



More Than "Broken Windows," a House in Danger of Collapse

America's juvenile justice system is in disarray, but it can be saved.

Kay Crawford

IMAGINE A TWELVE-YEAR-OLD BOY charged with stealing a bicycle. He is in a courtroom surrounded by adults who will decide his future. Is he a criminal or a delinquent? An adult or a child? Depending on the state in which he lives, he could be charged as a criminal in the adult criminal court system and receive the same punishment as someone twice his age. If he happens to live in a neighboring state, he could be charged as a delinquent within the juvenile court system and be placed on probation until he reaches eighteen.

Semantics aside, neither option gets to the root of the problem—how his behavior has affected him, his family, and the community, and what can be done to repair this harm. While policymakers try to maintain a middle ground between the traditional juvenile court system and its complete abolition, critics argue that reforms have resulted in an approach that neither protects the safety of the commu-

nity nor the rights of the juvenile. They are correct. While public policy debates rage between the entrenched camps of preservationists and abolitionists over the future of the juvenile court system in America, every year well over a million children find that the "justice" they are receiving is neither in their best interest nor that of the community.

Numerous authors have recently written of the plight of juveniles caught up in the system. In *A Kind and Just Parent*, William Ayers examines the Chicago Juvenile Court system as a microcosm of the way American justice deals with children. He follows the lives of half a dozen young men as they await trial, several on charges of murder. Edward Hume chronicles a year in the life of the Los Angeles Juvenile Court system in *No Matter How Loud I Shout*, also following the lives of representative juveniles, some of whom were first brought into the system

through foster-care placements and worked their way up into the delinquency court. In *Somebody Else's Children*, authors John Hubner and Jill Wolfson analyze the Santa Clara County, California, Family Court, where they follow the lives of families caught in a morass of abuse and neglect charges. Even television's "Judge Judy" Sheindlin has chimed in, writing of her twenty-five years in the New York Family Court as both lawyer and judge, in *Don't Pee On My Leg And Tell Me It's Raining*.

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Despite the recent slight decline in juvenile crime rates, the numbers are still depressingly high. (See "Ain't Misbehavin'—Yet," by Edmund F. McGarrell, in this issue.) Across the nation, juvenile courts in large cities and small are floundering in the sheer volume of cases crowding their dockets and are finding their resources stretched beyond capacity. Judges, prosecutors, public defenders, probation officers, and social workers face mountainous caseloads. In most jurisdictions, it is no longer possible for a child to appear before the court and have his case decided in a creative and personal way—it is in and out in a matter of minutes, with only minimal services available. But a system cannot possibly hold a person truly account-



Restorative justice conferences bring juvenile offenders face-to-face with victims to take responsibility for their offenses and offer restitution.

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social ills that afflict their young people and thereby bringing a lasting reduction in juvenile crime.

This, the theory goes, will reduce the numbers crunch and thereby enable the juvenile courts to fulfill more effectively their other, equally important role, that of handling cases of abuse and neglect. Abuse, neglect, and chronic truancy are the strongest indicators of who will later appear in criminal court. Emphasizing the timely resolution of these cases ensures that fewer children will languish for years in foster care without a permanent family. Texas District Court Judge Hal Gaither recommends that states follow his state's lead in abuse and neglect cases: case work begins immediately, and plans are put in place within weeks rather than years. Children in Texas no longer drift through the foster care system waiting for a remedy—either the problems in their own family are corrected or the children are quickly moved toward permanent placement with another family.

