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Reader's Guide

JUSTICE SYSTEM

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JUVENILE COURTS, PROBATION, AND PAROLE

In 1981, juvenile courts nationwide handled 1,348,000 juvenile delinquency cases. Of these cases, 159,000 were of crimes against people, 661,900 of property crimes, 72,800 of violation of drug laws, 206,000 of offenses against the public order, and 248,300 of "status offenses" (Snyder et al., 1983), or behavior considered troublesome because of the offender's young age. About half of all cases referred to juvenile courts were resolved without formal petition. Of those youths formally adjudicated by juvenile courts, about one fifth were sent to institutions and about one half were placed on probation. Juvenile courts also handled 185,200 child dependency cases in 1981 (Snyder et al., 1983).

Another kind of statistic—a one-day snapshot—furnishes a different view of the problem: on a typical day in 1981, nearly 72,000 juveniles charged with or already adjudicated for delinquent acts were confined in secure facilities. Over four times that number were being supervised in the community by probation and "aftercare" (or parole) authorities (U.S. Department of Justice).

The volume of cases brought before juvenile courts has tripled in the past two decades (Cavan, 1969; Snyder et al., 1983). Even though this growth peaked several years ago with the last of the baby boom generation reaching adolescence, the courts have struggled to cope with the enormous increase in volume. At the same time that referrals have been soaring, the very legitimacy of the juvenile court has been challenged seriously from both the left and the right of the political spectrum. The left has charged the court with intruding unnecessarily in the lives of noncriminal youngsters and with too often denying due process to those referred; the right has charged the court with being too lenient on youngsters who pose a clear threat to the public safety.

Similarly, both the left and the right have questioned the effectiveness of programs to which juvenile courts send youngsters for rehabilitation (Hellum, 1979; Hutzler, 1982; McNally, 1983). The left has observed that, although both institutions and community supervision programs describe their work in terms of rehabilitation, many in fact simply punish, sometimes harshly. The right has charged that these programs coddle children rather than correct them, and that some youth ought to be punished rather than rehabilitated.

Thus, the premises upon which the juvenile justice system was established are being questioned. Should and can the state serve as benevolent parent when children commit crimes? When and how should children be held responsible for their misbehavior? Does society know how to rehabilitate juvenile offenders? Such questions are generating changes in juvenile codes, juvenile court proceedings, and the administration of juvenile corrections. These changes in the premises and methods of helping juvenile offenders have clear implications for the helpers, among whom are social workers.

History

The first juvenile court was established in Cook County, Illinois, in 1899 (Rothman, 1980; Ryerson, 1978). The movement grew rapidly, and by 1920, virtually all states had some statutory provision for juvenile courts.

The juvenile court is thus the product of Progressive Era reformers who believed that children were not fully developed human beings and thus, unlike adult criminals, were incapable of being fully responsible for criminal behavior. Further, children were thought to be malleable and more capable than adults of rehabilitation. The reformers thus believed that criminal court procedures were inappropriate for children and that institutions ought to treat them rather than simply hold them. They further believed that society should legitimately intervene when youths misbehaved but did not commit crimes. Their vision in establishing juvenile courts was of a system of individualized justice and treatment for misbehaving children, with the judge serving as benign parent.

Probation, with social workers serving as probation officers, was a basic function of the juvenile court. Probation officers were responsible for collecting all the facts surrounding the youth's misbehavior—the history of his or her family, school performance, church attendance, and neighborhood—and making recommendations upon which the judge would make his or her disposition. Probation officers further provided community supervision and casework services to the vast majority of children adjudicated by the juvenile courts. Diagnosis and treatment in—and sometimes of—the community were tailor made for the emerging social work profession. Probation and juvenile parole, a practice that emerged not long after probation to provide services and supervision to youths after they were released from institutions, became highly regarded jobs for those educated for the new profession of social work.

Juvenile Court Challenged

The juvenile court movement flourished from within, becoming ever more concerned with professionalism in the intake process and in correctional supervision, and went unnoticed from without until the early 1960s. In that decade, legal challenges that went as far as the U.S. Supreme Court began to question—seriously and publicly—the belief that the juvenile court was in fact a benign parent and began to demand that children brought before the juvenile courts for matters that had the equivalent of criminal sanctions receive due process protections. The *Kent* decision (1966) required a formal hearing for juveniles waived to adult criminal courts. *In re Gault* (1967) extended specific adult due process standards to juveniles, and *In re Winship* (1970) imposed the standard of proof beyond a reasonable doubt on juvenile delinquency hearings. Although *McKeiver v. Pennsylvania* (1971) upheld the juvenile court's right not to conduct jury trials, the direction of the Supreme Court was nevertheless clearly that of protecting juveniles from the court's paternalism.

