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Articles

Speedy Trial in the Juvenile Court

Jeffrey A. Butts*

Table of Contents

I. Introduction 516

II. Court Delay 517
  A. *Effects of Delay* 520

III. Delay in the Juvenile Justice System 522
  A. *Adolescents as Defendants* 525

IV. Controlling Delay 527
  A. *Direct Inducements to Control Delay* 527
    1. *Constitutional Provisions and Case Law* 528
    2. *Legislation and Court Rules* 529
    3. *Professional Standards and Guidelines* 531
  B. *Management Interventions to Control Delay* 532
    1. *Case flow Management* 533
    2. *Financial Incentives* 535

V. Controlling Delay in the Juvenile Court 536
  A. *Constitutional Provisions* 536
    1. *Limiting Due Process for Juveniles* 538
  B. *Legislation and Rules in the Juvenile Court* 539

* Senior Research Associate, National Center for Juvenile Justice. B.A. 1981, University of Oregon; Ph.D. 1992, University of Michigan.

HeinOnline -- 23 Am. J. Crim. L. 515 1995-1996

C. *Case Law and Juvenile Court Processing Time* 541
D. *Time Standards in the Juvenile Court* 544
E. *Management Interventions in the Juvenile Court* 550

VI. Conclusion 553

I. Introduction

Among the many social reform movements that swept the United States during the late 1800s and early 1900s, one resulted in the creation of separate courts to handle young law violators.[1] Juvenile courts were founded at least partly on the belief that young people accused of crimes should be handled differently than adult offenders, with less formality and in nonadversarial proceedings. For the first sixty years of their existence, most juvenile courts had more in common with social agencies than with trial courts. Consistent with this less formal atmosphere, the juvenile court process included very few procedural protections for youth accused of delinquent acts.

By the 1960s, however, it was apparent that some juvenile courts were becoming very similar to criminal courts, with an emphasis on deterrence and punishment rather than rehabilitation. In a series of important cases beginning in 1966, the U.S. Supreme Court ruled that the increasingly punitive orientation of juvenile courts merited greater legal rights for juveniles. As a result, the standard of evidence used in delinquency proceedings was increased, and states were required to provide juveniles with a number of due process rights, including the right to counsel, the right to confront and to cross-examine witnesses, the right to formal notice of charges, and the right to protection against self-incrimination.

Still, not all procedural protections were extended to juveniles. For instance, the right to a jury trial in juvenile court was rejected by the Supreme Court in 1971.[2] Individual states, of course, were still free to grant such rights to juveniles. As of 1992, sixteen states allowed jury trials in juvenile court in at least some circumstances.[3] Some observers have argued that all juveniles should be provided with the right to jury trial, or at least those juveniles charged with the most serious offenses, as they are likely to be exposed to the court's more punitive tendencies.[4]

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1. DAVID J. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA 3 (1980).

2. McKeiver v. Pennsylvania, 403 U.S. 528, 528 (1971).

3. LINDA A. SZYMANSKI, NATIONAL CENTER FOR JUVENILE JUSTICE, JUVENILE'S RIGHT TO A JURY TRIAL IN A DELINQUENCY HEARING (1992 Update) 1-2 (1993).

4. Joseph B. Sanborn Jr., *The Right to a Public Jury Trial: A Need for Today's*

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The question of speedy trial rights for accused juveniles has never been addressed by the U.S. Supreme Court. Concern about the speed of the juvenile court's dispositional process, however, has been growing among legislators, judges, attorneys, court administrators, and law enforcement personnel. Some of these concerns may be related to the new emphasis on due process rights for juveniles. Other concerns most likely stem from an interest in accelerating the imposition of sanctions on juvenile law violators, under the assumption that swift sanctions are more effective sanctions.

During the 1970s and 1980s, several national associations and government commissions issued time standards for juvenile court proceedings. Currently, about half of the states have implemented at least some statutory time limits on the handling of delinquency cases. Other states have used court rules to designate the maximum delay permitted in delinquency cases. In these jurisdictions, the concept of a speedy trial may be almost as familiar in juvenile court as it has been in criminal court. Many juvenile courts, however, continue to operate without any formal controls on the timing of delinquency dispositions. This lack of uniformity means that in some courts young offenders may wait six months or more for an official response to their delinquent behavior. Six months is a very long time for an adolescent. Future policy debates about the juvenile court process should consider whether young people facing juvenile court adjudication should have speedy trial rights comparable to those provided to adult defendants by the Sixth and Fourteenth Amendments to the U.S. Constitution.

II. Court Delay

The phenomenon of court delay has a "long and notorious history."[5] Researchers have noted references to the "law's delay" by literary figures from Shakespeare and Moliere to Chekhov and Dickens.[6] Government

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Juvenile Court, 76 Judicature 230, 238 (1993).

5. THOMAS W. CHURCH JR. ET AL., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 2 (1978).

6. Macklin Fleming, *The Law's Delay: The Dragon Slain Friday Breathes Fire Again Monday*, 32 PUBLIC INTEREST 13, 13 (1973); Paul H. Haynes, *Reducing Court Delay*, CRIMINAL JUSTICE MONOLITH 45, 46 (1973), (quoting Gray v. Gray, 128 N.E.2d 602, 606 (Ill. App. Ct. 1955)); Mary Lee Luskin, *Building a Theory of Case Processing Time*, 62 JUDICATURE 115, 115 (1978); Joseph A. Trotter, Jr. & Caroline S. Cooper, *State Trial Court Delay: Efforts at Reform*, 31 AM. U. L. REV. 213, 218 (1982); Mary Lee Luskin & Robert C. Luskin, *Why So Fast, Why So Slow?: Explaining Case Processing Time*, 77 J. CRIM. L. & CRIMINOLOGY 190, 190 (1986).

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officials have been concerned about court delay for decades. Chief Justice Earl Warren once advised that "interminable and unjustifiable delays in our courts" could compromise the "basic legal rights" of Americans and eventually erode "the very foundations of constitutional government in the United States.[7] William Howard Taft asserted that the efficiency of courts was a critical component in the effectiveness of government:

> If one were asked in what respect we have fallen furthermost short of ideal conditions in our government, I think we would be justified in answering, in spite of the glaring defects of our system of municipal government, that it is our failure to secure expedition and thoroughness in the enforcement of public and private rights in our courts.[8]

Dire warnings such as these have been issued periodically throughout the past century and have prompted many research investigations into the causes and effects of court delay, some dating to the 1920s.[9] During the 1950s and 1960s, researchers examined delays in the handling of personal injury litigation,[10] in the processing of civil court caseloads,[11] and in criminal prosecutions.[12] Despite this lengthy history, the problem of court delay continues to generate concern and debate. Court delay appears to be a very stubborn problem. Numerous solutions have been advanced to deal with it, but none has been overwhelmingly successful. Some researchers have argued that court delay is uniquely resistant to intervention because the two most influential groups of court professionals tend to view delay in vastly different terms. Court administrators seek order, rationality and predictability in the courtroom, while judges and other attorneys are trained to think non-bureaucratically and to place primary importance on the quality of the legal process rather than on efficiency.[13] While administrators, judges, and attorneys share the common goal of providing justice and due process, their relative concern over the timeliness of court procedures varies.[14]

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7. Haynes, *supra* note 6, at 46–47.

8. *Id.* at 46.

9. CRIMINAL JUSTICE IN CLEVELAND: REPORTS OF THE CLEVELAND FOUNDATION SURVEY OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN CLEVELAND, OHIO (Roscoe Pound et al. eds., 1922); Wayne L. Morse & Ronald H. Beattie, *Survey of the Administration of Criminal Justice in Oregon*, 11 Or. L. Rev. 170-91 (Supp. 1932).

10. Maurice Rosenberg & Michael I. Sovern, *Delay and the Dynamics of Personal Injury Litigation*, 59 COLUM. L. REV. 1115 (1959).

11. HANS ZEISEL ET AL., DELAY IN THE COURT (1959); A. LEO LEVIN & E.W. WOOLLEY, DISPATCH AND DELAY: A FIELD STUDY OF JUDICIAL ADMINISTRATION IN PENNSYLVANIA (1961).

12. Laura Banfield & C.David Anderson, *Continuances in Cook County Criminal Courts*, 35 U. CHI. L. REV. 259 (1968).

13. DAVID, SAARI, AMERICAN COURT MANAGEMENT 3-4 (1982).

14. *See generally Id.*

HeinOnline -- 23 Am. J. Crim. L. 518 1995-1996

The fact that court delay continues to cause problems despite extensive efforts to control it may also reflect a necessary tension between the conflicting goals of justice. Packer described two competing models that influence our thinking about the justice system—*crime control* and *due process*.[15] Under the *crime control* model, the most important function of the justice system is to repress criminal conduct. The effectiveness of the system, therefore, depends on uniformity, speed, and finality (in other words, low rates of appeal).[16] Under the *due process* model, the central function of the justice system is to regulate governmental intrusions in individual rights and to mediate disputes among citizens and the State. The *due process* model stresses quality and thoroughness, and places much less importance on efficiency or speed.[17] While the *crime control* model is affirmative, emphasizing the exercise of official power and the authority of the legislative and executive branches of government, the *due process* model is negative, stressing limits on official power and emphasizing the authority of the judiciary and the Constitution.[18]

Packer noted that the criminal justice system has tremendous destructive potential for civil liberties and social freedoms.[19] Thus, society must prevent the justice system from achieving maximum efficiency. In other words, courts should be encouraged to pursue the crime-control values of uniformity, finality, and speed, but they should never be permitted to reach perfection. A reasonable level of court delay benefits society by providing a check upon the destructive powers of the state.[20] Pervasive and chronic delays, however, impede due process which is also an important check upon state power.[21]

A certain magnitude of delay may even be necessary for a court to function as an organization. The word "delay" is a pejorative term suggesting that faster is always better. Yet, the parties involved in a court case do not always desire a speedy resolution. Judges, attorneys, witnesses, and defendants often have competing interests which at times may be satisfied by slower rather than faster dispositions.[22] If court administrators were to become too successful in reducing delays, prosecutors and defense attorneys would most likely take actions to restore delay, such as filing more motions or seeking additional continuances.[23]

15. HERBERT L. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 153 (1968).

16. *Id.* at 159.

17. *Id.* at 165.

18. *Id.* at 173.

19. *Id.* at 179.

20. *Id.*

21. *Id.* at 190.

22. Luskin, *supra* note 6, at 117-120; Austin Sarat, *Understanding Trial Courts: A Critique of Social Science Approaches*, 61 JUDICATURE 318, 326 (1978).

23. Martin A. Levin, *Delay in Five Criminal Courts*, 4 J. LEGAL STUD. 83, 91-94

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Speed of case processing may be one of the more easily measured standards with which to evaluate the performance of the court system, but equating speed with effectiveness would be inappropriate. The task of court administration is not to eliminate all delays, but to control *unnecessary* delays.[24] Of course, it is far easier to profess one's opposition to unnecessary court delays than it is to specify which delays are unnecessary and then to reduce them. Cases that seem to take forever are easily identified, and delays in their resolution have few defenders. Most of the inefficiencies of justice, however, are generated by routine delays in routine cases.[25]

A. *Effects of Delay*

Delay can have severely negative consequences for society, for the courts, and for those accused of crimes. Posner described the costs that accrue to defendants when backlogs and congestion generate a long "court queue."[26] These costs include the temporary loss of income, perhaps the loss of employment altogether, and ultimately the effective loss of due process.[27] Defendants may spend months in crowded jails waiting for their cases to be resolved. In some pretrial facilities, relatively minor offenders may be mixed with serious offenders for extended periods. Feeley concluded that the court process itself often serves as a form of punishment for those accused of crimes.[28]

Of course, defendants can also benefit from delay. For those released to await trial, delay brings at least temporary liberty. Even for jailed defendants, delay may be beneficial if it weakens the prosecution's case by causing witnesses to lose memory of an incident or to drop out of the court process from frustration.[29] In his study of criminal case processing in the New Haven Court of Common Pleas, Feeley found a shared belief among defense attorneys that delay was usually in the interests of their clients rather than those of the prosecution. In fact, the defense attorneys told Feeley of an ironic courthouse adage, "speedy trial is a denial of due process."[30]

(1975); Richard A. Posner, *An Economic Approach to Legal Procedure and Judicial Administration*, 2 J. LEGAL STUD. 399, 445-48 (1973).

