjudicatory agencies play in pre-adjudicatory functions (*e.g.*, detention, bail investigations), and by the roles they play in furnishing services under both the criminal system and civil system rationales. The list of State and local governmental agencies involved in the post adjudicatory treatment system, exclusive of courts, is as follows:

1. Sixty-nine separate and distinct probation departments.
2. The State Division for Youth.
3. The State Department of Social Services.
4. The State Department of Correction.
5. The State Division of Parole.
6. Fifty-seven separate and distinct county jails, five separate and distinct county penitentiaries (however, in one county, the jail and the penitentiary are operated as a single unit); and a penitentiary, a work house and a reformatory for New York City.
7. The State Narcotic Addiction Control Commission.
8. The State Probation Commission.
9. The State Commission of Correction.
10. The State Board of Social Welfare.
11. The State Judicial Conference.

Allocation of Offenders to Agencies

The question of whether a person is dealt with by a county agency or by a State agency and the question of which county

or State agency deals with him is determined primarily on the basis of the particular juridical status assigned him by virtue of his age, type of crime, the custodial instrumentality being applied at the time (*i.e.,* field supervision or incarceration), and his condition (*e.g.,* narcotic addict, mental defective, mentally ill).

For the purpose of initial discussion, we will include juvenile delinquency with the juridical statuses based upon the criminal rationale and cover the person in need of supervision status with the juridical statuses based upon the civil rationale. However, as pointed out in several places in the Report (primarily pp. 134-137, *infra*) the law—although confusing on this issue—does not seem to express any sound basis for distinguishing between the statuses of juvenile delinquent and person in need of supervision.

The juridical statuses based upon the criminal rationale and the governmentally operated agencies are as follows:

1. *Juvenile Delinquent.* The term juvenile delinquent means a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime (Family Court Act, §712 [a]). Treatment for persons in the juvenile delinquent age group, who are adjudicated, is furnished by the following governmental agencies:

(a) *Probationer.* A countywide probation department or a special county-operated family court probation department, or in the City of New York, a city probation department that serves the lower criminal courts and the family court, administers field supervision for juvenile delinquents placed on probation;

(b) *Probationer.* The State Division for Youth administers residential programs and parole (the concept of incarceration and field supervision) and non-residential all-day work and counseling programs (a variation on the incarceration concept). These programs serve selected juvenile delinquents between the ages of fifteen and eighteen years—at the time of admission—who are placed in the juridical status of probation and are required to spend a period of time under the custody of the Division as a condition of probation (Executive Law, §502). This arrangement results in a per-

son being under the field supervision of a county agency while he is in a State operated program.

(c) *Inmate* (private agencies and two State agencies). Juvenile delinquents who are not placed on probation or whose probation is revoked may be placed in or committed to residential programs (the concept of incarceration) operated by private agencies or by the State Department of Social Services (the State institutions are called "training schools"). Family Court Act, §758; Social Services Law, §425. Juvenile delinquents may also be committed or transferred to an institution under the jurisdiction of the State Department of Correction. Commitment to a Department of Correction institution is authorized where the juvenile was fifteen years of age or more at the time he indulged in the unlawful conduct and the conduct would have constituted a grievous felony (class A or B) if perpetrated by an adult. Family Court Act, §758-b. Transfer to a Department of Correction institution may be made from a State training school if the juvenile is over sixteen years of age at the time of the transfer and it appears that he is incorrigible and that his presence in a Social Services institution is seriously detrimental to the welfare thereof. Social Services Law, §427-b (such transfers are not currently being made, however).

(d) *Parolee* (two State agencies). The Department of Social Services administers field supervision (parole) for juvenile delinquents who were committed to or placed in State training schools. Social Services Law, §437. The State Division of Parole administers field supervision (including decisions as to when to release on parole and when to revoke parole) for juvenile delinquents committed to the State Department of Correction.

2. *Misdemeanant.* The term misdemeanant may be defined as meaning a person over sixteen years of age who is convicted of a crime for which the maximum authorized term of imprisonment is more than fifteen days but not in excess of one

year.* Treatment for persons in this category is furnished by the following governmental agencies:

(a) *Probationer.* If the misdemeanant is convicted in a lower criminal court, a countywide probation department, or a special county operated or city operated probation department for lower criminal courts—which in some cases also serves the family court—administers field supervision for misdemeanants placed on probation. If the misdemeanant is convicted in a county court or in the supreme court, see paragraph three (a), *infra*;

(b) *Probationer.* The State Division for Youth administers programs on the basis described in paragraph one (b), *supra,* for misdemeanants between the ages of fifteen and eighteen who are placed on probation;

(c) *Inmate* (local government). Every county operates either a jail or penitentiary, and the City of New York operates a penitentiary, for incarceration of misdemeanants who are sentenced to terms of one year or less, or who are committed for failure to pay a fine.

(d) *Inmate, Young Adult* (local government and two State agencies). If a misdemeanant is between the ages of sixteen and twenty-one at the time of sentence, he may be committed for incarceration in a local institution as set forth in subparagraph (c) above; or, if the crime was committed in the city of New York by a male, he may be committed for incarceration in the City Reformatory for an indefinite period, which means incarceration for up to three years depending upon date of parole release (Penal Law, §75.20); or he may be committed for incarceration to the State Department of Correction for an indefinite period, which means incarceration for up to four years depending upon date of parole release (*id*, §§75.00-75.15); and, if committed to the State Department of Correction, he may be transferred to an institution

*It should be noted that the Penal Law also defines a category of offense called "violation". This is basically used to cover minor instances of offensive conduct, and a "violation" is not a crime. The maximum sanction that can be used is fifteen days incarceration in a county or city institution and neither probation or parole would apply. Hence, we have not listed *violator* as a separate status in this Report. See Penal Law, §§10.00 subd. 3, 55.10 subd. 3.

operated by the State Department of Social Services. Correction Law, §279-a;

(e) *Inmate* (City-State). If a misdemeanant is a female and is committed as set forth in subparagraph (c) above, she may be transferred from a New York City institution to an institution operated by the State Department of Correction under a leasing agreement with the City. Correction Law, §6-g. (The text of the law includes authority for such transfers from any city or county, but the law was introduced for the specific purpose of relieving overcrowding in New York City's institution for females and that City is the only locality that has used the law.)

(f) *Inmate, Mental Defective* (local and State agencies). If a misdemeanant is a mental defective, he may be committed for incarceration as specified in subparagraphs (c), (d) and (e) above and he also may, irrespective of age, be committed for incarceration in an institution under the jurisdiction of the State Department of Correction; or, if committed to a local institution, he may be transferred to an institution under the jurisdiction of the State Department of Correction. Correction Law, §§438, 438-a.

(g) *Parolee.* The State Division of Parole furnishes field supervision for misdemeanants who have been committed to incarceration as specified in subparagraphs (c), (d), (e) and (f) above. Release on parole is discretionary with the Board of Parole and the Board has the authority to revoke parole and to return the misdemeanant to incarceration.

(h) *Inmate, Mentally Ill* (local and State agencies). If a misdemeanant becomes mentally ill while serving a term of incarceration in a county jail or penitentiary, or in the New York City Penitentiary or Reformatory, he may be transferred to a hospital operated by the State Department of Correction. Correction Law, §408.

3. *Felon.* The term felon may be defined as meaning a person over sixteen years of age who is convicted of an offense for which a sentence to a term of imprisonment in excess of one year is authorized (see Penal Law, §10.00 subd. 4). Treat-

ment for persons in this category is furnished by the following governmental agencies:

(a) *Probationer.* A countywide probation department or a probation department that serves only the county court, or in the City of New York, a probation department that serves only the supreme court, administers field supervision for felons placed on probation;

(b) *Probationer.* The State Division for Youth administers programs on the basis described in paragraph one (b), *supra,* for felons between the ages of fifteen and eighteen years who are placed on probation;

(c) *Inmate* (local government). Every county operates either a jail or a penitentiary, and the City of New York operates a penitentiary, in which felons who are convicted of class D and E felonies (the less serious variety, see Penal Law, §70.05) may be incarcerated.

(d) *Inmate, Young Adult* (local government and two State agencies). If a felon is between the ages of sixteen and twenty-one at the time of sentence and the crime is not murder or kidnapping in the first degree (class A felonies), he may be dealt with as specified for misdemeanants in paragraph two (d) above;

(e) *Inmate* (City-State). If a felon is a female and is committed as set forth in subparagraph (c) above, she may be transferred from a New York City institution to an institution operated by the State Department of Correction under a leasing agreement with the City. (This is the same arrangement that applies in the case of a misdemeanant, as set forth in paragraph two (e) above.);

(f) *Inmate* (State). If a felon receives a term of imprisonment in excess of one year, he must be committed, for incarceration, to an institution under the jurisdiction of the State Department of Correction. Penal Law, §70.20, subd. 1; Correction Law, §801;

(g) *Inmate, Mental Defective* (local and State agencies). If a felon is a mental defective, he may be committed for incarceration in a local institution as outlined in subparagraphs (c), (d) and (e) above, or committed for incarceration in a state institution as outlined in subparagraph (f) above; but, if committed to a local

institution he may be transferred to an institution under the jurisdiction of the State Department of Correction;

(h) *Parolee.* The State Division of Parole furnishes field supervision for felons who have been committed to incarceration as specified in subparagraphs (c) through (g) above. Release on parole is generally discretionary with the Board of Parole; however a felon who has been sentenced to a term of imprisonment in excess of one year may, if he earns sufficient credit for good behavior, insist upon his release after serving two-thirds of his term and the Division of Parole is required to furnish field supervision in such case. Penal Law, §70.40 subd. 1 (b); Correction Law, §805. The Board has the authority to revoke parole in any case and to return the felon to incarceration;

(i) *Inmate, Mentally Ill* (local and State agencies). If a felon becomes mentally ill while serving a term of incarceration in a county jail or penitentiary, or in the New York City Penitentiary or Reformatory, he may be transferred to a hospital operated by the State Department of Correction. Correction Law, §383.

4. *Youthful Offender.* The term Youthful Offender means a person who: (a) is between the ages of sixteen and nineteen; (b) has committed a crime other than murder or kidnapping in the first degree; (c) has not previously been convicted of a felony; and (d) is granted youthful offender status by the court. Youthful offenders are adjudicated as such by the court (on the basis of criminal conduct) rather than being convicted of the crime directly. A youthful offender can be treated as a probationer, inmate or parolee, and the following paragraphs outline the agencies and treatment permitted: two (a) or three (a) depending upon the court of conviction; two (b); two (d) but no incarceration for a term of one year or less; two (f); two (g); two (h).

5. *Narcotic Addict.* The term narcotic addict denotes two statuses in New York State, one civil and one criminal. At this point we are concerned only with the criminal narcotic addict, *i.e.*, a person who: (a) has been found guilty of criminal conduct; (b) has been found to be a narcotic addict; and (c) is sentenced for the offense. This would include misdemeanants,

felons, youthful offenders and a person who has been found guilty of prostitution (a "violation", see footnote, *supra*, p. 115). Treatment for criminal narcotic addicts is furnished by the following governmental agencies:

(a) *Misdemeanant, Prostitute, Youthful Offender* (State and local agencies). Addicts convicted of a misdemeanor or of prostitution or adjudicated as youthful offenders must be certified to the care and custody of the State Narcotic Addiction Control Commission. The Commission administers residential facilities (incarceration) and aftercare (field supervision) for such persons, and the Commission also contracts for the care of such persons (incarceration) in institutions under the jurisdiction of the State Department of Correction. In addition, the Commission also contracts for the care of such persons (incarceration) in institutions run by counties and cities, including, at least so far, the New York City Penitentiary and Reformatory. Penal Law, §60.15, Mental Hygiene Law, §§206-a, 208, 209.

(b) *Felon* (State and local agencies). Addicts convicted of a felony, other than murder or kidnapping in the first degree (class A felonies), may be dealt with as follows:

(i) They may be sentenced to N.A.C.C. and treated in the same manner as misdemeanant addicts, as outlined in subparagraph (a) above (except that the permissible length of treatment for a felon is five years, as against three years for a misdemeanant), or

(ii) They may be sentenced to incarceration with a minimum term of incarceration of at least one year and a maximum term of custody of at least three years in an institution under the jurisdiction of the State Department of Correction. Release under field supervision in such case would be handled by the State Division of Parole, as outlined in paragraph three (h) above.

It is helpful, in setting the picture in clearer focus, to consider the same material on an agency-by-agency basis, as follows:

AGENCY	OPERATED BY	CUSTODIAL INSTRUMENTALITY	TYPE OF OFFENDER
Probation Dept.	County or City	Field Supervision	Juvenile Delinquent Misdemeanant Felon Youthful Offender
Division for Youth	State	Incarceration and Field Supervision	Any of above between ages of 15 and 18 who are placed on probation
Dept. of Social Services	State	Incarceration and Field Supervision	Juvenile Delinquent
		Incarceration	Misdemeanant Felon Youthful Offender } transfer from State Dept. of Correction
County jail County penitentiary New York City penitentiary, workhouse or reformatory	County or City	Incarceration	Misdemeanant Felon Youthful Offender (N.Y.C. Reformatory only) Narcotic Addict Offender (Under contract with State N.A.C.C.)
Dept. of Correction	State	Incarceration	Misdemeanant (16-21 at time of sentence) Felon Youthful Offender

			Juvenile Delinquent (by direct commitment in some cases and by transfer from Dept. of Social Services in other cases) Narcotic Addict Offender (by direct commitment in some cases and under contract with N.A.C.C. in other cases) Mental Defective (by direct commitment in some cases and by transfer from local institutions in other cases) Mentally Ill (by transfer from local institutions)
Division of Parole	State	Field Supervision	Misdemeanant Felon Youthful Offender Juvenile Delinquent Narcotic Addict Offender Mental Defective (generally, any person sentenced to a term of imprisonment in excess of 90 days, or to a reformatory term in any State or local prison, penitentiary, jail or reformatory)
Narcotic Addiction Control Commission	State	Incarceration and Field Supervision	Narcotic Addict Offender *i.e.*, Misdemeanant Felon Youthful Offender Prostitute

Pre-Adjudicatory and Civil Treatment System Functions

As previously indicated, the picture of the criminal post adjudicatory treatment system is further complicated by the fact that not one of the agencies operating within it is completely confined to such activities. Every one of the agencies is involved, to some extent, in pre-adjudicatory (*i.e.*, pre-disposition or pre-sentence) criminal justice system services or civil treatment services or both. These services and the agencies involved are as follows:

1. *Probation Department Serving Family Court.* A probation department that serves the family court, in addition to providing field supervision for juvenile delinquents placed on probation, furnishes the following services:

(a) *Pre-adjudicatory Criminal Justice System Services.* These consist of "intake" conferences and preparation of reports for the use of the court in making its order of disposition. "Intake" is a procedure under which a probation officer confers with persons seeking to file petitions against alleged juvenile delinquents and also confers with the alleged delinquent and other interested persons concerning the advisability of filing a petition. The officer cannot prevent any person from filing a petition, but attempts "to adjust suitable cases before a petition is filed over which the court apparently would have jurisdiction." Family Court Act, §734. Pre-disposition reports are reports containing information with respect to the condition of the offender and, in many cases, details of aggravating or mitigating circumstances of his criminal conduct. They are used by the court, in the same manner as a pre-sentence report, for guidance in determining whether to place the offender on probation or to commit the offender to a private agency or to the Department of Social Services, etc.;

(b) *Persons in Need of Supervision* (civil treatment system). The Family Court Act defines a sort of hybrid juridical classification known as "person in need of supervision" ("PINS") who, for all practical purposes, is handled in the same manner as is a juvenile delinquent. Under the Act, PINS means "a male less than

sixteen years of age and a female less than eighteen years of age who is an habitual truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority." Family Court Act, §712 (b). We have discussed juvenile delinquency within the framework of the offender system, because the State's right to deal with a delinquent starts with the premise that he has committed an "act which, if done by an adult, would constitute a crime" (but see discussion, pp. 134-137). We discuss PINS in a somewhat different light (*i.e.*, civil treatment system) because the status as presently defined by statute seems to be distinguishable in that specific criminal conduct is not required. The PINS concept seems to be based upon a pattern of non-criminal but ungovernable behavior. Probation departments supply all of the services for PINS cases that they supply in the case of juvenile delinquency (*i.e.*, intake, pre-disposition reports, field supervision);

(c) *Other Civil Duties.* The other duties performed by family court probation departments include: receiving and disbursing funds paid pursuant to court support orders (Family Court Act, §§221, 222); supervision of persons who have custody of neglected children and intake and preparation of reports and other duties in connection with neglect proceedings (*id.*, §§311-374); intake in support proceedings, field supervision of persons who fail to obey support orders and preparation of reports for the courts in support proceedings (*id.*, §§411-479); reports in proceedings to terminate parental rights over children (*id.*, §625); supervision of persons who are found guilty of "family offenses" and preparation of dispositional reports for the courts in such cases (*id.*, §§811-846); and conciliation conferences designed for the purpose of saving marriages (*id.*, §§911-926).

2. *Probation Department Serving County Court, Supreme Court, City Court, District Court.* A probation department that serves criminal courts (*i.e.*, courts with jurisdiction to adjudicate youthful offenders and wayward minors, and to convict for violations, misdemeanors and felonies) performs the following

services in addition to field supervision of persons placed on probation:

(a) *Bail Investigations.* In some counties the probation department conducts interviews and investigations to furnish the court with information to be used as a basis for determining whether to fix bail or to release the defendant on his own recognizance without bail;

(b) *Pre-pleading Investigations.* In some counties the probation department conducts investigations for the court and furnishes a report of the details of the offense and the condition of the offender for the use of the court in determining whether it will permit the defendant to plead guilty to a lesser crime than the one charged in the indictment;

(c) *Youthful Offender Investigations.* In all counties the probation department conducts investigations for the court and furnishes a report of the details of the offense and the condition of the offender for the use of the court in determining whether it will grant youthful offender status to the defendant;

(d) *Pre-sentence Investigations.* In all counties the probation department conducts investigations for the court and furnishes a report of the details of the offense and the condition of the offender for the use of the court in determining the sentence it will impose;

(e) *Wayward Minor Proceedings* (civil treatment system). Wayward minor status is something like the PINS status described in paragraph one (b), *supra.* This status, as defined in the Code of Criminal Procedure (§913-a), applies to persons between the ages of sixteen and twenty-one, and is based upon behavior pattern (*e.g.,* habitually addicted to drugs; intemperate use of liquor; habitual association with dissolute persons; willing participation in prostitution; habitual association with thieves, prostitutes, pimps or disorderly persons; moral depravity; etc.). We classify wayward minor treatment as "civil" for the same reason that we view PINS treatment as a civil matter. The probation department performs the same tasks in connection with wayward minor proceedings as it does in a criminal case.

3. *The State Division for Youth.* The Division for Youth, in addition to furnishing residential, parole and all-day work and counseling programs for persons who are adjudicated on the basis of criminal conduct, or convicted of crimes, furnishes such programs for: PINS and wayward minors who are under probation supervision; persons who are charged with the commission of a crime (where the court continues the proceeding on the condition that the youth spend a period of time in a Division facility); and for other youth referred to the Division by social work agencies and placed in its programs with permission of a parent or guardian or a court. Executive Law, §502.

Additionally, it should be noted that the State Division for Youth funds recreation and work programs initiated and operated by various localities within the State.

4. *The State Department of Social Services.* The Department of Social Services administers a wide variety of social services, and its only relationship to the post adjudicatory treatment system is in the context of children's services. A special Division of Children's Services within the Department seeks to develop comprehensive child social services, such as adoption, foster care, day care, preventive and protective services, homemaker family services, and rehabilitative commitment and aftercare. This function involves supervision and inspection of private agencies, and services operated by local governments, as well as operation of the State training schools and training school parole.

The only children cared for under programs directly administered by the Department are juvenile delinquents and PINS. As previously noted, the Department does not differentiate between the two juridical statuses and handles both conduct and condition-based commitments in accordance with the condition of the individual youngster. Thus, for example, one may find both juvenile delinquents and PINS mingled in the various training schools.

It should be noted that many of the children adjudicated as juvenile delinquents and PINS are placed by courts in the custody of private agencies rather than in State training schools, although the trend in recent years has been toward increased use of State facilities.

Other programs administered by the Department include: public assistance (including "medicaid"); inspection and super-

vision of public homes, homes for the aged, proprietary homes, temporary and special shelters for adults, and convalescent homes; coordination, evaluation and integration of Indian services (including payment of annuities to certain tribes); registration of charities; and special services in connection with prevention of blindness and alleviation of problems stemming from blindness.

5. *The State Department of Correction.* The Department of Correction, in addition to administering incarceration services in cases where persons are convicted of crimes, or adjudicated as youthful offenders or as juvenile delinquents, also performs the following criminal justice system and civil treatment system services:

(a) *Probation.* The Department's Division of Probation exercises "general supervision over the administration of probation throughout the State, including probation in family courts"; and the director of the Division has the authority to promulgate general rules regulating "methods and procedure in the administration of probation, including investigation of defendants prior to sentence, and children prior to adjudication, supervision, case work, record keeping and accounting so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state." Correction Law, §14. The Division of Probation also furnishes direct probation services in cases where counties are not supplying sufficient services (*id.*, §14-b). In addition, it conducts training programs for local probation departments throughout the State, administers scholarship programs for personnel in local probation departments, and administers a fifty percent State reimbursement program for operations of local probation departments. (These duties are performed subject to approval of the Commissioner of Correction and with the advice of the State Probation Commission.) See Correction Law, §§14 through 14-f. Hence, the State Department of Correction is deeply involved in all of the pre-adjudicatory and civil duties performed by local probation departments.

(b) *Wayward Minors.* Persons who are adjudicated as

wayward minors (see paragraph two [e], *supra*) may be committed, for incarceration, to an institution under the jurisdiction of the State Department of Correction. Code of Crim. Proc., §913-c.

(c) *Mentally Ill* (Civil). The Department of Correction operates two mental hospitals for persons under criminal sentence. One of these hospitals (Matteawan) is also used for incarceration of persons who have not been convicted of a crime. The situations in which such civil status inmates may be placed in a Department of Correction hospital are: (i) where a person is unable to stand trial on a criminal charge by reason of mental illness [Code of Crim. Proc., §662-b]; (ii) where a person is acquitted of a crime on the ground of mental illness [*id.*, §454]; and (iii) where a person who was committed to the Department of Mental Hygiene under ordinary civil proceeding is found to be so dangerous that his presence in a civil hospital is incompatible with the safety of other patients, the staff or the community (Mental Hygiene Law, §85);

(d) *Mental Defectives* (Civil). The Department of Correction also operates institutions for mentally defective persons who are under criminal sentence. Mentally defective persons who have not been convicted of crimes can be placed in Correction Department institutions under the same circumstances as the mentally ill. Code of Crim. Proc., §§662-b, 454; Mental Hygiene Law, §135.

6. *The State Division of Parole.* The only function performed by the Division of Parole outside of the offender treatment system is field supervision of wayward minors who have been committed to an institution under the jurisdiction of the State Department of Correction (see paragraphs two [e] and five [b], *supra*).

7. *The County Jails.* In addition to providing incarceration in cases where misdemeanants, felons and persons convicted of violations are sentenced to terms of imprisonment of one year or less, or are committed to imprisonment for failure to pay fines, the county jails also are used for: detention of persons awaiting trial; imprisonment of persons who violate family court orders (*e.g.*, support orders and orders of protec-

tion); detention of persons arrested in civil matters; detention of material witnesses; and imprisonment of persons pursuant to civil contempt of court commitments. Correction Law, §500-a; Family Court Act, §§372, 454, 846.

It should be noted, however, that the law requires segregation, within the jail, so that persons detained pending trial on a criminal charge are not mixed with persons who are serving sentences, and persons detained on civil matters (including family court commitments) are not mixed with persons held on criminal charges. Correction Law, §§500-b, 500-c.

8. *The County Penitentiaries.* Penitentiaries provide incarceration for criminal offenders under sentence in the same manner as county jails, but penitentiaries are not used for pretrial detention and are not usually used for incarceration of civil prisoners. However, persons committed civilly by the family court (*e.g.*, support orders and orders of protection) are incarcerated in penitentiaries; and unlike the county jails—where the law prohibits mingling of civil and criminal prisoners—the Penitentiaries mix in family court committed prisoners with the regular criminal inmate population.

9. *New York City Penitentiary and Workhouse.* The City of New York maintains a separate jail, under separate administration, for civil matters. Hence, as a rule, persons detained or imprisoned on civil matters are not dealt with by the same agency that provides incarceration in criminal cases. However, this is not so in the case of commitment ordered by the family court for disobedience of a support order or of an order of protection. Persons civilly committed in such cases are held in the City penitentiary or workhouse as described in paragraph eight, *supra.*

Defendants held in detention pending criminal trial are incarcerated in special detention institutions operated by the agency that operates the penitentiary, workhouse and reformatory (N.Y.C. Dept. of Correction).

In summary, the pre-adjudicatory and civil functions of the various agencies involved in operating the post adjudicatory criminal treatment system are as follows:

Decision Making in Allocating Persons to Juridical Statuses and to the Custody of Agencies

The key to understanding this vast, complex and overlapping system lies in understanding three factors: (1) the relationships among the various juridical statuses; (2) the rationales for affixing one juridical label rather than another to a person; and (3) the reasons for selecting one agency, rather than another, to administer treatment in cases where more than one choice is available.

In considering these factors we will limit discussion to the two basic types of cases presently dealt with by the agencies that administer treatment in the post adjudicatory system: cases based upon criminal conduct; and cases involving incorrigible, ungovernable or dissolute youngsters. The other types of cases—*i.e.*, pre-trial detention and the numerous civil commitments (apart from narcotic addiction commitments)—may be classed as peripheral duties in the context of the *post adjudicatory* treatment system.

For the purpose of setting the numerous criss-crossing juridical statuses in some manageable perspective, it is helpful to view them from the standpoint of hypothetical fixed dividing lines. Therefore, we will postulate three general categories of persons, based upon age, covered by the two basic cases (*i.e.*, criminal conduct and incorrigible, ungovernable or dissolute youngsters), and view the statuses in relation to these categories.

The three general hypothetical categories that can be used are: (1) under 16 years of age; (2) 16 to 21 years of age; and (3) over 21 years of age. For convenience we will call these "child", "youth", and "adult" respectively, even though this does not coincide with our recommendation as to maturity-level dividing lines for treatment purposes (see pp. 240-241, *infra*). The following table presents a graphic overview as an aid to discussion.

CATEGORY	JURIDICAL STATUSES	BASIS
I. Child (Under 16)	Juvenile Delinquent Probationer Inmate Parolee	Criminal Conduct (Over 7 Yrs. of Age) Custodial Instrumentality
	Person in Need of Supervision Probationer Inmate Parolee	Incorrigible, Ungovernable, etc. Custodial Instrumentality
II. Youth (16-21)	Person in Need of Supervision Probationer Inmate Parolee	Female (Under 18 Yrs. of Age), Incorrigible, Ungovernable, etc. Custodial Instrumentality
	Wayward Minor Probationer Inmate Parolee	Moral Depravity, etc. Custodial Instrumentality
	Youthful Offender Probationer Inmate Parolee	Criminal Conduct (16-19 Yrs. of Age) Custodial Instrumentality
	Young Adult Probationer Inmate Parolee	Criminal Conduct Custodial Instrumentality

	Misdemeanant Probationer Inmate Parolee	Criminal Conduct (Misdemeanor) Custodial Instrumentality
	Felon Probationer Inmate Parolee	Criminal Conduct (Felony) Custodial Instrumentality
	Narcotic Addict (NACC utilizes a general concept of custody)	Criminal Conduct and Addicted to Narcotics
	Mentally Ill (No probation or parole)	Criminal Conduct and Mentally Ill
	Mental Defective (No probation or parole unless sentenced as misdemeanant or felon)	Criminal Conduct and Idiot or Imbecile
III. Adult	Misdemeanant Probationer Inmate Parolee	Criminal Conduct (Misdemeanor) Custodial Instrumentality
	Felon Probationer Inmate Parolee	Criminal Conduct (Felony) Custodial Instrumentality
	Narcotic Addict Mentally Ill Mentally Defective (the above three same as in youth category)	Same as in Youth Category

Child (under 16)

Looking at the first general category (*i.e.*, child under 16 years of age), we find two basic juridical statuses: juvenile delinquent and person in need of supervision ("PINS"). An analysis of these two statuses reveals that they are so close as to defy any attempt at practical distinction.

The juvenile delinquent status is ostensibly based upon conduct, while the PINS status is based upon condition. However, in our society we do not consider persons under sixteen as being criminally responsible for conduct (see Penal Law, §30.00); and a mere adjudication that a youngster under sixteen has done an "act which, if done by an adult, would constitute a crime" is not even sufficient basis for treatment under the very law that creates the status of "juvenile delinquent" (*i.e.*, the Family Court Act). The Family Court Act requires that a juvenile delinquency petition allege that the child, in addition to engaging in the proscribed conduct, "requires supervision, treatment or confinement" (§731 [c]). It provides that a special "dispositional hearing" be held in order to determine whether the child "requires supervision, treatment or confinement" (§743); and it prohibits an adjudication that the child is a juvenile delinquent without a finding by the court that the child does require supervision, treatment or confinement (§§751, 752). These are precisely the same prerequisites as are required for a PINS adjudication, except that in the case of a PINS adjudication the basis is that the child is "an habitual truant or is incorrigible or ungovernable, or habitually disobedient", etc.; and the court must find that the child requires "supervision or treatment" (§732), rather than "supervision, treatment or confinement" (§731).

The additional requirement, that the child requires "confinement," for juvenile delinquency status, rather than just "supervision or treatment" as in the PINS status, seems particularly anomalous. Certainly it cannot mean that that State must prove the need for incarceration where the child has committed a criminal act, but does not have to prove such need where the child has not committed a criminal act (*i.e.*, PINS). Under the law, as amended in 1963 (one year after the Family Court Act went into effect), a PINS can be confined in a State training school in the same manner as a juvenile delinquent (§756[d]); and we cannot conclude that incarceration of a PINS can be

justified on less proof than incarceration of a juvenile delinquent. Therefore, unless the requirement is based upon general deterrence or prevention of anomie—public oriented concepts—it is illogical. However, if the requirement is based upon such public oriented concepts, rather than upon the condition of the child, it resurrects the concept of criminal responsibility in dealing with children; a result that may be inconsistent with modern thinking. In other words, the exemption of children from criminal responsibility must mean—if it means anything—that we cannot hold a child in an institution for the sole purpose of deterring other children or demonstrating the State's determination to uphold a norm (as we can in the case of an adult). Hence, for all practical purposes the juvenile delinquent status and the PINS status are based upon the same criteria.

The use of the term "requires . . . confinement" in the juvenile delinquency section and the omission of that term from the PINS section is most probably a reflection of the fact that the framers of the Family Court Act never intended to permit the confinement of a PINS in the State training schools (see Report of the Joint Legislative Committee on Court Reorganization, Vol. VII, p. 10 [1963]). This limitation proved to be impracticable because there were not enough beds in private agencies for all of the children adjudicated as PINS, and because private agencies have the option of refusing to accept a child for placement. Therefore, the State had to provide institutional services for PINS and the law has been amended from year-to-year to permit this (the existing authorization expires July 1, 1968, and there is every reason to believe that it will be renewed).

Thus, ever since the Family Court Act went into effect, with the exception of the first eight months, there have been only two minor technical differences in the dispositions available for juvenile delinquents and PINS. These are as follows:

(1) a juvenile delinquent may be "committed" for a period up to three years, while a PINS can only be "placed" which means custody for an initial period not exceeding eighteen months with authority to extend the "placement" for successive additional one year periods until the child's eighteenth birthday if male, or twentieth birthday if female (§756); and

(2) a juvenile delinquent may be committed or transferred to an institution under the jurisdiction of the State Department of Correction (direct commitment being permitted only in cases where the child committed a grievous felony [Class A or B] and was over the age of fifteen at the time [Family Court Act, §758 (b)]; and transfer being permitted only in cases where the child is over the age of fifteen at the time of the transfer and it appears that he is incorrigible and that his presence is detrimental to the welfare of the training school [Social Services Law, §427-b]).

In considering the first of these two technical differences (*i.e.*, "placement" vs. "commitment"), it should be observed that juvenile delinquents can also be "placed" in the same manner as PINS. In fact, approximately ninety percent of the juvenile delinquents sent to State training schools are placed, rather than committed. This is not surprising when one observes that "placement"—which can be extended year after year—permits the State to subject the child to custody for a longer period than "commitment"—which cannot be extended. Thus, once again, unless we assume that the three year "commitment" period is based upon some sort of theory of criminal responsibility, unrelated to the need for treatment, the distinction between "commitment" and "placement" seems illogical. In any event, however, it is obvious that the authority to "commit" rather than "place" a juvenile delinquent is only used in a very small percentage of cases; and, hence, as a practical matter, there really is no distinction.

The second of the two technical differences (commitment or transfer to the Department of Correction) can be disposed of rather summarily by noting that during the last full fiscal year (April 1, 1966—March 31, 1967) only thirteen male delinquents were committed to the Department of Correction, no females at all were so committed and no children of either sex were transferred to that Department.

Hence, we must conclude that, as a practical matter, there is no distinction between the status of "juvenile delinquent" and the status of "person in need of supervision". Moreover, it seems fairly obvious that the concept of "juvenile delinquency" is an anachronism. It is a holdover that represents some sort of reluctance to give up the old common law notion

that children over the age of seven are criminally responsible. The modern concept—and the one that seems to be used—is *child in need of supervision or treatment.*

Since we have already determined that the two statuses are practically the same, there is no real point in considering the second factor mentioned on page 131, *supra* (*i.e.*, "the rationales for affixing one juridical label rather than another to a person"). However, it is relevant to note that the Family Court Act (§716 [a]) permits substitution of a PINS petition for a juvenile delinquency petition at any time during the court proceedings; and, according to the comment of the Committee that drafted the Act, the purpose of this grant of authority is "to permit the court to avoid adjudicating a child a 'juvenile delinquent' and at the same time retain jurisdiction, if the relevant statutory requirements are satisfied." The only interpretation one can give to such a comment is that the framers of the law, themselves, thought that juvenile delinquency status carried some sort of stigma and this is another strong reason for doing away with the concept.*

The third factor mentioned on page 131, *supra*, is "the reasons for selecting one agency, rather than another, to administer treatment in cases where more than one choice is available". In dealing with a child adjudicated as a juvenile delinquent or as a person in need of supervision, the available choices are: probation; placement in the child's own home; placement in the custody of a suitable relative or other suitable private person; placement with a commissioner of public welfare; placement in an institution operated by an authorized private agency; placement in a training school operated by the State Department of Social Services; placement in an institution operated by the State Division for Youth (placement, as used in some of the foregoing instances includes "commitment"); and, under limited circumstances, commitment to an institution under the jurisdiction of the State Department of Correction.

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*In this connection note the language of Sections 781 and 782.

"§781. Nature of adjudication

No adjudication under this article may be denominated a conviction, and no person adjudicated a juvenile delinquent or a person in need of supervision under this article shall be denominated a criminal by reason of such adjudication."

"§782. Effect of adjudication

No adjudication under this article shall operate as a forfeiture of any right or privilege or disqualify any person from subsequently holding public office or receiving any license granted by public authority."

The decision as to which of these numerous alternatives will be used rests in the hands of the family court judge; subject, of course, to the fact that only certain of these public and private agencies have to accept supervision or placement of the child. In fact, the only ones who do have to accept supervision or placement are: the probation department; the Department of Social Services; the Department of Correction; and, perhaps, a parent of the child.

Thus, under our present system, it is up to the judge to determine: (a) whether the child committed a criminal act or is incorrigible or ungovernable, etc. ("fact finding hearing," Family Court Act, §742); (b) to determine whether the child requires supervision, treatment or confinement ("dispositional hearing," *id.*, §743); (c) to determine the best form of supervision or treatment for the child, or the best place to confine the child ("disposition," *id.*, §§753-759); (d) to select the agency or person who is to administer such supervision or treatment or confinement; (e) to convince the agency or person to provide such service or services for the child; and (f) to continue jurisdiction over the case for the purpose of modifying or terminating treatment. And these duties, of course, are only one small part of the overall responsibilities of the family court judge, who—in addition to having the responsibility for all other family court matters—is, outside the City of New York, also likely to double as county court judge, and surrogate. In performing many of these duties, the judge is aided by information supplied by the local probation department; but the extent to which the judge utilizes such information and the extent to which he relies upon the probation department for assistance in securing placement for the child varies in accordance with the personality, training and beliefs of the judge, and in accordance with the ability of the local department to supply effective assistance. (There is no set system in the State.)

The reasons for selecting one agency rather than another to administer treatment are obviously many and varied, and there is certainly no set of statewide standards or criteria, or any statewide system of diagnosing, classifying and assigning children to programs.

In order to complete the overview of the picture in connection with "supervision, treatment or confinement" of adjudicated children, it is important to observe that the numerous

alternatives for disposition can be divided into two general categories: (a) those that are operated governmentally; and (b) those that are operated privately but substantially supported and generally supervised by State and local government.

In the first general category (governmentally operated) we have: local probation; the training schools and aftercare services of the Department of Social Services; the institutions, residential, full-day programs and parole services of the State Division for Youth; and the rarely used institutional services of the State Department of Correction and aftercare services of the State Division of Parole.

In the second general category (privately operated) we have individual placements (foster homes, etc.) and placements with private (voluntary) agencies. It might be noted, in this context, that approximately forty-percent of the children (JD and PINS) who are institutionalized are sent to private agencies and that sixteen privately operated institutions handle approximately ninety percent of this caseload. The costs of both governmentally operated and privately operated "supervision, treatment and confinement" are primarily paid from public funds and are usually borne 50% by the county and 50% by the State, and the laws are so designed as to substantially eliminate any financial advantage to a county stemming from use of one as against the other.

For present purposes we will consider only the governmentally operated agencies; as once a child has been placed (or committed) with a private agency, State and local government have no operational responsibility. Children dealt with by governmentally operated agencies can be classified into three juridical substatuses: probationer, inmate, parolee.

A probationer may be defined as a child under the supervision of a county operated (or in the City of New York, a city operated) family court probation department. In order to change a child's status from one who is under field supervision (*i.e.*, "probationer") to one who may be institutionalized (*i.e.*, "inmate"), the procedure is as follows (Family Court Act, §779):

(a) The child must be brought before the court and charged with failure to comply with the conditions of the court's order of probation;

(b) The court must hold a hearing; and

(c) The court must be satisfied, through competent proof, that the child violated such order without just cause.

Thus, at least from a reading of the statute, once the court has affixed the juridical substatus of "probationer" to the child, it cannot subsequently determine that the child should be institutionalized for supervision or treatment unless the child specifically violates some condition of probation set in advance. Hence, by using probation, the court cuts itself off from an option it would have had at the time of disposition. In other words, the court could have institutionalized the child at the time of disposition solely on the ground that such disposition offered the most hopeful opportunity for coping with the problems of the child; but once the child is under probation supervision the court cannot utilize the day-to-day experience in dealing with the child as a basis for institutionalizing him, unless there is a violation of some specific condition of probation. This illustrates one of the difficulties stemming from our failure to utilize a general concept of custody.

Once there has been a "placement" (or commitment) with a State agency, the statuses of "inmate" and "parolee" come into play. However, if the placement is with the Department of Social Services or with the Division for Youth—rather than with the Department of Correction—the two statuses are really merged. In the case of the Department of Social Services, "parole" status may be granted at any time by the institutional authorities and, although revocation of such status is technically dependent upon violation of the "conditions of parole", no formal hearing is required, and the decision really rests with the director of the aftercare service (*i.e.*, the "Community Service Bureau"). Social Services Law, §437. In the case of the Division for Youth, no statutory distinction is made between inmates and parolees; and the transition from residential care to "aftercare" or parole status and back again depends upon the treatment needs of the child.

Where commitment is to the Department of Correction, the status of inmate and the status of parolee are clearly two separate juridical statuses. The "inmate" is under the supervision and jurisdiction of the State Department of Correction and the "parolee" is under the supervision and jurisdiction of the State Division of Parole. Moreover, the law sets forth de-

tailed procedures for moving from one to the other and back again (see Correction Law, §§210-225, 280-283).

In passing, it might be noted that, as previously indicated, if the disposition is "probation", and the child is between the ages of fifteen and eighteen, the court may make it a condition of probation that the child spend a period of time in a program operated by the State Division for Youth. Of course, this cannot be done unless the Division for Youth accepts the child. Hence, there are two ways in which an "adjudicated" child can enter a Division for Youth facility: direct placement with the Division; and referral as a condition of probation. Both involve a time lag since the Division must review the file and interview the child, which usually occurs after adjudication, or in some cases adjudication is deferred until acceptance by the Division can be confirmed.

Youth (16-21)

In the second general category (*i.e.*, Youth 16 to 21 years of age), we find nine basic juridical statuses: person in need of supervision (female 16-18); wayward minor; youthful offender; young adult; misdemeanant; felon; narcotic addict; mentally ill; and mental defective.

The first two statuses (female PINS and wayward minor) are based on conceptually similar criteria and, in dealing with a female between sixteen and eighteen years of age, either status can be used. Thus, if a petition is filed in the family court, the female between 16 and 18 may be adjudicated a PINS; but if an information is laid before a magistrate who has criminal jurisdiction, other than a justice of the peace, the female may be adjudicated a wayward minor (Code of Crim. Proc., §913-b). If the female is adjudicated a PINS, she is dealt with as outlined in the preceding section on children. If, however, she is adjudicated a wayward minor she may be either: (a) committed to a private institution, or (b) placed under probation supervision, or (c) committed to a State reformatory. Commitments are for three years and, although the law provides for release or parole at any time, it does not specify how this is to be done where commitment is to a private institution.

The portion of the wayward minor status that does not overlap with PINS consists of males between the ages of sixteen and twenty-one and females between the ages of eighteen

and twenty-one. These cases can only be dealt with by a criminal court and, unless the disposition consists of commitment to a private agency, treatment is by the post adjudicatory criminal treatment system agencies.

It is interesting to consider the criteria in the wayward minor statute than can serve as justification for possible commitment for three years to a reformatory under the jurisdiction of the State Department of Correction (in the fiscal year April 1, 1966—March 31, 1967 thirteen males and nine females were so committed, and in 1965-1966 twenty-five males and ten females were so committed). These criteria are as follows (Code of Crim. Proc., §913-a):

(1) Habitually addicted to the use of drugs or the intemperate use of intoxicating liquors; or
(2) Habitually associates with dissolute persons; or
(3) Is found of his or her own free will in a house of prostitution, assignation or ill fame; or
(4) Habitually associates with thieves, prostitutes, pimps, or procurers, or disorderly persons; or
(5) Is wilfully disobedient to the reasonable and lawful commands of parent, guardian or other custodian and is morally depraved or is in danger of becoming morally depraved; or
(6) Without just cause and without the consent of parents, guardians or other custodians, deserts his or her home or place of abode, and is morally depraved or is in danger of becoming morally depraved; or
(7) Deports himself or herself so as to wilfully injure or endanger the morals or health of himself or herself or of others.

