

Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards



STANDARDS RELATING TO
Monitoring

Recommended by the
IJA—ABA JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS

Hon. Irving R. Kaufman, *Chairman*

Approved by the
HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, 1979

Daniel L. Skoler, *Chairman of Drafting Committee IV*
Stephen R. Bing, *Reporter*
J. Larry Brown, *Reporter*
Dennis Flanagan, *Consultant*

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Preface

The standards and commentary in this volume are part of a series designed to cover the spectrum of problems pertaining to the laws affecting children. They examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles. The series was prepared under the supervision of a Joint Commission on Juvenile Justice Standards appointed by the Institute of Judicial Administration and the American Bar Association. Seventeen volumes in the series were approved by the House of Delegates of the American Bar Association on February 12, 1979.

The standards are intended to serve as guidelines for action by legislators, judges, administrators, public and private agencies, local civic groups, and others responsible for or concerned with the treatment of youths at local, state, and federal levels. The twenty-three volumes issued by the joint commission cover the entire field of juvenile justice administration, including the jurisdiction and organization of trial and appellate courts hearing matters concerning juveniles; the transfer of jurisdiction to adult criminal courts; and the functions performed by law enforcement officers and court intake, probation, and corrections personnel. Standards for attorneys representing the state, for juveniles and their families, and for the procedures to be followed at the preadjudication, adjudication, disposition, and postdisposition stages are included. One volume in this series sets forth standards for the statutory classification of delinquent acts and the rules governing the sanctions to be imposed. Other volumes deal with problems affecting nondelinquent youth, including recommendations concerning the permissible range of intervention by the state in cases of abuse or neglect, status offenses (such as truancy and running away), and contractual, medical, educational, and employment rights of minors.

The history of the Juvenile Justice Standards Project illustrates the breadth and scope of its task. In 1971, the Institute of Judicial Administration, a private, nonprofit research and educational organi-

zation located at New York University School of Law, began planning the Juvenile Justice Standards Project. At that time, the Project on Standards for Criminal Justice of the ABA, initiated by IJA seven years earlier, was completing the last of twelve volumes of recommendations for the adult criminal justice system. However, those standards were not designed to address the issues confronted by the separate courts handling juvenile matters. The Juvenile Justice Standards Project was created to consider those issues.

A planning committee chaired by then Judge and now Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit met in October 1971. That winter, reporters who would be responsible for drafting the volumes met with six planning subcommittees to identify and analyze the important issues in the juvenile justice field. Based on material developed by them, the planning committee charted the areas to be covered.

In February 1973, the ABA became a co-sponsor of the project. IJA continued to serve as the secretariat of the project. The IJA-ABA Joint Commission on Juvenile Justice Standards was then created to serve as the project's governing body. The joint commission, chaired by Chief Judge Kaufman, consists of twenty-nine members, approximately half of whom are lawyers and judges, the balance representing nonlegal disciplines such as psychology and sociology. The chairpersons of the four drafting committees also serve on the joint commission. The perspective of minority groups was introduced by a Minority Group Advisory Committee established in 1973, members of which subsequently joined the commission and the drafting committees. David Gilman has been the director of the project since July 1976.

The task of writing standards and accompanying commentary was undertaken by more than thirty scholars, each of whom was assigned a topic within the jurisdiction of one of the four advisory drafting committees: Committee I, Intervention in the Lives of Children; Committee II, Court Roles and Procedures; Committee III, Treatment and Correction; and Committee IV, Administration. The committees were composed of more than 100 members chosen for their background and experience not only in legal issues affecting youth, but also in related fields such as psychiatry, psychology, sociology, social work, education, corrections, and police work. The standards and commentary produced by the reporters and drafting committees were presented to the IJA-ABA Joint Commission on Juvenile Justice Standards for consideration. The deliberations of the joint commission led to revisions in the standards and commentary presented to them, culminating in the published tentative drafts.

The published tentative drafts were distributed widely to members of the legal community, juvenile justice specialists, and organizations directly concerned with the juvenile justice system for study and comment. The ABA assigned the task of reviewing individual volumes to ABA sections whose members are expert in the specific areas covered by those volumes. Especially helpful during this review period were the comments, observations, and guidance provided by Professor Livingston Hall, Chairperson, Committee on Juvenile Justice of the Section of Criminal Justice, and Marjorie M. Childs, Chairperson of the Juvenile Justice Standards Review Committee of the Section of Family Law of the ABA. The recommendations submitted to the project by the professional groups, attorneys, judges, and ABA sections were presented to an executive committee of the joint commission, to whom the responsibility of responding had been delegated by the full commission. The executive committee consisted of the following members of the joint commission:

Chief Judge Irving R. Kaufman, *Chairman*
Hon. William S. Fort, *Vice Chairman*
Prof. Charles Z. Smith, *Vice Chairman*
Dr. Eli Bower
Allen Breed
William T. Gossett, Esq.
Robert W. Meserve, Esq.
Milton G. Rector
Daniel L. Skoler, Esq.
Hon. William S. White
Hon. Patricia M. Wald, *Special Consultant*

The executive committee met in 1977 and 1978 to discuss the proposed changes in the published standards and commentary. Minutes issued after the meetings reflecting the decisions by the executive committee were circulated to the members of the joint commission and the ABA House of Delegates, as well as to those who had transmitted comments to the project.

On February 12, 1979, the ABA House of Delegates approved seventeen of the twenty-three published volumes. It was understood that the approved volumes would be revised to conform to the changes described in the minutes of the 1977 and 1978 executive committee meetings. The *Schools and Education* volume was not presented to the House and the five remaining volumes—*Abuse and Neglect*, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, *Juvenile Probation Function*, and *Noncriminal*

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Misbehavior—were held over for final consideration at the 1980 mid-winter meeting of the House.

Among the agreed-upon changes in the standards was the decision to bracket all numbers limiting time periods and sizes of facilities in order to distinguish precatory from mandatory standards and thereby allow for variations imposed by differences among jurisdictions. In some cases, numerical limitations concerning a juvenile's age also are bracketed.

The tentative drafts of the seventeen volumes approved by the ABA House of Delegates in February 1979, revised as agreed, are now ready for consideration and implementation by the components of the juvenile justice system in the various states and localities.

Much time has elapsed from the start of the project to the present date and significant changes have taken place both in the law and the social climate affecting juvenile justice in this country. Some of the changes are directly traceable to these standards and the intense national interest surrounding their promulgation. Other major changes are the indirect result of the standards; still others derive from independent local influences, such as increases in reported crime rates.

The volumes could not be revised to reflect legal and social developments subsequent to the drafting and release of the tentative drafts in 1975 and 1976 without distorting the context in which they were written and adopted. Therefore, changes in the standards or commentary dictated by the decisions of the executive committee subsequent to the publication of the tentative drafts are indicated in a special notation at the front of each volume.

In addition, the series will be brought up to date in the revised version of the summary volume, *Standards for Juvenile Justice: A Summary and Analysis*, which will describe current history, major trends, and the observable impact of the proposed standards on the juvenile justice system from their earliest dissemination. Far from being outdated, the published standards have become guideposts to the future of juvenile law.

The planning phase of the project was supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration. The National Institute also supported the drafting phase of the project, with additional support from grants from the American Bar Endowment, and the Andrew Mellon, Vincent Astor, and Herman Goldman foundations. Both the National Institute and the American Bar Endowment funded the final revision phase of the project.

An account of the history and accomplishments of the project

would not be complete without acknowledging the work of some of the people who, although no longer with the project, contributed immeasurably to its achievements. Orison Marden, a former president of the ABA, was co-chairman of the commission from 1974 until his death in August 1975. Paul Nejelski was director of the project during its planning phase from 1971 to 1973. Lawrence Schultz, who was research director from the inception of the project, was director from 1973 until 1974. From 1974 to 1975, Delmar Karlen served as vice-chairman of the commission and as chairman of its executive committee, and Wayne Mucci was director of the project. Barbara Flicker was director of the project from 1975 to 1976. Justice Tom C. Clark was chairman for ABA liaison from 1975 to 1977.

Legal editors included Jo Rena Adams, Paula Ryan, and Ken Taymor. Other valued staff members were Fred Cohen, Pat Pickrell, Peter Garlock, and Oscar Garcia-Rivera. Mary Anne O'Dea and Susan J. Sandler also served as editors. Amy Berlin and Kathy Kolar were research associates. Jennifer K. Schweickart and Ramelle Cochrane Pulitzer were editorial assistants.

It should be noted that the positions adopted by the joint commission and stated in these volumes do not represent the official policies or views of the organizations with which the members of the joint commission and the drafting committees are associated.

This volume is part of a series of standards and commentary prepared under the supervision of Drafting Committee IV, which also includes the following volumes:

PLANNING FOR JUVENILE JUSTICE
JUVENILE RECORDS AND INFORMATION SYSTEMS

*Addendum
of
Revisions in the 1977 Tentative Draft*

As discussed in the Preface, the published tentative drafts were distributed to the appropriate ABA sections and other interested individuals and organizations. Comments and suggestions concerning the volumes were solicited by the executive committee of the IJA-ABA Joint Commission. The executive committee then reviewed the standards and commentary within the context of the recommendations received and adopted certain modifications. The specific changes affecting this volume are set forth below. Corrections in form, spelling, or punctuation are not included in this enumeration.

1. Standard 1.2 was amended to add new subdivision G., thereby including the prevention of discrimination as a specific goal of the monitoring process.

2. Commentary to Standard 1.2 was revised to add a brief discussion of the need to prevent the intrusion of discriminatory factors in official decision-making in the juvenile justice system.

3. Standard 1.3 A. was amended to include educators among independent, external monitoring mechanisms.

4. Commentary to Standard 1.3 A. was revised to restrict the educators qualified to serve as external monitors to those not employed by the school system.

5. Commentary to Standard 1.6 A. was revised by adding to footnote 42 a cross-reference to the discussion of the relationship between the *Monitoring* standards and the *Juvenile Records and Information Systems* standards that appears in the commentary to Standard 1.6 B.

6. Commentary to Standard 3.1 was revised by adding a discussion of the monitoring function performed by juvenile prosecutors.

7. Commentary to Standard 3.3 was revised to add a reference to

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self-monitoring of counsel representing juveniles and a cross-reference to *Counsel for Private Parties* Standard 2.1 (a) (iii).

8. Commentary to Standard 4.1 was revised to require appointees or employees of the state commission on juvenile advocacy to be compensated at a salary and rank commensurate with their responsibilities.

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Monitoring

Introduction

This volume of standards addresses the concept of monitoring as a multiple function process that includes observation and evaluation but is also actively concerned with the formation of a minimum baseline of useful information and data, the assurance of compliance with applicable norms and standards, and the implementation of necessary change. This broad concept is based in part on the notion that useful information, necessary to measure the performance of the juvenile justice system, has been chronically lacking, and in part on the notion that success in obtaining continuous compliance and in implementing recommendations resulting from evaluations are both random propositions.

Given this broad concept of monitoring, this volume attempts to list standards that would: 1. lead to the development of an accurate, comprehensive information base for monitoring purposes; 2. ensure access for monitors to this information; 3. produce a mixture of external, independent monitoring and internal self-monitoring to ensure the objectivity, reliability, and comprehensiveness of the process; and 4. provide the means both to remedy problems or abuses discovered through the monitoring process and to enforce compliance.

In general, this volume does not advocate a specific rigid monitoring *system*. It is intended that the construction of such a system should be left to the discretion of each jurisdiction. Thus, while these standards envision a multi-tiered mix of self-monitoring, court-based monitoring, and monitoring mechanisms external to the juvenile justice system, the final design of the mixture of such mechanisms to perform monitoring of any given agency or proceeding is not specified. Because the characteristics of each jurisdiction that affect the need for more or less intensive monitoring can vary greatly, these standards provide general, basic criteria rather than specific directives.

Finally, the volume addresses all aspects of the juvenile justice

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system. It refers to component systems and subsystems. Accordingly, what follows is the volume's analytical framework.

The law enforcement system (courts, police, correction departments, etc.) is probably the most widely recognized "component system" within the juvenile justice system; but the education, mental health, and social services "systems" represent additional "component systems" of the overall juvenile justice system. Moreover, each of these "component systems" can be divided further into "sub-components" (e.g., the examples noted for the law enforcement system above). To avoid confusion when referring to this complex structure, these standards adopt a "system," "sub-system," "component" method of labeling the various levels of the structure. Thus system (used alone) or juvenile justice system are used interchangeably as an all-inclusive term for the entire structure. Component is used to refer to the various units that are a part of any of the subsystems (i.e., law enforcement, social services). Where reference must be made to any of the subsystems, this will be done only by using their specific name (e.g., the law enforcement system).

Because this volume, at times, speaks of planning and because the *Planning for Juvenile Justice* volume speaks of monitoring, the differences between planning and monitoring should be noted and kept in mind by the reader of these two volumes. At the same time, however, there is a close link between these two volumes, and the interface of the provisions of the planning and monitoring volumes should also be kept in mind.

Planning, as defined in Standard 1.1 of *Planning for Juvenile Justice*, means the process of applying systematic thought to the future in such a way that a desired future state is conceived and a process for attaining that state is defined and initiated. If planning can be said to be future oriented, monitoring is concerned with the present.

Planning represents a principal activity of the policymaking arm of the juvenile justice system or its agencies, whereas monitoring, in the context of this volume, is emphasized primarily as an activity external to and independent of the system or its component agencies, and is concerned with whether and how policy is being carried out and whether and how new policies are being developed and implemented.

Nonetheless, monitoring and planning are inextricably intertwined. The threads of monitoring and planning weave in and out to produce a fabric which, ideally, represents a juvenile justice

system that performs as it should in the present, while continuously changing and improving as it moves into the future.

Thus, although both are distinct, planning is just as much a part of the monitoring process as monitoring is of the planning process. For example, when, as a result of the monitoring process, the standards in this volume call for the production of plans to remedy or improve the functioning of the system, the planning standards should apply. On the other hand, when the planning standards call for monitoring or evaluation, self-monitoring should occur, reflecting the concern of the monitoring standards, expressed in Standard 1.4 C. and in Standard 10.1, that self-monitoring be performed by juvenile justice agencies. Monitoring should thus be viewed as a process that results in planning, and planning, as a process that flows from monitoring.

Standards

PART I: GENERAL STANDARDS

1.1 Definitions.

A. Monitoring process.

Monitoring, for the purposes of these standards, represents the process of overseeing and examining the operations of the various components of the juvenile justice system. This process involves such considerations as:

1. the determination of data and information needs and the generation or collection of needed data and information;
2. the identification of existing norms or standards for, and objectives of, the operations of various components of the system;
3. the evaluation of whether these operations are in compliance with the applicable standards and meet the stated objectives;
4. the assurance of compliance with standards;
5. the provision of data and evaluations for any necessary alteration of standards or modification of objectives; and
6. the dissemination of findings and conclusions resulting from the activities performed in 1. through 5. above.

B. Monitoring mechanism.

A monitoring mechanism is any agency, component of an agency, committee, or other group or individual designated to oversee or examine the operations of a component or components of the juvenile justice system.

1.2 Goals of the monitoring process and monitoring mechanisms.

The general goals of the monitoring process and monitoring mechanisms should be:

- A. to ensure that all juveniles' substantive and procedural rights are protected, and that all pertinent laws, administrative rules and regulations, and executive or judicial policies pertaining to juveniles are continuously complied with in any executive or judicial process,

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program, or facility under state or other public or private aegis, within the juvenile justice system;

B. to evaluate the fairness, humaneness, availability, and effectiveness of any such executive or judicial process, program, or facility;

C. to identify and evaluate alternatives to all forms of coercive intervention in juveniles' lives, including but not limited to coercive intervention at the arrest, pretrial, trial, and disposition stages, and all forms of incarceration or institutionalization; and to conduct or cause to be conducted research on the efficacy of such alternatives;

D. to gather, evaluate, and disseminate information to components of the juvenile justice system and to the general public that provides the basis for remedies for illegal, unsound, unfair, or inhumane policies and practices, and that increases public awareness of policies and practices concerning juveniles; and to evaluate the speed, efficacy, and consequences of reform;

E. to evaluate the adequacy and effectiveness of existing standards and criteria that apply to decisions made in any executive or judicial process, program, or facility within the juvenile justice system; to identify and evaluate the needs for additional or more comprehensive standards and criteria; and to ensure the uniform application of standards;

F. to identify and evaluate the existing documentary, informational, and data bases for monitoring the juvenile justice system, and, if necessary, to develop and implement additional provisions to ensure that information gathering, data collection, written records, and record maintenance are adequate for monitoring purposes.

G. to prevent discrimination in the juvenile justice system on the basis of race, sex, age, language, or family background.

1.3 Monitoring mechanisms.

The monitoring mechanisms employed should include, but are not limited to:

A. independent, external mechanisms including private attorneys, educators, statewide executive commissions, local and regional citizen advisory councils, ombudsmen systems, and legislative committees;

B. court-based mechanisms including the juvenile court, the appellate court, and the courts with general or limited jurisdiction empowered to hear matters concerning any aspect of the juvenile justice system;

C. juvenile justice agency-based mechanisms performing a self-monitoring role for the functions of such agencies, including but not limited to police, prosecutor, probation and intake, and juvenile correction and detention functions.

1.4 General principles for monitoring systems.

A. Each jurisdiction should develop a structure of monitoring mechanisms that will provide optimal scrutiny of all agencies, processes, programs, and facilities of the juvenile justice system and will ensure systematic, accurate, and effective monitoring on both an individual case and a general systemic basis.

B. The monitoring system developed should constitute a multi-tiered mix of local, regional, and statewide monitoring mechanisms. This multi-tiered mix should consist of a combination of appropriate internal self-monitoring and court-based monitoring mechanisms in addition to independent monitoring mechanisms external to the components of the juvenile justice system.

C. Internal self-monitoring should be made a basic requirement for all agencies, processes, programs, or facilities.

1.5 Criteria for selection of monitoring mechanisms.

The selection of the appropriate type of mechanism or mechanisms to be assigned the monitoring of any specific executive or judicial agency, process, program, or facility, under state or other public or private aegis within the juvenile justice system should be based on the following factors:

A. the degree of visibility of the decision makers, the decision-making process, and the decisions made affecting juveniles and their families;

B. the amount of discretion inherent in the decision-making function or activity;

C. the degree of coercion or intervention in the lives of juveniles and their families;

D. the importance of the rights or interests of juveniles and their families to be protected;

E. the adequacy and effectiveness of self-monitoring; and

F. the possibility, frequency, and reliability of review by some other agency of the juvenile justice system.

1.6 Access to and use of information.

A. Each jurisdiction should adopt laws and institute practices that will ensure that each monitoring mechanism:

1. is afforded the broadest possible access, relevant to its particular function and consistent with notions of privacy, to all appropriate information, records, data, and staff of the judicial or executive process, agency, program, or facility that is being monitored;

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2. has necessary powers to conduct investigations, secure testimony and production of documents, and perform on-site inspections of agencies, facilities, and institutions. Such powers, however, should be no broader than is reasonably sufficient for, commensurate with, and essential to the given monitoring mechanism's performance of its functions.

B. Monitoring mechanisms should employ any and all appropriate methods relevant to their particular functions to obtain and document information concerning the activities of executive and judicial processes, agencies, programs, and facilities in the juvenile justice system.

1. Methods of information gathering and documentation should include, but not necessarily be limited to:

a. the collection of all pertinent reports, data, records, and the like;

b. on-site visits, inspections, and observations, including the use of film or video-tape to record and document conditions and activities;

c. interviews of agency, program, and facility staff and juveniles subject to their jurisdiction and authority; and

d. executive and public investigative hearings.

2. When monitoring activities involve the use of records that include identifying information:

a. that fact alone should not be a basis for denying access to the records;

b. all necessary steps should first be taken by the agency to prevent disclosure of the identities of juveniles who are the subjects of the records;

c. if it is not possible to expunge identifying characteristics, access to the records should be denied the monitor;

d. under all circumstances monitors and agencies should be subject to the provisions of the *Juvenile Records and Information Systems* volume with respect to disclosure of the identities of the juveniles who are the subjects of the records, including any applicable civil and criminal penalties for improper collection, retention, or dissemination of information pertaining to juveniles.

C. Each jurisdiction should adopt laws and institute practices that give monitoring mechanisms broad authority to publish and disseminate findings, reports, and recommendations for reform.

D. Monitoring mechanisms should regularly and periodically publish and disseminate reports of activities, findings, and recommendations to the legislature, to judicial or executive agencies, programs, or facilities, to other monitoring mechanisms, and to the public. Con-

cepts of confidentiality and individual privacy should, however, be observed. Any and all appropriate media should be used to accomplish the greatest possible dissemination of reports. The term media includes: newspapers, academic journals, and any other publications in general; radio; public and private seminars and conferences; television, documentary and educational films, and other visual media.

1.7 Remedial and compliance enforcement powers.

A. Each jurisdiction should adopt laws and institute practices that will ensure that monitoring mechanisms have appropriate authority to propose reforms and improvements based on information gathered pursuant to monitoring activities and to enforce compliance with existing laws, rules, regulations, standards, and proposed reforms and improvements.

B. The nature and extent of both remedial and compliance enforcement powers granted to specific monitoring mechanisms should be relevant to and commensurate with the type of monitoring mechanism and the scope of its functions.

C. Remedial and enforcement powers should include but not necessarily be limited to the authority:

1. to draft and disseminate proposals for changes in legislation, administrative rules and regulations, executive or judicial policies, practices, and the like relating to any process, program, or facility for juveniles, based on information gathered pursuant to monitoring activities;

2. to require agencies responsible for any process, program, or facility for juveniles to produce plans or procedures to correct problems or improve policies and practices;

3. to appoint masters or ombudsmen to agencies or facilities, when necessary, to oversee the implementation of reforms or improvements in accordance with the plans developed;

4. to bring suit when remedies are not implemented or are implemented improperly.

PART II: MONITORING FOCAL POINTS

2.1 Discretionary decisions.

A. Monitoring mechanisms should focus their activities on the decisions of the agency, process, program, or facility being monitored wherein the exercise of discretion is permitted or occurs.

B. The determination of the need for, and the frequency and intensity of, monitoring such decisions should be based on a consideration of the factors listed in Standard 1.5.

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C. The identification of the discretionary decisions made, the decision makers, and the extent of discretion permitted should be a primary concern of the monitoring process. In performing this task each monitoring mechanism should:

1. identify the standards or criteria, if any, that should be applied by the decision maker to the decision-making process;
2. determine that such standards or criteria are being properly applied in all cases in a uniform manner; and
3. evaluate the adequacy and effectiveness of such standards or criteria in promoting fundamental fairness and consistency.

2.2 Guaranteed rights.

Monitoring mechanisms should identify the nature and extent of the rights of persons under the jurisdiction of any agency, process, program, or facility that is monitored, the manner in which notification of these rights should be given, and the manner in which waiver of these rights should be made. Two primary tasks of the monitoring process should be:

A. to determine whether substantive and procedural rights are complied with, notification of such rights is properly and timely given, and any waivers of these rights are properly obtained; and

B. to evaluate the effectiveness of the rights granted, the manner of giving notice of these rights, and the procedures for obtaining waivers in protecting individuals from unjust, unfair, or improper interventions and coercive actions.

