

Edited by
Scott H. Decker



Juvenile Justice Policy

Analyzing Trends and Outcomes

Perspectives in Criminal Justice 7

Juvenile Justice Policy

Perspectives in Criminal Justice **7**

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CONTENTS

Acknowledgments	7
INTRODUCTION: Policy Research in Juvenile Justice Scott H. Decker	9
PART I. EVALUATION STRATEGIES IN JUVENILE JUSTICE	
1. National Juvenile Justice Policy: Myth or Reality? Gayle Olson-Raymer	19
2. Implementing the Multigoal Evaluation Technique in Diversion Programs Rose Mary Stanford	59
PART II. THE EFFECT OF CHANGES IN THE JURISDICTION OF THE JUVENILE COURT	
3. Abolishing Court Jurisdiction over Status Offenders: Anticipating the Unintended Consequences Brooke E. Spiro	77
4. Removing Runaways from the Justice System: The Experience in Washington State Jill G. McKelvy	95
PART III. ASSESSING THE IMPACT OF DIVERSION	
5. Net Widening? Yes and No: Diversion Impact Assessed Through a Systems Processing Rates Analysis Finn-Aage Esbensen	115
6. How Wide the Net? Probing the Boundaries of the Juvenile Court Timothy S. Bynum and Jack R. Greene	129

7. Juvenile Diversion: Factors Related to Decision Making and Outcome Edward J. Latessa, Lawrence F. Travis III, and George P. Wilson	145
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About the Authors	166
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—*Scott H. Decker*

INTRODUCTION: Policy Research in Juvenile Justice

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The last two decades of criminal justice research represent a significant break with the past. Prior to the 1960s the majority of analyses were essentially descriptive. That is, most research provided a rather straightforward, descriptive account of the manner in which the unit of analysis worked, its characteristics or effects. Throughout, this research could be characterized as paying attention to the *formal* aspects of the criteria noted above. Such research exemplifies the approach described by Feeley (1973) as the “rational-goal model.” Under such an approach, the organization is viewed as a tool designed to achieve some objective, and is analyzed in terms of its ability to achieve formal goals.

Juvenile justice policy research was no exception to this approach. Most examinations of juvenile justice described the way the system operated by concentrating on its formal characteristics. This trend was best exemplified by studies that accounted for the progress of juveniles through various decision-making points in much the same fashion as one would construct a flowchart. Most studies were long on describing the various stages in the juvenile justice process, but short on accounting for why these patterns existed, or why policies produced the results they did.

The shift in research orientation coincided with the initial intervention of the U.S. Supreme Court in the area of juvenile justice and the resultant increase in complexity of juvenile justice policy. In both the

Kent (1966) and Gault (1967) cases, the court made clear its intention that the legal protection of due process be expanded for juveniles. This stance was predicated on the notion that the traditional treatment emphasis of the juvenile court was not sufficient justification for a reduction in legal protection. Three years prior to the Gault decision, Allen (1964) observed that the latent functions of juvenile courts must be considered when accounting for their overall operation. He noted that while juvenile justice espoused a distinct treatment orientation, many of its functions were essentially of an enforcement, adjudicative, or punitive nature. It was this admixture that Allen found most troubling because it ultimately led to the subversion of due process. This philosophical stance soon found empirical support. Juvenile justice research and policy analysis would never be the same. From Gault on, analysis would focus on the latent effects of policies, programs, and innovations. Thus concern for the total impact of policies became the orientation. Perhaps this shift can be seen most directly in the attempts to assess the effects of the Gault decision. Consistent with this new orientation, two examinations of the impact of Gault show that its promise lags far behind reality. Lefstein et al. (1969) found that the legal intent of Gault was effectively subverted. That is, consistent with the new approach, they examined the extent to which a policy (the court decision) became operational. They found that the Gault decision was seldom implemented. In a similar vein, Horowitz (1977) found that Gault had produced several judicial changes directly counter to the original intention of the decision. He concluded that this decision, specifically articulated to increase the level of formality (through the use of lawyers, notice, challenges, and so on), had in fact led to the opposite result. These analyses provide empirical support for the position delineated by Allen, as well as a foundation for future research in the area.

