

# Bringing Justice to India’s Children: Three Reforms to Bridge Practices with Promises in India’s Juvenile Justice System

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## *Table of Contents*

Introduction.....	109
I. Police .....	113
A. <i>Current Practices</i> .....	115
B. <i>Avenues for Change</i> .....	117
1. <i>Mandate Universal Training</i> .....	119
2. <i>Generate Issue-based Guidance</i> .....	121
3. <i>Employ Alternative Policing Models</i> .....	123
II. Diversion .....	124
A. <i>Current Practices</i> .....	126

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<i>B. Avenues for Change</i> .....	131
1. <i>Make Diversion an Explicit Goal of the Juvenile Justice System</i> .....	131
2. <i>Develop Explicit Diversion Protocols at the Intake Stage</i> .....	135
3. <i>Limit the Use of Secure Detention</i> .....	141
III. Probation Officers .....	147
A. <i>Current Practices</i> .....	148
B. <i>Avenues for Change</i> .....	150
1. <i>Foster the Professionalization of the Juvenile Probation Officer's Position</i> .....	150
2. <i>Craft a Meaningful Description of the Probation Officer's Role</i> .....	154
3. <i>Develop a System of Accountability</i> .....	160
Conclusion.....	161

## Introduction

India has the distinction of having the largest child population of any country in the world, with approximately 450 million children under the age of 18.<sup>1</sup> In early 2000, India recognized its unique obligation to one particular segment of that child population through the landmark Juvenile Justice (Care and Protection) Act of 2000. The law governs the experience of children “in conflict with law” – those children who would traditionally be described as juvenile offenders in the United States.<sup>2</sup> In India, children entering the juvenile justice system frequently face grave threats to their individual rights, yet their plight is often ignored. Police abuse is commonplace in some jurisdictions.<sup>3</sup> Children languish in the system for years, either as residents of the country’s decrepit detention facilities, without access to meaningful education or employment opportunities, or as the subject of endless proceedings that needlessly draw them away from school or work and serve as a significant financial drain on the child’s family.<sup>4</sup>

India’s original Juvenile Justice Act, passed in 1986 and written before many international conventions and instruments on children’s rights came into existence, did not align with the international mandate set by those instruments.<sup>5</sup> The original act did not address the “[p]revention of juvenile

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<sup>1</sup> UNICEF, India – Statistics, [http://www.unicef.org/infobycountry/india\\_statistics.html#57](http://www.unicef.org/infobycountry/india_statistics.html#57) (last visited Sept. 7, 2009).

<sup>2</sup> See The Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000; India Code (2000) [hereinafter JJ Act]. The JJ Act defines “juvenile in conflict with law” as “a juvenile who is alleged to have committed an offence”; the act defines “offence” as “an offence punishable under any law for the time being in force” and “juvenile as “a person who has not completed eighteenth year of age.” JJ Act, ch. 1, §§ 2(k)-(l), (p).

<sup>3</sup> See *infra* Part I.A.

<sup>4</sup> See *infra* Part II.A.

<sup>5</sup> See *infra* notes 8-12 and accompanying text. See also Sesha Kethineni & Tricia Klosky, *Juvenile Justice and Due Process Rights of Children in India and the United States*, 15 INT’L CRIM. J. REV. 131, 138-139, 142 (2005) (describing violations of international obligations under the 1986 Juvenile Justice Act).

delinquency,” the first fundamental principle of the Riyadh Guidelines, the United Nations Guidelines for the Prevention of Juvenile Delinquency.<sup>6</sup> The lack of rehabilitation provisions was more noticeable – provisions that were a primary focus of the Beijing Rules because they were designed to “ensure for the juvenile a meaningful life in the community” and “foster a process of personal development and education that is as free from crime and delinquency as possible.”<sup>7</sup> International instruments also included measures to limit the stigmatization of youth, as well as to provide education and vocational training to promote the wellbeing of those in the juvenile justice system.<sup>8</sup> The Juvenile Justice (Care and Protection of Children) Act (2000) (“JJ Act”),<sup>9</sup> amended in 2002 and 2006, revamped the old Juvenile Justice Act, bringing together all aspects of interaction between these children and the legal system.<sup>10</sup> It was originally written in response to the UN Committee on the Rights of the Child’s recommendation that India incorporate the aims of the Convention on the Rights of the Child (“CRC”) into domestic legislation.<sup>11</sup> The law is far-reaching in its scope and intent, covering areas such as adoption, abuse and neglect, and children in conflict with law.

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<sup>6</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency, art. 11, G.A. Res. 45/112, U.N. GAOR Supp. (No. 49) at 202 (Annex), U.N. Doc. A/45/49 (1990) [hereinafter Riyadh Guidelines].

<sup>7</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, Rule 1.2, U.N. GAOR, 40th Sess., Supp. No. 53 at 207, U.N. Doc. A/40/53 (1985) [hereinafter Beijing Rules].

<sup>8</sup> Riyadh Guidelines, *supra* note 110, at R. 56, R. 47; Beijing Rules, *supra* note 110, at R. 5.1.

<sup>9</sup> JJ Act, *supra* note 2.

<sup>10</sup> MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, BUILDING A PROTECTIVE ENVIRONMENT FOR CHILDREN 23 (2006), p. 22.

<sup>11</sup> Interview with Arlene Manoharan, Research Officer, Ctr. for Child and the Law, Nat’l Law Sch. of India Univ., in Bangalore, India (Aug. 8, 2007). “By ratifying the Convention on the Rights of the Child, the Government is obligated ‘to review National and State legislation and bring it in line with provisions of the Convention.’ This obligation of the State is also in conformity with the Constitution which allowed the continuance in force of laws only if they conform to the provisions of the Constitution (Article 372).” *History of Child Rights in India*, UNICEF, available at [http://www.unicef.org/india/children\\_3220.htm](http://www.unicef.org/india/children_3220.htm)

The JJ Act, like the aforementioned international agreements, aims to preserve the dignity and best interests of the child.<sup>12</sup>

Toward that end, the amended JJ Act created a separate entity from the traditional justice system: the Juvenile Justice Board (“JJB”).<sup>13</sup> Designed to be a legal body that is more sensitive to the needs of children, each JJB consists of a three-person panel with one magistrate and two social workers.<sup>14</sup> JJBs typically meet one to three times a week, and proceedings generally consist of brief hearings before the child and his or her family, with reports by probation officers and occasional witnesses.<sup>15</sup> In addition to the creation of the JJB, the amended JJ Act includes such provisions as the right to speedy proceedings<sup>16</sup> and the creation of child-friendly police units.<sup>17</sup> Further, in October 2007, the Government of India passed an updated list of Model Rules to aid in the implementation of the JJ Act.<sup>18</sup> These are ostensibly binding standards to which each state must adhere. They are still more expansive than the JJ Act in their guiding principles of “best interests” of the child, the “right to be heard,” and a “fresh

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<sup>12</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter the CRC], art. 3.

<sup>13</sup> JJ Act, *supra* note 2, arts. 4-7. JJBs were first established by the JJ Act of 2000, the first of which were established in January 2003. JJBs have not yet been established in some districts.

<sup>14</sup> JJ Act, *supra* note 2, ch. 2, § 4(2) (indicating that a JJB “shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman”).

<sup>15</sup> The JJ Act does not require the JJB to sit for a specified number of sessions. *See id.* at ch. 2, § 5(1) (noting that “[t]he Board shall meet at such times . . . may be prescribed”). Similarly, the JJ Act does not prescribe a set format for the hearings. *See id.* at ch. 2, § 14 (“the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit”). Therefore, this characterization is based on our observations at the sites that we visited.

<sup>16</sup> Inquiries are generally required to be completed within four months. JJ Act, *supra* note 2, ch. 2, § 14.

<sup>17</sup> *Id.* at ch. 5, § 63.

<sup>18</sup> Model Rules under the Juvenile Justice (Care and Protection of Children) Act 2000, 2007, Gen. S. R. & O. 679(E), *available at* <http://wcd.nic.in/> [hereinafter Model Rules].

start” to be available for all children under the JJ Act.<sup>19</sup>

The recent reforms to India’s juvenile justice system hail a new commitment to the country’s international obligations to its children and a change in the philosophy guiding the treatment of some of India’s most marginalized youth. However, there is evidence that these reforms have yet to trickle down to the local level where they would actually have a real impact on the experience of children in the system.<sup>20</sup> For many of India’s children, therefore, the promise of a more just and equitable system remains elusive.<sup>21</sup>

In the interest of preserving the momentum behind India’s recent changes to its juvenile justice system, this paper proposes several viable mechanisms for bringing current practices in line with the promises of the revised legislation. It

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<sup>19</sup> *Id.*, principles III, IV, and XIV.

<sup>20</sup> See, e.g., Preetu Nair, *Procedural Delays Keep Minors at Apna Ghar*, TIMES OF INDIA, Oct. 9, 2009, available at <http://timesofindia.indiatimes.com/city/goa/Procedural-delays-keep-minors-at-Apna-Ghar/articleshow/5088659.cms> (quoting a children’s rights activist in India as stating that “[c]hildren’s rights are being constantly violated under the purview of the juvenile justice system,” with several cases in the city of Goa pending since 2002); Rakesh Bhatnagar, *NHRC Raps Police for Ignoring Child Rights*, DAILY NEWS & ANALYSIS, Nov. 19, 2008, available at <http://www.dnaindia.com/report.asp?newsid=1207731> (describing the Indian National Human Rights Commission’s criticisms of the New Delhi judiciary, bureaucracy and police for their “insensitiv[ity] to child rights”); Divya Gandhi & Swati Shivanand, *More Staff for Juvenile Justice Board Sought*, THE HINDU, Jan. 31, 2007, available at <http://www.hindu.com/2007/01/31/stories/2007013118020400.htm> (noting the need for additional staff, partly in response to the escape of forty-six children from a facility in Bangalore and a lack of legal and psychological assistance for children within the facilities); Krishnadas Rajagopal, *Juvenile Management*, INDIAN EXPRESS, Apr. 6, 2007, available at <http://cities.expressindia.com/fullstory.php?newsid=230437> (noting that until February 2007, there was one juvenile justice board for all of Delhi with approximately 4,000 cases pending before it).

<sup>21</sup> See Sriranjini Vadiraj, *Juvenile Justice in India a Far Cry*, ONEWORLD SOUTH ASIA, Aug. 8, 2008, available at <http://southasia.oneworld.net/todayshadlines/juvenile-justice-in-india-a-far-cry/> (“Despite eight years of a separate Act meant to deal with juvenile delinquency, the situation on the ground has not changed much.”).

does so based on both authors' on-the-ground experiences with and research on India's juvenile justice system.<sup>22</sup> Critically, it does so while recognizing the scarcity of resources available in India, concentrating on reforms that can capitalize on the existing infrastructure and parties within the current system, many of which are based on successful practices currently in use in the United States.

The paper proceeds in four main parts. Parts I through III focus on three separate aspects of India's juvenile justice system, examining current practices and offering practical suggestions to bring those practices in line with the system envisioned by the JJ Act. Part I addresses the Indian police, who are almost always a child's first point of contact with the system and who, therefore, wield significant influence over a child's path through the system. Part II examines the potential for a more established and fully functioning system of early dismissal to ensure that youth do not languish within the system. Part III discusses the benefits of an increased role for probation officers within the system, particularly given the current lack of meaningful direction for that position. Finally, Part IV concludes with some brief general observations.

### **I. Police**

For nearly all the children who enter the juvenile justice system, the police are the first point of contact. They are a critical force in shaping the child's experience, vested with the power to exercise discretion as to when a child formally enters the system for an alleged offense.<sup>23</sup> In the

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<sup>22</sup> Although one recent paper has discussed the Indian and American juvenile justice systems from a comparative perspective, the authors focused on the historical development of each country's juvenile justice system, not the recent amendments to the Act or its implementation. See Kethineni & Klosky, *supra* note 5.

<sup>23</sup> NATIONAL COMMISSION FOR THE PROTECTION OF CHILD RIGHTS, GOVERNMENT OF INDIA, BANGALORE VISIT 6 (2007) ("The police are often the first people to come in contact with children in need of care and protection or children in conflict with law. Their role is hence very critical in ensuring social justice.") [hereinafter NCPDR Bangalore Report]. The National Commission for the Protection of Child Rights is a statutory body of the Indian Government, which was created in 2007 to investigate

United States, police are frequently faulted as a weak link in the juvenile justice system. This criticism focuses on the misuse or abuse of discretion by individual officers, which ultimately leads to a substantial number of children coming into contact with the system who should not otherwise be there.<sup>24</sup> The same criticism applies in India, where police are funneling children into a system that is already overworked and under-resourced.<sup>25</sup> Further, they are doing so in a system where false arrests and physical abuse by the police have become a common feature of a child's interaction with law enforcement officials.<sup>26</sup> Thus, a significant amount of abuse can occur before the child even comes into contact with the

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children's rights issues throughout the country. Their work on juvenile justice issues in India is available online at [http://www.ncpcr.gov.in/Reports/Karnataka\\_Report.pdf](http://www.ncpcr.gov.in/Reports/Karnataka_Report.pdf).

<sup>24</sup> LARRY J. SIEGEL, BRANDON C. WELSH & JOSEPH J. SENNA, *JUVENILE DELINQUENCY: THEORY, PRACTICE, AND LAW* 404 (9th ed. 2006) (discussing virtues of police discretion as mechanism for diversion, but noting that discretion can "deteriorate[] into discrimination and other abuses"). A 2009 report by the National Commission for the Protection of Child Rights noted that a key issue for reform was the "[u]nwarranted exposure and processing within the JJ system . . . of those children who should be diverted either upon their first contact with the JJ system (usually the police)." RASHMI CHOPRA, NATIONAL COMMISSION FOR THE PROTECTION OF CHILD RIGHTS, *KEY RECOMMENDATIONS & GUIDELINES FOR REFORM IN THE JUVENILE JUSTICE SYSTEM* 14 (2009).