Whereas the 1960s brought legal challenges to the fairness of the juvenile court, the 1970s brought challenges from research and practice to the effectiveness of the correctional treatment of juveniles. A growing body of empirical evidence cast serious doubt that social casework, the linchpin of correctional treatment and especially of probation and parole, helped rehabilitate youths (Hellum, 1979; Romig, 1978). That youths are capable of being rehabilitated was, of course, a major premise upon which the creation of the juvenile court rested. As researchers questioned the absence of positive results from correctional treatment, practitioners, journalists, and attorneys called attention to its negative effects. Finding correctional "treatment"—especially in the institutions—often unnecessarily punitive and sometimes sadistic, these modern reformers were especially appalled that noncriminal youths or status offenders could as easily find their way into such institutions as could seriously delinquent youths.

These challenges spawned in the early 1970s a rapid growth of community-based alternatives to institutionalization. Although some jurisdictions, most notably the state of Massachusetts, sought to replace institutions with community-based services for all juvenile offenders, most programs specifically sought to serve status offenders who otherwise would have been incarcerated. This movement was fueled by a new federal law, the Juvenile Justice and Delinquency Prevention Act of 1974, specifying that to receive federal delinquency prevention funds, states must decarcerate status offenders. The law

thus provided fiscal incentives for the creation of alternative voluntary services to which status offenders could be diverted. On the matter of divesting juvenile courts of jurisdiction over status offenses, the law was silent. Although many professional associations have argued for such divestment, and some states have restricted—and a few nearly eliminated—juvenile court jurisdiction over status offenders, juvenile courts by and large still assume responsibility for these troublesome but noncriminal youths (Hellum, 1979; Rubin, 1979).

Current Dilemma

Some reformers in the 1970s sought to close public juvenile correctional institutions altogether, citing evidence that they harm rather than help youths and that the best "cure" for delinquency is reaching adulthood. But public opinion has sharply disagreed with the notion of more leniency for youths who commit serious or repetitive crimes, and the public has demanded—successfully—that more of these juveniles be incarcerated for longer periods of time and that more of them be tried as adult criminals. So strong is public sentiment that the current major threat to the juvenile courts is the loss of their original jurisdiction in cases of youths charged with serious or repetitive crimes (Hellum, 1979; Hutzler, 1982; McNally, 1983). Several states have revised statutes to reduce the age at which youngsters can be tried in adult courts. Many have amended laws to give state attorneys an ever-larger role in deciding if and where delinquency cases will be heard, historically a function of probation. Some have revised codes to limit judicial discretion in making dispositions, setting minimum sentences for certain crimes. Many other states are toying with amendments that would place original jurisdiction for delinquency cases with criminal courts, giving them the option of waiver to juvenile courts (Hellum, 1979; Hutzler, 1982; McNally, 1983).

Yet in the midst of these changes and challenges, the juvenile court remains society's most important institution for ensuring that vulnerable children receive protection, that troubled youths receive treatment, that troublesome youths receive justice, and that the programs to which the court sends youths provide effective and humane care.

Probation, Parole, and Social Work

Probation is typically administered locally or statewide through the courts; parole is administered statewide by the juvenile corrections agency. Probation provides community supervision and casework services to youths whose behavior is not sufficiently troublesome to warrant incarceration; parole (which, in tune with juvenile court philosophy, is more commonly termed "aftercare services") provides supervision and services to help previously incarcerated youths readjust to the community. Probation officers collect social history information to help juvenile courts decide how to process youths; parole officers collect this information to help correctional authorities decide when to release youths. Thus, although managed separately, probation and parole officers have similar jobs.

Probation was the significant contribution of the juvenile court movement, for it provided the expertise and manpower for individualized diagnosis and rehabilitation. Probation officers, who were originally volunteers and social workers on loan from other agencies, became civil service appointees in the early 1900s. Although budgets and bureaucracies seldom permitted goals to be realized, until the 1960s juvenile probation aspired to become a domain of professional social workers. Similarly, so did institutional aftercare services. Two troubling aspects preoccupied the field until then—coping with the dual function of law enforcement officer and caseworker and coping with high caseloads that made good casework impossible. Several jurisdictions experimented with reduced caseloads, with disappointing outcomes: youths supervised intensively recidivated more often or at least no less often than youths supervised infrequently (Romig, 1978).

The varying criticisms of the juvenile court have affected probation and parole. The legal challenges have reduced the decision-making discretion of personnel in community supervision. The challenges to practice effectiveness have been used to make legitimate declassification (permitting individuals less qualified than professional social workers to

serve as probation or parole officers at, of course, less pay), to reduce budgets, and to increase caseloads. The increase in popular antipathy toward youthful offenders makes the job of obtaining help for them in the community ever more difficult and erodes the status and morale of workers. Declining human services budgets have further eroded the resources in the community available to help youths (Kimmich, Gatowski, and Salamon, 1985).

In the face of declassification, low pay, and public antipathy, it is not surprising that the field of juvenile probation and parole has become less attractive to professional social workers than it once was. Further, the social work profession is moving away from the practice arenas of community organization and public welfare and toward that of clinical practice. Although professional social workers have to some extent been drawn away from juvenile probation and parole into more congenial practice settings, to some extent they have also been displaced from the field. That race, class, and professional training can be barriers in working with youths has been underscored by the positive outcomes in community supervision programs relying on indigenous paraprofessionals. Moreover, the favorite method of professional social work—psychotherapeutic casework—has, in contrast, not yielded positive outcomes with delinquent youths.