2.3 Mandated provisions, duties, and obligations.

Monitoring mechanisms should identify the mandatory provisions, duties, and obligations of any agency, process, program, or facility being monitored. Two primary tasks of the monitoring process should be:

A. to determine that each provision is observed and each duty and obligation is properly performed and executed; and

B. to evaluate the effectiveness of such provisions, duties, and obligations in promoting, among other considerations, a just, fair, and efficient means of processing and serving juveniles who are under the jurisdiction of the agency, process, program, or facility.

2.4 Organizational and operational functions.

Monitoring mechanisms should identify the organizational aspects and operational functions of any agency, process, program, or facility being monitored. A primary focus of the monitoring process should be to examine these areas and evaluate the organizational

structure and operational performance in terms of efficiency in cost and time, internal and external accountability, achievement of objectives, and other similar considerations.

2.5 Records and informational bases for the monitoring process.

A. Monitoring mechanisms should determine whether the discretionary decisions of the agency, process, program, or facility being monitored are recorded in writing and indicate the standards or criteria that were applied, the manner in which they were applied, and the results that were obtained. When decisions are not recorded pursuant to this standard, each appropriate monitoring mechanism should undertake the implementation of such procedures as are necessary to provide the information specified herein.

B. Monitoring mechanisms should determine whether the agency, process, program, or facility being monitored records in writing the manner in which notification of rights has been given, and waiver of rights has been obtained; the manner in which mandatory provisions have been observed and duties and obligations have been performed; and whether this manner conforms with the procedures established for these activities. When such records are not made, or when established procedures are not followed, the appropriate monitoring mechanism should undertake the implementation of such remedies as are necessary to ensure that records are kept and procedures followed.

2.6 User participation.

Monitoring mechanisms should determine the nature and extent, and evaluate the impact of, the participation of the receivers of services and programs and the users of facilities for juveniles and their families, both in the determination of the types, objectives, and priorities for development of, and in the evaluation of, such services, programs, and facilities.

SPECIFIC MONITORING MECHANISMS

**PART III: DEFENSE COUNSEL OR COUNSEL
FOR PRIVATE PARTIES**

3.1 Monitoring individual cases.

A. The primary responsibility for monitoring individual cases rests with counsel for the juvenile.

B. Counsel should be provided for the entire period during which the juvenile is under the jurisdiction of the court.

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C. Priority should be given by the legislature to adequate funding of programs that provide counsel for juveniles. Adequate funding includes funding for capable support services, e.g., investigatory, expert, social, and psychological, as well as for sufficient numbers of attorneys to handle the caseload.

D. Counsel should be cognizant of his or her monitoring capability in individual cases, and perform a monitoring function in accordance with these standards insofar as applicable in order to facilitate coordination and cooperation with systemic monitoring activities. When necessary, counsel should commence legal action, including filing of appropriate motions in juvenile court, seeking appellate review, initiating civil suits, and applying for writs, to compel the adoption of or compliance with standards and practices that provide a basis for monitoring.

3.2 Establishment of lawyers' committee.

Whether counsel is provided by public defender or legal aid organization, arrangement with the private bar, or by some other means, a specific lawyers' committee of the bar association comprised of counsel representing juveniles in the juvenile justice system should be established on a local or regional basis, to systematically monitor the activities and performance of the juvenile justice agencies in accordance with the applicable provisions of these standards and the *Counsel for Private Parties* volume.

3.3 Role of lawyers' committee.

In performing this monitoring function, the lawyers' committee should:

A. advise, assist, criticize, and evaluate local or regional juvenile justice agencies;

B. publish regular, periodic reports on its findings in all appropriate media;

C. draft and disseminate comments on proposals for changes in legislation, rules, regulations, policies, and practices relating to activities of the juvenile justice system;

D. ensure that the bases for monitoring provided for under these standards and the other volumes of the Juvenile Justice Standards Project or similar bases under the laws, rules, and regulations of the jurisdiction, are established and maintained;

E. assist and cooperate with the monitoring activities conducted by any other monitoring mechanism to the fullest extent possible while preserving client confidentialities.

PART IV: STATE COMMISSION ON JUVENILE ADVOCACY

4.1 Creation and staffing of commission.

Each state through appropriate legislation, should provide for the appointment by the governor of a commission on juvenile advocacy. Appointments should be for staggered terms of similar duration and should be renewable for an additional similar period. Members of any one political party should constitute no more than a bare majority of the commission.

A. The appointments should be made subject to legislative approval and the positions should be full time at a salary and rank of a state agency director or commissioner, but not subject to state civil service requirements.

B. Recommendations for appointments should be sought from all agencies and organizations that have established records as vigorous advocates for equal rights and opportunities for all juveniles. The commission members, in turn, should also have such records. Minority groups and women should be represented on the commission.

C. The commission should have an adequate supportive staff of full-time investigators, lawyers, budget examiners, planners, and other professionals as required to perform its responsibilities who, in addition to their professional qualifications, also have established records as vigorous advocates for equal rights and opportunities for juveniles.

4.2 Activities of the commission.

The commission should perform the following activities:

A. monitor (including the evaluation function) all aspects of the juvenile justice system within the state on an on-going basis in accordance with the applicable provisions of these standards;

B. draft and disseminate proposals for changes in legislation, rules, regulations, policies, and practices relating to any aspect of the juvenile justice system, based on information gathered pursuant to such monitoring activities, and hold public hearings on any such proposed changes;

C. publish regular and periodic reports on its findings in all appropriate media;

D. report its findings directly to the governor and chief administrative judge responsible for the juvenile court system in the state and locality;

E. appoint consultants to an agency or a facility to oversee the implementation of remedies affecting juveniles in accordance with plans, standards, or procedures adopted by the agency;

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F. staff, on a temporary basis, legislative or judicial study or investigation commissions, committees, or other bodies probing juveniles' problems or issues.

4.3 Powers.

The commission should have the power and authority to:

A. gain access to all appropriate information, records, staff, and persons subject to the jurisdiction of any agency involved in the juvenile justice system;

B. investigate any aspect of the juvenile justice system, hold executive and public hearings, perform on-site inspection of facilities, and attend executive, judicial, and legislative meetings pertinent to the operation of the juvenile justice system, and, with the additional authority from the appropriate court, subpoena records and witnesses;

C. require agencies responsible for any aspect of the juvenile justice system to produce plans or procedures to remedy problems;

D. bring suit against an agency when proposed remedies are not being implemented or are implemented improperly.

4.4 Review of commission orders.

Any agency subject to any order of the commission, having good and reasonable cause to believe that the order is in excess of the commission's authority or otherwise improper, should be authorized to seek a judicial opinion from the highest court of general trial jurisdiction in the state as to the agency's duty and obligation to comply with such order.

PART V: COMMUNITY ADVISORY COUNCILS

5.1 Establishment and role.

All agencies involved in the juvenile justice system, including juvenile courts, probation, police, youth corrections, juvenile protective services departments, and school districts should promote, encourage, assist, and cooperate in the formulation of community advisory councils to advise, assist, criticize, and monitor the functions performed and services rendered by the agencies.

A. The monitoring activities of the community advisory councils should be performed in accordance with these standards as applicable.

B. The community advisory councils should be granted access to persons, agencies, institutions, records, data, and information necessary to perform their monitoring functions in accordance with these standards.

C. The community advisory councils should periodically report their findings to the respective agencies, the community, and the commission on juvenile advocacy.

PART VI: LEGISLATURE-BASED MONITORING

6.1 Creation of legislative committee.

Each state's legislature should establish a permanent standing committee or subcommittee on juveniles and juveniles' services.

6.2 Functions of committee.

A. Such committee or subcommittee should meet periodically to review the state of juvenile justice and juveniles' services systems within the state and report its findings to the legislative body as a whole and to the public through any appropriate media.

B. The committee on juveniles and juveniles' services should perform the following functions:

1. monitor, including evaluation of, all aspects of the juvenile justice system within the state in accordance with the applicable provisions of these standards;

2. draft and disseminate or review and evaluate all proposals for changes or additions to state laws pertaining to the juvenile justice system;

3. review, evaluate, and comment upon all proposed appropriations of funds pertaining to any aspect of the juvenile justice system.

6.3 Powers of committee.

The committee on juveniles and juveniles' services should have the same powers as other legislative committees to hold hearings, conduct investigations, subpoena witnesses or records, impose sanctions for failure to comply with committee directives, and publicize reports and findings.

PART VII: OMBUDSMAN-BASED MONITORING

7.1 Definition.

These standards define ombudsman as a government official who hears and investigates complaints by private citizens against government agencies—specifically juvenile justice agencies and community agencies servicing juvenile court clientele.

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7.2 Criteria for placement of ombudsmen.

A. The appointment of ombudsmen in the juvenile justice system should be promoted and encouraged, whenever appropriate under these standards, by all agencies and monitoring mechanisms.

B. The determination of the need for an ombudsman in an agency should be based on, but not necessarily be limited to, the following criteria:

1. the degree of visibility of the decision makers, decisions, and activities of the agency to other mechanisms;

2. the frequency and adequacy of the monitoring of the decision makers, decisions, and activities of the agency by other mechanisms;

3. the availability, promptness, and adequacy of review for any person aggrieved by a decision or activity of the agency;

4. the degree of harm that might occur to an aggrieved person resulting from a decision or activity not subject to prompt and immediate investigation and review;

5. the existence and adequacy of remedies available to a person aggrieved by a decision or activity of the agency; and

6. the responsiveness of the agency in the past in correcting and eliminating discovered abuses of discretion or improper actions.

C. An ombudsman may be appointed on a permanent or temporary basis depending on the nature of the function to be monitored and in accordance with the criteria in subsection B. The activities of an ombudsman should be governed in accordance with the applicable provisions of these standards.

7.3 Powers of ombudsmen.

Whenever an ombudsman is appointed, whether on a temporary or permanent basis, he or she should:

A. be independent of the agency he or she investigates;

B. have full powers of investigation;

C. be authorized to recommend action and publicize recommendations but should not be authorized to take direct action to correct situations.

7.4 Appointment and supervision of ombudsmen.

A. Whenever a commission on juvenile advocacy is established pursuant to these standards, it should exercise the authority to appoint ombudsmen, supervise their activities, receive their reports, and act on their recommendations.

B. In any jurisdiction where there is an ombudsman's office already established either by legislation or by executive order, such

office should exercise the authority specified in subsection A.

C. In all other jurisdictions where neither A. nor B. applies, an ombudsman's office should be established to exercise the specified authority.

PART VIII: PRIVATE SECTOR ACTIVITIES

8.1 Independent research.

Independent, impartial research and evaluation activities conducted by federal contract research centers, private foundations, university-based research centers, academics working as individuals, and private corporations engaged in juvenile justice research should be promoted, encouraged, and assisted by all agencies and monitoring mechanisms in the juvenile justice system. All primary research data should be made available to bona fide researchers, subject to provisions for the protection of the rights of privacy of individuals.

8.2 Advocacy groups.

Independent juveniles' rights advocacy organizations should be included in the monitoring process, and should be encouraged, assisted, and cooperated with by all monitoring mechanisms in efforts to enforce or prevent the violation of juveniles' rights.

PART IX: COURT-BASED MONITORING

9.1 The courts as monitoring resources.

Appellate courts, juvenile courts, and civil courts having jurisdiction over matters concerning the activities of the juvenile justice system should be cognizant of their role in monitoring other judicial or executive agencies in individual cases, and should, when appropriate, perform such monitoring in accordance with these monitoring standards, insofar as applicable, in order to facilitate coordination and cooperation with systemic monitoring activities.

9.2 Implementation in the juvenile court.

A. In order to facilitate its monitoring activities, the juvenile court should ensure that the bases for monitoring provided for under these standards or similar bases under the laws, rules, and regulations of the jurisdiction are implemented and maintained. When necessary, the court should invoke its inherent powers, including its rule-making powers, to require individuals and agencies within the scope of its

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jurisdiction to adopt and comply with practices designed to provide a basis for monitoring.

B. Juvenile court judges should further continuously monitor the facilities to which they assign juveniles, including making periodic on-site inspections, to determine that proper care and treatment are being provided. Judges should not only keep informed of the conditions in the facilities but also should make reports to effect change when needed.

C. Pursuant to the *Court Organization and Administration* volume:

1. the juvenile court should appoint an officer of the court full time to direct, coordinate, supervise, and report on the performance, results, and findings of the juvenile court's monitoring activities;

2. a citizens' advisory committee should assist the court in performing its monitoring activities; and

3. appropriations for juvenile court operations should include sufficient resources to permit the court to properly perform its monitoring activities.

D. The highest court in the state, or other designated court or agency responsible for the overall administration of the court system in the state, should establish a department to receive, compile in a systematic manner, and disseminate the results of monitoring activities and findings prepared by the juvenile courts within the state. The widest possible access to juvenile court monitoring reports by citizen groups, individuals, juvenile justice agencies, and other public and private agencies serving court clientele should be permitted and encouraged.

9.3 The appellate process as a monitoring resource.

In order to promote the monitoring function currently performed at the appellate level:

A. it is essential that applicable court rules permit at least one appeal, as of right, to all parties materially affected by a juvenile court's "final" order as defined by Standard 2.1 of the *Appeals and Collateral Review* volume;

B. appeal should be permitted by leave of the court from all orders of the juvenile court other than the "final" orders referred to in subsection A. Leave to appeal such interlocutory orders should be liberally granted; and

C. all decisions relating to appeal from or collateral review of juvenile court proceedings, including decisions to grant or deny leave to appeal, and decisions to grant or deny stays of orders and release

pending appeal should be published in writing, specifying the reasons for the court's decisions and the facts supporting them.

9.4 Implementation in civil courts.

A. The applicable provisions of the monitoring standards should be applied in the litigation of all civil complaints, whether denominated test-case litigation or not, brought on behalf of a class of plaintiffs or on behalf of an individual plaintiff, in the juvenile court or in any other judicial forum where such complaints are based upon the application or implementation of any laws, rules, regulations, or practices of the juvenile court or other agencies affiliated with the juvenile justice system.

B. For monitoring purposes, one objective of all the parties involved in such litigation, and the court wherein the matter is being tried, should be to provide the broadest information base possible for the court to render a proper decision. This should include full use of court authority and rules relating to discovery, appointment of experts, designation of special masters, etc.

C. To facilitate full discovery, the trial court should, when appropriate, appoint its own experts to assist the court in determining the nature and extent of the data and information required and in obtaining the necessary data and information.

D. At any point in the proceedings, when the trial court deems it appropriate under these standards or otherwise, the court should appoint a master in accordance with the appropriate rules of procedure for the forum to assist the court in making findings, determining relief, monitoring the implementation of court orders, or performing any other function permitted under the rules of procedure for the forum.

PART X: SELF-MONITORING BY JUVENILE JUSTICE AGENCIES

10.1 General principles.

A. Self-monitoring activities conducted by juvenile justice agencies should be performed in accordance with the applicable provisions of these standards.

B. Each agency should monitor its activities on a continuous basis to ensure that it is discharging its duties and obligations and observing mandatory provisions in accordance with the standards applicable to its functions.

C. Each agency should:

1. identify the key decisions it makes with respect to the processing of juveniles and their parents under its authority;

2. develop criteria and guidelines to be applied by agency personnel to the decision-making process, when the exercise of discretion is permitted; and

3. closely scrutinize the decisions made by its personnel to ensure that guidelines and criteria are being properly applied.

D. Each agency should ensure that rules or regulations requiring documentation of discretionary decisions, sufficient for monitoring requirements, are developed and complied with in order to facilitate both the agency's self-monitoring activities and the monitoring activities conducted by other mechanisms. Such documentation should be specific and should include:

1. the reasons and supporting facts relied upon for the decision;

2. the options considered; and

3. the reasons for rejecting any and all less intrusive and less coercive options.

E. Each agency should prepare frequent, periodic reports, summarizing the activities of and the actions taken by the agency, and evaluating these and the agency's organizational and administrative functions in terms of efficiency in cost and time involved, results obtained, objectives achieved, compliance with rules, regulations, criteria, or standards, and other similar considerations. These reports should be distributed to the appropriate supervising authority, if any, to the appropriate external, independent monitoring mechanisms, and to the public through publication by any appropriate media.

F. Each agency should assist and cooperate fully with mechanisms assigned to monitor the agency. Each agency should promptly implement the recommendations of such monitoring mechanisms.

Standards with Commentary

PART I: GENERAL STANDARDS

1.1 Definitions.

A. Monitoring process.

Monitoring, for the purposes of these standards, represents the process of overseeing and examining the operations of the various components of the juvenile justice system. This process involves such considerations as:

1. the determination of data and information needs and the generation or collection of needed data and information;
2. the identification of existing norms or standards for, and objectives of, the operations of various components of the system;
3. the evaluation of whether these operations are in compliance with the applicable standards and meet the stated objectives;
4. the assurance of compliance with standards;
5. the provision of data and evaluations for any necessary alteration of standards or modification of objectives; and
6. the dissemination of findings and conclusions resulting from the activities performed in 1. through 5. above.

B. Monitoring mechanism.

A monitoring mechanism is any agency, component of an agency, committee, or other group or individual designated to oversee or examine the operations of a component or components of the juvenile justice system.

Commentary

Background. Standard 1.1 introduces two key concepts of this volume, monitoring process (also referred to as monitoring) and monitoring mechanisms (also referred to as monitors). Other terms requiring clarification or definition are reserved for treatment either in the standards (e.g., ombudsman, Standard 7.1) or in the commentary as they appear.

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The definitions of monitoring and monitoring mechanisms adopted by these standards are intended to be functional. This approach is analyzed in detail in the following commentaries and therefore only a brief summation is presented here to provide an overview.

In general, these standards view monitoring as a multiple-function activity. The term "monitoring" connotes, at the least, the two functions of observation and testing (evaluation). The latter can be broken down further into several sub-functions: *e.g.*, identification of objectives of whatever is being evaluated, formulation of criteria to be used in measuring success, measurement and explanation of degree of success, and recommendations for future activity. However, when monitoring, thus understood, is considered with the juvenile justice system as its object, several considerations preliminary to the performance of the functions of observation and testing present themselves.

The juvenile justice system has little previous history of consistent and systematic observation and testing either built in or added on to the system; thus the bases for such activities have been largely ignored in the system's information and data collection functions. Reliable information about the performance of the various components of the juvenile justice system is in short supply; empirical data is unavailable; identifiable standards are generally absent from statutes and administrative regulations. In short, much of the system's activity is not "visible" for observation and there is a lack of information and of standards for measurement.

Apart from these preliminary considerations on observation in the juvenile justice system, there are considerations of evaluation. The end product of evaluation incorporates recommendations for future activity. But how are such recommendations handled? The juvenile justice system consists of a number of independent, largely uncoordinated subsystems: *e.g.*, the juvenile law enforcement system, the education system, and the social service and mental health systems. Each system has its own agencies, hierarchy, funding sources, etc.; and quite often agencies within the subsystems have separate hierarchies and funding sources and are accountable to different departments. Coordinating implementation of program changes for several agencies or subsystems or even integrating program changes in one agency or subsystem with its other ongoing activities presents one type of problem. Implicit in this is the assumption that there is a will to change. Where resistance to change is encountered, the problem can become insurmountable.

In present practice, the evaluators make recommendations, and

the evaluatees are responsible for seeing to the implementation of these recommendations. When recommendations are ignored or implemented improperly, there is little recourse.

Courts have traditionally been reluctant to intervene in internal administrative affairs. Even with the recent trend away from such reluctance, the absence of identifiable standards is a major obstacle to judicial relief, offering little or no basis for selecting and imposing changes in policy or operations.

Grievance mechanisms, which are receiving increasing attention, may offer a means for implementation but their overall impact is limited by the case-by-case nature of their approach. This is not to imply that such specific remedial activity is not necessary or essential, but rather that such activity rarely effects broader systemic change.

If the ultimate objective of the monitoring process is to arrive at a systematic way to observe and test the juvenile justice system, then the above considerations which surround these two basic functions must also be addressed. Hence, monitoring becomes a process containing additional functions that lead up to and flow from the basic functions of observation and testing.

Monitoring process. The approach of these standards, then, is to view monitoring as a multiple function process. A number of the more important functions are listed in Standard 1.1 A. Determining the minimum baseline of continuing information and data required, promoting the generation and collection of such information and data, and identifying norms, standards, and objectives, whether explicit or, as more often the case, implicit in the operations of the various components of the system constitute what might be called the preliminary functions of the monitoring process.

Evaluating operations to determine whether they conform with identified norms and standards and, if so, whether they promote the attainment of the identified objectives is the central testing or evaluation function. Included in this function is the testing of the standards themselves to determine whether they promote the desired objectives and the testing of the objectives themselves to determine if they reflect the legitimate concerns of society.

Ensuring that operations comply with the identified norms and standards, identifying deficiencies in existing standards or objectives, and disseminating reports of findings and conclusions are the outgrowth of the completion of evaluation. This constitutes the *implementation function* of the monitoring process.

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Monitoring mechanisms. By definition, if the monitoring process described above is to be complete, each of the functions must be performed. But this does not imply or require that all functions be performed by one single monitor. With standardized procedures, these functions are separable. For example, the preliminary functions can be performed by one designated monitor, the evaluative functions by a second, and the implementation functions by a third. Or the performance of two groupings of functions can be assigned to one monitor and the remainder to another. Moreover, each grouping of functions can be further divided and assigned separately for performance.

These standards view monitoring as a multiple function process that can be performed by a monitoring system comprised of multiple components. This promotes maximum flexibility and allows the monitoring mechanism to be tailored to the monitoring function. The choice between case-by-case or systemic monitoring need not be made since both can be accommodated under this flexible approach. Monitoring activity appropriate to each level of the system can thus occur.

When one of the functions of the monitoring process as previously outlined is performed on a regular basis, the performer of that function becomes a monitoring mechanism under these standards.

These standards recognize that some of the functions of the monitoring process are presently being performed in the juvenile justice system: *e.g.*, appellate courts monitor the performance of lower courts; ombudsman or other grievance mechanisms perform monitoring functions on a case-by-case basis; programs and agencies are occasionally subject to evaluation (especially "model" or "demonstration" programs); trial courts sometimes will monitor an entire component or sub-component of the juvenile justice system (*e.g.*, correctional institutions) when a systemic breach of constitutional or statutory rights is found to have occurred. These various activities, however, are not performed all the time, nor by all the components of the system, nor in the same manner. They represent an undeveloped resource for a monitoring system. These standards create a monitoring system that can tap these existing undeveloped resources, promote their development by standardizing the activities and requiring their performance on a regular, continuous basis throughout the juvenile justice system. This in turn provides the foundation upon which new monitoring mechanisms with broader powers and duties can be erected, thereby satisfying the need for a systematic overview that previously has been lacking. This approach offers at least one important benefit as far as implementing a monitoring system is con-

cerned: while new mechanisms are being established and put into operation, existing monitoring activity can be standardized and implemented in a continuous and system-wide fashion in a relatively short period of time so that useful monitoring at certain levels can begin immediately to remedy individual problems, and to contribute to a continuing baseline of information.