<sup>25</sup> See *supra* note 20.

<sup>26</sup> See NCPCR Bangalore Report, *supra* note 23, at 6. In this report, the Commission noted that:

Some of the NGOs and social worker members of JJB in Bangalore reported that children in conflict with law are often tortured by the police. It was added that they tend to arrest children again and again. Even where children have not done anything but are associated with some criminals or were part of the group indulging in a criminal activity, they are caught by the police and brought into the JJ system. The police also tend to play around with the age of the child. They lack sensitivity and need regular training.

*Id.*



formal juvenile justice system.<sup>27</sup>

As a gateway to the juvenile justice system, the role of police warrants particular attention. After reviewing the abuses that are common within the Indian juvenile justice system, this section discusses potential ways to bring police practices in line with the spirit of the JJ Act.<sup>28</sup> The section first describes the traditional approach of limiting police discretion as a means of curbing abuses. Although limiting discretion is one possible alternative, this section also discusses the key elements of effective training for police officers that can help equip the police to properly exercise the powers that are delegated to them. The section then highlights two approaches that have been effective at ensuring the best exercise of discretion without necessarily constraining the authority of individual police officers: community-based and problem-oriented policing.

#### A. Current Practices

In both the Indian and American juvenile justice systems, police maintain a substantial degree of discretion in handling juveniles in conflict with law. This exercise of discretion is important because it not only determines whether the child will come into contact with the formal juvenile justice system, but it also serves as a way of timely and effectively managing an incident on an individualized basis. However, it can also “deteriorate[] into discrimination and other abuses on the part of the police.”<sup>29</sup> The first author’s observations of the juvenile justice proceedings in Bangalore yielded several examples of abuses of discretion by police, primarily in the forms of false arrests and abusive interrogation techniques. The lack of accountability and oversight from court officials or defense attorneys, and the

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<sup>27</sup> See, e.g., *infra* notes 30-38 and accompanying text (detailing abuses youth face while held before their hearing before the JJB by police).

<sup>28</sup> During our observation of the JJBs in Delhi and Karnataka, we had little firsthand experience with police. Thus, the suggestions in this section are of a general nature and should not be interpreted as reflecting conversations with law enforcement officials.

<sup>29</sup> SIEGEL, WELSH & SENNA, *supra* note 24, at 404.

wide discretion afforded to police, contributed to this pervasive culture.

False arrests are a common occurrence.<sup>30</sup> When false cases are brought before the JJB, there are no actions against those who fabricate them.<sup>31</sup> For instance, in May 2007 in Bangalore, a boy was released on bail, only to be brought back on a new charge the next day.<sup>32</sup> The staff within the Observation Home conducted an inquiry, while the juvenile spent one month in the Home.<sup>33</sup> The case was deemed false, and he was released, but no action was taken against the police.<sup>34</sup>

When apprehending juveniles, police are responsible for reporting to the children's parents that a child is in custody. Police are also obligated under the Juvenile Justice Act to immediately bring apprehended children before a JJB member.<sup>35</sup> However, this procedure is not always followed. Juveniles in Karnataka report being locked up in police stations for as many as ten days prior to appearing before the Board.<sup>36</sup> Particularly in rural areas, there is no monitoring of activity within any given police station, which means that

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<sup>30</sup> Interview with Superintendent of Shimoga Observation Home for Boys, Shimoga, India (July 11, 2007); interview with teacher at Madivala Home for Boys, Bangalore, India (July 17, 2007).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* There are no statutes or regulations regarding JJB oversight over the police. However, there have been reports of police officers suspended for misconduct after their supervisors were informed by the JJB magistrate. *Id.*

<sup>35</sup> "As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the Special Juvenile Police Unit or the designated police officer who shall immediately report the matter to a member of the Board." MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, BUILDING A PROTECTIVE ENVIRONMENT FOR CHILDREN 23 (2006). See also JJ Act, *supra* note 2, ch. 2, § 13(a). See discussion of Special Juvenile Police Units, *infra* notes 47-57 and accompanying text..

<sup>36</sup> For example, three boys in Bangalore reported being locked up in police stations for 10 to 11 days, where they were beaten each day. Interview with boys at the Madivala Home for Boys, in Bangalore, India. (July 17, 2007).

abuse can occur unchecked and unnoticed.<sup>37</sup> Police engage in beatings and other methods of coercion, including rolling children's legs with *lathi* (batons), stringing them by their hands through a pulley system, and abusing children through other verbal and physical means.<sup>38</sup>

### *B. Avenues for Change*

In many ways, changing the practices of police officers in relation to the juvenile justice system is a daunting enterprise. Law enforcement officials are not subject to the formal control of the Juvenile Justice Boards for their practices, outside of informal reprimands.<sup>39</sup> Thus, the juvenile justice system itself has little intrinsic leverage with which to shape the practices of police officers' interactions with juveniles.

One almost reflexive response to police abuses is a move to limit police discretion. For example, in response to abuses perpetrated by police, many groups in the U.S. have advocated for limited police discretion in order to reduce the number of juveniles who are apprehended for minor incidents and to ensure that certain racial or socioeconomic groups are not disproportionately targeted by law enforcement officials.<sup>40</sup> These recommendations generally suggest narrowing the legal authority of police officers by specifying the proper procedures for apprehension through detailed formal written policies and by requiring individual officers to maintain written records of their response to each incident.<sup>41</sup> In India as

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<sup>37</sup> Interview with boys at Shimoga Observation Home for Boys, in Shimoga, India (July 12, 2007).

<sup>38</sup> *Id.*

<sup>39</sup> The JJ Act does not provide for direct accountability to the JJB. *See* JJ Act, *supra* note 2, ch. 2. Further, during our time in India, we rarely observed the JJB criticize the police for procedural delays or their treatment of children while in custody.

<sup>40</sup> SIEGEL ET AL., *supra* note 115, at 410.

<sup>41</sup> *Id.* *See also* George L. Kelling, "Broken Windows" and Police Discretion (Nat'l Inst. of Justice, Office of Justice Programs, U.S. Dept. of Justice), 1999, available at <http://www.ncjrs.gov/pdffiles1/nij/178259.pdf> (providing detailed guidance on and examples of such strategies with law enforcement generally).

well, organizations have pushed to limit police interaction with juveniles.<sup>42</sup>

The movement to limit police discretion, although laudable in theory, is ultimately misguided as a practical matter. Based on our conversations with individuals within the juvenile justice system, the strategy of limiting discretion is unlikely to succeed in bringing police practices in line with what is envisioned by the JJ Act for two reasons: first, police are unlikely to be aware of formal written policies; and second, and more importantly, they are likely to react negatively to attempts to reduce their authority or require additional work on their part with respect to a specific population. These predictions are borne out in current practice: the latest version of the Model Rules already limits the level of police discretion, and yet there is substantial evidence that this limit is not being followed.<sup>43</sup>

Achieving real change in current practices requires a fresh look at how to shape police practices across the country. Although limiting the level of police discretion can be one element of a movement to change police practices, it should not be the primary focus of reforms.<sup>44</sup> We have identified several potentially viable means of improving police practices

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<sup>42</sup> See, e.g., Arvind Narrain, "A Critique of the Juvenile Justice Act," ALTERNATIVE LAW FORUM, pp. 4-5, available at <http://www.altlawforum.org/grassroots-democracy/juvenile-justice/a-critique-of-the-juvenile-justice-act-2002/?searchterm=juvenile>

<sup>43</sup> For example, the Model Rules state that police should apprehend a child only for serious offences – those infractions that would be punishable by more than seven years for adults – or when apprehension "is in the best interest of the juvenile." Model Rules, *supra* note 111, ch. 2, § 6(4). In sharp contrast, the vast majority of cases that we observed before the JJBs were for petty theft or fighting. Ten of the thirteen boys in the Shimoga Observation Home were accused of petty theft; more than thirty of the thirty-eight boys in Bangalore had been arrested for theft.

<sup>44</sup> The accountability of police officers within the juvenile justice system is one feature of these types of reforms that could be worth considering. At present, there is no formal pressure for police to know about or follow the provisions of the JJ Act. However, actors within the juvenile justice system, such as the magistrates, could be used to ensure that police follow proper procedures, such as submitting charge sheets in a timely manner.

on the ground, which have yet to be explored fully in the Indian context. These strategies are outlined below.

### 1. Mandate Universal Training

In both the Indian and American juvenile justice systems, the police face the difficult challenge of “navigat[ing] . . . the philosophical and procedural differences between the adult and juvenile justice systems.”<sup>45</sup> Unsurprisingly, one of the biggest criticisms of police work with juveniles is that law enforcement officers fail to recognize these differences.<sup>46</sup> However, the police must be equipped to deal with juvenile matters in the first case for this to be a fair criticism. The JJ Act acknowledges the unique nature of work with juveniles by requiring the creation of “special juvenile police units” (SJPU) that are intended to be the primary police contact with children in contact with law: as soon as a child is apprehended by the police, he or she is to be transferred to the city or district’s SJPU for inquiry and case processing.<sup>47</sup> The Act states that these officers “shall be specially instructed and trained” in dealing with children and juveniles,<sup>48</sup> although it does not specify the general content or frequency of such training.

In reality, the creation of dedicated SJPU has yet to occur in Delhi. SJPU have been developed in Bangalore, but the bulk of children continue to come into contact with non-specialized police officers on the way to their appearance

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<sup>45</sup> William J. Flynn & Brian McDonough, *Police Work With Juveniles: Discretion, Model Programs, and School Police Resource Officers*, in JUVENILE JUSTICE SOURCEBOOK: PAST, PRESENT, AND FUTURE 200 (Albert R. Roberts, ed. 2004).

<sup>46</sup> See Bhatnagar, *supra* note 20 (quoting National Human Rights Commission member PC Sharma as faulting police for not “remember[ing] that while dealing with a child [police] have to look at him from the perspective of the juvenile justice system, not the criminal justice system”). See also *supra* note 45.

<sup>47</sup> The “special juvenile police unit” is defined “a unit of the police force of a State designated for handling of juveniles or children . . .” JJ Act, *supra* note 2, at ch. 1 § 2(w), ch. 5 § 63(1) *et seq.* See also Model Rules, *supra* note 111, at ch. 5 § 68.

<sup>48</sup> JJ Act, *supra* note 2, at ch. 5; Model Rules, *supra* note 111, at ch. 5 § 68.

before the JJB.<sup>49</sup> Thus, even though the SJPU do generally follow protocols, including prohibitions on locking children up in the police station and handcuffing children while en route to the JJB or observation home, the SJPU may have limited or no interaction with many children passing through the system.<sup>50</sup> The SJPU is seen by local government officials and NGOs alike as a kind of glorified escort for children, called only when the regular police are done with their interrogations, with the sole responsibility of transporting the child to an appearance before the Board or Board member.<sup>51</sup> A further complication with the creation of SJPU is that officers are transferred in and out of these positions more frequently than the trainings take place.<sup>52</sup> In addition to SJPU, all police stations are required to have dedicated Child Welfare Officers (CWOs).<sup>53</sup> Government officials frequently confuse CWOs with SJPU, highlighting a lack of familiarity with these different specialized positions.<sup>54</sup> They also experience similar problems in turnover and training.<sup>55</sup> Training is sporadic and not institutionalized, often sponsored by the UN with NGO counterparts.<sup>56</sup>

#### Specialized designation of police officers who work

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<sup>49</sup> Interview with Aarti Mundkur, JJB member and attorney for Alternative Law Forum, Bangalore, India (June 7, 2007).

<sup>50</sup> For instance, according to the Karnataka Rules on Juvenile Justice, "The child shall not be kept in the lock up of the police station in order to conduct preliminary enquiries and shall be taken to an Observation Home or Fit institution as early as possible. . . The police shall not handcuff, ill treat or harass the child in any way while bringing such child to the Observation Home." Karnataka Juvenile Justice (Care and Protection of Children) Rules, 2002, Notification No. WCD 40 SBB 2001(P) (India) [hereinafter Karnataka Rules], R. 11.5-11.8

<sup>51</sup> Interview with Aarti Mundkur, *supra* note 49.

<sup>52</sup> Interview with Deputy Director, Department of Women and Child Welfare, in Shimoga, India. (July 12, 2007).

<sup>53</sup> JJ Act, *supra* note 2.

<sup>54</sup> Interview with Deputy Director, Shimoga, India. (July 11, 2007). As of 2007, there were reportedly CWOs in each of the 24 police stations throughout Shimoga.

<sup>55</sup> *Id.*

<sup>56</sup> Interview with Arlene Manorahan, *supra* note 11; interview with Fr. M.C. George, Don Bosco, in Bangalore, India (July 3, 2007).

with juveniles has been ineffective. Officers are rotated in and out of these specialized positions more frequently than they are given training, and due to their responsibilities, may actually interact with children less than their colleagues.<sup>57</sup> Meanwhile, a vast majority of police officers have no training on laws affecting juveniles, nor the best strategies for handling juveniles in the criminal justice system. It would therefore be best to target training at all police, particularly given their individual ability to dispose minor incidents in an informal manner. Equipping all officers to effectively use their discretion in this way, not just the select few that receive training under the current system, could greatly reduce the number of children who are formally processed in the juvenile justice system.

