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ARTICLES

THE DISPOSITION OF CASES INVOLVING JUVENILE DELINQUENTS IN THE PEOPLE'S REPUBLIC OF CHINA

James V. Feinerman*

As the People's Republic of China attempts to deal with a recent epidemic of juvenile crime,¹ Chinese juvenile justice workers are increasingly faced with the necessity of making decisions about the intake of cases involving youthful offenders. Their decisions have important ramifications for the affected juveniles, determining the treatment they receive and the ultimate disposition of their cases in the Chinese criminal justice system.

As in most countries, Chinese juvenile authorities have considerable discretionary power; their flexibility is not limited by clearly stated legal guidelines. Yet unlike most other jurisdictions, in China this discretionary power, and its use in conjunction with non-institutional sanctions, mirrors the overall administration of criminal justice. This differs from the United States and other countries, where diversion programs for juveniles are seen as a marked departure from the norms of criminal justice as applied against adults.

Since the juvenile justice system in China reflects the administration of criminal justice generally, the study of disposition of juvenile cases yields information about the Chinese criminal process as a whole, as well as about the juvenile sector alone. This paper surveys systemic and specific features of this process, then focuses upon juvenile practice in the United States as a basis for comparative observations.

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1. See, e.g., Southerland, *China's Juvenile Delinquency is Growing*, Wash. Post, Nov. 10, 1985, at A32, Col. 1; Chan, *Juvenile Sex Crimes Surge*, S. China Morning Post, March 21, 1986, at 1. Both articles attest to a recent upsurge in juvenile crime in China which, despite the relatively low crime rate, has concerned Chinese officials.

I. THE CHINESE JUVENILE JUSTICE SYSTEM

At the outset it is essential to pin down the term "juvenile"² as that term is used in Chinese parlance. In general, it is not a legal term of art; Chinese criminal law neither defines the term "juvenile" nor discusses the concept of "juvenile delinquency."³ Under the Chinese Criminal Law, adult criminal responsibility begins when an individual reaches the age of 16, though the law provides that offenders under the age of 18 shall receive a lesser or mitigated punishment.⁴ Between the ages of 14 and 16, reduced criminal responsibility is borne by the offender, although for certain serious offenses an offender over the age of 14 may bear adult criminal responsibility.⁵ Under the age of 14, no criminal responsibility attaches for any act whatsoever.⁶ The following discussion uses the term "juvenile" in the more restricted sense to apply to those whom Chinese law singles out for special treatment, i.e., juvenile offenders under the age of 18.

The important features of the Chinese criminal process shared by the juvenile and adult sectors are informality, a tendency toward administrative sanctions, politicization and generation of popular fear of entanglement with the system.⁷ Dispute settlement by non-judicial means and the punishment of minor offenses outside the formal criminal process have long been hallmarks of the Chinese system. Indeed, given the relative paucity of judges, procurators (prosecutors) and other functionaries necessary to regularize the process, its administration in China today would be virtually impossible otherwise. Taking up much of the responsibility for the process that does exist are the public security forces, authorized since the mid-1950's to mete out a graduated series of administratively

2. The term used is *qingshaonian*.

3. '*Qingshaonian fazui' bu shi falu gainian* ['Juvenile Delinquency' Is not a Legal Concept], in 5 FAXUE YANJIU [STUDIES IN LAW] 39 (1983).

4. The Criminal Law of the People's Republic of China, art. 14, paras. 1-2 [hereinafter cited as Criminal Law]:

A person who has already reached the age of sixteen when he commits a crime shall bear criminal responsibility.

A person who has reached the age of fourteen but not the age of sixteen when he commits the crimes of killing, serious injury, robbery, arson, or habitual theft, or other crime seriously undermining social order shall bear criminal responsibility.

Translation by Cohen, Gelatt & Li, *China's New Criminal Code*, 29 HARVARD LAW SCHOOL STUDIES IN EAST ASIAN LAW, CHINA (1982), as cited in 73 J. CRIM. L. & CRIMINOLOGY 138 (1982).

5. Criminal Law, *supra* note 4, art. 14, paras. 1-2.

6. *Id.* para. 3 ("A person who has reached the age of fourteen but not the age of eighteen when he commits a crime shall receive a lesser punishment or a mitigated punishment.")

