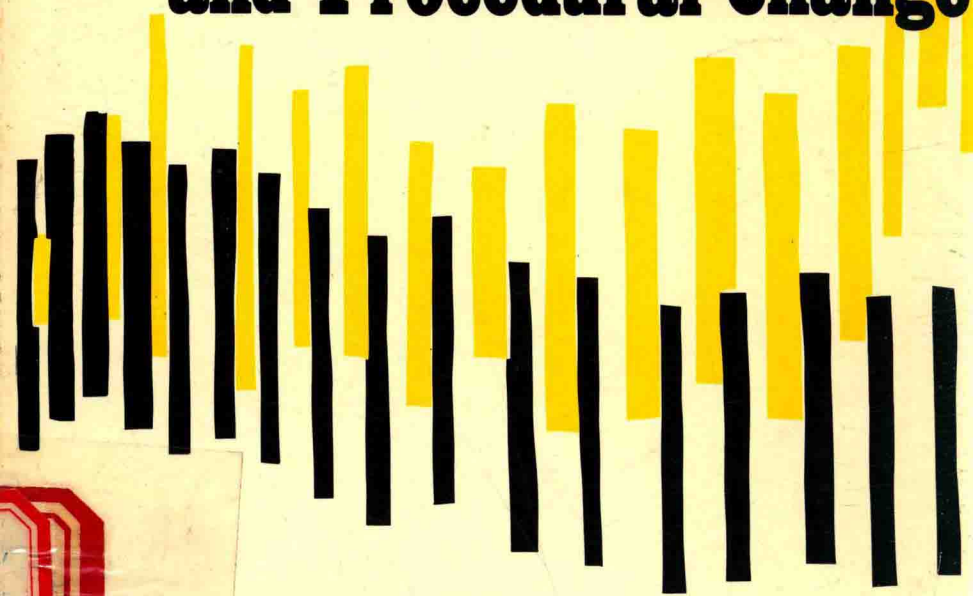


# **JUVENILE CORRECTIONAL REFORM**

**Two Decades of Policy  
and Procedural Change**



**Edmund F. McGarrell**

# Juvenile Correctional Reform

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Edmund F. McGarrell

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# Juvenile Correctional Reform

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SUNY Series in Critical Issues in Criminal Justice

Gilbert Geis, Donald J. Newman, and Terence P. Thornberry, Editors

## Preface

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We are currently experiencing a watershed period in juvenile justice reform. A new agenda of reform is emerging and gathering political strength. The prior agenda of deinstitutionalization, diversion, and juvenile justice reform is openly being questioned and criticized. As this ideological debate rages, the nation's juvenile justice system has become more formal, more restrictive, and more oriented toward punishing serious offenders. Juvenile correctional facilities hold more youth than since the early 1970s, and these facilities are increasingly crowded and understaffed. There are reports that some of the institutional abusive practices that motivated the reformers of the 1970s are still pervasive. Thus the watershed period presents a challenge to rethink and refocus the energies of all juvenile justice reformers (Krisberg et al., 1986:34).

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This book addresses the divergent reform agendas that have shaped American juvenile justice systems during the last two decades, examining national trends in juvenile justice and intensively investigating the process of change in New York State's juvenile corrections system.

Essentially, this is a study of change. The key question addressed is *how* and *why* has juvenile justice, particularly juvenile corrections, changed during the last twenty years. As such, it most clearly deals with issues of concern to the student of juvenile justice and corrections. In addition, by dealing with the question of change, the book also raises perhaps the most basic question of political science: "who gets and who should get what, how and why in governmental decisionmaking. . ." (Nagel, Fairchild, and Champagne, 1983:ix).

This study asks: What juvenile justice policies have changed? Who has changed them? Why have they been changed? What has been the effect on juvenile corrections, and ultimately, on youth? Although the questions may appear straightforward, the answers are complex. Thus, in terms of who and why, the study suggests that factors as broad as cultural shifts in prevailing political ideology and as narrow as the individual initiative of an agency head have shaped policy and procedure at specific times. In addition, the shifting roles of federal, state, and local governments and executive, legislative, and judicial branches therein have been apparent, as well as the occasional influence of the media and reform groups.