## 2. Generate Issue-based Guidance

The form that this training takes is also integral to its success as a means of changing practices on the ground. For example, many jurisdictions in the United States have some sort of training for issues relevant to the juvenile population, even if they do not have officers specifically dedicated to work with juveniles.<sup>58</sup> Although the focus and content of this training differs, two broad features are common in successful training programs. The first relates to how the training opportunities are presented to their audience. For training to be most effective, training programs should be framed as a means of helping law enforcement personnel do their job in light of the specific challenges that they face and the obligations they must meet; by contrast, training should not be presented as a requirement imposed by an external authority for the sake of telling individual officers how to do their

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<sup>57</sup> Interview with Aarti Mundkur, *supra* note 49; interviews with boys in Shimoga Observation Home, *supra* note 37.

<sup>58</sup> See, e.g., Massachusetts Juvenile Police Officers Association, <http://www.mjpoa.org/>; State of New York Police Juvenile Officers Association, Inc., <http://www.snypjoa.org/>; Juvenile Crime Intervention Section, Attorney General of Texas, <http://www.oag.state.tx.us/criminal/training.shtml> (all last visited Apr. 8, 2008).

jobs.<sup>59</sup> Although the goal of such training, regardless of how it is presented, is to effect some change in the practices of police officers, the difference in perception is key in terms of how the training is initially perceived and whether or not it is put to use in practice.

The second general feature of effective training opportunities is that it is issue-based, relating to specific problems that law enforcement officers actually face.<sup>60</sup> Training that is divorced from actual problems is less likely to effect any real change in practice. However, affording specific examples of how to effectively manage specific situations that officers encounter on a regular basis can result in changes in practices.<sup>61</sup> This has been the guiding philosophy of problem-oriented policing movement, discussed in more detail below. Granted, not all police practices reflect lack of training. Many stem from individual biases, ignorance of the law, or fundamentally corrupt practices, and the elimination of those behaviors should be addressed through mechanisms for accountability within the system.<sup>62</sup> However, meaningful and effective training is a first step to raising awareness and holding the police accountable for their role within the juvenile justice system.

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<sup>59</sup> Interview with Stephen Limon, Associate Justice, Massachusetts Juvenile Court, Suffolk Division, Feb. 11, 2008.

<sup>60</sup> Flynn & McDonough, *supra* note 122, at 204.

<sup>61</sup> See, e.g., Center for Problem-Oriented Policing, <http://popcenter.org/about> (last visited Apr. 8, 2008). The Center for Problem-Oriented Policing identifies specific issues that police face on regular basis (e.g., juvenile runways, disorderly conduct) and provides practical and detailed guidance as to best practices in handling such situations.

<sup>62</sup> A complaint among children at the JJB was that, after an initial infraction with the police, the local officers would target that child for any criminal activity within the district. Several children alleged that police had filed false charges against them as a means of harassment or as a means of resolve an unsolved incident by simply assigning that child to the crime. The magistrates at each JJB in Delhi appeared to be somewhat responsive to this practice by encouraging the parents of those children to file complaints with the local District Chief of Police and recommending that they return to the JJB if the practice continued.



### 3. Employ Alternative Policing Models

While targeted training can effect change in beliefs and behaviors of law enforcement officials, there has been a move in the United States to rethink the relationship of law enforcement with the communities they serve in order to address the unique issues associated with juvenile delinquency and crime in general.<sup>63</sup> These strategies represent a more holistic approach to dealing with law enforcement and the reform of police practices. One strategy that has been particularly popular in the United States has been community policing, which involves strengthening relationships with the neighborhoods and communities that police serve by “increas[ing] feelings of community safety and encourag[ing] area residents to cooperate with their local police agencies.”<sup>64</sup> Community policing requires law enforcement officials to become visible, active, and responsive figures in their community. By fostering relationships with community members, the community policing model benefits officers by helping them do their job more effectively by earning the trust of individuals in the neighborhood.<sup>65</sup> However, by raising the awareness of police practices within the community, it can also put pressure on law enforcement officers to follow their own rules, including those rules with respect to juveniles. Given that the Model Rules delegate a substantial social investigatory role to the police,<sup>66</sup> increased community

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<sup>63</sup> See, e.g., Office of Juvenile Justice and Delinquency Prevention, *Training Aims To Improve Interactions Between Law Enforcement and Adolescent Girls*, OJJDP NEWS AT A GLANCE (May/June 2009) (describing new training program by International Association of Chiefs of Police on best practices when approaching and interacting with adolescent girls). See also *infra* notes 64-70 and accompanying text (discussing new efforts in police interactions with juveniles).

<sup>64</sup> LARRY J. SIEGEL & BRANDON C. WELSH, *JUVENILE DELINQUENCY: THE CORE 301* (Cengage Learning, 2004).

<sup>65</sup> *Id.*

<sup>66</sup> The Model Rules explicitly charge the police with “assum[ing] a social investigatory role . . . obligat[ing] the Police not only to law and order reaction to law breaking information . . . , but also to gather all possible socio-economic information about him and also involve the juvenile’s family with a view to better understanding juvenile’s deviation but also effective solutions for it.” Model Rules, *supra* note 111, at ch. 2 § 6(2) n.2.

involvement could help facilitate that information gathering role while making police practices more visible.

Another type of police work that has been used in conjunction with community policing in order to manage juvenile issues is problem-oriented policing.<sup>67</sup> The focus of this approach to police work is “analy[zing] and respon[ding] to the problems or conditions underlying criminal incidents rather than the incidents themselves.”<sup>68</sup> By identifying specific issues that are related to juvenile crime in a given area, police can engage community members and other organizations in order to develop a strategy to try and address those issues. Problem-oriented policing has been utilized to successfully handle a number of discrete issues in specific communities, including gun violence, gangs, and prostitution.<sup>69</sup> One of the goals of such a program is obviously the reduction of crime through preventive measures. However, the programs also aim to involve other actors in the crime prevention progress to help police officers “improve their decision-making ability.”<sup>70</sup> Thus, the introduction of some aspects of the problem-oriented policing approach might effect change in law enforcement officers’ attitudes toward work with juveniles in addition to altering their general decision-making styles in handling such situations.

## II. Diversion

One of the guiding philosophies of the juvenile justice system is that children should not only be held accountable, but that the system should attempt to address the initial cause

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Whether the police *should* be charged with this is investigatory function is a question to consider.

<sup>67</sup> See *infra* notes 68-70.

<sup>68</sup> SIEGEL & WELSH, *supra* note 124, at 302. See also Center for Problem-Oriented Policing, *supra* note 124.

<sup>69</sup> Id. at 302-3. See also Anthony A. Braga, David M. Kennedy, Elin J. Waring & Anne Morrison Piehl, *Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston’s Operation Ceasefire*, 38 J. RESEARCH IN CRIME & DELINQUENCY 195 (2001).

<sup>70</sup> Flynn & McDonough, *supra* note 122, at 204.

or causes of delinquency.<sup>71</sup> However, full formal processing by the juvenile justice system is not required in all delinquency cases; indeed, it is inappropriate in certain cases. A child who is caught stealing food from a roadside stand should not be subject to the same processes and ranges of punishments as a child who is involved in a violent offense such as rape or murder.

Thus, some mechanism of identifying which juveniles warrant different types of treatment is critical. This approach to identifying and managing cases, particularly dealing with some cases “without resorting to formal trial,” is known as diversion.<sup>72</sup> Diversion is an integral element of a well-functioning juvenile justice system for two reasons. First, it ensures that children receive the services and sanctions that are appropriate relative to the offense that they have committed. The power of the juvenile justice system to reform future behavior hinges on this individualized approach. Second, diversion ensures that the juvenile justice system’s resources are targeted where they are needed most. For example, institutionalization, a resource-intensive and developmentally-harmful dispositional alternative, is reserved only for the most serious offenses. Effective diversion programs reduce the burden on specific points in the juvenile justice system by directing juveniles to the most efficient and effective resources both inside and outside of the formal system.

Although diversion is an element of the Indian juvenile justice system on paper, it fails to function as such in practice. This section describes the failures of the present system of diversion in India, highlighting the clash of current practices with best practices. The section then presents a series of

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<sup>71</sup> The intent of JJB inquiries is not to establish guilt, as children are not capable of the *mens rea* necessary for that guilt – it is a mere record of offense and offender. To that end, records are destroyed to prevent any child from being labeled as a criminal in the future. This is a confusing point of law, as there is some level of punishment assumed for juveniles in conflict with law, though there is an explicit lack of culpability assigned to them. The JJ Act seems to be at odds with itself in this regard.

<sup>72</sup> Beijing Rules, *supra* note 110, R. 11.

practical suggestions on how to increase the use of diversion in India's juvenile justice system.

### A. Current Practices

There are two primary reasons why current practices fail to realize the benefits of diversion, thereby threatening the development of youth in the system and weakening the system's ability to prevent future offenses. First, exposure to the juvenile justice system itself – and confinement in particular – can have negative effects on a child's well-being.<sup>73</sup> For this reason, detention is only to be used as a last resort, per international children's rights instruments.<sup>74</sup> Nevertheless, in India, the use of detention is pervasive in a number of common scenarios. For one, processing delays mean that children may spend months locked up for no reason other than the fact that the JJB has failed to adhere to the JJ Act's time requirements. To ensure speedy proceedings, the JJ Act specifies that proceedings "shall be completed within a period of four months from the date of its commencement;" however, this provision is limited by a substantial caveat that effectively eviscerates that time limit.<sup>75</sup> This discretion permits cases to languish in the system indefinitely.<sup>76</sup> Hearings

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<sup>73</sup> See, e.g., Kenneth A. Dodge, Thomas J. Dishion & Jennifer E. Lansford, *Deviant Peer Influences in Intervention and Public Policy for Youth*, 10 SOC. POL'Y REP. 1 (2006), available at <http://www.srcd.org/documents/publications/SPR/spr20-1.pdf>.

<sup>74</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 37b; United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, Annex, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49/Annex (Dec. 14, 1990), R. 2: "Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases." The Government of India has accepted this idea in the latest iteration of Model Rules, which includes a principle of last resort. Model Rules, *supra* note 111, ch. 2, art. 3, principle XII.

<sup>75</sup> JJ Act, *supra* note 2, art. 14 (stating that proceedings shall be completed within four months of the date of commencement "unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension").

<sup>76</sup> This may change under the new Model Rules, *supra* note 111, R. 13.1(a), where the Board can: "(a) dispose of the case, if the evidence of

are typically postponed by two weeks to eight months in Bangalore, either because family members or witnesses fail to appear, or because of problems with records.<sup>77</sup> Children can be brought back into the JJB for the additional charge of failing to appear for a hearing, which occurs frequently.<sup>78</sup> Indeed, juvenile proceedings can extend well into adulthood in many cases. For instance, a woman in Shimoga was remanded to the Observation Home<sup>79</sup> for missing JJB hearings. At this point, she is a 25-year-old woman who had committed an offense as a juvenile, but now is married and has a family.<sup>80</sup>

Bail proceedings also contribute to the misuse of detention. In many cases, children are released on bail to their families, returning every few weeks to stand before the

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his conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking.” [Note: this is the preliminary inquiry.] R. 13.6: “Every inquiry by the Board shall be completed within a period of four months after the first summary inquiry. Only in exceptional cases involving trans-national criminality, large number of accused and inordinate delay in production of witnesses, the period of enquiry may be extended by two months on recording of reasons by the Board. In all other cases, delay beyond four to six months would lead to termination of the proceedings.”

<sup>77</sup> Observations of Bangalore Juvenile Justice Board, Bangalore, July 18, 2007. The primary problems with records are: 1) the absence of important documents, such as the police charge-sheet or probation officer social investigation report, and 2) the file is not in proper order, per the magistrate’s standards.

<sup>78</sup> See, e.g., *Concern Over Delay in Justice in Juvenile Cases – 168 Accused Still Fighting Legal Battles for “Offences” Committed During Childhood, Reveals Study*, CALCUTTA TELEGRAPH, Oct. 7, 2009, available at

[http://www.telegraphindia.com/1091008/jsp/northeast/story\\_11587716.jsp](http://www.telegraphindia.com/1091008/jsp/northeast/story_11587716.jsp) (a recent study of delays in cases in Assam concluded that delays in resolving cases stemmed from numerous causes, including “a number of cases [in which] the juveniles were untraceable or absent”).

<sup>79</sup> She was remanded to the Reception Centre for Women in Shimoga, as there are no separate Observation Homes for girls.

<sup>80</sup> Interview with Superintendent of Shimoga Observation Home for Boys, Shimoga, India. (July 11, 2007). This anecdote is not unique; a study released in October of this year by the Assam State Police Accountability Commission indicated that 168 adults were still facing charges from before they had turned 18; 13 of these individuals were over the age of 30. See *Concern Over Delay in Justice in Juvenile Cases*, *supra* note 78.

Board.<sup>81</sup> However, in many others, children are held in residential Observation Homes throughout the duration of the proceedings – either because the JJB fears that children without proof of address will not return to the JJB, or because probation officers have yet to conduct an investigation into the child’s home surroundings.<sup>82</sup> Further, some children are held for no reason other than a lack of judicial training on the bail priorities for children. In one instance, several adults and one child were arrested at a Tibetan protest.<sup>83</sup> Although the JJ Act is designed to make bail more easily attainable for children, the arrested child was kept longer than all adults, due to misunderstandings by the presiding magistrate over bail and surety requirements.<sup>84</sup> In the most egregious cases, children are kept even after their cases are closed. For example, Boys in Karnataka who are from distant states like Rajasthan have been kept in Observation Homes for up to two years after their cases were adjudicated, because there was no way for them to return home.<sup>85</sup> Incarcerations like these, particularly for petty offenses, have a lasting and overwhelmingly negative impact on the lives of youth.<sup>86</sup>

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<sup>81</sup> Interview with Arvind Narrain, Alternative Law Forum, in Bangalore, India (June 20, 2007).

<sup>82</sup> “When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an Observation Home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.” JJ Act, *supra* note 2, ch. 2 § 12(3).

