POSSIBLE PROBLEMS IN IMPLEMENTING THE JUDICIAL REFORM ACT OF 1976 AS RELATED TO INTAKE AND PROBATION IN THE FAMILY COURT SYSTEM

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I. INTRODUCTION

A. PURPOSE AND SCOPE

During the course of its current audit of the Department of Youth Services (DYS), the Legislative Audit Council found that the Department was preparing to accept an important new responsibility - the operation of the juvenile intake and probation activities for the unified Family Court system. Other agencies connected with the juvenile justice system in South Carolina voiced concern that DYS was not the proper agency to handle the intake and probation function. The Audit Council undertook a thorough examination of the issue. Since the mechanism for performing intake and probation is still in the introductory phase, and since no State money has yet been obligated for this purpose, the Council thought it important to issue a report analyzing the ramifications for the State of DYS assuming intake and probation.

This report will trace the background of intake and probation in the Family Courts, describing how DYS was given authority over this dual function. The implications of DYS control for that agency and for the entire juvenile justice system will be explored. We will also compare the South Carolina juvenile intake and probation system with those in other Southeastern states. Finally, our report will draw some conclusions based on the analysis and will make recommendations for legislative action.

B. DEFINITION OF THE INTAKE AND PROBATION FUNCTIONS

Intake represents the screening process, while probation is one method of disposition for a Family Court case involving a juvenile. The intake worker handles the initial complaint from a law enforcement officer, school, social service agency, parent or other concerned agent requesting corrective action for a juvenile who (a) has committed a crime, (b) is neglected, or (c) is delinquent.* The intake officer investigates the case and determines whether a petition for formal adjudication is in order. The officer has the authority to dispose of the case in one manner or another without adjudication. Should a petition be drawn up for formal adjudication, the intake officer is charged with ascertaining the facts of the case. The judge can require the officer to have a diagnosis prepared and often asks the officer for a recommendation.

The responsibility of the probation officer is to maintain regular contact with a child placed on probation, in order to ensure that the child lives up to the conditions of release. Duties involve meeting with the family of the child, finding suitable placement for the child if the home situation is determined intolerable, helping the child with school or employment problems, and putting the child in touch with public or private service agencies that might help maintain appropriate behavior.

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*i.e., "Whose occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others" (Code of Laws of S. C. §15-1095.9.)

C. DEFINITION OF THE PROBLEM

Intake and probation are judicial functions, intimately involved with the decision-making authority of the Family Court. Moreover, they are county functions, dependent upon the continued support and involvement of the community. The Department of Youth Services is the State agency charged with providing a variety of services to correct behavior unacceptable to society. A third entity, The Department of Juvenile Placement and Aftercare, gives counseling to children who have been committed to a State correctional school, prepares them and their families for their return to the community, and follows their progress after release. There is a delicate but carefully delegated balance of authority here: the courts prescribe the treatment, DYS provides it, and JP&A monitors its effectiveness.

Should DYS assume the intake and probation functions, as the law would have it do, there is a very real danger that this balance could be upset. The service-providing agency, DYS, usurps the duties of the service-prescribing and the service-monitoring agencies. The community, previously the locus for decisions involving youths in trouble, passes this responsibility on to the State.

II. HOW DYS ACQUIRED INTAKE AND PROBATION FROM THE COURTS

Traditionally, intake and probation have come under the jurisdiction of the Family Court. The individual judges have had exclusive control over the number, appointment and compensation of employees of the court. According to one judge working in a small, relatively poor county, funds for juvenile justice

are a recognized necessity at the local level. The public is generally not reluctant to provide money to keep children out of trouble.

However, fragmentation and lack of uniformity have characterized intake and probation services across the State. Some counties provide a comprehensive system of services for youth through the courts; others may have one volunteer probation worker serving under the Probate Court. There is minimal interaction among court employees from different counties. Certainly the present system is in need of improvement.