7. See generally J. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963* (1967); S. Lubman, *Comparative Criminal Law and Enforcement: China*, in *ENCYCLOPEDIA OF CRIME AND JUSTICE* (1984).

determined sanctions which extend to sentences of several years in a labor camp—all without prosecutorial or judicial oversight.⁸

Political ideology has had a pervasive influence on the criminal justice system of the PRC since its earliest days; among the many transformations demanded of a repentant offender is an improvement in ideological outlook.⁹ In addition, contemporaneous political movements in Chinese society have had considerable impact on the implementation of the criminal law. The politicization of crime during the Cultural Revolution and recent anti-crime crackdowns are but two examples of these connections.¹⁰ Finally, as in dynastic China, involvement with the formal criminal process remains a fearful fate, to be avoided at all costs. Even for those whose convictions are overturned and whose reputations are rehabilitated by the state, the damage wrought can never be totally undone and the stigma of criminality continues to haunt them.¹¹

As a result, both for juveniles and for adults, it is crucial to have one's case resolved at the "least formal" level of the criminal process possible. For an adult offender, this may mean receiving a warning, paying a fine, or having to write a self-criticism; in more serious cases, it can result in one or two years of rehabilitation through labor—all to avoid the far more damaging contact with the formal criminal process.¹² For juvenile delinquents under the Chinese system, the possible sanctions range from stricter parental and community control, to assignment to a "work-study" school,¹³ to service at a juvenile labor reform camp. The ultimate punishment for offenders who are formally sentenced as juveniles is placement in one of China's reformatories, the juvenile equivalent of a prison sentence for adults. The possible determinations for juveniles at each level of the criminal process will be examined more fully below, with parallels drawn to the adult criminal process; however, it

8. The 1957 Security Administration Punishment Act of the People's Republic of China, in 6 *FALU HUIBIAN* 245 (1957), translated in J. COHEN, *supra* note 7, at 205-237 [hereinafter cited as Security Administration Act].

9. See generally J. COHEN, *supra* note 7, at 620-629 (discussing conditional release).

10. The prevalence of campaigns in Chinese political life is the topic of G. BENNETT, *YUNDONG: MASS CAMPAIGNS IN CHINESE COMMUNIST LEADERSHIP* (1976), astutely reviewed in Jones, *On the Campaign Trail in China*, 5 *REV. SOC. L.J.*, 457 (1979). See also Note, *Concepts of Law in the Anti-Crime Campaign: The Recent Anti-Crime Campaigns in China*, 98 *HARV. L. REV.* 1890 (1985).

11. For example, many former prisoners complain that their later reception in the community and work prospects are adversely affected by the lingering associations of their imprisonment, calling these associations "tails" which cannot be removed.

12. Included among the range of criminal penalties under the Criminal Law are a period of control, lasting from 3 months to two years, during which the offender remains in his usual work place, and criminal detention, which may last from 15 days to six months. See Criminal Law, *supra* note 4, arts. 38-39.

13. *Gongdu xuexiao*.

should be remembered that due to the emphasis on rehabilitation in juvenile cases, the range of punishment is narrower in the juvenile justice context, with harsh measures generally avoided.¹⁴

The first line of defense against juvenile criminal activity as far as Chinese authorities are concerned is the family. In the vast majority of cases, delinquents are put under the supervision of their families and the relevant local authority—neighborhood committee, school or work unit (depending upon the delinquent's status).¹⁵ According to Chinese Criminal Law, parents or guardians of offenders under the age of 16 are obliged to discipline their children.¹⁶ Under the watchful eyes of those with whom the delinquent has the most frequent daily contact, he is encouraged to reform and to develop a sense of social responsibility, which will lead to his reintegration into the community and the end of the supervision.

For adult offenders, an analagous level of treatment is found in the range of informal sanctions which may be applied by neighborhood committees, Communist Party and Youth League disciplinary procedures and disciplinary committees in the workplace.¹⁷ Such sanctions are generally imposed for minor offenses such as petty theft and truancy, though even assault may in certain instances be dealt with in this manner. As with juvenile offenders, the measures are locally administered by relatives and community groups who ordinarily exercise a good deal of control over the individual's life. As a result, the minimum amount of stigma attaches to disposition of offenses at this level.