New Opportunities for Social Work

Nevertheless, opportunities exist for social workers to be important actors in providing community supervision and services for youths, whether in the older field of probation and parole or in the newer one of voluntary diversion services. The deinstitutionalization of status offenders has made probation supervision a more important disposition for adjudicated youths and has generated programs that provide alternatives to adjudication. Status offenders are by definition youths in conflict with their families or schools, and some social work methods are well suited to helping troubled youths. Family dispute resolution, brief family therapy, and school-based counseling programs are some examples of court-sponsored community-based diversion programs that employ professional social workers.

Similarly, some community-based programs for delinquent youths that divert minor offenders from court processing or that provide alternatives to institutions are built upon probation and aftercare services. These programs typically add to case supervision and counseling the role of case manager, who purchases or refers youths to additional services. Far from making the job easier, the added case management function is a difficult one requiring diagnostic, evaluation, community resource development, and management skills. Professional social workers are typically found in management, supervisory, and even line positions in such programs.

Finally, although traditional casework services have been found ineffective in probation and parole, other kinds of direct service methods—which some schools of social work are now emphasizing and refining—have not been found ineffective. Encouraging results from brief therapy with families toward the goal of improving communications and from skill-building work with youths toward the goal of independent living suggest a reconsideration of the premises and specific methods upon which services are based. Troubled families and youths need skills more than a friendly visitor or psychotherapist, and recent developments in social work methods similarly give social workers the skills to provide this changing definition of help effectively. A troubling current concern is that the "get tough" climate of opinion focuses program attention on containing youths rather than helping them, so that opportunities may be restricted to apply methods that have proved effective in helping troublesome but nonviolent youths become productive adults.

SANDRA M. STEHNO

For further information, see JUVENILE JUSTICE SYSTEM; JUVENILE OFFENDER DIVERSION AND COMMUNITY-BASED SERVICES; JUVENILE OFFENDER INSTITUTIONS; JUVENILE OFFENDERS AND DELINQUENCY.

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JUVENILE JUSTICE SYSTEM

The history of children's legal rights can be divided into four periods: the early 1600s to early 1800s; early 1800s to 1899; 1899 to 1966; and 1966 to the present (Horowitz & Davidson, 1984). In the first period, children were considered chattel or property of their parents and as such had no rights. Although parents had a duty to maintain, educate, and protect their children, there was no legal method to enforce these obligations.

With the industrialization of the early nineteenth century, "child saving" became the goal of social reformers (Fox, 1970). The reform movement of this second period was interested in rescuing abused or neglected children and rehabilitating wayward children. Houses of refuge, reform schools, and industrial schools were established.

In 1899, the beginning of the third period, the first juvenile court in the United States was established to provide the legal vehicle for the social reformers to accomplish their goals on behalf of neglected, abused, and delinquent children. The new juvenile system stressed treatment and separation of children from adults and was dissociated from the mainstream legal system. Good intentions and idealistic promises of reform and treatment replaced due process of law and equal protection in this system. The good intentions were not realized, however, leading to the first comprehensive review of the juvenile court system in *Kent v. U.S.* (1966). In this decision, the U.S. Supreme Court said that "the child receives the worst of both worlds . . . neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children" (p. 556).

This decision marked the beginning of the fourth historical period in juvenile justice. The following year, in the landmark decision of *In Re Gault* (1967), the doctrine of *parens patriae*, in which the courts assume the role of parent, was specifically repudiated. The court stated, "Neither the 14th Amendment nor the Bill of Rights is for adults alone" (p. 13). These two cases marked the beginning of the juvenile court's reassociation with the legal system and the constitutionalization of the juvenile justice system, as well as freeing children from some of the reform schools and other social institutions established earlier in which children were placed with little or no regard for their constitutional rights (Heger, 1981). In the recent history of the juvenile justice system, the major issues involving case law and federal and state legislation have been juvenile confessions, search and seizure, pretrial detention, transfer of children to adult courts, and the right to treatment.

Confessions and Self-Incrimination

Prior to *In Re Gault* (1967), self-incriminating statements were believed to be a necessary therapeutic component of the accused child's rehabilitation (Horowitz & Davidson, 1984). The *Gault* court rejected

this premise, holding that children do have protection against self-incrimination. However, the U.S. Supreme Court subsequently established that this right could be waived. In *Fare v. Michael C.* (1979), a child requested to see his probation officer in the police station. The police advised him that he had a right to see his attorney but not a probation officer. The child waived both his right to an attorney and his right to remain silent and confessed to a felony. The Supreme Court held the confession admissible in evidence, even though the child never spoke to an attorney, parent, or interested adult.

