Implementing Detention Policy Changes

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Human service policies are officially promulgated by legislative, judicial, or administrative bodies. Their implementation, however, rests in the many hands of agency staff at all levels who must adapt the policy to their working realities. It is no longer a surprise to learn that policies are rarely carried out exactly as intended or without unanticipated side effects. A growing body of literature has emerged to explain what happens between the formulation of a policy and the successful or unsuccessful achievement of its objectives.

Factors Affecting Policy Implementation

A number of analysts have suggested factors that can influence implementation (e.g., Van Meter & Van Horn, 1975; Berman, 1978, 1980; Bardach, 1977; Palumbo & Harder, 1981; Pressman & Wildavsky, 1973; Rice & Rogers, 1980; Sabatier & Mazmanian, 1981). While the emphases may vary, there is general agreement that the key factors include: the nature of the problem being addressed by the policy; the clarity of the policy; the commitment and capability of leadership; organizational relationships within and among implementing agencies; the balance of support and resistance in the political environment; and incentives and sanctions for compliance and noncompliance. Accordingly, the likelihood of successful implementation is enhanced when, among other things:

- There are clear and consistent objectives.
- There is an adequate causal theory: causal linkages are understood,
and officials responsible for implementation have jurisdiction over critical linkages.
Financial resources are adequate.
There is enabling legislation or clear policy mandates.
There is strong commitment from leadership.
The leadership skills of implementing officials are strong.
There is consensus among the relevant key actors—social conditions, public opinion, and key political figures support the policy.
There are adequate incentives for compliance and/or sanctions for noncompliance.
There is formal access by outsiders, e.g., oversight by supportive interest groups.

In sum, the implementation of policy change requires developing the political "will" to initiate the changes and the technical "way" to carry them out. The first three factors in the list above reflect technical requirements: goals (what to do), causal theory (how to do it), and resources (with what to do it). The rest of the factors reflect contextual variables affecting the political will to implement policies: mandates, leadership, consensus, incentives, and community support.

Some of these factors, such as the desirability of clear objectives and enabling legislation or mandates, are self-explanatory. Others merit further discussion here. An adequate causal theory means that there is a clear link between the actions prescribed by a policy and the objective it seeks to attain. Moreover, the key actions must be under the jurisdiction of implementing officials. Regarding juvenile detention, for example, the number and types of youths admitted to secure detention facilities are clearly linked to intake policies. A new intake policy promulgated by an executive branch agency would, by itself, have limited impact on a detention system in which the courts controlled intake decisions (although the link between intake procedures and detention usage is clear, the executive agency does not have jurisdiction over that critical linkage in this hypothetical example).

The importance of adequate financial resources should be obvious, but policies are often enacted without the provision of adequate resources. For example, the 1990 Florida juvenile justice reform legislation mandated a statewide system of case management for delinquency services, but only a portion of the funds needed to develop and implement that system were allocated. At best, the policy will be partially
implemented, either in selected regions of the state or in selected parts of all districts.

The leadership factor cannot be overestimated. The implementation of a policy does not occur all at once, but rather evolves over a period of time. During that time, anticipated and unanticipated obstacles emerge and must be countered if the implementation is to remain on track. Feedback from early efforts may demonstrate that aspects of the policy need modification and refinement. Someone must shoulder the responsibility for managing the implementation process. Bardach (1977) coined the term "Fixer" to refer to a key actor in the implementation process who is highly committed to the goals of the policy and effectively able to intervene in the implementation process to counter opponents' moves and to keep proponents on track.

Although consensus among relevant key actors is highly desirable, it is rarely present initially. There are a variety of strategies for developing a consensus or for neutralizing opponents who cannot be otherwise persuaded to join a consensus. These will be discussed more below.

Any new policy or change in an existing policy requires various persons to change their usual way of doing business. Other things being equal, many people will resist such change. Incentives for compliance or sanctions for noncompliance—or both—can help encourage the changes. Such contingencies at an agency level can involve promotions, bonuses, etc., while at the broader level litigation, public relations campaigns, etc., can be effective. Litigation, in particular, will be discussed below, as it has played a major role in several detention initiatives.