1.2 Goals of the monitoring process and monitoring mechanisms.

The general goals of the monitoring process and monitoring mechanisms should be:

A. to ensure that all juveniles' substantive and procedural rights are protected, and that all pertinent laws, administrative rules and regulations, and executive or judicial policies pertaining to juveniles are continuously complied with in any executive or judicial process, program, or facility under state or other public or private aegis, within the juvenile justice system;

B. to evaluate the fairness, humaneness, availability, and effectiveness of any such executive or judicial process, program, or facility;

C. to identify and evaluate alternatives to all forms of coercive intervention in juveniles' lives, including but not limited to coercive intervention at the arrest, pretrial, trial, and disposition stages, and all forms of incarceration or institutionalization; and to conduct or cause to be conducted research on the efficacy of such alternatives;

D. to gather, evaluate, and disseminate information to components of the juvenile justice system and to the general public that provides the basis for remedies for illegal, unsound, unfair, or inhumane policies and practices, and that increases public awareness of policies and practices concerning juveniles; and to evaluate the speed, efficacy, and consequences of reform;

E. to evaluate the adequacy and effectiveness of existing standards and criteria that apply to decisions made in any executive or judicial process, program, or facility within the juvenile justice system; to identify and evaluate the needs for additional or more comprehensive standards and criteria; and to ensure the uniform application of standards;

F. to identify and evaluate the existing documentary, informational, and data bases for monitoring the juvenile justice system, and, if necessary, to develop and implement additional provisions to ensure that information gathering, data collection, written records, and record maintenance are adequate for monitoring purposes.

G. to prevent discrimination in the juvenile justice system on the basis of race, sex, age, language, or family background.

Commentary

The goals of any monitoring process are dependent to some extent on how that process is defined. Nevertheless, there appear to be some generally recognizable goals for monitoring however specifically defined. These include the improvement of the decision-making function of administrators and judges; the upgrading of the allocation of resources within and among the components of the juvenile justice system; and the increasing of accountability.¹

When monitoring has been defined as evaluation,² the goals have been identified as development of better policy programs to accomplish existing objectives, development of better or more appropriate objectives, and building support for newly designed policies.³

With respect to confinement institutions, the goals of monitoring include: 1. ensuring against blatant administrative abuse; 2. fairly resolving legitimate resident [of the institution] concerns; and 3. enlarging the constituency seeking more basic changes to better accomplish societal goals.⁴ This latter example suggests another consideration, i.e., goals may be dependent not only on what is meant by monitoring but also on what is being monitored.

As previously discussed, these standards view monitoring as a multifunction process, including the establishment and maintenance of a data base, evaluation, and implementation.⁵ The object of monitoring in these standards is the entire juvenile justice system with all its components.⁶ What should be the goals within this framework?

Relating goals to functions and mechanisms. In formulating a set of goals for the monitoring process envisioned by these standards, in which the object of the monitoring process is a multiple-compo-

¹Nejelski and LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going, If You Don't Know Where You Are?" 12 *Am. Crim. L. Rev.* 9 (1974). (Hereinafter cited as Nejelski and LaPook.)

²Several approaches to the definition of "evaluation" are found in Nejelski and LaPook at 24. These standards adapt the concept stated there, that evaluation includes: "(1) identification of the program being evaluated; (2) formulation of the proper criteria to be used in measuring success; (3) determination and explanation of the degree of success; and (4) recommendations for future program activity."

³See Wildavsky, "The Self-Evaluating Organization," 32 *Pub. Admin. Rev.* 509 (September/October 1972). (Hereinafter cited as Wildavsky.)

⁴Landever, "Regional Commissions to Monitor Confinement Institutions: A Proposal," 22 *Cleveland State L. Rev.* 450, 496 (1973). (Hereinafter cited as Landever.)

⁵See Standard 1.1 and commentary.

⁶See the Introduction at 2.

ment system, it becomes necessary at some point to identify which goal goes with which monitoring function(s), applied to which component(s) of the system, by which mechanism(s).

The goals listed in this section are intended to be general enough to apply to the monitoring of all components of the juvenile justice system and to all monitoring mechanisms. Throughout other parts of this volume, reference is made to these general goals that establish the framework within which monitoring of the system's components by monitoring mechanisms is to be considered.

However, not every goal listed here is directly appropriate to every function of the monitoring process. In this respect these goals represent what should be the cumulative result of the monitoring process when all functions of that process (preliminary, evaluative, and implementation) are properly performed.

Thus, for example, Standard 1.2 A. is generally applicable to all functions of monitoring, while subsections B. and C. specifically relate to the evaluative function. Subsections D. and E. pertain most directly to the evaluative and implementation functions while 1.2 F. is, again, a goal shared throughout the monitoring process.

Although these goals apply more directly to some functions of the monitoring process than others, realization of each of these goals should be the foremost consideration of any monitoring mechanism regardless of which function of the monitoring process is being performed.

Specific goals considered. Standard 1.2 A. states that protection of all rights and compliance with all appropriate laws and regulations should be basic goals of any monitoring function. These have been long-standing goals of court-based monitoring and this standard extends them to all other monitoring mechanisms, regardless of function. Reference to "laws, rules, and regulations," is not intended to be merely a broader restatement of "substantive and procedural rights." Rather, the phrase applies to those laws and regulations that, though not directly affecting constitutional and statutory rights, do affect the processing of juveniles or the administration of the juvenile justice system. Thus, for example, regulations pertaining to the calendaring of cases in the juvenile court or pertaining to the recording of information or reasons for administrative decisions would come within the scope of this phrase.

Standard 1.2 B. includes as a goal of monitoring the evaluation of the fairness and humaneness of processes, programs, and facilities. Though such an evaluation may be considered too dependent on subjective criteria, the standard is suggested in order to introduce a degree of flexibility into the ultimate objectives of monitoring. Apart

from determining that existing rights, laws, and regulations are being observed, a further objective of monitoring should be to evaluate whether they promote basic fairness and humaneness.⁷ Moreover, such a determination, though possibly subjective, may reflect changing societal mores. What is considered fair and humane at this time may not be considered so by general consensus at some future time. Monitors should develop the ability and sophistication to determine what may be an evolving general consensus of fairness and humaneness and evaluate the juvenile justice system accordingly. Courts, in performing monitoring duties, have on occasion made such determinations and evaluations.⁸

The goal stated in Standard 1.2 C. reflects an objective cited in a number of volumes of the Juvenile Justice Standards Project. This objective is found in standards calling for the selection of what has variously been called the "least drastic . . . alternative,"⁹ "least intrusive alternative,"¹⁰ and "least restrictive alternative,"¹¹ at the various stages of proceedings in the juvenile justice system. If there is to be a genuine selection process, less intrusive alternatives must be created. The task becomes one of identification of possible alternatives (model development) and measurement of their effectiveness (evaluation). In this manner, a wide range of reliable and realistic alternatives can be established. The performance of such a task is especially suited to a monitoring system that has access to relevant data and information, evaluation expertise, and implementation powers.

Standard 1.2 C. refers to "alternatives to . . . coercive intervention."¹² This implies consideration not only of less coercive alternatives, but also of noncoercive alternatives. For example, if the common procedure is to detain a juvenile after arrest until a hearing, then a less coercive alternative would be to release the juvenile with a

⁷The notions of fairness and humaneness are postulated as being among the general basic values that should underlie the juvenile justice system's activities. See, e.g., the *Dispositions* volume.

⁸See, e.g., *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970); *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968).

⁹See the *Juvenile Probation Function: Intake and Predisposition Investigative Services* volume.

¹⁰See the *Interim Status* volume.

¹¹See the *Dispositions* volume. See also the *Juvenile Delinquency and Sanctions* volume, which seeks to limit conduct over which the juvenile court has jurisdiction by excluding "uniquely juvenile offenses" (e.g., truancy, running away), and "victimless" crime from the court's jurisdiction. Such standards represent another approach to less drastic or intrusive alternative concepts.

¹²*Cf.* the *Dispositions* volume, where "coercive" with respect to dispositions is thus defined: "A disposition is coercive when it limits the freedom of action of the adjudicated juvenile in any way that is distinguishable from that of a nonadjudicated juvenile and when the failure or refusal to comply with the disposi-

summons to appear at the hearing. A noncoercive intervention would be a warning and then release of the juvenile without further consequences.

Standard 1.2 D. relates back to the three previous subsections of 1.2 and makes the accomplishment of the widest possible dissemination of findings, reports, and recommendations a specific goal in itself of the monitoring process. This is consistent with previously discussed concepts of increasing visibility and enlarging the constituency seeking more basic changes,¹³ and is essential to the implementation function.¹⁴ When reform is undertaken, evaluation of the speed, effectiveness, and consequences of reform measures becomes a further objective in order to identify where greater attention is needed to speed the implementation of reforms and to supply data and analysis indicating the need for additional or alternative reforms.

The ultimate objective that is the concern of Standard 1.2 E. is the assurance of uniform application of standards. This relates to improving decision making and ensuring against administrative abuse,¹⁵ as well as increasing accountability. Essential prerequisites for the performance of this goal are adequate standards and criteria for decision makers.

The lack of standards and criteria in statutes and administrative policies has often been cited as a handicap to effective monitoring of the juvenile justice system.¹⁶ Without clear-cut guidelines, decision makers are left to their own discretion. Decisions will vary in what may very well be similar, if not identical, situations. Accountability is lost; decisions cannot be judged; results cannot be compared. Indeed there may be no way of knowing if results should be compared. Since the ability to monitor any decision-making process rests in large part on the ability to identify what has gone into that process,

tion may result in further enforcement action." Coercive with respect to intervention implies the application of the same notions of limitations on freedom of action and possible "further enforcement action" (for failure to comply) at other decision-making points of the system as well (e.g., those illustrated in *Monitoring*, Standard 1.2 C., where such limitations or further enforcement actions are distinguishable from what would apply to juveniles not subject to the intervention.

¹³ Landever at 496.

¹⁴ See commentary to Standard 1.1 for general discussion of the implementation function. The relationship of dissemination of information to the ability to make changes (i.e., implementation) is more fully discussed in the commentary to Standard 1.6.

¹⁵ Landever at 496.

¹⁶ This is true not only with respect to the evaluative function (see, e.g., Nejelski and LaPook at 24) but also with respect to the implementation function. See generally S. Krantz, *The Law of Corrections and Prisoners' Rights, Issues and Materials* (1973).

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when the standards and criteria applied to the process are either vague or nonexistent, the task becomes difficult if not impossible.

Thus, monitors, in performing their duties, should not only examine whether appropriate standards or criteria have been properly applied to the decision-making process, but also the *sufficiency* of such standards with respect to providing both guidance for decision makers and a basis for evaluation by monitors. It is intended that the standards developed by the Juvenile Justice Standards Project (JJSP) serve as a model for monitors evaluating the adequacy and effectiveness of existing criteria and standards employed in a given jurisdiction. Moreover, whether or not the JJSP standards are implemented in a given jurisdiction, the monitors should continuously evaluate the need for additional or more comprehensive standards.

The objective of the implementation function then becomes one of overseeing the adoption of better standards and criteria that will serve not only to improve the fairness and uniformity of the decision-making process itself, but also facilitate subsequent monitoring of that process.¹⁷

The end result of these efforts—ensuring uniform application of standards—does not preclude a case-by-case approach to monitoring (although correcting problems or abuses in individual cases, as these arise, is a legitimate concern and does have a place in a monitoring system);¹⁸ rather, the attainment of this objective will foster a consistency in the system's operations that should facilitate conducting *systemic* evaluations of performance and results by reducing unknown or unmeasurable variables, rendering comparative analyses more possible, and the like.¹⁹

Standard 1.2 F. relates to the maintenance and improvement of the monitoring process itself, especially the preliminary functions of that process. Fostering the development and continuation of the monitoring process is a legitimate concern of that process.

Evaluation of the adequacy of the data base and especially developing and implementing improvements is, in one sense, the most important objective of monitoring. Without an adequate data base and a documentary and information recording and maintenance sys-

¹⁷ A caution should be noted here that simply insuring that standards do exist does not, of course, guarantee that they will be observed and followed. This is the concern of Standard 1.2 A. and is further addressed in Standard 1.7, the standards in Part II, Monitoring Focal Points, and the commentaries thereto.

¹⁸ See commentary to Standard 1.4.

¹⁹ Perhaps the greatest benefit would be realized in evaluations of diversion programs, where even the concept of diversion itself has not had a common meaning. See generally the *Youth Services Agencies* volume.

tem, the other goals of monitoring cannot be realized.²⁰ However, total reliance on the agencies being monitored to collect relevant information in an appropriate form and to furnish this information to monitors could prove to be unwise.²¹ If there is to be an established monitoring system, the designated monitors should seek to determine and maintain whatever information and data are needed, and in the appropriate form, so that their monitoring tasks can be properly executed.

At the suggestion of the Legal Services and Defender Attorneys Juvenile Justice Standards Consortium, a new subsection, Standard 1.2 G., was added as a specific goal of the monitoring function. Persuasive evidence that discriminatory factors influence decision-makers indicates the need to collect and evaluate data on the significance of such factors and to develop criteria to reduce, if not eliminate, their role in decisions made pursuant to the standards.

1.3 Monitoring mechanisms.

The monitoring mechanisms employed should include, but are not limited to:

A. independent, external mechanisms including private attorneys, educators, statewide executive commissions, local and regional citizen advisory councils, ombudsmen systems, and legislative committees;

B. court-based mechanisms including the juvenile court, the appellate court, and the courts with general or limited jurisdiction empowered to hear matters concerning any aspect of the juvenile justice system;

C. juvenile justice agency-based mechanisms performing a self-monitoring role for the functions of such agencies, including but not limited to police, prosecutor, probation and intake, and juvenile correction and detention functions.

Commentary

Classification of mechanisms. Standard 1.3 introduces the several types of monitoring mechanisms considered in Part III. Neither this standard nor this volume purports to exhaustively list or discuss every monitoring mechanism either presently in existence or pro-

²⁰ Arguably, this objective could be considered as a means to an end, rather than an end in itself. However, because of its importance both to the achievement of other goals as well as to the self-improvement of the monitoring process, it is presented here as an objective in itself.

²¹ See the commentary to Standard 1.6, on information needs.

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posed. However, most such mechanisms can be classified under one of the three categories indicated in this standard. The specific types listed under each category here represent those mechanisms that offer a significant degree of relevance to the monitoring system envisioned by these standards.

At the suggestion of the ABA Young Lawyers Division, Standard 1.3 A. has been amended to include educators. To qualify as an independent external mechanism, an educator necessarily could not be employed by or involved in the school system, which is defined as part of the juvenile justice system in Standards 1.3 C. and 5.1. Qualified educators might be found on the university level, notably specialists in the training of teachers or school administrators.

In developing a taxonomy reflected in the classifications of mechanisms in this standard, several existing and proposed types of mechanisms were identified and examined to determine their basic distinguishing characteristics.

The first mechanisms to be considered were the courts. They constitute the most common monitoring-type mechanism presently in existence. The exact nature of their contribution to monitoring, the success of their performance in monitoring and their role in a monitoring system will be discussed in greater detail below;²² for the purposes of the present analysis, it is sufficient to note that as a monitoring mechanism, the courts have operated most frequently on a case-by-case basis, reviewing administrative decisions, law enforcement activities, and the like. In the process of deciding these cases, policy may be set for an entire area of juvenile justice operation (e.g., arrest or search and seizure procedures, commitment proceedings); but generally a truly systematic review and evaluation of operations occurs less frequently and then only when some type of wide-impact litigation is before the court.

Various versions of specialized grievance mechanisms constitute a second type of existing monitoring mechanism. Such mechanisms generally operate on a case-by-case method, handling individual complaints.²³

Agencies that monitor their own operations would constitute a

²² See: 1. commentary to Standard 1.7, on basis for powers, for a discussion of remedial powers exercised by the courts; 2. commentary to Part IV at 66 for a discussion of the limitations of their monitoring capability; and 3. Standards 9.1-9.4 and commentaries for a discussion of the courts' role in the monitoring system.

²³ See generally *W. Gellhorn, When Americans Complain: Government Grievance Procedures* (1972).

third type of monitoring mechanism; agencies that do so on a continuous basis however, are exceedingly rare.²⁴ On a theoretical level, it has been suggested that self-evaluating agencies, if they existed, might follow one of three models: the "internalized gyroscope";²⁵ the central administration as evaluative unit for the entire organization; or evaluation firms under contract on an on-going basis to the organization to perform the evaluation.²⁶

Groups performing basic research and project evaluations constitute another type of possible monitoring mechanism that can provide an important systemic look at the juvenile justice system or specific parts of that system. At present, however, such activities are scattered throughout the system and are infrequently performed, and thus represent only a potential type of mechanism. Moreover, the range of groups performing these activities is extremely diverse, ranging from law enforcement agencies operating at the local level, state planning agencies, and federal agencies, through research centers under federal contract, private foundations and universities, and individual academics.

Obviously each of the above types of mechanisms are distinguishable; *e.g.*, evaluators and basic researchers do not resolve individual problems or disputes, whereas grievance mechanisms do. But the courts also resolve individual disputes, which suggests that the scope of a mechanism's concerns may offer a basis for distinguishing and classifying them. Are courts and grievance mechanisms of the same class? As previously noted, courts, unlike grievance mechanisms, also occasionally perform more programmatic monitoring. Though there are differences, courts and grievance mechanisms may be considered different species of the same class—with the courts being more developed and engaging in systemic concerns as well as case-by-case problems.

Apart from sharing a case-by-case concern, grievance mechanisms have basic differences. In that sense, they differ from courts. The courts are part of a court system that is self-contained, comprising a separate branch of government organizationally distinct from the

²⁴ Wildavsky at 509-10.

²⁵ This model would be represented by an organization in which "the members are socialized into central values that they carry with them wherever they go and apply to specific circumstances," but where "problem-solving skills" are also inculcated, allowing "problem-solving divorced from commitments to specific policies and organizational structures." The implication is that each member of the organization engages in self-evaluating. *Id.* at 511. (However, the author notes the unlikelihood of such a model existing in practice.)

²⁶ *Id.*

other branches. Moreover, though their jurisdiction may be limited or general, their enforcement powers within the limits of jurisdiction are self-contained and independently exercisable.

Grievance mechanisms, on the other hand, do not share these characteristics. Some mechanisms are components of the agencies they monitor. Others, although administratively separate, have limited investigative and compliance enforcement powers and thus can only recommend suitable action to be taken by the appropriate agency or branch of government to remedy the problems they monitor.²⁷

The analysis above, however, suggests other more basic concepts upon which a taxonomy of mechanisms might be based. These are: 1. the locus of the mechanism, i.e., its place in the system; and 2. the source of its authority, i.e., independent (self-contained) or dependent.

In classifying mechanisms according to these characteristics, the courts would be termed "independent-internal" mechanisms—internal in the sense that the locus of the courts is within the juvenile justice system (a component of the system), and independent in the sense that the courts are separate from the other components of the system that they monitor, and they exercise their powers under their own authority.

With respect to grievance mechanisms, those mechanisms that are separate offices in the executive branch would be "external" to the juvenile justice system. Those that are part of a specific agency or component (e.g., corrections) would be "internal." Mechanisms that have the authority to conduct their own investigations and seek to implement their own recommendations would be "independent" whereas those without authority to investigate or to implement or those that must rely on the agency under scrutiny to grant such authority would be "dependent."

Applying these concepts to some specific examples of grievance mechanisms, an ombudsman's office such as exists in Minnesota,²⁸ which is a separate office in the executive branch with subpoena powers and the power to sue in court for legal relief, is an example of an independent-external mechanism. The Inmate Grievance Commission in North Carolina²⁹ is an example of a "dependent-external" mechanism; it was established as a separate commission of the execu-

²⁷ See, e.g., the following discussion of the Inmate Grievance Commission in North Carolina.

²⁸ *Minn. Stat. Ann.* § 241.04 *et seq.* (1972).

²⁹ *N.C. Gen Stat.* § 148-101 *et seq.* (1974).

tive branch and its recommendations are subject to revision or reversal by the Secretary of Corrections. The ombudsman program of the New York State Division for Youth (DFY) is an example of a "dependent-internal" mechanism.³⁰

With respect to self-evaluating or self-monitoring mechanisms such as the three models previously discussed, the first two would be "dependent" in the sense that implementation of change would rest entirely on the will of the self-monitoring agency to reform itself. The "internalized gyroscope" model and the "central administration as monitor" model would also be "internal," both being an integral part of the self-monitoring agency. The third model, the "contract-evaluator," would be classified, on the basis of the source of the contract (in this model, the source is the self-evaluating agency), as "internal" (although perhaps only temporarily since the link to the agency endures only as long as the contract) and "independent" since under this model, the evaluators would also implement policy change and not merely make recommendations.³¹ The independence here, though, would be of the most precarious kind, since a dissatisfied agency could terminate the contract upon expiration of the initial term.

In summary, how a mechanism does and should operate will be affected primarily by its locus and source of power. These are the two distinguishing elements that constitute the determinative factors in a taxonomy of mechanisms.

In this taxonomy, the specific concerns and functions of a mechanism become the secondary characteristics that are considered in determining the types of mechanisms in each class. Examples of mechanisms in the "independent-external class" that show a concern for systemic monitoring are given the most specific attention in these standards because of the need for and present shortage of such mechanisms, while fewer types in other classes of mechanisms are specifically considered.

However, the taxonomy employed here facilitates the organization of general standards for mechanisms according to their class. Thus, although not all possible types of mechanisms in each class

³⁰ See Nejelski and LaPook, at 29, where the authors note that the DFY model is internal rather than external; the ombudsman cannot publicize its reports, but can only make recommendations based on the report to DFY.

³¹ Wildavsky at 515. The contract-evaluator model, referred to as "Evaluation Incorporated," is compared to management consultant firms but, as the author notes, "the difference would be that they do actual policy work as part of the public apparatus rather than making recommendations and then disappearing."

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are covered in Parts III through X, one can, by using the taxonomy employed here, analyze a mechanism not specifically discussed and determine the classification of that mechanism and thereby identify the general standards that should apply.

1.4 General principles for monitoring systems.

A. Each jurisdiction should develop a structure of monitoring mechanisms that will provide optimal scrutiny of all agencies, processes, programs, and facilities of the juvenile justice system and will ensure systematic, accurate, and effective monitoring on both an individual case and a general systemic basis.

B. The monitoring system developed should constitute a multi-tiered mix of local, regional, and statewide monitoring mechanisms. This multi-tiered mix should consist of a combination of appropriate internal self-monitoring and court-based monitoring mechanisms in addition to independent monitoring mechanisms external to the components of the juvenile justice system.