Since *Fare* there has been much controversy surrounding the competence of minors to make an intelligent, understanding, voluntary waiver of their *Miranda* (1966) or other constitutional rights without the guidance of a parent, attorney, or other friendly adult. (*Miranda* requires among other things that people be informed that any statements may be used against them, and that they are entitled to an attorney before making a statement or confession.) The trend, on a state level at least, has been toward involvement of parents in the interrogation process (Davis, 1983). Some states, such as Colorado, have gone even further and require by statute the presence of a parent before a child's waiver of Fifth Amendment rights can be found effective (Colo. Rev. Stats., 1978). On the other hand, at least one state, Missouri, has recently held that parental involvement is not necessary. Although many state courts have imposed more stringent standards for a child's waiver of Fifth Amendment rights than has the U.S. Supreme Court, there has been a recent erosion, on both the federal and state levels, of the application of the 1966 *Miranda* decision to children as well as adults (Davis, 1983).

Search and Seizure

Under the doctrine of *in loco parentis*, dating back to the era of Sir William Blackstone in eighteenth-century Britain, in which the school stands in for the parents, authority has been given to school officials to conduct warrantless searches of students (*Mercer v. State*, 1970). *In Re Donaldson* (1969) upheld the warrantless search of students' lockers. The doctrine was extended still further in *Farmer v. State* (1980), in which a student was searched by the principal, without a warrant, based on a suspicion that the student had drugs on his person. Although nothing was found, the police were called on a new complaint of assault by the child against a school faculty member. Pursuant to an arrest for the assault complaint, the police conducted a strip search and found marijuana. This search was upheld by the state court of appeal.

In *Horton v. Goosecreek Independent School District* (1982), the use of dogs in random sniff searching of the person was held unconstitutional, but similar use in sniffing lockers and automobiles was upheld. The court specifically rejected the doctrine of *in loco parentis* as justification for searches by school officials. Instead, it treated the school as a special situation similar to airports, borders, and courtrooms, where officials are given more leeway to conduct searches. The court noted that when society bands together large groups of students who are too young to exercise restraint in their use of illegal substances or dangerous instrumentalities such as weapons, society must assume

> a duty to protect them from dangers posed by anti-social activities—their own and those of other students—and to provide them with an environment in which education is possible. To fulfill that duty, teachers and school adminstrators must have broad supervisory and disciplinary power. (p. 480)

Some states began gradually to diminish the doctrine of *in loco parentis* and instituted more stringent requirements for warrantless searches. The New Jersey Supreme Court in the case of *In Re T.L.O.* (1983) is one such example. In this highly publicized case, a teacher discovered a high school student smoking cigarettes in the rest room. The student was taken to the assistant vice-principal's office, where she denied smoking at all. The assistant vice-principal asked to look in the student's purse and found cigarettes; a pack of cigarette rolling papers; some marijuana; a pipe; approximately $40, mostly in dollar bills; and an index card marked, "People who owe me money," with other students' names on it.

The New Jersey Supreme Court held that this search of the student's purse violated her Fourth Amendment right against unreasonable search and seizure. Upon appeal, however, the U.S. Supreme Court re-

versed the decision of the Supreme Court of New Jersey, thereby reinstituting the original doctrine and voiding the expanded procedural and substantive rights that had been accorded to students in the area of school searches. The U.S. Supreme Court agreed that the Fourth Amendment's prohibition on unreasonable searches and seizures also applies to searches conducted by public school officials. However, the school setting necessitates some easing of the restrictions, particularly the requirement for a search warrant. The Court stated that this requirement is unsuited to a school setting and that, rather than "probable cause," a teacher with "reasonable cause" can search a student without a search warrant. When all circumstances are considered, the search is not to be excessively intrusive (*New Jersey v. T.L.O.*, 1985).

Pretrial Detention

When adults are arrested, they are entitled to a hearing by magistrate shortly after the arrest, at which the circumstances of the alleged offense are briefly examined. Bail bond is set in accord with the Eighth Amendment to the U.S. Constitution ensuring citizens' right to bail that is not "excessive." However, all procedural rights guaranteed to adults in criminal proceedings are not yet applicable to juvenile proceedings.

One illustration of this is that most state juvenile codes do not grant the same constitutional right to bail for a child. The California Supreme Court, for instance, held in *In Re William M.* (1970) that the release provisions of the California juvenile laws were an adequate alternative to the bail system. Although the U.S. Supreme Court has not addressed the issue of the juvenile's right to bail as such, it has added a new criterion for pretrial detention of children. In *Schell v. Martin* (1984), the U.S. Supreme Court upheld Section 320.5 of the New York Family Court Act, which authorizes pretrial detention of an accused juvenile delinquent based on a finding that there is a "serious risk" that the juvenile "may before the return date, commit an act which if committed by an adult would constitute a crime" (p. 2403).