It seems clear that, when the Legislature enacted the Family Court Act in 1962, it delineated the modern view of the scope of the State's right to subject minors to special custodial restraint in matters of private morality, as follows:

(1) " 'Person in need of supervision' means a male less than sixteen years of age and a female less than eighteen years of age who is an habitual truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority." (§712[b]);
(2) " 'Neglected Child' means a male less than sixteen

> years of age or a female less than eighteen years of age . . . . who suffers or is likely to suffer serious harm from the improper guardianship, including lack of moral supervision or guidance, of his parents or other person legally responsible for his care . . . ." (§312).

If the Legislature had felt that a seventeen year old boy should be subject to commitment or placement because he is in danger of becoming "immoral," it would no doubt have included such authority in the Family Court Act. In any event, the Family Court Act provides a comprehensive procedure for dealing with such matters and the wayward minor provisions of the Code of Criminal Procedure should be repealed.*

The next seven juridical statuses can be dealt with as a unit, because they all are nothing more or less than alternative dispositions for cases that originate with criminal conduct. Before discussing these statuses, and in order to set them in context, it is important to consider three matters: (a) the issue of whether a youth who is found guilty of criminal conduct should be given a criminal record; (b) the question of whether a youth should be subjected to a longer period of custody than an adult for the same criminal conduct; and (c) the traditional limitations upon the use of institutions under the jurisdiction of the State Department of Correction.

Under our present system there are two methods of disposing of a case in a manner that will not give a youth a criminal record: youthful offender proceedings, and civil certification to the Narcotic Addiction Control Commission. The former is available for any youth between the ages of sixteen and nineteen accused of any crime, other than murder or kidnapping in the first degree, provided he has not previously been convicted of a felony. Code of Crim. Proc., §913-e. The latter is available for any person, irrespective of age, with the same limitations as to crime and prior conviction, and with the additional limitation that he has not previously been certified to the care and custody of the Commission. Mental Hygiene Law, §210. The question of whether or not one of these alternatives will be pursued in any given case depends totally upon the decision of the court and, in the case of a narcotic

*It might be noted that if a person over the age of 16 is a narcotic addict, the proper procedure should be civil certification to the Narcotic Addiction Control Commission (Mental Hygiene Law, Art. 9).

addict charged with a felony, the consent of the district attorney.

The two opportunities to avoid a criminal record are based upon modern feelings that make inroads—from different directions—on the principle of criminal responsibility. The youthful offender statute is based upon the feeling that youngsters between the ages of sixteen and nineteen should be saved from being stigmatized as criminals. This is a sort of amelioration of the principle that such youngsters are criminally responsible for conduct in the same sense as older persons and should be subjected to the same consequences as older persons. The narcotic addict statute is based upon the feeling that narcotic addiction is a sickness that can justify excuse from criminal responsibility. The narcotic addict statute substitutes a civil proceeding for a criminal proceeding and persons adjudicated under section two hundred ten of the Mental Hygiene Law are not dealt with under the rationale of the criminal treatment system.

We therefore will confine our discussion to the youthful offender status, and to the question of who in the sixteen to nineteen year age group should be saved from the stigma of a criminal record. Our answer to this is that society has everything to gain and little or nothing to lose—assuming an adequate choice of sentencing alternatives—by avoiding the stigmatization of any youth.

Under the present system the question is, to say the least, resolved in an unsatisfactory manner. The present situation is well described in the "staff comment" to the proposed New York Criminal Procedure Law prepared by the Temporary Commission on Revision of the Penal Law and Criminal Code, as follows (comment to Article 400, p. 445):

> ". . . the whole scheme, making no distinctions between eligible youth defendants with respect to the kinds or seriousness of the crimes charged or with respect to varying background factors, leaves everything—including the determination of whether youthful offender treatment will even be considered—to the discretion of the courts (*People* v. *Bond,* 1962, 36 Misc. 2d 557, 558, 232 N.Y.S. 2d 875; *People* v. *Hines,* 1960, 24 Misc. 2d 484, 485, 202 N.Y.S. 2d 875). Owing to widely differing practical considerations in different localities, to widely differing attitudes of in-

dividual judges toward youthful offender treatment, and to other factors, this results in flagrant disparities in the administration of the law.

"A metropolitan judge with a soft spot for young people may grant youthful offender treatment to a defendant charged with robbery and having a prior youthful offender adjudication, while a less sympathetic rural judge may, especially in view of the lack of probation facilities, refuse even to consider or order an investigation of a defendant of clean record charged with third degree assault."

One of the major difficulties with the present youthful offender procedure lies in the limited number of dispositions ("sentences") available. Under present law, the court cannot impose a fine and, if incarceration is necessary, the only sentence permitted is a reformatory term of imprisonment. Code of Crim. Proc., §913-m. This means an indefinite period of incarceration, which can last up to four years (three years if commitment is to the New York City Reformatory), with parole release available at any time and parole supervision—including the possibility of return to incarceration—for the balance of the period. Penal Law, Art. 75. Thus, the question of whether or not a youth is to be stigmatized by "conviction" depends—to a large extent—upon whether the available "youthful offender" dispositions are appropriate for the case. The youth who commits a misdemeanor and is given youthful offender treatment cannot be sentenced to thirty days or six months incarceration and, where the conviction is outside the City of New York, can only be sent for incarceration to the Department of Correction's reception center at Elmira. And the youth who commits armed robbery and is granted youthful offender treatment must, if he is to be incarcerated, receive the same type of sentence. Hence, it is no wonder that courts balk at granting youthful offender treatment in cases involving grave crimes, where the appropriate sanction range exceeds the range available under the youthful offender procedure, and in cases involving minor crimes, where the appropriate sanction range is much lower than four years.

If the youth is convicted of the crime actually committed (*i.e.*, if he were a "misdemeanant" or a "felon") rather than adjudicated as a youthful offender, he still can be sentenced as a "young adult" to the same type of reformatory term (see

Penal Law, Art. 75); and he also can be fined, or sentenced to thirty days, six months or seven years, or more, depending upon the authorized sanction for the crime.

It is submitted that a more rational procedure would be to call all offenders within the sixteen to nineteen year age group (excluding, perhaps, persons charged with murder and kidnapping in the first degree) youthful offenders, and permit the use of the ordinary types of sanctions available under the Penal Law. This could be coupled with a scaled down set of sanctions that would be in line with a policy of modified criminal responsibility for this group, so that, for example, where a youth (16-19) is convicted of robbery in the first degree, the authorized maximum sanction would be seven years rather than twenty-five years.

This brings us to the next factor mentioned on page 143, *supra* (*i.e.*, the question of whether a youth should be subjected to a longer period of custody than an adult for the same criminal conduct). As previously indicated, both "youthful offenders" (16-19 years of age, but no criminal record results from adjudication) and "young adults" (16-21 years of age and "conviction") can receive a reformatory term of imprisonment. This means that where the crime is a misdemeanor, any person under the age of twenty-one can receive a sentence that might result in four years of incarceration; while a person who is over the age of twenty-one cannot be sentenced to a term of imprisonment in excess of one year for a misdemeanor.

The ostensible justification for permitting the use of this reformatory sentence in the case of a youth between the ages of sixteen and twenty-one is, as stated in the "practice commentary" accompanying McKinney's Consolidated Laws of New York (Penal Law, §75.10, p. 156):

> ". . . the purpose of a reformatory sentence is to provide education, moral guidance and vocational training for young offenders who are badly in need of such instruction and counsel. One-half of the persons presently confined in reformatories never attended high school and less than one-half of one per cent of the inmates have ever completed high school. Very few have ever received any vocational training or have held steady jobs. The State Department of Correction and the State Board of Parole devote specialized and concentrated resources to the task of supplying

the needed education and training. Reformatories have special schools and shops. Youth camps supply more advanced training, and parole officers who work with reformatory term offenders have specialized caseloads. In view of this, the length of the reformatory term should be such as to permit achievement of the special purposes it is intended to serve."

The above quoted facts are true, but the essential question is whether the State is justified in extending the sanction because the youth needs "education, moral guidance and vocational training." The authorized sanction for criminal conduct should be based upon the gravity of the conduct, and not upon the condition of the offender. Moreover, even if the reformatory term could be justified on the basis of the condition of the offender—as some sort of special exception in dealing with youngsters—the present statute does not even require proof of any condition. Under the present setup the misdemeanant between the ages of sixteen and twenty-one is not even entitled to the legal protection accorded juvenile delinquents and PINS; *i.e.*, a dispositional hearing in which the question of whether he requires "supervision, treatment, or confinement" can be litigated. The reason he is not accorded such protection is that the sentence is a criminal sanction, rather than a civil commitment. And, as such, it should be proportioned to the conduct.

If we wish to have a reformatory sentence, based in part upon criminal conduct, and in part upon the theory that the State has the right to exercise special custody rights over youth who are in need of "education, moral guidance and vocational training," then any youth to be subjected to such special custody should, at least, have the same protection we accord others who are subjected to such special custody (*e.g.*, the juvenile delinquent, PINS, narcotic addict, mentally ill, etc.). He should have a hearing to determine whether he, in fact, needs supervision, treatment or confinement for a period beyond that which is justified by the gravity of his crime.

The last of the three matters to be considered, in order to set the juridical statuses in context, is the traditional limitations upon the use of institutions under the jurisdiction of the State Department of Correction. An understanding of these limitations and the role that they play in the post adjudicatory

system is essential if one is to understand the present structure of our system.

As stated in Part One of this Report, the historical view of incarceration was that it was focused upon punishment. And, historically, the severity of punishment—when inflicted by incarceration—has been judged on the basis of two factors: the length of the term and the place of incarceration. Minor punishment was inflicted by incarceration in a local institution and major punishment was inflicted by incarceration in a State prison. The reason for this dichotomy is lost in history, but it has become a key factor in distinguishing between major and minor crimes—*i.e.,* between felonies and misdemeanors. The term felony really means "a capital or otherwise infamous crime" (N.Y. Const., Art. I, §6); and—as pointed out by our Court of Appeals—during the years of our statehood it has been fairly well understood that a crime is infamous if the punishment which might be inflicted is death, imprisonment in a State prison, or imprisonment in any jail for a term longer than one year. *People* v. *Erickson,* 302 N.Y. 461, 466, 99 N.E. 2d 240 (1951); *People* v. *Kaminsky,* 208 N.Y. 389, 394, 102 N.E. 515 (1913); *People ex rel. Cogsriff* v. *Craig,* 195 N.Y. 190, 196, 88 N.E. 38 (1909).

The real point of distinguishing between infamous and non-infamous crimes (*i.e.,* between felonies and misdemeanors), is that persons who are placed in jeopardy of receiving severe sanctions must be accorded certain procedural safeguards; *i.e.,* a proceeding that includes indictment (N.Y. Const., Art. I, §6) and the right to a common law jury (*id.,* Art. I, §2). Preservation of the distinction between felony and misdemeanor based upon the relationship between the sanction permitted and the procedure to be used in prosecuting the case is logical, sound and practical. However, the Constitution does not say that incarceration in a State prison is infamous punishment. This is a judicial interpretation of the Constitution, based upon the traditional role of State prisons. And that role has changed, is presently changing, and will continue to change. The point is that the severity of a sanction must be judged by the length of the term and can no longer be judged by some arbitrary label affixed to the institution (*e.g.,* jail, workhouse, penitentiary, reformatory, prison).

Anyone who has toured our State and local institutions is aware that incarceration in many county jails and some penitentiaries is more unpleasant than incarceration in some—and perhaps all—of our State prisons. Moreover, and more importantly, incarceration in local institutions is usually less helpful to both the inmate and to society. One has only to inquire as to whether a term of one year to be served in a county jail—where there is often no education, counseling or recreation or other program—is more or less useful to the inmate and to society than a term of one year served in Auburn Prison would be, in order to perceive the irrationality of maintaining distinctions based upon anachronistic labels. At Auburn there is an outstanding school, special vocational training in highly technical trades such as a dental lab, and many other helpful programs.

The dawn of modern correctional administration in this State—and perhaps in the world—came with the opening of the Elmira Reformatory in 1876. This was the first State correctional institution for persons convicted of crimes founded upon a theory that departed from the focus of punishment. As stated by F. W. Wines, in his book *Punishment and Reformation*:

> "The great underlying thought in that institution [Elmira Reformatory] is that criminals can be reformed; that reformation is the right of every convict and the duty of the State; that every prisoner be individualized and given the special treatment adapted to develop him in the point in which he is weak—physical, intellectual or moral culture, in combination, but in varying proportions, according to the diagnosis of each case. . . . The other great thought here insisted upon as nowhere else in the world, is that the whole process of reformation is education."

As time went on various other reformatories were established in this State for the same purposes, and juvenile delinquents, wayward minors and young misdemeanants were committed thereto, as well as felons. Thus, the State Department of Correction presently administers two sets of institutions: one set—the prisons—derived from the old theory of punishment; and the other set—the reformatories—derived from

the new theory of rehabilitation. However, commencing during the late nineteen twenties, the Elmira philosophy spread to the State prisons, and today modern correctional administrators do not have one theory for operating a prison and another theory for operating a reformatory. All inmates—regardless of age or crime—are assigned, within the limits of present laws and resources, to programs designed to fit their individual needs.

Hence, it seems irrational to continue limitations that prohibit the use of State facilities in accordance with treatment needs. For example, the present law permits incarceration of a "youthful offender" or a "misdemeanant" in a State reformatory, but prohibits the Department of Correction from transferring the inmate to an institution designated as a "prison." Correction Law, §63. This restriction is not designed to separate misdemeanants from felons, because the Department may transfer inmates from prisons to reformatories (*id.*, §§293,314), and felons between the ages of sixteen and twenty-one often receive reformatory sentences from courts. The sole basis for the restriction is the ancient perception of a prison as an institution devoted to "punishment." As a result, reformatory inmates confined at Westfield State Farm, who have not been convicted of a felony, cannot be taken across the road to the prison for training in a computer card-punching program established there; and the Department recently had to duplicate this program at the reformatory branch. Reformatory inmates, convicted of misdemeanors, are also ineligible for treatment in the new Clinton Prison Diagnostic and Treatment Center, because the Center is part of a "prison." And many other examples could be given. This is, of course, quite apart from the fact that misdemeanants over twenty-one cannot be committed to any State correctional institution for necessary education, guidance and training. Such persons can only be sent, if incarcerated, to a county jail or penitentiary, many of which are so small that the per capita cost of a useful program would be prohibitive. As for any argument that such misdemeanants are a "county responsibility," one has only to look at the long records many of these persons have to see that "misdemeanants" also commit "felonies," and that the term "misdemeanant" and the term "felon" describe only the present crime of an individual and not his treatment needs or his past or future.

Hence, we should call all of our State correctional institu-

tions "State correctional institutions" and utilize their varied programs to most effectively meet the needs of persons convicted of crime, irrespective of the type of crime or the form of the sentence.

The seven basic juridical statuses that originate with criminal conduct in the youth category (16-21 years of age) are: youthful offender; young adult; misdemeanant; felon; narcotic addict; mentally ill; mental defective. The easiest way to grasp the relationships among these statuses, the rationales for affixing one juridical label to a person rather than another, and the reasons for selecting one agency rather than another to administer treatment, is to trace a single hypothetical offender through the system. For this purpose we will use as an example a seventeen year old male accused of burglary in the third degree, committed by breaking into a drug store with intent to steal property therefrom—a class D felony (Penal Law, §140.20).

The first possibility is youthful offender treatment. This is available if the youth has not previously been convicted of a felony. The salient features of the youthful offender procedure are: (1) the proceedings are private and the youth receives some protection from the notoriety that accompanies a criminal case; (2) the records and fingerprints and photographs are not open to public inspection; (3) if the youth is found guilty of the burglary, the determination results in an adjudication, rather than a conviction, which means that the youth will not be disqualified from holding public office or public employment, does not forfeit any right or privilege and is not denominated a criminal; and (4) the dispositions available are limited to probation, conditional or unconditional discharge, or a reformatory sentence of imprisonment (assuming he is not a narcotic addict or mentally ill). Code of Crim. Proc., §§913-e –913-r.

The second possibility is to charge the youth with the felony by indictment and the usual criminal procedures. In such case he may be permitted to plead guilty—or he may be found guilty—of unlawful entry, a misdemeanor. Where this occurs, the possible dispositions for the "misdemeanant" are as follows (assuming he is not a narcotic addict or mentally ill or mentally defective); probation or conditional or unconditional discharge, or a reformatory sentence of imprisonment

(as a "young adult") —all of which are the same as in the case of a youthful offender—or a sentence of imprisonment for a "definite term" of one year or less to be served in a county institution, or a fine, or probation or imprisonment plus a fine. Penal Law, §60.10.

If, however, the youth is convicted of the felony as charged, the available dispositions are precisely the same as in the case of a misdemeanor, plus an additional alternative for the "felon" which consists of an indeterminate sentence of imprisonment authorized for a class D felony (a maximum term of between three and seven years and a minimum period of imprisonment of up to two and one-third years, fixed in the discretion of the court). Penal Law, §70.00.

Where the youth is adjudicated as a "youthful offender" or convicted as a "misdemeanant" and is also a "narcotic addict", then the only authorized disposition is certification to the care and custody of the Narcotic Addiction Control Commission for an indefinite period that can last up to three years. Mental Hygiene Law, §209; Penal Law, §60.15.

If, however, the youth is convicted as a "felon" and is also a "narcotic addict", there are two alternative dispositions: an indeterminate sentence of imprisonment (as described above), or certification to the care and custody of the Narcotic Addiction Control Commission for an indefinite period that can last up to five years (rather than three years as in the case of a misdemeanant). Penal Law, §60.15; Mental Hygiene Law, §208 subd. 4 (b).

Where the youth is found to be a "mental defective", the choice of dispositions would be the same, except that if a definite sentence of imprisonment is imposed (a term of one year or less) and the term of the sentence exceeds ninety days, he may be committed to an institution under the jurisdiction of the State Department of Correction rather than to a local institution (*i.e.,* jail, workhouse or penitentiary). Correction Law, §438.

Where the youth is found to be "mentally ill" or in a state of idiocy or imbecility and cannot stand trial, the trial or proceeding is suspended and the defendant is committed "to the custody of the commissioner of mental hygiene to be placed in an appropriate institution in the state department of mental hygiene or the state department of correction which has been

approved by the heads of such departments." Code of Crim. Proc., §662-b.

Thus, the judge, in addition to having the responsibility for determining guilt or innocence (in the case of youthful offender proceedings) and presiding over criminal proceedings, also has the responsibility for determining: whether to order a youthful offender investigation to determine if youthful offender proceedings should be used, whether to use such proceedings, whether to accept a plea to a misdemeanor, whether to use probation supervision or not, whether to use incarceration and, if so—where the youth is convicted, rather than adjudicated—what the length of the term should be, whether to commit a "felon" who is also an "addict" to the Narcotic Commission or to the Department of Correction, whether to commit a "misdemeanant" who is also a "mental defective" to the local jail or to the Department of Correction, etc.

If the judge decides to order an investigation to determine eligibility for youthful offender proceedings, the local probation department must conduct a full scale investigation of the youth's background. The judge must then consider this background to determine whether the youth is "worthy" of being saved from the stigma of a conviction and must also consider whether the limited sanctions available are appropriate for the crime. All of this occurs before adjudication and, of course, if the youth is not subsequently shown to be guilty of any criminal conduct, the effort devoted and the resources employed are largely wasted.

In cases where the youth is "adjudicated" or convicted, and is not a narcotic addict, the judge must determine not only the appropriate sanction range, and the degree of sanction required for general deterrence and prevention of anomie, but also whether the youth presents a risk of recidivism. If he decides that there is a risk of recidivism, he is then faced with the question of whether the risk can best be dealt with by field supervision (probation) or by incarceration.

Where the judge uses probation, the imposition of a sentence of probation creates a juridical substatus based upon the custodial instrumentality selected (*i.e.*, field supervision) and the State is—from the moment of sentence on—limited to the use of that custodial instrumentality unless the offender violates a specific condition of probation prescribed by the judge at

the time of sentence. Thus, if experience in dealing with the youth on probation reveals that he presents a graver risk than the picture disclosed by the pre-sentence report, or if a crisis arises based upon new developments, it is impossible to utilize incarceration, even for a week or a day and it is impossible to utilize part-time institutional custody unless the offender has violated a specific preset condition of probation or has committed a new crime. Penal Law, §65.00 subd. 2; Code of Crim. Proc., §934-a.*

In using probation, the judge does, however, have one option that will permit use of incarceration. Our seventeen year old youth can be referred to the State Division for Youth. This means that the judge or a probation officer must request the Division to review the file and to interview the youth and, if the youth is found to be the type of youth who would fit into one of the Division's programs, the Division will accept the referral. Upon receiving notice of such acceptance, the judge may make it a condition of probation that the youth spend a specified period of time, not exceeding two years, in an institution under the jurisdiction of the State Division for Youth. Penal Law, §65.10 subd. 2 (g) (iii); Executive Law, §502.

Where the judge decides to use incarceration, and the youth is not an addict, his choices are as follows:

STATUS	TERM	AGENCY
Youthful Offender	Reformatory, 4 Yr. Uniform Indefinite Term	State Dept. of Correction
	Alternative Reformatory 3 Yr. Uniform Indefinite Term (N. Y. C. conviction only)	N. Y. C. Dept. of Correction
Misdemeanant or Felon "Young Adult"	Same as for Youthful Offender	Same as for Youthful Offender
Misdemeanant or Felon	Definite Sentence up to 1 Yr.	County Jail or Pen.
Felon	Indeterminate Sentence (Max. term 3 Yrs. to 7 Yrs.; Min. term at least 1 Yr. and up to 2⅓ Yrs.)	State Dept. of Correction
"Mental defective"	Definite Sentence over 90 days but not more than 1 Yr.	State Dept. of Correction

*It should be noted, however, that the judge does have the right to modify or enlarge conditions of probation at any time during the period of probation. Penal Law, §65.05 subd. 2. Thus, there is some method — albeit unwieldy — of coping with changes in condition and new situations.

Thus, a judge in the City of New York, must determine whether to use a reformatory sentence or an alternative reformatory sentence, or a definite sentence or—in the case of a felony—an indeterminate sentence. If he decides that the sentence should be some sort of reformatory sentence, his selection of one as against the other type (the regular as against the alternative) involves consideration as to whether the length should be four years or three years and whether the New York City Reformatory is better suited to the needs of the youth than the programs available in the network of State institutions (including forestry camps). This latter consideration also must take into account the question of whether the youth was convicted of a felony or not, because if he is not "convicted of a felony," he cannot be transferred to certain institutions (presently called "prisons"). If the judge decides upon a definite sentence (one year or less), the youth must be committed to a local institution, in which case the youth will be confined in the "Reformatory," which is the same institution that would have been used for a local reformatory sentence. Where the conviction is for a felony, and the judge decides upon an indeterminate sentence, the youth must be committed to the State Department of Correction, in which case he will be received at the same institution at which he would have been received in the case of a reformatory sentence (Elmira Reception Center) and will be transferred to an institution that fits his needs, which would be the same institution that would be used if he had received a reformatory sentence. Except, however, that the youth who receives a reformatory sentence as a "youthful offender" or as a misdemeanant "young adult" cannot be transferred to an institution labeled as a "prison".

Outside the City of New York, or in the case of a female sentenced in the City of New York, the choices are the same, with three exceptions:

(1) An alternative local reformatory sentence cannot be used;

(2) If a youth is sentenced to a local institution under a definite sentence, there is no special reformatory and the youth will be confined in the county jail, workhouse or penitentiary along with all other prisoners—albeit segregated from those over twenty-one years of age; and

(3) A female sentenced to a definite term in the City of New York may be transferred by the City to the State Department of Correction's reformatory at Bedford Hills (Westfield State Farm) where she is incarcerated in a separate wing operated by the Department under a leasing arrangement with the City.

Where the youth is sentenced as a mental defective, and the sentence is a definite term of imprisonment, the judge must decide whether the commitment should be to the local jail or penitentiary, or to the State Department of Correction's special facility for mental defectives. In this connection it is relevant to note that any mental defective committed to a local institution, whether sentenced as a mental defective or not, can be transferred to a State Department of Correction facility for mental defectives. Moreover, persons who receive reformatory terms and indeterminate terms and who are found to be mental defectives, and persons who are unable to stand trial because of idiocy or imbecility, may also be transferred to that institution. Correction Law, §§438, 438-a, 438-b, 439, 450.

Once incarcerated, the youth is in another juridical substatus. He is an "inmate" and there is no authority in the law for permitting him to leave the institution, except as a member of a work gang, or for some specified emergency, in which case he is under guard. Thus, for the "inmate", there is no work release, no program of part-time incarceration, no way of utilizing incarceration for just the days or the hours that he should not be at large in the community and, in sum, no rational use of custodial instrumentalities. For persons sentenced to incarceration, there is only incarceration.

This system, with its juridical dichotomy between probation and incarceration leaves the judge between Scylla and Charybdis.

The next change in juridical substatus comes with the granting of parole. All inmates sentenced to a reformatory sentence, an alternative local reformatory sentence, an indeterminate sentence or a definite sentence with a term in excess of ninety days may be released on parole. Parole is granted by the State Board of Parole and a "parolee" is under the field supervision of the State Division of Parole. A reformatory sentence inmate may be released on parole at any time,

but the mean time served before first release is twenty months.* An indeterminate sentence prisoner can be released after service of his minimum term or period of imprisonment or, if the court has not fixed a minimum, after service of one year of incarceration. And a definite sentence prisoner can be released after service of sixty days of incarceration. In this connection, it is important to note that the State Division of Parole has jurisdiction over persons confined in any county jail or penitentiary and in the institutions of the City of New York, as well as all State correctional institutions.

The question of whether parole is or is not presently considered a separate juridical substatus is not readily answerable. On the one hand, under our present system, parole generally means field supervision and field supervision only. The Division of Parole is, however, requesting funds in the 1968-1969 budget for a "multi-purpose facility" to be used, among other things, as "a pre-release center for males and females who require closer supervision and counseling for an interim period between institutional incarceration and release to parole". Moreover, a law was enacted in 1966 (Correction Law, §66; L. 1966, ch. 655), upon recommendation of our Committee, to establish a "residential treatment facility" that would merge the concepts of parole and incarceration by permitting "inmates" to be transferred to a special residential facility that would be operated by the State Department of Correction and such "inmates" would be permitted to leave the institution, under parole supervision, "to engage in rehabilitory activities"; but no funds were ever appropriated for this purpose. Thus we seem to be moving toward some sort of recognition that the concepts of incarceration and post incarceration field supervision ("parole") should be merged. But there presently is no real program in existence that is based upon that recognition and, moreover, it is doubtful that the Board of Parole—once having granted full field supervision status to a person—can revoke parole without a formal demonstration that the parolee has violated conditions of his parole. In other words there is

*This figure is taken from the 1966 report of the Division of Parole and represents the experience prior to the advent of the new Penal Law (which covers offenses committed after 9-1-67). The new Penal Law changed the length of a reformatory sentence from three years in the case of a youthful offender or a misdemeanant and five years in the case of a felony to a uniform four year term for all. It also established the alternative local reformatory sentence, and no experience figures on this are available as yet.

a distinction between the pre-release concepts of the "residential treatment facility" and the "multi-purpose facility," and the concept of being able to reincarcerate a person who has already been fully paroled.

Parole does, however, seem a little closer to wedlock with incarceration than probation, because the law is not clear as to whether a specific violation of a specific condition of parole is required to justify incarceration, as it is for "revocation of probation." It might be that parole may be revoked if a parolee "has lapsed, or is probably about to lapse, into criminal ways or company" as well as in a case where he "has violated the conditions of his parole in an important respect." Correction Law, §§216, 283. The concept in revocation of parole, therefore, might be "violation of parole" and not violation of some specific preset condition of parole, although specific conditions must be set. Correction Law, §215. Research does not disclose any case in which this has been tested in the courts and—with our present trichotomous concept of probation, incarceration and parole —it is doubtful that the courts would sustain a decision of the Board resulting in reincarceration of a parolee, unless the decision were based upon violation of a specific condition. In this connection it might be noted that a recent amendment to the Correction Law, applicable to persons sentenced for offenses committed after September 1, 1967, seems to focus more upon a requirement of specific violation of a specific condition than did the old law. (Compare Correction Law, §805 subd. 7 with §218.)

Thus, for all practical intents and purposes, parole does seem to be a separate juridical substatus, similar to probation. And a person once fully paroled cannot be reincarcerated for a day or a week or on a part-time basis without a showing of a specific violation, irrespective of changes in his condition and changes in circumstances. Further, although such person can be arrested and detained (and even returned to prison) without proof of a specific violation, a change in his status from "parolee" to "inmate" can only take place by decision of a three member panel of the Board after the parolee has had an opportunity to appear before the panel and explain the alleged violation (Correction Law, §805). We do not mean to imply by this observation that the status should be changed without some formal procedure, but only that the procedure as it

presently exists is indicative of the lack of a general concept of custody.

The youth who is adjudicated as a "youthful offender" or is convicted as a "misdemeanant" or as a "felon" and who is sentenced as a *"narcotic addict"* goes into an entirely different juridical world—although he may be incarcerated in the same prison, reformatory or penitentiary as the youth who is not sentenced as an "addict."

For the "narcotic addict" there is no trichotomous concept of custody, and, hence, no juridical substatus of "probationer," "inmate" or "parolee." The State Narcotic Addiction Control Commission programs are founded upon a general concept of custody. A person who is certified to the care and custody of the Commission may be moved back and forth between institutional care and field supervision, and may be incarcerated part-time or full-time or for a day, a week or a month depending upon the needs of the case. Such needs are determined by treatment personnel and decisions are reviewable by the Commission.

The Commission has the authority to contract for institutional custody of its charges in any facility, including State and local correctional institutions and may assign addicts to facilities in accordance with treatment needs and without regard to juridical label. The only restriction upon this is that a civilly committed addict cannot be incarcerated in a correctional institution. Mental Hygiene Law, §204 subd. 12, §206-a. Thus, at the present time (Feb., 1968), there are approximately 500 misdemeanants, felons and youthful offenders, who were sentenced to the Commission as "addicts," incarcerated in the New York City Penitentiary and Reformatory at Rikers Island, and approximately 100 incarcerated in Green Haven State Prison. (No distinction is made between persons who have and have not been convicted of a felony for the purpose of incarcerating convicted addicts at the "Prison.") Also, an additional number of convicted female addicts are incarcerated in a wing of Matteawan State Hospital, and at Western Reformatory which are institutions under the jurisdiction of the State Department of Correction. These correctional facilities are operated and staffed by correctional agencies; but have special programs for addicts, which are supervised and aided by the Narcotic Addiction Control Commission.

Hence, if the youth in the instant example were convicted as a "felon" and found to be an "addict", the judge may sentence him to the Department of Correction, under an indeterminate sentence, or to the Narcotic Addiction Control Commission under an indefinite commitment. If he is sentenced to the Department of Correction, he will be received at Elmira Reception Center and, after diagnostic classification, may be transferred to Green Haven State Prison, where there is a special treatment program for narcotic addicts. If he is sentenced to the Commission, he may also be incarcerated at Green Haven State Prison. However, the fact is that two separate and distinct narcotic programs are operated by the Department of Correction at Green Haven Prison: one for persons sentenced to the Department; and one for persons sentenced to the Commission. The narcotic program to which the youth will be assigned will depend upon the door through which he enters the State system, and this in turn depends upon the form of the sentence imposed by the judge.

Before summing up our conclusions based upon this part of the overview of our system, a brief look at the situation with respect to adults (21 years of age and over) is necessary.

Adult (21 years of age and over)

In the adult category we have five basic juridical statuses: misdemeanant, felon, narcotic addict, mentally ill and mentally defective.

The only differences between the system for dealing with adults and the system for dealing with youth are as follows:

(1) There is no procedure comparable to the youthful offender procedure for adults;

(2) Adults cannot receive a reformatory sentence or an alternative reformatory sentence;

(3) The State Department of Correction does not have a special reception center for diagnostic classification of adults who are committed to its custody; and

(4) The State Division for Youth does not operate programs for persons over the age of eighteen.

Hence, apart from the above noted differences, everything mentioned in the section on "Youth" applies to adults.

Financial Arrangements

For the purpose of setting some of the conclusions in this section in perspective, a few basic facts about the criss-crossing financial arrangements that accompany the criss-crossing juridical statuses should be noted. These are as follows:

1. *Probation.* Probation departments are operated by local government, but 50% of the operating costs of this service is reimbursed by the State (recommended figure in 1968-1969 budget, $12,752,002). In addition to this amount, the State spends $169,760 in administering the programs of the State Division of Probation.

2. *Incarceration for juvenile delinquents and persons in need of supervision.* The cost of institutional care for children placed in or committed to private institutions and State institutions (but not the Division for Youth) is borne equally by the State and by local public welfare districts. This means that the State reimburses local welfare districts for 50% of the amounts expended to keep children in private institutions, as well as charging those districts for 50% of the amount expended to keep children in training schools (recommended figure in 1968-1969 budget for State's share of private institutional care, $8,800,000).

3. *Alternative local reformatory sentences.* The State reimburses the City of New York for the cost of furnishing Reformatory incarceration for youth who receive alternative reformatory sentences. This reimbursement is for the actual per capita daily cost, not exceeding $8 per day.

4. *Definite sentences (one year or less) imposed upon felons.* When a definite sentence of imprisonment is imposed upon a person convicted of a felony, commitment is to a county jail or penitentiary. In such case the State reimburses the locality that operates the institution for the cost of furnishing incarceration. This reimbursement is for the actual per capita daily cost, not exceeding $5 per day.

5. *State prisoners lodged in local institutions.* When an inmate is brought from a State institution for the purpose of testifying in a hearing or trial, or when a parole violator is lodged in a local institution—other than one to which he was sentenced—the State reimburses the locality that operates the institution for the cost of furnishing incarceration. This re-

imbursement is for the actual per capita daily cost, not exceeding $5 per day.

The total cost of items 3, 4 and 5, as recommended in the budget for 1968-1969 is $3,895,000.

6. *Narcotic Addiction Control Commission.* The State Narcotic Addiction Control Commission pays for the institutional care of addicts in local correctional institutions. The amount recommended for this purpose in the 1968-1969 budget is approximately $10,000,000. (The present contract with the N. Y. C. Department of Correction calls for payments of up to $11 per day per capita.)

7. *Narcotic Commission to Department of Correction.* The State Narcotic Addiction Control Commission also transfers funds to the State Department of Correction for the cost of institutional services for addicts sentenced to the Commission and institutionalized in Department facilities.

8. *New York City to State Department of Correction.* The City of New York pays the State for the cost of incarceration of females sentenced to City institutions and confined in the State reformatory at Bedford Hills. Payment is pursuant to a leasing arrangement and in accordance with the actual per capita daily cost, not exceeding $5 per day.

Thus, the total cost to the State for locally and privately operated juvenile and criminal post adjudicatory services is approximately $35,000,000.

General Conclusions

The major conclusion that follows from the analysis set forth in the preceding pages is that all persons adjudicated as children in need of supervision, and all persons adjudicated or convicted for criminal offenses, including narcotic addicts, should be diagnosed and classified in State operated centers and then assigned by the executive branch of State government to programs that best fit their needs. We do not mean to imply, by this, that children should be mixed with youths or that youths should be mixed with adults or that criminals should indiscriminately be mixed with persons civilly committed. Our point is that the system is so badly restricted in its ability to utilize custodial instrumentalities (for which the State already pays all or half of the costs or substantial costs) that the system is irrational.

Facilities for custody should be selected by administrators who are intimately familiar with them, and not by the judiciary who have overwhelming problems to cope with in resolving factual disputes and in applying an ever increasingly complex body of law to the facts. The question of whether a person should be under field supervision or under incarceration—once a court has determined that there is a risk of recidivism and that custody is within the appropriate sanction range—should also be left to administrative determination, so that it can be resolved on the basis of day-to-day appraisal of the child or the offender by specialists in the treatment field. (Excluding, of course, cases where a minimum term of imprisonment is deemed necessary by the courts—in criminal cases—for general deterrence and prevention of anomie.)

The status of "juvenile delinquent" should be done away with, and all children who need special treatment because of conditions evidenced by anti-social behavioral aberrations should be placed with the State. The decision would then be made as to whether the child should be placed in a private institution, a foster home, under field supervision or in a training school, etc. Placements would be subject to court renewal and possible abuses of administrative discretion could be reviewed in the same manner as are other administrative decisions.

Youth, between the ages of sixteen and nineteen, should receive automatic protection from stigma and should be dealt with under a concept of modified criminal responsibility—with the possible exception of cases involving murder and kidnapping in the first degree. This would mean use of a lower scale of maximum terms than the present adult scale (life imprisonment, 25 years, 15 years, 7 years and 4 years), but such lower scale would be counterbalanced by the authority to use a higher maximum than the 4 year reformatory term (presently the only term available under the youthful offender procedure) in appropriate cases. Thus, for example, a crime that would carry 15 years for an adult would have a maximum term of 7 years for a youth. Commitment would be to the State for general custody in much the same manner as described above for children. If custody beyond one year is needed for a young misdemeanant to continue treatment until he is 18, he should have a hearing on the question of whether his condition warrants extended custody.

Persons over the age of nineteen should be dealt with as adults and there should be no reformatory term. Clearly it is not needed for a felony and it is unwarranted for a misdemeanor. Where custody is necessary for adults—at least where the term is to be more than thirty or sixty days—commitment should be to general custody and decisions from that point on should be administrative as described in the recommendation on children.

The same would be true for narcotic addicts who are convicted, or adjudicated as youthful offenders. Such persons could be assigned to a custodial instrumentality appropriate to their needs by the same State diagnostic process that is used for other offenders. This would not mean eliminating the Narcotic Addiction Control Commission, but merely redesigning its jurisdiction (see section VII of this Part of the Report, pp. 268-275, *infra*).

II

The Organization and Operations of Probation

The operations of the sixty-nine separate probation departments in this State cannot be summarized by or gathered within a single conceptual description. The services performed by many of them range from adoption investigations and marital counseling to field supervision of convicted felons. They perform civil functions in the family court and criminal functions in the county court, supreme court and lower criminal courts. They operate intake units and detention homes, and collect fines and collect and disburse restitution payments. They conduct bail investigations, youthful offender investigations and pre-sentence and pre-disposition investigations. And they supervise persons who have custody of neglected children, persons who fail to support their families, children in need of supervision (PINS and juvenile delinquents), youthful offenders, wayward minors, misdemeanants and felons.

In some counties a single probation department serves all of the courts and performs all of the above functions. In other counties there are two probation departments; one for the county court and one for the family court. Some cities have a probation department that just serves the lower criminal court within the city; and some lower criminal courts have no probation services available at all. Ten of the sixty-nine probation departments have one probation officer, and seven of these are departments that furnish the whole array of probation services for the county.

New York City has four separate probation departments: one for the family court and the criminal court (inferior jurisdiction); one for the supreme court in New York and Bronx counties; one for the supreme court in Kings and Richmond counties; and one for the supreme court in Queens county.

In counties that have a large countywide probation department, serving all courts, the department is usually organized so that one division serves the criminal courts and one division serves the family court. In some of the really large departments,* the organizational structure provides for specialized functions within each division. Thus, in the division serving the family court, there may be: a special unit that handles only intake, or several intake units with one specializing in family matters, another specializing in juvenile delinquency and PINS, and a third specializing in neglect or non-support matters; a special unit to handle pre-disposition reports, or several special units that handle particular types of pre-disposition reports; and a special unit to handle supervision of persons placed under probation supervision, or several special units that handle particular types of supervision cases. In the division serving the criminal courts there is frequently one separate unit for investigations and another separate unit for field supervision. Where the division also does bail investigations, there may be a third unit that specializes in this function.

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*E.g., Office of Probation for the Courts of New York City, serving the family court and the criminal court (inferior jurisdiction), approximately 600 probation officers; Nassau County Probation Department, serving all the courts of the county ("countywide"), approximately 165 probation officers.

The difficulty with probation today is that it is a branch of the post adjudicatory treatment system that has spread to furnishing services in connection with a wide variety of social service matters handled by the courts. Its original focus was upon presentence investigations and field supervision in the context of crime and delinquency; but as courts became increasingly involved in social services and required increased informational services, the tasks were assigned to the probation department, and all of these services became known as probation services. Thus, today, in New York State, the term "probation" has such a broad reach that it is meaningless.*

Because of the method in which probation grew—as a heterogeneous mixture of services—probation today contains many anomalies and is subjected to many conflicting administrative pressures. Thus, for example, a "probation officer" who does marital counseling is a peace officer, with the right to carry a gun, and is subject to the supervisory powers of the State Commissioner of Correction, exercised through the Division of Probation in the Department of Correction. Where once the term "probation" denoted "the action of suspending the sentence of a convicted offender and giving him freedom during good behavior under the supervision of a probation officer" (Webster's Seventh New Collegiate Dictionary, 1965), the term now includes supervision of a person who has custody of a

*Former section 927 of the Code of Criminal Procedure (repealed in 1967 [L. 1967, ch. 68]) contained the only set of statutory definitions the State has ever had in connection with probation. These definitions, although poor and somewhat confusing, clearly reveal the fact that the structure of probation is planted in the bedrock of the post adjudicatory treatment system. Former section 927 defined the term "probation officer" as meaning "one who either investigates for the court prior to sentence or supervises a probationer or both"; defined the term "placed on probation" in the following manner, "includes suspension of sentence, or suspension of execution of judgment"; defined the term "court" as follows, "includes all courts of criminal jurisdiction as well as children's courts . . .;" and defined the term "violation of probation" as meaning "(a) the commission . . . of any additional crime or offense, (b) failure to comply with any of the conditions of his probation, or (c) absconding . . ." No hint is given in the definitional section of any of the myriad other duties performed by probation officers.

neglected child (Family Court Act, §354). Many probation administrators in the State are responsible to four different sources of supervision, and have no fixed idea as to what each of the four sources actually controls (*i.e.*, the county government; the State Judicial Conference; the State Division of Probation; and the judge of the court being served). The situation in this regard is so bad that probation administrators actually take votes at their conventions to try to determine where probation—the homeless service—should fit in the governmental structure. At the 1966 Annual State Conference on Probation, the New York State Council of Probation Administrators voted on three separate propositions advanced by the members. Briefly stated, these propositions and the voting outcome were as follows:

	Plan	*No. of Votes**
I	To place all probation services under the State Judicial Conference, fully administered and financed by the State	6
II	To place all probation services in an appropriate department or division of the executive branch of State government, fully administered and financed by the State	36
III	To place all probation services under the general supervision of a State agency in the executive branch but to retain local autonomy and to continue the system of sharing costs between State and local government	8

*The totals shown here do not include 16 votes for proposition II cast by personnel of the State Division of Probation.

It might also be noted that five local administrators abstained from voting.

Organization Patterns

With the exception of the four probation departments in the City of New York, and the probation departments in Erie, Nassau, Schenectady and Suffolk Counties, probation services in the State are organized under one of two existing statutory plans set forth in the Code of Criminal Procedure. The first may be called the "court-operated plan" (§§928-929), and the second may be called the "countywide department plan" (§938-b).