C. Internal self-monitoring should be made a basic requirement for all agencies, processes, programs, or facilities.

1.5 Criteria for selection of monitoring mechanisms.

The selection of the appropriate type of mechanism or mechanisms to be assigned the monitoring of any specific executive or judicial agency, process, program, or facility, under state or other public or private aegis within the juvenile justice system should be based on the following factors:

A. the degree of visibility of the decision makers, the decision-making process, and the decisions made affecting juveniles and their families;

B. the amount of discretion inherent in the decision-making function or activity;

C. the degree of coercion or intervention in the lives of juveniles and their families;

D. the importance of the rights or interests of juveniles and their families to be protected;

E. the adequacy and effectiveness of self-monitoring; and

F. the possibility, frequency, and reliability of review by some other agency of the juvenile justice system.

Commentary

Standards 1.4 and 1.5 should be read together because of their close interrelation. These two standards are designed to show in general how functions, objectives, and mechanisms can be integrated in-

to a comprehensive system so that ultimately there can be monitoring activity appropriate to each intra-organizational and interorganizational level of the juvenile justice system.

Systemic vs. case-by-case monitoring. The juvenile justice system has existing mechanisms that provide correctives for individual cases. The frequently noted concern over absence of monitoring mechanisms refers to the lack of mechanisms that can provide a systematic overview of operations and correctives for systemic problems.³² The types of mechanisms noted in the independent-external class are intended to furnish this systemic monitoring capability. However, to concentrate solely on mechanisms with the capability of offering systematic overviews and correctives while ignoring mechanisms providing individual case scrutiny and correctives in a monitoring system would result in producing the inverse of the problem that until now has plagued monitoring efforts—one would finally see the forest but could no longer make out the individual trees.

What is needed is a system of monitoring that can satisfactorily provide both kinds of monitoring—case and systemic. Standard 1.4 A. recommends that each jurisdiction develop such a system providing both capabilities.

Multiple tiers. A fully comprehensive monitoring system requires the performance of all three functions of the monitoring process, on both a systemic and case-by-case basis, in a manner that focuses on both the intra- and interorganizational operations of the components of the system. This represents an enormous set of tasks for any single monitoring mechanism to perform. Certainly no mechanism presently in existence is designed for or capable of performing such a task without massive infusions of money, personnel, and legislative or executive authorization to substantially increase the scope of its power and authority.

In fact, it is quite possible that no single type of monitoring mechanism could adequately perform the full range of monitoring of the juvenile justice system that these standards call for.³³ Thus a multi-tiered system is advocated. Such a system would combine internal self-monitoring by individual agencies, programs, or fa-

³² See, e.g., Landever at 450; Nejelski and LaPook at 9.

³³ See, e.g., Wildavsky at 510. Noting the number of contradictory qualities evaluators must possess (e.g., obtaining bureaucratic support while pursuing antibureaucratic policies, combining political feasibility with analytical purity), the author concludes: "only a brave man would predict that these combinations of qualities can be found in one and the same person and organization."

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cilities, with presently existing court-based monitoring, and with further monitoring by mechanisms that operate external to and independent of the agencies being monitored—the latter mechanisms ranging from those assigned to monitoring specific agencies, programs, or facilities to those monitoring the system as a whole.

Such a system offers several advantages. First, specific types of mechanisms can be designed or designated in a manner that takes into account the function, objective, scope, and focus of monitoring that is called for. Second, such a system can incorporate presently existing and functioning mechanisms into the overall structure, necessitating only the making of those adjustments required to ensure that each mechanism's operations are integrated with and flow into those of the others. Third, existing mechanisms can perform their monitoring functions while awaiting the introduction of new mechanisms to complete the system. Fourth, an array of different mechanisms can provide a system of checks and balances on the performances of other mechanisms. For example, when functions of the process are divided among several mechanisms, each can look to the others to determine if their performance is adequate. Moreover, diversification and decentralization reduce the possibility of the monitoring process being dominated by any one faction.

These standards do not propose any specific system as *the* monitoring system for every jurisdiction. However, general characteristics of a system are suggested. For example, every system should have one or more mechanisms that are of the independent-external class.

Independence is an essential characteristic that needs to be found in some mechanism of the system in order to avoid the biases that operate against successful monitoring, such as resistance to change, suppression of negative findings, and reluctance to pass negative information up through the hierarchy of the organization (for fear that this would place the conveyor of that information in a bad light).³⁴ An independent mechanism would not be subject to these self-protective reactions. (This is not to say that independent mechanisms would not have to overcome the presence of these biases in organizations being monitored; but this can be more easily accomplished when the mechanism seeking to deal with these biases is

³⁴ Dependent mechanisms, i.e., those that can *recommend* but must look to the agency being monitored to *enforce*, would obviously be unable to overcome agency resistance to change, and would lack authority to resist suppression of negative findings (*cf.* the DFY ombudsman *supra* note 30). See note 41 *infra* for further discussion of the latter two biases noted here in the text and their causes.

independent of the resisting organization.) Since the presence of such biases reduces both visibility and accountability, independence becomes essential to achieve these two objectives.

The characteristic of being external to the juvenile justice system also needs to be found in some mechanism of the monitoring system. Internal monitors can be subject to the same biases noted above. Moreover, their identity with the organization or system being monitored may make their work suspect. They may appear to be justifying rather than examining policies. Their end product may be considered an attempt to protect the organization. Clearly the temptations towards partiality are greater.³⁵ Thus external mechanisms offer better possibilities for impartiality, objectivity, and perhaps most importantly, credibility, because the latter, given human nature, is often dependent on appearances.

Given these benefits, external-independent mechanisms seem best suited to provide the kind of systemic information gathering, evaluation, and corrective capabilities not now available.³⁶

Along with external-independent mechanisms, the performance of court-based monitoring, both case-by-case and systemic, should be continued and encouraged. In a monitoring system in which implementation constitutes an integral part of the monitoring process, the courts become an essential instrument for enforcing compliance with standards. The frequency of their performance of this function can be expected to increase as authorized mechanisms are added to the numbers of individual and class plaintiffs seeking redress. Coordination of this increased activity with other monitoring mechanisms makes their inclusion in the system essential.

Self monitoring. The above discussion does not imply that self-monitoring should be abandoned. Properly performed, self-monitoring presents obvious benefits to the monitoring system, even when self-monitoring is limited to the performance of the preliminary monitoring functions or the implementation functions.³⁷ Thus, as is noted in Standard 1.4 C., self-monitoring should be a basic element

³⁵ Nejelski and LaPook at 23, 25.

³⁶ See, e.g., Landever at 496 *et seq.* In the context of mechanisms to monitor confinement institutions, after reviewing the performance of a wide range of existing mechanisms, the author concludes that they have each manifested major weaknesses and proposes a network of regional commissions that are independent from and external to confinement institutions to provide comprehensive, systematic monitoring. Cf. Nejelski and LaPook.

³⁷ The likelihood that these functions may be performed more properly than the evaluation function is discussed in the commentary to Standard 9.1.

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of any system of monitoring. Using the taxonomy previously discussed, self-monitoring mechanisms could be classified in any one of the categories depending on how such self-monitoring is structured. The concept of self-monitoring discussed in the commentary to Standard 10.1 seems best adapted for the dependent-internal class of mechanisms and it is this class that is called for in this standard.

As part of the strategy of providing monitoring activity appropriate to each level of the system and of organizations within the system, self-monitoring constitutes the bottom line of a structure of mechanisms.

Self-monitoring may not adequately perform all the functions of the monitoring process but by performing well and accurately those functions that it can reasonably be expected to perform, self-monitoring can make an important contribution to the monitoring system. Thus, self-monitoring, at least in the form suggested by these standards, is an integral part of the proposed monitoring system.

Assignment of mechanisms. The multi-tier concept of the monitoring system involves use of external-independent, internal-independent, and internal-dependent classes of mechanisms, performing, in various combinations, both case-by-case and systemic monitoring on a local or regional as well as statewide basis. When the focus is on the whole of the juvenile justice system, or the statewide performance of any component or set of components of the system (e.g., all probation departments or all juvenile correctional institutions), a mechanism with a co-extensive jurisdiction (i.e., statewide) is most appropriate. When the focus is on a specific component or set of components of the system in a given locale or region or on the operation of the whole system within a given locale or region (e.g., the juvenile justice system of a specific county), a mechanism of local or regional scope would be most appropriate.

Apart from these considerations, Standard 1.5 lists additional criteria to be considered in determining which types of mechanisms should be assigned to which operations and in which numbers. The formula implicit in these criteria can be expressed as follows:

1. When the decision-making process is of low visibility to persons outside the agency or outside the juvenile justice system, when the amount of discretion authorized in decisions affecting juveniles' lives is very broad (or where applicable standards are inadequate in quantity or quality), when the resulting coercion or intervention is significant, or when basic rights or interests of juveniles and their families will be affected, then greater scrutiny by external, independent monitoring mechanisms should be provided for.

2. When more than one of these factors are present or when the degree of impact of any of these factors on the operation of the agency or system is especially significant, or when abuses are discovered, then several levels of monitoring mechanisms should be focused on the activity or operation in question, including not only mechanisms with systematic monitoring capabilities but also those with individual case monitoring capabilities whenever any of these factors appear to be chronic.

3. Whether or not the factors enumerated in 1. and 2. above are present, whenever self-monitoring has been ineffective or nonexistent or when review is unavailable, infrequent, or inadequate for other reasons, then monitoring by external, independent mechanisms is called for.

This formula and the enumerated factors in Standard 1.5 should be assessed by jurisdictions in the process of designing a monitoring system, selecting types of mechanisms for that system, and assigning tasks and functions to those mechanisms. The frequency and intensity of monitoring and the number and type of monitoring mechanisms designated to perform a given monitoring function will depend on the presence of one or more of these factors.

A formula of this nature offers several advantages. First it permits each jurisdiction to design a monitoring system that reflects the individual needs and problems of its juvenile justice system. Second, it produces a flexible system of monitoring. The juvenile justice system is not a static system always presenting the same problems with the same urgency. The needs of clientele change; policy makers, administrators, and line staff come and go, each bringing a different style and approach to that system. A monitoring system should be designed with a built-in flexibility to respond and adapt itself to the changes of the system and its components. To accomplish these ends, a generalized formula rather than a rigid, fixed structure is preferred as a guide for system design and modification. This permits a monitoring system to respond with different or more intensive kinds of monitoring when new problems arise or existing problems become more chronic and serious.

1.6 Access to and use of information.

A. Each jurisdiction should adopt laws and institute practices that will ensure that each monitoring mechanism:

- 1. is afforded the broadest possible access, relevant to its particular function and consistent with notions of privacy, to all appropriate information, records, data, and staff of the judicial or executive process, agency, program, or facility that is being monitored;**

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2. has necessary powers to conduct investigations, secure testimony and production of documents, and perform on-site inspections of agencies, facilities, and institutions. Such powers, however, should be no broader than is reasonably sufficient for, commensurate with, and essential to the given monitoring mechanism's performance of its functions.

Commentary

Information needs. This standard relates to the preliminary functions of the monitoring process identified in Standard 1.1. Apart from needing information per se to conduct evaluations, the quality of that information will determine the quality of the evaluation. Inadequate information leads to inadequate evaluations. And although evaluation can be poorly done even though the information and data base is adequate, evaluations cannot be done at all if the information about the organization under scrutiny is not available at all.³⁸ Quality of information is addressed in Standard 2.5. This standard pertains to the basic need for information and how it can be obtained.

Information bias³⁹ reduces information passed up through the organizational hierarchy. "Hierarchies exist in organizations in order to reduce information."⁴⁰ Apart from a natural process to compress, summarize, and reduce information as it flows up through the organization (which can possibly lead to the loss or distortion of important bits of information), there is a further tendency to suppress potentially harmful information.⁴¹

The problem is not whether information is needed but rather what information is needed, how much, and how to obtain it.

³⁸ This previously expressed concern led to the formulation of Standard 1.2 F.; see note 20 *supra* and accompanying text.

³⁹ Information bias has been previously discussed within the context of what class of mechanism can best be expected to overcome such biases. See commentary to Standards 1.4 and 1.5, on multiple tiers.

⁴⁰ Wildavsky at 509 states: "Hierarchies in organizations exist in order to reduce information. If the men at the top were to consider all the bits of data available . . . they would be overwhelmed. As information is weeded and compressed on its way through the hierarchy . . . important bits may be eliminated or distorted."

⁴¹ This tendency can occur as part of the fear of the impact of negative findings on the organizations. This impedes not only disclosure of evaluation reports and the like, but potentially the disclosure of the information itself that forms the basis for such reports; this tendency can also occur as part of an individual's desire to avoid blame for "bad" performance. "Good news" is passed on up the

Access to information. The general thrust of Standard 1.6 A. 1. is to grant monitors access to available information that is as broad as possible while neither violating applicable concepts of privacy⁴² nor exceeding the needs of the specific monitor, which are determined by the scope and function of the mechanism's duties. For example, mechanisms performing the evaluating function of the monitoring process will have the greatest need for information. If such mechanisms also perform the preliminary functions of the process (i.e., information gathering, data collection), they should be granted access to information concerning the operations of the component or components of the juvenile justice system. This access would be limited, however, to information concerning those operations actually being evaluated or that are relevant to the evaluation.

Mechanisms performing the implementation function of the monitoring process would be entitled to that information that reveals what means is best suited to implementation and how quickly and effectively implementation is proceeding.

Mechanisms concerned with systemic operations are entitled to broader access to information than are mechanisms concerned with resolving an individual problem.

A corollary of appropriately broad access is ready access. If the decision to make information available is initially left to the agency, the monitor could seek a court order challenging a decision to withhold information or deny access. However, this solution presents the possibility that the monitors' time and efforts could be consumed in merely obtaining information when the real task of evaluation of the information should be the primary activity.

Under the Freedom of Information Act,⁴³ individuals can bring suit in federal court to compel disclosure of information maintained by federal agencies (subject to certain limitations such as national security). Individual states could pass their own Freedom of Infor-

chain of command; information that would place the conveyor of it in a bad light is eliminated. Wildavsky at 519. There is possibly an additional form of information bias not yet mentioned. If evaluation depends on a "common recognition" (between evaluators and organization members) that it is to lead to better policies and not to support a predetermined position, and this understanding is violated, organization members "down the line will refuse to cooperate . . . by hiding information or by simply not volunteering to find it." *Id.* at 516-517.

⁴²See, e.g., the *Juvenile Records and Information Systems* volume. See also the Privacy Act of 1974, Title 5 U.S.C. § 552(a). Note commentary to Standard 1.6 B. on the relationship between monitoring and the records and information standards.

⁴³Title 5 U.S.C. § 552 (1974).

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mation Acts applicable to state agencies and specifically designate that appropriate monitoring mechanisms have standing to sue when information is withheld. Whether or not such legislation is enacted, Standard 1.6 A. 2. recommends that certain powers commensurate with the scope and purpose of the monitoring mechanism be granted as part of the information gathering function of monitors. The power to secure testimony and the production of documents, through application to the appropriate court for subpoenas, is one such power that is fundamental. Without such authority, the monitoring system is left helpless in the face of an intransigent agency.

Thus, this standard recommends that different monitoring mechanisms have different powers. The broader the scope and authority of the monitoring mechanism, the broader its powers should be. Relating this to the concept of a monitoring system, each of the enumerated powers should be available somewhere in the system. In addition to these enumerated powers, when a legislative committee under Standards 6.1 *et seq.* is created, the traditional power of such committees to issue direct subpoenas would also be available in the system.

B. Monitoring mechanisms should employ any and all appropriate methods relevant to their particular functions to obtain and document information concerning the activities of executive and judicial processes, agencies, programs, and facilities in the juvenile justice system.

1. Methods of information gathering and documentation should include, but not necessarily be limited to:

- a. the collection of all pertinent reports, data, records, and the like;
- b. on-site visits, inspections, and observations, including the use of film or video-tape to record and document conditions and activities;
- c. interviews of agency, program, and facility staff and juveniles subject to their jurisdiction and authority; and
- d. executive and public investigative hearings.

2. When monitoring activities involve the use of records that include identifying information:

- a. that fact alone should not be a basis for denying access to the records;
- b. all necessary steps should first be taken by the agency to prevent disclosure of the identities of juveniles who are the subjects of the records;

c. if it is not possible to expunge identifying characteristics, access to the records should be denied the monitor;

d. under all circumstances monitors and agencies should be subject to the provisions of the *Juvenile Records and Information Systems* volume with respect to disclosure of the identities of the juveniles who are the subjects of the records, including any applicable civil and criminal penalties for improper collection, retention, or dissemination of information pertaining to juveniles.

Commentary

Standard 1.6 B. 1. should be read in conjunction with 1.6 A. Under the latter, assuming access to information is available, the methods of gathering information and the authority to employ those methods should be tailored to the tasks assigned to the monitoring mechanism. Under the former, broad discretion should be granted to all monitors in the selection of which investigative methods among those authorized to the mechanism should be employed. For example, when a monitor is given authority to employ several of the methods listed, the determination of which method is most appropriate to the task at hand should be made solely by the mechanism.

Here again, although the list is not to be viewed as exhaustive of possible methods of information gathering, each of those listed should be available somewhere in a monitoring system.

Standard 1.6 B. 2. attempts to balance the concept of privacy with the need for information. When identities will be revealed without the individual's authorization, disclosure of the information must be denied to monitors. However, before absolute denial occurs, both monitors and the holders of information are urged to explore alternative ways of extracting the essential data and information appropriate for the monitor's use but that still protects the identity of the individuals. For example, records might be prepared so that only names or other identifying characteristics are deleted or otherwise concealed.

With respect to disclosure of any identifying information, monitors should be subject to the provisions of the *Juvenile Records and Information Systems* volume (see especially Standards 3.5 and 3.6). Monitors should also be cognizant of and subject to the civil and criminal penalties provided therein (e.g., Standards 2.3 and 2.4).

It should be noted here that the *Juvenile Records and Information*

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Systems volume has real potential to inhibit or prohibit effective monitoring. Bearing this in mind, Standard 1.6 B. 2. should be read in conjunction with Standard 1.2 D. *supra*, which establishes that monitors should provide data and evaluations that indicate a need for alteration of standards. If monitors find they cannot do their job because of the records standards, they may want to urge change in the latter.

C. Each jurisdiction should adopt laws and institute practices that give monitoring mechanisms broad authority to publish and disseminate findings, reports, and recommendations for reform.

D. Monitoring mechanisms should regularly and periodically publish and disseminate reports of activities, findings, and recommendations to the legislature, to judicial or executive agencies, programs, or facilities, to other monitoring mechanisms, and to the public. Concepts of confidentiality and individual privacy should, however, be observed. Any and all appropriate media should be used to accomplish the greatest possible dissemination of reports. The term media includes: newspapers, academic journals, and any other publications in general; radio; public and private seminars and conferences; television, documentary and educational films, and other visual media.

Commentary

Standard 1.6 C. and D. recommend that broad authority be given to monitors to publish and disseminate their findings and recommendations. This applies in particular to the evaluation and implementation functions. The protection of individual identities is not to be breached, however, unless a properly executed waiver of confidentiality is obtained from each affected person. Apart from this limitation, the choice, manner, and content of publicized reports should be at the discretion of the monitoring mechanism, with the fullest disclosure possible to the widest audience as the general governing standard. Just as access to information is crucial to the monitors' performance of their tasks, so too public access to the findings and reports of the monitors is essential to the public's formulation of an informed opinion and its knowledgeable participation and involvement in the juvenile justice system.

It has been observed that once an evaluation is completed,

... it is important that the effect of the study be maximized. To increase the impact of evaluation ... (1) evaluation results should be

required to be considered in budget preparation and the legislative process; (2) bureau chiefs and program managers should use evaluation evidence in program management; . . . (4) national or regional clearing houses should be created to facilitate the exchange of research data among agencies and organizations involved in the juvenile justice area.⁴⁴

Dissemination of findings to this extent goes a long way toward satisfying the need to know of planners, policy makers, administrators, and others closely connected to the study of the juvenile justice system. But what end would dissemination of findings and recommendations to the general public serve? It has been suggested that the "ability to make changes when . . . analysis suggests they are desirable is an essential part of [the organization's] capacity to make self-evaluation a reality. Yet the ability . . . to make self-generated change is limited by the necessity of receiving support from its environment."⁴⁵

It would seem that this proposition is equally applicable to changes sought by mechanisms other than self-evaluating ones.

How can a mechanism gain support from its environment? It could "seek to mobilize in favor of the programs it wishes to adopt."⁴⁶ In fact, "building support for policies" becomes "an integral part of designing them."⁴⁷ This process has been otherwise referred to as enlarging "the constituency seeking more basic changes to better accomplish societal goals."⁴⁸

It is these types of considerations that point to informing and involving the public as an important objective of the evaluation function of the monitoring process, and that in turn contribute to the "ability to make changes"—an objective of the implementation function addressed in the following standard and commentary.

1.7 Remedial and compliance enforcement powers.

A. Each jurisdiction should adopt laws and institute practices that will ensure that monitoring mechanisms have appropriate authority to propose reforms and improvements based on information gathered pursuant to monitoring activities and to enforce compliance with existing laws, rules, regulations, standards, and proposed reforms and improvements.

⁴⁴ Nejeleski and LaPook at 26.

⁴⁵ Wildavsky at 515.

⁴⁶ *Id.* at 516.

⁴⁷ *Id.* at 518.

⁴⁸ See commentary to Standard 1.2, at 26.

B. The nature and extent of both remedial and compliance enforcement powers granted to specific monitoring mechanisms should be relevant to and commensurate with the type of monitoring mechanism and the scope of its functions.

C. Remedial and enforcement powers should include but not necessarily be limited to the authority:

1. to draft and disseminate proposals for changes in legislation, administrative rules and regulations, executive or judicial policies, practices, and the like relating to any process, program, or facility for juveniles, based on information gathered pursuant to monitoring activities;

2. to require agencies responsible for any process, program, or facility for juveniles to produce plans or procedures to correct problems or improve policies and practices;

3. to appoint masters or ombudsmen to agencies or facilities, when necessary, to oversee the implementation of reforms or improvements in accordance with the plans developed;

4. to bring suit when remedies are not implemented or are implemented improperly.

Commentary

Distribution of powers in the system. It is not the intent of Standard 1.7 to require that every monitoring mechanism be granted the suggested powers in subsections C. 1. through 4.; however, this standard does recommend that each of these powers be available in each jurisdiction within its monitoring system to be exercised by at least one of the monitoring mechanisms established. Apart from this general limitation, under 1.7 B. the scope of such powers and the manner of enforcement should be further tailored to the type and scope of authority of each monitoring mechanism. For example, when a commission on juvenile advocacy or similar body is established pursuant to Part IV, a wide-ranging selection of enforcement and remedial powers would be appropriate; whereas, if a mechanism assigned to monitor only a single agency process or program is granted enforcement powers, it should be authorized to exercise them only over the specific agency under scrutiny.

Certain of the enumerated powers are obviously inappropriate for specific mechanisms. For example, it is highly unlikely that an agency monitoring itself would bring a suit against itself to compel compliance.

Nature of powers. The powers sought to be made available to a monitoring system are of two types: 1. remedial powers—i.e., powers

to both propose and introduce into the juvenile justice system reforms and improvements; and 2. compliance enforcement powers—i.e., powers to compel both the observation of and obedience to existing laws, rules, regulations, or standards, as well as the adherence to proposed remedies and other corrective measures.