Transfer for Adult Criminal Trial

The age limit for jurisdiction over offenders as juvenile delinquents in most states is around 17. Generally, juveniles can be treated initially as adults at even earlier ages for more serious felonies (Horowitz & Davidson, 1984). Many state codes include automatic waiver for children accused of certain offenses (Del. Code Ann., 1982, §921(2)(a); Nev. Rev. Stats., 1981; Pa. Cons. Stats., 1982; La. Code of Juvenile Procedure and La. R.S. 13:1571). These statutes usually leave it to the discretion of the district attorney whether the case shall be heard in the juvenile court or adult court. In juvenile court, the maximum sentence is usually confinement to age 21; in adult court the maximum sentence can range from ten to 40 years at hard labor.

In addition, when a child has committed a repeat offense, he or she may be transfered to the criminal courts for prosecution. This hearing is variously known as waiver, transfer, removal, or certification. The underlying principle of waiver is to allow for the removal of juveniles considered too hardened to be amenable to the rehabilitation treatment of the juvenile court services, or those whose crimes are so severe that the public must be protected from them. The cut-off age frequently used for this purpose is 15. However, an increasing number of states have been amending their statutes to allow transfer of any child to criminal court, regardless of age, when the offense is a serious crime against persons. Likewise, the age at which a child may be prosecuted in adult court for serious felonies is being lowered in many states ("Representing the Rights of the Serious Juvenile Offender," 1982).

Right to Treatment

Once a child is adjudicated delinquent, most state juvenile codes allow dispositions ranging from probation, restitution, or community service work; to out-of-home placement and foster care in nonsecure facilities; to placement in secure institutions. Recent legislation has moved toward balancing the court's traditional rehabilitation orientation with concern for public safety and sanctions for juvenile offenders (Ala. Code, 1975; Colo. Rev. Stats., 1982; Fla. Stats. Ann., 1983). Many states have adopted serious-offender legislation that requires mandatory secure confinement for determinate periods of time for children accused of serious crimes against persons rather than allowing the previous indeterminate sentencing (Del. Code Ann.,

1982, §937(c); Ill. Ann. Stats., 1983; N.Y. Family Ct. Act, 1982).

On the other hand, most jurisdictions prohibit jailing children in adult prisons. Since the enactment of the Juvenile Justice and Delinquency Prevention Act (1980), states that incarcerate children in adult jails are no longer entitled to federal funding. When state law is silent, courts have generally ruled that the practice of jailing a juvenile is an abuse of the juvenile court's dispositional discretion (*In Re L.L.W.*, 1981; *State v. Grady*, 1981). One line of cases has held that the jailing of children violates the Fourteenth Amendment guarantee of due process and the Eighth Amendment prescription against cruel and unusual punishment (*Baker v. Hamilton*, 1972; *Cox v. Turley*, 1974; *D.B. v. Tewksbury*, 1982).

Introductory clauses to most juvenile court codes define the purpose of a state's juvenile system as care and treatment of juvenile offenders. Cases interpreting these codes, as well as programs and policies of state institutions, have held that the codes create a statutory right to treatment (*Milonas v. Williams*, 1982; *Nelson v. Heyne*, 1973). However, recent articles about "the right to punishment," as well as decisions of the U.S. Supreme Court, cast doubts on the viability of this concept ("The Juvenile Right to Treatment," 1983; *Youngberg v. Romeo*, 1982). The overall trend seems to be that courts and institutions should make an honest effort to address the problems of the children before them. Treatment should be offered and provided. Children have the right to refuse these services if they wish, however. Moreover, what constitutes the "treatment" and "services" offered by various institutions and programs is open to debate. Some of the programs and staff of juvenile courts and various school or state institutions and programs are excellent; they employ competent staff from a variety of disciplines who, in turn, devise and implement programs that have greatly contributed to the welfare of the juvenile clients. However, some staff and programs are ineffective and counterproductive (Gross & Gross, 1977; Krisberg & Austin, 1978) and some have even been proved to be brutal and sadistic (*Morales v. Turman*, 1971; *Nelson v. Heyne*, 1973; Simonsen & Gordon, 1982). A child's "normal" response would be to refuse to be a part of such approaches.

Role of Social Workers

The juvenile court and the juvenile justice system have, for the most part, reassociated with the mainstream legal system. The foregoing cases illustrate that as a result of this reassociation, children are increasingly being treated in the same manner as adults in the adult system. Children have been afforded greater constitutional rights in procedural law. In the area of substantive law, however, they are receiving fewer special considerations and allowances because of their minority. Some examples cited have been the lowering of both the age of adult criminal jurisdiction and the age of waiver to adult court and the replacement of indeterminate sentencing with determinate sentencing in many states. The underlying philosophy is that a juvenile should get the same sentence as an adult convicted of a similar offense, making "the punishment fit the crime." Substantive constitutional rights of children are being whittled away. The emerging policy appears to be that if the juvenile system cannot provide facilities and programs to keep the child from committing further serious crimes, then the child should be sent to the criminal system, where lengthy sentences and secure penal institutions are available. Punishment is replacing the notion of rehabilitation as the sense of frustration and powerlessness in dealing with juvenile offenders increases (Ala. Code, 1975; Colo. Rev. Stats., 1982; Fla. Stats. Ann., 1983; Kan. Stats. Ann., 1982; Mich. Stats. Ann., 1980; Miss. Code Ann., 1981).