Beyond these questions of power and influence, the book also provides a case study of an organization in relation to its environment. The organizational sociologist is presented with a picture of an organization, a juvenile corrections agency, struggling to survive during a period of unprecedented and often contradictory (e.g., divert versus punish) external demands for change. The organization at times appears as the pivotal actor in the formation of policy, at times as the reactive implementor of policy, and most commonly, as some combination of lobbyist, policymaker, and administrator.

Whether the primary interest is in juvenile justice, politics, law, or organizations, the book's unifying feature is its focus on change and reform. The book presents the findings of an empirical study grounded in a theory of social reform originally developed in a similar study of the Massachusetts juvenile corrections system (Miller, Ohlin, and Coates, 1977). The analysis provides a test of the theory and an attempt is made to more fully develop the theory by drawing upon the insights of Wamsley and Zald's (1973) political economy approach to organizations.

Thus, this study of juvenile corrections change and reform raises issues not only of interest to the juvenile justice policymaker, reformer, and scholar, but also to the political scientist, social welfare reformer, and organizational sociologist interested in processes of large-scale reform. Because of these diverse interests, some readers may find certain chapters more relevant than others. The first three chapters frame the analysis but from rather different perspectives. Chapter One covers the historical development of American juvenile justice systems with particular attention on the major reform agendas witnessed nationwide since the late 1960s. Chapter Two discusses relevant theoretical and empirical developments in the study of corrections as an "open system." The chapter also reviews a number of studies of criminal law and correctional policy formation. Chapter Three presents the theory of social reform developed in the Massachusetts studies (Miller, Ohlin, and Coates,

1977; Miller and Ohlin, 1985). The chapter also presents the key research questions and the methodology employed to test the theory. Chapters Two and Three will be of most interest to those concerned with the theoretical issues raised in the study. They may be of less interest to readers primarily concerned with the practical impact of reform agendas on the juvenile justice system.

The next four chapters present the findings of the study of the New York State juvenile corrections system. Chapter Four describes the system level changes that have occurred in New York State and places the system in historical and national context. Chapters Five through Seven present the main findings and the analysis of the change process. These chapters are organized around the tenure of the administrators of the state's juvenile corrections system from the late 1960s to 1984. Finally, Chapter Eight presents an analysis of the overall change process and summarizes the empirical support for the theory of social reform. The chapter concludes by placing the study in perspective of national contemporary trends in juvenile justice and within the broad context of the deinstitutionalization movement and the so-called get tough movement toward crime and delinquency.



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Appreciation is also expressed to the editors of *Criminal Justice Policy Review* for permission to reprint Figures 4.2 and 4.3, Table 5.4, and portions

of the narrative text in Chapters Five through Eight. These materials originally appeared in the article, "Change in New York's Juvenile Corrections System," *Criminal Justice Policy Review* (1986) 1,2:169-197 (Indiana, PA: Indiana University of Pennsylvania). Thanks also to Flora Rothman, John Jay College of Criminal Justice, for permission to include Table 4.1.

Finally, my unending thanks to Donna, Corey, and Erin, the three who provide all that is good in my life.

