JUVENILE JUSTICE

Policies, Practices, and Programs

VOLUME II

By
H. Ted Rubin, J.D., M.S.W.

CRI
Civic Research Institute
4478 U.S. Route 27 • P.O. Box 585 • Kingston, NJ 08528

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Table of Contents

About the Author

H. Ted Rubin became a private consultant to juvenile and family courts and justice agencies in August 1992. As a consultant, he is employed by governmental and nonprofit associations to evaluate justice systems and recommend ways to reduce delays in case processing at all stages of case handling, expand Restorative Justice accomplishment, increase use of community-based alternatives to detention and institutionalization, and reduce disproportionate minority contacts; he also makes presentations to conferences. Judge Rubin's clients include state and local court systems, national and state juvenile delinquency agencies, legal organizations seeking to improve court handling of child abuse and neglect proceedings, foundations, and national court and Native American organizations. He has provided professional services in 49 states, as well as Canada, Egypt, El Salvador, and Israel.

Judge Rubin has served as Director for Juvenile/Criminal Justice and then Senior Staff Attorney for the Institute for Court Management of the National Center for State Courts, Denver. There, he directed ICM's juvenile justice training program (89 national workshops) and participated in a wide variety of court and justice agency studies (more than 150). He also served as director for the National Center's Civil Jurisdiction of Tribal Courts and State Courts: The Prevention and Resolution of Jurisdictional Disputes Project, and as Co-director for the Integration of Child and Family Legal Proceedings Project. He was a principal in the national Restitution Education, Specialized Training, and Technical Assistance Project (RESTTA), and a member and chair of the Board of Directors of the Colorado Children's Trust Fund. He served, also, as reporter for the volume on Court Organization and Administration, IJA-ABA Joint Commission on Juvenile Justice Standards. Earlier he was elected Judge of the Denver Juvenile Court (after having served two terms in the Colorado House of Representatives), and administered this position for six years. He was a lawyer in private practice in Denver, and has held social service positions in Denver and Chicago.

Judge Rubin obtained his law degree from DePaul University, a master's degree in social work from Case Western Reserve University, and an A.B. degree (Phi Beta Kappa) from Pennsylvania State University. He has served as Visiting Professor, School of Criminal Justice, State University of New York at Albany, and was primary American instructor for the American University Institute on Juvenile Justice in Great Britain and the United States, London.

Judge Rubin has written approximately 350 research reports and articles concerned with juvenile or family justice and corrections, along with four other books: *The Courts: Fulcrum of the Justice System* (Second Edition, Random House, 1984), *Juvenile Justice: Policy, Practice, and Law* (Second Edition, Random House, 1985), *Behind the Black Robes: Juvenile Court Judges and the Court* (Sage, 1985), and *Juvenile Justice: Policies, Practices, and Programs*, *Volume I* (Civic Research Institute, 2003). He also was editor of *Juveniles in Justice: A Book of Readings* (Goodyear, 1980). He is an editorial board member and regular columnist for *Juvenile Justice Update* and a member of the Advisory Council to the national Campaign for Youth Justice and the Pendulum Foundation of Colorado.

Introduction

The juvenile court is many things to many people. It receives an inordinate amount of attention across the country, though the number of cases it deals with amounts to just 2.1% of all incoming cases in all states courts.[1] The juvenile court's two primary workloads are juvenile delinquent offenses and children brought under a court blanket due to child neglect, dependency, or abuse (hereafter referred to as dependency or dependent children). Some juvenile courts deal extensively, and others infrequently, with a third jurisdictional category known generically as a status offense, i.e., noncriminal misbehavior or conduct that is illegal only for children—for example, school truancy, ungovernability, or running away from home. A child who commits a status offense is known in state codes by such descriptions as a CHINS (child in need of supervision), PINS (person in need of supervision), or Unruly Child. Most juvenile courts, however, focus far more heavily on the two primary workloads.

DELINQUENT JUVENILES AND THE COURT

The number of delinquency cases far exceeds the number of dependency cases, but judicial time invested in dependency matters may well exceed a judge's time investment with delinquency. This is because the number of hearings associated with a dependent child case often exceeds those related to a delinquency case, and the nature of certain hearings in dependency cases, particularly termination of parental rights hearings, may go on for days.

The media regularly inform the public of significant delinquent offenses and the injuries they have caused. It is inappropriate and incorrect to presume that the court is responsible for the delinquent offenses of youths who have not yet been brought into the court's domain. The court is not a primary prevention instrument. However, many of the public expect the court to essentially thwart the recidivism of those who have been brought into its fold. The reality is, nonetheless, that numerous court juveniles will reoffend regardless of court efforts.

The court process—from offense to judicial disposition to direct intervention with a youthful offender—frequently takes one to two months. So it is also simplistic and unrealistic to expect the court to eradicate the recidivism of offending youth who have not yet completed the court process.