Although human service agencies are responsible to the community, much of their day-to-day work goes unnoticed. Agencies develop informal relationships with each other and settle into routines that allow them to function smoothly while protecting their resources. As a result, the objectives of various policies, as they relate to the provision of service to the community, sometimes take a back seat to internal organizational goals. The more directly the community is involved in the implementation of a policy, the more likely it is that the agencies will be held accountable to the policy objectives in the implementation process. Ways to involve the community include the use of formal oversight committees and the inclusion of supportive community advocacy groups in policy planning and implementation monitoring.
Implementing Juvenile Detention Reforms

Technical Factors

For juvenile detention reforms, the technical “ways” are there—objective intake criteria, a range of alternative programs, diligent case monitoring, etc., as described in previous chapters. Given the presence of many relatively low-risk juveniles in secure detention, detention usage can be reduced by exerting stricter controls to limit intake, providing detention alternatives for the low-risk youths, and expediting the processing of detained youths to limit length of stay. Financial resources should be adequate, since non-secure detention alternatives generally cost less than secure detention.

Political Factors

Developing the political will to initiate changes and the leadership to implement and sustain them are more challenging. Rarely will the contextual variables all be favorable at the outset. Traditionally, juvenile justice has been marked by ideological schisms between “hard liners” who favor get-tough, punishment-oriented approaches and “reformers” who prefer to emphasize rehabilitative approaches. As can be inferred from the discussions in the first two chapters of this book, both sides have viewed detention as a catch-all resource and expanded its role far beyond its appropriate purpose. On the one hand, it is often used as summary punishment; on the other hand, in the absence of other adequate treatment resources, it is sometimes used as a way to provide some assessment and treatment services. Developing the political will to implement detention reforms of the kind advocated in this book requires that both sides adopt a narrower definition of detention and then decide how best to translate that definition into policies and procedures.

Strategies

Political will can be affected by consensus strategies, conflict strategies, or some combination of both. Consensus strategies focus on education, team building, and technical assistance. Conflict strategies include manipulations of political influence, bargaining, fiscal leverage,
and sometimes threats of litigation. Both consensus and conflict strategies have been used in detention reform efforts, and both have their advantages and limitations. For example, consensus strategies may have a better potential for bringing about lasting change, but they generally take longer and are sometimes insufficient to overcome strong initial resistance. It is possible to use consensus and conflict strategies together in a reform effort, as was the case with the Broward detention project (see chapter 4).

Detention Reform Implementation Examples

Let us consider the four specific detention reform efforts discussed in this book—the Broward Detention Project (chapter 4); the Cuyahoga County experience (chapters 2 and 5); the Pennsylvania experience (chapter 7); and the San Francisco experience (chapter 3)—in terms of the implementation model discussed above. Table 8.1 displays the primary intervention strategies and an assessment of the implementation factors associated with each reform effort, to the extent that such information is presented in or can be inferred from the reports. While this comparative exercise is not a rigorous experiment, it may provide insights into the roles that various factors can play in such reform efforts.

Broward

The Broward Detention Project combined consensus and conflict strategies in its attempt to reduce the use of secure detention through the development of objective intake criteria, non-secure alternative detention programming, and diligent monitoring of detention usage. The pre-existing lawsuit against the detention center reflected an initial conflict strategy that proved to be necessary in order to get officials to assign high priority to detention and to attract the resources required to bring about the changes. The Project then turned to consensus strategies designed to bring the various key actors (court, prosecutors, public defenders, and service providers) together. These strategies included: education—information about model detention programs elsewhere, empirical feedback about Broward’s detention usage, the link between intake procedures and detention usage, etc.; mediation to encourage settlement of the lawsuit; group facilitation through the use
of a representative task force; and other liaison work (see the discussion in chapter 4 about the role of the project attorney-liaison).

The technical factors were favorable. The goals were clear—reduce the use of secure detention without compromising public safety. The causal theory was adequate in that it recognized the importance of intake screening, alternative programming, and careful monitoring. The resources were uncommonly adequate, given the support of the Annie E. Casey Foundation for managing the overall effort and starting up new alternative programming.