The Judicial Reform Act of 1976 is an attempt to establish a uniform State-wide system of courts. It addresses juvenile intake and probation as a minor segment of the system overhaul. The Act specifies that, "beginning July 1, 1978 the Department of Youth Services will provide intake and probation services for juveniles brought before the family courts of this State and for persons committed or referred to the Department of Youth Services in cooperation with all local officials or agencies concerned". Individual judges, who now will move around an entire circuit, will have authority merely to transfer an officer out of the circuit. DYS will place intake and probation officers in each county and will also move them to other areas of the State for short periods of time when there is overcrowding.

Why was DYS chosen? To the agency's credit, it seems to have been the first to point out the need for a uniform system. The primary reason for letting DYS handle intake and probation, however, seems to have been an absence of competition. Faced with other complicated issues involved in the weighty task of revamping

the judicial system, legislators were glad to have an agency ready to take on the juvenile intake and probation responsibility.

III. IMPLICATIONS OF ADDITIONAL RESPONSIBILITIES FOR DYS

DYS is preparing to add a third major division to its organizational structure. This represents a significant new thrust for an agency which has already quadrupled its budget over the last seven years. While centralizing its administrative and institutional operations in Columbia, DYS is at the same time expanding its community programs into every county of the State.

The first responsibility of the agency by law is custodial and correctional. Teachers, social workers, psychologists, youth counselors, medical personnel, security guards and others provide services to children committed to the residential institutions by the courts.

In 1972 the agency introduced a Youth Bureau program which attempts to prevent delinquency and divert troubled youth from the juvenile justice system through a variety of community services. The Youth Bureau network has grown year by year and has been funded until now primarily with federal funds.

DYS is still in the process of figuring out a funding strategy to start up intake and probation. The Director gave a rough estimate of $1 million in increased appropriations that would be needed in 1978-79. The Chief Justice of the S. C. Supreme Court, however, has asked that DYS begin providing intake and probation in July 1977 to those 12 counties that at present have

no full-time capacity. The agency is looking into grant sources (about $400,000) for this purpose. The Director of the Office of Criminal Justice Programs, who is responsible for developing a State plan for administering LEAA funds, suggested that DYS seek a supplemental appropriation for intake and probation for 1977-78. This option has apparently not been seriously considered.

Although intake and probation will be a separate division within the Department, it cannot be separated from the other two. The decisions made by an intake officer, in particular, may have a direct effect on the number of children channeled into the institutions and the Youth Bureau programs. The intake officer receives the complaint directly and is the person best informed about the case. Unless the complainant or the child requests a court hearing, the intake officer may use discretion in finding an informal resolution to the case.

A convenient resolution is referral to a Youth Bureau. The Youth Bureau is designed to receive cases from the Family Court and arrange a package of necessary services. Its success and continued funding depend on the volume of clients it serves. Until now, the Youth Bureaus have been funded primarily with federal money. It is crucial to DYS that the Bureaus be successful in order to obtain State funding. A possibility exists that an intake officer could be pressured into referring as many children as possible to the Youth Bureau. On the other hand, there might be pressure applied to keep out children with more severe behavior problems - problems not easily managed. This is not to say

that it will happen; but there is nothing in the present system to prevent it from happening.

When a case does go to court for adjudication, the intake officer can be influential in determining disposition. Under Judicial Reform, judges will rotate around a circuit - usually two or three counties. They will no longer have the time to follow individual cases or become familiar with the families. Judges will be very likely to depend on the information supplied by the intake officer in disposing of the case. They may also ask for a recommendation.

It is not implausible that an intake officer employed by the Department of Youth Services would be more likely to recommend institutionalization than an officer responsible solely to the court. DYS is required to deinstitutionalize all status offenders by November 1977. In order to justify maintenance of the same number of staff in the correctional schools, the population cannot be allowed to fall. The agency Director surmised that the new intake and probation system would have the effect of increasing the number of institutionalized children. An absence of controls makes possible a self-sustaining system.