<sup>83</sup> Observations at Kingsway Camp Juvenile Justice Board, New Delhi, India, Jan. 11, 2008.

<sup>84</sup> Interview with Arvind Narrain, *supra* note 81.

<sup>85</sup> Interview with Kavita Ratna, Concerned for Working Children (June 19, 2007). We met several boys in Madivala Observation Home who claimed that their cases were resolved and they were just waiting to be picked up. In Shimoga, we observed a boy being sent back to the Observation Home after his case was adjudicated, to await transfer to the Children’s Home.

<sup>86</sup> See generally BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 2 (2007) (noting that “[a] recent literature review of youth corrections shows that detention has a profoundly negative impact on young people’s mental and physical well-being, their education, and their employment”).

The second way the current system fails to recognize the benefits of diversion is by treating all cases alike, regardless of the severity of the alleged offense. For example, many cases can be resolved using less resource-intensive alternatives – alternatives that do not require engaging every actor within the juvenile justice system. In this way, diversion practices “are well suited both to a modern theory of adolescent development and to principles of procedural fairness and proportionality in legal response to youth crime.”<sup>87</sup> Developing and refining an approach to case management that incorporates diversion is one avenue to reducing the strain on the juvenile justice system’s limited resources, while also providing more targeted and appropriate interventions for children in conflict with law.<sup>88</sup> Such an approach has significant appeal because it can be attractive to both children and the actors within the JJB themselves.

Both India and the United States make provisions for identifying the types of cases that should not be subject to full formal processing by the juvenile justice system. Generally, such practices are a mix of formal guidelines and informal practices. In India, for example, the JJ Act affords magistrates and their Juvenile Justice Boards a range of options to handle individual cases after completing an inquiry, including admonition, probation, and restitution; however, it does not specify in which cases such alternatives should be utilized.<sup>89</sup>

The JJB is structured to be a legal entity that is attuned to the unique needs of children, by having a trained legal

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<sup>87</sup> Franklin E. Zimring, *The Common Thread: Diversion in Juvenile Justice*, in *AMERICAN JUVENILE JUSTICE* 33, 34 (2005).

<sup>88</sup> Various international conventions provide suggestions as to the types of alternatives that should be available, including intensive care and day treatment. General Comment 10 on Article 37, encourages day treatment centers, intensive supervision as alternatives to incarceration, U.N. Committee on the Rights of the Child, *General Comment No. 10 (2007): Children’s Rights in Juvenile Justice*, ¶ 42, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007). Beijing Rules, *supra* note 110, R. 13.2. “Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.”

<sup>89</sup> JJ Act, *supra* note 2, ch. 2 § 15(1)(a) *et seq.*

magistrate and two social workers with experience in children's issues.<sup>90</sup> To some degree, this has been successful, but there are also limitations. By assembling groups of people with complementary backgrounds, the government has absolved itself of much responsibility in terms of training.<sup>91</sup> As a result, the magistrate arrives with very limited or no understanding of child welfare, child rights and child psychology, while the social workers rarely have any legal expertise.<sup>92</sup> This leads to inconsistent involvement by the social workers. For example, in Bangalore, the social workers on the JJB are also lawyers, and they are able to effectively advocate in the interest of individual children's welfare.<sup>93</sup> In Shimoga, on the other hand, one of the JJB members, though more experienced than the Chief Judicial Magistrate, rarely speaks during the proceedings and defers to the Magistrate in all sentencing; the other member lives in a different village and rarely attends meetings.<sup>94</sup> This dynamic generates very little discussion of when to offer diversion. As in the bail issue described above, the magistrate's opinion, which often stems from work in adult criminal proceedings, generally holds more weight in JJB hearings.<sup>95</sup>

The juvenile justice proceedings we see today frequently last well beyond the four-month maximum, and during that time many children remain incarcerated while awaiting their hearings. Once the paperwork is complete and all necessary witnesses and family members are in attendance, the disposition is invariably a simple "admonish and release" hearing, regardless of the severity of the crime.<sup>96</sup> Thus, no

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<sup>90</sup> *Id.* at ch. 2 §§ (4)(2)-(4)(3).

<sup>91</sup> According to Arlene Manoharan, a day's orientation workshop is conducted in collaboration with UNICEF, who sometimes ask CCL to conduct the session. Interview with Arlene Manoharan, *supra* note 11.

<sup>92</sup> Interview with Aarti Mundkur, *supra* note 49.

<sup>93</sup> Observation of Bangalore Juvenile Justice Board, Bangalore, India (July 18, 2007); interview with Arvind Narrain, *supra* note 81.

<sup>94</sup> Only the CJM spoke during our observation of the JJB session on July 13, 2007.

<sup>95</sup> Observations of Juvenile Justice Boards in Shimoga and Bangalore (July 13 and July 18, 2007); interview with Aarti Mundkur, *supra* note 49.

<sup>96</sup> See CHOPRA, *supra* note 24, at 14 (noting that under the existing system,



meaningful diversion strategies are currently practiced in any of the observed JJBs.

### *B. Avenues for Change*

The evidence above suggests that many children wind their way through the full adjudicatory system unnecessarily, and there are those children that spend far too much time before the JJB or waiting for a resolution of their case. In one extreme and unfortunate example, the Chief Justice of the High Court of Jharkhand discovered a girl who had spent seven years locked in an observation home because she had not paid a 300 rupee fine (\$6.40) for failing to have a valid train ticket.<sup>97</sup> The girl had been picked up in July of 1998, and her last significant case activity was in September of that same year – that is, until the High Court finally ordered her release in 2005.<sup>98</sup>

In the three sections below, we highlight ways of diverting low-level and first-time offenders to alternatives to the formal juvenile justice system. Our suggestions focus on identifying children who would be ideal candidates for diversion early in the process, in order to ensure that youth avoid unnecessary and lengthy contact with the juvenile justice system.<sup>99</sup> We also describe ways of limiting how many children spend time in locked facilities.<sup>100</sup> Both suggestions are aimed at ensuring that the juvenile justice system serves its rehabilitative function by treating youth as individuals and identifying the optimal use of resources in their particular cases. Further, our suggestions have the added benefit of easing the strain on a formal adjudicatory system that is already heavily burdened.<sup>101</sup>

#### 1. *Make Diversion an Explicit Goal of the*

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youth are ultimately “release[d] or exit from the system without adequate remedial focus on the causes of delinquency”).

<sup>97</sup> *Court on Its Own Motion v. State of Jharkhand & State of Bihar*, C.R. No. 65 of 0205, Oct. 8, 2005 (High Court of Jharkhand at Ranchi).

<sup>98</sup> *Id.*

<sup>99</sup> See *infra* Parts II.B.1-II.B.2.

<sup>100</sup> See *infra* Part II.B.3.

<sup>101</sup> See *infra* note 108 and accompanying text.

Juvenile Justice System

The Model Rules offer some guidance as to which cases do not require full formal processing. However, that guidance comes primarily in the form of piecemeal guidelines, not a coherent policy statement in favor of diversion. For example, the rules permit the board to handle cases of “petty offences” through “summary proceedings/inquiry.”<sup>102</sup> The Model Rules also note that police should not apprehend children for minor offenses (those that warrant a punishment of less than seven years for adults), but should instead inform the parents of the child’s behavior and forward information about the incident to the Board.<sup>103</sup> Additionally, the Model Rules do not require the filing of formal charges by the police for an inquiry to proceed, although there seems to be a lack of awareness of this provision among the police and the JJB members.<sup>104</sup>

Taken together, the provisions in the JJ Act seem to recognize a need for treating cases differently. As mentioned previously, a functional policy for case gradation can serve both the interests of the JJB actors and children themselves by reducing the pressures on the JJB’s limited resources and providing more appropriate and targeted services for the juvenile. In spite of this, case gradation did not figure prominently in the operation of the JJB, based on our observations. For one, the provisions of the JJ Act that are related to case gradation are not explicitly framed as a means of keeping children out of contact with the juvenile justice system.<sup>105</sup> To be sure, there may be informal practices at work,

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<sup>102</sup> Model Rules, *supra* note 111, at ch. 2, § 7(2)(c).

<sup>103</sup> *Id.* at ch. 2, § 6(5).

<sup>104</sup> Observations of the Kingsway Camp Juvenile Justice Board, Jan. 9 & 14, 2008.

<sup>105</sup> The recent iteration of the Model Rules, from October 2007, does include § 11 (7), which states, “The police or the Juvenile or the Child Welfare Officer from the nearest police station, shall exercise the power of apprehending the juvenile only in cases of his alleged involvement in serious offences (entailing a punishment of more than 7 years imprisonment for adults). Model Rules, *supra* note 111. However, this has yet to be implemented.

particularly among the police and at other JJB sites, which identify cases that do not require formal processing. However, based on our observations at all four of the sites we observed, there did not appear to be any system, formal or informal, that functioned in this way.<sup>106</sup> On the whole, cases were treated similarly, regardless of the type or severity of infraction.<sup>107</sup> This could indicate that those in the field have rejected diversion as a matter of policy; however, it is more likely to be a product of a lack of clear guidance as to when and how cases should be removed from formal processing. Making diversion an explicit priority of the juvenile justice system at the outset is a simple first step to encouraging the use of diversion in day-to-day practices.

In India, diversion could be one mechanism for encouraging the appropriate level of contact with the formal juvenile justice system, bringing practice in line with the general goals of the JJ Act. Further, it can be presented as a way of benefiting the interests of the children coming through the system and the actors working within the JJB. For example, in a diversion program, children who have committed minor offenses benefit by avoiding formal contact with the juvenile justice system in cases where it may not be appropriate. Actors within the JJB also benefit from diversion by virtue of decreased caseloads and a reduction in the amount of resources that have to be devoted to those cases – a leading concern of JJB members with whom we spoke.<sup>108</sup> Thus, diversion might have a greater intrinsic appeal than other proposed reforms. Further, given the reluctance to grant bail and delay during the period of inquiry, diversion could be one way of pairing children with some degree of services and/or providing some type of sanction without exposing children to the harmful aspects of the juvenile justice system such as

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<sup>106</sup> Observations of the Kingsway Camp Juvenile Justice Board, Jan. 9 & 14, 2008, Delhi Gate Juvenile Justice Board, Jan. 16, 2008, Shimoga Juvenile Justice Board, July 13, 2007, and Madivala Juvenile Justice Board, July 18, 2007.

<sup>107</sup> *Id.*

<sup>108</sup> *See, e.g.*, Interview with Magistrate Ila Rawat, Kingsway Camp Juvenile Justice Board, Jan. 22, 2008.

secure detention.

There are several key issues to address when examining the possibility of diversion in the Indian juvenile justice system. The first step to implementing a structured diversion program is defining diversion and its goals explicitly in the JJ Act and Model Rules.<sup>109</sup> Considering the individual actors' reliance on the text of the JJ Act in day-to-day proceedings, formalizing such a system is a predicate to any systematic use of diversion. However, instituting a successful diversion system requires more than just a policy statement; it also requires a consensus among actors within the system as to the purpose and process of the diversion program itself. Thus, any discussions on implementing such a program should bring those actors to the table to ensure that such a consensus is reached – with a particular focus on police as the usual first point of contact with the system.

That said, diversion should not be used solely as a means of reducing the number of children coming before the JJB. Diversion can reduce the strain on the formal judicial system by providing non-judicial alternatives for sanctions and rehabilitation. However, it only works when the system does just that: provides meaningful alternatives. Researchers have noted that “[t]he most successful diversion programs have been those that provide more intensive and comprehensive services.”<sup>110</sup> Indeed, in the United States “the lack of such agencies and services [has] been an impediment to successful juvenile court work.”<sup>111</sup> Thus, before a diversion program is implemented, there must be a realistic assessment of available alternatives. Some alternatives, such as restitution and community service, may be readily available or available at relatively little cost. Others, however, such as addiction and

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<sup>109</sup> For example of a statute detailing such goals and requirements, see COLO. REV. STAT. ANN. § 19-1-103(44) (West 2008).

<sup>110</sup> Randall G. Shelden, *Detention Diversion Advocacy: An Evaluation* (Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice, Washington, D.C.), Sept. 1999, available at [http://www.cjcj.org/pdf/ojjdp\\_ddap.pdf](http://www.cjcj.org/pdf/ojjdp_ddap.pdf) [hereinafter Shelden Evaluation]

<sup>111</sup> DON C. GIBBONS & MARVIN D. KROHN, *DELINQUENT BEHAVIOR* 313 (5th ed. 1991).

drug treatment services, may not be a realistic alternative absent a substantial investment. Thus, a diversion program must be tailored to the population that can effectively be serviced by the resources that are available.

Finally, the effectiveness of diversion programs also depends on meaningful supervision to ensure compliance with the terms of the diversion agreement. Thus, probation officers, the court, or some other actor should be charged with monitoring juveniles released through diversion. If these concerns are addressed, diversion could represent a viable way of ensuring that the limited resources of the JJB are targeted at the children who need them the most, while ensuring that other minor offenders are also addressed in a less resource-intensive, but nonetheless effective manner.

## 2. Develop Explicit Diversion Protocols at the Intake Stage

Because the lack of a systematic program of case gradation in India likely reflects, at least in some part, a lack of clear guidance, the United States experience with the process can serve as a useful reference point. Diversion has a long history in the United States juvenile justice system; indeed, it was one of the original goals of the juvenile court.<sup>112</sup> Although specific diversion policies vary from state to state, they have become popular as a means of reducing the demand on the limited resources of the understaffed and under-resourced juvenile justice system.<sup>113</sup> And while diversion programs take on a number of different forms, policies generally rely on diversion at two stages of intake: the time of a juvenile's first contact with police and the period before

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<sup>112</sup> Arthur R. Roberts, *The Emergence and Proliferation of Juvenile Diversion Programs*, in JUVENILE JUSTICE SOURCEBOOK, *supra* note 45, at 184.