Two other specific policy issues have received extensive scrutiny from this perspective. The first of these has been the notion that status offenses should be decriminalized—that is, removed from the jurisdiction of the juvenile court. The second (and related) of these issues has focused on the issue of the expansion of social control. In each of these contexts, analysts have noted that a specific policy or program has produced a result contrary to initial expectations. In the matter of status offenses, the National Council on Crime and Delinquency has been most active in the attempt to remove such behaviors from the jurisdiction of the juvenile court. They have noted that such an

approach tends to confuse legal misbehavior with social problems. Thus they (and others) have been active in attempting to curtail court jurisdiction in this area. These policies have been implemented in several states, and have had an effect on how minor offenders are processed in almost all states. The creation of PINS (Persons in Need of Supervision) or CHINS (Children in Need of Supervision) is a response to the dilemma posed to the juvenile court by status offenders. The greatest policy efforts in juvenile justice have been in this area.

The second policy that has received extensive scrutiny—the expansion of social control—is essentially a response to the dilemmas inherent in the disposition of minor offenders. In perhaps no other area of policy analysis has the methodological style under discussion here been displayed more prominently than in evaluations of the effect of diversion programs. Diversion was widely hailed in the 1970s as an appropriate policy response to the needs of minor offenders as well as those of the juvenile court. The results of most analyses of diversion indicate that these efforts, designed to reduce the scope of juvenile court jurisdiction, have instead produced the opposite effect. That is, programmatic efforts such as diversion have produced results directly contrary to their original intention. The works of Klein (1976a, 1976b, 1979; Klein et al., 1976) and Blomberg (1977, 1978, 1980; Blomberg and Carabello, 1979) provide the best empirical and theoretical examples of this trend. Each has demonstrated that the reality of diversion is indeed different from its rhetoric. Specifically, they have underscored the extent to which diversion programs initially designed to reduce penetration into the juvenile justice system have produced the opposite result, therefore expanding the jurisdiction of the court and subverting the goals of diversion.

The works contained in this volume are consistent with the trends that have been identified above. That is, each chapter presents an examination of a juvenile justice policy that is sensitive to the subterranean processes that may affect the implementation, execution, or outcome of that policy. In addition, each author has addressed an issue of both current and future significance. The book is organized into three parts: "Evaluation Strategies in Juvenile Justice," "The Effect of Changes in the Jurisdiction of the Juvenile Court," and "Assessing the Impact of Diversion."

The first section of the book describes two techniques of analyzing processes within the juvenile justice system. The two chapters in this section are consistent with the more recent approach that examines the latent and manifest effects of programs and organizations. The

first, "National Juvenile Justice Policy: Myth or Reality?" by Gayle Olson-Raymer, provides a historical analysis of the attempts of the federal government to formulate policy in the area of juvenile justice. Olson-Raymer carefully notes the changes from decade to decade in juvenile justice policy and operation. Her work demonstrates the utility of historical analysis, in both substantive and methodological terms. She notes that past efforts have been characterized by a lack of consensus. An inventory of guidelines for future federal policy efforts is offered as a conclusion to this chapter. The second chapter in this section is by Rose Mary Stanford. In "Implementing the Multigoal Evaluation Technique in Diversion Programs," she proposes an alternative to traditional evaluation designs. The multigoal technique is a means of gaining more information than that yielded by fixed-goal and unintended outcome orientations. Because the environment of most juvenile justice programs is unstable, this approach is worthy of consideration. Stanford demonstrates the utility of this technique by applying it to several well-known diversion evaluations.