One of the most promising responses to the need for a redeveloped juvenile court system is outlined in "Delinquents or Criminals: Policy Options for Young Offenders," by Jeffrey A. Butts and Adele V. Harrell, in the June 1998 *Crime Policy Report* of the Urban Institute. Butts and Harrell recommend building a new youth justice system based on the "best practices" approach—choosing from the myriad of court alternatives that have already been created to handle specific types of adult criminal cases. Citing the examples of the drug courts, gun courts, teen courts, community courts, and restorative justice conferences, the authors state that these approaches combine high levels of accountability with flexible procedures, individualized sentences, a range of intermediate sanctions, and rehabilitative services. Use of these specialty courts, the authors argue, would create a proactive, flexible model that retains the philosophy of the original juvenile court with the option of graduated sanctions, balancing the interests of justice, public safety, and the rights of the juvenile. To make this type of system work, an intake and referral system would make decisions on which court or alternative program would have the most appropriate procedures and sanctions for each juvenile. Rather than looking only to the formal charges

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to make this decision, the intake process would utilize multiple indicators from the individual's situation. This type of a youth justice approach would nicely bridge the chasm between the preservationists and abolitionists.

The keys to both these approaches to reform are community involvement and flexibility of administration.

Taking Responsibility

Many juvenile courts already have innovative programs in place, as diversion options or in conjunction with probation. Teen Court and Victim-Offender Mediation programs, for instance, are explicitly designed to increase accountability and hold offenders clearly responsible for their actions. Evaluation of both these models is currently underway, with particular attention to recidivism rates, and results so far look promising.

One such program—the Restorative Justice Conference—is currently being implemented in Indianapolis and focuses on accountability as well as providing the victim with an opportunity to participate in the justice process. A restorative justice conference brings the juvenile offender and his supporters—parents, family members, and others—together with the victim and victim's supporters, for a face-to-face meeting in which the offender takes explicit responsibility for his actions. The two sides talk about the harm that was caused, and the victim receives recompense through an apology, financial restitution, community service, or other arrangement agreed on by the group. Early results indicate that both victims and offenders have high levels of satisfaction with this approach, and most offenders complete their obligations under the agreement. This approach is far less expensive than trial and incarceration, and its advocates predict that it

will also reduce recidivism.

New Mexico, Texas, and Minnesota have implemented juvenile court reforms that allow them to retain jurisdiction over violent and "serious" (chronic) juvenile offenders. "Blended sentencing" provisions in these states enable juvenile court judges to impose juvenile and adult sentences simultaneously. The transfer decision is made after the youth's experience with the juvenile court's interventions. While imposing substantial punishment, blended sentencing provisions give juveniles powerful incentives for rehabilitation and can eliminate the economic and social costs of long-term incarceration in adult institutions.

At a recent Juvenile Judges' Symposium in Indiana, one judge described the current system as a car with four flat tires. But it is unfair to lay all the blame on the juvenile courts—other systems have failed just as miserably. Rather than occupy the extremes of Jane Addams idealism or the "get tough" reformers, the juvenile justice system of the future will probably encourage community involvement and administrative flexibility to point children in the right direction and thereby make communities safer. Additional "front-end" services provided in the community can help keep children out of the Juvenile Court system altogether and ultimately save money by reducing expenditures on foster care and detention facilities. As Marion County Juvenile Judge James Payne has noted, it is no longer enough to save just one child; programs must aim to save large numbers of children, albeit one at a time.

Although children at the end of this century are seemingly light-years away from the ones Jane Addams was trying to protect more than a hundred years ago in Chicago, the vast majority still share the same goal: to become productive, self-reliant adults. States are beginning to cope with their youth problems by reinvigorating juvenile court systems to hold offenders accountable, protect their rights, and offer rehabilitation through interventions, while satisfying the community's need for safety.

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able for his behavior if he appears before a judge only momentarily and never even sees the person he has harmed by his actions. Moreover, the overwhelming majority of incarcerated, delinquent youth are nonviolent offenders, and what they really need is an alternative to gangs and crime, perhaps through programs that help them find a positive role within their community.

Part of the numbers problem occurs because of the nature of juvenile crime: the overwhelming majority of apprehended juvenile delinquents commit their offenses in groups. Each child, rather than each crime, then becomes a case, but few are actually convicted. According to the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP), 60 percent of U.S. delinquency cases end in dismissal by the court, which indicates a huge waste of valuable time and money.