The political factors were mixed at the outset, but had improved considerably by the end of the project. The existing detention legislation at the beginning of the project presented several obstacles, particularly because it gave prosecutors the primary role in intake decisions. In addition, the statutory detention intake guidelines were so broad that they permitted the secure detention of almost any youth. The juvenile justice reform legislation of 1990 included detention statutes that were highly supportive of the project’s reform objectives: the prosecutors’ role was greatly reduced, objective intake criteria were mandated, and non-secure alternatives were required statewide.

The commitment to detention reform among the leadership within the Department of Health and Rehabilitative Services (HRS), the agency responsible for operating detention, was mixed. Many at the state level were supportive, while some at the local district level were less so. The leadership at the state level frequently pressured the local district to implement detention reforms, but operational authority resided at the district level. The district administration dragged its feet on implementing some of the alternative programming, even though outside resources were provided. The district’s legal counsel was also less than aggressive in monitoring and challenging inappropriate detention usage on the part of the court. During the course of the project and shortly after its completion, most of the district-level administrators had been replaced. The incoming officials were much more supportive of the reform objectives.

In a sense, the Center for the Study of Youth Policy, and Judge Frank Orlando in particular, assumed the role of “Fixer,” negotiating with opponents and trying to keep HRS on track with procedures consistent with policy objectives. The Center for the Study of Youth Policy’s temporary standing, lasting only for the two years of the Project, limited its appropriateness as a “Fixer.” Judge Orlando, however, has
continued in the role of “Fixer.” He has served on state juvenile justice advisory boards, maintained close ties to legislators, and helped shape the reform legislation of 1990. He continues to assist the Broward HRS administration with detention issues.

There was no initial consensus among the key actors regarding the proper role of detention in the juvenile justice system. The court and prosecutors favored broad use of detention; HRS and the public defenders favored more limited use. There were few other voices heard. During the project period, the prosecutors became somewhat supportive, the court less so. However, subsequent turnover on the Juvenile Court bench has brought in judges who are much more supportive.

The incentives and sanctions provided by the lawsuit on the one hand, and the Casey Foundation on the other, were powerful forces and largely responsible for the initiation of the effort to change in spite of the other, less favorable political factors discussed above. The lawsuit has now been withdrawn and Casey Foundation funds are no longer provided, yet the reform policies have continued to flourish. Presumably, the positive results of the new policies have become somewhat self-sustaining, so that outside incentives and sanctions are less necessary.

Community involvement was minimal. A few attempts were made to involve advocacy groups, but they never developed a major role.

The initial results of the Broward project were moderately favorable. Secure detention use decreased substantially but still exceeded the facility’s capacity. Alternatives were in place, if tentatively. Fortunately, with the statewide reform legislation and the subsequent changes in leadership and the judiciary, coupled with the continued involvement of Judge Orlando as a “Fixer,” all helped further the gains. By the end of 1991, 19 months after the project had ended, secure detention use in Broward had plummeted to less than one-third of its capacity.

Cuyahoga County

The Cuyahoga County (Cleveland) scenario was somewhat different. Its detention center was operated by the court rather than a state agency, as had been the case in Florida. As Martin has demonstrated (see chapter 2), Cuyahoga County’s use of secure detention has fluctuated widely over the last 20 years. For present purposes, we will focus on the period from 1985 to 1990. Faced with escalating secure detention rates and pressure to invest in costly additional beds, the key decision
makers—chief judge, court administrator, and detention supervisor—chose to develop and implement policies designed to limit the use of secure detention.

The goal was clear: limit the use of secure detention. The causal theory was adequate: limit intake through the use of explicit screening criteria, establish alternative programs, and expedite cases through the system. Resources were adequate to develop the alternatives. Committed and competent leadership was responsible for the consensual development of a clear mandate. Given the consensus, additional incentives or sanctions were unnecessary at the beginning. Similarly, community involvement was neither necessary nor sought after to further the policy objectives. The Cuyahoga County scenario can best be described as self-contained within the boundaries of the court and heavily dependent upon the leadership. In this context, the successful implementation of policy changes was relatively easy to bring about, given the strength, commitment, and consensus among the leadership.