The court-operated plan, which is the original plan, makes the county judge the chief administrator. The judge hires and fires ("the court may appoint and at pleasure remove"), subject to appropriations by the board of supervisors and the applicable civil service system. The judge also decides what courts—other than the supreme court—the probation officer will serve. In a county that uses this plan, the family court and the lower criminal courts receive services from a probation officer appointed by and responsible to the county judge (or, if there is more than one county judge, appointed jointly by the county judges); and then only with the approval of the county judge. The procedure for appointing probation officers under this system is as follows:

(1) The court certifies the need of one or more salaried probation officers to the official body charged with responsibility for appropriating funds for support of government in the political subdivision of the State wherein the court is located, (*i.e.*, county board of supervisors).

(2) The county board of supervisors then determines whether the need exists.

(3) If the board finds that the need exists, it fixes the salary for the position and appropriates the necessary funds for salary and expenses.

(4) The court then appoints (and may at pleasure remove) such probation officers as may be necessary.

The countywide department plan (enacted in 1936) permits the board of supervisors of any county having a population of less than 600,000 to "establish a county probation de-

partment in and for such county in which there may be merged and consolidated the services rendered by the several probation officers in such county." Code of Crim. Proc., §938-b. Under this plan a director of probation for the county is appointed by majority vote of the judges of courts in the county that "render" probation services. This would include judges of the family court and the county court; but the statute is not clear as to whether judges of the inferior criminal court participate, although the department does "have charge of all probation work in and for all of the courts in such county."

The board of supervisors fixes the salaries of the employees of the department and makes the necessary appropriations for such salaries and for expenses. The county director of probation—who is appointed by the judges—has the power to appoint, subject to the approval of the judges, "such probation officers, a secretary and such other employees as the work of such department requires."

The countywide plan is sort of a hybrid that gives the department the look of an agency of the executive branch of government, but leaves the judicial branch with some vital executive functions. In operation, the extent to which a countywide department will be under the executive supervision of the judiciary depends upon the political situation in the county, the personality of the senior county judge, the degree of influence exerted by the chief executive officer of the county, and the personality and skills of the individual director of probation.

The statutes that deal with probation in Nassau, Schenectady and Suffolk Counties set up individual countywide departments under plans that, for all practical purposes, are identical to the general "countywide department plan" discussed above. Code of Crim. Proc., §§938-d, 938-e, 938-f. The Erie County plan is similar, but with the unique difference that the director of probation—once appointed by the judiciary—is not required to secure the approval of the judiciary for the appointment of deputies, probation officers and other employees in the department (*id.*, §938-c).

In the City of New York there is no county court, and the supreme court tries the criminal cases that are tried by the county court elsewhere in the State. At the present time there

are three probation departments serving the supreme court in the City. These are created by the two departments of the appellate division that have jurisdiction over courts within the City. The First Department has jurisdiction over New York and Bronx Counties; and the Second Department has jurisdiction over Kings, Queens and Richmond Counties. The jurisdiction of the First Department is limited to courts within the two counties and thus to New York City, but the jurisdiction of the Second Department takes in Nassau, Suffolk, Westchester, Rockland, Putnam, Dutchess and Orange Counties, as well as the three counties within the City.

The First Department operates one probation department for both its counties (New York and Bronx); and the Second Department operates two probation departments for its three New York City counties, one for Kings and Richmond and one for Queens. Thus, in the Second Department the organization of probation services takes a variety of forms: two probation departments created by the appellate division; the Nassau and Suffolk County Departments, created by special statutes; and the other probation departments organized under one of the two basic plans. (This does not include the probation department for the criminal court of the City of New York [inferior jurisdiction] and the family court, discussed, *infra.*)

The statutory authority for the organization of probation departments to serve the supreme court in New York City is contained in Section 938 of the Code of Criminal Procedure. In brief, the elements are as follows:

1. The appellate division in each department appoints "such chief probation officers, deputy chief probation officers, and additional probation officers, male or female, clerks, stenographers and other employees, as the requirements of probation in the supreme court . . . shall in their judgment demand, and may fix the salary of each appointee in the manner provided by law."

2. "The two appellate divisions may adopt such rules, not inconsistent with laws relating to probation, regulating the method of procedure in relation thereto and governing the powers and duties of probation

officers appointed by them as in their judgment they deem proper."

It should be noted that this latter provision includes an important exception to the powers of the Director of the State Division of Probation. The State Director may adopt rules that are "binding upon all probation officers, and when duly adopted shall have the force and effect of law, but shall not supersede rules that may be adopted pursuant to law by the courts specifically authorized so to do in the City of New York or that may be adopted pursuant to the family court act." Correction Law, §14 subd. 2. Thus, the portion of the statutory duties of that officer which gives him a mandate to "endeavor to secure the effective application of the probation system and the enforcement of the probation laws and the laws relating to family courts *throughout the State,* and to "exercise general supervision over the administration of probation *throughout the State*" (*ibid.*, emphasis supplied), gives him a confused role to play and an impossible task to perform.

In addition to the three separate probation departments serving the supreme court in the City of New York, there is a fourth probation department that serves the family court and the criminal court (inferior jurisdiction). Unlike the supreme court probation departments, this department (called the "Office of Probation") serves in every county of the city, and thus is a city-wide department. Code of Crim. Proc., §938-a. Since the probation services are rendered to courts in both the First and Second Departments, the Director of the Office of Probation is appointed by the presiding justices of the two appellate divisions, rather than by the "appellate division" as provided in the case of supreme court probation departments. However, if the two presiding justices are unable to agree on an appointee, the appointment is made by vote of the majority of all of the justices of the two appellate divisions.

The development and maintenance of the policies, programs and standards of the Office of Probation is basically in the hands of the Director of Probation, but the Director must consult, on such matters, with a committee consisting of: the presiding justices of the two appellate divisions, the presiding justice of the family court in the City, and the presiding justice of the criminal court.

Unlike the statute dealing with probation in the supreme court in New York City (§938), the statute that creates the "Office of Probation" vests the Director of Probation with the power to appoint probation officers and other employees and to fix their salaries (within the amounts made available by the City's Board of Estimate). He may also appoint deputy directors for the family court and criminal court divisions in each of the five counties; but any such appointment must be approved by the presiding justice of each court.

The Role of the Judicial Conference

In order to approach even a vague understanding of the incredibly complex organizational structure for the administration of probation in this State, one also has to be familiar with the roles played by the various arms of the State Judicial Conference, by the State Division of Probation and by the State Probation Commission.

On September 1, 1962 a unified court system was established in this State pursuant to a new article of our Constitution (Art. VI). This article also provided that the authority and responsibility for the administrative supervision of the unified court system would be vested in an "Administrative Board of the Judicial Conference", consisting of the Chief Judge of the Court of Appeals and the Presiding Justices of the four appellate divisions (§28). The new Constitutional provision further provided that the Administrative Board, in consultation with the Judicial Conference, "shall establish standards and administrative policies for general application throughout the State"; and that "in accordance with the standards and administrative policies established by the administrative board, the appellate divisions shall supervise the administration and operation of the courts in their respective departments" (*ibid.*).

Additionally, the new article of the Constitution provided that itemized estimates of the financial needs of the courts must be submitted to the Administrative Board or to the Judicial Conference "to be forwarded to the appropriating bodies with recommendations and comment." Art. VI, §29.

Implementing legislation gave the Administrative Board the broadest powers to regulate the personnel practices, fiscal

practices and administrative methods, systems and activities of all officers and employees of the court system and their offices. Judiciary Law, Article 7-A. Included within this legislation is a somewhat vague provision that reads as follows:

"§218 Co-ordination of auxiliary services

There shall be such co-ordination of auxiliary services among the courts of the several judicial departments as the administrative board may direct or the respective appellate divisions, consistent with the standards and policies established by the administrative board, may determine."

The report to the Legislature of the Joint Legislative Committee on Court Reorganization helps to reveal the intent of this provision (Report, January 7, 1962, page 7):

"In the all important area of auxiliary court services, *such as probation*, the Administrative Board is empowered to direct the operation and administration of such services in the judicial departments separately, or jointly in two or more departments. Here again, power will be given to the courts themselves to decide how to deal with such administrative problems, and to develop with flexibility their administrative policies and techniques from time to time in the light of accumulating experience." (Emphasis supplied.)

Thus it appears that the Legislature intended to include probation within the unified court system as an "auxiliary court service". In any event, whether or not this was the legislative intent, the State Judicial Conference has proceeded on the assumption that probation is part of the court system. The authority of the Judicial Conference over probation is now well accepted in some counties, vigorously contested in other counties, and has not yet become apparent in many counties. For example, in New York City the authority of the Administrative Board over probation is completely accepted. In Nassau County, the authority of the Board over probation is under litigation.* And, in many upstate counties, the Admin-

*See Matter of Crowley (Milone), reported in New York Law Journal, January 4, 1968, p. 19, Col. 4. The authority of the Administrative Board was sustained in the Supreme Court, Nassau County and a notice of appeal to the Appellate Division Second Department has been filed.

istrative Board has not attempted to exert any substantial authority.

In counties where the Judicial Conference administers probation, the Administrative Board performs the functions of a civil service commission. It prescribes qualifications, titles, positions, salaries and arranges for tests and the administration thereof. It then certifies the names of successful candidates to the appointing officer, which—in most cases—is a judge or judges as described in pages 168-172, above. See *e.g., Matter of Conlon v. McCoy,* 27 App. Div. 2d 280 (1st Dept. 1967). The Board also prescribes general policy in many matters. Actual administration of auxiliary court services (other than in civil service matters) is primarily in the hands of a Director of Administration for the particular department. Such director is appointed by the justices of the appellate division on the nomination of, and is responsible to, the presiding justice of the department.

Since this is a fairly new system, many matters within it are still unclear—even disregarding for the moment the effect of this system on the authority of other, outside agencies. For example, as previously noted, the Code of Criminal Procedure gives the Director of the Office of Probation in the City of New York the authority to appoint probation officers and other employees, but there is some question as to whether he can exercise that authority independently, and without the acquiescence of the departmental Director of Administration. Another question one might ask is whether the Administrative Board of the Judicial Conference has authority to promulgate caseload standards for probation officers, and to prescribe the manner in which the social workers, psychologists, psychiatrists, sociologists, clergymen, group counselors, group therapists and others who perform probation services are to do their work.

In counties where the authority of the Judicial Conference has not been exerted, probation budgets are often submitted with the executive—rather than the judicial—budget, appointees to probation department positions are selected from a list submitted by the local civil service commission, and the State Division of Probation exerts a great deal of influence over standards and administration.

The State Division of Probation and The State Probation Commission

As the authority of the Administrative Board of the Judicial Conference expands, the authority of the State Division of Probation contracts. In fact, it seems fair to say that if the present trend continues, the State Division of Probation will be left powerless.

A brief history of the State Division of Probation and the State Probation Commission is helpful in setting the roles of these agencies in context. The State Probation Commission came into being in 1905, four years after the formal birth of probation in this State. It was first formed as a special commission to make a survey of probation in the State and to report to the Governor. Its primary finding at that time was that there was a lack of supervision and coordination or organization of the work of probation officers throughout the State. As a remedial measure a program of central State supervision was recommended by the Commission, with the result that in 1907 the Commission was made permanent and was authorized "to exercise general supervision over the work of probation officers, to keep informed as to their work, to improve and extend the probation system, to collect and publish information thereon and make recommendations." Subsequent reorganizations in State government were responsible for the birth of the Division of Probation in the Department of Correction with the Probation Commission as the executive head of the Division, and—in 1928—the creation of the office of Director of Probation as head of the Division and relegation of the Commission to advisory group status. It might be noted that, when originally created as a permanent agency, the Commission consisted of seven members to serve without salary. Four of these were appointed by the Commissioner of Correction with the advice and consent of the Governor. Today, the membership of the Commission consists of four members appointed by the Governor, plus the Commissioner of Correction, the Director of the Division of Probation and a member of the State Commission of Correction. Correction Law, §14 subd. 3. The Director of Probation is appointed by the Commissioner of Correction and in most cases can only exercise his authority with the approval of the Com-

missioner and after consultation with the Probation Commission.*

The various statutory duties and powers of the Commissioner of Correction, the Director of the State Division of Probation and the State Probation Commission, in the context of probation, include a wide range of vital matters; and a brief inspection of these clearly reveals a conceptual conflict with the duties and powers of the Administrative Board of the Judicial Conference.

The Director of the State Division of Probation is charged with the duty of exercising "general supervision over the administration of probation throughout the state, including probation in the family courts" Correction Law, §14 subd. 2. He is supposed to collect statistical and other information and make recommendations regarding the administration of probation in family courts (*ibid.*). He is charged with the duty of endeavoring "to secure the effective application of the probation system and the enforcement of the probation laws and the laws relating to family courts throughout the state" (*ibid.*).

"With the approval of the commissioner of correction, after consideration by the state probation commission," the Director of the Division of Probation "shall adopt general rules which shall regulate methods and procedure in the administration of probation, including investigation of defendants prior to sentence, and children prior to adjudication, supervision, case work, record keeping and accounting so as to secure the most effective application of the probation laws throughout the state." These rules are supposed to be "binding upon all probation officers and . . . have the force and effect of law," but they are not to supersede rules that "may be adopted pursuant to law by the courts specifically authorized so to do in the City of New York" or rules that may be adopted pursuant to the Family Court Act (*ibid.*).

The Director is also supposed to keep himself informed as to the work of "all probation officers," and may investigate any probation bureau or probation officer. He is entitled to access to all records and probation offices and he has subpoena power

*The historical summary presented in the text is taken in large part from a Special Report, by the Commission to Investigate Prison Administration and Construction, entitled "Probation in New York State" presented to the Legislature in 1933.

and the power to administer oaths and to examine persons under oath. His powers, however, fall short of the authority to remove or discipline any probation officer. In this connection he is limited to recommending, to the appropriate authorities, the removal of any probation officer; and before so doing he must secure the approval of the Commissioner of Correction (*ibid.*).

Where the Director of Probation finds that a county or combination of counties is not supplying sufficient probation services to its courts, he may—with the approval of the Commissioner of Correction and after consultation with the State Probation Commission—furnish such services through the Division of Probation. Correction Law, §14-b. During recent years, however, this power has only been exercised in cases where a local probation department has a temporary staff shortage, and in cases where a new probation service is needed in a county. In the latter connection, the Division of Probation will go into a county and inaugurate the new type of service on a demonstration basis, either on request of the chief executive officer of the county or on request of a judge, but on the understanding that the service will not be permanent unless the county continues it.

The State Division of Probation also conducts staff development training courses throughout the State. Correction Law, §14-c. During 1967, for example, the Division conducted eighteen general staff development courses (1 day per week for 5 weeks), thirty-nine seminars on the revised Penal Law (3 hrs. each), and two workshops at the Moran Institute (1 week). Total attendance of professional personnel throughout the State at these training sessions was over one thousand persons.

The Department of Correction grants scholarships to probation officers throughout the State for graduate training in the field of probation at graduate schools or departments of social work; and the Director of the Division of Probation administers this program, with the approval of the Commissioner of Correction, after consultation with the State Probation Commission. Correction Law, §14-d. During the year 1967, forty full time and twenty-five part time graduate scholarships were

financed (total $83,000 expended).*

One of the most important functions of the Commissioner of Correction, in the context of probation, and of the Director of Probation and the Probation Commission is the administration of the State aid program for local probation. Correction Law, §14-a. State aid is granted to the localities to the extent of reimbursing fifty percent of the "approved expenditures incurred in maintaining and improving local probation services." (Excluding, however, expenditures for capital additions or improvements, or for debt service costs on same.)

Aid is granted by the Commissioner of Correction upon the recommendation of the Director of Probation, and after consultation with the Probation Commission, provided the respective localities "conform to standards relating to the administration of probation services as adopted by the director of probation and approved by the commissioner of correction after consultation with the state probation commission." Correction Law, §14-a, subd. 2. Application must be made by the locality for such aid, and the locality must submit detailed plans and cost estimates, which may be accepted or rejected. The Commissioner of Correction is specifically authorized to withhold the payment of State aid to any locality that "(a) fails to conform to standards of probation administration as formulated by the director of probation pursuant to this section, (b) discontinues an approved plan, or (c) fails to enforce in a satisfactory manner rules promulgated . . . [by the Director of Probation] or laws now in effect or hereafter adopted which relate in any manner to the administration of probation services." Correction Law, §14-a, subd. 5.

The power to withhold State aid is the only real power the Division has in securing compliance with the standards and rules promulgated by it. Although this power has never been exercised for that purpose, there have been several occasions where counties have complied with the standards and rules after being advised that State aid would be withheld if they did not comply.

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*It might be noted that the Director of the "Office of Probation" in New York City also has specific statutory authority to grant scholarships to persons working in his office. Correction Law, §938-a, subd. 4, added by Laws of 1965, Ch. 920. This program is supposed to be financed by the City of New York, but no scholarships have ever been granted under it.

The specific standards and rules promulgated by the State Division of Probation deal with the entire spectrum of probation matters, such as: caseload sizes; minimum salaries; personnel qualifications; duties of probation officers, supervisors and administrators; supervision and treatment of probationers; method of preparing pre-sentence and pre-disposition reports; intrastate and interstate transfer of probationers; violations of probation; record keeping; and receipt and disbursement of monies.

Thus, a local probation department must submit its budget to both the State Division of Probation and the State Judicial Conference, as well as to the local appropriating body. These two State agencies will often have independent contact with the appropriating body. The Judicial Conference will urge its position with respect to personnel requirements (which must, of course, be based upon caseload standards) and the Division of Probation will urge its position on this matter. The Conference will set minimum eligibility standards for probation officers and then attempt to get the local appropriating body to furnish enough money to attract personnel who meet the requirements. The Division of Probation will also set minimum eligibility standards for probation officers and then advise the local appropriating bodies that, unless they appropriate the necessary funds, State aid will not be forthcoming. The local probation administrator may or may not be invited to the negotiations and this adds to the confusion. In any event, in the final analysis, the appropriating body holds the purse strings and is free to disregard the arguments of both State agencies. The chance that State aid will be withheld is minimal, and some counties do not even request the State aid.

The capstone of the confusion between the role of the individual judges, the role of the State Judicial Conference, the role of the State Division of Probation and the role of the local appropriating body can be found in the following excerpts from the Rules of the Family Court:

> "A paid probation service shall be established in each county . . . ." Rule 2.3.
>
> "The Probation Administrator shall be responsible for establishing such sections or units, positions, titles,

methods and procedures as may be required to provide intake, investigation, supervision, conciliation and social treatment in cases coming to the Court. He shall discharge his responsibilities in accordance with Title IX of the Code of Criminal Procedure, Section 14 of the Correction Law [the section vesting the Director of the State Division of Probation with broad supervisory powers] and with all other laws applicable to probation and with the 'General Rules Regulating Methods and Procedures in the Administration of Probation in the State of New York' [consisting of detailed instructions as to administrative methods, systems and activities, promulgated by the Director of the State Division of Probation]. Except as otherwise provided by law, the Probation Administrator shall act under the direction of the Family Court Judge." Rule 2.4.

Operations of Probation

As previously indicated, the operations of "probation" cover such a broad spectrum of services that they cannot really be discussed within a single conceptual framework. In one sense we might say that the present concept of probation is to furnish social work services in connection with people who come into contact with our courts as actual or potential subjects of court action. In another sense, however, probation is an integral part of the post adjudicatory treatment system. The basic and perplexing problem is to determine where the court oriented part of probation service ends and the post adjudicatory treatment system begins.

The closest one can probably come to grouping the activities of probation into conceptual categories is to postulate three categories of service: (1) services that are actually part of the functions of the courts; (2) services that provide information to the courts; and (3) post adjudicatory field supervision.

The first category relates only to intake in the family court. Intake is designed to screen and to adjust matters that would otherwise come before the court. In a sense, the intake function is a way of relieving the court of the burden of dealing with cases that do not require formal action. However, the road to the courtroom door must always be clear and—although intake personnel cannot legally prevent the filing of

a petition with the court—the intake service, if it performs its function, hinders access to the court. Therefore, intake has to be an integral part of the court and must be subject to operational control of the court.

One might also include, within the concept of intake, such probation service functions as deciding when to release a child to the custody of his parents pending the filing of a petition (Family Court Act, §727), and deciding whether a child who has been removed from his home without court order in a neglect matter should be returned to his home pending the filing of a petition (*id.*, §326). These are normally judicial decisions and the probation service acts as an agent of the court in making them.

The second category of probation service (*i.e.*, the information system) includes such services as: pre-disposition reports in neglect proceedings, support cases, guardianship matters and family offense matters; and pre-disposition reports in juvenile delinquency and PINS matters; bail reports; youthful offender investigations; and pre-sentence reports.

The third category of probation service (*i.e.*, post adjudicatory field supervision) includes field supervision of persons who have custody of neglected children, supervision of persons found to have assaulted a member of their household ("family offense"), supervision of juvenile delinquents and PINS, and supervision of youthful offenders, misdemeanants and felons. The term "field supervision" as used in this context includes a whole range of treatment services either furnished directly or arranged for by the probation services (*e.g.*, casework, psychiatric treatment, group counseling, vocational guidance, job placement, etc.).

Thus, at one end of the spectrum of probation services we have functions that are an integral part of court operations and at the other end of the spectrum we have functions that—if one accepts the principle of a general concept of custody—are an integral part of the post adjudicatory criminal treatment system. Additionally, we have the problem that some probation services are clearly related to civil matters, some are clearly related to criminal matters and some are clearly related to the hybrid area of children who are delinquent or incorrigible.

If all probation services were to be deemed "auxiliary court services," we would then have to maintain a dichotomy between general custody and probation; and, unless probation developed its own correctional system—complete with institutions—we could never achieve the benefits to be derived from utilization of a general concept of custody. Moreover, we would continue the costly, wasteful duplication of services that presently exists (see discussion, *infra,* pp. 185-194, 234-240).

If all probation services were to become part of the post adjudicatory treatment system, the courts would lose control over intake services and might well feel uneasy about relying upon informational reports furnished by personnel who are not subject to the supervision and control of the judiciary. Moreover, there would still be the question of whether probation as a whole should retain its close ties to the criminal system; and in this connection it is obvious that, although probation grew out of the criminal system, probation as a whole is now very much involved in other matters.

The only practicable solution lies in recognizing that services involving crime and delinquency seem to be part of a distinct functional system, and that probation has to be divided between two distinct operational orientations: one dealing with operations directly related to matters involving crime and delinquency; and the other dealing with the whole array of additional social problems that our courts are involved with.

We would not include the neglected child with the delinquent. When such a child is taken into custody it is not because he is delinquent or incorrigible, but rather because someone is not caring for him properly. Nor would we include, in the crime and delinquency orientation, such matters as adoption investigations, supervision of homes in which neglected children are placed or homes where there is family strife,* or supervision of persons who fail to support their dependents or like matters. Similarly, we would not include persons who are committed for failure to comply with court

*It is interesting to note that in the year July 1, 1965—June 30, 1966 only 7 persons were placed on probation in family offense proceedings in New York City and 138 upstate, although an additional 104 were placed on probation in conjunction with an order of protection by courts outside the City of New York.

orders in such cases: such persons are incarcerated, not for rehabilitation, but to coerce compliance with specific court orders.

While it is true that there probably is no such thing as a crime and delinquency syndrome that can be separated from all of the above mentioned other matters, a line must be drawn someplace for administrative purposes. We wish to re-emphasize, here, the point made throughout this Report, that the inclusion of delinquents within a unified system does not represent a change that moves juvenile delinquents and PINS from one system to another. The inclusion merely unifies a fragmented system that already exists. Children would still be handled separately in a unified system.

Recognition of a distinction between administration of matters involving crime and delinquency, and administration of matters involving other social problems, is reflected throughout the organizational structure of our services.

In dealing with children (under the age of 16) we utilize State training schools and aftercare ("parole") for juvenile delinquents and persons in need of supervision, and we do not permit utilization of these facilities for custody of a neglected child. Moreover, there are hundreds of privately operated programs in this State for neglected children, but only a handful of agencies accept juvenile delinquents and PINS as a matter of regular policy (16 private agencies handle 90% of all private institutional placements of juvenile delinquents and PINS).*

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*In this connection, it is important to note that the rules of the State Board of Social Welfare recognize a clear distinction between the neglected child and the PINS and juvenile delinquency cases.

"Rule 5.18 Separation of Destitute, Abandoned and Neglected Children from Juvenile Delinquents and Persons in Need of Supervision

Destitute, abandoned and neglected children may be received and retained in the same institution with juvenile delinquents and persons in need of supervision only when:

(a) such institution is not a shelter or detention home,

(b) the management, staff and facilities thereof are adequate for the care and treatment of such children, and

(continued on following page)

In dealing with youth and adults we have for many years required segregation of "civil" prisoners from persons sentenced for criminal offenses in our county jails. Correction Law, §§500-b, 500-c.* The institutions operated by the State Department of Correction are used exclusively for persons who are convicted of crimes or are adjudicated as youthful offenders, juvenile delinquents or wayward minors (except in cases where mentally ill or mentally defective persons are placed in one of the special correctional facilities for safety reasons). Field supervision of the Division of Parole is used exclusively for persons adjudicated or convicted in the context of crime and delinquency. The facilities operated by the State Division for Youth are for all practical purposes (approximately 75%) devoted to treatment of persons who are adjudicated or convicted in the context of crime and delinquency. And, where probation services are large enough to be divided into divisions, the distinction is preserved. The larger probation departments have one division that serves the criminal courts and another division that serves the family court, and even within the family court division there may be a separate unit for family problems and for juvenile matters.

(c) such care is not injurious to the interests of the children so cared for, and

(d) permission in writing is secured from the State Commissioner of Social Welfare, who may specify in respect to each such institution the conditions under which such care may be given. Such permission or conditions may be revoked or modified by the Commissioner."

It also might be noted that the courts seem to perceive a clear distinction between the neglected child and the PINS and juvenile delinquency cases, and there is no trend toward substituting neglect proceedings for PINS or juvenile delinquency proceedings. In the year July 1, 1965—June 30, 1966 a total of approximately 20,000 juvenile delinquency and PINS petitions were filed. Neglect proceedings were substituted in only 55 cases.

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*The requirement concededly does not apply to penitentiaries, but these institutions were never intended for confinement of civil prisoners. They were constructed as institutions for confinement of persons under criminal sentence. (See *e.g.*: L.1814, Ch. 176 [N.Y.C. Pen.]; L.1830, Ch. 213 [Kings Co. Pen.]; L.1847, Ch. 183 [Albany Co. Pen.].) The Rules of the Family Court, promulgated by the Administrative Board of the Judicial Conference, enlarge the meaning of the term "jail" as used in the Family Court Act to include "penitentiary" (Rule 1.1). These rules fail, however, to extend the segregation provision applicable for "jail" prisoners to "penitentiaries."

Thus, one orientation of probation services, and many other separate governmental agencies presently constitute a fragmented, loosely affiliated, post adjudicatory treatment system. Clearly, we can never achieve the goal of fluidity in custody, or any sort of an operational expression of a general concept of custody, unless we unite the system and create—from the fragmented parts—a total system for dealing with treatment in the context of crime and delinquency.

Probation services that deal with matters directly related to crime and delinquency should, therefore, be joined to the rest of the post adjudicatory treatment system; and services that are integrally related to the functions of the courts (*i.e.,* intake) and that deal with the array of the other social problems the courts are involved with should be deemed "auxiliary court services."

The rationale for merging the field supervision function of probation with the rest of the post adjudicatory treatment system is obvious, in the light of the need for operations based upon a general concept of custody. However, the reasons for putting the crime and delinquency information system services in with the post adjudicatory treatment system are not so obvious, and this part of our recommendation is based primarily upon our judgment in resolving a dilemma which, if not resolved, will continue to be the source of duplication of work, waste of governmental funds, and delay in the administration of justice and the assignment of offenders and delinquents to treatment programs.

The courts require data for making decisions on pre-adjudication release ("bail") and for making dispositional decisions (*i.e.,* pre-disposition reports and pre-sentence reports). The post adjudicatory treatment system requires the same data and much more for the purpose of determining treatment needs and administering treatment. If a person who is part of an auxiliary court service, operating under one set of standards, makes a pre-disposition investigation and the offender or the delinquent is sentenced or committed to custody, the custodial agency, operating under a different set of standards, then begins its own process of classification and assignment, which involves duplication of much of the work done for the pre-disposition investigation. This also involves an unnecessary delay in treatment, because in a unified system

the custodial agency would have the information it needed for a treatment plan before the disposition is made and could assign the child, youth or adult to an appropriate program at the time of disposition. Moreover, although we do not presently have any reliable figures (due to the lack of an organized information system for all of the post adjudicatory services), it is our general impression that a considerable number of the youth and the adults who are brought before our courts on criminal charges have previously been under probation supervision or in a training school, youth institution or correctional institution. Clearly, the information previously gathered with respect to the condition of such persons would be valuable to a court and should be before the court in passing upon the question of bail in cases involving charges such as armed robbery, assault, rape and burglary.* So too it makes little sense to prepare a whole new pre-disposition or pre-sentence report when the files of various agencies throughout the post adjudicatory treatment system contain a plethora of information relating to the defendant's background, previous treatment, previous adjustment, etc.

An illustration of the manner in which our present system works should help to illustrate the point here. Take as a starting point a child of thirteen who is brought before the family court in county A because he allegedly burglarized a

*In connection with the question of whether the defendant's condition should be a factor in determining whether to hold him in custody pending trial of the charges, it should be noted that the Family Court Act authorizes "preventive detention" (*i.e.*, the court does not have to release the child, pending determination of the petition if "there is a serious risk that he may . . . do an act which if committed by an adult would be a crime."), §§728 (b), 739. Moreover, the Temporary Commission on Revision of the Penal Law and Criminal Code is presently recommending similar authority for criminal courts. See Proposed New York Criminal Procedure Law, §390.20 subds. 1 (b) and 3. This provision would have the court take into account the defendant's character, reputation, habits and mental condition and the nature of his previous offenses. The Commission's staff comment reflects candid recognition by the Commission of the fact that whether or not such considerations are formally recognized by the law, courts have been taking them into account and will continue to take them into account in fixing bail. As stated in the Commission's staff comment: "There is little doubt that the average judge will, regardless of the reasons given by him, deny bail to a defendant charged with forcible rape and having an unsavory record of sex crimes, no matter how certain he may be that the defendant will appear in court when required; nor is there any doubt that such practice, known as 'preventive detention,' has the approval of the general public."

house. The first question that must be determined—after the case clears intake—is whether the child should be kept in custody pending a fact-finding hearing. Some sort of quick appraisal of his circumstances must be made to determine whether he is likely to appear in court on the return date, and of his condition to determine whether "there is a serious risk that he may before the return date do an act which if committed by an adult would constitute a crime" (see *e.g.*, Family Court Act, §739, which applies to both juvenile delinquency and PINS cases). The next step—assuming the court finds that the child committed the alleged burglary—is to prepare a detailed probation report for the dispositional hearing. This report would contain an exhaustive analysis of the child's background, including his relationships with his parents, siblings, friends, teachers and persons in the community. It would also set forth analytical material about his parents and his home life, and it might contain or have appended to it the report of a psychiatrist or a psychologist, etc. After review of the report, let us assume the court decides that the child needs supervision and decides to place the child on probation for two years. During those years the child seems to progress well under a particular plan of treatment formulated by the probation department but still has problems, evidenced by certain aspects of his behavior. At the end of the two years, there being "no exceptional circumstances [that] require an extra year of probation" the child is discharged.

Shortly after the child's discharge from probation, the family moves to county B in another part of the State, and the child (now 15) is arrested for a second burglary. If neither the child nor his family discloses the first incident, the entire process may be repeated, and a completely new file will be compiled. If the prior incident is disclosed, or is discovered by an alert probation officer through an inspection of school records or through contacting the probation department in county A, a new file may still be compiled. The probation department in county B may have different standards than the probation department in county A or may not be willing to rely upon the interpretations of the case history made by the probation department in county A. Moreover, county B will more often than not use a different format for presenting

material to the court—frequently based upon desires of the individual judges—and, hence, at the very least will rearrange and retype the case history. Thus, duplication of the work originally done is all but inevitable, and in many cases this occurs without the benefit of reviewing the original work. Our system is simply not set up in such a way that probation department B can be assured of getting the original report, relying upon it, and merely updating it for presentation to the court.

Pursuing the example further, assume that the judge in county B decides to commit the child to a State training school. One or both probation reports may accompany the child to the State training school. However, at this point the child is now in the custody of a State agency and the personnel charged with the duty of determining the best program for him may have different standards than either or both probation departments. The resident social workers may prepare a whole new file, taking the case history for a third time and perhaps asking Social Service Department aftercare workers ("parole officers") to gather home life information on matters already covered in one or both probation reports. Naturally, while the child is in the training school, detailed reports of the various medical, psychiatric, educational and other examinations are placed in the file of the school, as are detailed reports of his treatment, the opinions of the personnel who work on his case, and information indicating his adjustments. Summaries of this information are supplied to aftercare officers who, during the aftercare period of field supervision, keep similar records and transmit summaries of those records to the institutions.

If, instead of committing the child to a training school, the court decided to try to place the child with the Division for Youth, the intake unit of the Division would make its own independent appraisal of the case, perhaps relying upon the probation report and perhaps not. In any event, if the child is placed with the Division for Youth, the Division will establish its own institutional and aftercare file on the child in accordance with its own standards and procedures.

Continuing the odyssey of this single individual through our system, assume that he absconds from aftercare at the age of sixteen and is not heard from again until he is arrested in New York County (county C) and charged with robbery, in

that he took fifty dollars from a man whom he held at knife-point (robbery in the first degree, a class B felony). The first decision—and one that must be made quickly—is whether he is to be released on his own recognizance, or whether bail should be fixed, or whether bail should be denied. A representative of the Office of Probation will interview him, and will make a telephone check on the youth's story about ties to the community. Fingerprints are taken, but at the present time only the record of prior contacts with the law in New York City will usually be available for the decision as to bail.* Furthermore, the juvenile history would not be disclosed by a fingerprint check. Therefore, unless the defendant reveals the story of his background, the "auxiliary court service" cannot present the court with much vital information, assuming one accepts the fact that "preventive detention" is a legitimate consideration. However, if the person assigned to gather this information for the court were an agent of a unified information service maintained by a Statewide treatment agency—rather than an agent of a fragmented separated "court service" —it is conceivable that modern technology in transmission of information could furnish him with the entire story in a matter of minutes.† True it is that this will take several years to organize and develop, but the point is that unless we create a unified system the chances of our ever reaching that goal are quite slim.

The next decision, given our present system, is whether our youth should receive youthful offender treatment. Assuming that the case has now progressed to the supreme court, a different probation department will be charged with the duty of making a complete background investigation for this purpose. Here again, the probation department may or may not be aware of the prior experience in county A or county B

*The New York State Identification and Intelligence System has recently initiated a Statewide facsimile network that can provide identification and prior record within three hours of the time fingerprints are transmitted.

†The NYSIIS facsimile service would furnish the bare bones of the criminal record; and, where this information revealed that a person had been in the State's treatment system, the agent of the unified Statewide treatment agency might have the whole file in a regional office or could make a telephone check with the main office, or perhaps use facsimile equipment, to obtain the entire story.

or in the training school, or in the Division for Youth. Also, here again, even if that department is aware of these matters, it takes weeks for the information to be collected from the various independently operated sources—or it may be collected through telephone communications (in which case inaccuracies may creep in)—and even then the department in county C will write its own report and doublecheck much of the old information.

Finally, there is the pre-sentence report, and the story here is, of course, the same as it is in the case of the youthful offender investigation. However, the department will utilize its youthful offender report in preparing its pre-sentence report, but it also may gather other information for the pre-sentence report.

If the judge decides to commit the offender to a State correctional institution, he will be sent to the Elmira Reception Center. At this point, whether or not the pre-sentence report accompanies the offender to the institution (and it sometimes does not), and irrespective of the quality of the report or whether certain psychological tests were already conducted by the probation department, the whole process starts again. The youth will be confined at the Reception Center for six to eight weeks, after having waited approximately six weeks for the pre-sentence report to be prepared, and will receive complete diagnostic and classification services (excluding, however, at this point any direct double checking in the community). This may involve numerous requests to other independent agencies for background information.

Once the youth has been classified, he is assigned to an institution by the Department, and he then goes through an additional classification process in the institution. This institution may or may not follow the recommendations as to program made by the Reception Center. The institution will, of course, utilize the data furnished by the Reception Center, but it will conduct additional interviews and may give additional tests before assigning the youth to a program. Until so assigned, he is held in a reception company at the institution, which may be for a period of one or two weeks (some of this time is necessary in any event for various reception processes and an orientation program). Thus, from the time of adjudication to com-

mencement of any program specifically designed to meet the needs of the offender, there often is a sixteen week (4 month) lag, excluding any time spent in detention prior to adjudication.

Clearly, if a unified informational system were tied in with a unified assignment system (as recommended, *supra,* pp. 162-164), and program decisions, which are based upon the same data that are or should be in the pre-sentence report (or the "unified file"), were formulated on the basis of a unified file, the youth could go directly from court to the program that best suited his needs (which might, of course, be field supervision), or at least the decision as to program could be made within a day or two after the time of sentence.

Returning to the present, we find that the next step in the process occurs when the institutional officer of the Division of Parole reviews all of the outside information the Department of Correction has been able to collect from other parts of the fragmented system and the impressive quantity of data the Department has added. However, the Division of Parole is another independent agency with its own rules and standards, and the institutional parole officer will conduct his own review and his own interviews of the offender. Owing to the presently existing warm relationship between the Division of Parole and the Department of Correction (which has not always existed), the interchange of information between the two agencies is fluid, and Parole receives copies of institutional data for its own independent file. Nevertheless, Parole may not be satisfied with the data that Correction has been able to obtain from other parts of the fragmented system (even when a pre-sentence report is part of the data) and sometimes finds it necessary to write up a whole new social history or to substantially supplement the material and to assign a field service officer to gather background information in the community.

When the offender is released on parole, a copy of the Division's file containing information collected by Parole from the Department of Correction (including data on institutional treatment and adjustment) and information independently compiled by the Division of Parole is forwarded to the area office of the Division that will handle parole treatment. Naturally, additional information is added based upon the experience with the offender while under field supervision.

If the offender is arrested for a new crime while on parole, or after discharge from parole, the probation information process (*i.e.*, the "auxiliary court service") begins anew. This time the probation department in county D may be the recipient of the task. The lack of information for the bail hearing is, of course, the same as it would have been if the offender had never entered a State correctional institution. In fact, we do not even have any established procedure for the "court auxiliary service" to notify the Division of Parole as to the new arrest, or any present procedure that would furnish immediate notice to the Division of Parole.* Therefore, if our offender is lucky, he may be released on his own recognizance before Parole even finds out about the new charge, and Parole may not learn of the new incident until such time as some agency within the fragmented system happens to notify Parole.

The probation department in county D will also have to write a pre-sentence report on the new case. This time, however, the probation department—now in possession of the fingerprint record—at least has a clear method of determining that there is prior information available. The process of gathering that information, though, still involves requests to other agencies. These other agencies (Correction, Parole, Division for Youth, Department of Social Services, Probation Departments A, B and C, etc.) do not turn over their files to the county D probation department. They make summaries of information in their files and send the summaries to county D. Since county D's probation department is an independent agency—subject to the control of a judge, or perhaps of a county official, or perhaps of a probation director who has different training and standards than personnel of the other agencies—the other agencies will sometimes not transmit "confidential" information in their files to county D. This information, of course, may be the most important information in the file. Further, it should be noted that the very process of summarizing information involves subjective selection of data and creates another opportunity for error. Therefore, county D

*This part of the difficulty may be cured to some extent in the near future by the NYSIIS facsimile network, which, hopefully, will at least convey the bare fact that a person has a prior record or is a parole absconder to the appropriate authorities before the offender has an opportunity to be released from physical custody.

will frequently have to do much of the work involved in constructing its own report (utilizing, of course, the summaries supplied by the other agencies to the extent possible). This takes additional time, costs additional money, and results in presentation to the court of less information than is actually available. In a rational system the entire file would be available almost immediately and all that would be required is the work involved in updating it.

If we were to trace our hypothetical offender further, through county jails, penitentiaries, detention homes and through the facilities of the State Narcotic Addition Control Commission, the story would become more confusing and the picture more chaotic.

On top of the confusion caused by lack of vertical integration (*i.e.*, integration of probation with other post adjudicatory services), we have the difficulties caused by lack of horizontal integration (*i.e.*, integration of the 69 separate probation departments themselves). If a person who resides in county A commits a crime in county B, in another part of the State, county A has to either send a probation officer to county B to gather background information or request county B to gather the information. If the offender is placed on probation in county B, then the only way in which he can return to his job and family while under probation supervision is for county A and county B to work out an arrangement for transfer of supervision. The present state of affairs with respect to such transfers is aptly described in the staff comment appended to section 210.70 of the Proposed New York Criminal Procedure Law, prepared by the Temporary Commission on Revision of the Penal Law and Criminal Code, as follows:

> "Presently, the provision for transfer of supervision of a probationer is in Code section 933-a and consists merely of a statement that: 'The court may at any time transfer the case to another court in the same or in another jurisdiction as the court may determine.' Absence of a detailed procedure has caused the transfer provision to be practically useless. The two basic problems that have arisen are: (1) the lack of a procedure for dealing with violations, and (2) the failure, in many cases, of the sending county to either pick up, or provide expenses for the return of, a

violator. Thus, in practice, probationers often are not proceeded against for violations and this has led to a reluctance on the part of judges and probation officers to receive transfers.

With the ever increasing tendency of persons to travel and modern transportation methods the possibility of a person being arrested for and being convicted of a crime in a county other than his county of residence and the possibility of a person moving to another county to take advantage of an employment opportunity makes it essential that the State have an effective, workable procedure for transferring supervision of probationers between counties."

Obviously, a unified State informational system integrated with a unified diagnostic, classification and allocation system ("assignment system") which is part of a unified treatment system offers the best possible solution to these and to other problems. Furthermore, such a system offers a better method of protecting confidential social agency and law enforcement information; because, rather than sending summaries and copies to many different independent agencies, there would be centralized control of information, uniform standards for disclosure and an assurance of responsible administration.

Such a system is also the only feasible vehicle for performing the research so badly needed in the field of crime and delinquency. For example, we are unable to find published studies conducted in New York State that evaluate the effectiveness of any treatment method used in probation through acceptable research techniques.* Nor are we likely to have any body of meaningful research so long as our system remains fragmented.

Note Concerning Treatment Orientation

The basic treatment method in probation is social casework, which in the context of probation supervision means a

*By acceptable research techniques, we mean empirical data resulting from a comparison of an experimental group with a control group or from a comparison of a treatment group with a comparison group (*i.e.*, the treatment group may be compared with the general pool of probationers, matched control subjects, base expectancy rates, or itself [before-after comparison]).

one-to-one relationship between an understanding, but nevertheless, authoritative social worker and the probationer. Some departments are starting to progress to the more general concept of "social work", and are initiating the use of group techniques, and some departments also utilize the services of psychiatrists, psychologists and other professionals as part of their regular scheme for treatment planning and treatment. By and large, however, the predominant and most frequently used procedure is for a social worker to make an analysis of the needs of the case and utilize the services of other professions on a referral basis, with the entire structure of treatment revolving about the social worker, his diagnosis, his plan and his casework. The social worker is, of course, supervised by a more senior social worker and social workers do have "case conferences" (which means—in the absence of special circumstances—a meeting among different levels of social workers to discuss the problems in a case and to plan treatment).