24. Posner, *supra* note 16, at 445.

25. Levin, *supra* note 16, at 84.

26. Posner, *supra* note 23, at 441-42.

27. Levin, *supra* note 23, at 121.

28. MALCOLM M. FEELEY, THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT, 199-201 (1979).

29. *Id.* at 175.

30. *Id.* at 134.

HeinOnline -- 23 Am. J. Crim. L. 520 1995-1996

In addition to its impact on defendants, delay may interfere with the general effectiveness of the courts. Some researchers have warned that excessive delays may increase a court's willingness to grant lenient case dispositions, thereby reducing the overall deterrent effect of the process.[31] According to this argument, long processing delays and case backlogs make courts reluctant to engage in full-length trials, more tolerant of plea bargaining, and more receptive to the delaying tactics of attorneys.[32] Delays may also weaken the certainty and finality of sanctions if the appellate process is prolonged unnecessarily.[33] In Posner's cost-benefit framework, excessive court delays increase both "direct costs" and "error costs" of the legal process.[34] Direct costs increase as court participants expend considerable time and resources on tangential matters that do not lead directly to case dispositions.[35] Error costs increase as witnesses drop out or other evidence becomes unavailable or less useful to the prosecution due to the passage of time.[36]

Other researchers have noted that slow case handling is essentially a bureaucratic bottleneck, similar to the obstacles afflicting all human service organizations.[37] Mohr observed that sluggish court procedures may be inevitable because the courts serve a primarily impoverished clientele.[38] Any large organization that must move people and their problems through a complicated decision-making process will confront frequent operational failures. When the people served by the organization are mostly from poor, low-status communities, there is an increased tendency for the processing organization to be under-staffed, under-funded, and overwhelmed by its workload.[39] For the poor and disadvantaged, therefore,

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31. Banfield & Anderson, *supra* note 12, at 262-63.

32. *Id.*

33. *See* Levin, *supra* note 23, at 128 (postulating that long delay reduces the deterrent effect of the criminal sanction, especially when increased certainty of incarceration is most important in achieving deterrence.); Joy A. Chapper & Roger A. Hanson, *Taking the Delay Out of Criminal Appeals-Three Jurisdictions Take Three Different Approaches*, 27 JUDGES' J. 6, 7 (1988).

34. Posner, *supra* note 23, at 400.

35. *Id.*

36. FRANK J. CANNAVALE & WILLIAM D. FALCON, WITNESS COOPERATION 9 (1976).

37. Herbert Jacob, *Courts as Organizations in* EMPIRICAL THEORIES ABOUT COURTS 191, 208 (Keith O. Boyum & Lynn Mather eds., 1983) (citing ABRAHAM S. BLUMBERG, CRIMINAL JUSTICE (1967), the first major study to suggest the organizational paradigm); MILTON HEUMANN, PLEA BARGAINING: THE EXPERIENCES OF PROSECUTORS, JUDGES, AND DEFENSE ATTORNEYS 26 (1978); JAMES EISENSTEIN & HERBERT JACOB, FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS 9-10 (1977).

38. Lawrence B. Mohr, *Organizations, Decisions and Courts*, 10 LAW AND SOC'Y REV. 621, 621 (1976).

39. *See Id.* at 638 (stating that the prevalent constraints on resources impact the operations of the court system).

HeinOnline -- 23 Am. J. Crim. L. 521 1995-1996

court delay may be just another encounter with bureaucratic disrespect.

III. Delay in the Juvenile Justice System

> Case processing time [in the juvenile court] is not just a procedural or organizational issue. It has important implications for the theory of juvenile justice and the role of the court in creating change in troublesome youths. Given the importance of time in a child's life, court delay may have implications for juveniles that are both quantitatively and qualitatively different than its implications for adults.[40]

The number of cases handled by U.S. juvenile courts has grown considerably in recent years. Between 1988 and 1992, delinquency caseloads increased twenty-six percent nationwide; cases involving person offenses climbed sixty-eight percent.[41] Concerns about the timeliness of juvenile court case processing have also been growing as juvenile courts have begun to report increasing delays in their handling of delinquency cases. For example, in Nebraska juvenile courts the proportion of delinquency referrals that required more than thirty days to reach final disposition increased from fifty-seven percent to sixty-four percent between 1986 and 1988.[42] In Arkansas, twenty-nine percent of the delinquency cases still pending at the close of fiscal year 1992 had been awaiting disposition for more than one year, compared with twelve percent at the end of 1990.[43] Between 1991 and 1993, juvenile courts in the State of Pennsylvania reported an eighteen percent increase in the median number of days between referral and final disposition for formal delinquency cases—from sixty-two to seventy-three days.[44]

In general, juvenile court cases may still be handled more quickly than

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40. Anne Rankin Mahoney, *Time and Process in Juvenile Court*, 10 JUST. SYS. J. 37, 54-55 (1985).

41. Jeffrey A. Butts, *Offenders in Juvenile Court*, 1992, *in* JUVENILE JUSTICE BULLETIN, at 1 (United States Department of Justice Pub. No. J32.10.J 98/6/1992, October 1994).

42. NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE, JUVENILE COURT REPORT: 1986, at 30 (1986); NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE, JUVENILE COURT REPORT: 1988, at 32 (1988).

43. SYSTEMS DIVISION OF THE ARKANSAS ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT OF THE ARKANSAS JUDICIARY, FY 1989-90: STATISTICAL SUPPLEMENT OF ALL ARKANSAS COURTS 225 (1990); SYSTEMS DIVISION OF THE ARKANSAS ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT OF THE ARKANSAS JUDICIARY, FY 1991-92: STATISTICAL SUPPLEMENT OF ALL ARKANSAS COURTS 238 (1992).

44. PENNSYLVANIA JUVENILE COURT JUDGES' COMMISSION, PENNSYLVANIA JUVENILE COURT DISPOSITIONS (Series J-2, No. 21) 17 (1991); PENNSYLVANIA JUVENILE COURT JUDGES' COMMISSION, PENNSYLVANIA JUVENILE COURT DISPOSITIONS (Series J-2, No. 23) 17 (1993).

HeinOnline -- 23 Am. J. Crim. L. 522 1995-1996

criminal cases, but the degree of difference is likely to be smaller than previously believed. A 1989 study by the National Center for State Courts (NCSC) examined felony case processing times in twenty-six metropolitan trial courts.[45] The median time between case initiation and final disposition (either plea, trial verdict, or dismissal) ranged from 22 to 233 days.[46] Only one court in the study had a median disposition time greater than 150 days.[47] Nine jurisdictions (thirty-five percent) had median disposition times in excess of one hundred days.[48]

In comparison, a study using data from the National Juvenile Court Data Archive examined case processing times for all delinquency cases handled during 1992 in twenty-four large counties from ten different states.[49] The median time between case referral and final disposition among the twenty-four jurisdictions ranged from 11 to 140 days.[50] Among formally charged delinquency cases, the median time to disposition ranged from 36 to 171 days.[51] Ten of the jurisdictions (forty-two percent) had median disposition times greater than one hundred days for formally charged cases.[52] The *average median* disposition time for the twenty-four juvenile court jurisdictions was ninety-one days, while the medians of the criminal courts studied by NCSC averaged eighty-six days.[53]

Another analysis of data from the National Juvenile Court Data Archive calculated processing times for all delinquency cases disposed during 1992 by 687 jurisdictions in fifteen states.[54] The data in Table 1 illustrate the time elapsed in case disposition, including the trends discussed

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45. JOHN GOERDT ET AL., EXAMINING COURT DELAY: THE PACE OF LITIGATION IN 26 URBAN TRIAL COURTS, 1987, at 64 (1989).

46. *Id.*

47. *Id.*

48. *Id.*

49. Jeffrey A. Butts & Gregory J. Halemba, *Delays in Juvenile Justice: Findings from a National Survey*, 45 JUV. & FAM. CT. J. 31, 32 (1994).

50. *Id.*

51. *Id.*

52. *See Id.* (stating that 14 jurisdictions (58%) had median disposition times under 100 days for formally handled delinquency cases.)

53. *Id.* Three jurisdictions were in both the NCJJ and NCSC studies (Allegheny County, PA, Cuyahoga County, OH, and Maricopa County, AZ). In two jurisdictions, the median disposition time for felony cases exceeded that of formally handled delinquency cases by just 5 and 11 days. In the third jurisdiction, the adult median disposition time was 61 days greater than the juvenile court median. These comparisons are suggestive only. Juvenile court dispositions typically include placement and supervision decisions, which are similar to criminal sentencing. If the time between verdict and sentencing were added, processing times for criminal courts would increase. Yet, the difference between criminal and juvenile court processing time would still be smaller than often believed.

54. The jurisdictions included in the analysis contained 19% of the U.S. population in 1990. In 11 of the 15 States, the data accounted for all counties in the state.

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below. Altogether, the subject jurisdictions handled 294,483 delinquency cases in 1992. Half the cases required more than thirty-six days to move from initial court referral to final disposition; one-quarter (twenty-four percent) had disposition times exceeding ninety days. Disposition times were slightly longer in larger jurisdictions (in other words those with total populations of 100,000 or more). Among the cases handled in large counties, the median disposition time for delinquency cases was forty-one days, and twenty-seven percent of the cases had disposition times greater than ninety days. Formally charged cases (those handled through the filing of a formal petition) had even longer disposition times, with a median of sixty-eight days and thirty-eight percent taking more than ninety days to reach a final disposition. Formally charged cases handled in large jurisdictions took even longer to dispose. The median disposition time for these cases was seventy-two days and forty-one percent had disposition times of ninety days or more.

Juvenile courts typically make special efforts to expedite the processing of cases involving youth held in secure detention. The impact of these efforts was reflected in the analysis of disposition times. The median time to disposition for formally charged cases varied considerably according to the custody status of the juvenile. If secure detention was used at some point during case processing (before the disposition), the median disposition time for delinquency cases was forty-one days. If detention was not used, the median time from referral to disposition was sixty-eight days. The longest median disposition time in the study was for formally charged delinquency cases in which the juvenile was not adjudicated (seventy-five days). More than two of every five (forty-two percent) of these cases had a disposition time of more than ninety days.

Disposition times also varied according to the most serious offense involved in the case, with property offenses having the longest median disposition time (seventy-three days) and public order offense cases the shortest median time (fifty-four days). The type of disposition ordered for formally adjudicated cases was also associated with the length of case processing. Adjudicated delinquency cases resulting in an out-of-home placement were handled somewhat quicker (median fifty-one days) than were those ending in a disposition of probation supervision (median seventy days). Still, nearly one-third (twenty-nine percent) of the adjudicated delinquency cases that resulted in out-of-home placement required more than ninety days to reach final disposition.

This analysis suggests that juvenile court and criminal court case processing times may be far more similar than commonly believed. Juvenile court delay clearly deserves the attention of researchers and policy makers who in the past have focused exclusively on delays in the adult courts. A decade ago, one researcher found that there was "essentially no

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literature on the delay of juvenile justice."[55] A more recent review of the literature also found very few publications dealing with the timing of the juvenile court process.[56] In their investigation of civil and criminal court delays, Mahoney and his colleagues acknowledged that they studied general jurisdiction trial courts because delay problems were more visible in trial courts.[57] They noted, however, that "in terms of the human costs of protracted litigation, the impacts [of delay] may be greatest in some of the lower visibility courts such as those dealing with juvenile and domestic relations cases."[58] Their report advocated research on case processing time in those courts.[59]

A. Adolescents as Defendants

Minimizing the time between arrest and disposition in juvenile delinquency cases may be especially critical because of the nature of adolescence. The imposition of legal sanctions is essentially an attempt to teach offenders that illegal behavior has consequences and that anyone who violates the law will be held accountable. In order to deliver this message effectively, the juvenile court process must fit the unique learning style of adolescents. During the years of adolescence, young people experience many developmental changes, and the passage of time is often accelerated—for example, three months of summer vacation may seem like an eternity to a fourteen-year-old. If the juvenile court takes too long to respond to youthful misbehavior, the corrective impact of the court process may be greatly curtailed.

Adolescence refers to a time of transition between childhood and adulthood. It is a period characterized by rapid physical growth and emotional changes. In Western societies, adolescence is generally thought to begin at approximately eleven or twelve years of age and to continue through the late teen years. In addition to developing adult physical and sexual characteristics, it is during adolescence that individuals develop the psychological, emotional, and social skills of adulthood. Although the developmental tasks of adolescence are similar for all youths, the rate at which they are completed may be very different.[60] Some milestones may

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55. Mahoney, *supra* note 40, at 37.