# Abbreviations

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ACLU	American Civil Liberties Union
AFDC-FC	Aid to Families with Dependent Children-Foster Care
DCJS	Division of Criminal Justice Services
DFY	Division for Youth
DOB	Division of the Budget
DOCS	Department of Correctional Services
DOP	Division of Parole
DSS	Department of Social Services
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
JJDPA	Juvenile Justice Delinquency Prevention Act of 1974
JJRA	Juvenile Justice Reform Act of 1976
JO	Juvenile Offender Law
LEAA	Law Enforcement Assistance Administration
NYCDJJ	New York City Department of Juvenile Justice
OJJDP	Office of Juvenile Justice and Delinquency Prevention
PINS	persons in need of supervision
SEC	Securities and Exchange Commission
YDDPA	Youth Development and Delinquency Prevention Administration

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## Chapter One

# Juvenile Justice In Change

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In June 1978, a fifteen-year-old youth gained notoriety in New York State when he was sentenced to the maximum allowable five-year sentence for murdering two subway passengers and attempting to murder a third. The case had ramifications beyond the effect on those directly involved, as it was considered to have acted as a “triggering event” in subsequent legislative changes. As discussed in Chapter Six, the sentence was announced during a gubernatorial campaign during which Governor Hugh Carey was being criticized as soft on crime because of his stands against capital punishment and against criminal court jurisdiction for juveniles. While on a campaign flight, the governor was handed a newspaper with a front page article highlighting the above case. The governor reportedly slammed down the newspaper and announced plans to submit legislation that would permanently keep such a youth off the streets. The governor stuck to his pledge and the state passed what some experts called the toughest juvenile statute in the country (Smith et al., 1980).

One reason for the governor’s response was his dissatisfaction with the maximum five year sentence. It is interesting to note, however, that if the case had occurred just two years prior, the youth would have faced an eighteen-month indeterminate placement (although the law did include a rarely used provision for a three-year sentence). Further, a youth committing a similar offense several months later could face a minimum five- to nine-year sentence with a maximum sentence of life.

This case, while certainly atypical, is interesting both because of its historical significance and because it raises a number of questions concerning

public policy towards juvenile crime. The recognition that a juvenile committing the same act could, within a three-year span, face either an eighteen-month, five-year, or life sentence, raises fundamental questions about juvenile policy. At the very least, one must ask why these policies changed.

In addition to, and as a partial consequence of these policy changes, New York State's juvenile corrections system changed during these years. The policy changes that produced these shifts in available sentences followed a period in which the juvenile corrections system moved from a primary reliance on large institutions to a near-equal mix of institutional and community-based programming. Since the late 1970s, however, a renewed emphasis has been placed on institutions and particularly the development of secure facilities.

These changes in juvenile justice policy are not unique to New York State. Indeed, since the 1960s, American juvenile justice systems increasingly have been called into question. Perhaps more than at any time since the creation of the juvenile court at the turn of the twentieth century, the idea that the state acts as the benevolent guardian of delinquents has been questioned. Demands for reform ranged from complete deinstitutionalization to "cracking down" on serious juvenile crime (Ohlin, 1983). In order to understand these pressures for reform and the consequent effects on juvenile justice practice, both the historical development of the juvenile justice system and the changes in juvenile justice that have occurred on a national level since the 1960s must be examined.

### Historical Development

Although the origins extended to European common law and the early American colonial era (Empey, 1979; Rendleman, 1971), the major development of a separate juvenile justice system occurred during the nineteenth and early twentieth centuries. An early development was establishing houses of refuge in the 1820s, facilities intended to house juveniles who otherwise would be sent to adult jails or penitentiaries. During the second half of the nineteenth century the houses of refuge grew into disfavor and were replaced by the newly developed reformatories and industrial schools. The reformatory and industrial school movement proved popular and by the turn of the century most non-Southern states had built such institutions. These years also witnessed the expansion of probation and of placing out practices, the latter referring to practices whereby troublesome urban youths were sent

to live with farm families. The culmination of the trend toward a separate system of justice for youths was the development of the juvenile court in Chicago in 1899 and the subsequent spread of the juvenile court model to the rest of the country.