The questions raised by using the social worker as the vortex of our diagnostic, classification and treatment system, are common to all of our post adjudicatory services. These questions are discussed, and an alternative system is recommended in other sections of this Report. (See *e.g.*, pp. 52-54, 247-249).

General Conclusions

It is of course impossible to rate New York's probation services in general as good, bad or indifferent, because we have sixty-nine separate departments with sixty-nine variations on techniques, methods and procedures. It is also impossible to state whether probation supervision or casework as presently administered is helping offenders to lead law-abiding lives and, even if we assume that it is helping, it is impossible to state the extent to which it is helping or the circumstances under which it is helping or the characteristics of those it is most likely to help. We also do not believe that a list of our probation departments with a rating as to the quality of casework done in each, and suggestions as to how to improve, would be helpful, because we are convinced that an entirely new organizational approach, including a new method for diagnosing cases and assigning individuals to treatment pro-

grams is necessary; and this would also involve far reaching suggestions in the manner in which caseloads are administered.

Several conclusions are, however, obvious for mere rationality in operations. We must have a single, unified information system to supply information to both the courts and the post adjudicatory treatment system in cases involving crime and delinquency. That system must be part of a classification and assignment system for allocating persons to appropriate treatment programs. And the classification and assignment system must be part of a single, unified, post adjudicatory treatment system that can provide evaluative research, fluidity in custody and can operate in accordance with the conclusions set forth in this Report. Perhaps the most important point of all, is that we must have a system that is capable of administering treatment as a continuum, rather than one that involves transfer from agency to agency.

This would mean breaking off from the present polymorphic structure of probation so much of it as is directly involved with information services and administration of treatment in the crime and delinquency area, and welding that portion to the rest of the post adjudicatory system. The balance, consisting of intake and other functions, would remain under court-system administration.

III

The State Department of Correction

The State Department of Correction is primarily an agency that administers institutions, and diverse institutional programs, for the incarceration and correction of persons sixteen years of age and over who are sentenced to imprisonment because of criminal conduct. The Department also performs other functions but—apart from the activities of the Department's Division of Probation—the other functions are minor or incidental. The primary focus, and the one we will deal

with in this section of the Report, is the function of administering institutions for incarceration.

In discussing this function our attention will not be upon details of individual operations and we will cover such details only to the extent they are relevant to the overall organizational picture. Nor is it our purpose here to present an exhaustive descriptive analysis of the programs of the Department. (Such matters are covered in a separate appendix volume of our Report.) Our purpose in this section of the Report is to present an overview of the Department and to analyze its relationship to the rest of the post adjudicatory structure.

Such an analysis could be accomplished by viewing the operations of the Department in terms of a single vague concept called "incarceration", without going into such matters as operational philosophy, objectives and methods, but it would be barren and would not deal with the real core issues. This is because incarceration cannot be viewed as an entity, if one is to operate a modern system for dealing with the complex problems involved in applying the principles set forth in this Report and in dealing with human beings. Therefore, in order to analyze the role of the Department in the post adjudicatory system, it is necessary to discuss its operational philosophy, objectives and methods.

For the purpose of setting these matters in the proper context, it is important to stress the fact that at the present time we do not have any organized collection of information—nor do we believe that a collection of information exists anywhere*—to form a gauge or a set of gauges by which we can judge the effectiveness of any program operated by the Department, or by any other State or local agency that administers post adjudicatory treatment. In other words we presently have no reliable basis for stating whether anything any correctional agency in the country is doing at the present time is helping to prevent recidivism. In fact, some of the information that we do have shows that application of some of the most "advanced" treatment techniques on an across-the-board basis (*i.e.*, to undifferentiated groups of offenders) may actually

*We have collected and analyzed in an appendix to this report what we consider to be the body of extant "knowledge" and by "knowledge" we mean demonstrable effectiveness.

increase the likelihood of recidivism for some offenders (for further details on this see the separate appendix to this Report entitled "Treatment Evaluation Survey"). We stress this point here only because this is the first section of our Report that discusses particular programs; but what we state here applies throughout our Report.

We could judge these agencies against the standard of whether they are keeping up with the latest fashions, such as "work release," "half-way houses," "group therapy," advanced education programs, the "therapeutic community," etc. But there is a substantial question as to what, if any, effect any of these programs has upon the likelihood that the offenders placed in them will commit additional crimes. From the darkness of our present knowledge, all we can say about such programs is that they may be beneficial for certain individuals and that research should be conducted to find out for whom and under what circumstances they are useful. Hence, we cannot say, for example, that the Department of Correction should have half-way house programs and leave the recommendation at that, or that we should have more psychiatric treatment in our institutions and leave our recommendation at that. The several experiments that have been performed with both of these treatment methods have shown that extreme caution must be used in selecting persons for them, in designing the program, and in determining length and place of treatment.

There are, of course, certain gross universal concepts we all accept in our modern civilization that can be used to judge these agencies, such as: (1) humane treatment of every inmate, irrespective of his crime, record or behavior; (2) the maintenance of a degree of security sufficient to discharge the custodial functions (including the duty to protect inmates from each other); (3) utilization of inmate time for constructive purposes; and (4) efficient, rational operations.

Even these gross, universal concepts are subject to many judgmental factors that make evaluation difficult. The first, *i.e.,* humane treatment, is a relative concept. At one end of the spectrum we all recognize—at least today—that such measures as beating or starving prisoners or subjecting them to insanitary or unhealthy conditions is not humane treatment,

although it once was customary throughout western civilization. Today, in New York State, any such thing would be a gross violation of operating standards and philosophy, and any such occurrence would result in immediate discipline of the responsible official. We note with interest, in this context, that our State Correction Law still contains an instruction to keepers of county jails which seems to be a hangover from the ancient "Auburn Silent System," long since abandoned as inhumane: "Convicts under sentence shall not converse with any other person except in the presence of a keeper." (§500-c, as last amended by L. 1961, ch. 407). Coming down to modern day practice, however, one could, at this end of the spectrum, question whether the custom of locking an inmate in a cell from 5:00 p.m. to 7:00 a.m. (14 hours in a standard program) is humane treatment. Such treatment seems quite humane, however, when compared to the twenty-four hour lock-up in many of our county jails. The answer, we think, to the modern-day question of what is humane treatment lies in using methods which are no more severe than are justified by the individual case. In other words, it may be necessary to lock some people in cells for twenty-four hours a day, or from 5:00 p.m. to 7:00 a.m., and it may be unnecessary to lock other people in cells at all. Therefore, putting aside the issue of outright cruelty, which is not a problem in our present system, the answer to what is and is not humane lies in an analysis of rational and efficient administration (the fourth of the above concepts).

Questions raised by the second concept (*i.e.*, degree of security sufficient to discharge the custodial function) also can be answered by principles of rational and efficient administration. The degree of security needed for confinement of an inmate depends upon the inmate. Certain people must be confined in maximum security institutions and certain people would not walk outside the door of a half-way house if the regulations forbade it. Furthermore, there is the complication posed by the duty to protect inmates from each other. Much of the internal security in institutions is designed for this purpose.

The third concept (utilization of inmate time for constructive purposes) includes the bulk of programs that pass

for rehabilitation today. This includes education, vocational training, prison industries, institution maintenance, laundry work, kitchen work, etc. In looking at current rehabilitation programs one can perhaps make two classifications: treatment designed for the purpose of effecting behavior changes; and treatment designed to have the inmate use his time in pursuits that society deems worthwhile. The two are not, of course, mutually exclusive, but the fact that a person is using his time in a worthwhile pursuit does not necessarily mean that he is engaged in a pursuit that is likely to help in affecting his future behavior pattern.

In considering maintenance jobs and prison industries for example, the question arises as to whether this type of activity is designed to: (a) keep inmates occupied; or (b) reduce institutional costs; or (c) foster good work habits; or (d) teach useful specific skills; or (e) accomplish all of these purposes. If it is designed to accomplish all of these purposes, the first issue would be whether skill development has any relationship to prevention of recidivism. The second issue would be to identify the kinds of skill development that reduce recidivism, and the characteristics of the offenders who are likely to benefit from such treatment. And the third issue would be whether the system is actually furnishing such skill development for such persons. The same would apply to work habits. Where we do not have the answers to these questions we cannot say that the particular activity—*e.g.,* a license plate shop, a textile mill, a shoe factory or a laundry—has any effect in rehabilitating an inmate. This leaves the other two purposes (keeping inmates occupied and reducing prison costs), which are the only two criteria that can be evaluated on the basis of our present collection of information.

The same is true of education and vocational training, except here we do not have the element of reducing institutional costs. There is no reliable evidence anywhere to show that education or vocational training applied on a general basis has any effect in reducing recidivism. Available research does reveal that with certain types of offenders certain kinds of education and vocational training programs do seem to be helpful in reducing recidivism. This research could not, however, justify a conclusion that any of our present institutional

programs are good or bad from the standpoint of reducing recidivism. Before we could justify a recommendation concerning education or vocational training as a means of preventing recidivism, we would have to know the proverbial who, what, when and where.

The same reasoning applies to our efforts in finding jobs for offenders. Almost all offenders have jobs when they leave the institution, or obtain jobs shortly thereafter. Moreover, although no study has been made, our impression—based upon experience—is that many offenders have jobs at the time they commit their crimes. We suspect that problems which seem to underly the sporadic employment patterns of many offenders are related in some way to criminal behavior, but the question of whether one solves those problems by finding employment for offenders is problematical. In fact, by forcing some offenders to accept certain types of menial employment just to comply with an ideal, we may actually be putting them in a situation that will aggravate their underlying problems and accelerate their return to crime.

We are not implying that education, vocational training, industries, maintenance jobs and the like, *per se,* are harmful or should be eliminated. It is entirely possible that these types of training may be helpful. However, we merely wish to make the point clear that unless we utilize these programs in accordance with a rational design for prevention of recidivism—which must include evaluative research—we cannot call them rehabilitation, in the context of treating criminal behavior, and we may think of them only as methods of utilizing inmate time for constructive purposes.

There is probably nothing wrong with the State spending a lot of money to hire additional teachers for X institution. We are sure that *some* inmates will gain useful training from such an investment; and we instinctively believe that *some of them* will not return to crime because this type of training is just what they needed to help them adjust to a law-abiding life. But the issue is whether we ought to use a shotgun approach to the problem. Perhaps the money invested in educating a particular inmate for the high school equivalency test would be better invested in intensive therapy. To say that we have intensive therapy too, and to apply this type of treatment

on a shotgun basis might be considered a solution. But the logical extension of such an approach is that we should do everything for everyone in the hope that something will help. Clearly, if we are to have a system which purports to rehabilitate persons, we must have differential diagnosis, matching of treatment methods to characteristics suspected of being related to criminal conduct, and evaluative research to guide this process. Until such time we will continue striving to conform to latest fashions as adumbrated by the most articulate advocates and the various professional associations.

The fourth concept, efficient and rational operations, is the only one that seems useful in evaluating the various agencies. Given our acceptance of humane principles, our acceptance of the principle that the degree of security needed depends upon the inmate, and our lack of an available set of gauges to determine whether any program as presently operated is helping to prevent recidivism with respect to the particular offenders in it or with respect to offenders in general, the only measuring device we have is our judgment as to whether the operations are efficiently operated under a rational plan.

We shall proceed to apply this gauge to the organization and operations of the State Department of Correction.

Relationship of the Department to the Rest of the Post Adjudicatory Treatment System

At the outset of any analysis of the role of the State Department of Correction in the post adjudicatory treatment system, one is confronted by the fact that of the approximately 21,000 youths and adults incarcerated under sentence of imprisonment in this State (as of Dec. 31, 1967) only 15,000 are incarcerated in institutions under the jurisdiction of the State Department of Correction. Therefore, we cannot say that the Department is *the* agency for furnishing incarceration in cases where persons are sentenced to imprisonment. As previously noted the question of whether incarceration will be in a Department of Correction institution or in a local jail or penitentiary depends upon the length of the sentence imposed. Persons sentenced to more than one year or to a reformatory

sentence are committed to the Department. Persons sentenced to one year or less, or in the City of New York to an alternative reformatory sentence, are committed to local institutions.

Of the approximately 6,200 sentenced prisoners incarcerated in locally operated institutions, approximately 5,000 are incarcerated at Rikers Island in a complex of institutions (penitentiary, workhouse, reformatory, etc.) operated by the New York City Department of Correction. A total of approximately 500 are incarcerated in five county penitentiaries (Albany, Erie, Monroe, Onondaga, Westchester) and approximately 700 are spread throughout fifty-two county jails. A goodly, but unknown, number of these 6,200 are incarcerated for vehicle and traffic law infractions, public intoxication, violation of family court orders and other non-criminal offenses. If we were to delete the civil prisoners and persons incarcerated for petty, non-criminal violations and traffic infractions, we would probably find that there are approximately 5,000 persons serving criminal sentences in locally operated institutions (approximately 4,000 in the City of New York and approximately 1,000 outside the City of New York).

Hence, only about seventy-five percent of the persons incarcerated under sentence of imprisonment at any one time are incarcerated in institutions operated by the Department. Additionally, it must be noted, that in the context of the total sentenced prisoner picture this figure is misleading. Local sentences are shorter than "State" sentences and during the course of a year approximately 7,000 persons are sentenced to county penitentiaries, approximately 16,000 persons are sentenced to county jails, and approximately 25,000 persons are sentenced to institutions operated by the City of New York—a total of approximately 48,000 persons sentenced to local institutions, as against approximately 5,000 persons sentenced to the State Department of Correction. Therefore, roughly speaking, the State Department of Correction supplies incarceration in only ten percent of the cases where persons are sentenced to imprisonment. Of course, if we exclude public intoxication, disorderly conduct and like matters, which are not crimes, the penitentiary figure is reduced to approximately 2,000 and the county jail figure is reduced to approximately 2,500 persons sentenced in the course of a year. No change

would occur in New York City figures for public intoxication, because New York City does not treat public intoxication as a punishable offense, but exclusion of disorderly conduct and other non-criminal matters would reduce the New York City figure to approximately 15,000 persons sentenced in one year. Hence, even in purely criminal matters the institutions operated by the City of New York administer incarceration for three times the number of sentenced prisoners that the State Department of Correction receives and the county jails and penitentiaries administer incarceration for approximately the same number of sentenced prisoners that the State Department of Correction receives.

In sum, the picture for sentenced prisoners on criminal matters looks approximately as follows:

	Avg. No. Under Incarceration		Approx. No. Recd. during Year	
N.Y.S. Dept. of Correction	15,000	(75%)	5,000	(20%)
Co. Jails & Pens	1,000		4,500	
New York City	4,000		15,000	

Clearly then, when viewed in terms of its relationship to the rest of the post adjudicatory treatment system, the State Department of Correction looks like some sort of a fragment. It is separated from other post adjudicatory functions by reason of the probation, incarceration and parole trichotomy and—although its function is to provide institutional services—it does not provide institutional services for approximately 80% of the persons sentenced for crimes each year. Viewing this, one is given to wonder how the State can even attempt to make any meaningful inroad on the problem of recidivism.

In addition, although we have no statistics available to show how many of the persons sentenced to incarceration in local institutions are first offenders, we can, from our general experience, make two fairly firm statements: first, that very few of the persons incarcerated under sentence throughout New York State today are first offenders; and second, that many of the persons sentenced to local institutions have either been incarcerated in, or are destined to be incarcerated in, institutions

administered by the State.* Thus, even putting aside for the moment the fact that many of these "local prisoners" have previously been on probation or have been in training schools, it is obvious that we cannot continue to administer treatment along such fragmented lines. We cannot continue to say that treatment of an offender is a county problem at one time and a State problem at another time, or that he is the problem of county A today, county B tomorrow, the State the next time, and county A, B or C the time after. He is one individual with a set of continuing evolving problems. To bounce him back and forth between separate agencies until he finally gets the "long-ride" (*i.e.*, twenty-five years for a grievous felony) is simply irrational.

Furthermore, considering the fact that so many of these "local institution" sentences are for extremely short terms, most being under 30 days, it is administratively impossible to even initiate meaningful classification and treatment programs in these local institutions. In most cases, therefore, the "tail wags the dog" and persons sentenced to ninety days, six months, nine months, and one year just sit out their terms alongside the constant revolving stream of 5 and 10 day sentence prisoners. Additionally, there is the almost incredible fact that at the time of the last full compilation of figures by the State Commission of Correction (December 31, 1966), there were twenty-nine county jails in this State with six or less sentenced prisoners, and eleven of these had only one or two sentenced prisoners in custody.† Added to this there are the segregation rules—which are only right and proper—requiring separation of male from female prisoners, and within each gender, separation of civil prisoners from criminal prisoners, of juveniles from

*For example, just looking at the figures available for the male prisons operated by the State Department of Correction: during the year 1965, out of a total of 2,336 persons received, 1,947 had previously been convicted of crimes committed after reaching the age of 16 (therefore not including juvenile records) and 704 of these had previously been sentenced to local correctional institutions.

Also, although no figures are available for local institutions, statistics reported by the five upstate penitentiaries show that approximately 60% of persons received under sentence in each institution have previously been incarcerated therein.

†The administrator of one county jail recently complained that since the term of imprisonment for public intoxication had been reduced from six months to 15 days, he had no one to milk the cows at the jail farm.

adults, and of the convicted from those awaiting trial. This results in downright cruelty: because in many institutions such segregation means solitary confinement, since there are not enough persons in each category, and because there are not enough employees to administer separate programs for all of these categories of persons. In any event, even if there were enough employees to administer programs for such persons, there are no classrooms or meeting rooms in many local institutions and several of them do not even have yards or other facilities for exercise or recreation. Additionally, because of the fact that the county jails have the duty of housing persons in detention charged with all sorts of crimes, including murder, rape, arson, etc., they are designed as high security institutions, and this means that the sentenced inmates—mostly misdemeanants—are kept in what amounts to maximum security facilities.

It might be noted at this point that the State Division of Parole now has jurisdiction to release persons from this sprawling network of individually operated institutions (*i.e.*, where the sentence is more than 90 days and the inmate has served 60 days).* This indicates some recognition of the fact that the State has a responsibility for administering treatment to "local prisoners." However, if we limit State treatment to field supervision, we are still left with a fragmented system; and this would be true even if the State operated the probation system as well as the parole system.

The clear need here, as in every other aspect of the post adjudicatory treatment system, is for a unified statewide system. Persons sentenced to custody on criminal matters would then be treated in accordance with a general concept of custody, and persons incarcerated in institutions would be incarcerated in institutions that fit their needs.

A simple example of how this would work might be helpful to set the idea in focus. Suppose, for example, the State were to establish regional centers. Each of these centers would be equipped to do diagnostic work and would be tied in with a unified informational service. The centers would have a security unit for detention of persons convicted of crimes and remanded to incarceration pending preparation of the pre-

*See Penal Law, §70.40 subds. 2, 2-a; Correction Law, §§825-835. Effective Sept. 1, 1967. (This program was designed by this Committee and the legislation was drafted by the staff of the Committee.)

sentence report and imposition of sentence. (Those not remanded would, of course, report to a center for diagnosis in the same way they now report to a local probation office for that purpose.) The centers would also have minimum security units for incarceration of persons sentenced to very short terms, or persons under a part time incarceration program, or those who are incarcerated for one or two days or for a week pursuant to program needs under a general concept of custody.

Where a person is sentenced to custody and the court imposes a minimum term of incarceration of six months for example, the offender would go through a center and might then be sent to what is now known as Auburn State Prison to take advantage of the intensive educational program offered there, rather than idling his time away in the local county jail; or, in the case of a youth, he might be sent to one of the conservation camps presently operated by the Department of Correction. Conversely, a person with a ten year term of custody, who has already served his minimum period of imprisonment, or who has no minimum period of imprisonment, might be incarcerated under a partial community release program at the center.

In the many cases where short terms of thirty and sixty days are imposed, files showing the complete case history would be immediately available and the short term could finally come to be a meaningful term; because, rather than having no knowledge of the needs of the case, we would have considerable background information—in the case of a recidivist—and we might be able to continue a previous course of treatment or administer some new type of treatment.

We would also be able to lodge persons presently known as "parole violators" and "probation violators" at a center—rather than in a county jail or penitentiary administered by a different agency—and continue the treatment of these persons pending decision as to whether they should return to a full time field supervision program.

One of the primary advantages of these centers would be that they would give us the badly needed tool for treating an offender as a single person, rather than viewing him in one perspective when he happens to be convicted of a misdemeanor, another perspective when he happens to be convicted of a felony, a third if he happens to be on probation, and a fourth

if he happens to be on parole. A person who is released on January 1, from a State institution and who is sentenced on June 1 to a year in custody for a misdemeanor would return to the system that had been dealing with him, rather than go into a local independently operated institution that has no prior information about him.

The City of New York offers an excellent example of the utility of this approach. Turning first to the adolescent division of the Penitentiary (presently known as a reformatory), we find approximately 1,000 males between the ages of 16 and 21 serving definite sentences of one year or less and serving alternative local reformatory sentences of three years (excluding discussion at this point of the narcotic addicts lodged there under contract with NACC). Some of these youths would no doubt be better off in a conservation camp or in a program of partial institutional custody, or in an urban home program (as presently administered by the State Division for Youth), or in a data processing training program, or an optical lab training program, or a dental lab technician program operated by the State Department of Correction. Moreover, some of the youths incarcerated in the various State institutions might be better off in any one of the numerous programs at Rikers Island. Furthermore, individualized classification and differential diagnosis might reveal that some of the New York City youths incarcerated at relatively remote State facilities could better be helped if incarcerated nearer their homes; and, perhaps some of the youths incarcerated at Rikers Island might better be helped if incarcerated at more remote facilities away from certain sources of tension that are associated with their home environment. After all, the complex of institutions selected for incarceration of a youth under the present system depends solely upon a decision made by a judge at the point of sentence. Under the present system, when a judge pronounces an alternative local reformatory sentence, or a definite sentence, the universe closes, and the incarceration (for New York City youth) must be at Rikers Island, irrespective of individual needs or any consideration of matching individuals to the total panorama of programs in the system, and irrespective of any subsequent development that might show a need for a different institution. The present system is so locked-in that even if the State Board of Parole releases the youth and then subsequently finds it neces-

sary to reincarcerate him, that reincarceration must be at Rikers Island.

The same general considerations would apply in the case of adults. Rikers Island, itself, could be used as the regional center for New York City. Adults who must be incarcerated for periods of six months or a year might be sent to various institutions operated by the unified department in other parts of the State for programs that fit their needs. Others, presently thought of as "State prisoners", might be incarcerated at Rikers Island in the same manner as described in connection with the other regional centers.

It is important to note in this connection that the ties of the State to Rikers Island are growing closer and closer anyway. At the present time, of the 5,000 male prisoners confined on Rikers Island (including an undetermined number of non-criminal cases) approximately 550 are persons who were sentenced (for crimes) to the care and custody of the State Narcotic Addiction Control Commission and who are confined with the general inmate population under a contract whereby the State reimburses the City for the cost of care and custody. This contract provides that as many as 1,000 such persons may be incarcerated there (approximately 20% of the total inmate population). Another 1,300 prisoners are confined under the old penitentiary indefinite sentence (repealed in 1967) and the State also pays for the care and custody of such persons. Additionally, the State reimburses the City—as well as other localities—for the care and custody of felons who receive definite sentences of one year or less and are confined in local institutions; and Rikers Island presently has a number of these persons in its institutions.

Assuming that many of the felony cases sentenced under former Article 7-A of the Correction Law would be represented by definite sentences under the new Penal Law, and considering the provision for the alternative local reformatory sentence (the latter applies only to persons under 21, while Article 7-A covered persons of all ages), and further considering the potential of the Narcotic Addiction Control Commission contract, and adding in the cost of boarding parole violators (State prisoners) and petitioners (*coram nobis*) brought from State

prison and confined in New York City institutions,* the picture at Rikers Island—if we continue on our present course—might soon look something like the following (at present reimbursement contract and statutory rates):

Type of Sentence	Approx. No. of Inmates	Per Capita Reimbursement Rate	Approx. Total Annual Reimb. Rate
Alt. local reformatory	650	$ 8 per day	$2,000,000
Felony definite	400	$ 5 per day	730,000
NACC	1,000	$11 per day	4,000,000
Parole Viol. & Petits.	150	$ 5 per day	275,000
Total State	2,200		$7,005,000

If we were to exclude the persons held at Rikers Island on family court orders and for non-criminal offenses, we would find that approximately one-half of the prisoners held at Rikers Island under sentence of imprisonment for crimes are State reimbursement cases and that the total cost of the State for this is approximately one-half of the cost of operating Rikers Island, including debt service and fringe benefits for employees.†

Institutions Operated By the State Department of Correction

The State Department of Correction maintains a network of twenty-two institutions. Six are designated as prisons for males, one is designated as a prison for females, four are designated as reformatories for males, four are designated as conservation work camps, two are designated as reformatories for females (but one of these is a combination of two institutions serving both normal and mentally defective females), one is designated as a reception and classification center for males between the ages of 16 and 21, one is designated as an institution for mental defectives and two are designated as hospitals for the mentally ill.

*Parole violators and petitioners are not currently kept on Rikers. The present custom is to house them in detention institutions. However, in a unified system, if Rikers were a regional center, they could be housed there.

†The present operating cost of Rikers Island is approximately $9 million, excluding debt service and fringe benefits for employees. If we include an estimate of the portion of these items allocable to Rikers, the total would be about $15 million. This would include, however, operating costs in caring for family court prisoners and many petty offenders. Exclusive of such prisoners, the total budget for Rikers would probably be about $14 million.

Male Prisons

Attica Prison (Wyoming Co.)
Auburn Prison (Cayuga Co.)
Clinton Prison (Clinton Co.)
Greenhaven Prison (Dutchess Co.)
Sing Sing Prison (Westchester Co.)
Wallkill Prison (Ulster Co.)

Male Reformatories

Elmira Reformatory (Chemung Co.)
N.Y.S. Vocational Institution (Greene Co.)
Great Meadow Correctional Institution (Wash. Co.)
Catskill Reformatory (Ulster Co.)

Male Conservation Camps

Camp Pharsalia (Chenango Co.)
Camp Monterey (Schuyler Co.)
Camp Summit (Schoharie Co.)
Camp Georgetown (Madison Co.)

Female Institutions

State Prison for Women
Westfield State Farm (Reformatory)
(The above two institutions are operated by a single administrative staff at Bedford Hills, Westchester Co.)
Western Reformatory for Women
Albion State Training School (Mental Defectives)
(The above two are operated as a single institution in Orleans Co.)

Male Reception Center (Ages 16-21)

Elmira Reception Center (Chemung Co.)

Institution for Male Mental Defectives

Beacon State Institution
(Dutchess Co., on grounds of Matteawan State Hosp.)

Hospitals for Mentally Ill

Matteawan State Hospital (Dutchess Co.)
Dannemora State Hospital (Clinton Co.)

With the exception of the conservation work camps, each of the above institutions is specifically named by statute and specifically designated as to type. With such specificity one would expect to find detailed statutory statements indicating differences in purpose between prisons, reformatories, conservation camps, and mental defective institutions. However, no such statements are to be found. The statute designating

prisons merely states: "There shall continue to be maintained for the security and reformation of prisoners of this state, six state prisons for men . . . .", followed by a listing. Correction Law, §70. The statute designating reformatories is promisingly captioned: "Names, locations *and purposes* of the state reformatories." (*id.*, §270). However, this statute reads in pertinent part as follows:

> "Each of the following institutions shall be operated as a state reformatory for the security and correction of persons committed thereto: [then a listing]. . . . Each reformatory shall be under the supervision, direction and control of the department of correction. As used in this article, the term 'reformatory' or 'reformatories' means one or more of those named above. . . ."

Certainly there cannot be any difference in modern meaning between: "the security and reformation of prisoners", as used in the prison statute; and "the security and correction of prisoners", as used in the reformatory statute. The statutory rationale becomes even less clear when looking at the statute that authorizes the conservation work camps. This statute, captioned "Youth rehabilitation facility created", provides that this "facility" is a "reformatory" consisting of "conservation work camps" for the "care, treatment, education, rehabilitation, security and correction of males" who were between 16 and 21 at the time of commission of the act for which they were adjudicated or convicted. (Males between the ages of 21 and 25 may be transferred there also, provided the number of such transferees at no time exceeds twenty percent of the population of any camp.)

The progression of purposes from "reformation" to "correction" to "care, treatment, education, rehabilitation . . . and correction" reflects the evolution of our penological development. The difficulty is this evolution was not accompanied by the type of statutory revision that would free the Department from the chains of an anachronistic system of defining institutions. As a result, the prisons seem bound in by a particular image which is a heritage of the past, and we find anachronistic conceptual differences between institutions maintained for confinement of older inmates (prisons are generally used for those over 21) and institutions maintained for confinement of younger inmates (reformatories are gen-

erally used for those under 21). The prisons seem to have evolved from a system designed for "punishment" and the reformatories seem to have evolved from a system designed for rehabilitation.* Although both sets of institutions presently follow the same philosophy, the conceptual image of the prison is such that an institution called a "prison" is bound in by certain expectations we have come to demand. In other words, although our statutes are silent when it comes to defining a prison, the term "prison" must mean—if it means anything—a prison as we presently know it. If someone asks us to define a prison, we define it in terms of Attica, Sing Sing, Clinton, etc. If we decide to build a new institution for males over twenty-one and to call it a prison, we are bound in by the concept of a prison and any variation on the concept is a difficult matter.

The proof of this is that the only institution that approaches departure from the old maximum security concept is Wallkill State Prison, built in response to the specific demand of a special commission to investigate prison administration and construction, and that Commission furnished the plans and saw the project through. Certain statements of that Commission are as applicable to our present situation as they were to our situation thirty-eight years ago. The Commission stated (see Addendum I, Preliminary Report by Commission to Investigate Prison Administration and Construction, December 22, 1930; "Lewisohn Commission"):

> "Had there been no existing prisons, without doubt we would have recommended different types of housing but we realize that progress must be made step-by-step . . . . Therefore, we are acquiescing somewhat reluctantly, in the renovation of our old prisons. . . . [Then follows a statement to the effect that with such remodeling there will be sufficient cell-block provision for the needs of the prison system for years to come, even though the remodeling would reduce the then number of cells.] Our reason for this statement is that experience, both in this State and elsewhere has demonstrated that the cell-block should be used only for certain groups of prisoners, and is not

*"Reformation" as used in the prison statute is the product of the old punishment concept. "Correction" as used in the reformatory statute is the product of more modern thinking.

required for the whole prison population.

"On the other hand, we have practically no provision, outside temporary provision in road camps, for the group of prisoners who our study shows should be housed in the more open type of prison in order to promote their rehabilitation and save cost to the tax payer. We feel, therefore, that the first step towards any progressive development of prison methods in this State is the immediate building of a medium security type of prison, manned by a high-grade personnel to afford specialized training adapted to the needs of individual prisoners."

Approximately eight years after the Commission reported —six years after Wallkill had opened—the State of New York embarked upon construction of another new "prison". This institution, Green Haven Prison, is a "maximum security" institution enclosed by a thirty foot high wall and containing cell blocks that can accommodate approximately twenty-three hundred inmates.

Curiously, however, two reformatories opened in the middle thirties (N.Y.S.V.I. and Woodbourne) were not built as maximum security institutions. The differences in architecture between prisons and reformatories are certainly not based upon the notion that the sixteen to twenty-one year old age group (the bulk of the reformatory population) is less dangerous, less likely to escape, easier to handle or less able to breach security devices. The only explanation for the differences is that "prisons" are conceptualized as places for "punishment" and reformatories are conceptualized as places for rehabilitation. Thus, reformatories were built with a less forboding image, because they were places for rehabilitation, and the architecture embodied that concept. Prisons, so long as they remain conceptualized as "prisons," are and will be bound in by the anachronistic image.

Part of the anachronistic distinction between a prison and a reformatory seems to have been that prisons have industries and reformatories do not (both may have vocational training). Logically, at least, if an industrial program is really a rehabilitative program designed to teach good work habits and vocational skills, then the younger offenders in the sixteen to twenty-one year age group could benefit from such a program as well as adults. In other words, some younger offenders

might be better off in vocational training programs and some in industrial programs, just as some adults are assigned to one and some adults are assigned to the other.* The reason for the distinction regarding the use of industrial programs, and the reason we view it as an anachronism, is that prisons historically –or at least during a fairly recent period of our history ending approximately 80 years ago—were used as sources for a cheap supply of forced labor for private purposes. Today's industrial program bears no resemblance to its progenitor, but nevertheless we seem to be bound by concepts based on historical practices that limit the use of industrial programs along artificial lines. We are also bound by strict "state use" laws which had their genesis in the zealous and commendable efforts to abolish the "contract system" for both the protection of the prisoner and the protection of the free labor market; and which, having served their purpose, could well be eased so that industries could be shaped along practical treatment lines.

Thus, if one were to look for distinguishing factors between our prisons as a group and our reformatories as a group in the year 1968, one would find that prisons are distinguished by the presence of perimeter walls and the use of industrial programs. One would also find, to some extent, that there is more staff available in the reformatories for educational, vocational and guidance purposes. However, one would notice that the Department of Correction has been closing this latter gap and has repeatedly requested funds for additional positions to close the gap completely.

This brings us to the concept of security, symbolized by the thirty foot high prison wall dotted with expensive to maintain guard towers. In the statutes authorizing prisons, reformatories and conservation camps (see discussion, *supra,* pp. 211-213), there is only one term that is common in all three authorizations: "security." The statutes do not say maximum security, medium security or minimum security: they merely say "security." Clearly, the term security must be intended as a relative term and has no single definition. This is obvious from the

*We note, parenthetically, that Great Meadow Correctional Institution—a reformatory—has industries and that Wallkill Prison does not. This is strong proof of the point made in the text. Great Meadow was a prison until 1954 and Wallkill represented an attempt to introduce a variation on the prison theme.

difference between the security we use in a prison and the security we use in a conservation camp. Nevertheless, with the exception of the conservation camps and Wallkill, all of the Department's institutions are high security institutions. In this connection it is submitted that our reformatories are by and large, just as secure as our prisons; and that it is difficult to see any clear distinction between the security provided by a fence at some reformatories (or by interior yards) and the security provided by a wall, that would justify calling a place surrounded by a wall a maximum security prison and a place surrounded by a fence a medium security reformatory.

Some inmates, in all age groups, need to be in institutions surrounded by walls with guard towers. Some inmates, in all age groups, can be kept in institutions surrounded by wire mesh fences. Some inmates, in all age groups, can be kept in institutions without bars, security windows, internal check points, a fence or a wall. In fact, we submit, some inmates, in all age groups, can even be kept in community residential facilities (*e.g.*, half-way houses).

The point of our discussion is that the Department has a general image of high security which is fostered by the concepts embodied in terms such as "prison" and "reformatory." The time has come to abandon the ancient concepts of prison and reformatory, and to start working with a new concept: the correctional institution. Only then will we be able to clearly break out of the conceptual bondage that results in what amounts to maximum security for almost all inmates of all ages.

To amplify this point, let us consider the various "outside" or minimum security programs of the Department of Correction. At the present time these are limited to three categories: outside work groups and farming—both connected with security institutions—and conservation work camps. There is and has been agitation for the passage of legislation that would mandate work release programs: but no such legislation has passed, as yet; the Department has reservations regarding the idea; and it is doubtful whether work release could really amount to a meaningful program, in any event, in view of the locations of our institutions and the image that institutions designed as high security facilities is expected to maintain.

This latter factor, the security image, is the heart of the difficulty for all minimum security programs. At the present

time the Department of Correction is unable to find a sufficient number of inmates who are safe enough risks to fill the manpower requirements for its outside work groups and the vacancies in its conservation work camps. Paradoxically, more than one-third of the inmates in the State correctional institutions will be released during the year by *discretionary action* of the Board of Parole, and another ten percent will be released to parole supervision by virtue of "good time" credits earned against their sentences. Thus, although approximately forty percent of the inmates under incarceration in the Department's institutions will be released on parole supervision within a single year, the Department cannot fill its minimum security programs and facilities. One of the reasons for the paradox is that under our present conceptual dichotomy between correction and parole, the Department of Correction is not basically a risk taking agency and the Division of Parole is a risk taking agency. The entire image of the Department is one of security and both good and bad risks are held by and large in high security. The other reason for this paradox is that the public expects high security from institutions that are designed for high security. When a person escapes from an outside work gang of a prison, the escape is a major news event, even if his worst crime, or his pattern of criminality, consisted of a series of embezzlements. If such a person were to abscond from probation or parole supervision, the incident would hardly receive public notice.

We must constantly remember that almost all inmates return to society at one time or another; and that the basic aims of incarceration are twofold: (a) to hold securely those deemed dangerous; and (b) to consistently work toward the goal of restoring the inmate to the community as a person who can live a law-abiding life. It simply makes no sense to continue a system whereby one branch of the State government which has responsibility for one type of custodial instrumentality is not expected to take any but the most minimal risk; and another branch, administering another type of custodial instrumentality, is expected to take a complete risk. We are dealing with a single individual offender who could not, from a rational standpoint, seem dangerous on January 1 and safe on February 1.

If we were to abandon the legal distinction between "prison" and "reformatory" and were to call these massive insti-

tutions "security institutions," we would be able to use them for offenders in accordance with program need. If we added to the concept of security institutions, the concept of "non-security institutions", and established them in the form of regional centers (as outlined above), community-based residential facilities, conservation work camps, pre-parole orientation camps, etc., we would be able to break the bonds imposed by the fear of escapes. Certain institutions would be expected to take risks, just as our field services are expected to take risks. The greatest and most obvious advantage in risk taking on the part of institutions is that it would cut down the degree of risk our field services have to assume. We would end the all or nothing at all system. We also could establish a general concept of custody. Additionally, we would eventually save money, because minimum security is less expensive to build and to operate and because the many prisoners who would be released to community work programs would be contributing to their own support, the support of their families and to tax revenues. We might even find that such programs accelerate rehabilitation. Although there is no body of research available to support such a conclusion, our instinctive feeling is that, if the aim of correction in dealing with an offender is to return the offender to relatively unstructured community life as a law-abiding citizen, a less structured institutional environment may be a valuable tool in accomplishing this aim.

Reception and Classification

Male adults 21 and over committed to the custody of the Department of Correction are sent to one of three receiving prisons: Sing Sing, Clinton or Attica (depending upon the area from which they are sentenced). These institutions serve a dual role as both receiving and confinement prisons. The reception process at Sing Sing, by far the busiest of the three, is representative of the other two male receiving prisons, and an examination of the procedure used here will serve for our discussion.

Upon arriving at Sing Sing, inmates are assigned to a reception company for two weeks of processing. This includes medical examination, educational and intelligence testing, an interview with a service unit counselor and orientations about the Department, parole, the institution, its industry, its school program, its training courses and the operations of its service

unit. After processing, inmates are assigned to the "idle company" (generally for one week) awaiting interview by the institutional assignment committee. This committee, composed of the deputy warden, the supervisor of education, the director of industry, the director of guidance and the head of the institutional parole unit, formulates a program of activities for the inmate. The committee has before it each inmate's file containing the results of the aforementioned tests given during the two week initial processing, and the pre-sentence report (if available). It then makes an assignment to a Sing Sing program, based upon the inmate's background, his preferences and vacancies existing in the various programs.

Inmates who are in need of, or who desire, education are encouraged to participate in the institution's educational program. Illiterate inmates are required to participate in the program.

Except for extraordinary cases, all inmates received at Sing Sing appear before this institutional assignment committee and are processed and assigned to a program at Sing Sing, as if they would remain at that institution. Such assumption is necessary because decisions on transfer to other institutions are made at the central office in Albany, and there is no set policy as to the time when transfer will be made. Moreover, there is no way for the institutional personnel to know whether an inmate actually will be transferred.

There are two sets of criteria for transfer to other institutions: one may be called the general set, and the other may be called the special program set. These criteria and the manner in which they are applied are as follows:

General Set of Criteria
(Sing Sing Prison)

CRITERION	DISPOSITION*
Drug user	Transfer to institution further away from N.Y.C.
Returned parole violator	Transfer to institution from which last released
Long term of incarceration (*e.g.*, over 10 years)	Transfer to more rural location and more secure institution

*It should be emphasized that these dispositions are merely general guidelines, and are not followed in a mechanical manner.

GENERAL SET OF CRITERIA *(Continued)*

Two or more persons who are members of a single gang, or who were co-conspirators, or who are extremely hostile to one another	Transfer in such manner as to result in confinement in different institutions
Racial imbalance	Transfer in such manner as to avoid concentration of persons of any particular race, creed, origin, etc., in any institution
General population	Transfer in such manner as to avoid gross imbalance between ratios of number of inmates to institutional capacities.
Court cases	Inmates with cases or writs pending are to some extent kept in institutions closest to the courts in which proceedings are pending
Inmate preferences	Where compatible with general and special criteria, inmate preferences are fulfilled

Special Set of Criteria

(Departmentwide)

CRITERION	DISPOSITION
Medical problems	Special general hospital at Sing Sing; tuberculosis program at Clinton; cancer patients transferred to Attica so as to be near Roswell Park Memorial Institute
Physical disfigurements	Clinton Prison plastic surgery program
Physical handicaps	Attica Prison, special vocational training program for the physically handicapped
Advanced age	Attica Prison, special geriatric program
Multiple offender, over twenty-one, showing signs of readiness to reevaluate life pattern	Clinton Prison Diagnostic and Treatment Center
Mental defect	Beacon State Institution, devoted exclusively to care of mental defectives
Mentally ill	Dannemora State Hospital
Capacity to benefit from intensive educational program	Auburn Prison, special school
Low security risk, relatively young, more hopeful, short term	Wallkill Prison; or Correctional Camps for Youth

It might be noted that the Department is presently in the process of planning for conversion of Sing Sing Prison into an adult male reception center, similar to the Elmira Reception Center presently in operation for younger persons in the 16 to 21 year age group (described, *infra*). This would involve the closing of Sing Sing as a regular confinement institution. (Its continued utility as a regular confinement institution would be questionable in any event if proposed plans to build an expressway through a substantial portion of the present grounds are carried out.) Moreover, the Department is presently in the process of compiling criteria for all of its institutional programs (see *e.g.*, pp. 228-229), and when this is completed the special set of criteria will be greatly expanded.

All males between the ages of sixteen and twenty-one committed to the Department (other than mental defectives and the mentally ill) are received at the Elmira Reception Center. There these younger offenders are carefully studied six to eight weeks for classification and program planning purposes.*

Processing at the Center can be thought of as consisting of three stages: (1) orientation, testing and interviewing; (2) study and observation of inmate reactions, facilitated by a schedule of activities resembling the various programs in the constellation of confinement institutions; and (3) staff decision making and awaiting of transfer.