IV. IMPLICATIONS OF DYS CONTROL FOR THE JUVENILE JUSTICE SYSTEM

Clearly, an intake and probation system that allows a State agency to exercise influence on the numbers and types of clients it chooses to serve jeopardizes the foundation of checks and balances upon which government rests. Unless a child

is brought in by law enforcement, DYS represents the juvenile justice system every step of the way. Only the judge and the solicitor who prosecutes the case remain independent, and even their authority is circumscribed. It is certainly true that the solicitor makes the decision on which case to prosecute and that the judge makes the formal adjudication, but both of them depend on the intake officer for their information. If a child is placed on probation, the probation counselor decides whether or not the child is making sufficient progress to be released. Intake and probation officers, the keys to a child's fate in the system, are directly responsible to DYS, the correctional agency.

A significant feature of the new Family Court system is a change in emphasis from the parens patriae concept to the idea of due process. No longer will the judge act as a benevolent parent to help a delinquent child; the new system envisions the judge deciding the guilt or innocence of a child accused of a serious criminal offense. Status offenses, which heretofore occupied much courtroom time, will now be weeded out as often as possible by the intake officer. Criteria will be established for determining the proper method of disposition for each particular offense. Those criteria will be established by DYS with the approval of the judges. (A procedures manual is expected to be presented to the judges April 12).

This new orientation places DYS more firmly in the judicial field. Understandably, the planners want to change the arbitrary character of the old system, which allowed judges in

different counties to make vastly different dispositions for the same offense. However, the underlying principle behind the Family Court is its intention to help the child. As Mr. Justice Fortas said in the landmark case, In re Gault (387 US 1),

> "society's role was not to ascertain whether the child was "guilty" or "innocent", but "what is he, how has be become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career."

DYS is straddling the fence here: on the one hand, its institutions and Youth Bureaus are charged with rehabilitating the child and diverting the child from the criminal path. On the other hand, DYS is setting up standards for treating each offense in a uniform manner, similar to an adult court. In 1970, the Supreme Court ruled that

> a finding that a child has violated a criminal law does not constitute a criminal conviction, [and] that such a finding does not deprive the child of his civil rights ... And the opportunity during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment will remain unimpaired. (In re Winship, 397 US 358)

As the functions of the Department become broader, its priorities become confused.

The third entity in the service triangle, Juvenile Placement

and Aftercare, also suffers from confusion. JP&A counselors are essentially probation officers; they supervise children on conditional release from DYS institutions. As such, they are spread out (albeit thinly) all over the State. JP&A feels that it is the proper agency to perform intake and probation, since it already has the necessary structural network. The agency fears that its function will be the next for DYS to take over.

The fact is that JP&A counselors are not organized within county or circuit boundaries. The agency has five regional offices, and many of its 23 counselors operate out of their homes. Although JP&A counselors perform the same duties as probation officers, the agency has no experience with intake. Having intake and probation would probably make aftercare a secondary responsibility.

Nevertheless, it does seem that DYS is usurping JP&A authority and duplicating its work. In the correctional realm, DYS will no longer reinstitutionalize children whom JP&A charges with a parole violation. Such children will be transferred to a Youth Bureau, making the aftercare authority ineffectual.

In the probation area, DYS will have many more counselors performing the same type work as JP&A counselors, and the DYS people will have smaller caseloads. With the authority of the court behind them, they will be in a much better position to influence children on probation (the threat of correctional school is always in the background). JP&A cannot help but feel threatened.

Besides JP&A, the Family Court judges may also feel squeezed out by DYS. Through its $1.5 million LEAA grant for the deinsti-

tutionalization of status offenders, DYS must divert or remove from incarceration 3600 children. To do this, it has declared its intention to prevent any child whose last offense is a status offense from being adjudicated. The child would be referred to a non-residential service agency, probably a Youth Bureau. Similarly, a child who has committed a criminal offense would also be diverted from the residential institutions unless the judge convicts the child on that offense. Previously a judge could prevent a child from being labeled a criminal by committing the child on a status offense, such as incorrigibility. This was often done to keep the child away from a bad home environment for a few months. DYS will no longer allow the judge that kind of flexibility.