Juvenile court efficacy with those brought to its doorway depends on far more than judicial sanctions, judicial warnings, or meaningful judicial communications with a youth and his or her family. Many law enforcement referrals never see a judge. Lesser offenses often are diverted to informal handling by a probation officer, a community agency, or a volunteer citizen. Enlightened juvenile court systems tie diversion into performance of community service work by the youth or payment of restitution to a victim. The diversion switch may be made by a probation intake officer, a prosecutor, or by a combination of these officials.

Formal cases brought before a judge typically engage a prosecutor, defense counsel, and probation staff. Yes, there often is a plea (or sentence) bargain submitted to the court, frequently based on a predisposition study performed by probation personnel (officials who perform this function are known in some jurisdictions as court service officers or county or state agency officials). Often, however, there is excessive delay between the date a youth offends and the date a judge determines the disposition, and the date active interventions by probation officers or community agencies take place. In effect, with these formally petitioned cases, assistance or warnings by family members or a fear of potential court consequences may be the only constraints imposed for one or two months.

This book focuses essentially on this delinquency work load, from the court's doorway through its case dispositions into the community, and beyond the community such as to state institutions. There is a focus, also, on those juvenile offenders whose violations are sanctioned in criminal courts, often severely. However, the commentaries that follow consider the court's work with its two other key case types, child dependency and juvenile status offenses.

This volume consists of 42 chapters; all but one that were published by the author in an earlier form as articles in *Juvenile Justice Update,* written in the years since Volume I of this series was published in 2003. All chapters have been expanded with Author's Notes at the end, to alert readers to changes and developments that have occurred since original publication.

DEPENDENT CHILDREN AND THE COURT

The public child welfare or protective services agency is the court's primary accomplice in dependency matters (as the probation department is with delinquent offenders). These children and the child welfare agencies that serve them are often in the public's eye. One learns from the media of a child who has been sexually or physically abused; who is without food or clothing or parental oversight; whose parents have perished in a fire or accident, and for whom there is no ongoing caretaker; whose education is neglected, or who is a frequent witness to adult-to-adult brutalities. Child neglect is by far the most frequent form of dependency reported to authorities.

Agency efforts to protect or assist these children by improving their family stability or removing them for placement in a relative's home or some form of foster care has helped many. But other children have been further injured by agency failures to provide beneficial settings or necessary medical or rehabilitative interventions.

Social work agencies, often understaffed, deal with severe and terribly complicated human conditions and interrelationships. Their work is often with impoverished and under-educated families who are overwhelmed by adjustment problems. Individual social workers must follow ever-changing guidebook procedures, and function in often bureaucratic organizations. They may get mixed messages from their agency supervisors and/or from law enforcement officers who accompany them when a child must be removed from a family that does not want to give up, temporarily or long-term, the care of the child. There is a very high staff turnover rate in these agencies, which are normally staffed with persons having only a baccalaureate degree, and only sometimes working under a supervisor who holds a graduate degree. Situations not infrequently require after-hours or weekend work. Further, agency social workers wait in court for hearings, often for hours, until the court hearing commences and they are

called to testify. They may be in court concerning an emergency removal, or to testify at a contested trial, or to defend their report at a dispositional or permanent planning hearing, as well as take their turn to go on the witness stand when their agency seeks to terminate parental rights at a much contested hearing where they are grilled by a parent's attorney. I have long commented that agency social workers have the most difficult jobs of all social work fields.

Whether or not to remove an apparently dependent child in the first place is a critical decision that many believe has resulted in an erroneous decision to remove rather than insert more concentrated services such as drug abuse treatment, homemaker assistance, food and rental supplements, intensive parent or family counseling. But reality has demonstrated that some children have not been removed who should have been, and some have died of physical abuse in their own homes—an event that in some jurisdictions will prompt an agency directive that encourages child removals when in doubt, a practice that in some cases proves out to have been unwise. Still, there are numerous complaints that natural parents are not provided sufficient assistance to rehabilitate themselves and the consequence could be their permanent separation from their child via a termination of rights court proceeding. Their child might then be adopted; or their child might proceed to grow up in one or more foster homes or group facilities.

There are myriad foster homes that have done yeoman work with removed children, both short term and long term, quite a few providing the only stable and loving family a dependent child has known. But some foster children have been re-abused in foster care, or have made life too difficult for foster parents, which prompt removal to another foster home or residential facility.