The first two powers listed under Standard 1.7 C. would be remedial-type powers, the least coercive of which is the power to draft and disseminate proposals for change. The activity explicit in the exercise of this power has previously been noted to constitute an element of the evaluation function.⁴⁹ Clearly such a power would be appropriate for evaluative mechanisms. However, as the least coercive (involving only the *recommendation* of change), this power could be extended to all mechanisms, especially since even under present conditions recommendations are a common end product of all types of monitoring.⁵⁰

The power to require an agency, program, or facility, to produce its own plans for change is slightly more coercive. This power most nearly coincides with the implementation function of the monitoring process since implementation requires development of a strategy, plan, or design for change at some point in the process.

Compliance enforcement type powers include those found in subsections C. 3. and 4. respectively. These powers are still more coercive in that direct intervention into the operations of the agency, program, or facility being monitored can occur. These powers represent the ultimate recourse where a monitoring mechanism encounters a component of the system that is intransigent or uncooperative with respect to implementation of change. These powers, again, are most appropriate to mechanisms performing the implementation function of the monitoring process.

Basis for powers. Monitoring activities would clearly be inefficient—they would cost more than they are worth—unless they led to needed change, i.e., improvement of whatever is being monitored. In certain instances, the change may be voluntarily undertaken by the organization being monitored. In other cases, however, resistance to change may occur. In the latter situation, the problem becomes one of determining how to overcome resistance and who should be re-

⁴⁹ See discussion in note 2 *supra* and accompanying text.

⁵⁰ In these standards, mechanisms performing the preliminary functions are to make recommendations to agencies that will facilitate performance of this function (Standard 1.2 E. and F.). Mechanisms performing the implementation function are to make recommendations to agencies concerning how implementation may be more promptly and effectively accomplished (Standard 1.2 D.).

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sponsible for the effort. What are the factors to be considered in making these determinations?

Monitoring mechanisms are themselves organizations. Their degree of success is ultimately judged by the results produced, the improvements made. When the rate of success in producing change drops, the morale of the organization can be expected to suffer.⁵¹ One suggested means of avoiding a possible cycle of "failure, hopelessness, abandonment" is to selectively seek out problems easy to solve and changes to make.⁵² Another approach to this problem involves providing mechanisms with the power to ensure success by ensuring change.⁵³

Granting mechanisms the power to ensure change, however, poses a further problem that is most clearly expressed in the statement that "the problem is how to do enough of both [evaluation and pursuit of power] (and not too much of either) so that knowledge and power reinforce rather than undermine one another."⁵⁴

The monitoring process that criticizes certain agencies, programs, etc. and seeks to alter them or replace them with others is clearly a political activity not in the sense of partisan politics but in the sense of policy advocacy.⁵⁵ Thus, generating political and public support becomes an essential element in a proper exercise of power.⁵⁶ While obtaining support may help produce a balance between knowledge and power, the question of what powers should be available remains to be resolved.

The powers listed in subsection C. 2. and 3. have been available to and exercised by the courts in the past.⁵⁷ Requiring agencies to develop and implement standards and operational plans has been increasingly resorted to by courts when confinement institutions or the "right to treatment" are the subjects of litigation.⁵⁸ Appoint-

⁵¹ Wildavsky at 515-16.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 517.

⁵⁵ *Id.* at 515.

⁵⁶ See commentary to Standard 1.6 C. and D.

⁵⁷ See generally S. Krantz, *The Law of Corrections and Prisoners' Rights, Issues and Materials* (1973), for a survey of the range of judicial remedies available against correctional institutions.

⁵⁸ See, e.g.: Wyatt v. Stickney, 344 F. Supp. 373 (M.D. Ala. 1972), aff'd, *sub nom.* Wyatt v. Anderholt, 503 F.2d 1305 (5th Cir. 1974), mental institution; Martarella v. Kelley, 359 F. Supp. 478 (S.D.N.Y. 1973), enforcing 349 F. Supp. 575 (S.D.N.Y. 1972), juvenile institution; Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974), enforcing 364 F. Supp. 166 (E.D. Tex. 1973), juvenile institutions.

ment of ombudsmen or masters has also been employed by the courts either as part of the relief ordered⁵⁹ or to oversee implementation of relief.⁶⁰ This standard proposes that these powers be maintained somewhere in a monitoring system to permit flexibility, allowing intensive, on the spot monitoring activity of a given agency, program, or facility, not necessarily on a permanent basis, but certainly on a temporary one, lasting until the corrective measures are completed. This would provide a "trouble-shooting capability" for the monitoring system.

Apart from examples of powers exercised by the courts, certain kinds of executive agencies operating in other fields offer additional examples of the provision of enforcement powers exercisable by the agency to promote realization of its goals. Perhaps the most common examples are environmental protection agencies and equal rights commissions.⁶¹ Granting such executive agencies standing to sue represents an important enforcement power.⁶² Standard 1.7 recommends that such enforcement power also be available in a monitoring system.⁶³ When recommendations are made and followed up by efforts at persuasion, lobbying, and the like that prove unsuccessful, seeking remedies through the courts becomes the last resort.

This is not to imply that such enforcement powers do not have their drawbacks.⁶⁴ The authority to make recommendations can often have no effect without the companion authority to obtain compliance; so too, by itself, the power to enforce compliance through the courts can have limited effect. Many matters sought to be remedied or improved will not be resolved by the courts unless they involve substantial legal issues cognizable by the courts. Even

⁵⁹ *Martarella v. Kelley*, 359 F. Supp. 478 (S.D.N.Y. 1973).

⁶⁰ *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974). The district court's appointment of a "federal court monitor" is noted at 501 F.2d 1271, 1321, to check on and determine the degree of compliance with the court's earlier orders.

⁶¹ See, e.g., the Equal Employment Opportunity Commission (E.E.O.C.) Civil Rights Act of 1964, 42 U.S.C. §§ 2000-e *et seq.* E.E.O.C. members are authorized to file charges themselves (in addition to aggrieved parties). The agency can bring a civil action against an uncooperative respondent in federal court (and now has sole authority in this regard); and it has broad powers of investigation. Cf. *Massachusetts Commission Against Discrimination, Mass. Gen. Laws ch. 151 B, § 1 et seq.* (1974).

⁶² Minnesota's Office of Correctional Ombudsmen is one example of a monitoring mechanism that has the power to sue. *Minn. Stat. Ann. § 241.44h* (1972).

⁶³ Landever at 498 recommends this power be available to the regional commissions he proposes to monitor confinement institutions.

⁶⁴ *Id.* at 465-468.

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when such issues do exist, the absence of statutory standards can prevent obtaining relief since there is no basis to determine what action is appropriate. For example, when an effort is made to replace an agency's set of practices with another set, some standards are needed to measure the impropriety of the practices sought to be replaced. Additionally, even when relief is obtained there remains the question of whether ultimate "compliance can be achieved especially where it calls for meaningful change of administrative conduct of a continuing nature or (by implication) requires legislative funding."⁶⁵

The combination of both remedial powers and compliance enforcement powers must thus be available if objectives are to be achieved. Moreover, these two types of powers must be linked in such a way that each supports and assists the exercise of the other. The authority to require that policies be changed (which does not necessarily imply the authority to dictate the specific changes) must be linked with the authority to compel policy changes when they do not occur. For example, when systemic problems are uncovered, the monitoring system, through the designated mechanisms, should have the statutory authority to require agencies to develop a plan to remedy the situation. The specifics of the plan should be left to the agency; but the detailed legal standards created by the monitoring mechanism should provide guidance in the design of the plan. When the agency resists the mechanism's authority or opposes the development or subsequent implementation of a plan, or when the plan either does not comport with existing standards or is implemented improperly, the monitoring system can then turn to the mechanism designated to seek enforcement of compliance. The issue of compliance is itself made a cognizable issue for the courts.

Under this format each agency, program, or facility has the first opportunity to correct or revise operations found to be faulty through the monitoring process. It is only when an agency, etc. refuses or fails to make the necessary corrections that a mechanism with enforcement powers intervenes. In a variation of this format, a given jurisdiction may wish to authorize mechanisms to intervene at an earlier point, *e.g.*, to assume the specifics of policy making immediately at the point where problems are discovered. This standard leaves the decision to delegate such additional authority to the discretion of each jurisdiction.

⁶⁵ *Id.* at 469.

PART II: MONITORING FOCAL POINTS

2.1 Discretionary decisions.

A. Monitoring mechanisms should focus their activities on the decisions of the agency, process, program, or facility being monitored wherein the exercise of discretion is permitted or occurs.

B. The determination of the need for, and the frequency and intensity of, monitoring such decisions should be based on a consideration of the factors listed in Standard 1.5.

C. The identification of the discretionary decisions made, the decision makers, and the extent of discretion permitted should be a primary concern of the monitoring process. In performing this task each monitoring mechanism should:

1. identify the standards or criteria, if any, that should be applied by the decision maker to the decision-making process;
2. determine that such standards or criteria are being properly applied in all cases in a uniform manner; and
3. evaluate the adequacy and effectiveness of such standards or criteria in promoting fundamental fairness and consistency.

Commentary

The standards in Part II present a number of focal points of the monitoring process that are particularly related to the system, mechanisms, and objectives identified in these standards. The concerns identified in this part reflect the overall concerns expressed in this volume.

What the process of monitoring (which includes the preliminary, evaluative, and implementation functions) ought to focus on depends on innumerable factors, not the least of which is the nature of what is being monitored, i.e., the type of organization and the operations it performs. Correctional institutions pose different sets of problems and considerations than, for example, probation departments. Thus the quantity, quality, and type of information that must be obtained to perform the evaluation that is to be made will vary greatly from agency to agency, program to program, and facility to facility. Whether the scope of the monitoring process involves systematic analysis or individual case concerns will also affect what a mechanism should focus on.

Part II does not attempt to list all possible points of focus for each contingency. Rather, a number of selected general concerns

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organized under general categories are examined. The focal points listed here are not intended to be exhaustive but rather illustrative. However, whether an individual case or an entire component's operations are involved, the concerns expressed in this part are generally applicable.

Discretionary decisions. Standard 2.1 identifies one primary focal point of all monitoring activities, the decision-making process in which discretion is permitted or occurs. Discretion, here, implies choice. Properly employed, it is the exercise of legitimate decision-making within the range of authority granted to the decision maker. Discretion is improperly exercised when it exceeds the bounds of authority granted. This can occur either when only one course of action is permitted to the decision maker but another is nonetheless chosen, or when alternatives or options are available to the decision maker but the one selected is other than that which is properly available, or is inappropriate under governing standards.

Thus, choice involves the selection of alternatives (an either/or proposition) or the selection of options (multiple choice). The decision to arrest or not to arrest a juvenile (when the choice is limited to one or the other) is an alternative. The selection of a disposition for an adjudicated delinquent involves options. Standard 2.1 is concerned with the proper selection of available alternatives and options, and with the second type of improperly exercised discretion noted above (the selection of an unauthorized alternative or option).

The first type (selection of an alternative where none is permitted) is addressed in Standards 2.2 and 2.3. When the decision maker is allowed only one course of action, he or she *must* do something; he or she is an "actor" and the act should be automatic. Action "A" must be done; action "B" must not be done. The breach occurs when action "A" is *not* done or action "B" *is* done. This occurs, for example, when a right that ought to be observed is not, or when a duty that ought to be performed is not, or when an obligation that ought to be fulfilled is not.

Application of criteria. What any agency, program, facility, or the like *does*, can be determined by examining the decisions it makes. But obviously not every type of decision (let alone every decision) can or should be monitored. There must be a selection process that ignores the insignificant or irrelevant while focusing on what is important. The criteria listed in Standard 1.5 as guidelines in the process of selection of appropriate mechanisms for a given monitor-

ing assignment are applicable as guidelines here in the selection of appropriate types of decisions on which to focus. Using the formula previously discussed⁶⁶ and adapting it to these purposes, the concept is: the greater the exercise of discretion, the lower the visibility of the decision-making process, and the more coercive the potential consequences for the child, the greater the need for focusing on that type of decision.

Accountability. The juvenile justice system, as it presently functions, places a large amount of discretion in nonjudicial hands. Intake and probation personnel, police officers, and corrections officers all make decisions largely based on their own discretion. Standards providing guidance are few. Many of these decisions are not presently subject to internal review, are seldom monitored, and are rarely recorded or documented in a form that would render them subject to analysis and evaluation.⁶⁷ One must assume that this pattern will not be rapidly altered, that this amount of discretion will not be limited or eliminated, nor made subject to more immediate or exacting review, nor be circumscribed by more rigid or detailed standards or criteria. Thus, a major task for monitoring mechanisms in the immediate future is the identification of all such discretionary decisions and the decision makers, an assessment of the extent of discretion that is actually exercised, and a systematic identification of any criteria that presently are or should be applied to the decision-making process.⁶⁸ Having completed these initial steps, the monitoring mechanisms should then evaluate both the decision-making process, to determine if the existing criteria are being properly and uniformly applied, and the criteria themselves to determine if they are effective in promoting a fair and consistent decision-making process,⁶⁹ which is required in Standard 2.1 C. 3.

Obviously there will be other concerns of evaluation here as well as the two indicated, such as costs, delay, and whether the types of decisions made lead to the desired objectives. Their exclusion here is not intended to eliminate them as subjects of evaluation. However, the concerns of fairness and consistency are indicated since they are considered to be primary. A decision-making process would be of

⁶⁶ See commentary to Standards 1.4 through 1.6.

⁶⁷ "Individual components of the juvenile justice system have not been required either to give reasons for their decision making or to give accounts of their performance. Consequently, their activities often are not observed and the impact of their programs are rarely measurable." Nejeleski and LaPook at 13.

⁶⁸ See generally the *Interim Status* volume.

⁶⁹ This is intended to implement the objective of Standard 1.2 E.

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little merit in human terms even if it were performed speedily, at low cost, and achieved the desired object (*e.g.*, keeping dangerous juveniles off the street), if fairness and consistency were sacrificed.

2.2 Guaranteed rights.

Monitoring mechanisms should identify the nature and extent of the rights of persons under the jurisdiction of any agency, process, program, or facility that is monitored, the manner in which notification of these rights should be given, and the manner in which waiver of these rights should be made. Two primary tasks of the monitoring process should be:

A. to determine whether substantive and procedural rights are complied with, notification of such rights is properly and timely given, and any waivers of these rights are properly obtained; and

B. to evaluate the effectiveness of the rights granted, the manner of giving notice of these rights, and the procedures for obtaining waivers in protecting individuals from unjust, unfair, or improper interventions and coercive actions.

Commentary

Standard 2.2 identifies in general terms a second primary focus of monitoring, to implement Standard 1.2 A. This standard requires that a three-fold task—identification, assessment, and prescription—be performed by each monitor. Each monitor is required to initially identify all rights—constitutional, statutory, and administrative—that attach to persons coming under the jurisdiction of the agency being monitored. Having completed a systematic identification of these rights, each monitoring mechanism is required to determine: whether these rights are being protected and complied with; whether notice of any of these rights is required to be given and whether such notification is being properly given; and whether any of these rights can be waived and if so whether waivers are being properly obtained.

In addition to making the above determinations, each monitor performing the evaluative function should evaluate the effectiveness of these rights, of the manner of notification, and of the process of obtaining waivers, both in theory and in their application in protecting persons from arbitrary or unfair proceedings, interventions, or coercive actions. Appropriate concerns of evaluation here would include such notions as whether notice is in a clear, concise, understandable form, in the child's and parent's native tongue, and whether the waiver is voluntary.⁷⁰

⁷⁰ See, *e.g.*, the *Adjudication* volume for a method of determining voluntariness of a plea admitting the allegations of a petition.

2.3 Mandated provisions, duties, and obligations.

Monitoring mechanisms should identify the mandatory provisions, duties, and obligations of any agency, process, program, or facility being monitored. Two primary tasks of the monitoring process should be:

A. to determine that each provision is observed and each duty and obligation is properly performed and executed; and

B. to evaluate the effectiveness of such provisions, duties, and obligations in promoting, among other considerations, a just, fair, and efficient means of processing and serving juveniles who are under the jurisdiction of the agency, process, program, or facility.

Commentary

Standard 2.3 focuses on the mandatory operations of the organization being monitored. This standard requires that the same identification and assessment process previously noted be applied to the provisions for performance of the duties and obligations of the agency, program, etc., being monitored. Some of these duties and obligations will correspond to the rights of individuals under the agency's jurisdiction and will become subject to scrutiny during the identification and assessment of such rights. See Standard 2.2. Others, however, will not relate to any specific individual rights and it is with these that Standard 2.3 is especially concerned. Monitors should systematically identify these provisions, duties, and obligations, evaluate the agency's performance of them, and assess their effectiveness in promoting a just, fair, and efficient means of processing and providing services to juveniles. For example, an intake or probation officer may be required to notify a supervisor or superior of a decision or an action taken. The designated monitor should determine whether such notification regularly occurs and evaluate the effectiveness of the notice in informing the superior of the nature of the action or decision and the reasons for it. Any provisions pertaining to an agency's self-monitoring activities, and any obligations relating to the recording and documentation of activities would also be within the scope of this standard.

Provisions of the law concerning such things as health, safety, and sanitation requirements or building code regulations that apply to correctional institutions are another example. State law often provides for various individuals or groups to visit and inspect correctional institutions.⁷¹ Monitoring mechanisms should ensure that

⁷¹ See, e.g.: *Mass. Gen. Laws* ch. 126, § 1 *et seq.* (1971) (county commission); *Ohio Rev. Code Ann.* § 2939.21 (1976) (county grand jury); *Cal. Welf. & Inst'ns Code* § 509 (1972) (juvenile judge).

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such inspections do occur and should evaluate their performance; mechanisms should conduct their own inspections of facilities as well.

2.4 Organizational and operational functions.

Monitoring mechanisms should identify the organizational aspects and operational functions of any agency, process, program, or facility being monitored. A primary focus of the monitoring process should be to examine these areas and evaluate the organizational structure and operational performance in terms of efficiency in cost and time, internal and external accountability, achievement of objectives, and other similar considerations.

Commentary

This standard proposes that another focus of the monitoring process should be organizational and operational functions. The concern is *how* an organization performs as opposed to what it does.

Organizational aspects include considerations such as the qualifications of staff, the process of selection of staff, the division of labor and assignment of specific tasks, the structure of the organization (hierarchy) and division of authority (who makes policy, who carries it out), and the level of internal accountability. The examination of operational functions includes such considerations as the quality and amount of initial and on-going training for staff, the allocation of available resources in sufficient amounts for the operation involved, how coordination of operations is facilitated, how information is handled and passed on up the chain of command, how staff time is budgeted, how clients are processed through the organization, and how internal accountability is achieved.

Monitoring mechanisms should identify and evaluate these aspects. Efficiency in cost and time, accountability, and promotion of objectives are listed to illustrate the concerns of evaluation in these areas, and are not intended to be all-inclusive.

2.5 Records and informational bases for the monitoring process.

A. Monitoring mechanisms should determine whether the discretionary decisions of the agency, process, program, or facility being monitored are recorded in writing and indicate the standards or criteria that were applied, the manner in which they were applied, and the results that were obtained. When decisions are not recorded pursuant to this standard, each appropriate monitoring mechanism

should undertake the implementation of such procedures as are necessary to provide the information specified herein.

B. Monitoring mechanisms should determine whether the agency, process, program, or facility being monitored records in writing the manner in which notification of rights has been given, and waiver of rights has been obtained; the manner in which mandatory provisions have been observed and duties and obligations have been performed; and whether this manner conforms with the procedures established for these activities. When such records are not made, or when established procedures are not followed, the appropriate monitoring mechanism should undertake the implementation of such remedies as are necessary to ensure that records are kept and procedures followed.

Commentary

The problems posed by both the lack of information and the inadequacy of the information that is available have been listed previously.⁷² These problems pose a major obstacle to adequate monitoring of the juvenile justice system. Because of the present acuteness of these problems, this standard recommends that the maintenance and improvement of the information and data bases necessary to perform the monitoring process become a focal point of that process itself.

As organizations become more aware of the types and kinds of information they should be looking for and collecting and as they themselves develop the machinery and processes necessary to acquire and maintain this information, the focal point identified here could diminish in importance. But at present, since organizations do not evaluate themselves, (nor subject themselves yet to systematic evaluations), they often do not possess the information necessary for evaluation. It should be emphasized that quantity is not the most pressing concern here; there may be, in actuality, mounds of data available. Better monitoring does not necessarily result from the accumulation of more records and information.

This should be a concern shared by all mechanisms whether concentrating on systemic problems or individual cases. Each mechanism should not only ask itself how it can improve what is known and how it can insure that what it needs to know is available, but also how it can improve what other mechanisms know and insure that what they need to know is available. For example, in performing the tasks indicated in Standard 2.1, monitoring mechanisms

⁷²See commentary to Standards 1.2 C. and F. and 1.6.

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are called upon to identify and determine the adequacy and regularity of application of standards to the decision-making processes selected in accordance with criteria in Standard 2.1 B. The ability to identify and assess the decision-making processes will depend on the completeness of the documentation of the decisions made and of the process employed. When the appropriate monitoring mechanism is unable to perform the initial identification and assessment tasks because of inadequate or incomplete recording, Standard 2.5 A. directs the mechanism to devise and seek implementation of procedures and regulations to be followed by the agencies being monitored that will ensure that an adequate monitoring base is provided.⁷³

Standard 2.5 B. relates this same concern to the focal points identified in Standards 2.2 and 2.3. In completing the identification and assessment phases, each monitor will also be determining the adequacy and completeness of the documentation of rights protected, notice and waiver procedures followed, and duties and obligations performed. When such documentation is not performed or when the prescribed manner of documentation is not followed or is insufficient for monitoring purposes, each appropriate monitoring mechanism should prescribe and implement remedies that will provide the necessary bases for subsequent monitoring of these focal points.

2.6 User participation.

Monitoring mechanisms should determine the nature and extent, and evaluate the impact of, the participation of the receivers of services and programs and the users of facilities for juveniles and their families, both in the determination of the types, objectives, and priorities for development of, and in the evaluation of, such services, programs, and facilities.

Commentary

This standard reflects a somewhat novel focus for the monitoring process, i.e., user participation in an advisory capacity for both policy-making and monitoring activities. There has recently been

⁷³ See the *Interim Status* volume, in which the importance of documentation of decisions for measurement purposes with respect to the reduction of detention is cited, and written reasons showing the evidence relied upon and the purpose to be served by the decision are required.

some limited experimentation in this area.⁷⁴ The purpose of this standard is simply to acknowledge these efforts and to encourage additional efforts at carefully planned experimentation. These types of efforts are still largely untested and their ultimate value and contribution remains to be determined. Monitoring mechanisms should be aware of, and identify, where such experiments are being tried or planned and become involved in their evaluation.