Social workers are among the few who are involved in the juvenile justice system who are willing to disregard the jargon of "treatment," "control," or "punishment" and simply ask what approach is best to prevent the recurrence of serious crime. State institutions seldom help juvenile offenders (Miller, 1981). According to Richette (1969), "In a year or two, or five, they return, taller, stronger, more hell-bent on vengeance, even if it means blowing themselves up with the rest of the world" (p. 7). As an alternative, McNeese (1983) suggests:

> While the evidence on probation effectiveness is not convincing, the great majority of pro-

> bationers do not commit new offenses. At the same time, we also know that probation programs are more humane and less expensive than institutional programs. It would seem reasonable to suggest that a presumption be made in every juvenile case that probation (or another community-based alternative) is the preferred disposition except when the nature of the offense indicates a need for protecting the community or controlling the juvenile. (p. 30)

Social workers have greatly influenced the trends in juvenile justice policy in the areas of diversion, decriminalization of status offenses, victim restitution, and deinstitutionalization. Furthermore, as Treger (1983) has noted:

> Social work is now the only profession in all parts of the justice system. Innovative programs in which social workers team up with the police, public defenders, legal aid lawyers, prosecutors, and magistrates have resulted in new relationships and opportunities for public service, new knowledge, and a workable model for system change. As a result of these new programs, social work's involvement in the justice system has been broadened and social justice has been extended, especially to minority and low income groups, many of whom are now diverted from the justice system into the social service system.
>
> . . . Social workers in the justice system are now working with adjudicated and nonadjudicated people, juveniles, families, and adults who come to the attention of the system for a variety of reasons. They present a range of problems and predicaments, e.g., minor violations, personal, social bureaucratic problems, and the reluctance of agencies to provide services because of restrictive and inflexible policies. (p. 8)

It has been observed that the role of the juvenile court judge should be "legalistic, humanistic, and activistic" (Gothard, 1980). This approach should not be confined to judges, but should be extended to all components of the juvenile justice system. Such an approach entails a philosophy, attitude, and way of dealing with people that is the essence of social workers' contribution. Social workers must continue to contribute to and influence the juvenile justice system to ensure that the system remains not only juvenile, but just.

SOL GOTHARD

For further information, see JUVENILE COURTS, PROBATION, AND PAROLE; JUVENILE OFFENDER DIVERSION AND COMMUNITY-BASED SERVICES; JUVENILE OFFENDER INSTITUTIONS; JUVENILE OFFENDERS AND DELINQUENCY; RUNAWAYS.

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JUVENILE OFFENDER DIVERSION AND COMMUNITY-BASED SERVICES

The major juvenile justice reforms from the Kennedy-Johnson 1960s (Empey, 1978) to the Reagan 1980s were decriminalization, deinstitutionalization, diversion, due process, and determinate sentencing. During this period, several states, including Maine and Washington, decriminalized status offenses, removing from the jurisdiction of juvenile courts youthful behaviors that would not be chargeable offenses if committed by an adult. In about half the states, including California, Illinois, Pennsylvania, and Montana, and in the District of Columbia, statutes were passed to prevent the incarceration of juveniles for minor criminal offenses and status offenses. These deinstitutionalization efforts were accompanied by programs that diverted youths charged with minor and status offenses from the juvenile justice system to community-based treatment. The policies of decriminalization, deinstitutionalization, and diversion thus dramatically increased the need for community-based responses to behaviorally disordered youths charged with minor and noncriminal offenses.

The broad reforms of the 1970s were achieved by an alliance of diverse special interests and concerns, including both conservative and liberal critics of the American system of juvenile justice that had evolved with few changes over the more than 70 years since the establishment of the first juvenile court in Chicago in 1899. The reforms altered a system that had avoided major public criticism until the 1970s, when the concern for accountability in governmental spending brought juvenile courts and training schools under increasing scrutiny as people began to question the effectiveness of the juvenile court system in reducing the criminal recidivism of the youths served. Questions of effectiveness and justice were raised despite the apparent logic of the founding premise of the juvenile court—*in loco parentis*—"in the place of the parents." The doctrine embodied the belief that the state had the obligation to protect or control children if parents were unwilling or unable to do so. Moreover, the doctrine placed the juvenile court judge in the role of the benevolent but stern trustee of

orphaned, neglected, maltreated, and wayward children. Judges were to be their own good counsel in seeking the best interest of their wards and disciplining them when they got out of hand. The severity of discipline, which could include incarceration in a juvenile institution, was at the judge's discretion. Because there were no explicit standards for punishment, the juvenile courts often dealt more harshly with children who defied their parents than with youthful burglars, for example.