The final implication for the juvenile justice system of DYS assuming intake and probation is not the fault of that agency. Any time the State takes control of what was previously a local function, the community tends to lose interest. Juvenile justice is no longer a community responsibility; it becomes the exclusive province of the State. This means that if the Department of Youth Services does not perform its varied tasks effectively, there is no county watchdog ready to stop the flow of clients into the agency. In essence, DYS monitors its own work.

V. WHAT OTHER STATES DO

With the exception of Florida, other southeastern states leave intake and probation in the hands of the courts. Arkansas, Georgia, Kentucky, Louisiana and Mississippi allow the county, district or juvenile court judge full power to appoint the in-

take and probation officers. Alabama has its Department of Youth Services certify probation officers "who shall serve at the pleasure of the court." Mississippi allows a judge to have the county public welfare department or municipal authority furnish a youth counselor for the court. In Virginia, the Department of Corrections provides probation services out of appropriated funds, but the judge still appoints probation officers from a list of those eligible.

North Carolina has an innovative system, in which a Division of Juvenile Services is created within the Administrative Office of the Courts to administer a statewide system of juvenile probation and aftercare services. The Administrator of the Division of Juvenile Services appoints court counselors with the approval of the district judge. In this way, the courts retain full control over intake and probation without burdening individual judges with the administrative responsibilities involved.

Florida is the only southeastern state in which the Department of Youth Services exercises total administrative control over intake and probation. As in South Carolina, it was thought at the inception of the new system (1971) that centralized State control would do away with the disparity in resources counties devoted to juvenile justice. Counties were only too glad to let the State fund intake and probation - in fact, they stopped all county programs for juveniles, including those established to prevent delinquency and keep children out of the courts. The State has been left with a far greater responsibility than originally envisioned and is looking for ways to get the counties involved once again.

VI. CONCLUSIONS

1. The most significant outcome of DYS assuming intake and probation is the upsetting of the balance of power between the courts, DYS and JP&A. DYS, in addition to providing correctional and preventive services to youths adjudicated or in danger of become delinquent, acquires an essentially judicial function which could easily undermine the authority of the judge and the JP&A counselor.

2. There is a danger that disposition of cases could be tailored to management needs of DYS rather than to the needs of the child. Grant quotas, Youth Bureau evaluations and institutional bed space all act as pressures upon the court's decision. Intake and probation officers are well placed to influence that decision.

3. The shift from county to State control represents a significant new funding burden for the State. In order that no county suffers a decline in the quality of its intake and probation service and in order that service is uniform across the State, the State will have to come up with much more money than the counties have been spending in total for intake and probation. The case of Florida is illustrative here in that the State must be prepared to let DYS take responsibility for all services to youth in trouble (except placement and aftercare).

4. The Family Court is about to lose its identity as "the State acting as parent" in favor of a due process orientation. While this will ensure more uniform disposition for similar offenses, it ignores the underlying problem which caused the child to get into trouble. DYS will set up criteria for disposition which, in effect, categorize children, not improbably, according to DYS needs.

5. Until the Attorney General's ruling, starting intake and probation one year early may be illegal. By attempting to fund this first year with LEAA and Manpower money, DYS is, in effect, committing the General Assembly to a level of funding which it has not approved.

6. Who monitors the effectiveness of DYS? Previously, the intake officer could register approval or disapproval by increasing or decreasing the number of children referred to the Youth Bureau. The judge could determine the effectiveness of the institutions by seeing how often a child got back into trouble. DYS will be able to control its success under the new system.