56. JEFFREY A. BUTTS & GREGORY HALEMBA, NATIONAL CENT. FOR JUV. JUST., DELAYS IN JUVENILE JUSTICE: PRELIMINARY FINDINGS 10 (1994).

57. BARRY MAHONEY ET AL., CHANGING TIMES IN TRIAL COURTS: CASEFLOW MANAGEMENT AND DELAY REDUCTION IN URBAN TRIAL COURTS 210 (1988).

58. *Id.*

59. *Id.*

60. WILLIAM C. CRAIN, THEORIES OF DEVELOPMENT: CONCEPTS AND APPLICATIONS 96 (1980); *See* JEAN PIAGET & BÄRBEL INHELDER, THE PSYCHOLOGY OF THE CHILD 154-56

HeinOnline -- 23 Am. J. Crim. L. 525 1995-1996

never be reached if an individual's social environment is particularly disadvantaged.

Cognitive development is a critical task of adolescence and is thought to occur in four developmental periods.[61] "Sensorimotor" cognition focuses on objects rather than on social interaction, and characterizes the thinking of infants under two years of age.[62] "Preoperational" cognition usually develops between the ages of two and seven. During this period, a child's understanding of complex ideas is reduced to simple principles.[63] Children between the ages of seven and eleven develop "concrete operational" cognition, acquiring a more sophisticated understanding of complex ideas.[64] However, they operate in the present reality, do not think abstractly, and do not fully comprehend probability and distant consequences.[65] These abilities emerge with the development of "formal operational" cognition, the fourth and final stage of cognitive development.[66]

Formal operational thinking allows individuals to understand probabilities, analogies, and abstract principles. They can think beyond the present reality and can imagine or deduce future conditions. Formal operational thought is usually acquired by age sixteen, but this achievement is not assured and is not universal.[67] Cognitive development in general is dependent on adequate environmental stimulation, but the development of formal operational thought has been found to be especially dependent on environmental support.[68] Without the support of a safe and nurturing social environment, cognitive structures may continue in the concrete operational stage well into the late teens and twenties. If the social environment is especially disadvantageous, a substantial portion of the population may never develop formal operational thought.[69]

(1969) (describing the effects of organic maturation, experience, and social interaction on rates and extent of development).

61. BÄRBEL INHELDER & JEAN PIAGET, THE GROWTH OF LOGICAL THINKING FROM CHILDHOOD TO ADOLESCENCE (1958); David Elkind, *Conceptual Orientation Shifts in Children and Adolescents*, 37 CHILD DEV. 493, 493 (1966); PIAGET & INHELDER, *supra* note 60.

62. Crain, *supra* note 60, at 77-82.

63. *Id.* at 82-93.

64. *Id.*

65. Elkind, *supra* note 61 at 497.

66. *Id.* at 496; Crain, *supra* note 60 at 93-95.

67. Crain, *supra* note 60, at 100.

68. Jean Piaget, *Intellectual Evolution from Adolescence to Adulthood*, 15 HUM. DEV. 1, 6 (1972); Michael D. Berzonsky, *Formal Reasoning in Adolescence: An Alternative View*, 13 ADOLESCENCE 279, 285 (1978).

69. Jean Piaget, *The Theory of Stages in Cognitive Development*, *in* MEASUREMENT AND PIAGET 1, 7 (D. Green ed., 1971); Berzonsky, *supra* note 68, at 285.

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The delinquency caseloads of most juvenile courts include a disproportionate number of young people from poor and disadvantaged communities. Thus, it is likely that many youths appearing before the court do not have fully developed cognitive abilities. Delayed cognitive development could decrease their understanding of the juvenile court process and reduce their ability to alter their behavior in expectation of sanctions. In order to maximize the effectiveness of juvenile justice sanctions, the juvenile court process should be conducted in a manner that is consistent with an adolescent's ability to learn. At the very least, it should be clear and direct, involve a minimum number of hearings and court appearances, and be concluded as soon as possible.

IV. Controlling Delay

Like all court reforms, efforts to control court delays must contend with a range of legal, organizational, psychological, and political factors. Two approaches are generally used to control case processing delays: 1) direct inducements (legal or professional), and 2) management interventions. These approaches are designed to ensure speedy case handling by either mandating efficiency or re-engineering the court process to encourage efficiency. The following section reviews the various approaches to controlling court delays.

A. Direct Inducements to Control Delay

Two assumptions behind both legal and professional inducements to reduce court delays are that processing delays are ultimately within the control of people who work in the court system *and* that these court personnel will work faster once they are instructed to do so in sufficiently forceful terms. The research literature on court delay indicates that the effectiveness of this approach may be limited. No prescriptive sanction will be entirely effective in eliminating court delay if some delay is necessary for the stability of the court. Legislation, case law, and professional standards may be useful, however, as a means of establishing the basic expectation that cases will move as quickly as possible through the court process.

1. Constitutional Provisions and Case Law.—The most basic expression of a direct inducement to control delay is the Sixth Amendment to the Constitution, which guarantees any American citizen involved in a

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criminal prosecution the right to a "speedy and public trial."[70] The U.S. Supreme Court has held that the right to a speedy trial is as "fundamental as any of the rights secured by the Sixth Amendment."[71]

The Supreme Court first attempted to establish a standard for the implementation of the Sixth Amendment's speedy trial guarantee in *Barker v. Wingo*.[72] The 1972 case involved a Kentucky prisoner who petitioned for habeas corpus as a result of a five-year delay between arrest and trial.[73] The Court found that the defendant's right to speedy trial had *not* been violated because: 1) the defendant had not been seriously prejudiced by delay; and 2) the defendant apparently had not desired a speedy trial.[74] The *Barker* Court also asserted that the right to speedy trial was "generically different" than any of the other rights of due process.[75] Society has an interest in both the quality of the court process *and* the effectiveness of the outcome—*in other words*, adequate protection from crime. In some cases, society's desire for an effective outcome will come into conflict with a defendant's desire for high-quality process. Thus, evaluating the speediness of the legal process requires a balancing of the rights of the defendant with those of society. The Court proposed four factors that should be considered in assessing Sixth Amendment violations.[76] Known as the "*Barker* balancing test," the four factors to be considered were: 1) the length of delay, 2) the reason for delay, 3) the defendant's assertion of due process rights, and 4) the existence of prejudice to the defendant.

The Court acknowledged that some parties would favor an explicit standard to identify violations of Sixth Amendment rights. It asserted, however, that there was "no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months."[77] The Court argued that to establish a quantitative standard would be to engage in "legislative or rulemaking activity," which was outside the proper scope of its authority.[78] As a result of the Court's reasoning in *Barker*, legislation and court rules have remained the predominant methods of controlling court delay through direct inducements.[79]

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70. U.S. CONST. amend. VI.
71. Klopfer v. North Carolina, 386 U.S. 213, 223 (1967).
72. Barker v. Wingo, 407 U.S. 514 (1972).
73. *Id.* at 516-18.
74. *Id.*
75. *Id.* at 519.
76. *Id.* at 530.
77. *Id.* at 523.
78. *Id.*
79. Prior to *Barker*, several important cases helped to define the right to speedy trial in state and federal courts. In Smith v. United States, 360 U.S. 1, 9-10 (1959), the U.S. Supreme Court explicitly affirmed a defendant's right to speedy trial but did not specify what

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2. *Legislation and Court Rules*.—The most widely used delay reduction techniques are administrative rules issued by courts, and statutes enacted by local, state, and federal legislators. Statutes and rules have been used to limit the time courts may take to file charges, complete trials, and reach final case dispositions. Statutory time limits are seen as having more authority than court rules and often include dismissal sanctions for cases which are not disposed by the specified deadlines. Elected officials, however, can be reluctant to implement mandatory dismissal sanctions and have usually granted courts considerable discretion in defining violations of case processing statutes.

Two well-known efforts to reduce delay through legislation and administrative rules were implemented in the federal court system during the 1970s: 1) Rule 50(b) of the *Federal Rules of Criminal Procedure*,[80] and 2) the *Federal Speedy Trial Act of 1974*.[81] Both of these measures established national goals for reducing delays in the handling of criminal cases, encouraged local district courts to plan specific delay reduction strategies, devised procedures to monitor compliance by the local courts, and provided incentives for the courts to establish quantitative objectives for increasing the speed of their criminal case dispositions.[82]

Rule 50(b) was developed by the federal judiciary. It provided incentives for federal courts to reduce case delays but allowed considerable discretion in the time standards that individual courts could adopt.[83] The rule was to be fully implemented following a planning process that began in 1973 in each of the federal district courts.[84] The planning process was negated, however, by the passage of the *Federal Speedy Trial Act of 1974*,

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would constitute a violation of that right. In 1966, the U.S. Court of Appeals (D.C. Circuit), affirmed a defendant's conviction on federal narcotics charges despite a delay of 14 months between indictment and trial. Hedgepeth v. United States, 365 F.2d 952, 956 (1966). The ruling was based in part on the fact that much of the delay was caused by the defendant's requests for continuances and that the resulting delay was not shown to be prejudicial to the defendant. *Id.* at 955. In Solomon v. Mancusi, 412 F.2d 88 (2nd Cir. 1969), *cert. denied* 396 U.S. 936 (1969), the U.S. Court of Appeals for the Second Circuit denied a habeas corpus petition from a New York appellant who claimed that his Sixth Amendment rights had been violated because there was a delay of nine months between arraignment and trial. The court concluded that a delay of nine months did not necessarily violate the defendant's speedy trial rights because the defendant was unable to show prejudice from the delay or to prove that the delay was caused by purposeful or oppressive actions of the district attorney. *Id.* at 91-92.

80. FED. R. CRIM. P. 50(b).

81. 18 U.S.C. §§ 3161-74 (1974).

82. Richard S. Frase, *Speedy Trial Act of 1974*, 43 U. CHI. L. REV. 667 (1976); Joel H. Garner, *Delay Reduction in the Federal Courts: Rule 50(b) and the Federal Speedy Trial Act of 1974*, 3 J. QUANTITATIVE CRIMINOLOGY 229, 230 (1987).

83. Garner, *supra* note 82, at 230-31.

84. *Id.* at 231.

which was passed by Congress despite the opposition of the federal judiciary and the Department of Justice.[85]

The Speedy Trial Act mandated a single time standard for all federal courts—criminal cases were to reach final disposition within one hundred days of arrest.[86] The most contentious aspect of the Act was the provision that failure to meet the one hundred-day time limit would result in case dismissal.[87] Faced with widespread concern about dismissals, Congress later allowed the courts to exclude certain periods from the calculation of disposition time, gave them authority to waive the standards when necessary to meet the ends of justice, and permitted dismissal *without prejudice* thereby allowing defendants to be re-indicted on the same charges.[88] The extent of the exceptions led one observer to describe the Speedy Trial Act as a "flexible restraint" on case processing time in the federal courts.[89] Speedy trial controls have also been widely used in state courts, either through legislation, administrative rules, or both.[90]

Some researchers have expressed skepticism about the long-term impact of these approaches to delay reduction. Researchers have found mixed support for the effectiveness of administrative and legislative controls, both in the federal system[91] and in state courts.[92] Legislation and court rules can be insensitive to the reality that participants in the court process may "need" a certain degree of delay.[93] Some observers have cautioned that the efforts of courts to comply with speedy trial legislation in criminal cases may result in even greater delays for civil cases, while

85. *Id.* at 230.

86. Frase, *supra* note 82, at 670.

87. *Id.* at 671.

88. *Id.*

89. Garner, *supra* note 82, at 233 (citing A.J. PARTRIDGE, LEGISLATIVE HISTORY OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974, at 34 (1980)).

90. *See generally* Trotter & Cooper, *supra* note 6, at 214 (reviewing speedy trial controls in state courts).

91. *See* G.S. Bridges, *The Speedy Trial Act of 1974: Effects on Delays in Federal Criminal Litigation*, 73 J. CRIM. L. & CRIMINOLOGY 50, 53 (1982) (finding that although there has been a slight improvement in the actual time elapsed in processing cases, courts process many criminal cases with no greater speed); Garner, *supra* note 82 (finding that Rule 50b and the Speedy Trial Act are effective in reducing court delay).