SPECIFIC MONITORING MECHANISMS

PART III: DEFENSE COUNSEL OR COUNSEL FOR PRIVATE PARTIES

3.1 Monitoring individual cases.

A. The primary responsibility for monitoring individual cases rests with counsel for the juvenile.

B. Counsel should be provided for the entire period during which the juvenile is under the jurisdiction of the court.

C. Priority should be given by the legislature to adequate funding of programs that provide counsel for juveniles. Adequate funding includes funding for capable support services, *e.g.*, investigatory, expert, social, and psychological, as well as for sufficient numbers of attorneys to handle the caseload.

D. Counsel should be cognizant of his or her monitoring capability in individual cases, and perform a monitoring function in accordance with these standards insofar as applicable in order to facilitate coordination and cooperation with systemic monitoring activities. When necessary, counsel should commence legal action, including filing of appropriate motions in juvenile court, seeking appellate review, initiating civil suits, and applying for writs, to compel the adoption of or compliance with standards and practices that provide a basis for monitoring.

⁷⁴ Some confinement institutions are experimenting with "resident councils" that serve in an advisory capacity. *See generally* Singer and Keating, "Prisoner Grievance Mechanisms: A Better Way Than Violence, Litigation, and Unlimited Administrative Discretion," 19 *Crime & Delinq.* 367 (1973). (However, the authors note a number of drawbacks presently encountered with such councils.) Apparently the correctional ombudsman's office in Ohio, at one point, had ex-offenders in both deputy ombudsmen positions. Landever, at 486. The author recommends ex-inmate membership in his proposed regional commissions. Another variation currently being tried involves the employment of ex-inmates and ex-addicts as staff for work-release and residential drug-treatment programs, respectively.

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3.2 Establishment of lawyers' committee.

Whether counsel is provided by public defender or legal aid organization, arrangement with the private bar, or by some other means, a specific lawyers' committee of the bar association comprised of counsel representing juveniles in the juvenile justice system should be established on a local or regional basis, to systematically monitor the activities and performance of the juvenile justice agencies in accordance with the applicable provisions of these standards and the *Counsel for Private Parties* volume.

3.3 Role of lawyers' committee.

In performing this monitoring function, the lawyers' committee should:

A. advise, assist, criticize, and evaluate local or regional juvenile justice agencies;

B. publish regular, periodic reports on its findings in all appropriate media;

C. draft and disseminate comments on proposals for changes in legislation, rules, regulations, policies, and practices relating to activities of the juvenile justice system;

D. ensure that the bases for monitoring provided for under these standards and the other volumes of the Juvenile Justice Standards Project or similar bases under the laws, rules, and regulations of the jurisdiction, are established and maintained;

E. assist and cooperate with the monitoring activities conducted by any other monitoring mechanism to the fullest extent possible while preserving client confidentiality.

Commentary

Counsel as monitoring resource. Standards 3.1 through 3.3 recognize that lawyers actively engaged in representing juveniles in the juvenile justice system constitute a valuable resource, individually and collectively, as a monitoring mechanism. They are a source of information as to the day-to-day and case-by-case functioning of the system. They represent a source of expertise directly acquainted with the problems and issues confronted in the system. They are the means by which reforms and improvements of a general nature are translated into direct results for the individual juvenile brought into the system and in this latter capacity perform the implementation function of the monitoring process on a case-by-case basis.

In recognition of these attributes, these standards provide a com-

mon focus for counsel's activities and systematize these activities in order to maximize their contribution to a monitoring system.

Standard 3.1 thus recommends that representation by counsel in juvenile cases should become the one continuous reference point for case-by-case evaluation of the performance of the juvenile justice process. Moreover, an adequate pool of *capable* and supporting non-legal (*e.g.*, investigatory, expert, social, and psychological) services, *experienced* in juvenile matters, constitutes a most important element of counsel's monitoring capability and of reform in the juvenile justice process.

Several commentators, including the ABA Section of Criminal Justice and Young Lawyers Division, have observed that juvenile prosecutors also are responsible for case-by-case evaluation and monitoring of the juvenile justice process. As an agency involved in the system, prosecutors perform their monitoring function within the design of these standards as members of community advisory councils (Standard 5.1) or as self-monitors (Standard 10.1). The standards do not preclude juvenile justice agencies from monitoring other parts of the system. *Prosecution* Standard 7.2 prescribes a duty to monitor the effectiveness of dispositional programs used in the prosecutor's jurisdiction.

At every stage of juvenile processing, from custodial interrogation and arrest, to petition filing, through post-dispositional procedures, two conditions are deemed essential: 1. court provision of *effective* counsel (not simply a nonwaivable right and notification of the availability of counsel) without cost to indigent defendants; and 2. both written and oral notice of the right to counsel (and other rights) in the defendant's primary language.

It should be stressed that notification of the availability of counsel for any administrative or judicial proceeding is not sufficient to protect due process; provision of counsel without cost to indigent defendants is essential from the earliest stage of the process onward.

The application of the standards for monitoring to the role of counsel in individual cases suggests a general method of inquiry to be employed by counsel in performing the required monitoring. The scope and extent of counsel's inquiry will depend on the circumstances of the case and the stage of proceedings. In general, the scope of inquiry should include the determination that a juvenile has been properly informed of his or her rights and that these rights have been respected throughout, and that the duties and obligations of juvenile justice agencies—*i.e.*, police, prosecutor, intake and probation, the family court, youth corrections—have been discharged in accordance

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with applicable standards and guidelines. In performing this function, counsel should determine whether the juvenile has been afforded a nonwaivable right to counsel (and without cost to indigent defendants) as soon as the juvenile was taken into custody by an agent of the state, or when a petition was filed against him or her (whichever was earlier) as well as in cases of extension of commitment, institutional transfer, and revocation of probation or parole.

Counsel should also seek to determine whether juveniles and their parents have been advised of their rights under *Miranda*, and whether those rights, if waived, have been knowingly and voluntarily waived, without physical or psychological coercion. Counsel, of course, should exhaust all available means to suppress illegally obtained confessions, testimony, and evidence.

As part of counsel's activities of coordination with systemic mechanisms, subsection D. suggests that counsel assume the task of insuring that standards providing a proper informational base for monitoring are established and maintained in individual cases. More specifically, counsel should determine whether there is a documentation of the fact that notice of rights has been presented in writing at each stage of the juvenile process, commencing with custody, and whether such notice of rights has been explained verbally in simple language understood by the defendant and his or her parents.⁷⁵

With respect to decisions rendered by various juvenile justice agencies, counsel should determine whether the decisions are in writing, whether the reasons and facts relied upon for the decision are recorded, and whether the reasons for rejecting any less coercive or less intrusive options are in writing.

When noncompliance with applicable standards is discovered, counsel should employ whatever means is appropriate to protect the client and to compel compliance.

Finally, counsel should not only cooperate with requests for information from other mechanisms but should also make available to appropriate monitoring mechanisms, even when not specifically sought, the information and findings that result from counsel's monitoring activities that do not compromise client confidentialities.

Lawyers' committee. Standards 3.2 and 3.3 suggest a mechanism to implement the suggestion that lawyers seek improvement in the juve-

⁷⁵ See the *Pretrial Court Proceedings* volume.

nile justice system, which is expressed in Standard 1.7 of the *Counsel for Private Parties* volume.

The lawyers' committee suggested here and its activities are intended to be similar to those of other standing committees of the bar on both the local and state level.

They should offer advice and assistance, whenever appropriate, to both the components of the juvenile justice system and the mechanisms set up to monitor the system. As problems within the system are identified (e.g., court congestion, lack of treatment facilities), the committee should seek to mobilize defense counsel and the general membership of the bar to study these problems, separately or in conjunction with other groups or commissions, and to develop remedies. The findings made by such study commissions should be publicized in local or state bar journals, and in local and statewide media. Proposed changes in legislation and in administrative and court rules having an impact on the juvenile justice system should be reviewed and commented upon by these committees. They should seek to make known their opinions on such matters to the appropriate body.

The lawyers' committee also should monitor the activities and performance of counsel representing juveniles in the juvenile justice system. This self-monitoring function is set forth in *Counsel for Private Parties* Standard 2.1 (a) (iii).

PART IV: STATE COMMISSION ON JUVENILE ADVOCACY

4.1 Creation and staffing of commission.

Each state, through appropriate legislation, should provide for the appointment by the governor of a commission on juvenile advocacy. Appointments should be for staggered terms of similar duration and should be renewable for an additional similar period. Members of any one political party should constitute no more than a bare majority of the commission.

A. The appointments should be made subject to legislative approval and the positions should be full time at a salary and rank of a state agency director or commissioner, but not subject to state civil service requirements.

B. Recommendations for appointments should be sought from all agencies and organizations that have established records as vigorous advocates for equal rights and opportunities for all juveniles. The

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commission members, in turn, should also have such records. Minority groups and women should be represented on the commission.

C. The commission should have an adequate supportive staff of full-time investigators, lawyers, budget examiners, planners, and other professionals as required to perform its responsibilities who, in addition to their professional qualifications, also have established records as vigorous advocates for equal rights and opportunities for juveniles.

4.2 Activities of the commission.

The commission should perform the following activities:

A. monitor (including the evaluation function) all aspects of the juvenile justice system within the state on an on-going basis in accordance with the applicable provisions of these standards;

B. draft and disseminate proposals for changes in legislation, rules, regulations, policies, and practices relating to any aspect of the juvenile justice system, based on information gathered pursuant to such monitoring activities, and hold public hearings on any such proposed changes;

C. publish regular and periodic reports on its findings in all appropriate media;

D. report its findings directly to the governor and chief administrative judge responsible for the juvenile court system in the state and locality;

E. appoint consultants to an agency or a facility to oversee the implementation of remedies affecting juveniles in accordance with plans, standards, or procedures adopted by the agency;

F. staff, on a temporary basis, legislative or judicial study or investigation commissions, committees, or other bodies probing juveniles' problems or issues.

4.3 Powers.

The commission should have the power and authority to:

A. gain access to all appropriate information, records, staff, and persons subject to the jurisdiction of any agency involved in the juvenile justice system;

B. investigate any aspect of the juvenile justice system, hold executive and public hearings, perform on-site inspection of facilities, and attend executive, judicial, and legislative meetings pertinent to the operation of the juvenile justice system, and, with the additional authority from the appropriate court, subpoena records and witnesses;

C. require agencies responsible for any aspect of the juvenile justice system to produce plans or procedures to remedy problems;

D. bring suit against an agency when proposed remedies are not being implemented or are implemented improperly.

4.4 Review of commission orders.

Any agency subject to any order of the commission, having good and reasonable cause to believe that the order is in excess of the commission's authority or otherwise improper, should be authorized to seek a judicial opinion from the highest court of general trial jurisdiction in the state as to the agency's duty and obligation to comply with such order.

Commentary

Standards 1.3 and 1.4 noted that complete reliance on internal self-monitoring and monitoring by the courts and counsel may be insufficient.⁷⁶ Too often agency self-monitoring (if performed) becomes pro forma and useless. Moreover, courts often lack the resources, philosophical orientation, and statutory authority to provide systematic review of the entire system.⁷⁷ More importantly, the institutional capacity to make in-depth or continuing review of the numerous agencies involved is rarely present in the courts;⁷⁸ even when present and fully utilized, the courts may leave certain areas, such as the rights of incarcerated children, without sufficient protection.⁷⁹

Nevertheless, careful use of existing resources and thorough coordination of mutual responsibilities should accomplish a sequence, consistency, and quality of monitoring that will ensure at least some minimal capabilities. This concept takes explicit account of the possibility that neither at this time nor in the foreseeable future will sufficient resources exist to develop monitoring mechanisms wholly independent from current agencies and institutions that could provide a monitoring capability for all issues presented in the system. (Even when such resources are available, the wisdom of failing to require internal accountability on a consistent basis and abandonment of existing mechanisms would be questionable.)

⁷⁶ See commentary to Standards 1.3, 1.4, and 1.5.

⁷⁷ Nejelski and Lapook at 19.

⁷⁸ *Id.* at 20.

⁷⁹ *Id.*, citing Harvard Center for Criminal Justice, "Judicial Intervention in Prison Discipline," 63 *J. Crim. L.C. & P.S.* 200 (1972).

Thus, although the functions of the monitoring mechanisms considered in subsections B. through E. may cover the same areas as both the agencies currently performing self-monitoring and the courts, and although the establishment of such monitoring mechanisms is of primary importance, it is not intended that their establishment reduce the monitoring activity of existing mechanisms. The latter should still operate and integrate activities with the former. For example, whether or not internal monitoring is being performed satisfactorily, an independent-external monitoring capability is clearly needed and should be established through additional mechanisms designed to scrutinize the activities and functions of the juvenile justice system.⁸⁰ But once such mechanisms do exist, efforts to promote and improve self-monitoring should not be abandoned. These efforts, when successful, can provide a useful resource to be tapped by the independent-external class of mechanisms.

Subsections B. through E. contain standards for independent-external monitoring mechanisms that would provide the required independent overview of the entire system and would serve a needed coordinative function for directing internal monitoring activities, and for compiling, integrating, and supervising implementation of findings and recommendations resulting from all forms of monitoring.

At first glance it may appear that the mechanisms covered in these standards have broad powers and few checks on their activities; but, in fact, these mechanisms reflect the concept of checks and balances in their design. For example, the proposed commission on juvenile advocacy (see Standard 4.1), which is assigned the broadest powers, is subject to checks from within the executive branch through the provisions of Standard 4.4, which allows any improper exercise of commission authority to be challenged through the courts. The commission's executive powers are further balanced by requiring the appointment of commission members to be subject to legislative approval, and by the creation of a legislative committee on juveniles and juveniles' services (see Standard 6.1), which addresses concerns similar to those of the commission on behalf of the legislative branch. Finally, the commission's power to compel testimony and production of documents is subject to the approval of the appropriate court of requests for subpoenas. A similar limitation is placed on the community advisory councils (see Standard 5.1), which are further limited in that these committees do not have independently exercisable compliance enforcement powers. This latter restraint is also placed on the ombudsman mechanism. Final-

⁸⁰ See, e.g., note 36 *infra*.

ly, the legislative committee is intended to be subject to the traditional checks and balances placed on other legislative activities.

Such a system of checks and balances, however, in limiting the possibility of the abuse of powers, does create the potential for some duplication of function; and resulting tensions may arise between the executive and legislative mechanisms. This potential for duplication is, however, limited somewhat by the traditional separation of powers in the executive and legislative branches, so that any resulting tensions should be no greater than those that presently arise between executive and legislative branches and can be expected to be resolved in much the same way.

Additional tensions can arise, however, among agencies and branches of government, in certain circumstances, due to the advocacy monitoring role recommended by these standards for the state commission, citizen council, and ombudsman mechanisms in particular. Such tensions will occur when other agencies of government are not in agreement with an advocacy position. Although such tensions may lead to the risk of unhealthy rivalries developing among agencies to the detriment of juveniles, the alternative of eliminating advocacy from the monitoring process leads to a greater risk of detriment to juveniles. As previously noted, an important by-product of the monitoring process is positive change in the performance of the juvenile justice system. But if there is no advocate for such change, it is much less likely to occur. The risks of such inertia, therefore, outweigh the risks of unhealthy rivalries. An advocacy viewpoint needs to be present and needs to be incorporated into the monitoring process through the external mechanisms, since such a viewpoint is rarely attainable by agencies themselves. The better method appears to be to insure that an advocacy position is represented in the monitoring process and allow the political process of compromise and consensus to run its natural course in resolving possible tensions and rivalries, than to opt for a false consensus by not including an advocacy viewpoint in the process.

Tentativeness of standards. Subsection B. contains standards for the creation and operation of a central commission that would perform statewide and comprehensive monitoring of the juvenile justice system, while functioning independently of that system. Little guidance can be obtained from the juvenile justice system or even the criminal justice system as to how such a commission could best be structured, organized, and staffed.

State and regional or local planning commissions have been created to coordinate proposals to be submitted for funding to the Law

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Enforcement Assistance Administration, but these organizations exist primarily as agents through which LEAA funds can be channeled and distributed.

A National Advisory Council for Juvenile Justice and Delinquency Prevention (which is required to have its membership include persons under age twenty-six)⁸¹ was created to perform an advisory function to the National Institute for Juvenile Justice and Delinquency Prevention,⁸² which in turn provides technical assistance,⁸³ clearing-house services,⁸⁴ and training assistance⁸⁵ to juvenile justice agencies.

But none of these examples performs the systematic monitoring functions identified in these standards. Perhaps the closest existing example of a systematic mechanism is the Office of the Public Advocate in New Jersey.⁸⁶ The New Jersey Public Advocate is headed by a commissioner who is appointed by the governor, subject to approval by the senate, and serves at the governor's pleasure.⁸⁷

The Public Advocate presently consists of six divisions,⁸⁸ each headed by a director appointed by the commissioner. The Division of the Public Interest Advocate (P.I.A.) handles citizen complaints that, as the name implies, generally affect the public interest. The primary (although not exclusive) activity of the P.I.A. is in bringing wide impact litigation.⁸⁹ Approval of the commissioner must be obtained before suit can be brought; however, the commissioner is given broad discretion, within the context of general standards incorporated into the statute,⁹⁰ in determining what issues are of a public interest nature and in approving litigation.⁹¹

A Division of Citizens' Complaints and Disputes Settlement handles complaints by private citizens against state agencies. (The judiciary and legislature are excluded). The statute delineates this division's jurisdiction.⁹² This division has no powers of enforcement

⁸¹ 42 U.S.C. § 5617 (1974).

⁸² *Id.* at § 5651.

⁸³ *Id.* at § 5653.

⁸⁴ *Id.* at § 5652.

⁸⁵ *Id.* at § 5654.

⁸⁶ *N.J. Stat. Ann.* tit. 52, § 17 E-1 *et seq.* (1974).

⁸⁷ *Id.*

⁸⁸ These are the Divisions of Public Interests Advocate, Citizens' Complaints and Disputes Settlement, Child Advocacy, Mental Health Advocacy, the Law Guardian Program (child abuse), and the Public Defender.

⁸⁹ Telephone interview with Messrs. Ezra Rosenberg and Steve Zambrin of the New Jersey Public Advocate, July 12, 1976.

⁹⁰ *N.J. Stat. Ann.* tit. 52, § 17 E-1 *et seq.* (1974).

⁹¹ See note 89, *supra*.

⁹² *N.J. Stat. Ann.* tit. 52, § 17 E-1 *et seq.* (1974).

or litigation; rather, it acts as a mediator between the individual citizen and government agencies.⁹³ If the complaint received has broad ramifications, it can be referred to the P.I.A. for litigation.⁹⁴

The Division of Child Advocacy is the newest division, created not by statute but through a federal grant from the State Law Enforcement Program.⁹⁵ The scope of its authority is the entire juvenile justice system and its functions include bringing class actions on behalf of children, other litigation, and law reform.⁹⁶ One source of its cases is the New Jersey Public Defender, which represents juveniles in court; a second source is self-referrals by individual inquiries and complaints.⁹⁷ As with the P.I.A., the commissioner's approval is required before litigation can be commenced. The Division of Child Advocacy is staffed by two field representatives (investigators) and three attorneys.⁹⁸ Its power to investigate, however, is limited by the degree of cooperation it can elicit from agencies and institutions until litigation is commenced and discovery can be employed.⁹⁹

Notwithstanding these few examples, the question of how best to design a mechanism to perform the preliminary, evaluative, and implementation functions throughout the entire system is a speculative proposition. The standards contained in this Part, and to a certain extent in the following Parts as well, must thus be considered to be tentative and open to adjustment and revision as experience with these mechanisms is acquired.

Creation. With the above cautions taken into consideration, Standard 4.1 recommends establishment of a state commission on juvenile advocacy. Specific statutory authority directing the creation of such a commission would enhance legitimacy and promote permanence. The option of having the executive branch create the commission under a general grant of authority, or specifically creating the commission and spelling out the details of its structure and operation in the legislation, is left open. With either approach, these standards should form the guidelines. If the commission is to be created under a general grant of authority to the executive branch, the authority should be mandatory (*e.g.*, a commission *shall* be established).

⁹³ See note 89, *supra*.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

It is recognized that such a commission would be subject to political factors, and therefore, to reduce the possibility of partisanship, Standard 4.1 recommends that members of any one political party should constitute no more than a majority of one of the commission's total membership. Establishment of fixed terms is recommended in lieu of other alternatives (such as at the pleasure of the appointing party) in order to insulate members from pressures of political expediency and to prevent them from being vulnerable when politically unpopular decisions must be made.¹⁰⁰ Staggering the initial periods of tenure, with subsequent periods being of the same duration, will prevent the positions from expiring simultaneously. Thus, only the initial appointments would be made at the same time, and subsequent reappointments or new appointments would occur at one-year intervals in rotation. This would help to further insulate the commission from dominance by any one political faction. If each member's term were to be longer than that of the appointing executive, the commission would be further protected from the change of electoral politics, since a change of party would not result in an automatic change in the board composition. It would seem too that a limitation on the number of terms any one member can serve would also be appropriate. Protecting the commission from dominance by an internal faction is as much a priority as protecting it from dominance by an external faction. Two terms is the suggested maximum, although the length of the term would have some effect on this (*e.g.*, if the terms are to be of short duration, then the number of terms could be greater).

Appointments. Under this model, the commission is viewed as an executive agency.¹⁰¹ Thus, the governor, as chief executive, is desig-

¹⁰⁰ Landever's proposal, note 36, *supra*, involves a number of regional commissions overseen by a state board. Members of the commissions are appointed by the board for fixed terms. The *board* members are appointed in equal numbers by the three branches. Tenure of the board is not specifically addressed.

¹⁰¹ Perhaps the nearest example of the type of broad jurisdiction agency envisioned here is the Federal Environmental Protection Agency, created by Executive Order and approved by Congress in 1971 as part of the executive branch to coordinate and direct a wide range of activities pertaining to environmental preservation and pollution control, previously exercised by numerous departments in the executive. Its jurisdiction includes air and water pollution, pesticide control, radiation, solid waste, and ecological systems study. Under various acts of Congress, it can exercise broad authority in setting national industry-wide standards, *e.g.*, under the authority of the Clean Air Act of 1967 (and amendments), 42 U.S.C. § 1857, the EPA has mandated industry adherence to strict standards limiting motor vehicle emissions.

nated the appointing authority. Appointments are made subject to approval by the legislature to maintain the system of checks and balances. Input is to be sought from that part of the private sector that has established a record of vigorous child advocacy.¹⁰² The members themselves should have similar records. This is perhaps the most crucial ingredient. The commission is expected to take on the role of leadership in improving the way the state treats children. Not only experience but also a demonstrable record of advocating protection of juveniles' rights should be essential characteristics of the membership. It is these qualities especially that both the public and the legislature should scrutinize before approving executive nominations to the committee.

Whatever model for the commission is adopted, Standard 4.1 C. requires that the level of funding for its operations be adequate, clearly reflect the nature and extent of the tasks to be performed, and allow the hiring of sufficient supportive staff. In keeping with the concept of independence, the commission's budget should be a separate line item in the state's budget and not a part of another executive agency's budget. Appointees or employees of the commission should be compensated at a salary and rank commensurate with their responsibilities.

At all levels of the commission's staff, from the commissioner on down, standards of equal employment opportunity should be observed. Women, minority groups, and young persons¹⁰³ should be represented throughout the organization.