Juvenile cases of a slightly more serious nature, or repeated behavior demonstrating a certain incorrigibility in a juvenile offender (which might lead to such a person in a Western country being labelled a "status offender" or "person in need of supervision"),¹⁸ may result in a Chinese juvenile offender being sent to a "work-study" school for a term of up to two years. These institutions are administered by the Ministry of Education rather than by the Public Security Bureau and Ministry of Justice (who are responsible for the administration of institutions at harsher levels of sanc-

14. For example, the death penalty is not applied to minors. Criminal Law, *supra* note 4, art. 44; *see also infra* note 26 and accompanying text.

15. *See, e.g., Reforming Juvenile Delinquents—A Task for Everybody*, China Daily, June 10, 1983, at 4 [hereinafter cited as *Reforming Juvenile Delinquents*].

16. Criminal Law, *supra* note 4, art. 14, para. 4:

The head of a family or guardian of a person who is not punished because he has not reached the age of sixteen shall be ordered to subject him to discipline. When necessary, he may also be given shelter and rehabilitation by the government.

17. J. COHEN, *supra* note 7, at 97-199.

18. Various U.S. state statutes give juvenile intake authorities considerable discretionary power to classify juveniles as status offenders, especially for school problems such as truancy. *See, e.g., infra* note 53 and accompanying text.

tioning). The school regime combines closely supervised secondary-level academic education and light labor as a means of inculcating societal values and teaching self-discipline.¹⁹ Low rates of recidivism for students who have attended these schools are adduced as proof of their efficacy.

Adults charged with similar types of offenses, e.g., petty theft, non-serious assault and fornication or adultery, are subject to a similarly moderate level of sanctions, as set forth in the Security Administration Act, including warnings, fines and detention for a period of up to four years.²⁰ In both juvenile and adult contexts, punishing this range of misconduct by means of criminal proceedings would be viewed as excessively harsh, as well as an unnecessary burden on the courts. On the other hand, these intermediate punishments are intended to be sufficiently severe to deter future criminal acts and induce compliance with prevailing norms of behavior.

As a last resort, the relatively flexible and informal administrative measures described above give way to the more formal and severe sanctions of the Chinese criminal process.²¹ This transition, in which jurisdiction over a case passes from the Ministry of Education and local officials to the Public Security Bureau and the Ministry of Justice, may be brought on by the offender's recidivism or failure to respond to less severe punishment, or directly by more extreme acts of delinquency. Acts of delinquency triggering the immediate attention of the public security apparatus include robbery and rape.²²

Among the dispositional choices for juvenile cases, this alternative is the last resort. Offenders are sentenced either to terms in a special labor reform camp for minors or to an urban reformatory. Restrictions on the juvenile's personal freedom are much greater in both labor camps and reformatories, and the resultant stigma longer lasting. While those under the age of 16 may be placed in either institution through judicial or non-judicial disposition of their cases, those over the age of 16 may earn a reformatory sentence only through the adjudication of a criminal court, since they bear adult criminal responsibility.²³

19. *Reforming Criminals—Reformatory*, 8 BEIJING REV., Feb. 23, 1981, at 29 [hereinafter cited as *Reforming Criminals*], quoting a delinquent inmate:

I used to be very lackadaisical. My parents spoiled me and I led a sort of parasitic life. And I never cared about law and order and didn't know what discipline meant. Now I have to look after myself and follow all sorts of rules and regulations in everything I do from the moment I get up

20. Security Administration Punishment Act, *supra* note 8.

21. See *Reforming Criminals*, *supra* note 19, at 28.

22. See articles cited in *supra* note 1.

23. Interview with the Head of the Beijing Municipal Reformatory, Wang Yongxiang, in Beijing, China (Nov. 3, 1980).

In the realm of adult offenders, the corresponding sanctions would be those sentences which can be imposed either under the formal Criminal Law or pursuant to legislation authorizing rehabilitation through labor.²⁴ These sanctions, ranging from "control"²⁵ and short-term detention, to labor camps or prisons, to the death penalty, are the sternest measures employed by the Chinese criminal process. Like their counterparts in the juvenile system, they are applied only where the gravity of the offense, ineffectiveness of more lenient sanctioning or repeated criminal behavior have ruled out other alternatives. Criminal penalties and rehabilitation through labor for adult offenders also cause more serious damage to an offender's reputation and future than do lesser sanctions.