92. Charles W. Grau & Arlene Sheskin, *Ruling out Delay: The Impact of Ohio's Rules of Superintendence*, 66 JUDICATURE 109, 117-18 (1982) (noting that decreasing case processing time may increase defendant's chance of being found guilty); Thomas B. Marvell & Mary Lee Luskin, *Impact of Speedy Trial Laws in Connecticut and North Carolina*, 14 JUST. SYS. J. 343-57 (1991) (noting that speedy trial laws were ineffective where prosecutors, who controlled the docket, were able to deny continuances due to the speedy trial laws).

93. *See* Robert L. Misner, *Delay, Documentation and the Speedy Trial Act*, 70 J. CRIM. L. & CRIMINOLOGY 214, 219-223 (1979) (discussing defense, prosecution and judicial reasons for wanting a delayed trial).

HeinOnline -- 23 Am. J. Crim. L. 530 1995-1996

others have argued that the administrative burdens of speedy trial laws create more processing delays than they reduce.[94] Like most research findings on court delay, the effectiveness of legislative and administrative rules is best viewed in context. They can be a useful part of a delay reduction strategy as long as they are not seen as a substitute for all other efforts.

3. Professional Standards and Guidelines.—Another common method of controlling case processing delays is the adoption of professional standards and guidelines. Issued by organizations such as the American Bar Association and the Conference of State Court Administrators, professional standards derive their authority from consensus and voluntary compliance rather than the threat of legal sanctions. By themselves, professional standards may not influence the behavior of court actors to a great extent. Standards can be effective, however, in establishing administrative goals. By comparing their case handling time with nationally recognized standards, state and local courts can assess the adequacy of their case processing system and identify areas in need of improvement.

The standards most familiar to U.S. court professionals are the guidelines developed by the American Bar Association's National Conference of State Trial Judges.[95] The ABA standards include separate provisions for civil and criminal case processing, as well as separate standards for felonies and misdemeanors.[96] In Standard 2.52, the ABA recommended that courts conclude ninety percent of all felony cases within 120 days of arrest, ninety-eight percent within 180 days, and one-hundred percent within one year.[97]

Researchers from the National Center for State Courts (NCSC) compared the relative success of seventeen state trial courts in meeting these standards. Based upon felony cases handled between 1983 and 1985, *none* of the courts in the NCSC sample met the ABA standards in full.[98] Multnomah County (Portland), Oregon came the closest, processing eighty-

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94. N. GARY HOLTEN & LAWSON L. LAMAR, THE CRIMINAL COURTS: STRUCTURES, PERSONNEL, AND PROCESSES 255 (1991).

95. *See generally* NATIONAL CONFERENCE OF STATE TRIAL JUDGES, STANDARDS RELATING TO COURT DELAY REDUCTION (1985) [hereinafter NCSTJ]; *in* LAWYERS CONFERENCE TASK FORCE ON REDUCTION OF LITIGATION COST AND DELAY, AMERICAN BAR ASSOCIATION DEFEATING DELAY: DEVELOPING AND IMPLEMENTING A COURT DELAY REDUCTION PROGRAM (1986) (describing how a jurisdiction should attack delay and implement delay reduction programs).

96. NCSTJ, *supra* note 95, at 179-80.

97. *Id.* at 180.

98. Mahoney et al., *supra* note 57, at 33–38.

HeinOnline -- 23 Am. J. Crim. L. 531 1995-1996

five percent of its felony caseload within 120 days, ninety-one percent within 180 days, and ninety-six percent in one year or less.[99] Most courts studied by the NCSC were able to conclude only between forty-five percent and seventy-five percent of their felony cases within 120 days, far short of the ninety percent figure recommended by Standard 2.52.[100] Several courts in the study completed fewer than eighty-five percent of their cases within one year.[101]

The NCSC researchers noted that while professional standards are obviously not a panacea for delay problems, they still play an important role in reducing processing delays.[102] Standards, rules, and legislation all help to express and reinforce judicial commitment to reducing unnecessary case delays, provide clear goals for courts wishing to reduce delays, and often lead to the development of administrative systems for monitoring caseload status and tracking the progress of individual cases through the system.[103] Other researchers have suggested that the adoption of explicit time goals may be indirectly associated with reductions in case delays because in the close personal culture of a local court system, the existence of formal goals may encourage some court participants to place a higher value on administrative conformity.[104]

B. Management Interventions to Control Delay

Direct inducements such as case law, statutes, rules, and standards cannot be expected to eliminate delay in every court case. In order to control delay more effectively, it is often necessary to confront the organizational arrangements within a court that perpetuate delay. The research literature generally supports an organizational approach to delay reduction. In their 1988 study, Mahoney and his colleagues found that state trial courts varied considerably in their ability to improve efficiency and speed.[105] Some courts in the study were able to improve their case processing speed significantly, while others were unable to change. Importantly, these courts were not differentiated by the factors typically thought to cause delay, such as caseload size, offense severity, or court resources. The successful courts did share a number of characteristics:

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99. *Id.* at 38.

100. *Id.*

101. *Id.*

102. *Id.* at 62-63.

103. *Id.* at 63; GOERDT ET AL., *supra* note 38, at 78-79.

104. *See* Mary Lee Luskin & Robert C. Luskin, *Case Processing Times in Three Courts*, 9 LAW & POL'Y 207, 215 (1987) ("[I]n as small and public an arena as a court, an explicit standard may in itself provide some mild incentive to conform").

105. Mahoney et al., *supra* note 57, at 6.

HeinOnline -- 23 Am. J. Crim. L. 532 1995-1996

strong judicial leadership with active participation of state and local court officials, clear and widely shared goals for keeping case processing times to a reasonable minimum, timely and accurate information about the speed of case processing, open channels of communication among major court actors, and effective management techniques.[106] If more courts adopted these administrative qualities, they might also realize improvements in their case processing efficiency.

Researchers are quick to caution that reducing court delays through management interventions sounds much easier than it is. Management research has sometimes failed to understand the essentially nonbureaucratic nature of courts and the implications that this has for traditional management techniques.[107] Courts are not organizations in the conventional sense because they lack a clear, unitary, hierarchical structure.[108] Rather, they are composed of a number of relatively equal and competing clusters of actors—judges, prosecutors, defense attorneys, etc. Each cluster of actors has its own reward structure and chain of authority. Often, there is not a framework of shared goals or values. The only value shared by all participants in the court process may be that all of them would prefer not to appear in court if at all possible.[109]

Judges, administrators, prosecutors, defense attorneys, and clerks should be seen as "stake holders" with an abiding interest in the court process, but with different goals and varying investments in processing efficiency. In some cases, delay may frustrate their interests. In other cases, delay may be essential for them to achieve other important goals, such as controlling the timing of particular case events or managing the volume of their total workload. At times, these other goals may be far more critical than whether an individual case is delayed. Procedural reforms that address court functions in isolation (continuances, pretrial diversion, calendaring systems, etc.) inevitably will fail if they are not implemented with an acute awareness of how each of the various actors in the court system will respond. In order to address the true origins of delay, it is often necessary to approach case processing from an inter-organizational perspective.

1. Case flow Management.—Beginning in the 1970s, judges and court administrators came to believe that the best method of reducing delay was to implement aggressive caseflow management systems that could reverse the organizational incentives maintaining delay. Caseflow management

106. *Id.* at 197-205.

107. Sarat, *supra* note 22, at 320-21.

108. Eisenstein & Jacob, *supra* note 30, at 9; Sarat, *supra* note 22, at 320.

109. Sarat, *supra* note 22 at 325.

refers to the "supervision or management of the time and events involved in the movement of a case through the court system from the point of initiation to disposition, regardless of the type of disposition."[110] The word "caseflow" does not suggest that court cases are expected to flow smoothly through the dispositional process. Cases still move intermittently through a series of events, separated by various intervals of time involving little to no activity.[111] Caseflow management is simply a method of making the occurrence of these events and the intervals between them more predictable and regulated.

In the absence of caseflow management systems, the progress of court cases is governed by the independent efforts of various individuals, each seeking to meet their own organizational and personal needs.[112] Reducing delay was not in the self-interest of any single person or group, and it was usually not a part of anyone's formal job responsibilities.[113] Caseflow management represents a shift in thinking about the responsibility for case progress. It relies on the active oversight of each case event by a judge and/or court administrator, as well as frequent and direct consultation between court managers, judges, and lawyers.[114] An effective caseflow management system essentially re-designs the entire case handling process to facilitate speedy dispositions and to make efficiency a part of everyone's job.

Many students of court delay believe that judicial leadership and supervision are essential to effective caseflow management. Fleming argued two decades ago that the individual efforts of judges are far more likely to reduce delay than are rules and legislation, "whose long-term impact is about as effective as legislation outlawing sin."[115] He advocated what later came to be known as caseflow management: "The first step in any effective campaign against court delay in the routine criminal case is to enable the judge, the one person in the courtroom who represents the general public interest, to regain control over the [court process]."[116]

One of the strongest findings of the National Center for State Courts' Pretrial Delay Project was that a court was less likely to experience backlogs and delay if it had an effective caseflow management system in

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110. MAUREEN SOLOMON & DOUGLAS K. SOMERLOT, CASEFLOW MANAGEMENT IN THE TRIAL COURT: NOW AND FOR THE FUTURE 3 (1987).

111. *Id.*

112. *See* Steven Flanders, *Modeling Court Delay*, 2 LAW & POL'Y Q. 305, 307-14 (1980) (explaining the difficulty of modeling a court system due in part to the conflicting interests of participants).

113. *Id.* at 316-17.

114. *Id.* at 315-16.

115. Fleming, *supra* note 6, at 23.

116. *Id.* at 25.

HeinOnline -- 23 Am. J. Crim. L. 534 1995-1996

place.[117] This finding applied to both civil and criminal courts, although caseflow management systems were more common in criminal courts at the time.[118] When the Pretrial Delay Project was conducted, court control over the pace of litigation was a relatively new concept for civil courts.[119] In most of the courts studied by the project, attorneys controlled the pace of civil case processing.[120] Criminal courts, on the other hand, almost always had formal time limits and a system for monitoring compliance.[121] Prosecutors may have played a role in the timing of case filing, but no criminal court in the study gave attorneys as much discretion over the speed of case processing as did the civil courts.[122] The Pretrial Delay researchers believed that this difference was at least partly responsible for the fact that delays were nearly always more extensive in the civil courts.[123]

2. *Financial Incentives*.—Another approach to controlling court delays is the use of monetary incentives to encourage more efficient case handling. One such effort, known as the Speedy Disposition Program (SDP), was implemented in New York City during the early 1980s.[124] The SDP provided the six district attorney offices in New York with an opportunity to share several million dollars of incentive funds if they acted successfully to reduce the average age of their pending criminal cases.[125] The evaluation of the SDP effort suggested that the use of financial incentives had little long-term effect on the average length of time that cases awaited disposition.[126] Results were mixed, however, and the researchers saw enough impact in some sites to indicate that the approach was worthy of further investigation.[127] The SDP effort may have fallen short of expectations because New York prosecutors already were provided with more than adequate resources by the city and did not respond strongly to the promise of new funds.[128] In more appropriate contexts, however, the use

117. Church et al., *supra* note 5, at 66-72.

118. *Id.* at 71.

119. *Id.* at 39.

120. *Id.*

121. *Id.* at 42.

122. *Id.* at 39.

123. *Id.*

124. Milton Heumann & Thomas W. Church, Jr., *Criminal Justice Reform, Monetary Incentives, and Policy Evaluation*, 12 LAW & POL'Y 81, 83 (1990); THOMAS W. CHURCH JR. & MILTON HEUMANN, SPEEDY DISPOSITION: MONETARY INCENTIVES AND POLICY REFORM IN CRIMINAL COURTS 15 (1992).

125. Heumann & Church, *supra* note 124, at 83.

126. *Id.* at 85.

127. *Id.* at 94-97.

128. *Id.* at 95.

HeinOnline -- 23 Am. J. Crim. L. 535 1995-1996

of direct financial incentives to improve efficiency may be another method of controlling delay in the courts.