Activities and powers. Standards 4.2 and 4.3 outline the scope of activities that should be performed by, and powers that should be granted to, an independent statewide monitoring mechanism regardless of whether the mechanism conforms with the model previously suggested or is based on some other model.

The rationale for some of these functions has been examined in detail, *e.g.*, Standard 4.2 B. and C. (see Standards 1.2 and 1.6 and commentaries). The reporting of findings to the governor and the judiciary (Standard 4.2 D.) will serve to keep all branches of government informed of the status of children in the jurisdiction.

The selection of particular components or operations of the sys-

¹⁰² This represents another manifestation of the concern to develop and encourage public support for the monitoring process. See commentary to Standard 1.6.

¹⁰³ See, *e.g.*, commentary to Standards 1.4 and 1.5, on systemic vs. case-by-case monitoring.

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tem to be monitored and the determination of the intensity of the commission's monitoring activities at the selected points is to be governed by Standard 1.5.

Apart from actively being engaged in the monitoring process, the commission serves as a clearinghouse, coordinator, and technical consultant for other monitoring mechanisms in the monitoring system, and draws upon university and private research institutes for additional technical assistance or for specialized research.

The availability of the expertise and resources of the commission should not be limited to other mechanisms, however. Standard 4.2 E. and F. add, as additional functions of the commission, the lending of technical assistance to the agencies themselves, in implementing their own programs, and to legislative or judicial commissions addressing the issues and problems of the juvenile justice system or its components.

The commission model adopted here constitutes an independent external mechanism, supervising the performance of all three functions of the monitoring process throughout the entire juvenile justice system.

The investigatory and enforcement powers suggested in Standard 4.3 represent minimum necessary powers for the proper functioning of any independent statewide monitoring mechanism. Without a broad grant of access to information and power to investigate and seek subpoenas, the commission or any similar mechanism could not adequately perform its monitoring activities. Without powers to insure adoption of and compliance with recommendations resulting from the monitoring process, the ultimate objectives of monitoring would be defeated.¹⁰⁴

If, as discussed previously,¹⁰⁵ the power to file suit to enforce remedies should exist somewhere in the monitoring system, the commission would be the most appropriate mechanism wherein this power should reside.¹⁰⁶

The fact that this power to litigate exists does not imply that it must invariably be used. Enforcement through the courts is not presented here as, nor suggested to be, a panacea. In one sense, if it must be resorted to, the implication is that the monitoring system has failed. In the context of environmental laws, it has been observed that, "[a]ll available experience indicates that laws against

¹⁰⁴ See commentary to Standard 1.7.

¹⁰⁵ See notes 61 and 62 *supra* and accompanying text.

¹⁰⁶ Compare this to the Environmental Protection Agency model; pursuant to authority granted under specific acts and after first exhausting certain other enforcement procedures, the EPA can file suit to enforce compliance. The Attorney General represents the EPA in such actions.

pollution, like all other laws, must rest primarily on voluntary action if their purpose is to be achieved." The necessary dependence on voluntary compliance, however, should not obscure the fact that the degree of such compliance may depend upon the success of the control agency in carrying out legal prosecution.¹⁰⁷ There are thus two sides to this specific enforcement power; and monitoring mechanisms should be cognizant of both the advantages and disadvantages. The drawbacks should not preclude the establishment of the power, however.

It was recognized above that a mechanism such as the one proposed could wield a great deal of power. Although such power is commensurate with the task assigned to, and the goals and objectives of, an independent-external monitoring mechanism, the necessity to guard against abuses ought to be considered. Standard 4.4 is intended to provide a balance to that necessary power and offer a check to any possible abuse of that power. The orders and directives of the commission, or a similar monitoring mechanism, are made subject to court review when an agency has good and reasonable cause to believe that the commission is exceeding its authority with respect to the agency. It can be expected that, on occasion, disputes will arise between the monitor and the agencies being monitored. This standard recognizes the role of the courts in resolving such disputes. The prerequisite to initiating court action to resolve a dispute is "good and reasonable cause" to believe the commission is exceeding its authority. This standard is intended to prevent the use of the authorized court review procedure by agencies seeking to delay implementation by raising frivolous or dilatory allegations of excess of authority.

PART V: COMMUNITY ADVISORY COUNCILS

5.1 Establishment and role.

All agencies involved in the juvenile justice system, including juvenile courts, probation, police, youth corrections, juvenile protective services departments, and school districts should promote, encourage, assist, and cooperate in the formulation of community advisory councils to advise, assist, criticize, and monitor the functions performed and services rendered by the agencies.

A. The monitoring activities of the community advisory councils should be performed in accordance with these standards as applicable.

¹⁰⁷ J. Davies, *The Politics of Pollution* 185 (1970).

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B. The community advisory councils should be granted access to persons, agencies, institutions, records, data, and information necessary to perform their monitoring functions in accordance with these standards.

C. The community advisory councils should periodically report their findings to the respective agencies, the community, and the commission of juvenile advocacy.

Commentary

Community involvement is a concept encouraged in various other volumes of standards.¹⁰⁸ An important activity of community groups, recognized here, is monitoring. While this standard refers to community advisory councils, it is intended to be applied also to any advisory committee established pursuant to recommendations contained in other volumes of these standards. The structure, organization, make-up, and scope of activities of these community groups is left open. It is intended that each locality develop community involvement and participation most fitting to the geography, population, and other circumstances of the jurisdiction. Thus, each agency might wish to encourage and develop citizen involvement specifically limited to its activities or the various agencies might combine their efforts to formulate a single community group to assist and participate in all aspects of the local juvenile justice system. These citizen advisory groups in various forms have figured in proposals for monitoring¹⁰⁹ and in court orders¹¹⁰ involving confinement institutions. As the notes indicate, these citizen advisory groups can vary greatly in the type of staffing, structure, manner of appointment, and function.¹¹¹

¹⁰⁸ See, e.g., the *Court Organization and Administration* volume.

¹⁰⁹ Ohio's Citizens Task Force on Corrections recommended that the governor appoint a "Citizens Advisory Board" representing a cross-section of the community, in the area of adult corrections, and additional citizen task forces in the area of juvenile and misdemeanor corrections. "Ohio Citizens Task Force On Corrections, Final Report" A28 (Department of Urban Affairs 1971). Cf. N.Y. Mental Hygiene Law § 7.19 (McKinney 1972; 73), which provides for governor-appointed members, who reflect the community served by the hospital or school, to make independent annual assessments of the facilities. The board has power to inspect facilities, investigate complaints, interview patients and employees, and subpoena witnesses. Both are cited in Landever.

¹¹⁰ See, e.g., *Wyatt v. Stickney*, 344 F. Supp. 373 (M.D. Ala. 1972), aff'd *sub nom.* *Wyatt v. Anderholt*, 503 F.2d 1305 (5th Cir. 1974), where the court ordered establishment of "human rights" committees to insure compliance with court imposed standards.

¹¹¹ Landever proposes that the regional commissions (discussed in notes 36,

Variations in jurisdictions, regions, and locales preclude identifying any definitive model for these councils. However, certain generalities can be noted. They should be independent of the system or agency. Their membership should be drawn from the community and should have a familiarity with the issues and problems of the juvenile justice system and a record of rigorous advocacy on behalf of children. They should include minority representation and possibly representation by clients of the agency or system. Sufficient funding should be available to provide clerical and supporting professional staff; the members themselves could provide their services voluntarily. The tenure of the members should be for a definite period of time, and provisions to insure nonpartisanship should be present. In brief, the considerations included in the discussion of a state commission, *supra*, should be operative at the local or regional level for the citizen councils.

One possible model could allow local or regional non-justice system organizations involved with children's problems (*e.g.*, the Urban League, Neighborhood Action Councils, P.T.A.'s) to propose nominees for membership. The agency that the council will focus on (or the agencies if the council is to focus on several components in the local structure of the juvenile justice system) could then approve the nominees. Alternatively, nominees could be approved by the chief judge of the juvenile court, by the state commission on child advocacy, or similar mechanisms.

Funds could be provided by the local or regional (city or county) government, by the state (directly or through the commission), or by some combination. If use of such councils were to become a national strategy (adopted by the federal government), matching funds could be made available to localities or regions establishing councils that comply with the federally adopted model.

Under any model, the councils should have access to the organizations and persons within the scope of their authority, and to the information and data necessary to perform their functions. Their reports should be periodically published and distributed. Their efforts should be closely linked and coordinated with the state commission and other mechanisms as part of the multi-tier concept. Liaisons with other mechanisms should be established. Technical assistance from the state commission on child advocacy should be available directly or through consultants retained from nearby uni-

74, and 100, *supra*) be composed of persons within the region (appointed by the state board) who have backgrounds in law, accounting, correction, mental health, and social services.

versities or research centers. Remedial and compliance enforcement powers could be granted directly to the councils or exercised by the state commission on behalf of the councils upon the request of the latter and after a determination of need.

Here again a certain amount of experimentation is needed to identify the most appropriate models. Obviously no one model is best suited for every locality or region. It is only after several models are tried and themselves evaluated that more specific standards for community advisory councils can be postulated with any confidence in their appropriateness. These standards and commentary are intended to outline the parameters within which such experimentation should occur.

PART VI: LEGISLATURE-BASED MONITORING

6.1 Creation of legislative committee.

Each state's legislature should establish a permanent standing committee or subcommittee on juveniles and juveniles' services.

6.2 Functions of committee.

A. Such committee or subcommittee should meet periodically to review the state of juvenile justice and juveniles' services systems within the state and report its findings to the legislative body as a whole and to the public through any appropriate media.

B. The committee on juveniles and juveniles' services should perform the following functions:

1. monitor, including evaluation of, all aspects of the juvenile justice system within the state in accordance with the applicable provisions of these standards;
2. draft and disseminate or review and evaluate all proposals for changes or additions to state laws pertaining to the juvenile justice system;
3. review, evaluate, and comment upon all proposed appropriations of funds pertaining to any aspect of the juvenile justice system.

6.3 Powers of committee.

The committee on juveniles and juveniles' services should have the same powers as other legislative committees to hold hearings, conduct investigations, subpoena witnesses or records, impose sanctions for failure to comply with committee directives, and publicize reports and findings.

Commentary

Part VI develops general standards for monitoring performed by legislative bodies. Formal recognition is given to the monitoring role that the legislature performs. A specific standing committee or subcommittee should be established on a permanent basis. This will promote the development of knowledge and expertise in juvenile justice matters on the part of committee members and their staff.

Standard 6.2 recommends that all legislation and appropriation bills pertaining to the juvenile justice system be channeled through the committee. The intent is to coordinate all the activities of a legislative body that relate to juvenile justice issues, and to subject such issues to uniform and, it is hoped, expert analysis. Although legislative bodies have varying rules governing the consideration of appropriations bills, Standard 6.2 B. 3. recommends that appropriations for juvenile justice activities be reviewed at some point by the committee on children and children's services. In those legislatures that have a specific appropriations committee, appropriation bills in the juvenile justice field could first be referred to the committee on children for analysis.

Appropriations for monitoring mechanisms such as the state commission should also be processed through this committee. Standard 6.3 simply recommends that the committee suggested by these standards have the same general powers as any other committees of the legislative body.

In general, the committee should work closely with the monitoring mechanisms in the state—reviewing their reports and findings, studying their recommendations for legislative reform, incorporating these into new bills, assisting mechanisms in conducting investigations, and sharing information and findings of committee hearings and investigations.

PART VII: OMBUDSMAN-BASED MONITORING**7.1 Definition.**

These standards define ombudsman as a government official who hears and investigates complaints by private citizens against government agencies—specifically juvenile justice agencies and community agencies servicing juvenile court clientele.

7.2 Criteria for placement of ombudsmen.

A. The appointment of ombudsmen in the juvenile justice system

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should be promoted and encouraged, whenever appropriate under these standards, by all agencies and monitoring mechanisms.

B. The determination of the need for an ombudsman in an agency should be based on, but not necessarily be limited to, the following criteria:

1. the degree of visibility of the decision makers, decisions, and activities of the agency to other mechanisms;
2. the frequency and adequacy of the monitoring of the decision makers, decisions, and activities of the agency by other mechanisms;
3. the availability, promptness, and adequacy of review for any person aggrieved by a decision or activity of the agency;
4. the degree of harm that might occur to an aggrieved person resulting from a decision or activity not subject to prompt and immediate investigation and review;
5. the existence and adequacy of remedies available to a person aggrieved by a decision or activity of the agency; and
6. the responsiveness of the agency in the past in correcting and eliminating discovered abuses of discretion or improper actions.

C. An ombudsman may be appointed on a permanent or temporary basis depending on the nature of the function to be monitored and in accordance with the criteria in subsection B. The activities of an ombudsman should be governed in accordance with the applicable provisions of these standards.

7.3 Powers of ombudsmen.

Whenever an ombudsman is appointed, whether on a temporary or permanent basis, he or she should:

- A. be independent of the agency he or she investigates;
- B. have full powers of investigation;
- C. be authorized to recommend action and publicize recommendations but should not be authorized to take direct action to correct situations.

7.4 Appointment and supervision of ombudsmen.

A. Whenever a commission on juvenile advocacy is established pursuant to these standards, it should exercise the authority to appoint ombudsmen, supervise their activities, receive their reports, and act on their recommendations.

B. In any jurisdiction where there is an ombudsman's office already established either by legislation or by executive order, such office should exercise the authority specified in subsection A.

C. In all other jurisdictions where neither A. nor B. applies, an ombudsman's office should be established to exercise the specified authority.

Commentary

These standards relating to an ombudsman mechanism represent an effort to introduce a quality-control¹¹² capability to the monitoring system. Previously discussed types of mechanisms have emphasized and reflected the need for mechanisms that manifest systemic concerns, and that look to the operations of the system and the interrelation of its components. These are representative of the external-independent class of mechanisms performing systematic monitoring functions.¹¹³

The need in a monitoring system for mechanisms that can direct their concerns to the problems arising in individual situations on a case-by-case basis, although previously identified,¹¹⁴ has not as yet been addressed. The purpose of Part VII is to present one model of a mechanism that can respond to this need.

There are numerous models of such mechanisms from which to choose. The model discussed here is constructed to best complement the concept of a monitoring system adopted by these standards, and to best coordinate its activities with those of other mechanisms.

The model proposed here is not to be considered as exclusive of all other models either in its class or especially in other classes of mechanisms. These standards recommend that an ombudsman model of the external-independent class be incorporated into the monitoring system as a minimum essential mechanism providing a case-by-case monitoring capability. This does not preclude the development of other classes of such mechanisms (*e.g.*, independent-internal) as well.

Background. Apart from the courts, the most common existing monitoring mechanisms are those that can generally be referred to as grievance mechanisms—i.e., mechanisms that concern themselves with the monitoring and resolution of grievances, problems, or disputes on a case-by-case basis. Such mechanisms, however, can vary greatly in their particulars. There are examples of such mechanisms in a number of the classes identified through the taxonomy discussed in the commentary to Standard 1.3. Whatever their class in

¹¹²This is a concept discussed in Nejelski and LaPook at 28 *et seq.*

¹¹³See the discussion of taxonomy in commentary to Standard 1.3.

¹¹⁴*Id.* See also commentary to Standards 1.4 and 1.5.

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this taxonomy, they can vary greatly in structure and organization, powers, and duties. They appear most frequently in the correctional setting.¹¹⁵

The two most prevalent types are grievance commissions and ombudsmen.¹¹⁶ The Inmate Grievance Commission in North Carolina seems typical of this genre in its basic elements. The process is begun by written complaint from the inmate. The complaint is investigated, a hearing may be held, and if held, is presided over by a member of the commission or an appointed hearing officer. Findings are passed on up the chain of command and are eventually referred to the secretary of correction who can revise, reverse, or affirm the findings and recommendations.¹¹⁷ It appears that most such commissions of this type are internal mechanisms.¹¹⁸

The second type of grievance mechanism, the ombudsman, generally involves the same basic process. Complaints are received and investigated, and findings and recommendations are made on the basis of the investigations.¹¹⁹ One distinguishing characteristic is that they are generally external to the agency.¹²⁰

Both types of mechanisms have been cited as posing distinct disadvantages. The grievance commissions seem to lack credibility with their clientele because of their close link with the agency or institution against which the complaint is lodged.¹²¹ Ombudsmen systems have been criticized for their inability to ensure administrative compliance.¹²²

The Minnesota ombudsman model seems to be designed in response to this criticism. The ombudsman there is given subpoena power, as well as the power to sue in court or use legal assistance attorneys as counsel for Minnesota prisoners.¹²³

¹¹⁵ See generally Singer and Keating, "Prisoner Grievance Mechanisms: A Better Way than Violence, Litigation and Unlimited Administrative Discretion," 19 *Crime & Delinq.* 367 (1973). (Hereinafter cited as Singer and Keating.)

¹¹⁶ See commentary to Standard 1.3.

¹¹⁷ *N.C. Gen. Stat.* § 148-101 *et seq.* (1974).

¹¹⁸ See Singer and Keating. The authors examine grievance mechanisms in, *inter alia*, Maryland, Wisconsin, Kansas, and Illinois and note similar characteristics.

¹¹⁹ See Tibbles, "Ombudsman for American Prisons," 48 *N.D.L. Rev.* 383 (1972); see also W. Gellhorn, *When Americans Complain: Government Grievance Mechanisms* (1972).

¹²⁰ See Nejelski and LaPook. An exception to this general external characteristic, cited by the authors, is discussed *supra* at note 30.

¹²¹ They may also break down during periods of turmoil. See generally Singer and Keating.

¹²² Landever at 488.

¹²³ *Minn. Stat. Ann.* § 241.04 *et seq.* (1972).

A third model of grievance mechanisms involves arbitration. Neutral third-party arbitrators acceptable to the individual grievant and the administration arbitrate disputes. These decisions are advisory or binding, based on prior agreement of the parties.¹²⁴

Recognizing the pros and cons of any type of model and the numerous variables in particulars for each model, these standards nevertheless recommend an ombudsman model as a minimum essential grievance mechanism. First, such a model is independent from and external to the system, ensuring objectivity and credibility.¹²⁵ Second, given the criteria for the determination of the placement of such ombudsmen (Standard 7.2), there is room for agencies to develop their own internal grievance procedures which, if adequate, can preclude the necessity of an ombudsman as well. Third, the ability to assure administrative compliance is balanced against the desirability of maintaining harmony, cooperation, and support with the agency (Standard 7.3). Fourth, such a model facilitates coordination with other external-independent mechanisms and integration of the ombudsman activities with those of such mechanisms performing systemic monitoring.

Definition and criteria. The definition of an ombudsman used by these standards¹²⁶ reflects the discussion above concerning the need for a grievance mechanism to address problems on a case-by-case basis. In this model, the ombudsman is a government official (e.g., a part of the executive branch) handling citizen complaints about juvenile justice agencies, or community organizations that serve clientele of the system through a contract with or other direct link to the system or one of its components.

Standard 7.2 A. expresses a general view that all components of the system should promote and encourage the use of ombudsmen when called for under these standards. Their role and purpose should be recognized and accepted; their efforts should be met with cooperation from the organizations involved.

¹²⁴See generally Singer and Keating. The authors "support better designed grievance machinery and third party arbitrators as a more effective substitute for ombudsmen, the latter viewed as generally dependent upon correctional directors and unable to achieve compliance except upon minor matters." Landever at 483, n. 171, citing Singer and Keating.

¹²⁵See discussion, notes 34 and 35, *supra* and accompanying text relating to the information biases of internal-dependent mechanisms.

¹²⁶The definition is taken from Comment, "The Penal Ombudsman, A Step Toward Penal Reform," 3 *Pac. L.J.* 166 (1972), cited in Nejeleski and LaPook at 29, n. 63.

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Subsection B. lists several criteria as illustrative of the factors to be considered in determining at what points in the system an ombudsman is needed and should be placed.

These criteria are similar to those developed in Standard 1.5 for selection of mechanisms in general. They reflect the concepts of flexibility and responsiveness discussed in the commentary to Standards 1.5 and 2.1. The criteria implicitly recognize that ombudsmen are not required in all agencies nor at all times. An ombudsman's primary purpose is to hear and investigate complaints and protect against administrative abuse.

In agencies where decision makers or their activities are not readily visible to outside scrutiny, or where other monitoring is infrequent or inadequate, or where review of decisions cannot be obtained or cannot be accomplished properly and the resulting harm is great or the available remedies are inadequate, the placement of an ombudsman is appropriate.

Under these criteria, an ombudsman would generally be appropriate in youth corrections and detention facilities. More often than not, decisions affecting juveniles in these facilities are not readily visible, infrequently monitored, and not subject to prompt review. Decisions concerning the placement of a juvenile in solitary confinement, for example, can cause a degree of harm serious enough that even when review and a remedy are available—i.e., an order of release from solitary confinement—the result is not sufficient to offset the harm caused to the juvenile while in solitary confinement pending review.

It is here that the existence and operation of some other type of internal grievance mechanism, *e.g.*, a grievance commission within a department of youth corrections, could supplant the need for an ombudsman. Such a mechanism could respond quickly and adequately to complaints lodged with it and could provide remedies, obviating the need for an additional grievance mechanism such as an ombudsman. However, the operations of such internal mechanisms would need to be closely monitored by an external mechanism to ensure that their performance meets these standards.

Subsection B. 6. recognizes that in exceptional circumstances, even though an ombudsman would not ordinarily be appropriate under the other criteria, an agency's past practices—resistance or intransigence in remedying problems or a pattern of repeated abuses—would justify the placement of an ombudsman to perform on-site and continuous monitoring or to ensure prompt compliance with recommendations for improvement.

Under such circumstances, the placement of an ombudsman could

be on a temporary basis as authorized under Standard 7.2 C. Once operations are brought into conformance, or once an adequate internal grievance mechanism is established, the ombudsman could be withdrawn.

Powers and structure of the mechanism. The traditional models of ombudsmen have generally followed the pattern adopted by Standard 7.3. They are independent of the agency being investigated, have full power of investigation, can recommend actions and publicize their recommendations but not take direct action themselves.¹²⁷

The powers of investigation for ombudsmen should be developed in accordance with Standard 1.6. Ombudsmen should have access to the persons, places, and documents necessary to conduct their investigations. A granting of subpoena power as in the Minnesota model¹²⁸ is an important tool that should be made available. Although confrontations with agencies should be avoided whenever possible,¹²⁹ the balance of power should rest with the ombudsmen when confrontation becomes inevitable. The ombudsman would become totally ineffective if agencies could successfully resist investigation.

The powers of implementation, however, present a slightly different dilemma. On the one hand, if recommendations resulting from the investigation of complaints can be ignored by administrators, it will not take long for the ombudsman's clientele to realize they are wasting their time in filing complaints with the ombudsman. On the other hand, if the ombudsman directly exercises power to force the administrator to act against his or her will, it seems logical that administrators will become much more guarded, reluctant to cooperate with investigations, and possibly even hostile to the ombudsman's presence.