The juvenile courts were also criticized for other reasons. Youth advocates asserted that juvenile misbehavior was overcriminalized, that juveniles were being incarcerated to an excessive degree, and that minorities were overrepresented in the juvenile justice system. These concerns paralleled similar ones in the larger society, in which increasing attention was given to the civil rights of women, blacks, and adolescents (Empey, 1978; Klein, 1979). Youth advocates began to call for the use of community-based services to minimize the penetration of youths into the juvenile justice system and their exposure to criminal influences in juvenile institutions (Coates, 1976). The popularization of labeling theory (Becker, 1963; Lemert, 1967) focused attention on the possible stigma resulting from the process of labeling and treating youths as delinquent (Severy & Whitaker, 1982; Spergel, Reamer, & Lynch, 1981). Consequently, labeling theory provided a theoretical basis for deinstitutionalization and decriminalization efforts. Treatment in the community was advocated as less costly (Austin & Krisberg, 1982; Juvenile Justice Delinquency Prevention Operations Task Force, 1975) and less likely to harden delinquency as a pattern of behavior for minor offenders and status offenders (Lemert, 1981). Community-based services were also seen as correctives for the inefficiency and backlog in juvenile courts, the failure of communities to take responsibility for youths' behaviors, and the denial of juveniles' rights to due process and equal treatment under the law (Lemert, 1981).

At the same time, law enforcement officials criticized the juvenile courts for being too lenient with chronic serious youthful offenders, often allowing arrested youths to return to the streets before the arresting officers had finished their paperwork. For example, Washington State law enforcement officials and prosecutors joined to advocate determinate sentencing—based on the youth's instant offense and prior record—as a companion reform with mandatory incarceration for youths found guilty of multiple or serious offenses. Determinate sentencing in conjunction with diversion of minor offenders was expected to streamline the juvenile courts so that they could focus on the most serious crimes. Thus, in some states, even the historical partners of the court in the job of social control—law enforcement officials and prosecutors—saw benefits in juvenile court reform and collaborated with other reformers to change state policies.

The pressures for reform began to be reflected in policy changes in the late 1960s. The due process rights of juveniles were confirmed by the Supreme Court in the *Gault* case of 1967. In the same year, the President's Commission on Law Enforcement and the Administration of Justice recommended the deinstitutionalization and diversion of status offenders. The Juvenile Delinquency Prevention Act of 1968 sought similar goals: more formal legal control for serious juvenile offenders and more informal social control in communities for youths engaged in minor illegal or noncriminal behavior (Weis & Hawkins, 1981). Yet, in 1974, juveniles were still detained in adult jails in 43 states; 17 states and the District of Columbia made no distinction between status offenders and delinquents; 26 states had statutes that made certain behaviors illegal only for juveniles; and 8 states classified some noncriminal behaviors as status offenses while they classified other similar behaviors as delinquent (Ryan, 1981). In those states that made distinctions between status offenders and delinquents, the processing, treatment, and disposition of cases varied both within and between jurisdictions. Often status offenses were treated more punitively than delinquent acts (Weis et al., 1980). In short, the treatment of juveniles in the juvenile justice system was inconsistent and often arbitrary.

The pressures for juvenile justice reform at the federal level culminated in the Juvenile Justice and Delinquency Prevention Act of 1974. The act required that states change their juvenile justice practices to obtain federal funding. It established a time limit for the removal of status offenders from

correctional institutions, advocated the provision of alternatives to imprisonment for delinquent youths charged with minor crimes, and called for the diversion of juveniles charged with nonserious offenses from the traditional juvenile justice system into community-based treatment programs. The act also required the separation of delinquents from adult offenders in jails and prisons and identified delinquency prevention as a priority.

Community-Based Services

The new federal emphasis on diversion of status and minor offenders from the juvenile justice system stimulated the development of community-based services for delinquent and troubled youths. The new philosophy emphasized the importance of local community involvement in the control of local youngsters. In response, a wide range of activities and programs have been initiated under the general rubric of community-based services. The term "community-based" has been used to refer to residential treatment centers, youth service bureaus, group or foster homes, halfway houses, and adolescent units in psychiatric hospitals. These facilities vary on such important dimensions as the degree of security provided, whether they are residential or nonresidential, the extent and nature of treatment provided, and their size (Hylton, 1982).

Nevertheless, there are some features common to all community-based programs. Typically, these programs are committed to intervention in the least restrictive setting possible and to the concept of normalization in the form of continuing opportunities for interaction with the social environment in which the participant is expected to function following treatment. In essence, community-based services can be conceptualized as varying in frequency, duration, extent, and quality of staff-client, staff-community, and client-community interactions (Coates, Miller, & Ohlin, 1978). Elaborating on this framework, it has been suggested that community-based interventions are neither divorced from nor separate youths from the social units, networks, and support systems in which they normally participate in their communities (Coates, Miller, & Ohlin, 1978). The major interventions in most community-based programs include individual, family, and group counseling; guided group interaction; and behavior modification. In addition, these programs emphasize interpersonal relations between staff and youths (Romig, 1978).