V. Controlling Delay in the Juvenile Court

> Speedy processing of all juvenile cases is important for two reasons. First, in order to maximize the impact upon the juvenile that he has been caught in a criminal act, that he will be held accountable for what he has done, and that there will be consequences for his actions, it is important that the case be resolved quickly. If the case drags on for too long, the impact of the message is diluted, either because the juvenile has been subsequently arrested for other offenses and 'loses track' of just what it is that he is being prosecuted for or because the juvenile has not engaged in any further delinquent acts and feels that any consequences for the past offense are unfair. Speedy processing is also important because excessive delay is obviously unfair and damaging to victims.[129]

Efforts to reduce court delay have been widespread for several decades in the form of legislation, case law, administrative rules, organizational change, and policy interventions. Yet, research about these efforts has been conducted entirely in criminal and civil courts. Juvenile court delays have not been a prominent concern among researchers, court professionals, or policy makers. Very little systematic knowledge is available on the causes and consequences of delayed delinquency cases, and virtually no literature exists on the relative effectiveness of the various delay reduction techniques in juvenile courts. The following section reviews the extent of administrative, legislative, and judicial efforts to affect the timing of delinquency case processing in juvenile courts.

A. Constitutional Provisions

Juveniles have no federal constitutional right to a speedy trial. Before the 1960s, a youth appearing before a juvenile court had few rights in general. Because the official purpose of juvenile court proceedings was to "help" juveniles and not to establish guilt and administer punishment, juvenile courts were not considered to be trial courts. Thus, a youth involved in a delinquency proceeding was not considered to be at risk of criminal prosecution and did not require formal due process protections.

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129. James Shine & Dwight Price, *Prosecutors and Juvenile Justice: New Roles and Perspectives, in* JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA 101, 115 (I.M. Schwartz ed., 1992) (quoting Massachusetts Attorney General Scott Harshbarger).

HeinOnline -- 23 Am. J. Crim. L. 536 1995-1996

These assumptions began to change during the 1960s as juvenile courts were required to provide procedural protections for juveniles.

The U.S. Supreme Court first granted limited procedural rights to juveniles in the 1966 case, *Kent v. United States*.[130] Ruling against the District of Columbia's arbitrary and poorly documented procedures for transferring juveniles to the criminal court, the Supreme Court required transfer hearings to incorporate basic standards of due process, orderliness, and fair treatment.[131] *Kent* challenged the fundamental premise that juvenile court proceedings were outside the sphere of criminal prosecution. The Supreme Court had previously interpreted the Equal Protection Clause to suggest that classes of people could receive lesser due process *if* a "compensating benefit" came with this diminished protection.[132] In theory, the juvenile court provided such a compensating benefit because its concern was for the best interests of juveniles rather than guilt or innocence. The *Kent* decision referred to evidence that this compensating benefit did not exist, and while the Court did not equate juvenile court hearings with criminal trials, it did suggest that juvenile court proceedings had to provide at least the "essentials" of due process.[133] These essentials were enumerated by the Court in its next important juvenile procedure case.

The case most responsible for changing the juvenile justice system was *In re Gault* in 1967.[134] Gerald Gault was an Arizona youth who had been incarcerated for placing an obscene telephone call.[135] His appeal asked the Supreme Court to consider whether the juvenile court process had violated several of his Fifth and Sixth Amendment rights—counsel, notice of charges, confrontation of witnesses, the privilege against self-incrimination, and the right to a transcript and appellate review.[136] The *Gault* Court ruled that in any juvenile court proceeding where commitment to an institution is a possible outcome, juveniles should have the right to notice and to counsel, to confront and cross-examine witnesses, and to the privilege against self-incrimination.[137] The Court did not rule on a juvenile's right to appellate review or to transcripts, but it encouraged states to provide those rights.[138]

The Supreme Court based its ruling on the fact that Gault had been

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130. 383 U.S. 541, 557 (1966).
131. *Id.* at 562.
132. THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 112-113 (1992).
133. *Kent*, 383 U.S. at 557.
134. 387 U.S. 1 (1967).
135. *Id.*
136. *Id.* at 10.
137. *Id.* at 1-3.
138. *Id.* at 58.

punished by the juvenile court rather than helped.[139] The Court also rejected the doctrine of *parens patriae* as the founding principle of juvenile justice, describing the concept as "murky" and of "dubious" historical relevance, and concluded that the process used to incarcerate Gault violated the Due Process Clause of the Fourteenth Amendment.[140] Extending the reasoning that first appeared in *Kent*, the Supreme Court asserted that juveniles need not give up their Fourteenth Amendment rights in order to derive the benefits of their status as juveniles—in other words, the greater concern for well-being supposedly inherent in juvenile court proceedings.[141] Furthermore, the Court suggested the aspects of due process it considered essential for juvenile court proceedings: "fairness, impartiality and orderliness."[142]

The Supreme Court demanded more of juvenile court proceedings. In its 1970 decision, *In re Winship*, the Court ruled that the "preponderance of evidence" standard used for delinquency adjudications in New York violated the due process promised by *Kent* and *Gault*.[143] The *Winship* case involved an adjudication based upon evidence that the juvenile court judge openly admitted would not have met a "reasonable doubt" standard.[144] On appeal, the Supreme Court ruled that the reasonable doubt standard should be required in all delinquency adjudications.[145] The Court rejected the opinion of the New York appellate court which had upheld the adjudication arguing that juvenile courts were not required to operate on the same standards as adult courts because they were designed to save rather than punish.[146]

1. Limiting Due Process for Juveniles.—The *Winship* decision appeared to signal the end of the Supreme Court's expansion of procedural rights for juveniles. In fact, Chief Justice Burger and Justice Stewart offered a dissent to the *Winship* decision that foreshadowed the future direction of the Court in matters of juvenile due process rights.[147] They re-asserted that the intent of juvenile court proceedings was still to help juveniles rather than to punish them.[148] They conceded that while actual practices were sometimes inconsistent with this rehabilitative intention, the

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139. *Id.* at 26-27.
140. *Id.* at 16.
141. *Id.* at 30.
142. *Id.* at 26.
143. 397 U.S. 358, 368 (1970).
144. *Id.* at 369.
145. *Id.* at 368.
146. *Id.* at 365.
147. Bernard, *supra* note 132, at 122-23.
148. *Winship*, 397 U.S. at 376.

HeinOnline -- 23 Am. J. Crim. L. 538 1995-1996

solution to such failures was not to be found in *Kent* and *Gault*, which they believed would eventually undermine the legal and philosophical bases of juvenile justice.[149] Chief Justice Burger and Justice Stewart favored a continued distinction between adult and juvenile court procedures so as to preserve the special treatment accorded young people.[150]

In its next significant juvenile law case, the Supreme Court ruled that the Due Process Clause did *not* require jury trials in juvenile court.[151] In the Court's view, *Gault* and *Winship* had already enhanced the accuracy of the juvenile court fact finding process.[152] Juries would add little to the factual quality of the process and would be disruptive to the informal atmosphere of the juvenile court, tending to make it more adversarial.[153] *McKeiver* appeared to signal the Court's retreat from the direction established by *Gault*, *Kent*, and *Winship*. Thus, after several dramatic cases that granted juveniles greater due process protections, the Supreme Court stopped short, refusing to grant juveniles the right to jury trial, appellate review, or transcripts of court proceedings.

The Supreme Court was never asked for an explicit opinion regarding juvenile rights to speedy trial. However, the *Gault* Court was careful to characterize juvenile court proceedings as being accountable only to the Due Process Clause of the Fourteenth Amendment and specifically not within the purview of the Sixth Amendment.[154] Furthermore, during the 1970s and 1980s, the Court continued its attempts to resuscitate the *parens patriae* philosophy of juvenile justice.[155] To date, the Supreme Court has not indicated any new willingness to expand due process for juveniles, including the right to speedy trial.

B. *Legislation and Rules in the Juvenile Court*

Approximately half of the states use legislation and court rules to control delinquency case processing time in the juvenile court, though the extent of these controls varies greatly.[156] The data in Table 2 illustrate

149. *Id.*

150. *Id.*

151. McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971).

152. *Id.* at 539.

153. *Id.* at 545.

154. Sanborn, *supra* note 4, at 232.

155. *See generally* Schall v. Martin, 467 U.S. 253, 256-57 (1984) (holding a law authorizing pretrial detention of an accused juvenile delinquent on the basis that there was a risk that the juvenile would commit further crimes did not violate due process).

156. *See* LINDA A. SZYMANSKI, NATIONAL CENTER FOR JUVENILE JUSTICE JUVENILE COURT CASE PROCESSING TIME: A STATUTE, COURT RULE, AND CASE LAW ANALYSIS (1994) (listing the full text of various state statutes and court rules relating to juvenile court

HeinOnline -- 23 Am. J. Crim. L. 539 1995-1996

the time limits employed, including several patterns described below.[157] In thirty-one states, there are deadlines for holding adjudication hearings in delinquency cases. For example, several states set maximum allowable times between initial case referral and adjudication hearings (thirty days in California, sixty days in Massachusetts, and fifty-six days in Oregon). More commonly, states set a maximum number of days allowed between the filing of the delinquency charges and the adjudication hearing. For example, in cases where a youth is being held in detention, Georgia established a limit of ten days between the filing of charges and the adjudication hearing. In non-custody cases, adjudication hearings in a Georgia court must be held within sixty days of charges being filed.

In twenty-five states, there are time limits for juvenile court dispositional hearings. In Nebraska and Wisconsin, for instance, the deadline for dispositional hearings is set relative to the filing of the delinquency petition. Nebraska sets a maximum of 180 days between the petition and the dispositional hearing, regardless of the youth's detention status. Wisconsin limits the time between the plea hearing and the final disposition to ten days if the youth was being held in detention, and thirty days if the youth was released awaiting disposition.

Twenty-four states limit the time between adjudicatory and dispositional hearings. Arizona, for example, allows no more than thirty days between adjudication and disposition for detained juveniles and forty-five days for non-detained juveniles. A number of states restrict the time between adjudication and disposition for detained juveniles only (for example, fourteen days in Arkansas, fifteen days in Florida, thirty days in Georgia). Washington is one of the most aggressive states in controlling pre-dispositional delays. Dispositional hearings in Washington are required within fourteen days of adjudication for detained juveniles and twenty-one days for non-detained juveniles.

A few states limit the time for handling cases being considered for transfer to the criminal court. While judicially transferred cases account for a very small portion of all juvenile delinquency cases, they represent a highly visible and contentious area of the juvenile court caseload.[158]

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case processing time).

157. The analysis portrayed in Table 2 summarizes the use of legislation and state court rules only. In some jurisdictions, local court rules may be used to set case processing standards.

158. *See* Barry C. Feld, *Juvenile (In)justice and the Criminal Court Alternative*, 39 CRIME & DELINQ. 403, 411-12 (1993); Francis Barry McCarthy, *The Serious Offender and Juvenile Court Reform: The Case for Prosecutorial Waiver of Juvenile Court Jurisdiction*, 38 ST. LOUIS U. L.J. 629, 629-30 (1994); Franklin E. Zimring, *The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver*, 5 NOTRE DAME J. L. ETHICS & PUB. POL'Y 267, 280 (1991).

HeinOnline -- 23 Am. J. Crim. L. 540 1995-1996

Nine States regulate the timing of juvenile transfer cases, either through statute or court rules, as illustrated in Table 3 and discussed below. Indiana, for example, requires the court to hold transfer hearings within sixty days of referral (twenty days if the youth was held in detention).

C. *Case Law and Juvenile Court Processing Time*

Although the U.S. Supreme Court has not applied all constitutional due process protections to juvenile court proceedings, some of the states have interpreted the Court's use of the Fourteenth Amendment in *Gault* to suggest at least the possibility of other rights for juveniles—including the right to speedy trial.[159] Courts in Arkansas, Florida, Illinois, Minnesota, New Hampshire, New York, and Washington have extended some form of speedy trial rights to juveniles. The New Hampshire Supreme Court ruled in a 1983 case that juvenile court adjudications should be dismissed if the court failed to meet the statutory deadline for adjudication *and* the delay was not due to actions of defense counsel.[160] In a 1985 case, the Appellate Court of Illinois vacated the adjudications of four juveniles whose due process rights were found to have been violated by a delay of more than seven hundred days between their arraignment and adjudicatory hearing.[161] In 1987, the adjudication of a Minnesota juvenile was reversed and the delinquency petition dismissed *with prejudice* by the state court of appeals.[162] The court held that the juvenile's right to speedy trial had been violated when prosecutors failed to bring the case to trial within sixty days as required by Minnesota statute.[163] The Arkansas Supreme Court recently affirmed the dismissal of burglary and theft charges against a juvenile because the State failed to bring the accused to trial within one year of the filing of charges.[164] The court's opinion in the case was based on the speedy trial rules for juveniles provided in Arkansas statute.[165]

Appellate courts have dismissed other delinquency proceedings due to violations of speedy trial statutes in Washington[166] and New York.[167]

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159. Jesse H. Choper, *Consequences of Supreme Court Decisions Upholding Individual Constitutional Rights*, 83 MICH. L. REV. 1, 53 (1984).