The dependent child arena, like the delinquent child arena, serves a seriously disproportionate number of minority children and families. There is awareness in both systems that system officials may exacerbate this overrepresentation by how they view and how they handle events related to minority persons, especially low income minorities. Child welfare professionals now are speaking out and writing about overrepresentation, and are publicizing data findings while looking to implement changed perspectives and practices directed at this significant problem.[2]

WHEN MORE THAN ONE PROBLEM IS AT ISSUE

Any number of children before the court will possess several labels, such as "delinquent" and "dependent." A dependent child in foster care may commit and become adjudicated for a law violation, as well. Another combination of labels would adhere when a dependent child continually ditches school and is brought to court for habitual truancy, a status offense, or when such a child continually runs away from a foster home or residential placement, also a status offense.

Duplicating categories are bound to happen with numerous children, which should prompt a strong collaboration between the child protective and juvenile probation agencies. This does take place, but not always. It may be that one entity strongly prefers that the other entity take primary responsibility for a particular juvenile's health and welfare. The child protection agency may feel authority is needed, and that the probation arm more naturally fulfills this purpose. Conversely, the probation department may believe that residential placement in a private, high cost treatment center is needed, and that the child welfare agency has a greater monetary capacity to purchase such expensive out-of-home care.

It has been contended that combining a child welfare agency and the juvenile justice agency into a single organization would eliminate this friction and uncertainty. This appears to make sense. However, while several such efforts are or have been underway in at least one community and in one (different) state, it is no way certain that such a consolidation can eliminate bureaucratic and turf issues and enable staff members to better assist youth through these combined resources.

Meanwhile, thousands of CASA (Court Appointed Special Advocates) citizen volunteers actively assist these children in every state, seeking to ensure that they receive the care and services they need, and that court-directed orders are being fulfilled.

JUVENILE STATUS OFFENDERS AND THE COURT

Historically, state laws that defined delinquent offenses also included in the listing violations that we now term status offenses. Historically, ungovernable children were locked up in pretrial detention facilities along with juveniles who violated laws of a criminal nature. Historically, a judge could as easily dispatch a runaway to a state institution as the judge could commit a juvenile who had committed an armed robbery.

Then something happened in the 1960s that reduced the court's interest in status offending youth. The immensely important U.S. Supreme Court decision, *In re Gault*, 387 U.S. 1 (1967), brought fundamental due process into this court and along with it, revised statutes, proceedings, and lawyers. This legalization brought clear recognition that juvenile delinquency constituted the violation of a law which, if violated by an adult constituted a crime, but that a status offense was different, it was non-criminal misbehavior.

Statutory redirections in the states proceeded to separate status offenses from delinquent violations. Myriad states then proceeded to prohibit or severely restrict the placement of status offenders in secure pretrial detention or state delinquent institutions. Many, who believed that status offenders were likely to segue into delinquent law violators, opposed these changes. School systems, in particular, wanted their truants to be formally processed and disciplined by these courts, and even be restrained in secure centers with ongoing absences.

The federal Juvenile Justice and Delinquency Prevention Act (P.L. 93-415, 88 Stat. 1109), passed by the Congress in 1974, barred the pretrial detention of status offenders with limited exception, and prohibited their institutionalization in state delinquency facilities. This has reinforced how local juvenile courts must differentiate these two categories of juveniles. Of course, some status offenders will segue into delinquency, but then they can be handled as delinquent youth, and these restraints will not apply.

The 2007 national data archive report estimates that 926,000 juveniles were formally petitioned into court for one or more delinquency charges that year, with another 740,100 youth referred to the court but not formally petitioned. By contrast, the archive report estimates that 150,700 juveniles were formally petitioned into a court as status offenders that year. The archive does not present data on the number of status offense referrals to a court that were handled other than by formal petition. Certainly far more youth exhibit one or more of these misbehaviors but are not reported to a court. Nonetheless, it is clear that the juvenile court is far more involved with delinquent juveniles than with status offenders.[3]

The particular status offense category listed for these 150,700 youth was: runaway, 12%; truancy, 35%; curfew violation, 9 %; ungovernability, 13%; liquor law violation, 22%; miscellaneous, 6%. Girls comprise 44% of petitioned status offenders, far more

than their percentage with delinquency cases handled by the court (27%). However, runaway is the only status offense where girls are dominant (59%). Boys comprise 67% of curfew and 63% of liquor law violations, 54% of truancy petitions, and 56% of ungovernability petitions.[4]

Today, local juvenile courts differ in the extent of their interest in opening the court's doorway to these juveniles. There remains much that communities could and should do to provide services to unofficial status offenders. Prevention and informal interventions should be the rule. Bringing status offenders to court on a formal petition often leads to unworkable results when a youth flouts the community-based restrictions that a judge requires. The judge, if the judge chooses, has been able to resort to the one (controversial) exception to the federally required ban on secure detention of status offenders, known as a violation of a valid court order (VCO), by ordering the youth into a pretrial detention facility or even a correctional institution (and in either setting he or she would then mix with law-violating youth).