Staff decision making is accomplished by a board consisting of a psychologist, a recreation analyst, an academic analyst, a chaplain, a parole officer, a guidance analyst and a correction officer. There are four such boards at the Center. Each board acts as a team and the members are the persons who have actually administered most of the tests to, and have actually conducted individual interviews with, the inmate. Hence, each of

*The Department's statement defining the functions of the Reception Center is as follows: 1) careful study of the offenders upon admission by a competent professional staff, 2) effect differentiation based on scientific methods permitting greater specialization of institutional programs, 3) recommend treatment based upon the careful study of the individual inmate at the time of commitment, 4) provide a special orientation program for all inmates designed to facilitate their adjustment to institutional life and to develop attitudes which will enable them to make the most of opportunities offered in the institution in preparing for eventual adjustment in a free community, 5) assist in the improvement of institutional programs based on the close study of inmate characteristics and needs, 6) develop research concerning the causes and treatment of delinquency.

the members brings to the meeting personal knowledge of the inmate within the framework of a particular profession, and the decision of the board is based upon a composite of these contributions.

The board's decision consists of recommendations to the central office in Albany as to the institution to which the inmate should be transferred, the program the inmate should follow therein, and the approximate length of such treatment. The central office will then notify the Center as to its decision on the matter of transfer and, upon receipt of such decision, the inmate is transferred.

Transfer from the Reception Center may be to any institution within the Department, except that no person can be transferred to a "prison" unless he has been sentenced as a "felon". Where appropriate, transfers from the Center are made in accordance with the same general and special criteria as outlined for Sing Sing. However, only about six percent of the total number received* are sent to institutions designated as "prisons". The bulk of transfers are made to reformatories in accordance with the following general criteria:

GENERAL CRITERION	INSTITUTION	APPROX. % OF TOTAL
Borderline or low normal intelligence	Catskill Reformatory	32%
18-20 years, capable of benefiting from intensive educational program	Elmira Reformatory	28%
16-19 years, immature but not in need of rigid control	N.Y.S. Vocational Inst.	20%
18-20 years, average intelligence, serious discipline problem and poor prognosis	Great Meadow Correct. Inst.	10%
Low security risk, relatively young, more hopeful, short term and not in need of an education program	Conservation Work Camps	3%

Female "felons" sentenced to an indeterminate term of imprisonment are received at the State Prison for Women; and females sentenced to reformatory terms are received at

*In the year April 1, 1966 to March 31, 1967, approximately 1,900 offenders were classified at the Center. Of this number approximately 27% were "felons", approximately 27% were "misdemeanants" and the balance were youthful offenders, wayward minors and juvenile delinquents.

either Westfield State Farm or Western Reformatory, depending upon the location of the sentencing court. Since there is only one prison for women and two reformatories—at opposite ends of the state—transfers between institutions are made only in cases where there are special circumstances. All mental defective females are received at Albion State Training School (administered as a single institution with Western Reformatory).

Persons transferred from one institution to another (including transfers from the Reception Center), and females received at the various institutions, go through an institutional classification process before assignment to program. This process is as described above for reception at Sing Sing, except some of the tests and parts of the orientation—if already given at another institution—are not repeated. There are also, of course, other variations such as the composition of the classification committee, which will be based upon the size of the institution, the activities available, and institutional traditions. (*E.g.*, in a smaller institution the superintendent might sit as a member of the committee, in addition to the deputy. Where there is no industry there naturally is no director of industry. Some institutions have a chaplain on the committee and some do not.) The institutional committee has total authority—within the framework of general Departmental directives—to decide the particular program an inmate is to follow, and to change programs. This is so even in cases where persons are transferred from the Reception Center (as a rule, however, the recommendations of the Center are followed).

Thus, apart from standards as to the types of activities that will be available in institutions, and apart from the Department's rule that all illiterate inmates must enroll in an educational program, the central office does not participate in decisions as to specific programs for specific individuals. The central office may transfer individuals from institution to institution, where they have differing opportunities available, but the decision as to whether and how those opportunities are utilized by individual offenders is primarily made by institutional authorities.

In view of the lack of centralized diagnostic review and program planning, and the lack of centralized control over the

assignment of individual offenders to programs within the institutions, it is difficult to see how the Department can maintain standards for differential diagnosis and application of specific treatment programs to specific offenders. Moreover, the results of periodic institutional reevaluations are not generally reviewed by the central office unless they result in recommendations for transfer to another institution. Hence, the whole process does not constitute a system for formulating and pursuing specific treatment goals within the framework of an overall, centrally controlled, diagnostic-based plan. Further, without centralized control, the prognosis for any type of systematic evaluative research on treatment effectiveness is quite poor.

It is important at this point, however, to stress the danger of oversimplification in considering these matters. The administration of an institution for confinement of persons who by and large have been sent there by society as a last resort—usually after at least one prior conviction or juvenile adjudication and a period of probation—involves an extremely complex matrix of decisions, most of which must be made immediately. Quite apart from the question of which type of program might be best for the offender, the administrator must take into account: the security of the institution; protection of the offender from other inmates; protection of other inmates from the offender; homosexual relationships; racial tensions between confined persons that make for a potential "hot summer" all year round; the peculiarities of inmate social structures; and extortion and other rackets likely to be carried on surreptitiously by inmates. Furthermore, many inmates do not recognize the value of "rehabilitation" and are unwilling to participate in programs thought best for them by experts; and this latter difficulty—often the result of deeply ingrained attitudes—is not readily overcome, even through a series of counseling sessions with a social worker or a psychiatrist. In fact, one of the most serious difficulties is to bring an inmate to the point where he is ready to accept help.

It would simply be unrealistic, for example, to expect the Department to be able to assign an elementary school dropout with a sporadic employment record, dull normal intelligence, ingrained anti-social attitudes, overt hostility, latent homo-

sexuality and numerous other problems to a program specifically designed for rehabilitating him. There is simply no organized collection of data to determine which of his symptoms is most likely to be causally related to his criminal conduct; and even if we had the virtually unlimited resources to probe his psyche and to determine that all of his troubles were caused by an identifiable syndrome, it is doubtful that we could effect a change in his behavior.

Nevertheless, the difficulties do not mean that we should not have the most effective system possible and the most efficient system of collecting data for research. In other words we must start someplace.

The classification process at the Elmira Reception Center, in and of itself, approaches the best that can be done, given the state of knowledge in the various behavioral sciences and the complex problems, outlined above, involved in assigning persons to correctional institution programs. However, this classification process is conceptually isolated from the rest of the system. It stands as an integral unit producing a product, which other institutions may accept or reject, and receiving no feedback to help refine its diagnostic techniques. Clearly, where its recommendations are not followed, its effort is largely futile. Further, where its recommendations are followed and it does not have feedback data to show the outcome, it has no way of applying experience to refine or correct itself. Moreover, even assuming initial recommendations are uniformly followed, there comes a point in time where an inmate's program must be reevaluated. (This is presently done by an institutional program committee which in many cases lacks sufficient staff with the expertise needed to probe to the same depth as the staff of the Reception Center.) These reevaluations are performed in accordance with independent standards and criteria established within each institution and are not systematically reviewed in the central office unless they result in recommendations for transfer to another institution. Also, in this connection, there is a tendency for each institution to view its own programs as a separate complete universe when reevaluating inmate needs. Therefore, inmate needs are not routinely reappraised in the light of the broad array of programs offered by the Department, and the Department does

not bring all of its resources to bear. Hence, central administration yielding uniform quality in treatment decision making, uniform application of diagnostic findings, complete data collection and information feedback, and broad application of Departmental resources is needed.

It is recommended that the State establish three central diagnostic boards—one for adults, one for youth, and one for children—and a system of local diagnostic panels for regional centers (see p. 206-207, *supra*) and institutions. Each of the three central boards would consist of four or five outstanding professionals in the area of treatment for the maturity level involved; and each regional center and institutional panel would basically be composed of persons in charge of the various treatment operations administered at the center or institution. (Institutional panels would not, of course, be a new idea, as most institutions presently use the panel system for certain aspects of decision making.)

If the State had a central diagnostic board system, and diagnostic panels operating at regional centers, the basic reception, diagnostic and classification process could be done at the regional centers (the present Elmira Reception Center being one). These could be reviewed by a central board which would make the final decision. The inmate would then proceed from the regional center to a specific program without initial reclassification in the institution.* Where the individual institution desires to make a program change, its institutional panel or its chief administrator could do so as an interim measure. Such action would be reported to the central board, and the final decision as to program change would be made there. Periodic review would be made by institutional panels with the reports and recommendations going to the central board for decision. There would, of course, be appropriate

*At present, one of the big problems is that Reception Center recommendations frequently do not coincide with program vacancies or available treatment in the institution to which the inmate is sent. A simple computer installation could be developed so that the central diagnostic board has current information; and, where vacancies are not available, the board could make appropriate substitutions. If an airline can furnish reservation vacancies on thousands of planes within moments, there is no reason for the State of New York to continue sending inmates to institutions without knowing whether appropriate programs are available.

data collection, evaluative research, and feedback reports to the various panels.

The regional and institutional panels would also make custody level recommendations to the central diagnostic board, so that decisions as to whether to use field supervision or incarceration or a combination thereof would be made in the same way as described for institutional programs. Thus, when a person is found guilty of a crime and sent to a regional center for a pre-sentence informational report (see pp. 206-207, *supra*), the basic diagnostic process would be carried out by the same staff that has the duty of diagnosing for treatment purposes. If he receives a sentence of custody, the regional center is in a position to make a rapid recommendation as to program to the central board. Where a minimum term of incarceration is involved, or where it appears that incarceration is necessary, additional observation and testing may be required to determine the precise institutional program; but obviously the savings in time and expense through having this process as a continuation of the work already done would be of great benefit to the State and to the offender. Periodic scheduled reviews by the institutional panel for the purpose of determining whether program change is appropriate would also include evaluation in the light of criteria for change in custody level (*e.g.*, field supervision). The data from these reviews along with recommendations would similarly be transmitted to the central diagnostic board. The board would then make the periodic review decisions as to changes in program within the same institution, transfer to another institution for a different or the same program, transfer to field supervision, etc.—all as part of a single unified treatment plan covering the time from the point of sentence to final discharge from field supervision.

It is important to recognize, however, that in cases where persons are incarcerated in institutions for substantial periods of time, it is beneficial for both the inmate and for sound administration to have reviews that include personal interviews by personnel from outside the institution. Hence, for such cases, there would be a system of having representatives of the central board—who have studied the case file—visit institutions, conduct special inmate interviews, and report back to the central board.

Summary of Present Correctional Institution Treatment Resources

As previously noted, the body of our Report does not deal with the details of the various programs operated by the agencies of the post adjudicatory system, and does not attempt to appraise or evaluate any method of treatment used or the adequacy of available resources. (The details of such programs are covered in separate appendices.) It is relevant, however, for perspective on the overview presented herein, to be aware of the vast panorama of treatment resources within the Department of Correction. The following list, while not complete, should suffice for this purpose.

CATEGORY	RESOURCE
Individual counseling	56 guidance counselors, 16 supervisors
Group counseling	140 counseling units conducted by specially trained correction officers, shop foremen, teachers, guidance counselors, etc. (over 3,000 inmates involved)*
Group therapy	50 therapy units conducted by psychologists (500 inmates involved)
Therapeutic community	Clinton Prison Diagnostic and Treatment Center, conducted in conjunction with the Dept. of Forensic Psychiatry, McGill University (over 100 inmates presently, soon to accommodate 250)
Academic education	Three million dollar operating budget (just for salaries and expenses), 143 full time academic teacher positions, approximately 10,000 inmates involved in part and full time courses. Several institutions have full professionally staffed schools, certified by the State Education Dept. to grant diplomas.
Vocational training	35 different types of formal vocational training courses, more than 20 of which are offered in some single institutions (105 vocational teachers). These include dental lab, optical lab, computer programming, computer

*Each year a considerable number of persons are trained to conduct group counseling sessions, and the number of these sessions is growing by leaps and bounds.

CATEGORY	RESOURCE
	key punching, plastic laminating, silk screen sign making, auto repair, radio and T.V. repair, mechanical drawing, etc.
Special education	Approximately 5,000 inmates involved in arts and crafts, music, fine arts, occupational therapy, commercial training, home economics and physical education.
Special training for the handicapped	A program of vocational training specially designed for the physically handicapped, providing as needed medical, surgical and psychiatric services, speech and occupational therapy, prosthetic devices, etc.
Plastic surgery program	Approximately 150 inmates per year receive special plastic surgery at Clinton Prison. Additionally, there is a special plastic surgery program for females at Albion.
Industrial	29 industries in 11 institutions employing approximately 3,500 inmates, offering 292 different types of positions (42 in clerical and accounting) for training; gross sales, State use, over $7 million per annum. Production of office equipment, shoes, clothing, license plates, cleaning utensils, bookshelves, beds, textiles, etc.
Religious programs	As in most institutions throughout the country, the Department has, within its institutions, a full array of religious programs; *i.e.,* services and counseling. Many institutions have beautiful chapels that would be a source of pride for any congregation.
Miscellaneous	Extensive Alcoholics Anonymous program; Dale Carnegie courses; special narcotics program; intramural sports, and intermural sports with outside teams; art shows at county fairs and in State capitol.

General Conclusions

The State should administer incarceration for all persons sentenced for crimes. A network of regional centers should be established for diagnosis, short term incarceration, and pro-

grams involving a combination of incarceration and field services.

Restrictions upon the use of facilities derived from outmoded titles of institutions (*e.g.*, "prison", "reformatory") and juridical labels (*e.g.*, "misdemeanant", "felon") should be eliminated and complete fluidity should be built into the system. In this way the State would be able to bring all of its resources to bear in a system that could match its broad scope of programs to the needs of all individual offenders.

All initial diagnoses should be made at regional centers and should be reviewed by a central board. Periodic reevaluations should be made at institutions and similarly reviewed. (Where an institution is too small to have a review panel, the review would be conducted at the closest regional center.) Decisions as to what is now known as "parole" would be part of this process. Also, the assignment and classification process should be integrated with the pre-sentence information gathering process and with the determination—where left to the executive branch of government—as to whether incarceration or field supervision or a combination thereof should be used initially.

A complete information system should be established, and this must be in conjunction with a built-in evaluative research program. This system would, among other things, furnish feedback information on diagnostic classification so that this process would become self-correcting. It would also furnish such necessary items as program vacancy information and recidivism data.

IV

The State Division of Parole

The State Division of Parole administers a function that can be characterized as post-incarceration field supervision. Prior to September 1, 1967, this function was limited to parole administration for persons confined in institutions under the jurisdiction of the State Department of Correction. As the result of a plan and legislation drafted by our Committee, in consultation with the Temporary State Commission on Revision of

the Penal Law and Criminal Code, and sponsored by Governor Nelson A. Rockefeller as part of his 1967 program, the jurisdiction of the State Division of Parole was expanded, so as to provide parole administration for all locally operated sentence institutions (*i.e.*, jails and penitentiaries) as well as the State institutions. Therefore, at the present time, the State Division of Parole provides parole services for all persons in the State who are sentenced to terms of imprisonment in excess of ninety days, or to reformatory periods of imprisonment.

The Division of Parole is an agency within the Executive Department of State government, which is used as a catchall department for agencies that cannot be given departmental status because of a constitutional limitation on the permissible number of departments (N. Y. Const. Art. V, §2). Its operations are administered by a twelve member Board ("Board of Parole") appointed by the Governor with the advice and consent of the Senate. This Board also functions as a decision making body, exercising discretion to move inmates from incarceration to field supervision and back again. Additionally, the Board sets policy for the Division, including formulation of general standards of conduct for persons under parole supervision. The Chairman of the Board, elected by the members, directs the work of the Board and is the chief administrative officer of the Division of Parole.

In thinking about the Division of Parole, it is important, for the purpose of gaining perspective on its present role, to have some knowledge about its evolution. The following list sets forth the pertinent information:

Phase I

(Prior to 1930)

REFORMATORIES	PAROLING AUTHORITY
Elmira (from 1877)	Board of Managers
Westfield	Board of Managers
PRISONS	**PAROLING AUTHORITY**
1889-1901	"Board of Commissioners of Paroled Prisoners", composed of Supt. of State Prisons and institutional officials
1901-1907	Three members of the "State Commission of Prisons" (presently known as the "State Commission of Correction")

1907-1928	Supt. of State Prisons (Commissioner of Correction after 1926) and two members appointed by the Governor
1928-1930	Warden of the prison, Commissioner of Correction and the Second Assistant Commissioner of Correction

INSTITUTION FOR MENTAL DEFECTIVES	PAROLING AUTHORITY
Napanoch	Superintendent of Institution

Phase II

(1930 – 1945)

REFORMATORIES	PAROLING AUTHORITY
Elmira	Three member State Board of Parole
N.Y.S.V.I. (Coxsackie)	Institutional authorities, pursuant to rules and regulations adopted by the Commissioner of Correction
Westfield	Board of Visitors

PRISONS	PAROLING AUTHORITY
All prisons	Three member State Board of Parole

INSTITUTIONS FOR MENTAL DEFECTIVES	PAROLING AUTHORITY
Napanoch	Superintendent of Institution
Woodbourne	Superintendent of Institution
Albion	Superintendent of Institution

Phase III

(1945 – 1967)

Growth of Board	1930-1947	3 members
	1947-1960	5 members
	1960-1962	7 members
	1962-1963	9 members
	1963-1967	10 members

REFORMATORIES	PAROLING AUTHORITY
All reformatories	State Board of Parole

PRISONS	PAROLING AUTHORITY
All prisons	State Board of Parole

INSTITUTIONS FOR MENTAL DEFECTIVES		PAROLING AUTHORITY
Napanoch (E.C.I.) Albion Woodbourne (to 1945)	1945-1964	Supt. of Institution, but Division of Parole made pre-parole investigation and furnished field supervision
Napanoch (E.C.I.) Beacon State Inst. (Est. 1966) Albion	1964—to present	State Board of Parole, full authority

Phase IV

(1967 — to Present)

Growth of Board	1967—to present	2 members, for a total of 12
Growth of Jurisdiction	1967—to present	All State and local institutions for confinement of sentenced persons

In summary, the above data show that although post incarceration field supervision is a relatively old concept, the present administration of parole is of relatively recent origin. Parole was established as a concept in this State in 1877 for reformatories, in 1889 for prisons and in 1967 for county jails and penitentiaries.* Thus, general application of post incarceration supervision is less than one year old in New York State. Also, as the above outline reveals, the practice of having a full time professional parole board is less than forty years old in this State; and the general use of such a board to decide upon parole from all State correctional institutions is only twenty-three years old. (In fact, if one were to include correctional institutions for mental defectives, it would be only four years old.) Moreover, it is significant, in considering the evolution of the Board, to note that the present system of having more than one three-member panel of Board members to hear cases came into being in 1960 (only 8 years ago), when the membership of the Board was increased from five to seven members.

The organizational problems confronting us today with respect to parole can be divided into three areas: (1) whether parole should continue to be a separate juridical status; (2) whether the decision making process should continue to be administered by circuit riding panels (operating in the same manner as the judges of old); and (3) whether the present basic system (generally accepted in this and other States) of having a parole officer develop a treatment plan for an offender, carry it through and perform virtually all of the functions involved —albeit under supervision of senior and supervising parole officers—is a sound method of administering parole.

The question of whether parole should continue to be a separate juridical status is discussed throughout the foregoing portions of this Report. Suffice it to say here, that the applica-

*It might be noted that the City of New York had its own parole system from 1915 to 1967. This, however, was a limited operation, dealing only with persons who received reformatory sentences and special "indeterminate" sentences. It did not apply generally to definite sentence inmates.

tion of a general concept of custody precludes an affirmative answer to such a question. The idea of "field supervision", be it employed under the label of "probation" or "parole", is merely an expression of a particular level of custody; and where such idea is circumscribed within a juridical status, the fluidity needed in dealing with offenders is seriously impeded.

Once parole is viewed as a level of custody within a system offering many variations on levels of custody (*e.g.*, long term incarceration, incarceration for a few days, part time incarceration and part time field supervision, full time field supervision), the need to effect an administrative merger of the Division of Parole with the balance of the system can be seen clearly.

As emphasized throughout this Report, it seems irrational to have three separate vertically stratified agencies dealing with an offender at separate times during post adjudicatory treatment. Under the present system, an independent probation department administers field supervision if the offender is placed on "probation." If the offender fails on probation, and probation is revoked, a different independent agency takes over for incarceration (*i.e.*, the State Department of Correction, the local penitentiary administration, or the sheriff's office as administrator of the county jail). When the offender is ready to return to field supervision, a third independent agency—the State Division of Parole—assumes responsibility. Quite apart from the duplication of informational services, and the lapses in transmitting vital information (discussed, *supra,* in the chapter on probation), the transfer of an offender from agency to agency obviously precludes continuity of treatment. We cannot expect that such a system could possibly be capable of formulating and implementing a general plan of treatment for an offender, utilizing the vast array of developed and developable custodial techniques to accomplish its purpose. Nor can we reasonably expect to be able to make transfers of offenders from one custodial level to another for the purpose of applying a specific type of treatment when each level is operated by an independent agency with its own separate policies.

Furthermore, on the horizontal aspect, in the less populous areas of our State the lack of integration of post adjudicatory services results in severe waste of resources. In some of these counties we have as many as five different types of field service officers traveling around making visits to outlying

areas. These are as follows: State parole officer; State Division for Youth parole officer; State Department of Social Services aftercare worker (for children released from training schools); family court probation officer; and county court probation officer. All of these people are supposed to be trained in social work theory and practice relating to crime and/or delinquency; and we must work toward the goal of having a system where, for example, a person who is out in the field to visit an adjudicated youngster who has not been incarcerated can visit one who has been incarcerated. It simply makes no sense to have a family court probation department perform the function prior to placement in a training school and have the Department of Social Services perform the function after placement in a training school or, if the youngster happens to be placed with the Division for Youth, have aftercare performed by those officers. Nor does it make sense to have a county court probation officer make the visit in cases prior to incarceration and a Division of Parole employee or a Division for Youth employee make the visit in cases where there has been incarceration.

If the State were to establish the regional centers discussed in the section on the Department of Correction, and each center had a field service staff, the staffs of the centers would be large enough to permit allocation of field supervision caseloads to persons who specialize in particular problems. For example, it is fairly well recognized that some persons are trained specifically for, and are better adapted to, dealing with problems encountered in connection with children; some are specialists in the troubled world of youth; and some are specialists in the problems of adults. These problems are not basically different when a person is on "probation" than they are when a person is on "parole", although in the latter case there is the additional complication of readjustment to community life. Therefore, a specialist in children's problems should be able to handle the case of a particular child without regard to artificial treatment universes presently forced upon us by the juridical status system; and the same, of course, is true for youth and adults. Hence, there is a clear need—at a bare minimum—for at least administering field services on a unified basis divided along the lines of maturity levels.

Turning to the question of maturity levels, we are im-

mediately confronted with the issue of whether the State should have separate agencies to deal with separate maturity levels, organized with dividing lines based upon arbitrary chronological age standards. We recognize the necessity of drawing arbitrary lines for juridical purposes; because, obviously, the adjudication process requires fixed and universal rules for determining when a person is a "juvenile" (*i.e.*, under 16), when a person is a "youth" (*i.e.*, 16-19 under the youthful offender procedure), and when a person is a "young adult" (*i.e.*, 16-21 under the Penal Law sentencing structure). However, whether these juridical standards, or whether standards of functional administration in accordance with need, should guide organization of treatment services is another question. It is one thing to say that we cannot stop to examine maturity level when deciding the legal question of criminal responsibility; but it is quite another thing to say that a system devoted to the administration of therapeutic treatment should not stop to examine maturity level in allocating its resources to fulfillment of the purpose.

The absurdity of our present age-line limitations in operations of the post adjudicatory system is illustrated by the following statutory authorizations:

GOVERNMENTAL SERVICE	AGE-LINES
Dept. of Social Services, training schools and aftercare ("children's services")	If under 16 at time of behavior underlying petition for PINS or juvenile delinquent adjudication (or where the petition seeks adjudication of a female as a PINS, if under 18 at such time) custody can be continued until age 18 for males (or older, if J.D.) and age 20 for females
Family Court Probation	Same as above, except probation custody can be continued to age 20 for male as well as female PINS and possibly beyond age 20 for juvenile delinquents
Division for Youth ("youth services")	15 to 18 years of age at time of admission to program
Criminal Court Probation	16 years of age and over at time of commission of act
State Dept. of Correction and State Division of Parole	16 years of age and over at time of commission of act, or 15 years of age if act would have constituted a class A or class B felony had it been perpetrated by a person over 16 years of age

It is clear that the treatment agencies, other than the Division for Youth, are basically organized in accordance with the age groupings set forth for court processing. In other words, the legal question of how a person should be processed for adjudication—which depends upon his age at the time of the act or the behavior involved (see Family Court Act, §714)—determines the treatment universe. Obviously, however, the treatment takes place after the act or behavior involved, and the person who comes into the system as a child, under the age of sixteen, matures during the treatment process to a youth and in some cases to an adult. Hence, there is no necessary correlation between the age groupings used for adjudicatory purposes and the ages of persons dealt with by post adjudicatory services which are presently organized in accordance with the juridical system.

One example of the type of result that follows from continuing to correlate post adjudicatory services with labels used for adjudication purposes, is the hiatus in institutional services for PINS and juvenile delinquents who are 17 years of age or older. The Family Court Act sets forth a procedure for adjudication of PINS and juvenile delinquents, and for the administration of probation supervision over persons so adjudicated. As noted above, the processing of a person under the Act is contingent upon his age at the time of the conduct or the behavior involved. The basic age limit is 16 years of age; but 18 for females on a PINS petition. So long as the behavior occurred within that age limitation, the court may entertain a petition for a PINS adjudication at any time prior to the youngster's 18th birthday, and there is no statutory limit to the age for a petition for juvenile delinquency. (For the purpose of this discussion we will assume that the court would not entertain a delinquency petition after the 18th birthday.) If a person is adjudicated and placed under probation supervision, the period of probation may be a total of three years for juvenile delinquents and two years for PINS. The theory of the Act in one sense seems to be that the court may order placement in or commitment to an institution at any time prior to the twenty-first birthday. (This must follow from the fact that a person adjudicated prior to his eighteenth birthday can be on probation for three years until prior to his twenty-first birthday. Probation is revocable, and the court upon such revocation has

the power to make any order it could have made at the outset [§779].) However, in another sense, it could be said that placement—as distinguished from commitment—cannot be made after the eighteenth birthday for males or the twentieth birthday for females, because the Act (in another section, §756 [c]) states that placements may not be made or continued beyond such age. (There is no such limitation on "commitment" of juvenile delinquents.) Hence, although these provisions are somewhat confusing, we will say for the sake of discussion that the Act intends to permit placement and commitment of males up to some undetermined period preceding the 18th birthday, commitment of females up to some undetermined period preceding the 18th birthday, and placement of female PINS up to some undetermined period preceding the 20th birthday.*

Assuming then that the court does wish to place or commit a youngster of 17, the next question is where can the youngster be sent. Putting aside the possible use of private agencies or acceptance of the youngster by the Division for Youth, and focusing upon agencies that are required to accept the youngster, we find a void. The State Department of Social Services cannot accept him if he is seventeen or over, and the State Department of Correction cannot accept him unless he is a juvenile delinquent who is adjudicated for conduct that would be a class A or a class B felony.

Thus, we have the paradoxes of: (a) the Department of Social Services treating 17 year olds placed or committed prior to their 17th birthday, but unable to accept 17 year olds; and (b) a court with authority to send but no agency required to receive. One aspect of this irrationality became so frustrating that a family court judge actually tried to hold the superintendent of a Department of Correction reformatory in contempt of court for refusing to accept a female PINS who was too old for placement in a training school. See *Fish* v. *Horn*, 39 Misc. 2d 121, 20 App. Div. 2d 395, 14 N.Y. 2d 905 (1963).

Another example of the result of fixation on juridical labels may be seen in the case of the youthful offender. A person may be adjudicated as a youthful offender if he is under nineteen

*This, of course, leaves the court without authority to place or commit where it entertains a petition just prior to the 18th birthday in the case of a male, or where it revokes probation after the 18th birthday in any case other than a female PINS.

at the time of commission of a crime (Code of Crim. Proc., §913-p). Assuming the adjudication takes place shortly before or after his nineteenth birthday and he is placed under probation supervision for five years (§913-m), jurisdiction of the court to revoke probation and commit to an institution extends to approximately the 24th birthday. Yet if probation is revoked after the 21st birthday, there is no institution authorized to receive the offender (with the possible exception of the reformatory in New York City for persons committed by courts within the City). The Department of Social Services cannot receive persons seventeen and over, the Division for Youth cannot receive persons eighteen and over, and there is no institution in the Department of Correction authorized to receive persons twenty-one and over unless they are labeled as "felons." Thus, once again, we find a court with power to send and a post adjudicatory system without power to receive.

If one adheres to the point of view that PINS and juvenile delinquents should be dealt with by a system that is separate and apart from the rest of the post adjudicatory system, then two basic results must follow: (1) that system must be equipped to handle treatment up to the age of twenty-one; and (2) we must accept the principle and the burden of parallel treatment systems operating in the area of overlap constituted by the sixteen to twenty-one year age group. However, even if parallel systems were the answer, we would still have to cope with the question of whether there ought to be—as there is now—a special service devoted to the problems of youth. The present agency, the State Division for Youth, accepts both the "child" of 15 and the "adult criminal" of 17. It accepts PINS, juvenile delinquents, wayward minors, youthful offenders, misdemeanants, felons, and even persons without labels referred by social agencies. To the Division for Youth, which has as its aim prevention of delinquency and crime, a youth is a youth, irrespective of the door through which he entered the treatment system. This principle is, of course, sound.

Hence, the result is three systems: one focused upon persons who enter treatment through the door of the family court; one focused upon persons who enter treatment through the door of the criminal court; and one hybrid system for youth.

Such division of services leads to still another question; and that is who is to decide whether a person in the 15 to 21

year group goes to the children's system, the youth system or the adult system. Under the present structure, the court makes the initial decision. The court may send a fifteen year old adjudicated as a juvenile delinquent for burglary in the first degree to the Department of Social Services, the Department of Correction, or to the Division for Youth (assuming the Division accepts the youth as one who can benefit from its programs). If the youth is over sixteen at the time of the burglary, the choice is limited to the Department of Correction and the Division for Youth. This, of course, is inconsistent with the principle that, where custody is prescribed, the place of custody should be decided by administrators and not as part of the commitment process.

It seems obvious that the time has come in the evolution of our system to recognize the post adjudicatory treatment system as an entity, and to dissolve the organizational strictures imposed by conceptual linkage of the post adjudicatory system with the court system. There is no reason for the treatment system to be fixated by juridical labels to the point where it must be organized in alignment with such labels. Such alignment makes for the incredible criss-crossing complexity outlined in section I of this Part of the Report. The treatment system represents a separate independent and complex enough function in and of itself. It should be recognized as an entity and organized as such.

With one agency administering all post adjudicatory services, maturity levels could be handled on a rational basis. The immature child would be assigned to programs designed for him; the troubled youth would be assigned to programs designed for him; and the adult would be assigned to programs designed for adults. There would be three central classification boards and three sets of regional panels. Persons under 15 would be dealt with by a children's division; persons 15 through 18 would be dealt with by a youth division; and persons 19 and over would be dealt with by an adult division. If the board handling children decided that a fourteen year old should be in a youth program, the transfer could be made by referring the case to the youth unit. If the youth board felt that a 15 year old should be in a children's program, the transfer could be made by referring the case to the children's unit. Similarly, if the adult board felt that a 19 year old

should be in a youth program, the transfer could be made by referring the case to the youth unit. Dividing lines, based upon chronological age, would only be used as guidelines for determining the board that initially looked at the case.

It is important to note at this point that the above recommendation cannot be applied universally across the whole post adjudicatory system. As pointed out in Part One of this Report, the purpose of custody imposed upon an adult for a crime goes further than treatment of his needs or prevention of recidivism. The purpose includes general deterrence and prevention of anomie. Hence, it is necessary to preserve the concept of having special places where convicted persons may be "sent"; *i.e.*, a correctional institution for convicted persons. Therefore, the system must have certain institutions designated as places for convicted persons. This does not mean that convicted persons should be limited to this form of custody; but only that the institutions specifically reserved for persons designated as criminals should not receive persons who come into the system through any other door.

The Committee is aware that recommendation of a unified post adjudicatory agency may receive criticism from persons who have not closely studied the proposal, or who are not intimately familiar with the existing system and its trends, on the ground that such a concept would resurrect the ancient system of mixing children with adult criminals. Therefore, it is important to be perfectly clear on the "mixing" question.

At the outset it is essential to analyze what is meant by "mixing" and to identify precisely who is to be mixed with whom. The present system contains many examples of "mixing". As already noted, the Division for Youth—which is the only agency in the system presently organized for the concept of functioning on a maturity level basis—mixes PINS, juvenile delinquents, wayward minors, youthful offenders, misdemeanants and felons; and there seems to be much public sentiment for expanding the program. Further, the Department of Social Services and the Department of Correction are presently engaged in working out regular administrative procedures for transferring some of the less mature "younger criminals" committed to Correction from Correction to Social Services (authorized by Correction Law, §279-a). Moreover, present pro-

cedures permit commitment of "children" to the Department of Correction to be "mixed" with criminals (where the child was 15 years of age or over at the time he engaged in conduct which would be a class A or class B felony if engaged in by a 16 year old).

It is interesting to note that in the last fiscal year (April 1, 1966—March 31, 1967) the Department of Correction received 790 youngsters in the seventeen year age group and under. We see no virtue in saying that such persons are branded "criminals" who should not under any circumstances be "mixed" with persons of the same ages and maturity levels presently in training schools of the Department of Social Services. Clearly, the Division for Youth has demonstrated, beyond cavil, that there is no conceptual barrier to such "mixing". We would be more disturbed if we were to find that the Department of Correction sorted out the youngsters labeled as "felons" by the juridical process and transferred them to "prisons" on that basis. This the Department has an absolute right to do under the law; but significantly, transfer of a person under nineteen to a "prison" is quite rare today in New York State.*

What we advocate here is the use of two concepts: administration of services in accordance with maturity levels; and the maintenance of certain institutions designated as places specifically limited to treatment of persons confined as adult criminals (bearing in mind that we would not limit treatment of such persons to confinement in such institutions). It would be unlawful for a person who is not an adult "criminal" to be sent to an institution designated as a place for confinement of "criminals." Further, it would strain credulity to believe that a system so designed—with special boards prescribing for children, youth and adults—would start us on the road back to the old alms house practice of throwing all ages, sexes and juridical statuses into a single institution.

So far as "mixing" is concerned, the system here advocated would mix—just as the present system (including the Narcotic Addiction Control Commission) mixes—criminals and non-criminals in various programs: only it would do so

*At the present time there are approximately 1,720 persons under 19 incarcerated in institutions under the jurisdiction of the State Department of Correction. Only thirty-five of these are in institutions designated as "prisons" (twenty-four 18 year olds and eleven 17 year olds).

in a more rational way. Some of the basic differences that would be advantages of the proposed system over the present system are: persons placed therein would be assigned to programs through a procedure designed for systematically matching needs with virtually the total treatment resources of the merged agencies; duplication of parallel functions would be eliminated (*e.g.*, separate systems for probation and parole); triplication of overlapping services would be eliminated (*e.g.*, the 15-18 year age group); there would be a regular administrative system for moving persons who outgrow programs while in custody to programs for more mature persons; there would be a regular system for pursuing an organized, cohesive treatment plan in conjunction with transfers from program to program; and there would be a vehicle for fitting persons who now cannot be sent anywhere—because of gaps between the juridical system and the organization of the treatment system —into appropriate programs.

Returning to the application of these comments to the role of the State Division of Parole, the conclusion to be drawn is that the field service function of parole should be merged with the field service functions of probation, the Division for Youth, and the training school aftercare service presently administered by the Department of Social Services. This would, of course, be within a single department administering diagnostic, institutional, research and other functions as well.

It might be noted that the plan as set forth herein will not completely eliminate the practice of having more than one field service employee cover the same geographical area, as it may well be necessary to send a specialist in children's problems to one household in a rural area and a specialist in adult problems to the next door neighbor; but at least in such a system we will be utilizing our resources in a rational manner to meet specific problems.

The second area for discussion mentioned on page 233, *supra*, is whether the decision making process should continue to be administered by circuit riding panels composed of three Board members. This question too is answered by the general concept of custody; and by the proposal for panels sitting at regional centers and at the various institutions coupled with central review boards.

If one thinks of parole and incarceration as forms of custody and looks at the versatility offered by use of a general concept of custody (*e.g.*, full time incarceration, part time incarceration, part time field supervision coupled with part time incarceration, incarceration for one day or one week, etc.), it is clear that a traveling parole panel cannot administer decision making in such a system. Firstly, the process of changing custodial instrumentalities must be administered through a constant—and many times immediately available—evaluative, planning and decision making process; and not by a panel that visits an institution once each month for one or two or even three days (and then must not only make decisions but must also become familiar with the case file). The process, as we envision it, would consist of frequent periodic reviews by panels who are intimately familiar with the case, and interim on the spot reviews where needed. The local panels would have authority to act in many cases on a temporary basis, and its decisions would be within the framework of policies established by, and would be subject to review by, the central Board.

Secondly, and perhaps more important, the panels and the board would be deciding more than the bare issue of whether to grant or to revoke field supervision (presently juridically known as "parole"). The issues would involve changes in assignment from one institutional program to another as well; and the specific type of treatment program to be followed. Where it is decided that field supervision should be used, the panel would determine the number of office visits that should be made, whether group counseling or group therapy or individual therapy should be included as part of the field supervision program, and whether the person should spend nights or weekends in a regional facility or some other designated place, etc.

The panels and the central board would therefore be responsible for the entire course of treatment, so that treatment could be handled as a continuum. We would no longer have one agency (the courts and local probation) determining a treatment plan for "probation", another agency determining an independent treatment plan for "incarceration", and a third agency determining another independent treatment plan for "parole".

A person coming into the system under a custodial commitment would be received at a regional center where a panel would work out a treatment plan pursuant to policies set forth by the central board. The central board would review the plan and in some cases no such review would be necessary (*e.g.*, a misdemeanant with no prior record). Where the person is transferred to another facility, that facility would initiate treatment in accordance with the plan. Such plan would be reevaluated periodically by the panel in that facility (or if the facility is too small for a panel, by the nearest regional center or institutional panel). Recommendations for change would be submitted to the board; and such would include transfer to another institution or field supervision, etc., including the plan to be followed. Upon board approval the change would be made and the plan would be forwarded to the panel involved. The procedure for reevaluation would then be continued by the new panel.

Applying this specifically to the present concept of post incarceration field supervision, the steps would be as follows: the institutional panel would recommend the change in custody level and recommend a plan for field supervision treatment; the central board would make the decision; and the approved plan would be forwarded to a regional center. The panel at the regional center would conduct periodic and emergency reevaluations and make recommendations to the central board where major changes seem appropriate. The procedure now known as "parole revocation" would be handled by having a field supervision officer bring the "parolee" before the regional center panel *for reevaluation.**

It might be noted that the Committee has not overlooked or disregarded the reasons underlying the establishment thirty-eight years ago of a separate Parole Board, independent and

*Under the present procedure a parole violator is arrested and lodged in a local correctional institution until such time as a Board member decides upon the action to be taken. If the Board member considers "revocation" advisable, the parolee is returned to a State correctional institution and the case is "decided" (*i.e.*, the question of changing juridical status from "parolee" to "inmate") after such return by the next panel of three members to visit that institution. Thus, under the present system the formal reevaluation only takes place after reincarceration for a period that can be as long as one month; and, moreover, the initial decision of a single Board member is rarely reversed by the panel of three Board members.

apart from institutional authorities. In those days parole was manipulated—in many cases—by institutional authorities in order to maintain a particular population level in the institutions; and abuses stemming from prejudices, the granting of special favors and other matters were not uncommon. Moreover, parole—prior to 1930—was viewed as a release from actual custody (although the parolee was deemed to be in the legal custody of the warden) and therefore represented, for practical purposes, a termination of supervision. The independent Board established in 1930, and the development of a staff of parole officers for field supervision of all parolees, which were part and parcel of the idea underlying the Board and the Division of Parole, represented a major step forward at that time. The concept, however, remained pretty much the same; *i.e.*, that parole and incarceration were separate universes and were not parts of a single unified treatment plan. This concept, as noted in Part one of this Report, grew and solidified to the point where "parole" became a separate juridical status.

Using a general concept of custody, institutional custody is not viewed as something separate and apart from field supervision. The whole system works as a unit and in many programs the two custodial instrumentalities are used at the same time (or at least both may be used on a single day). Possible abuses by local institutional panels would be handled by the reviews conducted by the central board; and the central board would also have staff for visiting local panels and conducting interviews where appropriate (see p. 227, *supra*).

The central board would, it is true, be responsible to the chief executive of the department, and to this extent one might raise the old spectre of the utilization of parole as a tool for institutional management. This, however, is based upon the old model where field supervision was an appendage of the institutional system. Under a department organized to implement the general concept of custody, the focus would be changed, and the administrator would be charged with the responsibility of administering a program that is viewed as a single entity. Thus, his responsibility and his goal would be rehabilitation rather than merely institutional rehabilitation.

It might be observed in this connection that the trend today is to have the decision on changes in custody determined by personnel working in an agency that operates both incarcera-

tion and field supervision services and who are responsible to the chief executive of the agency. The new Narcotic Addiction Control Commission was designed along this line. The Division for Youth operates in this fashion. The Department of Social Services operates in this fashion. And, outside of the system we are directly concerned with, the Department of Mental Hygiene operates in this fashion.

The third area for discussion mentioned on page 233, *supra*, is whether the present basic system (generally accepted in this and other States) of having a parole officer develop a treatment plan for an offender, carry it through and perform virtually all of the functions involved—albeit under supervision of senior and supervising parole officers—is a sound method of administering parole.

This question is answered in part—*i.e.*, the aspect of formulating a treatment plan—by the preceding discussion of institutional and regional panels and a central review board. The parole officers, some of whom are drawn from the legal profession, some of whom are drawn from the field of social work, and some of whom are recruited right out of college and given full caseloads after one year of training, cannot be expected to bring to bear on diagnosis of a case the full body of behavioral knowledge that would be possessed by members of an interdisciplinary panel. This is true even in the case of lawyers and college graduates (there is no special major required for qualification as a parole officer) who accumulate years of experience in dealing with parolees. It is also—but perhaps to a lesser extent—true of parole officers who may possess the Master of Social Work degree ("M.S.W.").

To have the caseworker—even the worker with an M.S.W. —as the vortex of treatment planning is to entrust the function of detecting symptoms of psychosis, neurosis and brain damage, of evaluating vocational and educational deficits, of determining levels of maturity and of inadequacy, and of evaluating degree of identification with delinquent subcultures, etc., in the hands of one individual. This is the present practice. Under the present practice—in both probation and parole and also in institutional work—the caseworker is supposed to detect the symptoms and where he recognizes a problem beyond his competence he refers the "client" to a psychiatrist, psychologist, physician, vocational guidance counselor, etc. These diagnoses

are checked by senior and supervising caseworkers, who at most can add the benefit of their experience in dealing with seemingly similar problems.