Despite these formal similarities in the disposition of cases in the Chinese juvenile and adult systems, it is important to note the significant disparities caused by the greater emphasis given to the educative and rehabilitative functions of sanctioning in juvenile cases. The extent to which this emphasis manifests itself in public policy and community involvement is perhaps the chief feature distinguishing Chinese juvenile criminal jurisprudence not only from its adult counterpart, but from foreign juvenile justice systems as well.

Leniency toward young offenders, especially first-time offenders, is a basic principle of China's criminal jurisprudence; one illustration of this policy is that persons under the age of 18 are not sentenced to death.²⁶ Chinese policy also stresses education and supervision rather than punishment in order to transform delinquents into law-abiding citizens. In implementing this policy, an unusually broad range of citizens and groups are drawn into the process. Personnel who work with delinquents are taught to avoid coercive methods, relying instead on persuasion and leadership by example.²⁷ Even when harsh penalties are meted out, such as labor reform or a term in a reformatory, productive labor is emphasized as a part of any such regime for its rehabilitative effect on delinquents. Finally, post-release supervision and general societal concern for the fate of former delinquents is far greater than for adult offenders.²⁸

The disposition of individual cases in the Chinese juvenile justice system clearly reflects these principles. Except for the most seriously criminal acts, the courts are avoided; every attempt is made to dispose of cases at the neighborhood or school level without involv-

24. J. COHEN, *supra* note 7 at 249-250.

25. Criminal Law, *supra* note 4, arts. 33-36.

26. *Id.* art. 44.

27. See *infra* notes 34 and 35 and accompanying text.

28. See *Reforming Juvenile Delinquents*, *supra* note 15.

ing higher authorities. Depending upon the point at which, and the circumstances under which, a juvenile case enters the criminal process, it may be possible for the offender or his family to influence the eventual disposition. If the police consider the infraction to be minor, or if an act has not yet attracted the attention of the public security apparatus, the juvenile may be remanded to parental custody or, at the most, to community supervision without any further involvement with the formal process. If the offender is a student or a worker and the act to be sanctioned occurred at school or in the work unit, then less serious cases may be handled at school or in the workplace by officials charged with institutional security work.²⁹ The vast majority of juvenile cases will thus be handled outside the formal criminal process.

Those cases that do require court adjudication must, unlike cases involving adult offenders, be heard *in camera*.³⁰ Clearly, this provision of the Criminal Procedure Law is intended to protect juveniles from stigmatization and increase the possibility that a rehabilitated offender will become part of the community after serving his sentence.

Perhaps the chief feature of the Chinese process for disposition of juvenile offenders which sets it apart from foreign juvenile justice systems and from the Chinese process for adult offenders is the wide range of people who are drawn into it. At the lowest levels, it includes parents and other family members as well as neighborhood groups which have the basic responsibility for public welfare in China. Chinese authorities claim that these "grass roots" institutions have had considerable success in helping delinquents to reform.³¹ Specialized organizations, through their local branches, also take a hand in urging delinquents to rehabilitate themselves; trade unions, the Women's Federation, the Communist Youth League and Communist Party committees join with the local neighborhood and village committees in urban and rural areas to share this task.³² More generally, the importance of communitarian values in Chinese society and the considerable pressures which they exert for individual conformity to group norms must certainly have an impact on young offenders, though an inquiry into their significance in this regard is beyond the scope of this paper.³³

29. Every work unit and institution in China has personnel who form a "security section," handling minor matters on its own and working with the Public Security Bureau when necessary.

30. Criminal Law, *supra* note 4, art. 111

31. See Luo, *City Dwellers and the Neighbourhood Committee*, 44 BEIJING REV., Nov. 3, 1980, at 20, stating that neighborhood security committees "have helped some juveniles to change their ways."