<sup>113</sup> *See id.*; *see also* RICHARD A. MENDEL, FROM DEMONSTRATION PROJECT TO NATIONAL STANDARD: TWO DECADES OF JDAI 2 (2009) [hereinafter TWO DECADES OF JDAI] (noting that the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative now operates in 110 local jurisdictions and a number of partner states, which together contain almost 40% of the nation's population). JDAI began in 1992 as a project aimed at, among other goals, reducing the use of secure detention to house youth.

what would be the juvenile's first contact with the juvenile court.<sup>114</sup> Although the processes at both stages are part of the same system of diversion, they represent two discrete opportunities for handling children outside of the formal process. Each stage is discussed in turn.

As mentioned previously, the police exert a significant degree of control in determining the course of action for a child in conflict with law. Importantly, they can do so at the earliest point at which a juvenile comes into contact with the system. For example, in 2007 police in the United States handled one in five cases without any formal contact with the juvenile justice system.<sup>115</sup> Thus, law enforcement officials play a "pivotal role in determining whether the case proceeds into the juvenile justice system"<sup>116</sup> In the United States, police diversion programs can be formal or informal in nature.<sup>117</sup>

For example, "[d]iversion has . . . existed for a long time in the form of informal station adjustments and discretionary handling by police officers."<sup>118</sup> These informal practices can be grouped under the general heading of "warn and release," and entail a telephone call or visit to the child's home to inform the parents of the infraction, holding the child at the station to be retrieved by the parents, or simply admonishing the child at the time of the infraction.<sup>119</sup> Promulgating regulations directed at these practices can raise

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<sup>114</sup> F.M. Porpotage, *Diversion and Juvenile Probation: Youth Offender Demonstration Grant Project Tip Sheet* (Nat'l Youth Offender Demonstration Project, U.S. Dept. of Labor, Washington, D.C.), June 3, 2003, at 1, available at [http://www.doleta.gov/youth\\_services/pdf/DOLTipSheet2.pdf](http://www.doleta.gov/youth_services/pdf/DOLTipSheet2.pdf).

<sup>115</sup> Kathleen R. Skowrya & Joseph J. Cocozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* (Nat'l Ctr. for Mental Health and Juvenile Justice, Delmar, N.Y.), 2007, at 46, available at <http://www.ncmhjj.com/Blueprint/default.shtml>.

<sup>116</sup> *Id.*

<sup>117</sup> See *infra* notes 118-120 and accompanying text (discussing informal police diversion techniques) and *infra* notes 121-125 and accompanying text (discussing formal police diversion efforts).

<sup>118</sup> Roberts, *supra* note 112, at 185.

<sup>119</sup> Porpotage, *supra* note 114, at 1.

the awareness and encourage the use of such techniques; however, the extent of their use is ultimately dependent on an individual station's culture and general philosophy on handling minor offenses.<sup>120</sup> Thus, attempting to change practices via such an informal avenue might not be effective, particularly without some type of targeted training that sparks a change in culture.

More structured police diversion programs also exist in the United States.<sup>121</sup> These programs generally require a youth to participate in certain services or conditions in exchange for the police not filing a complaint with the juvenile court.<sup>122</sup> In essence, such programs are similar to probation or a contractual agreement, but the arrangement is developed *before* the child has any formal contact with the juvenile justice system.<sup>123</sup> Such programs are often viewed as providing greater accountability because of the relatively immediate response to the situation, more efficient processing because of the reduced gap between the time of infraction and the point of treatment and/or referral, and a lower demand on the resources on the juvenile court because not every child is automatically referred.<sup>124</sup> More often, though, the police are

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<sup>120</sup> For example, in Florida's Miami-Dade County, police operate a Civil Citation Program that allows police officers to refer first- and second-time misdemeanor offenders to services without making an arrest or requiring the juvenile to appear in court. According to recent statistics, from the program's inception in April 2007 to February 2009, police made over 4,000 civil citation referrals, which have saved the county \$16 million annually. Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Summit Salutes Arrest Prevention Program*, OJJDP NEWS AT A GLANCE (May/June 2008) The Florida legislature passed enabling legislation for the program in 2007. *See* Fla. Stat. § 985.12 (2009). However, the program's success stems from the evidence that police are actually using the statutory tool.

<sup>121</sup> *See infra* notes 122-125.

<sup>122</sup> *See supra* note 120 (discussing the Miami-Dade County Civil Citation Program).

<sup>123</sup> *See, e.g.*, Tallmadge Police Department, Police Diversion Program, <http://www.tallmadge-ohio.org/safety/police/pdf/diversion.pdf> (last visited Mar. 28, 2008). *See also* TEX. FAM. CODE. ANN §52.031 (describing Texas's "first offender program" which permits police to refer juveniles for voluntary participation in a diversion program).

<sup>124</sup> *See Roberts, supra* note 112, at 191; *see also* Megan Kurlychek et al.,

just one part of a broader network of diversion resources – referring juveniles to other actors within the juvenile justice system, such as probation officers, in order to determine what services are necessary to ensure accountability and a change in future behavior.<sup>125</sup> Regardless of the specifics of a diversion program, integrating the police into the overall diversion framework is one way of forging a stronger, more meaningful relationship between the Indian police and the Juvenile Justice Boards. Accordingly, discussions on the development of diversion plans should include the police as one of the key stakeholders in the scheme, particularly given their ability to manage cases at the earliest possible time point.

Although police can serve as the front line for diversion, many jurisdictions in the United States have developed formal diversion programs as a means of directing minor offenders, typically first-time offenders, out of the judicial system.<sup>126</sup> Diversion programs operate on the principle that the juvenile justice system should not just blindly release children for the sake of reducing numbers, but should instead “hold offenders accountable . . . , take steps to repair the damage caused by their actions, and provide swift and certain consequences.”<sup>127</sup> Diversion in the United States “cover[s] a wide range of interventions, all of which are alternatives to initial or continued formal processing in the juvenile justice system.”<sup>128</sup> Oftentimes diversion is employed

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*Focus on Accountability: Best Practices for Juvenile Court and Probation*, JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANTS BULLETIN 6 (Aug. 1999), available at <http://www.ncjrs.gov/pdffiles1/177611.pdf> [hereinafter *Best Practices for Juvenile Court and Probation*] (“Effective diversion programs hold offenders accountable for the offenses committed . . . and provide swift and certain consequences.”).

<sup>125</sup> Porpotage, *supra* note 114, at 1; *see also supra* note 120 (discussing police referral to services in Miami-Dade County, Florida).

<sup>126</sup> *See Roberts, supra* note 112, at 185-85; *see also supra* notes 120 & 123.

<sup>127</sup> *Best Practices for Juvenile Court and Probation, supra* note 124, at

<sup>128</sup> Kathleen Skowyra & Susan Davidson Powell, *Juvenile Diversion: Programs for Justice Involved Youth with Mental Health Disorders* (Nat’l Ctr. for Mental Health and Juvenile Justice, Delmar, N.Y.), June 2006, at 2, available at <http://www.ncmhjj.com/pdfs/publications/DiversionRPB.pdf>. For an overview of such programs, *see Roberts, supra* note 112; Shelden



for discrete categories of offenses, such as drug and alcohol infractions, theft, and other relatively minor crimes.<sup>129</sup>

These programs vary significantly in terms of their exact structure. However, the general program begins with a referral from an actor within the juvenile justice system, including police, probation officers, prosecutors, or the court itself. Although some jurisdictions use informal methods to determine which cases are good candidates for diversion, other states provide explicit criteria.<sup>130</sup> For example, in Washington State, prosecutors must divert first-time offenders from prosecution in the juvenile court as a matter of law, with little exception.<sup>131</sup> Washington, through the same statute, also codifies the specific detention alternatives themselves, regulating the length and types of dispositions for specific offenses in explicit terms.<sup>132</sup> These explicit guidelines could be a model for shaping intake diversion practices, even in the absence of an active prosecutorial figure, by establishing clear paths through the juvenile justice system for different offenses.

In these programs, youth are generally unrepresented by counsel, and the juvenile has the option of entering into an agreement similar to a probation arrangement whereby he or she agrees to a certain course of action in return for not prosecuting the case formally in juvenile court.<sup>133</sup> Diversion programs may order restitution, counseling, or referrals to treatment agencies, and a number of diversion programs also

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Evaluation, *supra* note 110.

<sup>129</sup> For example, the Miami-Dade County Civil Citation Program applies to first-time offenders “who have committed a minor misdemeanor offense,” such as assault, battery and animal cruelty. *See* Catherimarty Burgos, *Juvenile Justice Model*, at 16, <http://www.miamidade.gov/jsd/library/Clinical%20Perspective.pdf>.

<sup>130</sup> *See e.g., infra* notes 131-132.

<sup>131</sup> WASH. REV. CODE § 13.40.070 (West 2008).

<sup>132</sup> WASH. REV. CODE § 13.40.0357 (West 2008).

<sup>133</sup> *See, e.g.,* State of New Hampshire, Judicial Branch, Juvenile Diversion Agreement, *available at* <http://www.courts.state.nh.us/forms/nhjb-2354-df.pdf> (last visited Oct. 31, 2009) (noting that as part of the agreement, youth are “advised that the court will not appoint an attorney or guardian ad litem”). These terms are typical of other diversion programs.

pair juveniles with community members and resources as a means of treatment.<sup>134</sup> One notable example of a formal diversion program that has been successful is the “fast track” diversion program in Thurston County, Washington.<sup>135</sup> The program directs offenders to a Community Accountability Board (CAB) if they meet the eligibility criteria and the prosecutor agrees to diversion.<sup>136</sup> The CAB holds a hearing within two weeks of the offense, meeting with the juvenile and his or her parents to discuss the infraction and develop a diversion agreement, which can include any of the dispositional options listed above.<sup>137</sup> If the child agrees to the diversion agreement (which entails an admission of guilt), he or she is supervised by a juvenile diversion case manager, a figure akin to a probation officer.<sup>138</sup> If the terms of the agreement are met, no formal charges are entered.<sup>139</sup> Analyses of the program’s effectiveness have indicated that it results in reduced rates of reoffending and reduced costs to society in terms of funds that must be expended on services for the juvenile in the long run.<sup>140</sup>

Although many jurisdictions explicitly provide for diversion as a discrete element of the juvenile justice system, others utilize existing actors and processes to achieve the same goal without referring to that process as diversion per se.<sup>141</sup> The “show-cause” hearing in Massachusetts is an example of

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<sup>134</sup> Barry C. Feld, JUVENILE JUSTICE ADMINISTRATION IN A NUTSHELL 139, 154-55 (2d ed. 2009) [hereinafter JUVENILE JUSTICE ADMINISTRATION]. For a sample of a juvenile diversion agreement, see Juvenile Diversion Program Leader Handbook, <http://www.learning-for-life.org/exploring/lawandgovt/diversion.pdf> (last visited Mar. 31, 2008).

<sup>135</sup> See, e.g., *Fast Tracking Youth to Diversion in Thurston County: A Preliminary Analysis* (Washington State Inst. for Pub. Pol’y), Dec. 1997, available at <http://www.wsipp.wa.gov/rptfiles/FastTrack.pdf>; *Best Practices for Juvenile Court and Probation*, *supra* note 124, at 6.

<sup>136</sup> *Best Practices for Juvenile Court and Probation*, *supra* note 124, at 6.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Fast Tracking Youth to Diversion in Thurston County*, *supra* note 135, at 4.

<sup>141</sup> See *infra* notes 142-146; see also *supra* notes 118-119.

one such process.<sup>142</sup> In the hearing, the clerk-magistrate of the court, who may or may not have a legal background, reviews the evidence provided by the arresting officer or the prosecution, making a determination as to whether or not the case should proceed to the formal adjudicatory process and fully engage with the juvenile justice system.<sup>143</sup> If the clerk decides that the evidence is not sufficient to warrant proceeding to trial, he or she can dismiss the case with or without conditions.<sup>144</sup> In the former case, the clerk will negotiate a set of terms with the youth.<sup>145</sup> If the terms are met, there will be no record of the infraction and no formal contact with the juvenile justice system; if the child breaks the diversion agreement, he or she may then be processed in the formal juvenile justice system.<sup>146</sup> While not a formal diversion program, this type of arrangement effectively channels juveniles away from the full adjudicatory process, albeit using similar technique as the formal programs listed above.<sup>147</sup>

### 3. Limit the Use of Secure Detention

Both India and the United States rely on the possibility of secure detention at various stages in the delinquency process. As in the United States, detention is used in India as a means of holding children pending inquiry before the JJB,<sup>148</sup>

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<sup>142</sup> Massachusetts Bar Association, Common Legal Proceedings, <http://www.massbar.org/about-the-mba/press-room/journalists'-handbook/22-common-legal-proceedings> (last visited Mar. 31, 2008).

<sup>143</sup> *Id.*

<sup>144</sup> *See Commonwealth v. Clerk of the Boston Division of the Juvenile Ct. Dept.*, 432 Mass. 693, 698-703, 738 N.E.2d 1124, 1128-31 (2000) (discussing show cause procedure). In this case, the Supreme Judicial Court held that the clerk-magistrate had exceeded his powers in ordering such an agreement over the objection of the prosecution. However, the Court was “confident” after its ruling “that the valuable, albeit informal, screening function performed by magistrates will continue to be welcomed and encouraged by the Commonwealth, to the extent that it does not directly interfere with prosecutorial discretion.” *Id.* at 703, 1131.

<sup>145</sup> *See Commonwealth v. Clerk of the Boston Division of the Juvenile Ct. Dept.*, 432 Mass. at 698-703, 738 N.E.2d at 1128-31.

<sup>146</sup> *Id.*

<sup>147</sup> *See supra* notes 133-139 and accompanying text.