Another community-based intervention is restitution: actual or symbolic payment of damages to the victim or society through monetary reimbursement or community service. Although attempts have been made to expand its use, restitution has been applied primarily to minor offenders—generally white male property offenders with few prior arrests (Austin & Krisberg, 1982).

Perhaps the most radical move toward community-based services was the closing of juvenile institutions in Massachusetts in the early 1970s. Prior to 1969, the institutions run by the state Division of Youth Services were characterized by overcrowding and by poor educational and rehabilitative programs (Romig, 1978). After attempts to establish community-based treatment failed, a decision was made to release all youths from juvenile institutions within a period of 2 months (Romig, 1978). Three important lessons were learned from the Massachusetts experience: (1) those communities that developed the widest array of local community treatment resources were the most successful in absorbing released youths; (2) in spite of the large number of youths returned to communities, there was no appreciable increase in juvenile crime; and (3) massive intervention was accomplished "*even without much community preparation*" (Klein, 1983, p. 373). An analysis of the project concluded that the community-based option was a viable one (Coates, Miller, & Ohlin, 1978). The majority of institutionalized youths were handled in relatively noninstitutional settings and, from a cost perspective, the community-based system compared favorably with the training school system.

In Massachusetts, as in other states that followed in the deinstitutionalization of youthful offenders, community-based services have involved private agencies as service providers (Lerman, 1984). An informal division of labor between public and private agencies has been associated with juvenile justice reforms (Lerman, 1980, 1984). Private agencies have tended to handle dependent and neglected children and less serious delinquents in community-based programs, and public institutions have handled more serious

offenders. The private agencies have, in turn, become advocates of increased community-based services for youths. However, the recent movement in some states toward privatization of juvenile institutions is increasing the private sector participation at all levels of juvenile corrections.

Unanticipated Consequences

Reforms often create unexpected consequences. Each innovation may create new problems that need to be addressed by subsequent reforms. The history of juvenile justice reform illustrates this phenomenon. Prisons for youths and adults were reforms that sought to avoid the harsh physical punishments that had previously been standard practice. Yet the massive system of training schools and prisons that subsequently evolved was not anticipated by the reformers of the time. Similarly, the juvenile justice reforms of the 1970s have had a number of unanticipated consequences, both for the juvenile justice system and for the youths served.

A major unintended consequence of diversion has been called "net widening," the inclusion in the diversion system of youngsters who otherwise would not have been included in the criminal justice system at all. These are youths who, if apprehended for a minor delinquent act, would formerly have been warned by the police and released prior to the increase in diversion programs (Hylton, 1982; Kobrin & Klein, 1982; Spergel et al., 1982). The increased availability of community diversion programs for those charged with less serious offenses resulted in services to increased numbers of youths who had little or no prior contact with the juvenile justice system and a nonserious instant offense. A related problem has been "creaming," the selection of youths with histories of less serious prior offenses for diversion programs to make the programs appear successful (Kobrin & Klein, 1982).

Another unintended consequence of the reforms has been the relabeling of certain youths in order to retain them in service programs (Klein, 1979, 1983). One label, "minor delinquent or status offender," has been replaced with others, such as "person in need of supervision," "acting out child," or "emotionally disturbed child." Although relabeling has helped to ensure that troubled youths receive needed services, Hylton (1982) has noted that the relabeling of youngsters as "psychologically disordered" allows circumvention of such hard-won due process protections as the right to trial, appeal, and legal representation. Further, many diversion programs transfer youths to community agencies that are not accountable to juvenile justice standards, making them subject to the discretionary decisions of staff. A set of secondary sanctions may be set up, with penalties for youths who fail to comply with the directions and requirements of the diversion program (Lemert, 1981). In his evaluation of the California Treatment Project, Lerman (1975) found that youths experienced an increase in formal social control as a result of participation in the diversion program. Youths in the program underwent more detention for "violation of treatment expectations, accommodations to community complaints, administrative convenience, diagnostic purposes, and the prediction of 'acting out' behavior" than did youths who did not participate in the program (Lerman, 1975, pp. 6–7). In sum, implementation of decriminalization, diversion, and deinstitutionalization reforms has had some consequences the reformers did not originally intend.

Perhaps as a consequence of professional resistance, net widening, and other implementational difficulties, the outcomes of deinstitutionalization and diversion experiments have been less favorable than reformers originally expected. Evaluations have consistently suggested that diversion programs are no more effective than juvenile justice penetration or outright release in reducing subsequent crime (Dunford, Osgood, & Weichselbaum, 1982; Hylton, 1982; Klein, 1979; Severy & Whitaker, 1982; Spergel et al., 1982). In addition, as implemented, diversion has led to increased costs in some communities (Lerman, 1975) and may also have increased costs in other systems such as child welfare and mental health.

Nevertheless, results indicate that a large majority of delinquent and misbehaving youths can be handled in community settings that are less restrictive than juvenile institutions (Coates, Miller, & Ohlin, 1978). As noted earlier, the closing of the juvenile institutions in Massachusetts did not lead to appreciable increases in crime. Further, community-based care appears to produce no