32. See *Reforming Juvenile Delinquents*, *supra* note 15.

33. See, e.g., Butterfield, *How the Chinese Police Themselves*, N.Y. Times Mag., Apr. 18, 1982, at 32.

In the work-study schools, labor reform camps and even the reformatories, special criteria are applied to the selection of staff to ensure that the government's goals reform will be met. For example, in one work-study school near Beijing, the staff daily reconsider their mission "to lead the students to recognize their errors, to convince them of society's concern and to show them the better side of society."³⁴ A staff-inmate ratio of 1:2, remarkable by U.S. standards, allows individual attention. In the Beijing Municipal Reformatory, the rules for cadre behavior state that:

1. Everyone can be reformed;
2. Each inmate is to be respected;
3. Particular needs should be understood; and
4. Cadres should become surrogate parents.³⁵

Whether low recidivism rates³⁶ for released inmates from these institutions are chiefly the result of such concern by the staff or are due to other factors (tight social controls, post-release surveillance, etc.) is impossible to predict from the limited data available, but the Chinese authorities do claim remarkably good long-term results.

Importantly, the system's success seems related to the avoidance—except in serious cases—of formal processes. The recent reactions to an increase in juvenile crime suggest that the Chinese process may be changing.³⁷ Among the adjustments which Chinese officials have recommended to deal with the unusual rise in juvenile criminal activity are greater recourse to imprisonment for first offenders and more frequent execution of criminals convicted of serious crimes.³⁸ Should the formal process become more the norm in Chinese juvenile justice administration, it is difficult to predict what effect this shift might have on the results the system now claims. Moreover, the continued community involvement may balance any ill effect of harsher treatment of juvenile offenders and extend the range of benefits which have accrued from the societal approach of the Chinese.³⁹

II. PRE-JUDICIAL DISPOSITION OF JUVENILE CASES IN THE UNITED STATES

Discretionary authority permeates the entire juvenile court sys-

34. Interview with Head of the Beijing West City Work-Study School, Xu Yinglong, in Beijing, China (Nov. 12, 1980).

35. Interview, *supra* note 23.

36. Reported as between 8% and 20% in different sources. See I. Epstein, *Juvenile Delinquency and Reformatory Education in Chinese Society* at 229, University of California, Los Angeles (1984) (unpublished doctoral dissertation).

37. See generally the articles cited at *supra* note 1.

38. *Id.*

39. See, e.g., *School for Parents Tries to Curb Crime*, 47 BEIJING REV., Nov. 25, 1985, at 20.

tem in most United States jurisdictions. Proponents of the juvenile court system generally applaud the extensive use of discretion by all personnel involved in the process.⁴⁰ They make several arguments,⁴¹ chief among them the claim that in particular cases, the application of the full criminal process may be too severe. This is especially true in cases involving technical status violations—truancy, failure to obey parental rules, etc. Criminal prosecution may impose greater trauma, expense and harm to reputation than the offense warrants. Labelling a child “delinquent” harms him or her and may reinforce anti-social behavior. Use of discretion, it is argued, can facilitate the rehabilitation process.⁴²

Juvenile justice professionals in the United States note also a tendency for legislatures to over-criminalize certain conduct or to reach ends other than crime prevention through penal provisions. Discretion buffers this tendency and allows officials in the juvenile process the flexibility necessary to reach appropriate outcomes.

Finally, the juvenile justice system is overburdened. Channeling less “serious” cases through unofficial procedures allows understaffed agencies and courts to focus on those which are most pressing.⁴³

The countervailing arguments against discretion are not insignificant. Critics complain that broad discretion does not promote respect for precise rules of law. Consistent law enforcement is necessary if important values of individual liberty are to be protected.⁴⁴ Moreover, the personal prejudices of officials can often cause them to treat juveniles either harshly or benevolently depending on their race, family background, socio-economic status, neighborhood, sex, or other factors.⁴⁵ Officials may use inappropriate criteria to decide whether to urge rehabilitation or detention, such as prior contact with the youth involved or personal aversion to the alleged crime.⁴⁶ Officials also often take into account such factors as school attendance and behavior, relationship with family, juvenile demeanor or her/his willingness to acknowledge guilt.⁴⁷

40. In re H., 71 Misc. 2d 1042, 337 N.Y.S.2d 118 (1972); State v. Chatham, 28 Wash. App. 580, 624 P.2d 1180 (1981); Note, *Juvenile Delinquents: The Police, State Courts, and Individual Justice*, 79 HARV. L. REV. 775 (1966).