Part II focuses on the effect of proposed changes in the jurisdiction of the juvenile court. Two specific analyses are presented in this context. The first chapter, by Brooke E. Spiro, "Abolishing Court Jurisdiction over Status Offenders: Anticipating the Unintended Consequences," raises and examines several of the consequences likely to occur with the abolition of juvenile court jurisdiction over status offenses. While granting that there has been considerable momentum behind the "abolition" movement, she notes that the cure may be worse than the disease. Spiro provides evidence that there may be more negative results from such an effort. She reasons that once status offenders have been removed from court jurisdiction there will be less supervision of the type of treatment received. In noting that social welfare and mental health systems typically rely on out-of-home placements and overly lengthy treatment, the implication is clear that due process rights may well be jeopardized.

An interesting counterpoint to Spiro's argument is the work that follows it, by Jill G. McKelvy. In "Removing Runaways from the Justice System: The Experience in Washington State," McKelvy examines the effect of removing status offender jurisdiction from juvenile court. In addition, she examines the legislative mandate that created a social service network for runaways and children with family conflict, who were served previously by the juvenile justice system. These changes were consistent with the "just deserts" model,

and therefore represented concern for punitive dispositions that frequently occurred without legal processing. In analyzing the effects of these changes, McKelvy notes that there were several negative, latent consequences of the changes. These consequences were primarily the result of an inability to resolve the tension between the just deserts model and society's obligation to intervene on behalf of youths who need help.

Part III examines one of the more interesting and important areas of juvenile justice policy: the impact of diversion. Two of the chapters focus specifically on the issue of net widening, that is, whether or not diversion produces the unintended negative consequence of expanding the number of youths under control. The third chapter in this section is concerned with factors likely to trigger the decision to divert.

Finn-Aage Esbensen, in a chapter entitled "Net Widening? Yes and No: Diversion Impact Assessed Through a Systems Processing Rate Analysis," is the first of two authors to examine the expansion of social control hypothesis. Using data generated from the National Evaluation of Diversion Programs, he examines a flow analysis for three sites. This chapter has the methodological advantage of examining the flow of cases through the juvenile justice *system*, rather than using a single decision-making point. Thus Esbensen considers whether there were differences in the probability of youths being processed both before and during diversion. He finds no support for the net-widening hypothesis throughout the study. Finally, Esbensen offers the observation that when diversion programs are properly implemented, they are unlikely to precipitate net widening.

In "How Wide the Net? Probing the Boundaries of the Juvenile Court," Timothy S. Bynum and Jack R. Greene examine the notion that the scope of the juvenile court has been expanded. They are concerned not only with the creation of new dispositional alternatives, but also consider that traditional areas of court jurisdiction have been enlarged. These issues are raised in a pre/post analysis of 802 court cases. By performing an offense-specific analysis, Bynum and Greene were better able to specify the effects of the diversion program. They found that even in the presence of diversion, the juvenile court under study retained jurisdiction over matters of minor legal significance. They discuss the implications of the findings for the juvenile court.

The final chapter in this volume was written by Edward J. Latessa, Lawrence F. Travis III, and George P. Wilson. In "Juvenile Diver-

sion: Factors Related to Decision Making and Outcome," they examine the processing of 760 youths diverted from the juvenile court of a large midwestern city. They focus on the effect of legal and demographic variables on the decision to divert a youth and the effect of diversion. The authors found that extralegal characteristics are more strongly related to the diversion decision than are legal criteria. They speculate about the policy consequences of this decision-making pattern. In addition they note that success (measured by severity of offense committed within one year of referral to the program) varies widely among the demographic subgroups. The authors also place these findings in the context of their implications for juvenile justice policy.

The works included in this volume all represent a concern for the implications, both manifest and latent, of juvenile justice policy. They are consistent with the best current research that does not accept as a given the formal goals and lines of authority, but rather seeks to establish the real dynamics of decision making and outcome. Juvenile justice policy has undergone several important revisions in the last two decades, and is currently still in flux. The analyses presented in this volume require us to confront the realities of our policies and not be content with the illusions.

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