In a very real sense, diplomacy is the trade of the ombudsman. He or she must satisfy the legitimate desires of the client. To do this, the ombudsman must, without interfering with the legitimate authority of the agency, maintain the bounds of the exercise of that legitimate authority on the client and somehow reign in that au-

¹²⁷ *Id.*

¹²⁸ *Minn. Stat. Ann. § 241.04 et seq.* (1972).

¹²⁹ Clearly, agency cooperation is desirable simply from the standpoint of expediting procedures. Over the long term, a certain degree of cooperation must be maintained if success is to be maximized. The need to obtain compliance through the courts or through some other cumbersome compliance machinery for each serious case (not to mention innumerable petty problems) would bog down the system entirely.

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thority when it is improperly or incorrectly exercised. If diplomacy is the trade, persuasion is the tool of that trade. Motivating the agency to correct what is wrong can be much more effective than forcing the agency to do so. The advantage of the internal grievance commission is that as a part of the agency it is more likely to have influence in seeing that recommendations are followed.

The limitation on the ombudsman's enforcement powers in Standard 7.3 is an attempt to balance these conflicting elements. The ombudsman is authorized to publicize findings and recommendations but not to take *direct* corrective measures. As structured in these standards, the power to take direct action to implement the ombudsman's recommendations rests with the state commission on child advocacy. The individual ombudsmen would thus be better able to maintain an image of neutrality. The agency would be given the opportunity to comply with or respond to the recommendations. The ombudsmen would refer their recommendations and agency responses to the commission when compliance does not occur. The commission would then be authorized to take direct action, if appropriate, to enforce compliance. Direct confrontation between the individual ombudsmen and the agencies would thus, hopefully, be minimized.

Standard 7.4 directs that when a commission on child advocacy has been established, the ombudsman's office be organized under that commission's authority. A director of ombudsmen services would be appointed who would, in turn, appoint and assign deputy ombudsmen who would operate in the field.

Preferably, these deputies would be from the locality or region in which they serve. They should be knowledgeable about the problems and issues they will probably encounter in the agency to which they are assigned, and should have demonstrable experience in child advocacy. Assignment by the director would be in accordance with the criteria previously discussed in Standard 7.2.

The deputies would report both to the commission and the director. The director would be responsible for compiling periodic reports of activities, recommendations, and results from all the deputies. The commission would intervene directly in cases where compliance within the agency has not occurred.

This type of structure would best integrate and coordinate the activities of independent-external mechanisms at all levels. Citizen advisory councils, for example, could, when appropriate under the criteria of Standard 7.2, request that an ombudsman be assigned to the agency being monitored by them. If the director verifies that the necessary criteria are met, then he or she would assign an om-

budsman. In such situations the ombudsman would report also to the citizen advisory council.

In performing their duties, ombudsmen might encounter patterns of repeated grievances of a similar nature, suggesting that more systemic problems are present. Such patterns could be directly referred to the state commission, which would then intensify its systemic monitoring activities and focus specifically on the problem. As reports from investigation of individual cases accumulate throughout the locale or region, and throughout the agency or system on a statewide basis, this cumulative information can be systematically organized, collated, and studied by the commission to discern general patterns and trends.

There are obviously other models for organizing an ombudsman system besides the one previously discussed. Subsections B. and C. take into account two other such models. A number of states have already created an ombudsman's office with either general authority (all citizen complaints)¹³⁰ or more limited authority (e.g., complaints only in the area of corrections).¹³¹

Subsection B. suggests that when such an ombudsman's office already exists, the functions of an ombudsman mechanism for the juvenile justice system should be organized within and under the authority of that office. This reaffirms the wisdom of building into existing mechanisms, thereby avoiding the creation of parallel or redundant administrative operations.

Subsection C. recognizes that a mechanism such as the state commission may not exist in every jurisdiction and suggests an alternate structure for the ombudsman mechanisms, so that the failure to establish the former does not necessarily lead to the inability to provide the latter. In either situation (B. or C. above), the standards developed here for such mechanism should be observed. Thus, when an ombudsman's office of general jurisdiction exists, a component of that office, *meeting these standards*, should be created for the juvenile justice system, even though this may mean that the juvenile justice component exercises functions or possesses powers different from the "parent" ombudsman office.

When a jurisdiction creates a juvenile justice ombudsman but not a mechanism of the state commission type, the same considerations of manner of appointment, tenure, nonpartisanship, etc., for the commission, discussed above in the commentary to Standards 4.1 *et seq.*, should nevertheless apply to the ombudsman.

¹³⁰ *Hawaii Rev. Stat.* § 96-1 *et seq.* (1974).

¹³¹ *Minn. Stat. Ann.* § 241.04 *et seq.* (1972).

PART VIII: PRIVATE SECTOR ACTIVITIES

8.1 Independent research.

Independent, impartial research and evaluation activities conducted by federal contract research centers, private foundations, university-based research centers, academics working as individuals, and private corporations engaged in juvenile justice research should be promoted, encouraged, and assisted by all agencies and monitoring mechanisms in the juvenile justice system. All primary research data should be made available to bona fide researchers, subject to provisions for the protection of the rights of privacy of individuals.

8.2 Advocacy groups.

Independent juveniles' rights advocacy organizations should be included in the monitoring process, and should be encouraged, assisted, and cooperated with by all monitoring mechanisms in efforts to enforce or prevent the violation of juveniles' rights.

Commentary

These standards recognize the importance of the activities of independent research centers, academics, and advocates in the overall scheme of monitoring. The continuation of such research and advocacy activities should be encouraged and assisted. Important to the continuation of meaningful research and advocacy is full access to appropriate data and information, evaluation reports, and the like, compiled through the monitoring process.

The underlying principle is that even though a comprehensive monitoring system is established, the contributions of independent research and advocacy should not be overlooked. Indeed, monitoring mechanisms and state and local governments should actively sponsor (as well as assist and cooperate with) research, evaluation, and advocacy by persons and organizations outside their respective systems.

PART IX: COURT-BASED MONITORING

9.1 The courts as monitoring resources.

Appellate courts, juvenile courts, and civil courts having jurisdiction over matters concerning the activities of the juvenile justice system should be cognizant of their role in monitoring other judicial or executive agencies in individual cases, and should, when appro-

appropriate, perform such monitoring in accordance with these monitoring standards, insofar as applicable, in order to facilitate coordination and cooperation with systemic monitoring activities.

Commentary

This standard and the remaining standards in Part IX recognize the role courts have traditionally performed and presently perform as a further resource for a monitoring system.¹³² The standards reflect what was noted in earlier commentaries—that the present role of the courts includes acting as monitoring mechanisms.¹³³ They also reflect the concept of a monitoring system in which the courts are relied upon to perform an important part of the implementation function of the monitoring process.¹³⁴

Standard 9.1 encourages the courts to be cognizant of their role as monitors, and to be aware of the objectives of a monitoring system and the focal points of the monitoring process in performing any of the functions of that process (preliminary, evaluation, or implementation) in each case.

9.2 Implementation in the juvenile court.

A. In order to facilitate its monitoring activities, the juvenile court should ensure that the bases for monitoring provided for under these standards or similar bases under the laws, rules, and regulations of the jurisdiction are implemented and maintained. When necessary, the court should invoke its inherent powers, including its rule-making powers, to require individuals and agencies within the scope of its jurisdiction to adopt and comply with practices designed to provide a basis for monitoring.

B. Juvenile court judges should further continuously monitor the facilities to which they assign juveniles, including making periodic on-site inspections, to determine that proper care and treatment is being provided. Judges should not only keep informed of the conditions in the facilities but also should make reports to effect change when needed.

C. Pursuant to the *Court Organization and Administration* volume:

1. the juvenile court should appoint an officer of the court full time to direct, coordinate, supervise, and report on the perfor-

¹³² See commentary to Standards 3.1 through 3.3, relating to the concept of defense counsel as a monitoring resource.

¹³³ See, e.g., commentary to Standards 1.3, 1.4, and 1.5.

¹³⁴ See, e.g., commentary to Standards 1.7, 4.3, and 4.4.

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mance, results, and findings of the juvenile court's monitoring activities;

2. a citizens' advisory committee should assist the court in performing its monitoring activities; and

3. appropriations for juvenile court operations should include sufficient resources to permit the court to properly perform its monitoring activities.

D. The highest court in the state, or other designated court or agency responsible for the overall administration of the court system in the state, should establish a department to receive, compile in a systematic manner, and disseminate the results of monitoring activities and findings prepared by the juvenile courts within the state. The widest possible access to juvenile court monitoring reports by citizen groups, individuals, juvenile justice agencies, and other public and private agencies serving court clientele should be permitted and encouraged.

Commentary

The maintenance of an adequate information and data base has been identified in Standard 2.5 as an important focal point of monitoring. When a jurisdiction adopts the JJSP standards, Standard 9.2 directs the juvenile court to ensure that these standards are complied with by the agencies and individuals within its jurisdiction—administratively (*e.g.*, as with court-based probation departments) or judicially (within the context of litigation). In other jurisdictions, Standard 9.2 directs the juvenile court to look to the applicable laws of the jurisdiction to identify the applicable standards required and to ensure compliance with them. It is suggested that the court's procedural rule-making powers be used to ensure that certain agencies and individuals, *e.g.*, the prosecutor and the probation and intake units when the latter are court based, adopt and comply with standards and procedures designed to provide a basis for monitoring their activities. Implementation in this manner would be on a systemic basis. Even on a case-by-case basis, however, the concerns of this standard should not be neglected. The record of each individual case should be examined to determine whether it contains information indicating that applicable standards and criteria have been observed and followed. The performance of this activity, on a *cumulative* basis, will serve to identify chronic or systemic problems.

The elements of subsection C. are based on the same considerations that underlie these proposals in the *Court Organization and*

Administration volume. Administration of the juvenile court's monitoring functions would be added to the duties of the court administrator (*Court Organization and Administration*, Standard 2.3). The citizens' advisory council called for in Standard 3.5 B. of the *Court Organization and Administration* volume should include among its duties assisting the court in the monitoring process. (This council could also serve as the community advisory council described in Standard 5.1 *supra*).

Subsection D. proposes that the appropriate court or agency assigned the overall administration of a state's court system establish within itself a specific department to receive the monitoring reports on the performance of other components of the system, as observed by the juvenile courts in executing their day-to-day functions. This practice will facilitate coordination of juvenile court efforts, and compilation of the results on a systematic statewide basis.

Maximum public exposure of these reports is recommended and is in keeping with the general monitoring standards, which recommend that the activities of the juvenile justice system and the findings of the monitors of that system be as open as possible while protecting individual identities of persons subject to the system. (See Standard 1.6 *supra*).

9.3 The appellate process as a monitoring resource.

In order to promote the monitoring function currently performed at the appellate level:

A. it is essential that applicable court rules permit at least one appeal, as of right, to all parties materially affected by a juvenile court's "final" order as defined by Standard 2.1 of the *Appeals and Collateral Review* volume;

B. appeal should be permitted by leave of the court from all orders of the juvenile court other than the "final" orders referred to in subsection A. Leave to appeal such interlocutory orders should be liberally granted; and

C. all decisions relating to appeal from or collateral review of juvenile court proceedings, including decisions to grant or deny leave to appeal, and decisions to grant or deny stays of orders and release pending appeal should be published in writing, specifying the reasons for the court's decisions and the facts supporting them.

Commentary

Subsections A. and B. mirror the concerns for an established ap

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pellate process found generally in the *Appeals and Collateral Review* volume. The emphasis here, though, is on how the appellate process can contribute to the monitoring process. Subsection A. here adds an additional purpose to those that led to the recommendation that one appeal as of right from final orders be allowed.¹³⁵ Subsection B. adds to the notion that appeals from interlocutory orders be allowed, the proviso that leave to appeal be liberally granted.¹³⁶

In one sense, appellate review is a self-monitoring activity whereby the appeals court examines the decision-making process of the lower court. But in another sense, the appellate court, on the basis of the record established at the trial level, acts as a monitor of the juvenile justice system or one of its components when their operations or activities are the subject of the litigation. It is particularly in this latter situation that the appellate courts provide a valuable service to a monitoring system.

Subsection C. recommends that the decisions of the appellate courts be published in writing and clearly recite the reasons and facts supporting them. This will promote the development of a body of appellate law that provides guidance to both the courts in enforcing the law and the juvenile justice system in administering the law. This will also permit monitoring mechanisms to identify and apply clearly-stated, court-made legal standards when evaluating agency compliance and performance.

9.4 Implementation in civil courts.

A. The applicable provisions of the monitoring standards should be applied in the litigation of all civil complaints, whether denominated test-case litigation or not, brought on behalf of a class of plaintiffs or on behalf of an individual plaintiff, in the juvenile court or in any other judicial forum where such complaints are based upon the application or implementation of any laws, rules, regulations, or practices of the juvenile court or other agencies affiliated with the juvenile justice system.

B. For monitoring purposes, one objective of all the parties involved in such litigation, and the court wherein the matter is being tried, should be to provide the broadest information base possible for the court to render a proper decision. This should include full use of court authority and rules relating to discovery, appointment of experts, designation of special masters, etc.

C. To facilitate full discovery, the trial court should, when appro-

¹³⁵ See the *Appeals and Collateral Review* volume.

¹³⁶ *Id.*

priate, appoint its own experts to assist the court in determining the nature and extent of the data and information required and in obtaining the necessary data and information.

D. At any point in the proceedings, when the trial court deems it appropriate under these standards or otherwise, the court should appoint a master in accordance with the appropriate rules of procedure for the forum to assist the court in making findings, determining relief, monitoring the implementation of court orders, or performing any other function permitted under the rules of procedure for the forum.

Commentary

The role civil courts have played in both the implementation function and the identification of standards aspect of the preliminary function of the monitoring process have been noted above¹³⁷ with respect to various types of "impact" or "test-case" litigation. This role will obviously be increased in a monitoring system that relies on the process of the court as one of its means to obtain and enforce compliance with corrective measures.

Standard 9.4 specifically recognizes that monitoring functions will be performed in such litigation and recommends that the applicable provisions of this volume (including those governing the objectives of monitoring, access to and usage of information, and focal points) be applied to the litigation process. Subsection B. is not an exclusive, but is rather a supplementary, objective to other traditional objectives of civil litigation. Its purpose is to emphasize the importance of fact gathering, and to apply a liberal standard to the implementation of discovery procedures through cooperation or by court order when necessary. It is illustrative of how the general objectives of monitoring (in this case the objectives of Standard 1.2 E. and F.) can be applied to litigation.

As such, it is in keeping with other monitoring standards encouraging broad and liberal access to information, data, records, and reports (*e.g.*, Standards 1.6 and 2.5).

Subsection C. is intended to encourage courts to obtain their own experts, when necessary, to assist in the determination of what primary data and information are required either to resolve the issues of the litigation or to formulate a plan of relief, and, when necessary, to act on behalf of the court in gathering the necessary data and information.¹³⁸

¹³⁷ See notes 57 to 64 *supra*.

¹³⁸ See, *e.g.*, *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974).

Subsection D. is based on Fed. R. Civ. Pro., Rule 53, and the parallel state rules of procedure, and affirms that the use of court-appointed masters is applicable to litigation contemplated under these standards, when appropriate under the rules of procedure, and is a proper tool for monitoring by civil courts.¹³⁹

PART X: SELF-MONITORING BY JUVENILE JUSTICE AGENCIES

10.1 General principles.

A. Self-monitoring activities conducted by juvenile justice agencies should be performed in accordance with the applicable provisions of these standards.

B. Each agency should monitor its activities on a continuous basis to ensure that it is discharging its duties and obligations and observing mandatory provisions in accordance with the standards applicable to its functions.

C. Each agency should:

1. identify the key decisions it makes with respect to the processing of juveniles and their parents under its authority;

2. develop criteria and guidelines to be applied by agency personnel to the decision-making process, when the exercise of discretion is permitted; and

3. closely scrutinize the decisions made by its personnel to ensure that guidelines and criteria are being properly applied.

D. Each agency should ensure that rules or regulations requiring documentation of discretionary decisions, sufficient for monitoring requirements, are developed and complied with in order to facilitate both the agency's self-monitoring activities and the monitoring activities conducted by other mechanisms. Such documentation should be specific and should include:

1. the reasons and supporting facts relied upon for the decision;

2. the options considered; and

3. the reasons for rejecting any and all less intrusive and less coercive options.

E. Each agency should prepare frequent, periodic reports, summarizing the activities of and the actions taken by the agency, and evaluating these and the agency's organizational and administrative functions in terms of efficiency in cost and time involved, results obtained,

¹³⁹ See, e.g., *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974).

objectives achieved, compliance with rules, regulations, criteria, or standards, and other similar considerations. These reports should be distributed to the appropriate supervising authority, if any, to the appropriate external, independent monitoring mechanisms, and to the public through publication by any appropriate media.

F. Each agency should assist and cooperate fully with mechanisms assigned to monitor the agency. Each agency should promptly implement the recommendations of such monitoring mechanisms.

Commentary

In the commentary to Standard 1.4, self-monitoring was identified as an internal-dependent class of mechanism. The standard itself recommended that self-monitoring be performed by all agencies, processes, programs, and facilities of the juvenile justice system. Several drawbacks to internal-dependent monitoring mechanisms have previously been noted.¹⁴⁰ Certain benefits of having self-monitoring performed as part of the activities of a monitoring system have also been mentioned.¹⁴¹ The standards in this Part are designed to promote the advantages, and at the same time take note of the drawbacks.

Discussion of the drawbacks inherent in self-monitoring should include an important distinction. The term "monitoring" as a process performed by agencies themselves is used in the broad sense of the definition adopted by these standards (Standard 1.1).

All three functions of that process are involved. In this sense the problems encountered in adequately performing self-monitoring may be less acute when, for example, the preliminary functions of monitoring are involved as opposed to the evaluative functions.¹⁴²

In order to construct a self-evaluating organization, numerous problems must be addressed and resolved. These problems have been most succinctly summarized as involving questions such as:

Who will evaluate and who will administer? How will power be divided among these functionaries? Which ones will bear the costs of change? Can evaluators create sufficient stability to carry on their own work in the midst of a turbulent environment? Can authority be allocated to evaluators and blame apportioned among administrators?

¹⁴⁰ See, e.g., note 34 *supra*, and the discussion of grievance mechanisms in the commentary to Standards 7.1 *et seq.*

¹⁴¹ Commentary to Standard 1.3.

¹⁴² Wildavsky, at 509, is skeptical that self-evaluation can be performed at all.

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How to convince administrators to collect information that might help others but can only harm them? How can support be obtained on behalf of recommendations that anger sponsors?¹⁴³

Whether evaluation and organization can be internally linked is problematical. "The needs of the organization and the people within it conflict with the desire to continuously monitor activities and change policies when they are found wanting."¹⁴⁴

Unless the above problems are adequately addressed, the inherent danger is that self-evaluation, if performed at all, may become self-justification. Objectivity is difficult to maintain when an organization must criticize itself, or even when one part of the organization must criticize another part. The organization's desire to survive and prosper may lead to suppression of "bad" evaluations.¹⁴⁵ Thus even before considering whether self-evaluation leads to necessary change, there is a problem of whether self-evaluation can be objective and accurate.

It comes down to asking what organizations can be *reasonably* expected to do by themselves as part of the monitoring process.

The emphasis in Standard 10.1 is thus placed on the preliminary functions (information gathering, documentation, etc.) rather than on the evaluative functions. These constitute the more mechanical operations of the monitoring process, leaving the evaluative function to other mechanisms. The performance of these mechanical operations are also more easily made accountable. When these mechanical operations are clearly designated, it is simply a matter of determining whether they have or have not been performed; whereas external monitoring of self-evaluations would involve an evaluation of the evaluation.

The manner of implementing self-monitoring is left to each agency's discretion. It can be performed by agency personnel along with other duties, or by personnel assigned solely to that task, or by persons under contract to the agency to perform its self-monitoring functions. The key point is that whatever manner of implementation is chosen, the monitoring should be continuous and not merely periodic, which often means sporadic. If the former method is chosen, this does not imply that an agency whose own personnel are responsible for self-monitoring should not also periodically contract with outside consultants to monitor and evaluate the agency's activities and, in addition, the agency's self-monitoring. In

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See discussion of information bias in commentary to Standard 1.6.

fact, the standards in general are intended to encourage this practice.

Subsections B., C., and D. identify specific mechanical operations (and their focal points) to be performed by the system's agencies. One general focal point of self-monitoring is the proper discharge of the agency's duties and obligations. Reference is made to whatever applicable standards define the agency's operations and the duties and obligations relevant to them. Obviously, subsection B. requires that clear, unambiguous statements of the provisions for, and duties and obligations of, an organization exist. When the standards of the Juvenile Justice Standards Project are implemented, it would be these standards that define functions and specify duties and obligations.

Subsection C. identifies a second general focal point for self-monitoring, namely the decision-making activity of an agency. When discretion¹⁴⁶ in the decision-making process is permitted, this subsection specifies that self-monitoring should include: 1. the identification of criteria and guidelines to be uniformly applied to the exercise of discretion; 2. their development whenever such criteria and guidelines are found to be absent; and 3. the subsequent examination of decisions to insure that the criteria and guidelines are being applied in a uniform manner. In jurisdictions that adopt the standards of the Juvenile Justice Standards Project, the identification of decisions and areas of discretion would be based on these standards. In other jurisdictions, a similar systematic analysis should be employed to identify the key decisions and areas of discretion.

Subsection D. identifies a third general focal point of self-monitoring that has been considered essential in the performance of other monitoring activities.¹⁴⁷ This subsection makes the development of sufficient monitoring bases a primary function of self-monitoring. Regulations pertaining to the maintenance of adequate records and the written documentation of reasons for, objectives of, and criteria applied to decisions and services rendered should be adopted by each agency; and operations should be closely scrutinized to ensure compliance.

The entire process is threefold: 1. agencies should determine what they are required to do (by law, administrative directive, etc.); 2. they should ensure that there are standards and criteria that tell them how to go about doing what they are required to do; and 3. they should ensure that they have a system of documentation and recording of information that tells them what they have done.

¹⁴⁶ See commentary to Standard 2.1 for a definition of this concept.

¹⁴⁷ See generally commentary to Standards 1.6 and 2.5.

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If an agency, through self-monitoring, can adequately perform merely the last stage of the process (recording and documenting what it does), it can provide a valuable contribution to a monitoring system. When other mechanisms can be sure of the accuracy of information provided by the agency itself, and when such information is in a compatible form for the monitoring process, a system of monitoring can devote more time and resources to the evaluation and implementation functions.¹⁴⁸

Mindful of the problems encountered in self-evaluation, subsection E. nevertheless encourages agencies to undertake their own evaluations. The difficulties involved should not preclude the continued effort. Such evaluations could be conducted by the agency staff itself or by outside consultants. These evaluations, however, should not supplant the performance of external-independent evaluations.

Finally, subsection F. places an affirmative duty on each agency in the system to assist other mechanisms that monitor them and to cooperate fully in the implementation of those mechanism's recommendations.

¹⁴⁸ Accuracy of information being fed to monitors by the agencies performing the preliminary functions of the monitoring process would still need to be periodically checked, but would clearly consume less time and resources than if monitoring mechanisms had to supervise the collection of data and information for the agency on a continuous basis.

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