41. *President's Commission on Law Enforcement and the Administration of Justice, The Task Force Report: Juvenile Delinquency and Crime*, at 9-11 (1967) [hereinafter cited as *Report*].

42. *Id.*

43. *Id.*; Winters, The Youth Aid Division, Metropolitan Police Department, Washington, D.C. (1964).

44. See Note, *supra* note 40.

45. See *Report*, *supra* note 41.

46. Compare Statistical Analysis Center, *The Juvenile Offender*, at 75-76 (1976) with Thomas and Fitch, *The Exercise of Discretionary Decision Making by the Police*, 54 N.D. L. REV. 61, 75 (1977).

47. In re William M., 3 Cal. 3d 16, 89 Cal. Rptr. 33, 473 P. 2d 737 (1970).

Statistics indicate that in 1967, 53% of all cases referred to juvenile courts in the United States were not formally adjudicated.⁴⁸ Variation from county to county was as wide as 80.7% at the top, to 27.0% at the bottom. It seems evident that various counties use different criteria to determine which cases will be subject to informal disposition; no other explanation will support such a wide range as this.

The function of "intake"⁴⁹ in the United States juvenile justice system is to determine which complaints should be referred for judicial hearing. Intake eliminates complaints involving acts over which the juvenile court has no jurisdiction, dismisses complaints which, though jurisdictionally sufficient, are not supported by sufficient evidence, and diverts cases where both jurisdiction and evidence are present but the offense is minor.

Juvenile courts located in larger cities often have complete and separate intake sections composed of trained probation officers. In less populated areas, there are often no special intake personnel; sometimes the police themselves are responsible for the intake process.⁵⁰ The authority delegated to intake personnel also varies from state to state. The intake worker's determination is not always final. In certain jurisdictions, an accused may insist on his right to file a petition, overruling the intake authority's decision; in other jurisdictions where the decision is not overruled, the accused may still insist that the decision be reviewed by a prosecution official. In determining the extent of authority given the intake official, most state statutes balance the protection of the accused and the public against the need to exclude petty disputes from the courts.

Most statutes fail to specify the criteria to be used in making the decision to divert cases from the formal court system.⁵¹ Also, juvenile courts often fail to provide written outlines or instructions for intake personnel. The President's Crime Commission on Law Enforcement and Administration of Justice has criticized the lack of written, specifically formulated standards.

Among the standards which are often applied, but not applied consistently, are the following:⁵²

1. Seriousness of the act;
2. Prior conduct and police contact of the accused; and

48. STANDARDS RELATING TO THE JUVENILE PROBATION FUNCTION: INTAKE AND PREDISPOSITION INVESTIGATIVE SERVICES, (INSTITUTE OF JUDICIAL ADMINISTRATION AND AMERICAN BAR ASSOCIATION JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS) (tent. draft 1977)

49. Ferster and Courtless, *The Intake Process in the Affluent County Juvenile Court*, 22 HASTINGS L. J. 1127 (1971) [hereinafter cited as *The Intake Process*].

50. *Id.* at 1128.

51. *Id.* at 1130.

52. *Id.* at 1132.

3. Attitude of the juvenile and his/her parents.

Some jurisdictions consider the following additional criteria:

4. Age of the accused;

5. Time of day of the incident; and

6. Type of neighborhood in which the accused lives.

What constitutes a "serious" crime to be processed by the courts is far from clear. Generally, complaints of homicide, forcible rape, robbery, purse snatching, aggravated assault, auto theft, and burglary are referred to the courts.⁵³ To a great extent, a crime's seriousness appears to depend on how greatly the act impinges on the personal and/or property rights of the public. If the crime affects only the offender—e.g., truancy, fighting, drinking or drug abuse—the juvenile is not likely to be referred to the courts, but rather to some alternative correctional facility or to family or community supervision.