However, the very factors that facilitated the initial success of the Cuyahoga County effort made it vulnerable in the long run. In 1989, the leadership was replaced. The incoming key decision makers did not share the commitment to the reform goals and policies established by their predecessors. No incentives or sanctions existed to reinforce the reform policies, nor was there significant pressure from the outside community favoring the reforms. As a result, by 1990, the rate of secure detention in Cuyahoga County had surged upwards, reaching its earlier peak levels.

Pennsylvania

As described by Anderson and Schwartz (see chapter 7), a lawsuit filed in 1981 prompted detention reform in Pennsylvania. The parties reached a mediated settlement agreement in 1986 that included explicit intake standards for the use of secure detention. The agreement resulted in a substantial drop in the use of secure detention, although use has increased in more recent years, as will be further discussed below. Pennsylvania started with a conflict strategy (litigation), but moved toward consensus strategies (mediation, technical assistance) after both sides saw the necessity for a settlement. The Juvenile Court Judges’ Commission (JCJC) played a key leadership role in defining, implementing, and monitoring the policy changes.
Implementing Detention Policy Changes

In terms of the technical implementation factors under consideration here, Pennsylvania had a reasonably clear goal: to reduce the use of secure detention. Pennsylvania's causal theory was limited to the link between intake criteria and secure detention usage, but did not extend to alternative programs for many typically detained youths nor aggressive expediting of cases in secure detention to minimize length of stay. There is no explicit mention of resources in the Anderson and Schwartz chapter, but we may assume that resources were adequate, since reducing secure detention use rarely costs more and usually costs less than the continued high rates of secure detention.

With one exception, the political factors appear to have been favorable by the time of the settlement agreement. Settlement of the lawsuit was an adequate incentive because it meant avoiding litigation costs and the costs associated with potential defeat, but also because it meant limiting the intrusion of the federal court into the state's authority to make and implement policy. JCJC was committed to resolving the lawsuit, recognized the value of consultation and mediation in the development of solutions, and was capable of influencing the courts throughout the state. The settlement agreement contained a clear mandate to implement more restrictive detention-intake guidelines. In retrospect, the only political factor lacking was community involvement.

Pennsylvania's experience is interesting in that, once JCJC assumed a leadership role, the reform process was fairly smooth and produced early favorable results with a minimum of controversy. As Anderson and Schwartz point out, the specific intake guidelines were sufficiently elastic to permit judges to retain considerable discretion. While this proved helpful in gaining compliance with the reform policies, it may have limited the long-term effectiveness of the reforms.

Specifically, the guidelines allowed detention of cases that did not otherwise meet the criteria if "the facts present extraordinary and exceptional circumstances which require the use of secure detention" or "the child presents extraordinary circumstances requiring secure detention to prevent him/her from absconding." The use of both discretionary categories has risen steadily, largely accounting for the recent increases in secure detention use. The lack of specificity regarding "extraordinary circumstances" permitted judges to regularly allow detention for certain offenses not specifically included in the guidelines, e.g., auto theft and drug law violations. Anderson and Schwartz rightly suggest that this elasticity prevented calls for a permanent modificat-
tion to the guidelines addressing these specific offenses and thus resulted in less of an increase in detention usage than might have occurred otherwise.

Perhaps the Pennsylvania experience was less rancorous than some others because the interests of at least some of the usual opponents of detention reforms, such as judges, were well represented in the reform leadership. While JCJC is to be applauded for its enlightened leadership, one might still suggest that the long-term effectiveness of the policy changes will be modest. Other key factors that contribute to this mixed result are the limited causal theory employed and the lack of outside community involvement, as noted above.

San Francisco

In contrast to the Pennsylvania experience, the San Francisco experience, as described by Steinhart (see chapter 3), began with a consensus strategy but shifted to a conflict strategy that has certainly retained its adversarial character. Responding to the suicide of a youth in detention in 1986, San Francisco hired consultants to develop a new juvenile justice plan. In 1988, the National Council on Crime and Delinquency was enlisted to help implement some aspects of the plan. NCCD conducted research to estimate the number of detention beds required and proposed an objective risk screening tool to guide intake decisions. While supported by the leadership, the criteria met with strong resistance from some of the line staff. Overrides of the instrument were commonplace. Nevertheless, the risk screening helped bring about a modest reduction in the size of the detention center population.