160. *In re* Eric C., 469 A.2d 1305, 1306 (N.H. 1983).

161. Illinois v. A.J., T.M., L.R. and J.R., 481 N.E.2d 1060, 1066 (Ill. App. Ct. 1985).

162. *In re* J.D.P., 410 N.W.2d 1, 4 (Minn. Ct. App. 1987).

163. *Id.*

164. Arkansas v. McCann, 853 S.W.2d 886, 888 (Ark. 1993).

165. *Id.*

166. *See* Washington v. Smith, 734 P.2d 491, 498-99 (Wash. Ct. App. 1987) (reversing one conviction because the 74 days allowed to arraign and bring defendant to trial was exceeded by four days; reversing another conviction because 14-day limit to commencement

HeinOnline -- 23 Am. J. Crim. L. 541 1995-1996

In the State of Florida, appellate courts have dismissed delinquency proceedings against juveniles for a large number of reasons related to speedy trial. Among these reasons are: 1) a delay of more than one year between arrest and adjudication;[168] 2) failure to state properly the reasons for extending the statutory deadline for speedy trial;[169] 3) failure to provide proper notice of a hearing, resulting in an adjudicatory hearing being delayed for more than ninety days after arrest;[170] 4) filing motions to extend a speedy trial period after the expiration of the speedy trial deadline;[171] 5) misplacement of a case file by the court clerk's office, which did not constitute an "exceptional circumstance" for extending a

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of speedy trial after information is filed was exceeded by 233 days); Washington v. Adamski, 761 P.2d 621, 623 (Wash. 1988) (en banc) (agreeing that prosecutor's failure to comply with CR 45 violates due diligence necessary to obtain a continuance).

167. *See In re* Oranchank, 466 N.Y.S.2d 172, 173 (N.Y. Fam. Ct. 1983) (holding that the time lag of more than one year unduly prejudiced the infant respondent and granting the dismissal of the petition); *In re* J.V., 487 N.Y.S.2d 304, 306 (N.Y. Fam. Ct. 1985) (finding that the State could not refile petition against juvenile after initial petition was dismissed under speedy trial provision); *In re* Steven C., 494 N.Y.S.2d 658, 660 (N.Y. Fam. Ct. 1985) (holding that if fact finding in delinquency proceeding is not commenced within fixed maximum period after initial appearance, defendant has been denied right to speedy trial); *In re* Juan V., 553 N.Y.S.2d 397, 398 (N.Y. App. Div. 1990) (holding that a heavy court docket did not warrant a special circumstances extension of the 60-day speedy trial provision and dismissing the petition); *In re* Robert S., 579 N.Y.S.2d 851, 853 (N.Y. App. Div. 1991), *aff'd* 596 N.Y.S.2d 148 (1993) (finding that where the State failed to demonstrate that a good faith effort had been made to execute a warrant on the juvenile defendant, dismissal of the petition was appropriate); *In re* Jessie C., 583 N.Y.S.2d 1011, 1012 (N.Y. Fam. Ct. 1992) (granting dismissal of juvenile delinquency petition where more than 60 days had elapsed from date of filing original petition and no adjournments had been granted based on showing of good cause or special circumstances); *In re* Lydell J. & Taseem D., 583 N.Y.S.2d 1007, 1009 (N.Y. Fam. Ct. 1992) (holding that period spent in jail by defendant was chargeable to state for speedy trial purposes and granting dismissal of juvenile delinquency petition); *In re* Nicole D., 584 N.Y.S.2d 403, 405 (N.Y. Fam. Ct. 1992) (holding that provisions of speedy hearing section of family court act were mandatory and granting dismissal of petition); *In re* James H., 597 N.Y.S.2d 53, 54 (N.Y. App. Div. 1993) (granting dismissal of juvenile delinquency petition where no good cause was shown for adjournment beyond 60 days); *In re* Shannon FF, 596 N.Y.S.2d 219, 220 (N.Y. App. Div. 1993) (holding that where a juvenile delinquency petition is dismissed for facial insufficiency and a second petition is filed, the 60-day speedy hearing provision runs from defendant's initial appearance on the first petition); *In re* Jose R., 598 N.Y.S.2d 243, 244 (N.Y. App. Div. 1993), *rev'd*, 83 N.Y.2d 388 (1994) (holding that dismissal of juvenile delinquency proceedings was warranted where State had failed to meet statutory deadline for hearing even though juvenile's absence was cause of delay).

168. Shanks v. Cianca, 491 So.2d 1267, 1267 (Fla. Dist. Ct. App. 1986).

169. J.J.S. v. Florida, 440 So.2d 465, 466 (Fla. Dist. Ct. App. 1983).

170. *In re* M.A., 483 So.2d 511, 512 (Fla. Dist. Ct. App. 1986).

171. D.A.L. v. Florida, 456 So.2d 1333, 1335 (Fla. Dist. Ct. App. 1984); J.T. v. Florida, 601 So.2d 283, 284 (Fla. Dist. Ct. App. 1992).

HeinOnline -- 23 Am. J. Crim. L. 542 1995-1996

statutory speedy trial period;[172] and 6) failure to respond for more than twenty-one days to a juvenile's motion for dismissal due to a violation of speedy trial rights.[173]

Yet, other courts have either explicitly denied speedy trial rights to juveniles or severely limited their application. In 1985, the Appellate Court of Illinois denied the appeal of a delinquent juvenile who claimed that the Cook County Juvenile Court violated his Sixth Amendment rights when an adjudicatory hearing was not held within thirty days as required by statute.[174] The appellate court found that while the lower court had refused to comply with an Illinois statute that called for the dismissal of delayed cases, this refusal did *not* violate the juvenile's rights because juvenile court proceedings were thought to be separate and distinct from criminal court proceedings.[175] Thus, although the juvenile court had in fact violated the statutory requirement that a fact-finding hearing be held within thirty days, the court did not interpret this violation as granting the juvenile an absolute right to dismissal of the proceedings.[176]

The right to a speedy trial clearly was denied to juveniles in the State of Kansas. In a 1987 case, the Court of Appeals of Kansas heard the case of a delinquent minor whose adjudication by a magistrate court had been upheld by a county district court.[177] The minor appealed for dismissal on the grounds that the district court had not held *de novo* review in a timely manner, in other words, within thirty days as specified in the Kansas statute.[178] In affirming the lower court's decision, the court of appeals held that juveniles did not have a constitutional right to speedy trial in proceedings conducted under the Kansas juvenile offenders code and that the statutory requirement of *de novo* review within thirty days was not intended as a codification of the right to speedy trial.[179] Thus, the thirty-day requirement was not mandatory and juveniles were not entitled to a speedy trial dismissal based upon failure to meet this standard.[180]

Another case before the Florida Supreme Court involved the question of whether a juvenile would be denied a speedy trial if his or her adjudication occurred after the ninety-day period mandated by Florida statute.[181] Florida statute required that juvenile court adjudications taking

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172. T.C. v. Florida, 540 So.2d 937, 938 (Fla. Dist. Ct. App. 1989).
173. E.R. v. Florida, 617 So.2d 1149, 1150 (Fla. Dist. Ct. App. 1993).
174. Illinois v. M.A., 477 N.E.2d 27, 29 (Ill. Ct. App. 1985).
175. *Id.* at 30.
176. *Id.* at 29-30.
177. *In re* T.K., 731 P.2d 887, 887 (Kan. Ct. App. 1987).
178. *Id.* at 888.
179. *Id.* at 890.
180. *Id.* at 891.
181. R.J.A. v. Foster, 603 So.2d 1167, 1171 (Fla. 1992).

more than ninety days be dismissed *with prejudice*. State court rules, however, provided an additional ten-day grace period for holding adjudication hearings.[182] The Florida Supreme Court ruled narrowly that a juvenile court's use of the ten-day grace period did not violate juveniles' right to speedy trial because speedy trial rights were procedural rather than substantive and fell within the court's discretion.[183] The opinion was based on the Sixth Amendment balancing analysis in *Barker v. Wingo* in which courts were given the discretion to determine the amount of delay that constitutes a violation of speedy trial.[184] The Florida court did affirm, however, that the state's juvenile courts have an obligation to process delinquency cases in a timely fashion or face the risk of dismissal.[185]

During the past decade, courts in a few states have supported time limitations for juvenile court proceedings. Speedy trial mandates have been endorsed by courts in the states of Arkansas, Florida, Minnesota, New Hampshire, New York, and Washington. In some cases, however, a juvenile's right to speedy trial has been defined rather narrowly. Speedy trial rights have been explicitly denied to juveniles in other cases (for example, in Illinois and Kansas). It would appear that non-legal inducements will continue to be a common mechanism for ensuring speedy case handling in the Nation's juvenile courts.

D. *Time Standards in the Juvenile Court*

Since the late 1970s, several sets of juvenile justice standards have been issued by groups representing federal agencies or national professional associations. The time limitations established by these groups are illustrated in Table 4. One of the earliest of these standard-setting groups was the Joint Commission on Juvenile Justice Standards, an effort by the Institute of Judicial Administration and the American Bar Association (IJA/ABA).[186] The IJA/ABA project began its work in 1971 and issued

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182. *Id.* at 1169.

183. *Id.* at 1171-72.

184. Michael J. Dale, *Juvenile Law: 1992 Survey of Florida Law*, 17 NOVA L. REV. 335, 347-48 (1992).

185. *Foster*, 603 So. 2d at 1168-69.

186. The Institute of Judicial Administration began the project in 1971. The American Bar Association joined as a co-sponsor in 1973. *See* INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION (IJA/ABA), JUVENILE JUSTICE STANDARDS SERIES (1980). For a review of all standards and the process used to develop them, see BARBARA D. FLICKER, STANDARDS FOR JUVENILE JUSTICE: A SUMMARY AND ANALYSIS 15 (2d ed. 1982) (formulating standards in an attempt to address comprehensively the laws regulating children in their contact with social institutions).

HeinOnline -- 23 Am. J. Crim. L. 544 1995-1996

its final recommendations in twenty-three separate volumes published between 1977 and 1980. Each volume of the IJA/ABA standards addressed a separate topic of interest, for example, court administration, prosecution, probation, adjudication, disposition, and appeal.[187]

Other prominent juvenile justice standards include those of the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC), which was established in 1974 by the Juvenile Justice and Delinquency Prevention Act.[188] Congress directed the NAC to develop general standards for the administration of juvenile justice. The NAC's final report was published in 1980 and contained standards for a wide range of juvenile justice functions, including prevention programs, court administration, adjudication, and supervision.[189]

The standards developed by these groups addressed case processing time and juvenile court delay in a number of ways. For example, the IJA/ABA Joint Commission asserted that time limits on juvenile court case handling were necessary to combat the negative effects of unwanted court delays:

> Delay in the processing, adjudication, and disposition of criminal and juvenile cases compounds the disadvantages of detention, increases the risks of nonappearance and antisocial conduct if the juvenile is released, and is harmful to the interests both of the accused and the community.[190]

In Standard 7.1, the IJA/ABA Commission declared that "juvenile court cases should always be processed without unnecessary delay" in order to "effectuate the right of juveniles to a speedy resolution of disputes involving them" and to be consistent with the "public interest in prompt disposition of such disputes."[191] Case processing time should be monitored especially closely, according to the IJA/ABA, in cases involving "young, immature, and emotionally troubled juveniles," "juveniles who are detained or otherwise removed from their usual home environment," and "juveniles whose pretrial liberty appears to present unusual risks to

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187. *See generally* FLICKER, *supra* note 186 (reviewing the juvenile justice standards set out by the Institute of Judicial Administration and the American Bar Association).

188. Juvenile Justice and Delinquency Prevention Act of 1974, Pub.L. No. 93-415, § 207 (1974) (codified at 42 U.S.C. § 5617 (1988)).

189. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP), STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE: REPORT OF THE NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION (1980) [hereinafter OJJDP].

190. INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION (IJA/ABA), STANDARDS RELATING TO INTERIM STATUS 11 (1980).

191. INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION (IJA/ABA), STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS 21 (1980).

HeinOnline -- 23 Am. J. Crim. L. 545 1995-1996

themselves or the community."[192] The IJA/ABA standards advanced the following time limits for specific stages of the juvenile justice process and recommended that delinquency cases be dismissed *with prejudice* when these time limits were exceeded:[193]

2 hours	between police referral and the decision to detain;
24 hours	between detention and a petition justifying further detention;
24 hours	between a detention petition and the detention hearing;
15 days	between police referral and adjudication (if youth is detained);
30 days	between police referral and adjudication (if youth is *not* detained);
15 days	between adjudication and final disposition (if youth is detained);
30 days	between adjudication and final disposition (if youth is *not* detained).

In effect, the IJA/ABA standards suggested a maximum of sixty days from referral to disposition for non-detained cases, and thirty days in the case of detained juveniles. In Standard 3.3, the Joint Commission clarified that the time standard for adjudicatory hearings should apply to transfer hearings also.[194] Juvenile courts were to hold *either* adjudicatory or transfer hearings within fifteen days for detained youth, and within thirty days for non-detained youth.[195]

Similar time limits were recommended by the National Advisory Committee for Juvenile Justice and Delinquency Prevention. The NAC recommended that in all "matters subject to the jurisdiction of the family court over delinquency, the following time limits should apply:"[196]

24 hours	between police referral and the report of intake decision (if youth is detained);
30 days	between police referral and the report of intake decision (if

192. *Id.*

193. *See id.* at 5-22 (setting out standards for reporting, notification of rights, discovery, rights to a probable cause hearing, right to counsel, role of parents or guardians, and calendaring).

194. INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION (IJA/ABA), STANDARDS RELATING TO COURT ORGANIZATION AND ADMINISTRATION 32 (1980).

195. *Id.* at 7.

196. OJJDP, *supra* note 189, at 311.

HeinOnline -- 23 Am. J. Crim. L. 546 1995-1996

	youth is *not* detained);
24 hours	between detention and the detention hearing;
2 days	between intake report and the filing of a petition by the prosecutor (if detained);
5 days	between intake report and the filing of a petition by the prosecutor (if *not* detained);
5 days	between filing of the petition and the initial arraignment hearing;
15 days	between filing of the petition and adjudication (if detained);
30 days	between filing of the petition and adjudication (if *not* detained);
15 days	between adjudication and final disposition.

The NAC standards suggested that the total time between police referral and court disposition should not exceed eighty days in cases of non-detained juveniles, and thirty-three days for detained cases. As recommended in the IJA/ABA standards, the NAC called for dismissal of the case if court processing extended beyond these maximums.[197] However, the NAC permitted dismissal *without prejudice*, allowing prosecutors to re-file for adjudication on the same case.[198] The NAC also suggested the use of sanctions for court officials when cases were delayed beyond the recommended time limits:

> When these time limits are not met, there should be authority to release a detained juvenile, to impose sanctions against the persons within the juvenile justice system responsible for the delay, and to dismiss the case with or without prejudice.[199]

The decision to impose sanctions, according to the NAC, should account for the possibility that excessive delays may have been caused by a "lack of sufficient resources" rather than "individual failures."[200] The NAC standards also recognized that there were situations when exceptions to the time limits could be granted. Extensions could be authorized in the following circumstances: 1) when important evidence or witnesses are unavailable to the prosecuting attorney during the prescribed time period even after reasonable efforts to secure them; and 2) when a continuance is requested by any party to the case *and* the judge finds that the "ends of justice" would be better served by a continuance than by "a speedy

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197. *Id.* at 311-12.
198. *Id.* at 311.
199. *Id.*
200. *Id.* at 312.

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resolution of the case."[201] Even when necessary, extensions were not to exceed thirty days in cases involving detained juveniles, or sixty days in non-custody cases.[202]

The NAC standards also listed a number of circumstances in which it would be appropriate to exclude certain periods of time in calculating elapsed processing time:

> Any period of delay caused by the absence, incompetency, or physical incapacity of the respondent; consideration of a motion for change of venue, a motion for transfer to a court of general jurisdiction pursuant to Standard 3.116, or an extradition request; a diagnostic examination ordered by the family court and completed within the time specified in the order; or an interlocutory appeal; and a reasonable period of delay caused by joinder of the case with that of another person for whom the time limits have not expired, should not be included in the computation of the prescribed time periods.[203]

Following the release of the IJA/ABA and NAC standards, other national groups issued juvenile justice standards. In their standards for state trial courts, the ABA's National Conference of State Trial Judges included Standards 2.50 through 2.55, known as the "Standards Relating to Court Delay Reduction."[204] The standards provided guidance for state trial courts on a number of issues related to case processing, including caseflow management, calendaring, continuances, setting trial dates, and delay reduction programs.[205] In Standard 2.52 on "timely disposition," the ABA explicitly addressed the issue of time standards for delinquency cases.[206] The ABA standards recommended that:

- detention hearings be held within twenty-four hours of a juvenile's admission to a detention facility;
- adjudicatory (or transfer) hearings be held within fifteen days of admission to detention for juveniles in custody, and within thirty days following the filing of a delinquency petition for non-custody cases; and
- disposition hearings be held no later than fifteen days following the adjudicatory hearing.

The National District Attorneys Association (NDAA) also issued standards for the handling of juvenile delinquency cases. In 1987, the Juvenile Justice Committee of the NDAA began an effort to revise

201. *Id.* at 313.
202. *Id.*
203. *Id.*
204. NCSTJ, *supra* note 95, at 167.
205. *Id.* at 169-71.
206. *Id.*

HeinOnline -- 23 Am. J. Crim. L. 548 1995-1996

Prosecution Standard 19.2 for juvenile delinquency cases, which had been originally adopted by the NDAA in 1977.[207] The revised standards were issued in 1989 and addressed a wide range of issues related to the prosecution of juvenile cases—for example, case screening, criteria for diversion, determining legal sufficiency, uncontested cases and the use of plea agreements, transfer or certification to adult court, adjudication, and disposition.[208] The NDAA recommended the following time limits for the processing of juvenile cases: "Prosecutors should screen cases for legal sufficiency within twenty-four hours of police referral if the youth is in detention, and within seven days if the youth is not detained."[209] Intake decisions (whether to divert, file a formal petition, or transfer) should be made within three days of police referral if a youth is detained, and within ten days if not detained.[210] "Adjudicatory hearings should be held within thirty days of police referral for detained juveniles, and within sixty days for non-detained juveniles."[211] "Disposition hearings should be held within thirty days of the adjudicatory hearing."[212]

Altogether, the NDAA standards suggested a maximum time of sixty days between police referral and disposition in cases where a youth is detained, or ninety days in non-detained cases. The NDAA recognized that these time limits may be exceeded in particularly complex cases, such as when the discovery process requires more time, or the prosecutor must review a lengthy social history or psychological evaluation before making a decision to transfer a case for criminal prosecution.[213] In the commentary accompanying Standard 19.2, the NDAA issued the following caution:

> The time limits suggested are model ones. It is recognized that some jurisdictions by law or practice make even more prompt determinations, and that other jurisdictions, due to limitations in resources or the environment, have been unable to make such timely decisions. The point is that prompt determinations generally promote confidence in the system and fairness to the victim, the community, and the juvenile. Further, prompt decisions are more likely to result in rehabilitation of the juvenile by providing more immediate attention.[214]

In general, the provisions of NDAA's Standard 19.2 mirrored the juvenile justice guidelines developed by the earlier standard-setting associations. The time limits recommended in the NDAA standards,

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207. Shine & Price, *supra* note 129, at 103.
208. *Id.* at 120-32.
209. *Id.* at 123-24.
210. *Id.* at 124.
211. *Id.* at 130.
212. *Id.*
213. *Id.* at 126.
214. *Id.*

HeinOnline -- 23 Am. J. Crim. L. 549 1995-1996

however, were more lenient than those published earlier by the IJA/ABA, NAC, and ABA. The NDAA's maximum of sixty days between referral and disposition in detention cases was twice the thirty-day maximum recommended by the IJA/ABA standards and the ABA's Standard 2.52, and nearly double the limit of thirty-three days recommended in the NAC standards. The NDAA's time limit for non-custody cases (ninety days from referral to disposition) was also the longest of all the standard-setting groups.

The development of these standards and guidelines reflects a growing awareness of juvenile court delay among legal professionals and policy makers. Of course, the impact of standards on actual case processing may be limited. This is especially true if the time frames suggested by the standards are considerably faster than the pace at which juvenile courts are currently processing their delinquency caseloads. According to the analysis above (see table 1), in 1992 the *median* time between case referral and final disposition for petitioned delinquency cases in a large sample of jurisdictions was sixty-eight days. In large jurisdictions, forty-one percent of all petitioned cases had disposition times in excess of ninety days. Clearly, case processing time in many jurisdictions often exceeds the time limits recommended by national standards. Whether juvenile courts are overloaded and poorly managed, or the standards themselves are out-of-date and unrealistic, remains to be determined by research. As Anne Rankin Mahoney once advised, the application of time standards in the juvenile court should be informed by an empirical understanding of the juvenile court and its unique task environment:

> Before standards for juvenile cases are widely adopted, issues of time in juvenile court should be considered carefully and data collected on the extent to which delay occurs in juvenile justice systems. Time may have a different meaning in juvenile courts than it does in adult courts, and an uncritical application of time standards and delay reduction procedures to juvenile courts may be inappropriate.[215]

E. *Management Interventions in the Juvenile Court*

Research on the criminal and civil courts has suggested that legislation, case law, rules, and professional standards may encourage an organizational climate that is supportive of efficient case handling. However, they tend to have little empirical association with actual patterns in the timing of case dispositions. Instead of relying on such inducements, judges and administrators often advocate caseflow management systems as

215. Mahoney, *supra* note 40, at 37.

HeinOnline -- 23 Am. J. Crim. L. 550 1995-1996

a means of ensuring speedy case handling in the criminal and civil courts.

Caseflow management can be applied just as effectively in the juvenile justice system. The Cuyahoga County Juvenile Court (Cleveland, Ohio) implemented a caseflow management system in 1991 after an internal study found that the average time for delinquency dispositions was 226 days.[216] Following consultation with a variety of court personnel and outside experts, a new system was designed to move delinquency cases through the court process as quickly as possible. The system was designed to provide continual monitoring and oversight of case progress and to increase the use of caseflow data within all areas of the court.[217] The results were promising. In six months, the court realized a sixty-one percent reduction in the average time to disposition—from 226 to 88 days.[218]

It is likely that other juvenile courts will turn to caseflow management to control delinquency delays. Most problems encountered by such efforts will be similar to issues faced in the criminal and civil courts. Studies on court delay have found that slow processing time is often associated with inefficient courtroom procedures, indifferent staff attitudes, lack of consistent caseflow data, and poor organizational arrangements that limit the court's ability to control continuances and other critical events.[219] Each of these factors will be just as problematic in juvenile courts as they have been in the adult justice system.

Other aspects of delay reduction, however, are unique to the juvenile court. Compared to the adult courts, the juvenile court process is more individualized and multifaceted and often extends beyond the fact-finding and dispositional stages. Juvenile courts must consider the social and psychological development of juveniles, their relationships with other family members, and the role of social institutions involved with the youth and family, especially the schools and social service agencies. Processing delays caused by investigations and reports on such issues are often considerable in the juvenile court.

Compared to adult courts, more of the juvenile court's work takes place after disposition. Delays at this stage are thought to be highly problematic. In a recent national survey, juvenile court judges, administrators, and attorneys were asked to indicate their degree of concern about

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216. Richard T. Graham & John Howley, *Cuyahoga County Develops More Efficient Case Management System*, 20 JUV. JUST. DIG. 1, 2 (1992).

217. *Id.* at 2-3.

218. *Id.* at 3.

219. Thomas W. Church Jr., *The "Old and the New" Conventional Wisdom of Court Delay*, 7 JUST. SYS. J. 395, 398-400 (1982); EISENSTEIN & JACOB, *supra* note 37, at 258-259; Luskin & Luskin, *supra* note 6; MAHONEY ET AL., *supra* note 57; Marjorie S. Zatz & Alan J. Lizotte, *The Timing of Court Processing: Towards Linking Theory and Method*, 23 CRIMINOLOGY 313, 313-14 (1985).