Assuming the caseworker is able to identify the problems, he must next determine which of the various problems are most related to the maintenance of the client's criminal behavior patterns. This, of course, involves making an educated guess, even when the determination is made through the process of an interdisciplinary evaluation and case conference among representatives of various disciplines. Then there is the added task of matching appropriate treatment methods to the needs as determined through the diagnostic process. This means that the caseworker—under the present system—must decide which of the vast array of treatment modalities are best adapted to helping the client overcome his difficulties. The latter task is perhaps the most difficult of all.*

The balance of the answer to the question—*i.e.*, the aspect of administering the treatment plan—lies in analysis of the role of the caseworker in the treatment system. Casework is generally believed to be a valuable and important treatment method, and we do not here question the validity of this belief. From the standpoint of our present level of knowledge, it appears that casework (the one-to-one relationship) will continue to be a major tool of the treatment system for the forseeable future. Two points, however, must be made: (1) there are many other acceptable methods of treatment; and (2) that the caseworker's role in the post adjudicatory treatment system presently extends to functions that go much further than casework as such (*e.g.*, surveillance and arrest of persons under supervision).

Both of these points lead to the conclusion that the caseworker should be part of a treatment team. Certain persons under field supervision may best be helped by group counseling, group therapy, individual psychotherapy, vocational guidance, etc. Certain cases require intensive field surveillance, which is an investigative function. Some cases may require a combination of group therapy and intensive field surveillance. Some cases may require individual psychotherapy, intensive field surveillance, vocational guidance and casework. The combinations of treatment are as varied as the permutations result-

*The Committee presents some suggestions for a possible model to facilitate this task in Part Three of this Report.

ing from matching the array of treatment methods to the array of needs.

Under the proposed system, the treatment plan would be formulated by a regional center or institutional panel and approved by the central board. The plan would then be implemented by teams assigned to the regional center. Where casework as such is prescribed, the plan would so indicate and the plan would also furnish an indication of the intensity required. Where surveillance or verification of residence or employment is necessary, such function would be performed by an investigator or a sub-professional. (Experienced professional caseworkers could then devote full attention to therapy.) Indigenous workers would also be used as part of the teams, and storefront offices would be established for such workers in neighborhoods with high concentrations of persons under supervision.*

The exact make-up of the teams would vary in accordance with the patterns of treatment plans and the degree of specialization deemed practicable in the various regional centers. Without going into detail, the team would have a coordinator, and each person assigned to the team would receive copies of reports made by other members, so that each could perform his function in accordance with all information available. There would be case conferences when necessary among the team members, and where treatment changes are thought necessary—prior to normal panel reevaluation—the coordinator would present the case to the panel. Thus, the caseworker—rather than being the vortex of the treatment process—would become an integral part of a team equipped to furnish the whole spectrum of services in accordance with appropriately diagnosed needs.

*These workers would be excellent sources for community job vacancy information; and could be used in many cases to supplement or substitute for surveillance. Additionally, properly selected workers could furnish leadership and guidance to reduce the burden of the professionals.

V

The State Division for Youth

The State Division for Youth was established in 1960 as an agency within the Executive Department of State government that would perform the functions of the then existing State Youth Commission (established in 1956), and would also develop and directly administer innovative programs for the State. With the establishment of the Division, the "Youth Commission" became the "Council on Youth" and the powers of the Council were limited to passing upon items to be financed under the program of assistance to localities for youth projects.

The focus of the activities of the old "Youth Commission" was upon development of locally operated programs for prevention of delinquency and rehabilitation of delinquent youth. The successor Division for Youth was charged with the duty of assuming these activities and of creating programs for the same purpose that would be directly administered by the State.

The creation of the Division came in the wake of a particularly intensive outburst of juvenile violence during the summer of 1959. It was part of a program intended "to meet the State's responsibility in the fight upon juvenile delinquency." (Gov.'s mem. of approval, chs. 881-887, April 27, 1960). The program was "designed not only to strengthen law enforcement in combatting crime but also to turn youthful energies into useful channels," laying "particular stress on rehabilitation of delinquents and guidance of potential delinquents into law-abiding citizens" (*ibid.*).*

Prior to the establishment of the Division for Youth, the

*The total program consisted of the following: establishment of the Division; authority to commit "hardened" juvenile delinquents (15 and over) to the State Dept. of Correction; establishment of half-way houses for youth in the Division of Parole and the Dept. of Social Welfare; extension of the types of jobs permissible for 14 to 16 year olds holding part-time work permits; extension of the continuation school program for 16 year olds; consolidation of certain probation services in New York City; State aid for reserved space in detention boarding houses; authority to admit limited numbers of 21-25 year olds to Correction Dept. conservation work camps; expansion of said camp program; expansion of vocational guidance for youth in the Dept. of Labor; appropriation of funds for a new training school in the Dept. of Social Welfare; and increased State aid for local probation services.

State had no directly administered programs focused upon youth problems, as such. The facilities of the Department of Social Services were viewed as children's facilities; and the facilities of the Department of Correction were viewed as places for "hardened" persons. The establishment of the Division reflected awareness of the growing and intensified problems of youth in our society. The mission of the Division was to create new methods of dealing with what was generally believed to be a rising tide of youth delinquency and crime.

The Division has continued and expanded the local assistance program ($3,200,000 in 1960-1961 to $7,250,000 in 1967-1968) and has developed various innovative directly administered projects. The only presently existing directly administered projects, however, are facilities that deal almost totally (75%) in treatment of persons placed therein or referred thereto (*i.e.*, condition of probation) as adjudicated PINS, juvenile delinquents, wayward minors, youthful offenders, misdemeanants and felons. All of these facilities are of the residential type, with the exception of one that provides a full time program, but permits the youth to sleep at home (the latter having capacity for 20 youths out of a total facility capacity of more than 600 youths). Additionally, the Division for Youth has a "parole" staff for persons transferred to the community from its facilities consisting of thirty-two persons (excluding clerical).

The basic problems in looking at the Division for Youth are as follows: (1) whether the treatment facilities operated by the Division (be they permanent Division operations or experimental operations) should be operated within or outside of a single unified post adjudicatory treatment agency; and (2) whether the local assistance programs and any directly administered pre-adjudicatory delinquency prevention programs should, (a) be coupled with experimental post adjudicatory treatment programs—assuming the facilities are experimental, or (b) be coupled with permanent post adjudicatory treatment programs—assuming the facilities are permanent.

It seems clear that irrespective of whether the facilities of the Division are permanent or experimental, they should be part of a unified post adjudicatory treatment system. If the mission is to create new innovative and experimental facilities for post adjudicatory treatment, that mission is best performed

by a research and development unit within a unified post adjudicatory treatment system.* The alternatives—both of which are unsatisfactory from an administrative standpoint—are: (a) duplication of developmental efforts; or (b) reliance by the unified system upon another agency for experimental work. If the mission is to operate on-going post adjudicatory treatment facilities, such mission results in triplication of agencies performing this function for the age group involved (*i.e.*, the Department of Social Services, the Division for Youth and the Department of Correction). We have already noted, throughout the foregoing sections of this Part of the Report, the difficulties stemming from such triplication.

It is not within the scope of this report to comment upon the question of whether the State should, or should not, have a separate Division for Youth to deal directly and/or indirectly with the increasingly important and significant problem of prevention of youth crime and delinquency. The Governor's Special Committee on Criminal Offenders was charged with the specific duty of examining the post adjudicatory system, which does not include the administration of the numerous other functions that are relevant in the area of crime and delinquency (*e.g.*, the police, pre-trial detention, prosecution, adjudication, education, etc.). Clearly, however, whether experimental or on-going, the facilities program of the Division for Youth is an integral resource of the post adjudicatory treatment system, and it would be outside the scope of operations of a post adjudicatory agency to administer a broad scale program for general prevention of youth crime and delinquency.

*It might be noted that the Division has, for several years, offered to turn certain of its facilities over to other agencies, and, at the present time, negotiations are in process for transfer of three small community residences to the Department of Social Services. Other agencies have expressed interest in these facilities, such as the Department of Mental Hygiene and the Narcotic Addiction Control Commission, but concrete steps have not been undertaken beyond the aforementioned transfer negotiations.

Further, although the Executive Budget, for at least the last three years, has contained the statement that research is "an integral part of each of the Division's programs and is aimed primarily at evaluating the effectiveness of the resident center program", the longitudinal, intensive research performed by the Division to date has dealt with programs other than the resident center program. Surveys have been undertaken to ascertain rates of recidivism of graduates from the Division's facility program, but an intensive evaluation of the effectiveness of these "innovative, experimental" programs has not been fully launched.

Therefore, the facilities program should be organizationally separated from the other programs of the Division for Youth.

The facilities program consists of: five conservation work camps (capacity 300); five short term adolescent resident training centers (capacity 100); nine urban homes (capacity 180); five half-way houses (capacity 38); one full time work and counseling non-residential program (capacity 20); and the resources of thirty-two aftercare ("parole") workers. This program (total capacity, excluding aftercare, 638) is at least seventy-five percent devoted to the post adjudicatory treatment area. (It might be noted that this program is twenty-five percent as large as the total training school program.)

The facilities program should be removed from the present Division for Youth and placed within a unified post adjudicatory agency. Such an agency would be large enough to support a true research and development unit. It would have the capacity to allocate persons placed in its custody to a vast array of programs, basically in accordance with need. Youth would be referred to a regional center and placed in programs by a youth control board (see *e.g.*, discussion pp. 226-227, 240-241).

VI
The State Department of Social Services

The Department of Social Services administers training schools and aftercare ("parole") for juvenile delinquents and PINS. The Department also plays a major role in development of other local government and privately administered social services for both children and adults. Among these services are the following: adoption, foster care, day care, preventive and protective services for children; homemaker family services; public assistance (including "medicaid"); inspection and supervision of homes for the aged, proprietary homes, temporary and special shelters for adults, and adult convalescent homes; coordination and evaluation of Indian services (including payment of annuities to certain tribes); registra-

tion of charities; and special services in connection with blindness.

Thus, the Department is deeply involved in the entire spectrum of social service problems, dealing with persons of all ages, all maturity levels, and from all walks of life.

Although there is no reliable body of evidence, it is widely believed that the social suffering, misery and family problems dealt with by the Department are integrally related to the causes of crime and delinquency. In one sense, therefore, the Department's activities seem to be directly related to prevention of crime and delinquency, but the activities themselves cover a vastly broader concept.

The Department's activities reach into the homes of perhaps the majority of persons convicted of crimes. A troubled family is often a multiproblem family: the father may be in a correctional treatment facility; and the son or daughter may be in a Narcotic Addiction Control Commission treatment facility or a State training school; while the mother receives public assistance, and the grandmother is in a home for the aged or involved in a special program for the blind. Thus, the activities of the Department—as a rule—touch the core of the lives of offenders, as well as the problems that are widely believed to lead to crime.

Coupled with this wide swath involvement in prevention and cure of society's social ills, the Department also has specific responsibility for direct administration of certain custody services for youngsters adjudicated as juvenile delinquents and PINS. This is the only activity of the Department directly involved in administration of the crime and delinquency post adjudicatory treatment system. It is performed in conjunction with an array of other child-related activities by a "Division of Children's Services" within the Department.

The Division of Children's Services has responsibility for all of the Department's functions in connection with child-related activities. It operates, as does the Department in general, primarily as a supervisory and assistance furnishing agency for local government and privately operated programs. The Division visits and inspects the privately operated child-caring institutions and agencies, develops and evaluates programs and standards, issues permits for day care, furnishes con-

sultative training and technical services, and stimulates inauguration of preventive, day care and homemaker services in local agencies. The Division also administers the State's role in the reimbursement program for care of children, but the concept here is reimbursement of local public welfare districts rather than direct arrangement for child care. Under the reimbursement program, the local public welfare agency makes arrangements for child care and receives reimbursement from the State and Federal Governments, contributing a portion of county money as well.* The State, therefore, exercises its responsibilities in connection with children's services through a combination of inspection, licensing and financing functions. The basic concept is one of assuring compliance by localities and private services with standards, and providing leadership in fostering development of desirable services. The State is not, however, involved in anything that approaches direct administration of child services, except in the one limited area of training schools and aftercare for juvenile delinquents and persons in need of supervision.

The basic question in connection with the Division of Children's Services is whether direct State services for custody of juvenile delinquents and PINS should be administered by a general social welfare agency or should be part of a unified post adjudicatory treatment system. Added to this problem there is the complication arising from the possibility of the State establishing directly administered services for dependent and neglected children—as has been suggested by the Department—and the question of whether such services must be administered conjointly with delinquency services or are better administered separately.

It seems clear that there is no special connection between social services in general and treatment of delinquent children. Any connection between social services in general and treatment of persons who evince anti-social behavior patterns is the same for adults, youth and children. Hence, there is no special reason for keeping the function of providing directly

*However, it is important to note that financial aid for care of delinquent children, including PINS, is separated conceptually from aid for care of dependent and neglected children. The former is administered under a special statute and there is no Federal assistance. The latter is administered under the heading of public assistance and care.

administered services for juvenile delinquents and PINS in the Department of Social Services, unless the basis is that the Department ought to provide some sort of a total children's service for dependent and neglected children in conjunction with a total service for the delinquent group.

However, if the State were to provide directly administered service for dependent and neglected children, the question would then be whether there should be a division in administration such as now exists between Mental Hygiene, Correction and other special services, each focusing on a specialty; or whether all children should be handled by a single agency. In other words the question would be whether children's services based upon dependency should be administered conjointly with children's services based upon delinquency. There is no more reason for saying that all services for children should be administered by a single agency than there is for saying that all services for adults should be administered by a single agency. It has been the practice—and one we believe to be sound—to administer services in accordance with particular groupings of problems. For example, a mentally defective or a mentally ill child is handled by the Department of Mental Hygiene. The education of a child is handled by State and local education departments. Prevention of delinquency is handled by specialists within the police department and by youth boards, etc. A total children's service is no more rational than a total adult service. The concept in organization for administration of government services is not organization by age, but rather organization by function.

The validity of this point—*i.e.*, that services should be organized in accordance with function—is borne out not only by the present clear separation between services for neglected and dependent children and services for delinquent children, but also by the fact that unless the services for delinquent children are administered in conjunction with services for delinquent and criminal youth, and these in turn administered with adult criminal services, crime and delinquency services will continue to be organized as a labyrinth, with duplication for some groups, total lack of services for other groups, and total lack of either a true children's service or a true youth service. What this State needs in the crime and delinquency

field is a service devoted to treatment of crime and delinquency on a functional basis for all age levels. This need is amply illustrated not only by the foregoing sections of this Report but also by an examination of the direct administration functions of the presently existing Division of Children's Services.

At the outset there are three points to be focused upon: (1) that the only services directly administered by the Division of Children's Services now are institutional custody and aftercare ("parole") for juvenile delinquents and PINS; (2) that more than 50 percent of the "children" in the training schools are fifteen, sixteen and seventeen years of age (the same as the ages for admission to the Division for Youth) and less than 12 percent are under thirteen years of age; and (3) that the Division of Children's Services has custody (both institutional and aftercare) of less than three-eighths of the juvenile delinquents and PINS under custody at any one time (the remaining five-eighths are under probation, private agency placement, Division for Youth placement, Dept. of Correction commitment, etc.).

The relevance of these three points is as follows. The Division of Children's Services does not administer a total children's service now. It is doubtful that the Division of Children's Services can really be thought of as a "children's service" (at least 50% of its direct administration institutional resources are devoted to an age group that delineates the general maturity level of persons considered youth). The services to juvenile delinquents and PINS have no central administrative focus and are as badly fragmented as the post adjudicatory services for the older persons.

It seems obvious that the State is becoming increasingly involved in providing directly administered institutional and aftercare ("parole") custody for the delinquent group, including PINS. Over the last fifty years or so the trend has been to shift from private institutional services to State institutional services (67 percent private in 1915 vs. 40 percent private today). In view of this trend, and of the fact that the State is rapidly expanding its institutional capacity for juvenile delinquents and PINS (20 percent increase planned for the next 2 to 3 years), with approving public sentiment, the role of the State in providing such direct services is well established and well accepted. The State does not presently, however, have any role in providing directly administered services for neglected

children. This has traditionally been the exclusive province of local government and private agencies. The question, therefore, is whether the concept of directly administered State services for children is or should be one of a single agency to deal with *all children,* or is or should be one of special services for children in need of custodial treatment because they have evinced anti-social behavior patterns (*i.e.*, criminal-type conduct, or behavior beyond the control of lawful authority).

If one were to view the State's role as involving direct administration of a unified total children's service, the major problem—putting aside for the moment the question of whether it is advisable to include neglected children in a system designed for children who evince anti-social behavior patterns—would be to define the age groups to be treated. In other words, we have to focus on the definition of the term "child."

Clearly, the term "child" does not have the same meaning for treatment purposes as it does for determining the juridical question of criminal responsibility. When a youngster of fourteen engages in a series of burglaries or a series of "mugging-type" robberies, he is dealt with as a child by the family court. This means that there is no criminal responsibility and there is no need for a sanction to fulfill the public oriented purposes of general deterrence and prevention of anomie. It does not necessarily mean that his maturity level is that of a child; and it clearly does not mean that he will continue to be a child throughout the permissible length of custody prescribed for treatment (*e.g.*, until his eighteenth birthday in the case of a male, or beyond if he is "committed" after his fifteenth birthday). So too, the female PINS who may be kept in custody until her twentieth birthday is thought of as a child juridically, but this does not mean that treatment should be administered by a "children's" service.

Consider further the case of the ten year old who stabs one of his peers with a knife. Clearly this is a child, and one who may need custodial treatment. However, suppose our treatment efforts are unavailing and the court finds it necessary to continue placement to the "child's" eighteenth birthday, there must come a time where the treatment administered is aimed at reaching the "youth" rather than the "child."

It seems clear that a "children's" service is a service devoted to dealing with persons of a certain maturity level. This

level cannot be fixed in accordance with the point in time when the behavior that gave rise to jurisdictional power of the court occurred. As pointed out previously (see pp. 235-240) such is the fallacy of organizing treatment services in accordance with lines fixed for adjudicatory purposes. The fact that the family court has jurisdiction over persons for behavior engaged in prior to their sixteenth birthday (18 in the case of a female) does not mean that such persons are at the maturity level of "children" at the time of adjudication or that they will remain at the maturity level of children during the course of treatment.

Unless the concept of service for the youth is included within the sphere of "children's" services, the functions of an agency that receives all persons considered as children for court jurisdiction purposes cannot possibly be coterminous with its responsibilities (see *e.g.*, discussion pp. 48-49, *supra*).

This could mean that the children's service ought to include a youth service. The question then becomes whether the youth service deals with all youth in the post adjudicatory system or only with youth that enter the system with certain juridical labels. Stated otherwise, a true youth service—like a true children's service—would deal with youth in accordance with needs. Hence, the sixteen, seventeen and eighteen year olds, and perhaps even some of the nineteen year olds, labeled as misdemeanants and felons and sentenced to the Department of Correction would have to be part and parcel of the youth service; the only alternative being to continue having separate treatment universes with the court selecting the appropriate universe.

As pointed out previously, the Department of Correction receives between 800 and 1,000 youths in the sixteen and seventeen year age bracket annually (plus a handful of fifteen year olds). If the eighteen year old group is added to this, the Department receives between 1,200 and 1,500 youths (15 through 18) each year. The total State institutional distribution of youths in the fifteen through eighteen year age group is approximately as follows:

Department of Social Services	1,200*
Division for Youth	600
Department of Correction	1,700

*Comprised primarily of 15 and 16 year olds, but see discussion pp. 48-49, *supra*.

To think of a service that treats vast numbers of youth of differing needs as a "children's service" is misleading. In fact, the youth function would be a greater part of the work than the function of caring for "children." Our present training school population of persons 14 and under is approximately 900. Assuming such persons are at the maturity level of children, and that the 15 through 18 year group is at the youth maturity level, the number of youth in State institutions outnumber the children in State institutions by approximately 4 to 1. Even adding the delinquents and PINS in private institutions and assuming that all are under 15—an unwarranted assumption—the "youth" would still outnumber the "children".

If one is to think in terms of a "children's service", we suggest that it be in terms of the under fifteen age group. However, it is obvious that there are many persons of fifteen or sixteen who are considered to be at the maturity level of a child; and many sophisticated, worldly-wise mature fourteen year olds are considered to be at the youth maturity level. The factor of chronological age simply cannot be used as a sharp dividing line for organization of post adjudicatory treatment services in the manner in which it is used as a dividing line for juridical purposes. Further, as previously noted, persons mature while they are in custody and treatment commenced with an individual at the thirteen or fourteen year age level may have to be changed to suit a fifteen or sixteen year age level. Therefore, the children's service and the youth service must have a built-in system for transferring clients from program to program depending upon maturity level needs at any particular point of time in treatment.

Pursuing this further, it is important to note that the youth who enters the system at the seventeen or eighteen year age level under a four year reformatory-type commitment may require services designed for an adult, either at the time of entry or at a subsequent time during treatment; and the "adult" who enters at nineteen may require a youth program. Hence, the youth and the adult services must have a system for interchange similar to the mechanism needed for exchange between the child and the youth services.

The system described in the foregoing portions of this Report would provide for three separate spheres under the

umbrella of a single unified department. One sphere would be exclusively devoted to the needs of children, another sphere would be exclusively devoted to the needs of youth, and the third sphere would be exclusively devoted to the needs of adults. For the first time in the history of this State we would have a true children's service devoted exclusively to that function. We would also have, for the first time, a systematic means of transferring persons of different maturity levels to programs designed to fit their needs. (See discussion pp. 240-241.)

Additionally, such a department—working under a general concept of custody—could unify the badly fragmented services for children. At the present time the judge makes the decision as to the custodial instrumentality to be used. The judge decides whether to use probation, a foster home, a private institution, a State training school, the Division for Youth or the Department of Correction.

Where probation—*i.e.*, field service—is used, the State does not become directly involved at all (although the State pays 50% of the cost of the service). Approximately 7,500 juvenile delinquents and PINS are presently under probation treatment. This is substantially more than the total number in training schools and under aftercare administered by the State Department of Social Services.

Where a private institutional placement is made, the State does not become directly involved, except to the extent of regulating the institutions and financing 50% of the cost of care. At the present time, although admissions to training schools of juvenile delinquents and PINS are greater than admissions to private institutions, there are as many juvenile delinquents and PINS in private institutions as there are in training schools (approximately 2,200 in each category). It is relevant to observe in this connection that the reason for this seemingly paradoxical discrepancy between admissions and population is that the average length of institutional stay in private institutions is fourteen months while the average length of institutional stay in training schools is nine months. One reason for this discrepancy—at least the reason relevant from an organizational standpoint—is that many of the private institutions have no aftercare ("parole") services or have

inadequate services, and are forced to provide treatment that could be furnished under aftercare in the institution. The dearth of aftercare services for children placed with private agency operated institutions is due in large part to the fact that the State and local government reimbursement plan (fifty percent from each) does not permit reimbursement for aftercare or community programs. Hence, if one believes, in accordance with the latest trend, that treatment should be administered in the community to the greatest extent possible, a large number of the juvenile delinquents and PINS are not receiving a modern well balanced plan of treatment. Moreover, the taxpayers—both State and local—are paying for the high cost of institutional care rather than for a balanced program including lower cost field supervision.

Where placement is made with the Division for Youth or where a commitment is made to the Department of Correction (the Division for Youth receives a number of juvenile delinquents and PINS equal to 20% of the number sent to the Department of Social Services and Correction receives a handful), the fragmentation in operations is again apparent.

Under a unified system, all children would be diagnosed by specialists in children on the regional center staff prior to the dispositional hearing. Where the court decides that official custody is appropriate, the case would be referred back to a regional center. The diagnostic panel at the center would then prescribe a program (either field service or institutional or part one and part the other) and the central board for children would make the decision. Such decision could be placement in a foster home, placement in a private institution, placement in a State institution, or field service custody. There would have to be regular treatment progress reports to the board from the private institutions—something we do not have now—and the private institutions' staffs would be sitting as institutional panels for making recommendations as to program change. Such recommendations would go to the central board and the board could order transfers from private institutions to State operated aftercare, to State institutions, or to foster homes; and the board could, of course, order discharge from custody.

This type of organization would, for the first time, central-

ize control over, and centralize treatment focus for, children's services. It would move us from a system where a busy judge with a crowded court calendar must negotiate placements and even has the responsibility of selecting the specific training school for placement (rather than just placement with the Department) to a system where skilled diagnosticians who have up to date vacancy and program information in the context of the total spectrum of services available determine and administer the matching of the total array of needs to the total array of programs.

The children's services would not be merged with youth services and youth services would not be merged with adult services. All three would be divisions within a single unified department. This would permit a unified information service (see pp. 185-194, *supra*), a systematic method of assigning persons to programs designed for their particular maturity levels as well as their other needs, and a unified approach to research, development, staff training and deployment of professional skills.

None of the three services would be subservient to the interests of the other, as each of the three central boards would act as a program planning committee under the chief executive of the Department. Here again it is important to emphasize that the role of the chief executive is primarily one of administration and of balancing and harmonizing the various parts of the system.

Turning to the question of whether the neglected child should be in this system, we have already stated that there seems to be a traditional distinction between administration of services for neglected children and administration of services for delinquent children (see pp. 182-185). This distinction, however, is not based upon any readily discernible immutable principle. It might be based upon a feeling that there are administrative problems in operating programs that receive both neglected children and children who have evinced anti-social behavior patterns. It might be based upon a feeling that the State has a broader role in treating the delinquent than it does in treating the neglected child. (In the case of the former, intervention is necessary to change behavioral patterns; and to protect society from the behavior of the individual, who is by defi-

nition a person who has committed a criminal act or a person who is beyond the control of lawful authority. In the case of the latter, treatment may be necessary to cope with the child's problems, but the focus of the official intervention is protection and nurturing of the child.) Or, the distinction might be based upon historical development.

Whatever the basis of the distinction, it is difficult for this Committee to advance a sound reason for disturbing it now. The Governor's Special Committee on Criminal Offenders has not made any detailed study of the administration of services for the neglected child. Our mandate has been to study the post adjudicatory services in the context of crime and delinquency. This has traditionally included the problem of juvenile delinquency, and not the neglected child. If wisdom derived from some other or future study should point the way to inclusion of the neglected child, so be it.

In this context some mention should be made of the seeming distinction between PINS and juvenile delinquents created in 1962 under the new Family Court Act. We have already noted, in detail, the difficulties in attempting to distinguish between the two categories, and the fact that the distinction seems to be based upon some sort of vestige of the common law rule as to criminal responsibility (pp. 134-137). Neither category has criminal responsibility and both categories should be merged into a single concept of child in need of supervision or custodial treatment. From one standpoint it could be argued that PINS do not belong in a system designed for treatment of persons who commit criminal acts. This was obviously the thinking of the framers of the Family Court Act, because as originally enacted in 1962 the law did not permit the placing of PINS in the State training schools. Such distinction, however, did not prove to be a practicable one and the law was amended in 1963 to permit such placement. Therefore, our recent experience, if nothing else, indicates that we cannot separate the concept of juvenile delinquency from the concept of person in need of supervision.

In order to set the discussion of the Division of Children's Services in context, some information as to its size and general operations is necessary. As with the other agencies, the Committee has prepared a separate detailed analysis of the Division

to be presented in a separate appendix to this Report, and the information set forth at this point is presented merely as a skeletal outline. Further, as with the other agencies, there is no collection of research to show whether anything this agency is doing is effective in treating the persons in custody.*

The Division of Children's Services presently operates twelve institutional facilities. Seven of these are designated as "training schools" and five are designated as "centers" (which are authorized by law as "branch facilities" of the training schools). The primary difference between the training school concept and the center concept is that the centers are smaller institutions with specialized missions. Training schools are constructed for capacities of 250 to 400, and centers are constructed for capacities of 50 to 100. The Division does not operate any community-based facilities except for two small aftercare centers in New York City. In addition to institutional facilities, the Division has approximately 152 aftercare workers and 150 foster home arrangements throughout the State.

The organization of services consists of a loose amalgamation rather than a unified system. Presently there is no system for central office administration of allocation of persons to institutions, length of stay in institutions, length of stay under aftercare, return to institutions from aftercare, or specific programs in institutions. The various units are operated separately under guidance and leadership from the central office. This consists of encouraging the various segments of the operation to follow generally acceptable—but mostly unwritten—expectations, and, where necessary, applying pressure to obtain conformity.

There is no system of information feedback from which any of the parts of the organization can learn of the results of its decisions and treatment in terms of outcome. Nor is there any established central machinery in the Division for matching treatment needs to the increasing and impressive array of services available. As a result there is no system for planned treatment. The Division does not have a central reception center nor—even more modestly—a central reception and diagnostic process.

*The Department has not performed a single research project to determine treatment effectiveness. It might be noted, however, that a research program is planned and that data collection is under way.

With the exception of children placed or committed by courts in the City of New York, children are sent by the courts to specific training schools selected by the courts. Children placed or committed by courts in the City of New York—although formally placed in or committed to specified institutions—go to a central intake and allocation unit located in the detention facility. This unit has the authority to make paper transfers so as to: (a) change the institution to which the child will be sent; (b) retain the child in a special small short-term residential program at the detention facility; or (c) place the child under aftercare treatment ("parole") immediately.* The central allocation unit resembles, but does not function as, a reception center. It resembles a reception center because it receives the files of all children sent to the Department from a given area (*i.e.*, New York City). However, it does not make a detailed study of each child and prescribe a detailed program as is done at the Department of Correction's Reception Center. Moreover, the allocation unit does not have authority to send children to all of the institutions in the Department in accordance with need. It serves only five of the twelve institutions. Further, it is significant to note that the central office does not conduct any systematic review of the decisions made by the unit.

The institutions in the Department are divided into four conceptual groups, consisting of: downstate direct commitment or placement institutions and downstate transfer institutions (taken together, "the downstate complex"); two upstate institutions; and female institutions. Male children are sent directly by the court to one of the downstate direct commitment or placement institutions or to one of the upstate institutions (except as noted above for children from New York City). Intake workers from the downstate transfer institutions—with the exception of Goshen Annex, which is a security facility—visit the direct commitment institutions and select children for the special programs in the transfer institutions. These selections are not supervised or directly controlled by the central office. Transfer to Goshen Annex can be made from any institution, upstate or downstate, but only upon order of the central office.

*A handful of judges have objected to the practice of granting aftercare in cases where incarceration was ordered, and the allocation unit refrains from this practice in cases where children are sent by such judges.

Transfers from one downstate direct commitment or placement institution to another are accomplished by application to the New York City intake and allocation unit. And transfers between the two upstate institutions are accomplished by application to the central office.

Females are all sent to Hudson Training School and allocated from there to the other institutions. This too is accomplished without central office review or direct control.

The downstate institutions are stratified in accordance with age and maturity groupings. The two upstate institutions are not so stratified. Thus, at Industry, for example, one may find children under twelve years of age and children over sixteen years of age.

Each institution has a program committee that recommends the particular plan of treatment for the youngster. This committee also performs periodic reevaluations and recommends changes in program and release to aftercare ("parole"). The decision on these matters is made by the superintendent and these decisions are not reviewed by the central office.

Aftercare workers visit the institutions and familiarize themselves with the cases before the children are released. These workers then supervise the children in the community. If an aftercare worker feels that a child should be returned to an institution, he consults his supervisor and, where the supervisor agrees, the supervisor requests permission from one of two regional directors of aftercare, depending upon the location involved. Those in the downstate group contact the director in New York City and those in other parts of the State contact the director in Rochester. There is no system for central office review of the decisions made by these directors.

Thus there is no central focus on treatment planning and administration of treatment. The child moves from program to program on the basis of decisions made in separately administered parts of the organization. The critical decisions as to assignment to an institution, assignment to a program within the institution, selection for a special institution, release to aftercare, aftercare program, and revocation of aftercare are all made by persons who are responsible for only a single phase of treatment. There is no concept of developing, implementing, reviewing and evaluating individually tailored

treatment plans designed to achieve specific objectives. There is no system of feedback data to build a body of experiential information on which to base treatment plans. There is no concept of administration of treatment from point of adjudication to point of discharge.

Added to this, there is, of course, the problem of fragmentation resulting from the fact that probation is separately administered and the fact that the Department has no direct control over juvenile delinquents and PINS placed in private institutions (unless such persons are returned to the court as unmanageable and subsequently placed with the Department).

Clearly, the administrative needs in connection with services for juvenile delinquents and PINS are the same as they are for the youth and the adult groups. A general concept of custody—dissolving the juridical distinction between probation and the other forms of custody (*i.e.,* institutional and aftercare)—is needed here. The regional center concept with its regional panels, institutional panels and central review board is needed here. An information system is needed here. A system for matching treatment needs to total available programs is needed here. And, in general, all of the organizational recommendations made in this Report with respect to Correction and Parole—with the exception, of course, of institutions for convicted persons stemming from the needs of general deterrence and prevention of anomie—apply to services for juvenile delinquency.

VII

The State Narcotic Addiction Control Commission

The State Narcotic Addiction Control Commission was established in 1966 for the purpose of launching a comprehensive all-out attack on the problem of narcotic addiction. The rationale for establishment of the Commission was that the problem of narcotic addiction had reached epidemic propor-

tion in our society and that a special agency should be assigned the task of focusing exclusively upon the problem. The legislative findings in the opening section of the law that created the Commission refer to addiction as a "disease" and call attention to the grave concern of the public regarding the magnitude of the human suffering and social and economic loss caused by this disease (Mental Hygiene Law, §200).

The legislative findings also set forth a relationship between narcotic addiction and crime, estimating that narcotic addicts are responsible for one-half of the crime in New York City. The heart of the relationship between addiction and crime is, as stated in the findings, that the "addict needs help before he is compelled to resort to crime to support his habit." In other words, the relationship between addiction and crime is not that addiction *per se* leads to crime (apart from the crime of possession of narcotics), but rather that addiction is the source of a compulsion that drives the addict to use any and all means to obtain funds to support his habit. Thus addiction, like mental illness, seems to relate to a singularly specific aspect of criminal behavior. It is a grave medical and social problem in and of itself, and it is at the same time a specific cause of criminal behavior.

The assignment given to the Commission includes the functions of community education, prevention, diagnosis, treatment, aftercare, community referral, rehabilitation, research, pilot programs, and general control in the field of narcotic addiction. Compulsory commitment ("certification") of all narcotic addicts to the custody of the Commission for rehabilitative treatment was the most publicized aspect of the law, because this aspect involved a new dimension of the State's right to interfere with liberty (*i.e.*, compulsory and generally applicable civil certification based upon the condition of being an addict). However, the compulsory commitment provision is, in fact, merely one element in a comprehensive approach. Hence, in viewing the Commission, it is essential to think in terms of a unified broad multifaceted approach to a specific problem, rather than in terms of the single dimension of rehabilitating addicts.

The aspect of the Commission's activities that is integrally related to the mandate of the Governor's Special Committee on

Criminal Offenders is the Commission's involvement in treatment of persons who are convicted or adjudicated for criminal offenses. This program is part of the general program for compulsory treatment of addicts initiated on April 1, 1967. Due to the fact that most of the program was developed after completion of the planning of the Committee's work, and the fact that the program is still rapidly evolving, we have not made a detailed analysis of this program. Therefore, our comments will be limited to certain basic organizational matters.

There are three juridical procedures for certification to the "care and custody" of the Commission. One of these can be called the purely civil procedure; the second one can be called the purely criminal procedure; and the third can be called the substitution procedure. Under the civil procedure, the proceeding is commenced as one for compulsory civil certification and a criminal charge is not before the court. Under the criminal procedure, the proceeding is a normal criminal (or youthful offender) proceeding, but the sentence consists of certification to the Commission. Under the substitution procedure, the addict comes before the court on a criminal charge and the civil certification procedure is substituted for the criminal charge.

Taken together the result of these three procedures is that all addicts are certified to the Commission with the exception of persons convicted of a felony under the purely criminal procedure. In the case of a felony, other than murder or kidnapping in the first degree, the court may certify an addict to the Commission or may impose an indeterminate sentence of imprisonment (a minimum term of at least one year and a maximum term of at least three years) and commit the addict to the State Department of Correction.

Civilly certified addicts and addicts adjudicated as youthful offenders or convicted of misdemeanors or of prostitution (a "violation") are subject to a three year period of Commission care and custody. Addicts convicted of felonies and certified to the Commission are subject to a five year period of care and custody.

The only justifiable rationale for vesting the Narcotic Addiction Control Commission with the duty of treating

addicts—in the light of the fact that both Mental Hygiene and Correction were available as vehicles for this purpose—is that the State desired a single focus (with a total approach) on a distinct problem of epidemic proportion. We do not question that rationale here. The Commission was created as a method of meeting a grave and immediate problem; and the wisdom of this approach will no doubt be evaluated in the light of the experience gained from it.

The presently recognizable trouble with the concept of the Narcotic Addiction Control Commission law is that the criminal commitment provisions are based upon the assumption that all addicts who commit crimes do so because of addiction, and that a necessary causal relationship exists between the addiction of an individual and the crime he committed. The fact is, however, that although certain addicts do commit crimes to support their habits, there are many persons whose addiction is incidental to their criminal conduct. This distinction leads to two possible results: (a) that mandatory commitment to the Commission of all convicted addict cases will put the Commission in the business of furnishing general post adjudicatory treatment for all criminal behavior patterns, as well as for the specific problem of addiction; or (b) that the State must develop a mechanism for determining whether or not addiction is the primary factor in a particular case in order to allocate the "addict criminal" to the agency designed to focus upon the problem of addiction (*i.e.,* the Commission) and to allocate the "criminal addict" to the agency designed for providing treatment in the broad area of crime and delinquency (*i.e.,* the unified post adjudicatory treatment system).

Some recognition of this difficulty is reflected in the law that created the Commission. The Commission has authority to transfer addicts certified to its care and custody to facilities operated by other agencies, including correctional facilities; provided, however, that the Commission cannot transfer civilly certified addicts to correctional facilities. Further, in the case of a felony, the court has the choice of certification to the Commission or commitment to the State Department of Correction.

These devices are not satisfactory in theory, and have not proved to be satisfactory in practice. They are not satisfactory in theory, because: (a) in the case of mandatory crim-

inal certifications (*i.e.*, misdemeanor convictions and youthful offender adjudications) the assumption is made, prior to diagnosis, that addiction is the salient problem in treatment of the offender; and (b) in the case of discretionary criminal certifications (*i.e.*, felonies) the choice of treatment agencies rests with a judge rather than with an interdisciplinary panel of treatment experts. The difficulty in practice is that experience over the first nine months of operations (April 1, 1967—December 31, 1967) reveals that almost all criminally certified addicts have been transferred (by a virtually automatic procedure) to correctional institutions.

A more rational system would be to commit the *convicted* (or adjudicated) addict to the unified post adjudicatory treatment system and not to the Commission. The court would certify, as it does under the present law, that the offender is an addict and would authorize an indefinite period of custody, as it does under the present law (this period terminates automatically after 36 months). In the case of a felony, the court would be required to either: (a) sentence the offender to custody for three years or more, depending upon the offense; or, if such a sentence is not warranted as a sanction, authorize an indefinite period of custody that would terminate after thirty-six months. This would mean a change in the present option to use a sixty month indefinite commitment for felons; and the rationale for the change is that the court has the choice of using the sanction-type sentence, which can be four years for the lowest class of felony (class E), or using the condition-based addict commitment. If it uses the condition-based commitment, there is no justification for distinguishing between a condition-based commitment for a misdemeanor and a condition-based commitment for a felony. The term of custody in either case is based solely upon condition. Where a longer period of custody is appropriate because of the underlying conduct, the court is justified in imposing any period within the appropriate sanction range.

Diagnosis at the regional center would serve to determine whether treatment should be administered in a special narcotic program operated by the Narcotic Addiction Control Commission or whether a program operated by the unified post adjudicatory treatment agency is more appropriate to the needs of the case. If a Commission program is recommended, and the recom-

mendation is approved by the central board, the file would automatically be referred to the Commission and the Commission would decide whether the offender is appropriate for one of its special programs. Pending such decision—depending upon possible backlog problems—the offender could be placed in a program in the unified treatment system.

Such a procedure would permit the Narcotic Addiction Control Commission to truly be focused upon narcotic addiction. The Commission would relate to the unified post adjudicatory treatment system by taking the cases in which the antisocial conduct is particularly traceable to the problem of addiction, and by furnishing program guidance for treatment of other offenders who have an addiction problem. Further, this procedure would eliminate the tortuous current practice of sending virtually all convicted addicts to correctional facilities via certification to the Commission.*

Several points must be noted in connection with these recommendations. First, and perhaps most important, we would not recommend a change unless it were coupled with an organizational structure capable of administering custody as a general concept. This means that before a unified post adjudicatory agency could be used for real treatment purposes, the juridical distinctions between probation, incarceration and parole would have to be dissolved; and there would have to be implementation of a true system for matching programs to treatment needs. From the standpoint of conceptual progress, the salient feature of the law that vests the Narcotic Addiction Control Commission with the duty of treating convicted addicts is the fact that it calls for utilization of a general concept of custody. Any change that would transfer treatment responsibility to another agency without transfer of this concept would be a large step backward. Further, the Commission is presently embarking upon a program of evaluative research for effective matching of needs to treatment. Hence, transfer of treatment functions without the establishment of such a program in the unified agency would also be undesirable. Additionally, the unified agency would, of course, have to establish the appropriate types of facilities for administering programs involving part time institutional and part time field supervision custody.

*The Commission does, of course, contract for special services for such addicts. However, whatever special services are needed could be supplied by the unified system with the advice and guidance of the Commission.

The other point to be noted should serve to bring this entire Part of the Report into clearer focus. This is that the unified post adjudicatory treatment system cannot be viewed as being solely a criminal treatment agency. The concept and the basis of the system is not the old concept of punishment or retribution. It is one of providing rehabilitative services. True it is, as noted above (pp. 240-241), that a corner of the system is reserved for designation as exclusively devoted to treatment of persons convicted of crimes. However, the reason for this is to serve the needs of general deterrence and prevention of anomie; and the plan for the system does not require that every convicted person be incarcerated in such an institution. Such institutions would be used only where high security is necessary and only where a conviction is involved. At some future stage of society's development, there will perhaps be no necessity for making any distinction based upon the public need for institutions that have a punitive aura. But at the present time this distinction seems appropriate.

The conduct-condition dichotomy set forth in Part One of the Report does not govern the organizational structure of post adjudicatory treatment services. The system recommended by this Committee is designed to operate in the functional area of criminal and delinquent behavior. The conduct-condition dichotomy serves only as a basis for determining the right and the extent of the right of the State to interfere with the liberty of an individual. Thus, for example, in the case of the misdemeanant addict, the present maximum sanction for conduct is one year of incarceration. If the condition of addiction is proved, the State may exercise custodial control for three years, based not upon conduct but solely upon condition. The agency assigned to administer treatment to the addict does not have to be a Narcotic Addiction Control Commission, and, by the same token, should not be a criminal treatment agency. So long as the addict committed to custody on the basis of his condition receives appropriate treatment for his condition and is discharged when cured—rather than held for an arbitrary time within the maximum permitted—the fact that a portion of the treatment agency serves general deterrence and prevention of anomie should make no difference. Further, if necessary for public purposes, or for security, there is no conceptual barrier to keeping the convicted addict in the portion of the agency reserved for

criminals where the commitment is for a felony; or, in the case of a misdemeanor, for a period that does not exceed one year.