A rich body of historical literature has developed tracing the evolution of the penitentiary, house of refuge, asylum, reformatory, and the juvenile court. Some of this literature focuses on the development of total institutions and deals with the growth of a separate juvenile justice system as part of this broader development (Foucault, 1979; Rothman, 1971, 1980; Ignatieff, 1978); while other studies focus more directly on the development of the juvenile justice system in particular (Mennel, 1973; Platt, 1969, 1974; Schlossman, 1977; Hawes, 1971; Fox, 1970; Pickett, 1969). This literature provides not only historical documentation of these institutions' emergence and growth, but also insights into the social and political forces behind the process.

Traditional or orthodox explanations for developing these total institutions, and juvenile institutions in particular, emphasize the evolutionary progression from traditional forms of corporal punishment to the development of correctional institutions, separate juvenile institutions, and eventually a separate juvenile justice system (Hawes, 1971; Pickett, 1969; Mack, 1909). This process was brought about through the efforts of humanitarian philanthropic and religious reformers, concerned first with the use of barbarous corporal punishment and later with conditions of the jails, penitentiaries, and juvenile institutions. Along with concern for the conditions of legal punishment, the reformers were concerned with the plight of poor children growing up in the disorganized large cities during this period of increasing immigration, urbanization, and industrialization. Reformers became interested in developing institutions and programs to remove children from inadequate families and provide proper educational and moral training. Such a response was necessary to save these children from a life of poverty and crime. The reform agenda was influenced in the late eighteenth and early nineteenth centuries by the Enlightenment philosophers such as Beccaria and Bentham, and later in the nineteenth century by the tenets of Social Darwinism and positivistic criminology's emphasis on both hereditary and environmental causes of crime. The development of the separate juvenile justice system, similar to parallel reforms in the areas of adult corrections, education, and social welfare, is thus seen as a humanitarian, consensual, and functional response to the problems of rising juvenile crime and youth misconduct precipitated by the disorganized character of life in the rapidly growing urban centers.



In the 1960s and 1970s, several historical analyses of the rise and development of juvenile justice institutions questioned traditional, orthodox explanations of this development (Platt, 1969, 1974; Rendleman, 1971; Fox, 1970; and in relation to the development of the penitentiary in England and France, see Ignatieff, 1978; Foucault, 1979). These revisionist historians also saw this process as evolutionary, but rather than as a progressive movement from corporal punishment to humanitarian reform institutions, this process was seen as the further extension of social and legal control over subordinate classes. The revisionist account also stresses the importance of social structural changes caused by immigration, urbanization, and industrialization, but interprets the reform movement as the effort of the social and political elite to control the poor, urban, "dangerous" classes. Rather than portraying reformers as humanitarians, they are seen either as elite oppressors or as tools of the dominant classes.

Later writings criticized the revisionist interpretation as reductionist (Ignatieff, 1981; Mennel, 1983; Hagan and Leon, 1977). The assertion that the development of the penitentiary and the juvenile justice system was the product of a rational conspiracy fails to recognize the actual complexity of the process (Ignatieff, 1981; Mennel, 1983; Schlossman, 1977; Empey, 1979). Speaking of accounts regarding the development of the penitentiary system, Ignatieff (1981:156) scored revisionist portrayals for ". . . overschematizing a complex story and for reducing the intentions behind the new institution to conspiratorial class strategies of divide and rule." While control intentions are not denied, the process is best understood as the result of complex social structural changes occurring at the political, economic, cultural, and religious levels. Furthermore, rather than being the sole product of either humanitarian or elite efforts, the development of the penitentiary, house of refuge, reformatory, and juvenile court, was the product of compromise and political and legal debate revolving around basic issues of both humanitarian reform and security and order.<sup>1</sup>

Despite the debate among orthodox, revisionist, and antirevisionist accounts over the motives and functions of these new institutions, several insights of relevance to the study of change in the juvenile justice system can be noted. First, the development of the separate juvenile justice system clearly cannot be understood apart from the broad social structural changes brought about by the processes of immigration, urbanization, and industrialization. Second, while revisionist historians interpret the role of social science as merely providing legitimacy to control activities (Platt, 1969, 1974), changes in social thought and theory, ranging from the Enlightenment philosophers