Detention remains a volatile issue in San Francisco, with some politicians alleging that, contrary to available evidence, the new intake policies endanger public safety. On the other hand, uncommonly visible advocacy groups continue to push for reform. Conditions of confinement for those in detention have remained deplorable, however, resulting in the filing of a lawsuit in 1990 by public interest lawyers.

A consideration of the implementation factors provides some insights into the San Francisco experience. The goals and causal theory behind the reform effort were clear and adequate. Although the NCCD effort focused on intake criteria, a home detention alternative already existed, and the consultants kept advocating more creative responses to deal with uncooperative parents and other situations that often
resulted in detention for youths who did not otherwise meet the intake criteria. No mention is made of the level of resources, but, as with the Pennsylvania example, we may assume that they were adequate, since reduced use of secure detention tends to produce savings.

The political factors were clearly mixed. There was little in the way of a formal mandate for the policy changes. Leadership changed during the intervention effort, and the new leaders were more committed to the reform objectives. There is not enough information in the report to determine the competence level of the leadership. One may speculate, however, that the escalating conflict could have been prevented had there been a truly effective "Fixer." Incentives were adequate: although San Francisco is faced with the likely necessity of constructing a new facility in any event, successful implementation of the reforms could limit the size, and thus the cost, of the new building. Moreover, the reforms could possibly have prevented the lawsuit, and could still contribute to a relatively speedy resolution of the litigation. As noted above, community involvement was higher and more influential than is usual in such scenarios. The main political shortcoming appears to have been the inability to develop and maintain a consensus concerning the reform objectives.

None of the above discussion is meant to imply that the reform effort was misguided or that it was unsuccessful. The discussion merely highlights the complexity of implementing policy change in as politically charged an area as juvenile justice. It is probably fair to say that the San Francisco effort is ongoing and that it may yet turn out to be highly successful. To this point, however, its effect has been modest.

**Lessons Regarding Implementation of Detention Reforms**

The analysis of the implementation scenarios of the four detention reform efforts provides some summary lessons for those seeking to implement such policy changes. Many of these lessons probably apply to other policy areas as well.

1. The problem of juvenile detention overuse is highly amenable to change. The technical implementation factors are relatively straightforward and likely to be favorable. In most jurisdictions, secure detention use *can* be reduced without jeopardizing public safety by *(a)* developing objective intake criteria, *(b)* utilizing alternative programming, and
(c) expediting the processing of detained youths to limit length of stay. These steps are not expensive and can usually be covered by savings from reductions in secure detention. Successful implementation is most likely when all of the technical factors have been addressed. For example, Pennsylvania's efforts might have been more successful had attention been paid to detention alternatives and case expediting in addition to intake criteria.

2. Among the political factors, leadership may be the most crucial. The eventual success of the Broward reforms and the initial success of the Cuyahoga County and Pennsylvania efforts were surely greatly facilitated by the presence of effective "Fixers." The subsequent turn-around in Cuyahoga County which accompanied the change in leadership only serves to underscore this point. Those initiating detention reform efforts should try to identify or develop someone or some group for the role of "Fixer."

3. The importance of developing a consensus should also be recognized. Although conflict strategies may be necessary to create sufficient initial motivation for change, reliance upon conflict strategies alone is unlikely to result in long-term adherence to reform policies. The problem with coercive strategies is that they can produce compliance only as long as the coercive threat is valid. Compliance produced by internalized change has a greater potential for long-term continuity. The fostering of internalized compliance may take a long time since it requires individualized educational strategies, technical assistance in staff development, and several iterations of pilot testing of new procedures.

Reform proponents should consider developing a stakeholders' group to participate in the design, monitoring, and evaluation of the policy implementation. This group must contain representatives from the major juvenile justice agencies and related interest groups in the community, i.e., the court, law enforcement, prosecutors, public defenders, youth corrections agency, child advocates, provider programs, etc. If possible, an outside facilitator with acknowledged expertise in juvenile justice issues as well as group techniques should lead the group. This group can be the target of early education efforts and can subsequently transmit this knowledge to others in the system.