<sup>148</sup> The JJ Act designates “observation homes” as the institution charged with “the temporary reception of juvenile in conflict with law during the

and it is available as a dispositional alternative under the JJ Act.<sup>149</sup> Based on our observation of the juvenile justice system in Delhi, Bangalore, and Shimoga, however, institutionalization, particularly during the period of inquiry, is utilized on a regular basis without consideration of alternative placements listed in the JJ Act.<sup>150</sup> A disproportionate reliance on institutionalization is a common phenomenon in the United States as well.<sup>151</sup> There are several possible explanations for this tendency, including a lack of awareness of alternatives, a belief in the efficacy of institutional detention, and – most importantly – a lack of viable detention alternatives.

In order to address some of these issues, a number of jurisdictions in the United States have experimented with several types of reform.<sup>152</sup> The impetus for this effort has come from two main sources. First, there was a dramatic rise in the number of youth held in juvenile detention facilities: the figure jumped seventy-two percent nationwide in the ten-year period from 1985 to 1995, even though less than a third of the offenses contributing to detention on any given year were violent offenses.<sup>153</sup> This rise resulted in overcrowding and a

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pendency of any inquiry.” JJ Act, *supra* note 2, at ch. 2 § 8(2).

<sup>149</sup> Juvenile detention facilities used for this purpose are designated “special homes” in India. JJ Act, *supra* note 110, at ch. 2 § 9.

<sup>150</sup> JJ Act, *supra* note 2, ch. 2, §15 and Model Rules, *supra* note 111, ch. 2, §9 (listing dispositional alternatives, including counseling, probation, community service, and placement in the care of a “fit institution” or special home).

<sup>151</sup> See, e.g., Paul DeMuro, *Consider the Alternatives: Planning and Implementing Detention Alternatives*, 4 PATHWAYS TO JUVENILE DETENTION REFORM 10 (2006), available at <http://www.aecf.org/KnowledgeCenter/PublicationsSeries/JDAIPathways.aspx> (noting that “[i]n many jurisdictions, judges and probation staff have only one of two options when faced with a youth who has been arrested and charged with an offense: they can either release the youth to his or her parents or another responsible adult or lock up the youth in a secure detention facility.”)

<sup>152</sup> See, e.g., TWO DECADES OF JDAI, *supra* note 113 (noting that the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative, started in 1992 to limit the use of secure detention for juveniles, now operates in 110 local jurisdictions and a number of partner states, which together contain almost 40% of the nation’s population).

<sup>153</sup> Richard A. Mendel & Julie Peterson, *Beyond Detention: System*

substantial increase in expenses to the state, sparking interest in alternatives to detention from a fiscal standpoint.<sup>154</sup> Additionally, advocates successfully marshaled research on the harmful effects of detention on youth.<sup>155</sup> This research demonstrated that the potential harms of detention, even for a brief period, were clear.<sup>156</sup> These included increased recidivism, high rates of physical injury and mental problems, increased developmental problems, greater association with deviant peers, and decreased education and employment prospects relative to other dispositional alternatives.<sup>157</sup> Together, these factors made it clear that “disproportionately detaining certain groups of children or . . . keeping children who need and would benefit from treatment services in secure detention, [ran] counter to the goals of the juvenile justice system.”<sup>158</sup>

In response to these concerns, a number of programs have sought to reform the approach to juvenile detention through the creation of novel alternatives.<sup>159</sup> Although this section does not provide an exhaustive list of such

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*Transformation Through Juvenile Detention Reform*, 14 PATHWAYS TO JUVENILE DETENTION REFORM 4-5 (2007), available at <http://www.aecf.org/KnowledgeCenter/PublicationsSeries/JDAIPathways.aspx>.

<sup>154</sup> *Id.* at 10.

<sup>155</sup> Kenneth A. Dodge, Thomas J. Dishion & Jennifer E. Lansford, *Deviant Peer Influences in Intervention and Public Policy for Youth*, 20 SOC. POL'Y REP. 1, 1 (Soc'y for Res. in Child Dev., Ann Arbor, Mich.) (2006), available at <http://www.srcd.org/documents/publications/SPR/spr20-1.pdf>.

<sup>156</sup> See, e.g., Elizabeth Calvin, LEGAL STRATEGIES TO REDUCE THE UNNECESSARY DETENTION OF CHILDREN: ADVOCACY AND TRAINING GUIDE 55-79 (2004), available at [http://www.njdc.info/pdf/detention\\_guide.pdf](http://www.njdc.info/pdf/detention_guide.pdf); NATIONAL RESEARCH COUNCIL & NATIONAL INSTITUTE OF MEDICINE, JUVENILE CRIME, JUVENILE JUSTICE 5-6 (2001) [hereinafter JUVENILE CRIME, JUVENILE JUSTICE]; Dodge et al., *supra* note 156.

<sup>157</sup> See *id.*

<sup>158</sup> CALVIN, *supra* note 157, at 55.

<sup>159</sup> See, e.g., JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 157, at 108-154; Albert R. Roberts, *Epilogue: National Survey of Juvenile Offender Treatment Programs That Work*, in JUVENILE JUSTICE SOURCEBOOK, *supra* note 45, at 537-561.

programs,<sup>160</sup> it does raise the key considerations and issues that should be addressed with respect to limits on institutionalization. For example, in the United States, the Juvenile Detention Alternatives Initiative (JDAI), sponsored by the Annie E. Casey Foundation, stands as the most concerted reform effort thus far in the area of alternatives to detention and rehabilitation planning.<sup>161</sup> The guidelines, practice pointers, and model programs from the initiative represent the best practices related to modern juvenile detention and can serve as an excellent guide to anyone considering the introduction of alternatives to detention. Importantly, while JDAI focuses on identifying model detention alternatives that work, it has also identified the foundation that must be in place *before* detention alternatives are introduced in order to ensure successful implementation.<sup>162</sup>

Of these key principles, there are four general areas of particular relevance for the Indian context. First, creating non-institutional detention alternatives requires a reconceptualization of detention among those making detention decisions.<sup>163</sup> That is to say, detention should not be understood solely as the state of being locked up in a secure facility, but should be viewed “as a continuum of options ranging from secure custody to various types and levels of

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<sup>160</sup> For more extensive discussions of these programs, *see supra* note 159.

<sup>161</sup> David W. Roush, *Juvenile Detention: Issues for the 21st Century*, in JUVENILE JUSTICE SOURCEBOOK, *supra* note 45, at 222. For more information on the JDAI program, see The Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx> (last visited Oct. 18, 2009). Additionally, the JDAI Help Desk, a joint project of the Casey Foundation and the Pretrial Justice Institute, provides very extensive practice-based resources for policymakers, advocates and practitioners regarding multiple facets of detention reform. *See* JDAI Help Desk, <http://www.jdaihelpdesk.org/Pages/Default.aspx> (last visited Oct. 18, 2009). Additionally, the JDAI Pathways series is a collection of targeted recommendations and best practices based on actual experience with the administration of model sites and is available at <http://www.aecf.org/KnowledgeCenter/PublicationsSeries/JDAIPathways.aspx> (last visited Oct. 18, 2009).

<sup>162</sup> DeMuro, *supra* note 151, at 11-14.

<sup>163</sup> *Id.* at 11.

non-custodial supervision . . .”<sup>164</sup> This ensures that decision makers view alternatives to detention as true alternatives that can be utilized as a disposition. Second, there should be some level of consensus as to when and how secure detention or alternatives should be utilized; otherwise there is a risk that decision makers will fail to utilize alternatives even if they do exist.<sup>165</sup>

Third, any planned scheme “should include a *continuum* of detention alternatives, with various programs and degrees of supervision matched to the risks of detained youth.”<sup>166</sup> The continuum of alternatives reflects the principle that “[d]etention alternatives should be designed and operated on the principle of using the least restrictive alternative possible” based on the individual circumstances of the juvenile’s case.<sup>167</sup> Finally, detention alternatives should be designed with the specific needs of the population in mind, meaning that such alternatives should be “culturally relevant” and “should be located in the neighborhoods from which the youth come, both for ease of participation and because community context is important to program outcomes.”<sup>168</sup>

These four conceptual issues clearly indicate that making alternatives to detention work requires more than just the creation of alternatives – it requires a collective belief that those alternatives are superior to institutionalized detention, save for in a handful of narrowly defined, extreme cases. For a country that may be considering diversion, therefore, a first step is to craft a clear statement that outlines the appropriate use of detention and stresses the need to consider those alternatives in certain types of cases. However, simply directing individuals to employ alternatives to detention will likely be insufficient to change current practices. Such a policy will have little effect without corresponding efforts to make key stakeholders aware of the policy, the harms of detention, and the viability of those options as adequate

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 12.

<sup>167</sup> *Id.* at 13.

<sup>168</sup> *Id.*

alternatives. Thus, a concerted effort should be made to educate individuals about the reasons for the policy before it is introduced in order to ensure its effectiveness.

Changing practices related to detention is difficult, particularly given pre-existing beliefs about the appropriateness of detention and entrenched practices among the existing institutional actors.<sup>169</sup> These factors may mean that “absent an objective approach, high-risk offenders may be released and low-risk offenders detained.”<sup>170</sup> In an attempt to work against such tendencies and to ensure that detention alternatives are utilized appropriately, the JDAI has adopted Risk Assessment Instruments (RAI) at its model detention reform sites.<sup>171</sup> These RAIs are, in effect, checklists that juvenile justice personnel use to determine what type of placement is appropriate for a juvenile based on his or her prior history. The instruments assign point values to risk factors, and the juvenile is assigned to detention alternatives based on the number of points that he or she receives on the RAI.<sup>172</sup> The idea is that such an instrument will allow decision makers to “screen for individual risk using reliable, standardized techniques,”<sup>173</sup> thereby assigning juveniles to more appropriate dispositional options.

There is evidence that the JDAI approach can result in an increased – and increasingly appropriate – use of detention

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<sup>169</sup> One particular belief held by magistrates throughout India is the necessity of incarceration for fear of an inability to track children down, particularly if they live in migrant families. Interview with Aarti Mundkur, *supra* note 51.

<sup>170</sup> JDAI Help Desk, Objective Admissions Home, <http://www.jdaihelpdesk.org/objective/Pages/default.aspx> (last visited Oct. 19, 2009).

<sup>171</sup> See DAVID STEINHART, JUVENILE DETENTION RISK ASSESSMENT: A PRACTICAL GUIDE TO JUVENILE DETENTION REFORM (2006), *available at* <http://www.aecf.org/upload/PublicationFiles/JJ3622H5038.pdf>.

<sup>172</sup> *Id.* at 5.

<sup>173</sup> Objective Admissions Home, *supra* note 170. For sample screening instruments, see JDAI Help Desk, Juvenile Detention Risk Assessment, <http://www.jdaihelpdesk.org/objective/Pages/JuvenileDetentionRiskAssessment.aspx> (last visited Oct. 19, 2009).



alternatives.<sup>174</sup> Certainly, there are limits to an objective screening approach, and independent assessments of the RAIs have noted that not all of the factors included in the original instrument may bear a significant relationship with the desired outcome variables (e.g., the likelihood to commit a new offense).<sup>175</sup> Yet, such an approach might be useful in a situation in which there is little working knowledge of or an over resistance to the use of detention alternatives. These instruments could be useful in moving decision makers toward a more regularized and consistent application of detention alternatives.

### III. Probation Officers

Probation officers are the lynchpin of a successful juvenile justice system. Examining how to increase the level and quality of contact with probation officers is, therefore, one of the most promising avenues to improving the substantive experience of children within that system. Probation officers are wholly unique actors in the juvenile justice process. They serve an integral role at every stage of the youth's contact with the system, from intake into the system to follow-up after the juvenile had ended his or her formal contact with the juvenile justice system.<sup>176</sup> The juvenile justice systems in India and the United States, at least in theory, exist to serve the goals of accountability, rehabilitation, and individualized case management.<sup>177</sup> The probation officer is the individual who

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<sup>174</sup> See, e.g., Kelly Dedel & Garth Davies, *Validating Multnomah County's Juvenile Detention Risk Assessment Instrument* (June 11, 2007), available at

[http://www.jdaihelpdesk.org/Docs/Documents/jsd\\_rai\\_validation100907.pdf](http://www.jdaihelpdesk.org/Docs/Documents/jsd_rai_validation100907.pdf). See generally JDAI Help Desk, RAI Analyses, <http://www.jdaihelpdesk.org/objective/Pages/RAIAnalyses.aspx> (last visited Oct. 19, 2009).

<sup>175</sup> See Dedel & Davies, *supra* note 174.

<sup>176</sup> See Patricia McFall Torbet, *Juvenile Probation: The Workhorse of the Juvenile Justice System*, JUVENILE JUSTICE BULLETIN 1-2 (Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice, Washington, D.C.), March 1996, available at <http://www.ncjrs.gov/pdffiles/workhors.pdf>.

<sup>177</sup> See JJ Act, *supra* note 2, at preamble; see generally Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691 (1991).

makes those goals possible, recognizing that the system cannot achieve its objectives based solely on a juvenile's brief physical presence before the juvenile court or Juvenile Justice Board. Indeed, probation officers are in many ways the actors who are best equipped to manage the unique challenges of the juvenile justice system by virtue of their training and relationship with the juvenile.