There is some tendency to use the felony-misdemeanor distinction as the basis for determining whether or not to divert; however, the District of Columbia Crime Commission has cautioned against automatic referrals to the court on the basis of an act's classification as a felony.⁵⁴ For example, joyriding in a stolen car, a felony if committed by an adult, may not require full scale court treatment if committed by a juvenile.⁵⁵

One recent example of a legislative diversion policy is the Washington statute,⁵⁶ which provides that after a determination of proper jurisdiction and evidence equal to that needed to establish probable cause, the prosecutor or probation counselor may either file the case in Juvenile Court or divert the case. Serious cases (Class A or B felonies, assault in the third degree, rape in the third degree, etc.) are to be filed in court automatically. Also, if the juvenile has a history of criminal activity and is accused of any felony, the case is to be filed. A case will only be diverted if the offender's record, including the instant offense with past crimes, does not contain more than three offenses and does not include felonies.

As provided in the statute, the diversion agreement made between the juvenile and the diversionary unit may involve:

- a) community service (with limitations);
- b) restitution (with limitations), or
- c) an informal, educational or counseling interview.

The law also provides for the involvement of "members of the com-

53. *Id.* at 1134.

54. *Id.*

55. *Id.* at 1135; *Report of the President's Commission on Crime in the District of Columbia* (1966).

56. Juvenile Justice Act of 1977, WASH. REV. CODE ANN. §§ 13.40.010-13.40.080 (1983 PP. Supp.).

munity" in setting the terms of the diversion agreement and in supervising the juvenile's performance of these terms.

"Due process" is defined in this statute,⁵⁷ which also grants the juvenile the right to counsel at intake. The statute provides for the release of the juvenile if the offense involved no victim, involved no more than \$50 in loss or damage and involved no threatened or actual physical harm.

The historical trend in the United States, at least until very recently, has been toward increasing discretion and providing more opportunity for diversion from court (and, presumably, from detention in juvenile facilities).⁵⁸ The presumption has been that individually tailored treatment for juvenile offenders will maximize rehabilitative goals of the juvenile justice system. Yet despite these departures from adult criminal justice administration, juvenile crime remains a significant problem in the United States. Recent studies suggest that community-based treatment of delinquency may provide promising alternatives for improved results in reducing delinquent recidivism.⁵⁹ On this last point, the Chinese experience with community involvement in the administration of criminal justice may prove instructive.

III. CONCLUSION

Despite the surface similarities of the Chinese and United States juvenile justice systems with respect to discretion in the disposition of cases, an important difference remains. In China, the discretionary power of juvenile justice authorities mirrors the process applied in cases involving adult offenders; in the United States, the discretionary authority given to juvenile court systems is seen as a major departure from the general norm of criminal justice and a process markedly different from that invoked against adults.

Recent trends in the two countries seem to be moving in opposite directions, insofar as juvenile cases are concerned. To deal with its recent epidemic of juvenile crime, the People's Republic of China is using the harsher penalties available under the current system to crack down on young offenders. The Criminal Law has been applied to an ever-wider range of offenses, increasing the likelihood of a juvenile delinquent receiving a significant sanction. On the other hand, the United States has seen—for most of this century—a con-

57. *Id.*, § 13.40.020(12): "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear, danger to society in light of the purposes of this chapter.

58. See generally Powell, *Disposition Concepts*, 34 *JUV. & FAM. CT. J.* 1 (May 1983). See also Goldberg & Johnson, *Juvenile Delinquency: Outline for Rehabilitation and Juvenile Reform*, 40 *REHABILITATION LITERATURE*, No. 4, 98 (Apr. 1979).

59. See, e.g., Kratcoski & Kratcoski, *The Phoenix Program: An Educational Alternative for Delinquent Youths*, 33 *JUV. & FAM. CT. J.* 17 (May 1982).

tinuing removal of juvenile cases from the general jurisdiction of the courts, coupled with the widespread belief that providing juvenile authorities maximum discretion offers the best hope for reducing the juvenile crime rate. Only time and further experience will tell whether these systems can deliver what they promise; while at present they share certain specific features, each must ultimately contend with the unique social realities of these extremely disparate societies.