VII. RECOMMENDATIONS

1. THE LEGISLATIVE AUDIT COUNCIL RECOMMENDS THAT THE GENERAL ASSEMBLY POSTPONE FURTHER IMPLEMENTATION OF THE TRANSFER OF INTAKE AND PROBATION FUNCTIONS TO THE DEPARTMENT OF YOUTH SERVICES UNTIL THE COUNCIL IS ABLE TO FULLY EXAMINE THE IMPLICATIONS OF THIS TRANSFER. THIS EXAMINATION WILL INCLUDE THE ELEMENTS AND ALTERNATIVES DESCRIBED BELOW AND

SHOULD BE COMPLETED IN TIME FOR LEGISLATIVE ACTION DURING THIS SESSION.

2. THE JUVENILE INTAKE AND PROBATION SYSTEM SHOULD INCORPORATE THE FOLLOWING ELEMENTS:

   a. INDEPENDENCE FROM ANY AGENCY OR ENTITY THAT COULD MATERIALLY BENEFIT FROM ITS DECISIONS.

   b. UNIFORMITY IN THE QUALITY OF PERSONNEL AND SERVICES ACROSS THE STATE.

   c. RESPONSIBILITY OF COURT OFFICERS TO THE JUDGES IN THAT CIRCUIT.

   d. INVOLVEMENT OF THE COMMUNITY EITHER THROUGH A VOLUNTEER PROGRAM SUCH AS THE ONE RICHLAND COUNTY OPERATES OR THROUGH COUNTY FUNDING OF COMMUNITY-BASED DIVERSIONARY PROGRAMS.

   e. CLOSE CONTACTS BETWEEN THE COURTS AND SOCIAL SERVICES AVAILABLE IN THE COMMUNITY AND THE STATE.

   f. CONCERN FOR THE LONG-TERM WELFARE OF THE CHILD AS WELL AS FOR EFFICIENCY IN GETTING THE CHILD THROUGH THE SYSTEM.

3. THE FOLLOWING ALTERNATIVES APPEAR TO THE COUNCIL TO INCORPORATE THE ABOVE ELEMENTS:

   a. AN INTAKE AND PROBATION SYSTEM, SUCH AS NORTH CAROLINA HAS, UNDER THE DIRECT CONTROL OF THE COURTS. THIS WOULD BE A UNIFORM SYSTEM CENTRALIZED IN THE COURT ADMINISTRATION OFFICE. INTAKE AND PROBATION OFFICERS WOULD BE

CERTIFIED AND PAID BY THE STATE AND APPROVED BY THE INDIVIDUAL JUDGES.

b. A SYSTEM RUN BY JUVENILE PLACEMENT AND AFTERCARE. THIS WOULD GIVE JP&A AUTHORITY OVER ALL PROBATIONARY FUNCTIONS FOR JUVENILES IN THE STATE AND WOULD PREVENT THE ESTABLISHMENT OF ANOTHER LAYER OF JUVENILE SERVICES IN THE COMMUNITY.

c. A STATE-APPROPRIATED SYSTEM ADMINISTERED BY THE COUNTIES. THIS WOULD FACILITATE COMMUNITY INVOLVEMENT AND PREVENT THE GROWTH OF A NEW STATE BUREAUCRACY.

GLOSSARY

Family Court - Court with general jurisdiction over delinquent, neglected and abandoned children, family support and protection and other related areas. (Family Court Act, 1968)

Probate Court - Courts in which the judge has "jurisdiction in all matters testamentary and of administration, in business appertaining to minors, in the allotment of dower and in cases of mental incompetency." (S. C. Code 15-444) Jurisdiction over children generally exists in the absence of a family court.

Residential Facility - Facility operated by the Department of Youth Services' Juvenile Corrections Division that provides custodial care for children between the ages of ten and seventeen who have been committed by a family, county, circuit or probate court judge. These facilities are mandated to provide academic and vocational training as well as religious guidance and medical treatment.