In addition, consensus strategies should be extended to the line staff in agencies that will be directly affected by the reforms. Their input into certain implementation decisions may not only improve the procedures but also result in line staff "buying into" the reform objectives.
4. The incentive structure surrounding the implementation of a policy change warrants attention. One would think that the incentive structure inherent in detention reforms would be sufficient—more cost-effective handling of juveniles prior to their court hearings, more humane treatment of children, etc. However, detention has come to serve a number of interests in many juvenile justice systems; it is often made to compensate for the lack of sufficient child welfare services and other juvenile justice resources, such as commitment programs, etc. Changes introduced in detention practices may require adjustments in other parts of the child welfare and juvenile justice systems, and such adjustments may be resisted unless motivating mechanisms such as incentives and sanctions are included as part of the reform strategy. Such mechanisms can include outside grant support for the development of new programs, retraining of staff, monitoring and evaluation, etc. On the other hand, sometimes the incentive structure can be affected dramatically by the introduction of litigation, hence its frequent use in this area.

5. When possible, one should have the reform goals—and perhaps some of the technical procedures for achieving them—expressed as a formal mandate, through legislation if feasible. Such mandates provide additional authority to the leadership and can counter some of the resistance that might otherwise limit implementation success. The presence of mandates in Cuyahoga County in the form of formal court policy statements, in Pennsylvania through the JCJC, and, eventually, in Florida as part of the statewide reform legislation probably enhanced the success of those efforts. Of course, such mandates can change when those responsible for them change, as seen in Cuyahoga County.

6. Community involvement from advocates and others is perhaps most obviously helpful in situations which must rely on conflict strategies, as in the San Francisco example. It can also be useful in any situation to provide monitoring and continued influence to help maintain compliance with reform objectives over the long run.
**Appendix: Table**

**Table 8.1**
Implementation Scenarios for Four Detention Reform Efforts

<table>
<thead>
<tr>
<th>Implementation Factor</th>
<th>Broward</th>
<th>Cuyahoga</th>
<th>Pennsylvania</th>
<th>San Francisco</th>
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</thead>
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<tr>
<td>Primary strategy</td>
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<td>consensus</td>
<td>both</td>
<td>conflict</td>
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<tr>
<td>Technical factors</td>
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<td>Clear goals</td>
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<td>+</td>
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<td>Adequate causal theory</td>
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<td>+</td>
<td>o</td>
<td>+</td>
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<td>Adequate resources</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>?</td>
</tr>
<tr>
<td>Political factors</td>
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<td>Legislation/mandate</td>
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<td>+/-</td>
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<td>o</td>
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<tr>
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<td>+</td>
<td>–</td>
</tr>
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<td>Adequate incentives</td>
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<td>+</td>
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<td>Community involvement</td>
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<tr>
<td>Success of effort</td>
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<td>+/-</td>
<td>o</td>
<td>o</td>
</tr>
</tbody>
</table>

_Sources_: For Broward, W. Barton et al., chapter 4; Cuyahoga County, Martin, chapter 2 and Sanniti, chapter 5; Pennsylvania, J. Anderson and R. Schwartz, chapter 7; San Francisco, Steinhart, chapter 3.

**Key:**
- + factor generally favorable
- - factor generally unfavorable
- o factor relatively neutral
- ? insufficient information in report
- / factor changed during course of intervention
Notes

Portions of this chapter have been adapted from William H. Barton, "Promoting Change in Juvenile Detention: The Broward County Experience," paper presented at the annual meetings of the American Society of Criminology, Baltimore, November 1990.

1. Prior to the 1990 reform legislation, the intake process for detention was as follows: a law enforcement officer would bring a youth to the detention center and request secure or home detention. A detention intake worker would review the case and make a separate recommendation. If the two disagreed, a prosecuting attorney would be called to resolve the dispute. Almost invariably, the prosecutors in Broward specify secure detention. Thus, detention intake staff had virtually no control over intake.

Bibliography