HeinOnline -- 23 Am. J. Crim. L. 551 1995-1996

various types of delay in the juvenile justice system.[220] The survey respondents expressed more concern about delays following disposition than about any other stage of the court process (for example, petitioning, pre-adjudication, pre-disposition).[221] Respondents were most concerned about obstacles encountered in arranging probation supervision or in securing out-of-home placements.[222] Such delays are difficult to control since they involve agencies beyond the immediate influence of the court (state corrections, private providers, etc.). They have also been largely ignored by prior research on delay. Studies of the criminal courts tend to view sentencing as the logical conclusion of the court's responsibility.

Caseflow management in the juvenile justice system will also have to contend with the unique characteristics of adolescents. One method of accomplishing this may be to modify the factors incorporated in caseflow management decisions. The criminal and civil courts have found that "differentiated case management" can be an effective tool in controlling court delays.[223] Differentiated case management systems acknowledge that not all cases are alike. Rather than simply push all cases through the court process in the order in which they are received, different kinds of cases are placed on different processing tracks.[224] Case processing tracks in criminal courts are based on factors such as the nature of the offense, the number of hearings required, the defendant's bail status, evidentiary complexities, etc.[225] Delinquency case management systems will have to account for these items, as well as other factors related to juvenile court case processing time such as the developmental status of juveniles or the role of counsel.[226]

Finally, juvenile courts are known to be more dependent on judicial leadership than are the criminal and civil courts. The juvenile court process is more subjective than the adult justice system, since it is bound by fewer constitutional requirements and is less likely to operate under strict legislative controls. By design, a juvenile court judge has more control over the dispositional process. The extent of this judicial authority led one historian to refer to the juvenile court as a "cult of personality" in which case outcomes are heavily influenced by the attitudes, beliefs, and

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220. Butts & Halemba, *supra* note 49, at 33.

221. *Id.* at 36.

222. *Id.*

223. BUREAU OF JUSTICE ASSISTANCE (BJA), DIFFERENTIATED CASE MANAGEMENT: PROGRAM BRIEF 3-4 (1993).

224. *Id.* at 5.

225. *Id.* at 1.

226. BARRY C. FELD, JUSTICE FOR CHILDREN: THE RIGHT TO COUNSEL AND THE JUVENILE COURTS 151 (1993).

HeinOnline -- 23 Am. J. Crim. L. 552 1995-1996

morals of judges.[227] In addition to their influence on outcomes, juvenile court judges may also have greater control over the timing of the court process. While judicial involvement is critical in any delay reduction effort, it should be a major focus of attempts to improve the efficiency of case handling in juvenile court.

VI. Conclusion

The number of delinquency cases handled by the nation's juvenile justice system has increased substantially in recent years. This growth underscores the need for effective services and sanctions for juvenile law violators. Generally accepted theories of cognitive development suggest that the effectiveness of the juvenile court process depends in part on its timeliness. Adolescent offenders have less ability to anticipate the long-term consequences of their actions, and the behavioral impact of court sanctions may be greatly diminished if the dispositional process drags on for long periods of time.

Yet, a considerable proportion of the nation's delinquency caseload takes far longer to reach disposition than any of the time frames recommended by nationally known juvenile justice standards. In large jurisdictions, the time required to process delinquency cases has begun to rival the magnitude of delays typically found in criminal courts. Moreover, in nearly half of the states no formal time limits are placed on the juvenile court's processing of delinquency cases, either through state court rules or legislation. Only a handful of state courts have recognized some form of speedy trial rights for accused juveniles. Other states have explicitly denied this right to juveniles. Whether an individual juvenile enjoys any protections against unreasonable court delays likely depends largely on where within the United States that juvenile happens to end up in court. Other observers have described similar inconsistencies in juvenile rights as providing "justice by geography."[228]

Researchers should examine the relative efficacy of various methods for reducing unwanted delays in the juvenile court. Policy makers should reconsider the practical limitations of the current patchwork of rules, statutes, and standards in place throughout the country. If these inducements are found to be inadequate, the question of Sixth Amendment speedy trial rights for juveniles should be explored. While the existence of the Sixth Amendment may not guarantee timeliness in all cases heard by the

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227. Rothman, *supra* note 1, at 238.

228. Barry C. Feld, *Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration*, 82 CRIM. L. & CRIMINOLOGY 156, 162 (1991).

HeinOnline -- 23 Am. J. Crim. L. 553 1995-1996

criminal courts, its application and ensuing case law have sent an important message to society and the courts—efficient case processing is an essential element in the overall effectiveness of the justice system. A federal constitutional right to speedy trial for juvenile offenders would send the same needed message to all those involved in and affected by the juvenile justice system.

HeinOnline -- 23 Am. J. Crim. L. 554 1995-1996

Table 1:
Time elapsed between case referral and final disposition for all delinquency cases handled by juvenile courts in 687 U.S. counties during 1992.

	Number of Cases	*Median Days Elapsed*	*Percent Over 90 days*
All delinquency cases	294,483	36	24%
County population under 100,000	69,412	25	16%
County population 100,000 or more	225,071	41	27%
Cases not involving secure detention	138,639	37	24%
Cases involving secure detention	23,016	35	20%
Informal (non-petitioned cases)	150,067	17	11%
Formal (petitioned cases)	144,416	68	38%
Formal (petitioned) cases only			
County population under 100,000	28,452	52	28%
County population 100,000 or more	115,964	72	41%
Cases not involving secure detention	57,868	68	37%
Cases involving secure detention	18,181	41	23%
Not adjudicated	52,976	75	42%
Adjudicated	91,309	64	36%

Most serious charges			
Personal offenses (robbery, rape, assault, etc.)	33,830	69	39%
Property offenses (burglary, larceny, etc.)	73,146	73	41%
Drug offenses (sales, possession, etc.)	11,684	64	36%
Public order offenses (vandalism, weapons, etc.)	25,756	54	31%
Adjudicated cases only			
Most restrictive disposition			
Placed in residential facility or program	19,285	51	29%
Placed on probation or other supervision	52,524	70	38%
Fined, given restitution, or referred for services	11,150	62	35%
Dismissed or otherwise released	5,389	60	36%

Source: Data stored in the National Juvenile Court Data Archive, National Center for Juvenile Justice, Pittsburgh, PA. Includes all delinquency cases disposed during 1992 in 687 counties in Alabama, Arizona, Connecticut, Maryland, Mississippi, Missouri, Montana, Nebraska, New Jersey, North Dakota, Ohio, Pennsylvania, South Carolina, Utah, and West Virginia. In 1990, these counties contained 19% of the U.S. population.

HeinOnline -- 23 Am. J. Crim. L. 556 1995-1996

Table 2:
Time limits (in days) for juvenile court adjudication and disposition hearings, in cases *not* involving proceedings for transfer to criminal court.

	Start of Adjudication Deadline					Start of Disposition Deadline	
State	Court *referral*	Filing of Charges *(det / not det)*	Prelim. hearing *(det / not det)*	Detention *admission*	Detention *hearing*	Filing of Charges *(det / not det)*	Adjudication *(det / not det)*
Alaska							immed.[c]
Arizona			30/60				30 / 45
Arkansas					14		14 / -
California	30	30[c]		15			
Delaware				30[a]			
Florida		21/90[a]					15 / -
Georgia		10 / 60					30 / -
Illinois		120[ac]		10[a]			
Iowa		60[bc]					a.s.a.p.[c]
Louisiana			30 / 90				30[c]
Maryland		60[c]		30			30[c]
Massachusetts	60						
Michigan		180[c]		63			35 / -
Minnesota		30 / 60					15[a] / 45[a]
Mississippi		90 / -		21			14 / -
Montana							a.s.a.p.[c]
Nebraska		180 / -				180[c]	
New Hampshire		21 / 30					21 / 30
New Jersey				30			30 / 60
New Mexico							20 / -
New York			14 / 60				10 / 50
North Dakota		30[c]		14			
Ohio		10 / -					immed.[c]
Oregon	56			28			28[d]

HeinOnline -- 23 Am. J. Crim. L. 557 1995-1996

	Start of Adjudication Deadline					Start of Disposition Deadline	
State	Court *referral*	Filing of Charges *(det / not det)*	Prelim. hearing *(det / not det)*	Detention *admission*	Detention *hearing*	Filing of Charges *(det / not det)*	Adjudication *(det / not det)*
Pennsylvania		10 / -					20 / -
Rhode Island				7			
South Carolina		40[c]					
Tennessee		- / 90		30			15 / 90
Texas		10 / -					
Vermont		15 / -					30[c]
Virginia		- / 120		21			30 / -
Washington		30[e] / 60[e]					14 / 21
Wisconsin			20[d] / 30[d]			10[d] / 30[d]	10 / 30
Wyoming					60		

a = Extensions are possible.

b = If statutory right to speedy trial is waived.

c = Statute did not distinguish detention status.

d = Statute-specified time from "plea hearing."

e = Statute-specified time from "arraignment."

f = Statute-specified time from assumption of court jurisdiction.

Note: Twenty States did not have time limits for adjudications as of 1993: AL, AK, CO, CT, DC, HI, ID, IN, KS, KY, ME, MO, MT, NV, NM, NC, OK, SD, UT, and WV. Twenty-six States did not have time limits for dispositions: AL, CA, CO, CT, DE, DC, HI, ID, IL, IN, KS, KY, ME, MA, MO, NV, NC, ND, OK, RI, SC, SD, TX, UT, WV, and WY.

Source: Summary table based on analysis by the National Center for Juvenile Justice.

Table 3:
Time limits on juvenile court handling of delinquency cases considered for transfer to criminal court.

State	Time limits
Arizona	• 30-day maximum between motion for transfer and transfer hearing • 30-day maximum between denial of transfer and juvenile court adjudication
Indiana	• 20-day maximum between case referral and transfer hearing if youth is detained (otherwise 60 days maximum)
Iowa	• 40-day maximum between case referral and transfer hearing
Maryland	• 30-day maximum between time of detention and transfer hearing • 30-day maximum between denial of transfer and juvenile court adjudication
Massachusetts	• 30-day maximum between case referral and Part A of transfer hearing • 45-day maximum between Part A and Part B of transfer hearing • 21-day maximum between denial of transfer and juvenile court adjudication if youth is detained (otherwise, 30 days maximum)
Michigan	• 28-day maximum between case referral and Phase 1 of transfer hearing • 35-day maximum between case referral and Phase 2 of transfer hearing • 28-day maximum between Phase 1 and Phase 2 of transfer hearing • 28-day maximum between denial of transfer and juvenile court adjudication if detained
Minnesota	• 1-day maximum between placement of youth in adult jail and filing of transfer motion

New Mexico	• 30-day maximum between motion to transfer and transfer hearing if youth is detained (otherwise, 90 days) • 30-day maximum between denial of transfer and juvenile court adjudication if youth is detained (otherwise, 90 days)
Virginia	• 21-day maximum between time of detention and *either* transfer hearing or adjudication • 30-day maximum between denial of transfer and juvenile court disposition if detained

Note: Forty-two States (and the District of Columbia) did not have time limits for transfer cases as of 1993.

Source: Summary table based on analysis by the National Center for Juvenile Justice.[229]

Table 4:
Time limitations provided by juvenile justice standards.

	Maximum days from referral to adjudication	Maximum days from adjudication to disposition	Total: Maximum days from referral to disposition
Detained Juveniles			
IJA/ABA (1977-80)	15	15	30
NAC (1980)	18	15	33
ABA Std. 252 (1984)	15[a]	15	30[a]
NDAA Std. 19.2 (1989)	30	30	60
Released Juveniles			

229. Szymanski, *supra* note 156.

HeinOnline -- 23 Am. J. Crim. L. 560 1995-1996

	Maximum days from referral to adjudication	Maximum days from adjudication to disposition	Total: Maximum days from referral to disposition
IJA/ABA (1977-80)	30	30	60
NAC (1980)	65	15	80
ABA Std. 252 (1984)	30[b]	15	45[b]
NDAA Std. 19.2 (1989)	60	30	90

a. Time limit begins at point of detention admission rather than police referral.

b. Time limit begins at filing of delinquency petition rather than police referral.

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