#### A. Current Practices

The JJ Act makes provisions for probation services,<sup>178</sup> and the Model Rules specify a list of duties for probation officers themselves.<sup>179</sup> However, based on our observations of the probation services at the JJBs in Delhi and Karnataka, the role of the probation officer in the juvenile justice system in India is vague. The JJ Act indicates that the probation officer is to provide information on the child's background that will assist the Board in issuing an order and that he or she should report noncompliance with any of the JJB's orders.<sup>180</sup> However, the Act provides no specific guidance as to *how* the probation officer should go about accomplishing those tasks.<sup>181</sup> The Model Rules delve into more detail by setting out fourteen general responsibilities of probation officers.<sup>182</sup> Again, though, the Model Rules afford little guidance as to what each task might entail, and many of the tasks are stated in terms that are too general to be of much practical assistance.<sup>183</sup>

The one discrete requirement elucidated by the Model Rules is the social investigation report, a mandatory component of a juvenile's case file before an order can be

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<sup>178</sup> JJ Act, *supra* note 2, at ch. 2 §§ 13, 15. Other scattered sections of the Act also reference probation officers.

<sup>179</sup> Model Rules, *supra* note 18, at ch. 5, § 71.

<sup>180</sup> JJ Act, *supra* note 2, at ch. 2 §§ 13(b), 15(3).

<sup>181</sup> See JJ Act, *supra* note 2 (not providing guidance to probation officers on how to perform assigned duties).

<sup>182</sup> Model Rules, *supra* note 18, at ch. 5, § 71(1)(a) *et seq.*

<sup>183</sup> For example, one task is "social reintegration of juveniles and to ensure the necessary follow-up." *Id.* § 71(1)(j).

rendered.<sup>184</sup> This requirement becomes the focus of the probation officers' duties, leading them in many cases to become the equivalent of courtroom clerks, rather than field investigators.<sup>185</sup> Probation officers do make reports as part of the courtroom procedures, but they do not appear to be based on actual investigations.<sup>186</sup> Further, the timeliness with which these reports are completed varies widely – some cases are filed within twenty-four hours, while others take months.<sup>187</sup> According to a member of the Bangalore JJB, there is no standard report format, leaving officers with no formal requirements as to the information that they provide, making the reports less helpful to the JJB than intended by legislation.<sup>188</sup> Delays occur both with investigations and with the clerical tasks. In Bangalore, for example, there are many files – 350 according to one probation officer – where all documentation, including the charge-sheet, have been received, but the staff have yet to prepare the files to bring before the JJB.<sup>189</sup> During JJB hearings, the JJB in Bangalore spends less than half of their time calling cases because the staff does not bring proper files before them.<sup>190</sup>

Another problem is a basic confusion regarding roles within the system. In rural areas, probation officers can have multiple responsibilities. In Shimoga, for instance, one man serves as both the superintendent of the Observation Home and the sole probation officer, who is responsible for all home visits.<sup>191</sup> In Bangalore, one probation officer has been the temporary superintendent since the suspension of the

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<sup>184</sup> *Id.* § 15(2).

<sup>185</sup> Observations of probation officer in Shimoga and Bangalore, India (July 13 and July 19, 2007); interview with Probation Officer, Madivala Observation Home for Boys, Bangalore, India (July 19, 2007).

<sup>186</sup> *Id.*

<sup>187</sup> This is in violation of the Rule that it should be filed within 90 days and a case closed within four months JJ Act, *supra* note 9, R. 14.

<sup>188</sup> Interview with CMM, in Bangalore, India (July 18, 2007).

<sup>189</sup> This file contains the FIR, charge-sheet, statements from witnesses, victim, and child, police statements, Probation Officer report, warrant, and order sheet.

<sup>190</sup> Observations at JJB sessions, in Bangalore, India (July 18, 2007).

<sup>191</sup> Interview with Superintendent of Shimoga Observation Home for Boys, *supra* note 30.

superintendent in January 2007.<sup>192</sup> This conflation of roles seems highly problematic for three reasons. First, there is no time for one person to attend to both the responsibilities within the Observation Home and the fieldwork in visiting the children's homes. Second, these individuals have not been properly trained for either role. Finally, there is no safe person for children to bring grievances regarding staff within the Home. The fact that juvenile probation officers are being taken from the adult system compounds the effects of a lack of meaningful guidance.

### *B. Avenues for Change*

In India, the law recognizes the need for juvenile probation officers to secure the JJ Act's mandate for individualized treatment and rehabilitation.<sup>193</sup> The reality on the ground, however, is that probation is not yet a meaningful part of children's experience with the juvenile justice system.<sup>194</sup> The three reforms below recognize that juvenile probation is a challenging and specialized profession – one that requires a desire to and aptitude for work with children. We propose measures that would help to develop the juvenile probation workforce,<sup>195</sup> assist juvenile probation officers in understanding how to manage their many discrete obligations under the JJ Act,<sup>196</sup> and hold juvenile probation officers accountable for their work.<sup>197</sup>

#### 1. Foster the Professionalization of the Juvenile Probation Officer's Position

In Delhi, social work programs exist at several national universities, and many of the probation officers present held masters degrees in the field. Thus, training and career opportunities appear to be available for probation officers at

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<sup>192</sup> Interview with Probation Officer, Madivala Observation Home for Boys, *supra* note 185.

<sup>193</sup> See *supra* notes 176-177 and accompanying text.

<sup>194</sup> See *supra* notes 178-192 and accompanying text.

<sup>195</sup> See *infra* Part III.B.1.

<sup>196</sup> See *infra* Part III.B.2.

<sup>197</sup> See *infra* Part III.B.3.

the JJB sites that we visited.<sup>198</sup> Indeed, universities across India do offer the training opportunities in fields necessary to perform the duties of a juvenile probation officer.<sup>199</sup> Nonetheless, a broader professionalization of the position of juvenile probation officers has yet to occur and will likely take time to develop as a specialized field or lifetime career path. However, creating student internship or clinical opportunities within the juvenile justice system for current social work students is one way to foster interest and professional development in this area. There are currently some student volunteers, primarily working through non-governmental organizations, and some social work students who have participated in the system (primarily within Observation Homes in urban areas), but without government support.<sup>200</sup>

Additionally, the current hiring and placement system also fails to ensure that juvenile probation officers have – at a minimum – some interest in working with children.<sup>201</sup> For example, one trend in India is to assign probation officers from the adult probation or corrections system to the JJB in an effort to comply with the JJ Act.<sup>202</sup> Thus, there is no formal mechanism in place to provide for the hiring of probation officers specifically for work with juveniles.<sup>203</sup> This hiring and placement scheme means that it is unclear how many of the probation officers who enter the juvenile justice system are

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<sup>198</sup> Interview with Syed Mohsin Ali, Probation Officer, Kingsway Camp Juvenile Justice Board, in New Delhi, India (Jan. 9, 2008).

<sup>199</sup> Discussion at the meeting of the NCPCR Juvenile Justice Expert Subcommittee, in New Delhi, India (Jan. 8, 2008).

<sup>200</sup> Observations at Kingsway Camp Juvenile Justice Board, New Delhi, India, Jan. 11, 2008.

<sup>201</sup> See *infra* notes 202-206 and accompanying text. The National Commission for the Protection of Child Rights has noted this as well, and has recommended “[c]reat[ing] and support[ing] dedicated juvenile probation units nationally with requisite development of juvenile probation regulation, policies and guidelines.” CHOPRA, *supra* note 24, at 21.

<sup>202</sup> Interview with Syed Mohsin Ali, Probation Officer, Kingsway Camp Juvenile Justice Board, in New Delhi, India (Jan. 9, 2008).

<sup>203</sup> Indeed, the JJ Act specifies that probation officers are “officer[s] appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958).” JJ Act, *supra* note 2, § 2(s).

qualified for and interested in work with children. Further, there was some indication that the probation officers that had been assigned to work with children at a specific JJB were rotated to other placements in the adult system after a relatively brief duration, even if they had demonstrated a particular aptitude for work with juveniles.<sup>204</sup> We observed a separate trend in Bangalore, where probation officers were transferred from Child Welfare Committees, providing a background working with youth but no experience with courtroom proceedings.<sup>205</sup> This background, combined with a lack of guidance on their new responsibility, led to miscommunication and errors in reporting, complicated proceedings, and significant delays.<sup>206</sup>

The experience of the United States with juvenile probation can serve as a model for strengthening the profession, given the country's long history with the probation function in the juvenile court. Although some states in the United States also hire probation officers on general terms, later assigning them to specific areas such as work with juveniles, many states in the United States hire and manage probation officers directly through state-level juvenile corrections, child protection, or social and human services agencies.<sup>207</sup> These states can impose specific job requirements that are unique to the position of juvenile probation officer.<sup>208</sup> In addition, "[p]robation officers usually work with either adults or juveniles exclusively."<sup>209</sup> The present system in India

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<sup>204</sup> Interview with Minna Kabir, Kingsway Camp Juvenile Justice Board, in New Delhi, India (Jan. 18, 2008).

<sup>205</sup> Interviews with Probation Officers, Madivala Observation Home for Boys, in Bangalore, India (July 19, 2007).

<sup>206</sup> *Id.*

<sup>207</sup> Patrick Griffin & Melanie King, Nat'l Ctr. for Juvenile Justice, *National Overviews: State Juvenile Justice Profiles – How is Juvenile Probation Organized and Administered From State To State?*, <http://www.ncjj.org/stateprofiles/overviews/faq3.asp> (last visited Oct. 19, 2009).

<sup>208</sup> *Id.*

<sup>209</sup> *Probation Officers and Correctional Treatment Specialists*, in BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, 2008-2009 EDITION 238-40 (2007), available at

makes it difficult to impose any such requirements or capture any individual skill for work with juveniles.

Of particular note, some comparative research in the United States indicates that juvenile and adult probation officers utilize different strategies when interacting with their supervisees.<sup>210</sup> In general, adult probation officers tend to favor law enforcement management strategies (e.g., ensuring community safety through direct supervision), while juvenile probation officers tend to favor a casework strategy that is more amenable to accountability and rehabilitation.<sup>211</sup> Ideally, probation officers should be hired directly into the juvenile justice system based on their qualifications for work with children and their interest in that specific field; they should not be assigned from the adult system where priorities and styles of case management may be significantly different than those of the juvenile justice system.

While professionalization and changes to the hiring scheme are two routes to ensuring an interested and qualified body of juvenile probation officers, training existing probation officers for work in the juvenile justice system in India is also a means of addressing the many unique needs of children. This is particularly true given that probation officers in India come from the adult probation system, where they do not receive any guidance on working with youth.<sup>212</sup> Several organizations in the United States provide targeted and concise training materials in order to brief an individual as to what those needs are. For example, the National Juvenile Defender Center regularly conducts trainings with probation officers and other actors in the juvenile justice system using a program that has

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<http://www.bls.gov/oco/ocos265.htm> (reviewing other details related to adult and juvenile probation practice in the U.S.).

<sup>210</sup> See Benjamin Steiner et al., *Legally Prescribed Function of Adult and Juvenile Probation Officers: Worlds Apart?*, 39 J. OFFENDER REHABILITATION 47, 49-50 (2004).

<sup>211</sup> *Id.* (reviewing research on differences in strategies, but concluding that both juvenile and adult probation officers use primarily law enforcement strategies)..

<sup>212</sup> See *supra* notes 201-204 and accompanying text.

been refined for use with juvenile justice professionals.<sup>213</sup> The training uses discrete, independent modules that focus on adolescent development, strategies for interviewing youth, pathways to violence, and other topics.<sup>214</sup> Such training would be valuable, not only as a means of equipping probation officers to recognize and manage some of the unique challenges of a juvenile population, but also as a means of ensuring that probation officers from the adult system understand the different focus and goals of the juvenile justice system. At a minimum, probation officers should receive some training that highlights the unique nature of the child population that they will be addressing.

### 2. Craft a Meaningful Description of the Probation Officer's Role

Based on our observations at various JJBs, the current role of the probation officer is unclear. Services are provided on an ad hoc basis, and individual probation officers exercise substantial discretion in shaping their own roles and responsibilities within the system.<sup>215</sup> Conversations with various individuals inside the juvenile justice system revealed that many people believed that probation officers were deliberately avoiding their responsibilities due to a lack of meaningful oversight.<sup>216</sup> Intentional avoidance of work may indeed be a factor in some cases. However, it is difficult to fault probation officers for avoiding their responsibilities until those responsibilities are clarified and presented in a meaningful way.

Developing a meaningful conceptualization of what the duties of a probation officer are – and not simply a list of

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<sup>213</sup> See National Juvenile Defender Center, MacArthur Juvenile Court Training Curriculum, <http://www.njdc.info/macarthur2.php> (last visited Oct. 18, 2009). This training program was piloted in several jurisdictions and refined before its publication in 2000.

<sup>214</sup> *Id.*

<sup>215</sup> Observations at Kingsway Camp Juvenile Justice Board, New Delhi, India, Jan. 9, 11 & 18, 2008.

<sup>216</sup> Oversight and accountability is certainly a critical element of ensuring the quality of probation officers and is discussed in detail in the next section.



general responsibilities – is a necessary first step to ensuring that probation officers are an active part of the juvenile justice process. Again, the American experience with juvenile probation can serve as a model. Given that over half of all cases that are formally adjudicated in the delinquency system result in probation as the disposition, probation officers shoulder significant responsibilities in ensuring that the rehabilitative mission of the juvenile court is carried out.<sup>217</sup>

Their tasks are numerous, incorporating many of the functions that are listed as duties under the Model Rules in India. Although the specific functions of probation officers across the United States differ somewhat from jurisdiction to jurisdiction, their main responsibilities fall within three broad areas: intake screening, predisposition investigation and recommendations, and court-ordered supervision.<sup>218</sup> This section will discuss the general functions of a probation officer at each of those stages in order to demonstrate how the probation officer's responsibilities fit together. The purpose of the discussion is to suggest how probation officers' responsibilities in India could also be grouped together into meaningful areas of responsibility in order to provide clearer guidance as to roles and expectations.