Stated otherwise, viewed in traditional terms, the agency recommended by this Committee would administer both a civil and a criminal post adjudicatory treatment system. However, the overriding organizational consideration would be the *function* of providing rehabilitative services for persons who are found to be in need of custody because of anti-social behavior. From the standpoint of organization for treatment, the use of juridical labels is not helpful. (Except for the narrow area where general deterrence and prevention of anomie are required.) Any attempt to organize treatment services in accordance with a clear distinction between agencies devoted to cases labeled as "civil" and agencies devoted to cases labeled as "criminal" can only result in: massive overlap; obfuscation of agency objectives; gaps in agency services; a labyrinth of channels for transfer, communication, research, etc.; a plethora of juridical statuses; fragmentation of treatment; lack of flexibility; tortured legal definitions of the various statuses; and obscure justifications for prolonging treatment. The civil-criminal distinction is vital in determining the basis for deprivation of liberty. But it is not applicable to sound organization for functional administration of treatment.

VIII
Visitation and Inspection

There remains to be considered the roles played by the various citizen boards and commissions that are involved in administration of the post adjudicatory treatment system. These are as follows:

The State Commission of Correction
The State Probation Commission
The Board of Social Welfare
The various boards of visitors for reformatories and training schools

The State Commission of Correction

The State Commission of Correction is charged by Constitutional mandate with responsibility "to visit and inspect, or cause to be visited and inspected by members of its staff, all institutions used for the detention of sane adults charged with or convicted of crime" (N.Y. Const. Art. XVII, §4). The Constitution does not otherwise define the role of the Commission and does not set forth any provision for the composition of the commission, except for a provision that "the head of the department of correction shall be the chairman" of the Commission.

The Commission presently has seven members (in addition to the Chairman) appointed by the Governor with the advice and consent of the Senate. Apart from the Chairman, all of the members are private citizens who serve part time and are remunerated on a per diem basis. Additionally, the Commission has a staff of five full time professionals. Basically, the staff works under the direction of the Commissioner of Correction, and almost all of the supporting services are furnished by the Department of Correction.

The Commission has broad sweeping powers with respect to institutions operated by local government. It approves construction plans; it may close down any jail, penitentiary, detention facility or lockup that does not meet basic standards of safety, sanitation, humane conditions, etc.; and it promulgates and enforces rules and regulations establishing minimum standards for program and security in the institutions.

The Commission visits and inspects State correctional institutions, but has no specific power to regulate the administration of such institutions.

Additionally, the Commission collects and publishes miscellaneous statistics with respect to the population of all correctional institutions, certain characteristics of inmates committed thereto, and various other matters. This information is presented annually in a report that contains a critique of all institutions under its jurisdiction.*

The concept of public visitation and inspection of institu-

*The Committee wishes to acknowledge its indebtedness to the Commission for this reporting function. Without the statistics collected and furnished by the Commission, there would be no way—other than a detailed canvass of every county institution—to ascertain many of the facts set forth in this Report.

tions operated by government for confinement of human beings is deeply rooted in the history of this State and was born of a wisdom based upon many bad experiences. It is the opinion of this Committee that irrespective of the efficiency and humane intentions of governmental administrators in a modern day system, there should always be a strong, independent body of interested citizens with the specific responsibility of visitation and inspection of institutions; and with the specific duty of reporting to the public.

If a unified agency is established in line with the recommendations in this Report, it seems obvious that the duty of collecting statistics should be vested in the agency rather than the Commission. This function must be tied in to the data requirements of the system. For example, when it comes to characteristics of inmates, the need for such data must be determined by the agency charged with administration and research.

Further, if the Commission is to be continued, as we think it should, administration of the Commission should be divorced from administration of the agency it inspects. The concept of the Commission should be one of an independent inspection function.

In sum, our recommendation is to continue the Commission, but to narrow its duties to purely visitation and inspection. Functions such as approving plans for new local institutions, setting program standards for such institutions and the like, presently vested in the Commission by statute, should be performed by the experts in the unified treatment agency, and this authority should be vested in the chief executive of the agency. The function of closing institutions that do not meet the standards should be performed through legal process by the Attorney General on the complaint of the Commission or on the complaint of the head of the unified treatment agency. In cases where the Commission is not satisfied with standards set by the chief executive of the unified treatment agency, the Commission would have recourse through reports to the Governor and to the public.

The basic responsibility for assurance of proper standards in both State and local institutions would be performed by an inspection bureau within the unified treatment agency. The Commission would be an independent "watchdog".

The State Probation Commission

The history, development and present role of the State Probation Commission is outlined in detail, *supra,* in this paper (pp. 175-180). As noted, the Commission consists of four citizen members appointed by the Governor with the advice and consent of the Senate, the Commissioner of Correction, the Director of the Division of Probation and a member of the State Commission of Correction. The role of the Probation Commission today is an advisory role.

While it is true that the State Probation Commission is largely responsible for having developed probation service from a virtually unknown function to its present level, it is clear that there is no role for a body of citizen advisors in the system envisioned through application of a general concept of custody. Probation would no longer be an entity and would no longer be a clearly distinguishable function.

The State Board of Social Welfare

The State Board of Social Welfare is charged by Constitutional mandate with responsibility to visit and inspect "all public and private institutions, whether state, county, municipal, incorporated or not incorporated, which are in receipt of public funds and which are of a charitable, eleemosynary, correctional or reformatory character, including all reformatories for juveniles and institutions or agencies exercising custody of dependent, neglected or delinquent children, but excepting state institutions for the education and support of the blind, the deaf and the dumb, and excepting also such institutions as are . . . made subject to the visitation and inspection of the department of mental hygiene or the state commission of correction." (N.Y. Const. Art. XVII, §2).

In addition to its duties with respect to agencies receiving public funds, the Board is also vested by Constitutional mandate with the responsibility for inspection and visitation of other private institutions, but its authority with respect to such institutions is limited to matters directly affecting the health, safety, treatment and training of inmates or of children under custody.

Further, the Constitution provides that "subject to the control of the legislature and pursuant to the procedure prescribed by general law," the Board may make rules and regulations

"with respect to all the functions, powers, and duties with which the department and the state board of social welfare are herein or shall be charged." (N.Y. Const. Art. XVII, §2). There is no specific reference in the Constitution, however, to the duties of the Department of Social Services or of the Board of Social Welfare other than the above provisions on visitation and inspection.

The Board consists of fifteen members appointed by the Governor with the consent of the Senate. The Governor designates a chairman to serve in such position at the pleasure of the Governor. As in the case of the Commission of Correction, the members and the Chairman are selected from among interested community leaders in the field, serve part time, and are compensated on a per diem basis.

Under the Social Services Law (§§6, 11), the Board makes policy for the Department of Social Services. The Commissioner is appointed by the Board—as the chief executive and administrative officer of the Department—with the consent of the Governor and the Board may remove the Commissioner in its discretion with the consent of the Governor.

The Board of Social Welfare plays a dual role in our government. It sets the policies of a State agency; and it has visitation and inspection responsibilities for State, local government and private institutions caring for most categories of persons receiving care in eleemosynary institutions (*i.e.*, public homes, homes for the aged, proprietary homes, temporary and special shelters for adults, certain convalescent homes, and institutions serving dependent, neglected and delinquent children).

Under the reorganization proposed in this Report, the Board would no longer have responsibility for operational policies governing the administration of training schools, because the function of caring for delinquent children placed with the State would be in the unified post adjudicatory agency rather than in the Department of Social Services.

However, as stated in connection with the Commission of Correction, the independent visitation-inspection function would be a valuable public safeguard. There would, however, be a basic difference between the functions of the Board and the functions recommended for the Commission of Correction. The Board presently has broad statutory responsibility for setting standards for all sorts of agencies, including institutions for

dependent, neglected and delinquent children, and it would continue this function, except with respect to institutions operated by the State. The head of the unified agency for post adjudicatory treatment services would not, therefore, set standards for local government and privately operated children's institutions. The Board would retain the function. The Board would, however, in addition, serve as a public "watchdog" over children's institutions operated by the State.

Boards of Visitors

Training schools and certain reformatories have boards of visitors, provided for by statute. These boards are made up of interested citizens appointed by the Governor with the consent of the Senate, and they serve without compensation.

The board of visitor concept is the descendant of the old board of managers system. Under that system institutions were organized separately and were not under strong central departmental control. The boards of managers set policy, controlled the institutions, and had ultimate operational responsibility. As the departmental system evolved, there was a transfer of authority and responsibility from the boards of managers to the departmental executives; and the organizational title of the boards was changed to reflect the transfer from "managers" to "visitors".

The only justification for continuing to have boards of visitors is the fostering of community involvement with the institution. This function does not have to be served by a special board appointed by the Governor with the advice and consent of the Senate. The board of visitor concept is an anachronistic vestige of a long abandoned administrative system. If these boards are to continue, they should be selected by the heads of the institutions involved and their roles should not be such as to exercise any control over administrative policies. They should function as community volunteers to assist in bridging the gap between the institutions and the surrounding community.

Part Three
Analysis of the Problem of Prevention of Recidivism through Treatment Administered by the Post Adjudicatory Treatment System

The purpose of this Part of the Report is to discuss the problem of prevention of recidivism through treatment administered by the various agencies comprising the post adjudicatory treatment system, and to offer suggestions for improvement in the present approach.

In dealing with this subject we will first focus upon certain special problems when treatment is administered under the criminal system rationale (section I) and then discuss prevention of recidivism as it applies throughout a functionally administered unified post adjudicatory treatment system (sections II and III).

I
Prevention of Recidivism as Related to the Objectives of the Criminal System

The criminal treatment system is an integral part of the State's mechanism for dealing with the problem of crime. Its objectives, as stated in Part One of the Report, are: general deterrence; prevention of anomie; and prevention of recidivism. Pursuant to these objectives it seeks (a) to deter the general

populace from engaging in criminal conduct, (b) to maintain the faith of the general populace in the State's determination to uphold certain norms, and (c) to prevent persons who have engaged in criminal conduct from committing additional crimes.

The basic problem to be explored at the outset is the conflict that often arises between the two public oriented aspects of the criminal system (*i.e.*, general deterrence and prevention of anomie) and the individually oriented aspect of that system (*i.e.*, treatment of individuals to prevent them from committing future crimes). The principles involved, and the methods for narrowing the area of conflict, are explored, in detail, in Part One of the Report and will not be repeated here. The discussion at this point is limited to the purpose of directing attention to the fact that measures which may seem most appropriate for prevention of recidivism *in individual cases* may run counter to the overall needs of the system.

Thus, for example, consider a situation where there is a crime wave in a particular section of a community and the question arises as to treatment of persons convicted of crimes committed there during that period. Experts in the behavioral sciences might opine that field supervision would be best for all of these particular individuals in that it would seem to be the most fruitful method of treatment to help them to refrain from future crime. Such treatment, however, might not be severe enough to serve the needs of general deterrence or to assure the restless community that the State is determined to uphold norms. Therefore, it might be necessary to incarcerate some or all of these offenders for public oriented purposes, even though we believe that field supervision would be a better method of preventing their recidivism.

As noted previously, there is no collection of data to show whether more crime is committed by first offenders or by recidivists. Moreover, there are no studies to show what the effect of sanctions might be on general deterrence (except in the limited area of the effect of capital punishment—the most extreme sanction—as a deterrent for murder). If one were to postulate a relationship between severity of sanctions and general deterrence, hypothesizing that within a limited range deterrence is increased as the level of severity is increased, the conclusion would be that lower severity contributes to an increase in the

general crime rate. This is the present assumption and it is fair to say that the system will continue to proceed upon it until it can be demonstrated to be false.

Hence, the best method of preventing recidivism is not necessarily the best method of preventing crime. If the group restrained from committing crime through fear of a certain level of sanction is larger than the group convicted or adjudicated (*i.e.*, the group actually sanctioned), there is a risk to society in use of a low level of sanction even if it is probable that the lower level will reduce recidivism. Consequently, it is essential to remember that, in cases where criminal responsibility is involved, the objective of prevention of recidivism cannot dominate the treatment system; and that treatment must be prescribed through a process that balances the needs of all of the objectives of the system.

In this connection it is relevant to observe that a distinction must be drawn between the executive and the judicial functions. The judicial branch of government, within the concept of the criminal treatment system, sets the limit of the sanction and formulates the prescription for general deterrence and prevention of anomie (insofar as such matters are dealt with by action of the post adjudicatory treatment system*). The judicial branch decides whether a sanction is necessary—and the extent of the sanction necessary—for general deterrence or prevention of anomie. The executive branch does not, or should not, concern itself with general deterrence or prevention of anomie in administering treatment. The role of the executive branch in the criminal treatment system is prevention of recidivism. Thus the objectives of the criminal treatment system are administered by two distinct agencies; and the judicial branch has the authority to limit the effectiveness of the executive branch through imposition of restrictions such as mandatory minimum terms of incarceration.

The distribution of powers between the executive and the judiciary is accomplished by the legislature and the legislature sometimes mandates sanctions for public oriented purposes itself. Basically, the legislature performs the function of balancing the public and the individually oriented purposes.

*General deterrence and prevention of anomie also result from prompt and sure police action, prompt and efficient prosecution, publication of results and like matters.

For example, when the legislature—reflecting public opinion—believes that general deterrence should be increased or that the State should evince a stronger determination to uphold a norm, it will either prescribe a mandatory minimum itself or increase the authority of the judiciary to impose a minimum term, or take some other step such as prohibiting probation. When rehabilitation seems to be the more important objective, there is a tendency for the legislature to eliminate mandatory sentences and to cut down the authority of the court to impose minimum terms of imprisonment. Thus the balance between public oriented purposes and the individually oriented purpose pulsates in accordance with general impressions as to need. Some years laws will go in one direction, some years laws will go in the other direction, and some years laws will go in both directions at the same time (*e.g.*, increase mandatory minimums for sex and narcotic crimes and decrease for other crimes).

The executive, therefore, focuses upon prevention of recidivism within a limited framework and does not always have the power to do that which seems best for this purpose.

The Problem of Risk

Unfortunately, so little is known about the effects of any action taken with respect to the post adjudicatory treatment system that everything presently done and any change made involves unknown levels of risk.

In discussing the relationship of prevention of recidivism to general deterrence, for example, the problem of risk arises both in the operation of the present criminal system and in considering any changes. It is virtually impossible to make a sound knowledgeable judgment at the present time as to the effect of sanctions on general deterrence. It is equally difficult to arrive at any firm conclusion at the present time as to whether anything we are doing with offenders is decreasing or increasing the possibility of recidivism. Thus, if we increase the severity of sanctions we might decrease the number of first offenders but at the same time reduce the flexibility available to the treatment system to the point where recidivism increases because of treatment failure. This, however, involves the assumption that flexibility—*e.g.*, the authority to utilize lower degrees of custody and

non-custodial sanctions—helps in treating offenders and consequently prevents recidivism.

The assumption throughout this Report is that flexibility helps in preventing recidivism. This assumption is based upon the notion that in the absence of demonstrable knowledge experienced practitioners must be permitted to use their judgment to the fullest extent possible and to apply the widest possible array of alternatives to meet the individual treatment needs of offenders.

The aforesaid notion proceeds from the fact that almost all offenders must be returned to the community at some time. Hence, the treatment system applies the type of treatment that is most likely to help them adjust to the community. (Except in cases where it is necessary to utilize high security for protection of the public, and, even in such cases, the treatment administered is designed to foster eventual adjustment.) Notwithstanding the absence of any demonstrable knowledge as to the relationship between adjustment to the community and recidivism, this is the most rational line of action the system can follow.

This discussion has significant relevance to the problem of determining the type of custody to be used in administering treatment for rehabilitation. The alternatives for the criminal treatment system cannot be perceived in terms of security vs. risk (*i.e.*, danger to the community from use of less structured forms of custody). The comparison of security and risk can only hold in a system that has an unlimited avenue for pursuing security—where security as an alternative to risk can assure us that the offender will be put away for life. Such alternative is not available—except for the most heinous crimes—in a system that weighs the permissible sanction against the gravity of the conduct; and one sound reason for preservation of this system is the inability to determine with any degree of assurance that a particular offender will offend again. Hence, our system is one that forces us to take risks in almost every case; and the question is not one of security vs. risk, but rather one of doing that which will reduce risk, taking into consideration the entire lifespan of the offender and not just the period he might be in custody.

Accepting, therefore, the hypothesis that assisting a person to adjust to the community will lessen the likelihood of his

recidivism,* and given the fact that the offender must return to the community at some time, the principle that inhibiting flexibility will increase recidivism must be accepted.

Therefore, when laws are passed that inhibit flexibility to achieve general deterrence or prevention of anomie, such step is taken at the risk of increasing recidivism; and when flexibility results in a lower level of security such step is taken at the risk of inhibiting general deterrence (other aspects of risk in use of lower security are discussed *infra,* pp. 321-323). The major problem being that movement in either direction cannot presently be justified through any demonstration that such move will reduce the rate of crime.

Until such time as society acquires a body of information as to the effect of sanctions on general deterrence, as to the actual effectiveness of the various treatment methods in preventing recidivism, as to whether one objective should be given priority over the other (*i.e.*, which is more important in reducing the crime rate), and as to how to serve both purposes most effectively, any change—and indeed our present system—will continue to contain a vast area of undetermined risk.

II

Prevention of Recidivism

In dealing with rehabilitative treatment in the field of anti-social behavior, relevant definitions and theories do not make distinctions on the basis of criminal responsibility. In particular, definitions and theories that seek to explain crime and delinquency, or deal with treatment, generally do not differentiate between crime and acts committed by juveniles for whom the term crime is not legally applicable. Thus, in this and the following sections of this Part of the Report, our use of the terms "crime" and "criminality" includes anti-social behavior and comprises conduct that is either prohibited by

*The relationship between community adjustment and recidivism still remains a subject that requires experimental investigation. Thus far we are not aware of any study designed for testing the relationship. Some so-called well adjusted people commit crimes and some people who appear to be poorly adjusted do not commit crimes.

law, or unacceptable for juveniles regardless of the presence of criminal responsibility.

The Problem of Definition

One of the foremost problems in communication of ideas with respect to the post adjudicatory treatment system is the fact that the term "recidivism" has many different meanings. In any discussion of recidivism, or of the rate of recidivism, one must be extremely careful to ascertain the definition of the term as used in the discussion.

For example, when discussing probation or parole failure, one must ascertain whether the term recidivism means: the commission of a new crime, arrest for a new crime, conviction for a new crime, violation of a rule, revocation for violation of a rule, revocation without violation of a rule; or, where a new crime is involved, whether the term recidivism means major crime (*i.e.*, felony), minor crime (*i.e.*,misdemeanor), or a crime of the same order as the prior crime (*e.g.*, sex offenses).

The term recidivism is defined in one dictionary as meaning "a tendency to relapse into a previous condition or mode of behavior." (Webster's Seventh New Collegiate Dictionary), and this definition seems to catch the flavor of the concept as generally understood. However, from the standpoint of the post adjudicatory treatment system, it seems most rational to define recidivism as "an offense committed by a person who has previously been convicted or adjudicated for an offense," because the objective of the system (in prevention of recidivism) is prevention of new offenses by persons who have been convicted or adjudicated.

Even this meaning is not useful from a practical standpoint, since the only way in which the system can ascertain—with any degree of certainty— whether a particular person committed an offense is by using the factor of conviction or adjudication.* This is a highly unsatisfactory guide, because it obviously is limited to persons caught and convicted. Not all crimes are reported, only a small percentage of reported crimes result in arrests, and not everyone who is arrested is charged and convicted.

*A particular researcher may be able to ascertain whether certain offenders have committed new offenses by asking them. However, any admission so obtained would more than likely be kept in confidence and self-report information in such a sensitive area is not reliable.

Moreover, one cannot even postulate important probabilities from this guide. In other words one cannot say whether more crime is committed by first offenders or by prior offenders based upon the relative ratios of first offenders and prior offenders to the total number of persons convicted or adjudicated. It is well known that police authorities are more likely to be able to solve a crime if it was committed by a person with a record than if it was committed by a person unknown to the system. Therefore, one can assume that even if we had figures to show the relative number of first offenders and prior offenders convicted or adjudicated each year, such figures would not be reliable indices of the contribution to the crime rate made by each group.

Additionally, the use of the term recidivism is a source of confusion. Literature discussing comparative rates of recidivism among various governmental treatment systems abounds with misleading statements that rates are higher or lower in one place or another, because such comparisons frequently are made on the basis of different meanings of the term. In fact, it is fairly well recognized that any post adjudicatory system can make its own rate of recidivism by including or excluding factors that will be used as criteria, and also by changing its policies with respect to enforcement.

For example, parole failure may be measured in one state by the number of rule violations, in another state by the number of persons returned to incarceration, and in a third state by the number of convictions for new crimes committed by parolees. Obviously, unless the figures are published for each factor in each state, a comparison of the effectiveness of parole among the three states is impossible.

Apart from this it should be noted that even when such figures are compared, the results may be misleading if one does not take policy differences into account. In several states there is a tendency not to prosecute new crimes where parole or probation revocation can furnish an adequate period of incarceration. Also, parole rules differ from state to state and what may be recorded as a violation in one state may not be regarded as a violation under a system in another state. Further, even the most commonly used criterion of return to the institution is subject to myriad interpretations.

In sum then, the term recidivism represents nothing more

than an omnibus concept. Whenever the term is used as a vehicle for conveying information, it must be accompanied by a definition. In discussing any aspect of recidivism, the terminology must focus upon specific factors; *e.g.*, new arrests, new convictions, rule violations, revocation, community adjustment, etc.

The Causes of Crime and the Relationship Between Causal Theory and Recidivism

In thinking about crime it is essential to distinguish between theories that seek to explain how crime develops in society as a general matter, and the problem of explaining the criminality of a given individual. From the standpoint of crime prevention, theories as to how crime develops in society are valuable tools *per se*. However, the post adjudicatory treatment system deals with individuals rather than society at large, and such theories are only relevant as leads to determination of what might be the difficulties to be overcome in rehabilitating an individual offender.

Consider, for example, Cloward and Ohlin's theory of Differential Opportunity, which deals with delinquent subcultures rather than with individuals. The theory holds that persons who perceive societal obstacles to legitimate fulfillment of goals generally believed to be accessible to all may adopt illegitimate means of attaining those goals. An important element of the theory is that the individual believes that the obstacles represent injustices created by society and, hence, that he is justified in rejecting society's norms of conduct in pursuing the generally accepted goals. The illegitimate means adopted depend upon the available and accessible opportunities in the particular neighborhood.

The Cloward and Ohlin theory is one way of explaining the phenomenon of crime of a particular type (*i.e.*, lower class youth crime) but it represents a global approach to even that type. One might accept the theory as explaining crime in a certain neighborhood and still have no understanding of why a particular individual in that neighborhood engaged in criminal conduct. To gain such understanding it would be necessary to have knowledge of the individual and to understand the roles played by all of the other factors that might be involved. It might well be that the Cloward and Ohlin theory

would explain the individual's criminality, but this cannot be determined without an evaluation of the individual. Thus, such theories may be useful in combatting the general problem of crime and are useful as indicators of factors that may be relevant in treatment of individuals.

All of the extant theories of crime causation deal with crime on an abstract level. This is not a criticism of the theories, because all theories are necessarily abstract. The difficulty is, that attempts thus far to move from the abstract to the particular—*i.e.,* to move from theories explaining the general phenomena of crime to an explanation of the criminality of individuals—seem to be fixated at the level of trying to fit the individual to the theory. This usually takes the form of a typology in which several theories or explanations of the general phenomena of crime are synthesized as categories of persons, and attempts are made to fit the offender into one or the other category. It also sometimes takes the form of a single theory and attempting to fit all offenders into it (*e.g.,* psychoanalytic theory, postulating that criminal conduct is a form of aberrant behavior stemming from traumatic interruptions of natural drives).

Thus, it is common to refer to offenders as: associational delinquents, conflict gang delinquents, deprivational offenders, cultural conformists, uncontrolled impulsive erratic offenders, compulsive neurotic delinquents, etc. (Additionally, it is not uncommon to find typologies that categorize offenders in accordance with the particular crime committed: *i.e.,* burglars, sex offenders, robbers, murderers, assaulters, etc.)

The criminality of an individual can only rarely be explained by any single factor or by any limited theory. Individual criminality—the problem of the post adjudicatory treatment system—requires a complex formula for each offender. The elements of this formula can be derived from causal theories, but such elements must be stated in a manner that permits recognition of the interaction of all of the factors involved. In other words, each offender must be described by a profile that permits recognition of the varying factors that are believed to be related to his conduct. It does little good to know, for example, that an individual was reared in a slum where delinquency is rampant, and to which Cloward and Ohlin's theory might apply, unless we can determine that his

particular criminality is the outgrowth of the causal factors postulated in the theory. Moreover, we might find social or psychological factors that have more saliency in connection with the criminality of the individual than his perception of differential opportunities. Most probably, we would find that his criminality is the outgrowth of many interrelated factors.

Before examining a suggested method for creation of a system that would apply causal theory to individual criminality, it is helpful to have an overview of the major hypotheses.

Basically, there are two conceptual categories of theory and explanation on the causes of crime: those that can be called socio-cultural theories; and those that can be called psychogenic and constitutional theories. Additionally, there are theories that utilize elements of both categories.

The socio-cultural theories emphasize the transmission through culture of criminal roles, values, attitudes, techniques and patterns of behavior from individuals or groups of individuals to others; and do not deal with psychological or constitutional abnormalities. Almost all of these theories are directed at explaining delinquency rather than adult crime and almost all of them focus upon the lower socio-economic group. There are no well recognized socio-cultural theories as yet that are directed at explaining adult crime, crime at the middle and higher socio-economic levels, or recidivism *per se;* but attempts have been made to postulate such theories through extrapolation from the juvenile lower socio-economic level theories.

The socio-cultural theories and explanations deal with such matters as criminal associations, delinquent peer groups, delinquent milieux, differential opportunity, social disorganization, poverty, and like matters. These theories tend to focus in two directions: (a) that the individual acquires criminal attitudes and ways of behaving from others in his community; and (b) that the individual is bitter or frustrated, and hence, rejects society's norms because of some perceived injustice that prevents him from fulfilling his expectations. Many of the socio-cultural theories involve an interplay between these two orientations.

The common element in these theories is the idea of deprived youth living in disadvantaged neighborhoods. These neighborhoods are thought to be characterized by social breakdown; *e.g.,* inability of parents to provide for the needs of chil-

dren, lack of focused community condemnation of deviant behavior, isolation and anonymity of families and individuals, and general absence of traditional social controls. While such neighborhoods do not necessarily generate delinquency, they offer a medium for germination and growth of delinquency.*

Delinquency is thought to arise in a number of ways. One such way is through conflict between different ethnic or cultural groups. For example, when a new group starts to move in, there is a tendency for tension to develop and the youths in the new and old groups tend to band into gangs for protection of common interests. This leads to gang fights which may involve homicide, felonious assault, malicious mischief, etc. Another way for delinquency to develop is through the presence in the neighborhood of individuals with delinquent attitudes. Where there is no controlling community focus against delinquent behavior in the neighborhood, there is a greater tendency for a youngster to accept the ideas of the persons he meets who hold delinquent attitudes than there would be if delinquency was socially discouraged in the neighborhood. The more frequent, the more intense and the longer his contacts with delinquents, the more likely it is that he will come to behave similarly and to adopt delinquent attitudes, techniques and values. A third way for delinquency to develop is where youngsters perceive some injustice in the social structure as applied to them (*e.g.*, racial discrimination in jobs; lack of job opportunities because of low education; unfairness of police, courts or school officials toward poor people or minority groups; etc.). These perceptions, whether based upon reality or subjective belief, may lead to bitterness against society and cause repudiation of legitimate paths to desired goals. Such persons also may invert the general value system and adopt a set of values opposite to those posed as standards. When this occurs there is a tendency to steal rather than to work, to fight rather than to discuss, to rape rather than to seduce, etc. The actual form such delinquent conduct may take will depend to a great extent upon the kind and degree of delinquent organization in the neighborhood.

*Alcohol and drug addiction, abandonment, mental illness and other social ills are also quite likely to occur and grow under these conditions.

It is important to note that delinquency can, of course, arise in other types of neighborhoods. However, such delinquency is more sporadic and has less of a tendency to be characterized by large numbers of delinquents who band together.

Where organized crime holds sway, there is a tendency to become connected with this sort of activity. Where there is a neighborhood gang, the particular activities of that gang offer the opportunities. A fourth way for delinquency to develop is where certain forms of criminal conduct are simply part and parcel of the neighborhood culture and persons participate in such conduct as a normal social activity without any conscious feeling that it is anti-social. One example of this is the use of marijuana; another example is statutory rape; a third example is maintaining an illegal still or production of untaxed alcohol. There are, of course, many other socio-cultural explanations and many refinements of what has been said here; however, the above should serve as a basic overview of socio-cultural crime theory.*

The psychogenic and constitutional theories and explanations deal with such matters as: uncontrolled, unconscious psychological forces or drives; mental deficiency; personality traits; genetic malformation; endocrine malfunction or imbalance; and like matters.

Psychogenic and constitutional theories seek to explain criminal behavior on a more global level than the extant socio-cultural theories in that they cover adults and juveniles on all socio-economic levels. The psychogenic and constitutional theories postulate a relationship between crime and the biological or psychological condition of the individual, and hypothesize that socio-cultural factors are relevant only as they may reinforce or trigger behavior or behavior patterns that emerge from factors within the individual.

In the psychogenic sphere, the primary theory is psychoanalytic, which is the most formalized and far reaching of the group. Psychoanalytic theory is directed at aberrant behavior rather than at crime *per se*. Delinquency and crime are equated with aberrant behavior which is held to be symptomatic of underlying psychological maladjustment. Such maladjustment is thought to stem from the failure to develop ("internalize") adequate impulse control—*i.e.*, control of primitive instinctual drives—and failure to develop adequate responses to reality—*i.e.*, poor ego and superego development. Psychoanalytic theory usually is based upon the hypothesis that some traumatic experi-

*A number of the best recognized theories and explanations are set forth in detail and analyzed in a separate appendix to this Report.

ence, or some disturbed relationship, during an individual's early formative years (*e.g.,* absence of a father figure), has blocked fulfillment of natural drives or has interfered in a negative way with natural development. Where natural drives are blocked, the repressed unfulfilled strivings recur directly or symbolically at a later time in a distorted form and cause aberrant behavior. This may take the form of assaultive and destructive acts, sexual deviation, compulsive acts (*e.g.*, kleptomania, pyromania) or crime committed as a means of seeking punishment. Where there is a failure to develop adequate responses to reality, the outcome depends upon whether the difficulty is thought to be in the development of the ego or in the development of the superego. Failure to develop an adequate ego structure is thought to result in an inadequate personality and the inability to cope with the array of alternatives for action in everyday life. This may cause a person to be easily led by others, to take an improper alternative because it appears easier (steal rather than work) or to deliberately recidivate so that he can be returned to the highly structured environment of a correctional institution. Failure to develop an adequate superego is thought to result in lack of moral judgment (no internalized controls). This may cause a person to fulfill his desires in any manner that comes to mind without regard to morality.

Other theories in the psychogenic sphere include the mental deficiency and personality trait hypotheses. Mental deficiency theory holds that mental weakness is associated with the inability to make moral judgments and that mentally deficient persons are unable to forsee the consequences of their actions. As a result it is thought that such persons are likely to be drawn into crime. Another aspect of mental deficiency theory is that mentally deficient persons are more likely to act in the manner of children and to respond impulsively to provocation or temptation. Personality trait theory holds that certain personality characteristics are associated with anti-social behavior (*e.g.*, aggressiveness, dominance, hostility, manipulativeness, etc.), and that criminal behavior is a manifestation of these characteristics.

The constitutional theory sphere consists of a number of hypotheses that share the notion that criminality is the result of innate or acquired biological characteristics. Included in these characteristics are such things as glandular, neurological

and genetic anomalies. It is posited that such characteristics may decisively influence personality and behavior, and that where aberrant behavior is found the characteristics predisposed the individual toward the behavior. Socio-cultural factors are thought to serve as modifiers of the basic propensities generated by the characteristics—*i.e.*, they hold the individual in check or trigger aberrant behavior. The heart of these theories is that persons who possess such anomalies have an inherent proclivity toward aberrant behavior.

Most of the explanations of crime phenomena utilize an interplay of elements from both the socio-cultural and psychogenic theories. For the purpose of discussion we will refer to these theories as "bridging theories." Basically, bridging theories can be looked at in four conceptual separate, but interrelated, categories.

The first category can be called the "adolescent problem" category. Theories in this area focus upon tension produced during the transition from dependency of childhood to autonomy of adulthood. The conflicting demands of society requiring dependency upon and obedience to parents (or guardians) in combination with adult responses tends to create tension between the generations. It also causes confusion as to the expectations the adolescent is to fulfill. These factors are thought to be responsible for adolescent gangs which, it is postulated, provide a source of stability for the individual. The stability is derived from the fact that all members have the same problems and that the gang, itself, provides a relatively unambiguous social system. Individual tensions are worked out primarily through collective behavior of the gang. One common form of this behavior is delinquent conduct. The factors involved in the adolescent problem category are also thought to produce a striving to acquire material and social symbols of adulthood (*e.g.*, automobiles) and this may result in utilization of illegal means of fulfilling desires. It should, of course, be noted that adolescent "acting-out" can occur on an individual level (at all socio-economic levels) as well as on a group or gang level.

The second category of bridging theory can be called the "identity process" category. Theories in this category focus upon a hypothesis that an individual pursues a form of behavior that fits the manner in which he sees himself. If a person acquires delinquent attitudes and values during his formative

years (in the process of socialization), he is likely to see himself as a criminal and to see generally accepted methods of fulfilling goals as "not for him". It is also thought that such a person is likely to select others with similar attitudes and values as companions, and that such associations are likely to reinforce the criminal self-image. The sources of delinquent attitudes and values are thought to be identifications with real or imagined criminals,* aspiration to membership in a delinquent gang, or desire for friendship with a delinquent individual, or repudiation of a non-delinquent group or individual because of perceived or actual rejection.

The third category of "bridging theory" can be called the "family relationship" category. Theories in this area are built around the hypothesis that family experiences shape the way the child perceives and evaluates himself and the world around him, and largely determine the child's capacity to deal with situations he encounters. They gratify the child's need to be wanted, to be recognized, and to be secure. There are three focal points of family deficiency that are thought to be causally related to criminal conduct: failure of discipline, rejection, and overindulgence. Failure of discipline involves the lack of, or inconsistency in providing, discipline and setting of appropriate limits for behavior. It is thought that such failure results in the child's inability to control himself and to delay gratification of his needs. This may lead to a wide range of unacceptable conduct—*e.g.*, larceny, assault, etc. Rejection (and lack of affection) involves deprivation of warmth, security and recognition. It is thought that such deprivation causes the child to become anti-socially aggressive out of revenge, or to seek warmth, security and recognition from membership in a gang, or to seek attention—as a substitute for affection—by committing acts that will attract attention such as arson, property destruction, etc. It is also thought that even where the youngster has internalized socially accepted norms and attitudes, rejection by the parents may cause him to seek warmth, security and recognition through companionship with others, and that such may result in membership in a delinquent gang. Where this occurs, there is a tendency to repudiate socially acceptable practices and values

*Some observers hold that such media as television, comic books and pornographic literature stimulate the process of identification with deviant individuals and behavior.

learned from the parents because the source of affection—*i.e.*, the gang—repudiates what the parents have transmitted and because the youth never received important gratifications from the parents. This can be thought of in terms of a cycle that erects an ever growing barrier between parent and youth. The harder the parent tries to inculcate socially acceptable practices and values without providing affection, the further away the youth grows and the more opposite his views become. Overindulgence, on the other hand, leads to dependence upon one or both parents. As the youth matures he finds himself unable to break the dependency relationship, while at the same time finding the relationship painful because it conflicts with his desire for independence. It is thought that he unconsciously attempts to resolve the conflict by going to one extreme or another. Thus, for example, drug addiction—when viewed under this theory—is a displaced dependency relationship; also, persons may commit crimes in order to obtain or regain the structured and nurturant environment of institutional life. Where the person goes to the other extreme and denies dependency, he is likely to overemphasize his "manhood" and become overly aggressive. This may lead to assault or gang dominance through physical prowess, etc. In cases where there has been maternal overindulgence, the pain of the conflict and denial of dependency may translate into intense hatred of women and rape as a means of expressing both masculinity and the desire to get back at women.*

One of the more common causes of the three factors (failure of discipline, rejection and overindulgence) is the absence of a consistent father figure. Such absence may indirectly lead to poor discipline because of the mother's inability to deal with the child; may produce feelings of rejection; and may lead to a mother overindulging the child as a compensatory measure. It might also be noted that such absence may lead to maternal identification by a son which can generate feelings of conflict with his emerging need to be masculine.

*Apart from the theories explained in the text, it is also thought that parents can be the direct cause of the acquisition of criminal attitudes. Where the parents express hostility and mistrust toward schools, employers, police, social agencies and other social institutions, or boast of having engaged in "smart deals", "bribery" and other forms of law evasion, or express admiration of others who engage in such conduct and "get away with it", children may adopt similar viewpoints without acquiring concomitant controls.

The fourth category of "bridging theory" can be called the "social identity" category. Theories in this area deal with interaction between the "identity process" (see pp. 295-296, *supra*) and certain social forces. It is hypothesized that experiences in the community can create or reinforce delinquent self-images. Thus, for example, a youngster who is a member of a minority group (and happens to have a weak self-image) and who feels that he is being discriminated against by the police and school officials may come to believe that they regard him as a delinquent. He might then generalize from this experience and come to believe that society in general regards him in this manner. This, in turn, may lead to acceptance by him of this identity and the development of delinquent attitudes and values. Basic to the theory is the assumption that society tends to stereotype people in accordance with certain characteristics: *i.e.*, race, religion, juridical label, social status, etc. These stereotypes are accompanied by sets of expectations as to how individuals within the categories will behave.

Perhaps the most noted expression of this theory in the crime area is called "labeling theory." Under this hypothesis, official juridical labeling places a youth into the category of delinquent. This helps to organize responses to him different from those that would have developed without the label. The youth comes to think of himself as a delinquent as a result of both the impression made upon him by the label and the responses he receives from the community (*e.g.*, from prospective employers, school authorities, etc.). Continual failure in attempts to overcome the label creates an expectation of failure which inhibits future attempts and deepens internal acceptance of the label. Associations with others similarly situated also may have this effect. The individual then organizes his behavior in accordance with the label.

An interesting variation on labeling theory was postulated under the name of "drift theory". This holds that a delinquent only spends a small percentage of his total waking time engaged in anti-social conduct. He drifts through a variety of situations and circumstances, some of which may be anti-social acts, and the forms which such acts take vary according to the values and restraints of the moment. Just as delinquents drift into anti-social behavior they also drift out of it. When one adds the concept of "labeling" to the notation of "drift", a theoretical

principle emerges to suggest an explanation of how a certain drift direction can solidify. This is that a youngster who drifts into occasional anti-social acts and then is caught and adjudicated may have less of a chance of avoiding future anti-social behavior than a similar lad who has not been so labeled. The point is that many, if not most, urban youngsters drift in and out of minor delinquent acts during early adolescence. When they are not caught by legal authority and adjudicated, they "burn out" of this mischief as they mature without ever becoming serious delinquents. But once juridically labeled, the social sphere available to them is more narrowly limited and the contacts with other delinquent youth become more frequent (and their acceptance among them is greater).

There is very little evidence available to demonstrate the validity of the above theories and explanations. Among the theories that have been tested, the one that has been shown to have some validity according to the standards of scientific methodology is Cloward and Ohlin's Theory of Differential Opportunity (see p. 289, *supra*) and even in this case there are other factors that could explain the results obtained. Nevertheless, we cannot discard the best thinking that has been done in the field on the ground that the theories have never been, or cannot be, shown to be correct by scientific tests. Crime exists, offenders are sentenced to custody, and society must proceed to treat crime and individual offenders in the most effective way possible at the moment. Hence, the State must utilize all available knowledge and theories in accordance with the expertise at hand.

As previously noted, there is an important distinction between the above theories and the system that must be developed for treatment of an individual. The theories are abstract and do not attempt to explain the criminality of any particular individual: they deal with criminal phenomena in general. The utility of the theories to the post adjudicatory treatment system is that they furnish leads to determining what might be salient factors in the delinquency of individuals.

A Suggested Method for Applying Causal Theory to Individual Criminality

From the above theories it is possible to extrapolate a set of factors that seem to play an important role in crime causa-

tion. If these factors are taken and set forth in the form of a list, then the individual could be matched to the factors, and a profile of treatment factors can be derived for him. In other words, using the theories as source material one can create an inventory of causal factors. The individual can then be matched to the causal factors and those that apply to him may be selected. These would be ranked in order of saliency and treatment would be aimed specifically at the factors selected.

Although it is impossible to conclude, at present, that the factors which are thought to play an important role in crime causation actually cause the criminality of any given individual, it is possible to utilize such factors in conjunction with another concept—rehabilitation. The one common element in all of the theories is that they postulate factors that impede an individual's ability (or willingness) to function in a socially acceptable manner. From this it is hypothesized that such factors contribute to criminality. The theories, themselves, utilize the factors in varying combinations, but the same thought is implicit in all—*i.e.*, impedimenta. This thought is the cornerstone of modern rehabilitation, and the theory of rehabilitation supplies the connecting link between abstract causal theory and the treatment of individuals.

The theory of rehabilitation, as stated in Part One of the Report, is as follows:

1. There are certain personal characteristics that impede an individual's ability to function at a generally acceptable level in one or more basic social areas.
2. The difficulty in performing at a generally acceptable level in such areas significantly contributes to criminal conduct.
3. Treatment should be directed at overcoming the aforesaid personal characteristics.

Since no one can state with certainty what the cause of any individual's criminality might be, the best the post adjudicatory system can do is to focus its efforts upon attempting to assist the offender to overcome the impediments to acceptable social functioning that can be detected in his case. Thus, even without proof that such impediments have "caused" his criminality, there is a rational basis for attacking the impediments in an effort to prevent recidivism.

In sum, the post adjudicatory system can (and must) ad-

minister treatment on a rational basis without knowledge of whether or not the factors dealt with in individual cases are actually causal factors in such cases. The theory of rehabilitation supplies the connecting link between abstract causal theory and treatment of individuals.

Before proceeding to the first step—*i.e.*, creation of the inventory—it is important to note that the reservoir of factors in the theories does not include some idiosyncratic factors that must be utilized to explain specific patterns of individual behavior. Additionally, crime sometimes is precipitated by particular constellations of chance factors which may propel a person who is not otherwise disposed toward criminal behavior into a criminal episode. Hence, the inventory of factors must be constructed so as to take account of these matters.