This numbers crunch creates a severe lack of time, money, personnel, and programs, which severely limits a Juvenile Court's options for intervention with any particular offender. Thus many a "frequent flyer" juvenile will appear before a judge six or seven times before receiving any meaningful sanctions. By that time, of course, the child has developed a habit of criminality. Moreover, clogging the court docket with repeat appearances by some juveniles or numerous youths who have committed minor offenses means that the system cannot give violent offenders the attention they need nor the community the protection it deserves.

All or Nothing

As we near the centennial of the first juvenile court in America, it is apparent that the special, separate court envisioned by Jane Addams and the reformers of Hull House is no longer a "kind and just parent" providing a safe haven for youngsters in crisis. The idea of rehabilitation and healing has been replaced by the politicians' rhetoric of "you do the crime, you do the time." The dual goals of the juvenile court—maintaining order in society while saving the child—were first placed in major conflict by the U.S. Supreme Court's 1967 decision in *In Re Gault* which considered the issue of due process protection for juveniles. Since then, with each new wave of headlines screaming about elementary students killing classmates on the play-

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ground and each new series of articles on the upcoming class of "superpredators," states rush in with new legislation that further erodes the juvenile courts' jurisdiction.

With the rise in violent juvenile crime over the past decade, politicians have shown their willingness to "get tough" by passing laws that transfer more juveniles at even younger ages into the adult criminal court system. As a "transferred" juvenile, a youth loses his status as a minor and is held fully culpable for his behavior. The rationale for the transfer is that these violent, serious juvenile offenders will receive punishment that is more certain and more severe when tried in the adult system. Author James C. Howell has shown, however, that this is true for only the most serious cases, approximately 30 percent of the total (*Juvenile Justice and Youth Violence*, 1997). Approximately half of those transferred receive sentences similar to those they would have received in the juvenile court system, and some receive even more lenient treatment through conviction on lesser charges or dismissal due to the criminal courts' emphasis on procedure and rules of evidence.

On the other side, there is substantial support for restoring the pre-1967 system. Professors Elizabeth Scott and Thomas Grisson, for instance, argue that youths' different moral, cognitive, and social development require a presumption of diminished responsibility which is best handled in juvenile court systems. Evaluating studies of children's decision-making capabilities, Scott and Grisson conclude that the cognitive capacity of delinquent youths inhibits their ability to make choices about their involvement in crime and even their competency to stand trial.

We cannot go back to the pre-Gault

juvenile court as some preservationists would like, but letting an inflexible adult system handle all juvenile matters from the preteen shoplifter to the young adult murderer would be an equally grievous mistake. Even if we no longer see children as extremely malleable and readily "cured of their corruption," as Addams saw them, we must recognize that most of these juveniles will eventually return to society, and that prisons are hardly suitable preparation for life outside. Legislators eager to cut corrections costs have scaled back social services, educational opportunities, and job training in adult facilities and may well do so in those for juveniles also. Eventually, these children must leave incarceration as uneducated, unemployed, and angry adults. Several recent articles in publications such as *Crime and Delinquency* have examined the recidivism rates of waived juveniles and concluded that they are rearrested more quickly and more frequently than juveniles who have been through the juvenile court system.

Community Autonomy

Clearly, neither extreme—the preservationists nor the abolitionists—offers a dynamic solution to the question of what to do with a juvenile after arrest. Fortunately, two recent publications discuss an alternative approach that may hold great promise.

A recent OJJDP bulletin, *A Juvenile Justice System for the 21st Century*, called for community-based reforms—creation of systems that bring together representatives of the juvenile justice system with those in the health and mental health systems, schools, law enforcement, social services, and others to engage in planning, development, and operation of a state's juvenile justice system. The OJJDP report argues that an effective juvenile justice system must hold the offender accountable and enable him to become a productive and responsible citizen, thus ensuring the safety of the community. Indianapolis has recently implemented such a program, bringing a broad cross-section of the community together to reformulate policies and realign resources in both the public and private sectors to improve the long-term life chances of its young people. The OJJDP report argues that redirecting resources in this way enables communities to spend their money more effectively by ameliorating the