In the United States, the responsibilities of the probation officer during the intake stage are focused on the goal of determining whether a case should be formally processed.<sup>219</sup> The intake process, therefore, depends on the probation officer's knowledge of what type of cases are appropriate for the juvenile court, based on the relevant laws and regulations.<sup>220</sup> Probation officers review complaints from police in order to decide whether the offense listed is

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<sup>217</sup> Torbet, *supra* note 176, at 1.

<sup>218</sup> *Id.* at 2.

<sup>219</sup> See generally DESKTOP GUIDE TO GOOD JUVENILE PROBATION PRACTICE 43-48 (Patrick Griffin & Patricia Torbet eds., 2002), [http://www.ncjservehttp.org/ncjjwebsite/publications\\_detail.asp?n=284](http://www.ncjservehttp.org/ncjjwebsite/publications_detail.asp?n=284) [hereinafter GRIFFIN & TORBET].

<sup>220</sup> JUVENILE JUSTICE ADMINISTRATION, *supra* note 134, at 156-64. For a more extension discussion of the specifics of the intake process, including a checklist of key considerations, see GRIFFIN & TORBET, *supra* note 116, at 41-48.

sufficient for formal processing in the juvenile court.<sup>221</sup> In India, probation officers are required to generate their own social investigation report; however, they do not screen police reports. Thus, many cases end up in front of the JJB that should not be there under the provisions of the JJ Act.<sup>222</sup>

Clarifying and assigning an intake role to one of the actors of the juvenile justice system is one way of ensuring that only the correct cases receive formal processing through the JJB. For example, a probation officer could recognize that a charge filed by a police officer is insufficient to warrant formal processing because the offense is punishable by less than seven years,<sup>223</sup> and he or she could then direct the child to targeted services or simply dismiss the case.<sup>224</sup> In this way, the probation officers would be able to counter the lack of awareness about the JJ Act among law enforcement officials. They might also be able to shape the behaviors of police over time, as police would come to realize that the children they bring in for certain offenses will not be prosecuted. Thus, the intake function of probation officers in the United States, in terms of screening cases based on the sufficiency of the charges, could be a model for one discrete set of responsibilities that probation officers could undertake in India. Charging probation officers with this intake function and establishing clear guidelines for the process could be one way of reducing the overall burden on the JJB and ensuring that the correct child population is formally processed through the system, even in the face of a limited awareness of the JJ Act by other actors such as police.

Probation officers in the United States not only screen cases at the outset to determine whether they can be formally processed, but they also investigate the background circumstances of the case to make recommendations about

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<sup>221</sup> *Id.* at 42-43.

<sup>222</sup> Observations at Kingsway Camp Juvenile Justice Board, New Delhi, India, Jan. 9, 11 & 18, 2008.

<sup>223</sup> Model Rules, *supra* note 18, at ch. 2, § 6(5).

<sup>224</sup> *See* GRIFFIN & TORBET, *supra* note 116, at 43, 47.

what type of action should be taken.<sup>225</sup> The probation officers have a significant influence on the type of children coming through the system at this stage: in the United States, probation officers either dismiss or adjust half of the cases that are reported to the juvenile court based on their initial investigations.<sup>226</sup> Making an intake decision entails going beyond the formal written complaint to investigating the individual child's situation in order to make the proper decision about what course of action may be necessary.<sup>227</sup> Probation officers may also undertake a predisposition investigation to collect information about the child's background, parental situation, prior history with delinquency or dependency issues, community and school background, and a host of other factors.<sup>228</sup> As a result of this investigation, the probation officer can suggest formal processing, informal services, or dismissal by issuing a written report to the prosecutor or juvenile court judge.<sup>229</sup> This report is also useful for the probation officer when determining the appropriate services at the disposition phase because it contains information about the child's needs and strengths.

The JJ Act and Model Rules do provide for a "social investigation report" discussed above, which is to be filed by either a probation officer or "recognized voluntary organization."<sup>230</sup> Indeed the JJB may not rule without the presence of a social investigation report in a child's file, which is the source of many dispositional delays.<sup>231</sup> However, with

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<sup>225</sup> For a more detailed description of how probation officers make disposition recommendations in the U.S. system and best practices in doing so, see GRIFFIN & TORBET, *supra* note 220, at 63-71.

<sup>226</sup> JUVENILE JUSTICE ADMINISTRATION, *supra* note 134, at 151.

<sup>227</sup> GRIFFIN & TORBET, *supra* note 220, at 44.

<sup>228</sup> *Id.* at 43-45.

<sup>229</sup> *Id.* at 44, 48.

<sup>230</sup> JJ Act, *supra* note 2, ch. 2, § 15(2).

<sup>231</sup> *See id.*; *see also* Model Rules, *supra* note 18, § 7(5). The JJ Act and Model Rules require completion of a social investigation report before any order can be handed down by the JJB. However, the JJ Act and Model Rules also indicate that some of these functions are to be provided by the Child Welfare Officer, a figure who is supposed to be attached to and work within the Observation Homes. *See* JJ Act, *supra* note 2, at ch. 2, § 13(b). Intake responsibilities could be assigned to either of these individuals with

many overlapping duties and a lack of guidance as to the report, many probation officers file reports without having left the office for the requisite social investigation in the field.<sup>232</sup> Because of the importance of the intake role, it “should not be . . . left to unstructured guesswork [as] too much follows from [it].”<sup>233</sup> Establishing specific guidelines and clarifying the goals of the juvenile justice system are a predicate to meaningful intake decisions and disposition recommendations, as is training on how to make informed decisions.<sup>234</sup>

Intake screening and predisposition investigations are critical responsibilities that occur early on in the child’s experience in the juvenile justice system. Yet, the third discrete role of probation officers, court-ordered supervision, is considered “the core of the probation function, [consisting] of all the activities the officer engages in to assist the probationer toward behavior change and accountability.”<sup>235</sup> Given that one of the main goals of the juvenile justice system in both India and the United States is diversion of the juvenile from future criminal activity, the role of probation officers in ensuring some sort of meaningful follow-up is essential. In the United States, probation officers work with children who have received probation as a disposition for their case, either through formal adjudication or informal processing, to develop a supervision plan for the youth that addresses some of the key issues that may have led to delinquency in the first place.<sup>236</sup> The probation officer uses information from the initial investigation report and from additional conversations with the juvenile to identify what such a plan should look like and the priorities for rehabilitation.<sup>237</sup> This plan then serves as the “blueprint for probation supervision,” and the probation

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appropriate training and qualifications, but the responsibilities should themselves represent one discrete function that one individual performs to ensure clear expectations and accountability.

<sup>232</sup> Interview with Probation Officers, Madivala Observation Home for Boys, in Bangalore, India (July 17, 2007).

<sup>233</sup> GRIFFIN & TORBET, *supra* note 220, at 41.

<sup>234</sup> *Id.* (discussing the key elements of intake interviews).

<sup>235</sup> *Id.* at 73.

<sup>236</sup> *Id.* at 64-65.

<sup>237</sup> *Id.* at 63.

officer is charged with following up with the juvenile to ensure that he or she adheres to the plan.<sup>238</sup> Depending on the specific situation that the juvenile is facing, the level of the probation officer's involvement will vary.<sup>239</sup> However, it will always require some type of follow-up and progress report, and in many cases it can involve in-person visits to the juvenile's community or individual home.<sup>240</sup>

In India, this type of follow-up is not a visible feature of the juvenile justice system. From what we observed, probation officers rarely provided any type of systematic counseling to juveniles who had gone through the system.<sup>241</sup> Additionally, the follow-up that occurred was only with juveniles who voluntarily returned to the JJB site, as probation officers did not perform community- or home-based visits.<sup>242</sup> The absence of follow-up services is likely a product of several factors, including unclear definitions of the probation officer's role and level of appropriate involvement with children, a shortage of resources, and a lack of oversight. However, making rehabilitation the focus of the juvenile justice system requires a greater commitment to planning and follow-up with the children coming through the system. "Probation is the key resource to meet the special needs of each youth" – needs that cannot be addressed during the short period that the juvenile is in the courtroom or boardroom.<sup>243</sup> Because, by virtue of their training, probation officers should be in the best position to fulfill those needs, their supervisory role should be clarified, keeping in mind the goals of the

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<sup>238</sup> *Id.* at 74. For best practices in terms of creating plans, see *id.* at 76-78.

<sup>239</sup> *Id.* at 74-75.

<sup>240</sup> *Id.* at 79-80.

<sup>241</sup> Observations at Kingsway Camp Juvenile Justice Board, New Delhi, India, Jan. 9, 11 & 18, 2008.

<sup>242</sup> Interview with Syed Mohsin Ali, Probation Officer, Kingsway Camp Juvenile Justice Board, in New Delhi, India (Jan. 9, 2008). *See also* Observations at Kingsway Camp Juvenile Justice Board, New Delhi, India, Jan. 9, 11 & 18, 2008.

<sup>243</sup> NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 33 (2005), *available at* <http://www.ncjfcj.org/content/view/411/411/>.

system and society's perceptions about the appropriate level of intervention in a child's life.

### 3. Develop a System of Accountability

One of the key concerns that advocates and juvenile justice staff had with respect to probation officers was the lack of accountability.<sup>244</sup> Specifically, there is no clear authority governing the functioning of probation officers, particularly at the JJB site itself.<sup>245</sup> Although the magistrate can exercise informal authority over the probation officers and attempt to ensure that they are performing their duties through verbal and written reprimands, the JJB has no formal authority over juvenile probation officers as per the JJ Act.<sup>246</sup> The formal authority over probation officers, instead, rests with the original department from which they were assigned.<sup>247</sup> Because juvenile probation officers are drawn from either the adult probation system or the child welfare system, the level of supervision in the juvenile justice system may be too far removed to provide any effective accountability.

Accountability is an issue in the United States as well; many jurisdictions do not provide for meaningful supervision or assessment.<sup>248</sup> However, “[j]ust as a probation department must be clear and firm in setting expectations for juveniles, it must be publicly accountable for its own performance.”<sup>249</sup>

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<sup>244</sup> Interview with Minna Kabir, Kingsway Camp Juvenile Justice Board, in New Delhi, India (Jan. 18, 2008).

<sup>245</sup> *Id.*; Observations at Kingsway Camp Juvenile Justice Board, New Delhi, India, Jan. 9, 11 & 18, 2008.

<sup>246</sup> See JJ Act, *supra* note 2 (making no provision for JJB authority over probation officers).

<sup>247</sup> See CHOPRA, *supra* note 24, at 15 & n.18 (noting lack of specific juvenile probation provisions and citing to controlling law regarding probation responsibilities, the Reform Probation of Offenders Act of 1958).

<sup>248</sup> See, e.g., Doug Thomas, *How Does the Juvenile Justice System Measure Up? Applying Performance Measures in Five Jurisdictions*, TECHNICAL ASSISTANCE TO THE JUV. CT.: SPECIAL PROJECT BULL. (Nat'l Ctr. for Juv. Just., Pittsburgh, Pa.), May 2006, at 2, available at <http://www.ncjservehttp.org/NCJJWebsite/pdf/taspecialbulletinmeasuringjsperformance.pdf>.

<sup>249</sup> GRIFFIN & TORBET, *supra* note 220, at 3.

Many probation offices throughout the country track data on cases and outcomes based on reports of probation officers, thereby providing data as to recidivism and length of supervision that can later be used for evaluations.<sup>250</sup> The key indicators from these reports often consist of length of supervision, frequency of contact of the juvenile with the probation officer, and additional contact with the juvenile justice system or police while on probation.<sup>251</sup>

An alternative approach used by some jurisdictions that does not necessarily require a centralized filing system involves selecting cases at random from a probation officer's docket to review his or her performance.<sup>252</sup> Of course, such a system presumes that there are written records to review and that there is an individual or office with authority to review such files.<sup>253</sup> There are also various external indicators that can also be used to assess the effectiveness of probation officers. Some, such as grades and attendance at school, might not be applicable or might be too difficult to obtain and assess.<sup>254</sup> As a first step, however, ensuring some meaningful supervision of existing probation officers and maintaining some record of follow-up would likely bring about significant change in the practices of probation officers, thereby bringing the practices of the system more in line with its overall goals.

### Conclusion

This paper has highlighted what are among the most viable ways of bringing current practices in line with India's promises with respect to children entering the country's

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<sup>250</sup> By contrast, the data that we received from probation officers about recidivism was anecdotal. Interview with Syed Mohsin Ali, *supra* note 198.

<sup>251</sup> GRIFFIN & TORBET, *supra* note 220, at 134-35.

<sup>252</sup> See Thomas, *supra* note 248, at 20-22..

<sup>253</sup> One idea could be to assign the social workers on the JJB to the role of supervising the quantity and quality of probation officers' work. Although the viability of such an option should be explored, the broader point about enlisting someone close to the JJB to do such an evaluation is an important one.

<sup>254</sup> For a listing of such indicators, see GRIFFIN & TORBET, *supra* note 220, at 73-83.

juvenile justice system. These reforms, although not comprehensive, represent ways of capitalizing on the existing infrastructure and resources within the country to elicit significant changes for youth in the system. For example, the police, as the typical first point of entry into the system, wield a tremendous amount of influence over the length and quality of a child's experience in the Indian juvenile justice system. Yet, at present there is much more that should be done to ensure that this point of contact does not remain a point for abuse and delay in the system. Similarly, diversion and early dismissal, which is described in the act but not necessarily implemented in practice, can help ensure that children who enter the system are treated appropriately and in a way that best complements the overarching goals of the system. Finally, clarifying and focusing the role of probation officers can help ensure that children receive the attention that they need in the system to ensure that the rehabilitation and accountability are a realistic possibility in individual cases.

Like the recent changes to India's juvenile justice laws, the reforms outlined in this paper ultimately recognize that Indian juvenile justice system can and should do better to address the needs of children. Moving to adopt the changes listed above would represent strong first steps towards doing just that.