The inventory that we submit at this point is, of course, tentative and is designed merely to explain the method that we suggest be used in determining factors to which treatment may be directed. Hopefully, the inventory can be developed through induction as well as through deduction. One may start with a set of characteristics arrived at through deduction from causal theory and one may modify such characteristics or add to the list by information gained through experience with offenders. Naturally, the same would be true of the various treatment methods utilized in connection with the characteristics. One may take the present treatment methods and apply them in a manner deduced by extrapolation from causal theories, one may modify existing methods on the basis of information gained through treatment experience, or one may develop entirely new treatment methods for application to the various characteristics.

It is suggested, on the basis of the causal theories and on the basis of experience obtained through working with offenders, that fourteen fundamental characteristics can be postulated as being both social impedimenta and crime related. These characteristics are as follows:

1. Inadequacy
2. Immaturity
3. Dependency
4. Ill-Equipped in Social Skills
5. Ill-Equipped in Education
6. Vocational Maladjustment
7. Cognitive Deficiency

8. Compulsive Pathology
9. Organic Pathology
10. Anti-Social Attitudes
11. Career Commitment
12. Catalytic Impulsivity
13. Habitual Impulsivity
14. Asocial Attitudes

Inadequacy is a characteristic that can be associated with psychogenic theory and with the social identity category of bridging theory. Inadequacy is characterized by (a) a pervasive feeling of inability to cope with needs, (b) a generalized feeling of helplessness, (c) the inability to plan ahead, (d) frequent feelings of despair, negativism and cynicism, (e) diffuse anxiety —*i.e.*, not seen as related to a specific cause, (f) the perception of tasks as likely to lead to failure rather than success, and (g) a disproportionate fear of rejection.

Immaturity is a characteristic that can be associated with psychogenic theory and with the adolescent problem and family relationship categories of bridging theory. Immaturity is characterized by (a) inability to postpone gratification, (b) general attitude of irresponsibility, (c) preoccupation with concrete and immediate objects, wishes and needs, (d) an orientation of the individual as receiver and a tendency to view others as givers, (e) manipulativeness, (f) self-centeredness, and (g) petulance.

Dependency is a characteristic that can be associated with psychogenic theory and with the adolescent problem and the family relationship categories of bridging theory. Dependency is characterized by (a) difficulty in coping with an unstructured or complex environment, (b) anxiety in situations requiring independent action, (c) a feeling of guilt with respect to elements (a) and (b), and (d) feelings of resentment toward what is believed to be the source of dependency.

Ill-equipped in social skills is a characteristic that can be associated with all of the theories but is most generally thought to be related to the socio-cultural theories. This factor is characterized by (a) lack of ability to articulate feelings and ideas and a resulting inability to communicate meaningfully with others except at superficial levels, (b) lack of ability to function in subordinate-superordinate roles, *e.g.*, inability to take orders from a superior in a work situation, (c) inability to "take the role of the other," *i.e.*, to empathize with others, and (d) inad-

vertent, socially disapproved behavior, *e.g.*, use of language inappropriate to various social situations, dress inappropriate for job interviews, failure to conform to norms of personal hygiene.

Ill-equipped in education is a characteristic primarily related with socio-cultural theories, but it may also play a significant role in the social identity category of bridging theory. This characteristic simply implies that an individual is functionally illiterate in English or demonstrates a disproportion between his present level of education and his potential level, or both.

Vocational maladjustment is a characteristic that has the same theoretical relationships as ill-equipped in education. This characteristic implies a lack of appropriate technical skills for employment that would be meaningful to the individual, or a disproportion between the aptitudes of the individual and realistic opportunities, or both.

Cognitive deficiency is a characteristic related to constitutional and psychogenic theories. This characteristic refers to a state of mental retardation, restricted mental potentiality or incomplete development existing from birth or early infancy as a result of which the individual is (a) confused and bewildered by any complexity of life, (b) overly suggestible and easily exploited, and (c) able to achieve a mental age within a range of 8 - 12 years.

Compulsive pathology is a characteristic derived from psychoanalytic theory. This factor is characterized by (a) a sense that criminal behavior is forced upon the individual against his will (he is aware of the peculiarity of his behavior, but is unable to control himself), (b) inability to obtain any lasting satisfaction from the act committed, *e.g.*, no apparent gain to individual from act nor any reason for injury to another, (c) repetition of such acts, and (d) usually accompanied by other obsessive-compulsive symptoms.

Organic pathology is a characteristic related to constitutional theory. This factor involves such things as glandular and neurological anomalies, *e.g.*, brain damage, organic brain disease, etc. Conduct stemming from organic pathology is not usually typified by any single behavioral pattern.

Anti-social attitudes is a characteristic that can be associated with all of the theories. This characteristic consists of a configuration of attitudes which are defined by society as delinquent, criminal and anti-social. An individual who possesses

anti-social attitudes demonstrates positive affective responses toward trouble, toughness, smartness, excitement, fate, autonomy, and short-run hedonism.

Career commitment is a characteristic that can be associated with socio-cultural theory and with the identity process category of bridging theory. Basically, career commitment is a way of describing a professional criminal and this would include many of the persons involved in organized crime. This factor refers to an offender's commitment to anti-social behavior as his chief occupation and major source of income for his adult life. Such commitment involves (a) a life-orientation pervasively concerned with criminal pursuits, (b) extensive knowledge of techniques applicable to one's criminal activities, (c) the maintenance of a strong identification with criminals of similar pattern with whom he may from time to time share common criminal acts, (d) the use of the argot of one's profession, (e) an insistence upon carefully planned criminal activities, (f) the derogation of the "amateur" criminal, (g) the perception of the possibility of apprehension and imprisonment as an occupational risk, and (h) the manipulation of the law enforcement system through bribery.

Catalytic impulsivity is a characteristic that can be associated with psychogenic theory (*i.e.*, psychoanalytic and personality trait theory) and with the family relationship category of bridging theory. This form of impulsivity requires the presence of a catalyst for it to appear, *i.e.*, criminal acts *only* occur while the normally over-controlled person is affected by the catalyst. The catalyst may take the form of alcohol or of an overwhelming need stemming from psychic or physical dependence (*e.g.*, narcotics), or a specific emotional stimulus (*e.g.*, cursing one's mother). The central concept of catalytic impulsivity is the impulsive, spontaneous, unplanned nature of the criminal act while the offender is under the influence of, or is affected by, the catalyst. Under normal circumstances, *i.e.*, in the absence of the catalyst, the catalytic impulsive individual is not anti-social and possesses adequate and even excessive self-control. Under the influence of the catalyst, however, the criminal act almost invariably precipitates and there is total disregard for the consequences of such acts.

Habitual impulsivity is a characteristic that can be associated primarily with all of the psychogenic and most of the con-

stitutional theories. This form of impulsivity differs from catalytic impulsivity by the absence of the need for a catalyst as a trigger. An habitually impulsive individual may use alcohol or drugs, but the crucial aspect is that these substances are neither necessary nor sufficient for causation of the criminal act. The act itself is always spontaneous and unplanned, and the individual who possesses this characteristic is temperamental, exhibits a low frustration tolerance and high reactivity. His volatile temperament typically demonstrates rapid mood swings. The triggering source for impulsive criminal acts cannot be definitively indicated. Such a characteristic may be seen in individuals who react variously to situations of temptation, slight provocation, and frustration. Rages may be a typical reaction for one offender, while another may react by petty thievery.

Asocial attitudes is a characteristic associated with sociocultural theory and with the family relationship category of bridging theory. Such attitudes give rise to cheating, bribe giving or taking, shoplifting, insurance fraud and like matters, by persons who otherwise seem to be law-abiding members of the community. Asocial attitudes are commonly found in offenders who have respectable positions in the community and who articulate support for the general value system. Such attitudes are characterized by (a) selfishness, (b) disregard of responsibility to others or to certain other persons, (c) feelings that society is dishonest and that the individual is foolish if he does not "get his", (d) feelings that the test of whether conduct is improper is whether one can "get away with it," (e) feelings that most people are "suckers", and (f) feelings that it is all right to steal from certain businesses or from certain categories of people because they have "too much money," or because they have "exploited the public anyway" (*i.e.,* social rationalization).

The aforementioned fourteen characteristics may appear singly, or in combinations of two, three, or four in one individual offender at one time. Thus, more than one of these characteristics may operate to impede the functioning of an individual simultaneously. An offender may, it is true, be described as an inadequate offender, or another one as an ill-equipped offender, if that is the only characteristic which operates to impede normal functioning; but for the most part, offenders can be described as possessing more than one of the fourteen

characteristics—each with a different relative impact upon the individual's behavior.

It must be emphasized that crime can arise without attribution to the aforesaid characteristics, and this should be recognized in treatment of offenders. Sometimes a fairly extraordinary configuration of events coupled with lowered individual tolerance may cause a person to commit a crime. For example, a person who is extremely agitated because of trouble at home or on the job may get into an automobile accident, and upon being yelled at by the driver of the other car may just lash out and assault him. Sometimes ignorance of the law or of fact may cause a person to commit a crime—*e.g.*, statutory rape of a girl who appears to be of age, or where the offender is unaware of the age of consent and the girl seems mature. Sometimes the conduct is technically criminal, but it is part of the custom of a group to which the individual belongs and the group does not view the conduct as anti-social, *e.g.*, use of peyote by certain Indian tribes, and production of untaxed alcohol by members of certain ethnic groups. Finally, there is the offender who believes that his act is in the better interest of society and who violates the law in order to focus attention upon what he believes to be a harmful or unjust practice—*e.g.*, distribution of birth control information where such is prohibited by law, violation of overseas travel restrictions, draft card burning, etc. All of such conduct may justifiably result in the use of sanctions, but may not be such as to indicate the need for rehabilitation.

Application of Treatment to Individual Characteristics

The next step in prevention of recidivism is to attempt to align appropriate treatment methods with the characteristics that seem to be relevant in each individual case. As previously noted, this requires an examination of each individual and the profiling of characteristics in order of saliency for the individual (on the theory that the most salient characteristic should receive the greatest degree of treatment emphasis).

Putting aside for the moment the difficulty involved in administering the appropriate treatment to those offenders who must be kept in high security institutions and to those offenders who must be incarcerated for a minimum term for public

oriented purposes, and assuming complete flexibility, one can set forth all of the currently used treatment methods and select from among them the method or methods that seem most promising in the treatment of the particular characteristics. To illustrate, we can set forth fifteen basic treatment options, as follows (the order of listing does not, of course, imply any general priority of one over the other):

A. Academic Education
B. Social Education
   (training in dress, public speaking, personal hygiene, behavior in common social situations, civics, etc.)
C. Vocational Training, Guidance and Counseling
   (training in skills, behavior on the job, how to find employment, good work habits, job placement, reconciling skills to vocational potential)
D. Individual Psychotherapy
   (psychoanalysis, reality therapy, etc.)
E. Group Counseling, Group Therapy, Group Psychotherapy, Sociodrama, etc.
F. Medical Methods
   (chemotherapy, conditioning therapy, plastic surgery, etc.)
G. Milieu Therapy
   (therapeutic community)
H. Team Sports and Recreation
I. Casework and Individual Counseling
J. Occupational Therapy
K. Family/Marital Counseling
   (counseling parents or spouses of offenders to educate them to problems and experiences of the offender, or counseling offender with the family to foster favorable family relations, etc.)
L. Religious Counseling
M. Incarceration*

*Item M is included as a treatment method rather than as a custodial instrumentality. The purpose of item M as a treatment method is individual deterrence. This must be separated from the concept of selecting the appropriate custodial instrumentality for minimizing risk to the public (see pp. 313-314). Items N and O are also for individual deterrence. Field supervision is not included because without a specific form of treatment (*e.g.*, casework) it is essentially a custodial instrumentality.

N. Intermittent Jail
O. Fine

Assume that an offender is found to be vocationally maladjusted, inadequate and possesses anti-social attitudes in that order of saliency. One might then utilize a program involving milieu therapy heavily oriented toward vocational guidance and training. The milieu therapy (*i.e.*, community meetings and group sessions) would be to cope with inadequacy and anti-social attitudes; and, of course, the heavy orientation toward vocational guidance and training would be to cope with vocational maladjustment. To systematize this, one would use the numbers assigned to the characteristics and the letters assigned to the treatment methods so as to show the specific characteristics diagnosed in order of saliency and the treatment prescribed for each.

Thus, applying the numbers on pp. 301-302 and the letters on page 307 to the above example, the profile and the prescription would be summed up as follows:

Characteristics:	6	1	10
Treatment:	C/G	G/C	G/C

The characteristic line shows the diagnosis in order of saliency (the number 6 representing vocational maladjustment, the number 1 representing inadequacy and the number 10 representing anti-social attitudes). The treatment line shows the type of treatment best suited for each characteristic—not separately but taken in conjunction with the others (C/G representing vocational training in a milieu therapy setting, G/C representing milieu therapy with emphasis upon vocational training). In this example, the same type of treatment is indicated as beneficial for all of the characteristics; however, in some cases the treatment methods may be different. Suppose, for example, that the diagnosis revealed catalytic impulsivity (number 12), inadequacy (number 1), vocational maladjustment (number 6) and ill-equipped in social skills (number 4). One might select a group psychotherapy program to get at the factors that underly the outbursts and to cope with the inadequacy. This would be coupled with vocational training and social education. Hence, the diagnosis and treatment instructions would be as follows:

Characteristics:	12	1	6	4
Treatment:	E	E	C	B

The coding system, as presented here, is, of course, quite gross and merely used to illustrate the form in which basic information can be conveyed for the purpose of giving treatment instructions. The characteristic line would have to be refined by the addition of symbols to indicate the relationship between the characteristic and the individual's criminality; and the treatment line would have to be refined by the addition of symbols to indicate the precise nature of treatment prescribed. The point is, however, that such a coding system facilitates focusing upon individual characteristics and the alignment of treatment methods to the characteristics. It also gives a shorthand picture of the case. Additionally, it helps to show—in a broad sense—the rationale for selection of treatment in a particular case; and permits rapid detection of obvious errors. Further, it can be used as a method for organization of data for research.

Before examining the problems in utilizing any such approach and, in fact, the problems in determining the appropriate treatment to be applied, two other dimensions of the approach should be discussed. These dimensions are: (a) the selection of the custodial instrumentality; and (b) the sequence of treatment phases.

Selection of the appropriate custodial instrumentality means determination as to whether treatment is to be administered while the offender is under field supervision, or under incarceration, or is under both at the same time. Additional symbols can be added to the coding system to specify the custodial instrumentality to be used.

The sequence of treatment phases will depend upon the time the post adjudicatory system has to deal with the offender, the programs available, and the results of periodic evaluations. Additionally, treatment can be scheduled for phasing-in as part of an overall treatment design.

Perhaps the most difficult aspect of determining the type of treatment to be administered inheres in the fact that any rational system must relate the treatment to the dynamics through which the characteristic operates to impede the offender's functioning. It does little good to know, for example, that the offender is vocationally maladjusted, inadequate and possesses anti-social attitudes unless one has a theory as to why this

might be so. Such combination of characteristics could have resulted from a set of events typical of the "adolescent problem" category of bridging theory, or from a set of events typical of the socio-cultural Differential Opportunity Theory (or from other events). If they resulted from the former the treatment might be different than if they resulted from the latter. A middle class youth whose problems stem from family dynamics and who has opportunities available, if only he had the skills and the attitudes to grasp them, is a different treatment problem from a youth who feels society is discriminating against him. In the latter case, if treatment of the characteristics is not focused upon the discrimination problem and is not followed up to the extent of seeing to it that the youth is afforded an opportunity which is realistic in terms of his potential, the treatment may merely heighten expectations which, if not fulfilled, will confirm his sense of discrimination and inadequacy. This, in turn, may solidify the delinquent attitudes and propel him into a life of crime.

Further, in administering group treatment methods, one must have some conception as to the underlying causal processes that brought the participants to crime before deciding upon the proper composition of the group. If the group is to contain a mixture of offenders—rather than a number of persons who all share the same basic problems—this should be based upon a deliberate treatment strategy.

Another example might be seen in the three characteristics: cognitive deficiency, ill-equipped in education and dependency. In one case the cause might be psychogenic and in another case the cause might be socio-cultural. It would obviously be essential to identify the cause before planning treatment.

In addition to the need for a theory as to the process of causation in each case, there is also the fact that very little is known with respect to the effectiveness of various treatment methods in general, or when applied to specific characteristics. Thus, it is difficult to tell, for example, whether in dealing with anti-social attitudes it is more appropriate to use group methods, individual methods, education, milieu therapy, religious counseling or all of these. We do know that certain types of problems must be assigned to certain disciplines (*e.g.*, organic pathology to the physician, compulsive pathology to the psychiatrist,

and ill-equipped in education most often to the educator); but there is little concrete evidence as to whether the treatment applied is effective in removing the impediment.

If the State were to establish the panel and board system referred to in Part Two of the Report, the method—suggested here—of approaching diagnosis and aligning treatment methods with characteristics would fit well. The diagnostic panel would be responsible for administering, or overseeing the administration of, the various psychological tests and interviews, the psychiatric and medical examinations, the gathering of social histories, and like matters. The unified file would contain all of the data and the background material for the development of the diagnostic and treatment profile. This would then be summed up by use of a coding system on the order of the one described above.

The advantages of this method are as follows. First and foremost, this approach forces a focus upon factors related to causation in individual cases. Second, and almost equally important, this approach facilitates rational application of treatment methods. Third, this approach lays the foundation for systematic acquisition of treatment effectiveness data. Fourth, the approach points the way toward development of treatment programs (where certain groupings of characteristics appear in a sufficient number of cases, programs can be designed around the cluster of characteristics, and perhaps specific institutions would deal with specific clusters). Fifth, the approach facilitates transmission of information, uniformity of diagnostic and treatment language, an understanding of the basic rationale for ordering the use of particular treatment methods, and a method for rapid detection of gross errors.

The method suggested here has no value in and of itself unless it is used in conjunction with a continuing program of evaluative research; and, indeed, no other method would have any value without such research. Research would supply an ongoing source of data for diagnostic refinement and for more precise alignment of treatment methods with characteristics. A suggestion on this matter is outlined in the last section of this Part and set forth in detail in an appendix to this Report.

Treatment of Individual Characteristics and Prevention of Recidivism

In thinking about prevention of recidivism there are three basic interrelated issues: (1) whether treatment of the characteristics discussed above will prevent recidivism; (2) whether recidivism is to be viewed within the framework of the treatment system or over the lifespan of the offender; and (3) the risks that inhere in pursuing treatment methods without adequate knowledge of the effectiveness thereof.

With respect to the first issue, it is important to remember that the theory of rehabilitation is only a theory and validation has yet to be carried out. Although strong arguments can be made for the notion that removal of the impediments will aid socially acceptable functioning and, hence, assist the offender to refrain from criminal acts, there is no proof that this is so. All we can say at present is that the system must do the best it can, and that the theory of rehabilitation seems to be a sound approach.

This brings us to the second issue—whether recidivism is to be viewed within the framework of the post adjudicatory treatment system or over the lifespan of the offender. Recidivism, when viewed as return to crime during the period of custody (*i.e.*, return to crime while on probation, parole or while incarcerated) is one concept; and recidivism when viewed as return to crime after the period of custody is another concept. If all offenders were to be placed in custody and held in institutions until maximum expiration of their sentences, the rate of return to crime within the framework of the treatment system would be virtually zero (assuming no crime within the institutions). This would give the system, as such, a good record. However, the question would then arise as to whether the use of such a severe method either made the offender more likely to commit another crime after release, or resulted in loss of an opportunity to make him less likely to commit another crime after release (*i.e.*, loss of possible treatment gains).

The latter point ties into the third issue—the risks that inhere in pursuing treatment methods without adequate knowledge of their effectiveness. There are two aspects of this issue: risk that the offender will commit another crime when less restrictive methods are used; and risk of increasing the likelihood of recidivism through inappropriate treatment. At

present the system operates blindly with respect to these risks. One result is a dilemma between risk-taking and security. Risk-taking is concomitant to the fact that offenders must be released from custody at some time. Security is concomitant to the notion that the longer the offender is out of the community the safer it will be (*i.e.*, the uncertainty of treatment effectiveness is seen as an argument for holding that restrictive measures assure prevention of recidivism for at least the period of custody). However, if the system is to progress, it must do that which seems most hopeful in preventing recidivism throughout the lifespan of the offender and not just the period he is in custody. To this end, we must assume that risks are justified in an attempt to help the offender to adjust to the community. Without research, we cannot demonstrate the empirical validity of this assumption: nonetheless, the system must operate and the assumption is sound in theory (see pp. 284-286, 299-301).

Several points can be developed from these three issues. First, the treatment system cannot always utilize treatment deemed best for the characteristics of the offender, even where such treatment is available. Administrators must weigh the probability of treatment success against risk to the community. For example, where field supervision seems to be the most hopeful custodial instrumentality, the risk of commission of a new crime may be too great for its utilization. This would mean the adoption of a less hopeful but safer method. The system is always balancing the risk to society against the use of various treatment methods; the primary difficulty being lack of information to demonstrate justification for taking risks.

The second point is that the effectiveness of a system cannot be judged by the rate of recidivism during treatment. For example, a restrictive policy on permitting field supervision may yield a lower recidivism rate within the framework of the system, simply because fewer offenders are in the community. However, although this may make the administrator appear successful on a superficial level, such a policy may increase the possibility of recidivism after release and may in fact be irresponsible.*

A third point is that treatment thought to be best for the

*It might be noted that such a policy might also lead to riots within the institutions or may increase recidivism within the institutions.

offender may actually be making him worse. For example, where the salient characteristic is dependency, institutionalization or intensive field supervision may foster the dependency, and when the custodial period ends the offender may become extremely anxious, and may either resort to alcohol or narcotics; or he may commit another crime to precipitate return to an institution. Another example might be seen in application of treatment to newly released prisoners. Such treatment may have two relatively unexplored negative implications. The first relates to the common assumption that if some form of treatment is not administered to "ease the transition from institutionalization to community life" the inevitable result will be recidivism. This assumption is based upon the hypothesis that the offender is in a social limbo at such time and is likely to grab at the first tempting opportunity which, due to his background, is likely to be an illegitimate opportunity. It well may be, however, that the offender's flattened condition at such time is precisely what prevents him from violating another law and that the process of building him up may give him the confidence and ego-strength to take another chance on criminality. Thus, assuming that he would have returned to crime in either event, his return to crime may be hastened. The second possible negative implication may be that such treatment may raise expectations beyond realistic opportunities and hence heighten frustration and bitterness.

A fourth point deals with the relationship between public expectations and the policy of field supervision agencies in determining when to incarcerate or reincarcerate. Such expectations seem to be the basis of many field supervision rules. However, there may well be no necessary and sufficient relationship between the criteria of community adjustment as defined by probation and parole rules and the return to crime. This could be so even where one accepts the theory of rehabilitation and the social impedimenta characteristics set forth above. For example, section 65.10 of the recently revised New York Penal Law sets forth certain suggested conditions for probation. Among these conditions are the following: avoid injurious or vicious habits; refrain from frequenting . . . disreputable places or consorting with disreputable persons; and work faithfully at a suitable employment. Also, the standard New York State parole agreement requires each parolee to agree among other

things: that he will "not associate with evil companions or any individual having a criminal record"; and that he "will not have sexual relations with anyone not . . . [his] lawful spouse." Such criteria of community adjustment may have no relevance to the actual adjustment of many individuals. It is difficult to regard non-marital coitus as related to any of the characteristics thought to contribute to crime. Further, in the multiproblem family many of the offender's relatives may have criminal records, or in a slum neighborhood many of the offender's acquaintances and neighbors may have criminal records. The offender could be adjusting well even though he associates with his family and such other persons. Additionally, what may seem to be a disreputable place to a middle-class person may be an integral part of the community milieu to which the offender must adjust. All of this is not to imply that field supervision officers and administrators are unaware of such factors; the problem is to justify continuation of field supervision in the face of behavior that violates abstract rules of propriety. Thus, if the offender should commit another crime, it is difficult to explain to the public why he was permitted to remain at large in the face of behavior that seemed to violate rules of propriety. This creates a dilemma for field supervision agencies, and they may be forced to reincarcerate persons who are adjusting adequately. On another level of this dilemma, an offender under field supervision may commit a minor crime (*e.g.*, possession of a marijuana cigarette) and the natural expectation would be that he should be incarcerated. Such action, however, may destroy a plateau of adjustment which he has achieved that is far superior to his former state of adjustment and the offender may be more likely to commit a serious offense when finally released. Thus, public expectations as to the proper role of the various post adjudicatory functions may actually impede rehabilitation and force the rate of recidivism to go up.

Where the concept of recidivism includes rule violations or revocation for rule violations, the rate of recidivism may bear no relationship to the effectiveness of the system in terms of preventing new crimes. Thus, as illustrated in the above examples, the rate of recidivism may appear even higher as a result of the fallacy of equating failure to comply with abstract principles of behavior to criminality. This also applies when rule violators are termed parole or probation "failures."

Any such concept can only tend to mislead. It might be noted, in this connection, that persons who seem extremely well adjusted when viewed in terms of compliance with rules of propriety (*e.g.*, living with and supporting family, working faithfully, and avoiding evil companions) also recidivate.

Throughout this Part of the Report, the emphasis in discussion has been upon treatment of the individual offender. It is essential to recognize, however, that prevention of recidivism involves more: prevention of recidivism also requires treatment of the community. The efforts of the treatment system in rehabilitating an offender may be largely futile if he is harassed by the police, unable to get appropriate employment, shunned by his neighbors, or returned to a family setting that caused his alienation in the first place. The post adjudicatory system itself can do some good in this area—*e.g.*, family counseling, relocating the offender in a different neighborhood, educating employers, working with the police, etc. However, much of the help needed must come from other organs of government and from public spirited citizens and citizen groups.

III

Research

The single most important need in the post adjudicatory treatment system is the development of a body of knowledge with respect to the effect of its operations upon its objectives. This can only come through an organized program of research operating at all levels and operating as an integral part of the system.

There are four functions of research in the post adjudicatory system: (1) to provide basic descriptive data (the "categorical level")—*e.g.*, number of persons under treatment, educational level of persons under treatment, number of persons returned to institutions for parole violations, etc.; (2) to provide analytical information (the "synergistic level") showing the relationships between various kinds of descriptive data at the categorical level—*e.g.*, whether the jobs obtained by offenders are related to their training in institutions, whether more crime is committed by first offenders or by recidivists, whether

given types of treatment are effective, determination of the correlation between institutional conditions and riots within institutions, etc.; (3) to provide information for generating insights to further inquiry across a range of related problems (the "sequential level"), *i.e.*, where the relationship between two or more factors has been determined at the synergistic level, to examine possible ramifications or to examine causes—*e.g.*, once having determined that group counseling aids institutional adjustment, determining whether institutional adjustment helps in prevention of recidivism after release from the institution and then determining why and how one or both of the results have occurred, and how to improve; (4) to provide sequential information designed to test existing, and to develop new, theoretically based principles (the "theoretical level").

A survey of the present research picture in New York State reveals that the great bulk of research effort is at the categorical level. The predominant focus has been upon the movement of the population through the system, the nature of the offenses committed, the dispositions made, the ages, races, sexes, marital statuses, residences and occupations of the offenders and other demographic information. Most of this categorical information is organized to present a picture of the agencies' activities for public information, housekeeping, and budgetary purposes. Such research as has been done on the synergistic level consists of sporadic, unrelated efforts to test particular ideas or programs. The only agency that has made any consistent effort to perform research at the synergistic level is the State Division of Parole. However, the State Division for Youth and the State Department of Social Services have been collecting data and have plans for a regular program of synergistic and sequential research. Other than this there has been no sequential research at all; and we are not aware of any theoretical research.*

The present state of affairs with respect to collection of categorical data is very confusing. The Judicial Conference, the State Department of Correction, the State Commission of Cor-

*A description of the various research units and of the work done and planned therein is set forth in the appendixes to this report that deal with the agencies in detail.

It might be noted that the State Division for Youth has produced an impressive synergistic study of its "Youth and Work Training Programs." This, however, is not primarily within the realm of post adjudicatory problems and further, it was funded, in part, by private sources.

rection, and the New York State Identification and Intelligence System seem to be collecting vast amounts of overlapping data. It is difficult to ascertain whether there is any justification for the overlap and which agency is primarily responsible for what. The Governor's Committee has not had an opportunity to make an exhaustive information study; and, therefore, we will not comment upon the details of this subject. In our general survey of other matters, however, we have seen enough to know that a detailed analytical study of information flow and information use should be undertaken at the earliest possible date. Such a study should concentrate upon the following matters: the precise need for each category of data collected; the areas of overlap and an analysis of whether such overlap is desirable; the processes of transmitting information from agency to agency; the question of whether the data processing equipment presently in use is adequate; and the uses made of the data collected. Naturally, if the Committee's recommendation for a unified post adjudicatory treatment agency is adopted, such study would have to be made within this framework of reference.

Most importantly, any study of the collection of categorical information must deal with the question of how to maximize the use of categorical data so that much of the data used for administrative housekeeping purposes can also be utilized fore synergistic, sequential and theoretical research.

Data collection and research must be related to, and must play an integral role in, the total operation of a unified post adjudicatory treatment system. Unless administrators come to look upon research as an indispensable part of the decision making, policy planning and treatment processes, there will continue to be no way of telling whether anything we are doing is achieving the objectives of the system and whether any new plan is worth acceptance. The integration of research with the post adjudicatory system must be based on a commitment and an approach that will permit the ongoing development and refinement of treatment techniques, the accretion of verified theoretical principles, and the accumulation of a precise and extensive criminological knowledge base.

To illustrate the type of research needed in the post adjudicatory treatment system one might consider, for example, two research designs at the sequential and theoretical levels for the

purpose of aligning treatment methods with characteristics that are thought to be both social impedimenta and crime related.

One design is based upon the fourteen characteristics described previously and can be characterized as a "deductive method." In this design the first step would be the test development stage. A large number of offenders obtained by probability sampling among the post adjudicatory treatment system population would be tested with diagnostic tests designed specifically to demarcate persons who possess the characteristics as postulated. The test results would be computer analyzed and a refined test battery would be obtained (*i.e.,* clustering of test items that demarcate, elimination of items that do not). At this point a reexamination of the characteristics as related to clusterings of items would be made to determine whether there are any clusters of items that fall outside the fourteen characteristics. Such clusters might well indicate the existence of one or more unforeseen characteristics to be added to the characteristics postulated. By the same token one might find that no items cluster under one or more of the characteristics postulated, which could indicate the lack of relevance of such characteristic (probability sampling of offenders assumes that the sample will be representative). The next step is to cross-validate by randomly selecting another group of offenders and repeating the process with the refined battery of test items and the refined roster of characteristics. The outcome at this point would be a diagnostic instrument and a standard score profile that would accurately demarcate relevant characteristics in the diagnosis of offenders for treatment purposes. The next step is to develop information for the alignment of treatment methods with the characteristics. A large number of offenders would be administered the diagnostic instrument and then assigned to profile types (using the coding system described, pp. 308-309). Persons from each profile type would be randomly assigned to one of three groups: (a) a group to receive treatment hypothesized as most appropriate for the characteristics; (b) a group to receive alternative treatment; and (c) a group to receive no special treatment. After treatment and release, various measures of treatment success would be applied—*e.g.*, return to crime after one year, two years, etc.; time free before first conviction; community adjustment. The failure rates of the three groups would yield a base expectancy

rate for each group; and comparisons of these rates would yield an indication as to whether the hypothesized treatment was better than the alternative treatment or better than no special treatment. At this point treatment hypotheses can be reevaluated and determinations can be made as to whether modifications are necessary. Base rates developed through these processes for each profile type can be used for future comparisons of new methods with current methods. Such comparisons would yield relative advantages and disadvantages of treatment in a manner never before possible, and would enhance the modification of treatment within a framework of known probabilities of success. This method would also facilitate learning of the "why and how" of rehabilitative change as well as a means of determining the level of performance of personnel employed to administer treatment. Additionally, the information developed would furnish insights for new theories.

The second design is not based upon any hypothesized characteristics, but arrives at alignment of treatment with characteristics through an inductive process. This process starts with the random assignment of randomly selected offenders to various treatment methods, including a group that will receive no special treatment. An extensive test battery is administered to all of these offenders prior to commencement of treatment. The test results are placed aside for future use in finding the characteristics that may be related to treatment success. After treatment and release, various measures of treatment success would be applied as described in the first design. The test item scores are then grouped in accordance with success and failure under each treatment method. Items that do not correlate with success or failure are discarded, and a refined interim test battery is developed. This yields a scale for prognosis of each treatment method. The next step is to cross-validate by randomly selecting another group of offenders and repeating the process with the refined scale. Modifications would, of course, be made as necessary. The outcome would be a prognostic profile which would permit determination of who should be placed in what kind of program with the greatest probability of success. The scale demarcating the groupings can then be analyzed to induce a set of social and psychological characteristics corresponding to each treatment; and these can be used to generate testable theoretical propositions of causality and

theoretical postulates with respect to the rehabilitation process. After such development one hopefully would emerge with a system that would continue through application of the deductive method described above.

It is important to note that these two methods complement each other and can be used reciprocally and concurrently with data from one feeding into the other and the same test battery serving both. (Further details are set forth in an appendix.)

Risk

As with all other aspects of the post adjudicatory treatment system, research involves a great deal of risk. The nature of the risk is twofold: risk to public safety; and risk of harm to the offender.

In the first category—risk to public safety—the main consideration is that many types of experiments involve steps that can appear to expose the public to greater than ordinary risk of recidivism. For example, if one were to design a parole experiment to determine whether fifteen-man caseloads are more effective in preventing return to crime during the period of parole than caseloads of one hundred, and assuming that the present caseload is forty, there would be increased risk to the public that would stem from sparser supervision of the offenders in the one hundred-man caseloads. This is even more obvious when one considers that offenders would be randomly selected and randomly assigned to the caseloads.

In the second category—risk of harm to the offender—the main consideration is that offenders subjected to experiments with new methods may be physically or mentally harmed (*e.g.*, by certain types of chemotherapy) or may be made more likely to recidivate. Further, for example, some forms of milieu therapy may induce anxiety that can result in outbursts of violent behavior. Additionally, there are ethical issues involved in deliberately denying to control groups what is thought to be the best treatment.

Variations and new methods require departure from general belief. In a governmentally administered operation dealing with a sensitive area, such as a post adjudicatory treatment system, departure from general belief must be based upon demonstrable justification. This justification can be founded upon two bases: a feeling that the system is not effective, or knowl-

edge of another system that is more effective (or, of course, a combination of the two).

Where it is felt that the system, or an aspect of the system, is not as effective as it should be, the public will tolerate a degree of experimentation (*e.g.*, more risk) for the purpose of improving the system. Similarly, where a particular type of treatment seems to have improved the operations of a system in another jurisdiction, there is justification for experimentation with such method on the ground that it may improve our system.

Since each new risk to public safety and each new risk of possible harm to the individual offender must be weighed in terms of the justification for departure from general belief as to the appropriate treatment, the methods applied by the post adjudicatory treatment system for prevention of recidivism are difficult to experiment with and to change.

For example, one might develop a hypothesis that minimum security community-based facilities are more effective in rehabilitating certain types of child-molesters than custody in an institution such as Attica State Prison. This would require public acceptance of a risk with child-molesters who otherwise would be in secure custody. Such risk would have to be justified on the basis of knowledge that can demonstrate the ineffectiveness of the present method, the inappropriateness of safer alternatives, or the effectiveness of the experiment when tried elsewhere. However, it is important to note that even where such justification is furnished, and initial resistance is overcome, the subject matter is so sensitive that one or two unfortunate incidents could turn the tide of public opinion against the experiment. Thus, even if evidence were accumulated by the experiment to show that the rate of recidivism of the type of child-molester treated in the experiment was significantly reduced, it would be extremely difficult to continue the method of treatment or to expand the number treated if two incidents of child-molesting occurred in rapid succession. A fortiori, the difficulty might be insurmountable if the incidents occurred prior to collection of any evidence as to affect on the rate of recidivism. Further, once terminated for such reason, it would be unlikely that any such experiment would be performed again for many years.

The most vital factor in experimentation is the necessity

of monitoring risk throughout the experiment. This involves the concept of moving from known risk levels into experimentation. Known risk can be ascertained from synergistic level research such as parole experience with certain types of offenders, institutional infractions, treatment side effects, etc. Experimentation can then proceed cautiously from this point, and when the risk level reaches the border of tolerable limits, experimentation can be curtailed. In this connection it is essential to recognize that experimentation does not always have to proceed in the direction of lower security; and hence, when the risk level becomes too high the direction of experimentation can change.

It is also important to remember that a step which appears to be a greater risk within the framework of the treatment system, may be justified through a demonstration of a lowered recidivism rate based upon consideration of the lifespan of the offender rather than just the period of custody.

TABLE OF RECOMMENDATIONS*

Overall Organization

	Page Nos.
A. Organize post adjudicatory treatment services on the basis of functions to be performed—functional administration—rather than on the basis of labels used for court purposes (e.g., juvenile delinquent, misdemeanant, felon, convicted narcotic addict)	26-9, 47, 256-7, 275
B. Administer all services for individuals adjudicated on the basis of anti-social behavior through a single unified treatment agency—a Department of Rehabilitative Services ("D.R.S.")	41, 47, 56, 183, 261, 264, 274
C. Establish three separate units within D.R.S. based upon maturity levels: one for children, one for youth, and one for adults, with provision for transfer between levels	48, 235-7, 240, 260-1
D. Eliminate probation, correction and parole as separate concepts and utilize a general concept of custody	34-5, 47, 49, 50, 89-90, 185, 196, 233-4, 244, 268, 273
E. Establish direct administration by the State of all pre-sentence and pre-disposition reporting functions, and of all custodial treatment, for persons who have been convicted or adjudicated on the basis of anti-social behavior. Such administration would be within the D.R.S., and the effect with respect to existing agencies would be as follows:	
1. Custodial function of county jails and penitentiaries in respect to sentenced persons would be assumed by D.R.S.	57-8, 202-6, 229
2. County operated probation service functions in connection with pre-sentence and pre-disposition reports for, and supervision of, convicted and adjudicated persons would be performed by D.R.S.; court service functions (e.g., intake, non-support cases, etc.) would be under Judicial Conference	56, 153-4, 180-2, 185, 195-6, 240, 268
3. Training schools and aftercare programs of Department of Social Services would be absorbed by D.R.S.	57, 59, 240, 260-1
4. Facilities and aftercare programs of State Division for Youth would be absorbed by D.R.S.	58-9, 240, 251-3

* The listing of recommendations set forth herein is presented as a guide to indicate the places within the Report where the major recommendations may be found. The brief descriptions in this listing should not be taken as statements of the recommendations.

	Page Nos.
5. All functions of the State Department of Correction would be absorbed by D.R.S.	57, 162, 202-6, 229-30
6. All functions of State Board and Division of Parole would be absorbed by D.R.S.	56-7, 156-9, 234-5, 243-6
7. Functions of the Narcotic Addiction Control Commission would be narrowed so that only civilly certified addicts would be sent to Commission from the courts; convicted addicts would go to D.R.S. and there would be provisions for transfer between Commission and D.R.S.	58, 159-60, 164, 272
8. Elimination of State Probation Commission and narrowing of functions of other boards and bodies	60, 277-80
Organization for Treatment	
A. Organize administration of treatment in a manner that will permit a person's program to be carried out on a continuum from adjudication to discharge, whether field supervision or incarceration, or both are used as part of the program	196, 206-10, 224-27 230, 242-9, 260-3, 267-8, 309
B. Establish three central control boards within D.R.S.: one for children, one for youth and one for adults. These boards would set program standards, subject to approval of the chief administrator of the department, and would supervise diagnosis and assignment to program	53-4, 226-7, 230, 240, 243-9, 262-3, 268, 272-3, 311
C. Establish regional centers operated by D.R.S. for diagnosis, preparation of pre-sentence and pre-disposition reports, and certain treatment functions	52-4, 206-7, 225-7, 235, 240, 243-9, 262-3, 268, 272, 311
D. Establish interdisciplinary diagnostic panels at regional centers and in various institutions to work in conjunction with central control boards	52-4, 225-7, 243-9

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E. Establish operational capability for fluidity in custody so that institutional custody and field supervision may be used as and when needed, including programs where persons spend part of a day under institutional custody, and part of a day in the community under field supervision 36, 99-100, 195-6, 230, 273

F. Eliminate artificial distinctions between types of institutions (e.g., prison, reformatory, penitentiary, etc.). Use institutions in accordance with program needs and maturity levels of individuals treated therein 57-8, 147-51, 155-6, 206-10

G. Establish and maintain, within D.R.S., unified treatment information files containing all material on successive treatment phases administered to individuals so that material on prior treatment phases is available in a single place every time a recidivist is adjudicated 48, 54, 185-94, 196, 206-8, 230, 263, 267-8, 311

H. Administer treatment through use of interdisciplinary teams in accordance with specialized functions 53, 194-5, 225-7, 243, 247-9, 262-3

Decision Making

A. Legislature should not mandate minimum terms of incarceration except for the most grievous categories of crime. However, the law should require commitment to custody of D.R.S. for all highly serious categories of crime (e.g., class A, B and C felonies) and for felony repeaters 38, 100-2, 283-4

B. After adjudication, court should be limited to determining type of sanction and, where custody is imposed, its maximum duration. Minimum terms of incarceration could be used in appropriate cases 38, 40, 103-8, 163, 283-4

C. All decisions as to place of custody and whether such custody is to be institutional or field supervision custody, or part one and part the other, should be made by D.R.S. (except where limited by imposition of a minimum term of incarceration) 37, 48, 108-9, 163, 283

	Page Nos.
Juridical Recommendations	
A. Eliminate distinctions between juvenile delinquent and person in need of supervision. Use single category—*child in need of supervision*	43-5, 134-41, 163, 183, 256-61
B. All youth 16 through 18, except in cases of murder and kidnapping in the first degree, should be dealt with under a new concept of modified criminal responsibility and a completely changed sentencing structure	47, 143-6, 163, 184, 260-3
C. Establish concept of deferred sentence with order of supervision. The court would not have to make a sentencing decision at time of adjudication, but could defer sentence for a reasonable period to determine risk of recidivism	39, 59, 105-7
D. Eliminate wayward minor procedure	142-3
E. Change length of commitment for narcotic addicts convicted as felons	272
Prevention of Recidivism	
A. Develop linkages between treatment programs and theories of crime causation	289, 300-1, 309-10
B. Extrapolate fundamental crime-related characteristics (treatment needs) and match treatment to these needs	51, 55, 87, 199-202, 230, 243-9, 260-3, 267-8, 273, 299-306
C. Establish coding system for assignment of offenders to treatment based upon treatment needs	308-9
D. Establish an organized program of research operating at all levels within D.R.S. as an integral element of administrative decision making	48, 52, 194, 197-8, 201, 273, 311, 316, 318
E. Initiate an inductive and a deductive research process to develop diagnostic instruments, actuarial prognostic scales, and classification processes for matching individuals to treatments	318-21
F. Utilize neighborhood offices and indigenous workers in connection with field service treatment teams	249
G. Revise parole and probation rules to fit the offender's adjustment level and the reality of his situation	314-16
H. Initiate a detailed analytical study of data needs, flow and use	318

STATE OF NEW YORK