But the currently pending 2009–2010 congressional bill (S. 678) that would reauthorize the Juvenile Justice and Delinquency Prevention Act would eliminate the VCO (at least one state, Connecticut, has already eliminated the VCO). Interestingly, the organization which had prompted the VCO exception in the first place, and which had strengthened judicial powers, the National Council of Juvenile and Family Court Judges, has officially voted, in March 2010, to support its elimination.

HOPE DIES LAST

The creation of juvenile courts—the first in Chicago in 1899, followed by Denver and several other cities/counties a few years thereafter—was an enormously positive and hopeful development. This was a radical departure from the past, in which apprehended juveniles were held in jails, were brought before criminal courts, and were sentenced to adult prisons. The initiation of probation services enabled these courts to serve some youth in the community. Larger courts added limited mental health services. Institutions for juveniles, good, bad, or indifferent, worked with youth on direction from a judge.

Juvenile court development became a movement that spread out to encompass all states in a little more than two decades. It took different structural forms in different state courts, and these structures continue to evolve. Today, for example, there are unified family courts or family court divisions in a minority of the states that contend with delinquency and additional family causes (domestic violence; divorce and child custody; child support; mental health issues; drug offenses and drug treatment; in a few courts even criminal matters that involve a family member; and, of course, child dependency).

However, this restructuring and extension to implement a one family/one judge/one treatment plan judicial center and to coordinate here an array of social service interventions a family may need is only very partially fulfilled. Very frequently, a domestic violence matter or divorce/child custody/child support matter that concerns a delinquent youth's parents is heard in a court that is not a juvenile court. A criminal charge that involves a father or a mother likewise is heard by a judge in a different court or court division. However, cases that involve a dependent child and his or her delinquent brother or sister typically are heard in the same court, a juvenile court, though insufficiently channeled before a single judge.

Management information systems in some states are now able to bring information about prior or pending cases that involve different family members to a judge who can use this information beneficially at the appropriate time of a hearing. Yet families, often segmented themselves, are often further segmented by a court system.

Juvenile courts are wise societal investments, but they deal with very difficult situations and persons whose issues and concerns are often not met effectively either in or out of court. Juvenile courts are often faulted and allocated more responsibility than is merited for not meeting all the needs of their clientele (despite the limited resources they possess). They have been seen as lawless, law-preoccupied, secret chambers, social work agencies, meal-tickets for lawyers, do-gooders, non-realists, too punitive or insufficiently punitive, and other unflattering descriptions.

But now we appear to be at a new crossroads. The media inform the public of harmful juvenile acts, but often have done little to inform the public of success stories of those who now lead conforming and positive lives. However, at this moment in our history, a punitive justice system is under strong attack, with very substantial media-provided information that the move to criminalize and incarcerate juveniles in adult courts and prisons was overzealous and must be reformed, and that the much maligned juvenile system holds significantly more merit for juveniles who run afoul of the law.

In addition, impaired state and local government budgets have also prompted many professionals and advocates to reconsider the high cost of incarceration—adult or juvenile—and to look harder at ways to maintain public safety while leaving more offenders in the community. With this, the juvenile system has done the better job.

The late Studs Terkel, one of America's greatest listeners and story tellers, quotes from his interview with a former stoop-labor farm worker, Jessie de la Cruz, who worked tirelessly in the fields as well as outside the fields organizing to obtain better work conditions for this largely ignored but critical labor force. She said, ". . .*'La esperanza muere ultima.* Hope dies last. You can't lose hope. If you lose hope, you lose everything."[5]

Let us recognize this judicial instrument, the juvenile court, as a valuable creation and important contributor to the health and welfare or our society. Let us maintain our hopefulness for the juvenile court movement that is critically important to this nation, and help it move to a heightened effectiveness with those it serves on our behalf.

—H. Ted Rubin
July 2011

Endnotes

[1] LaFountain, R., et al. (2009). *Examining the work of state courts 2007: A national perspective from the court statistics project.* Williamsburg, VA: National Center for State Courts, p.31.

[2] See *Child Welfare*, Special Issue 2, 2008: Racial Disproportionality in Child Welfare, Part I: Understanding and Measuring Racial Disproportionality and Disparity of Outcome; Part II: Practice Methods to Reduce Disproportionality and Disparity of Outcome. A complete list of articles in this issue, plus article abstracts, is available at www.cwla.org/articles/cwjabstracts.htm#0802.

[3] Puzzanchera, C., Adams, B. & Sickmund, M. (2010). *Juvenile court statistics* 2006–2007 Washington, DC: National Center for Juvenile Justice for US Office of Juvenile Justice and Delinquency Prevention, pp. 36, 37. Available at http://www.ojjdp.ncjrs.gov/ojstatbb/njcda.

[4] Id. at pp. 72, 77.

[5] Terkel, S. (2003). *Hope dies last: Keeping the faith in difficult times.* New York: The New Press, p. xv.