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Delinquency Adjudications Against Juveniles — The Rehabilitative Model Is Not A Universal Panacea

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The concern with serious law violative acts committed by individuals defined legally as juveniles is a topic which has received considerable attention in the various media channels. An area which often meets with considerable controversy is that no matter how serious the act committed by the youth, the juvenile court is unwilling to impose sanction. Thus, increased attention has been given to proposing legislation which would permit the adult court system to have these cases heard without having to work through a cumbersome waiver process.

If we are to justify the need for concurrent jurisdiction of serious law violative youth, it must not be hidden under the veil of "in the best interests of the child." Rationale is often given that the adult correctional system provides a wider range of rehabilitative services to the offender with identified treatment skill to work with the dangerous offender. Although it may be true that adult correctional institutions offer more job and vocational placements than juvenile facilities, they also represent facilities in which anger and violence exist. The continuing abuse primarily between adult inmates creates an atmosphere constantly tense and explosive. Thus, we should not try and rationalize that the primary basis for adapting enabling legislation to try youth who commit serious crimes in adult court is the "rehabilitative or treatment program" available to them, but that instead, protection of society is the major concern.

Professor George in his *Background Paper on Delinquency Adjudications Against Juveniles* presents a scholarly review of the establishment of special programs for juveniles in Michigan. The passage of the first comprehensive statute in 1907 was a direct outgrowth of the juvenile court movement. This movement primarily began with the establishment of the first full-time juvenile court in Cook County, Illinois, in 1899. Established with the great hope of being a humanitarian institution of social reform, the outlook for the court was most aptly expressed by the Chicago Bar Association:

The whole trend and spirit of the (1899 Juvenile Court) is that the state, acting through the juvenile court, exercises the tender

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solicitude and care over its neglected dependent wards that a wise and loving parent would exercise with reference to his own children under similar circumstances.

It was this philosophy which incorporated the concept of *parens patriae* as the basic right of the state to govern and regulate the behavior of the minor. Thus, behavior such as truancy, curfew violation, being unruly, incorrigibility, or even "idling one's time away" were as sufficient a basis for a juvenile court to adjudicate a youth delinquent as commission of a misdemeanor or felony. Because delinquency was often viewed as a disease or malady, or as the result of social inequities, juveniles were often confined and controlled under the guise of "*in locos parentis*." The juvenile court, the primary agent of social control, was designed as a quasi legal body whose lack of legal structure and formal courtroom decor was designed so as to be less stigmatizing to the youth and his family. Such words as "helping," "rehabilitation" and "therapeutic" were used to justify the minimal effort given to establishing legal safeguards for the minor. It was not until 1967 that the first recognition that the rehabilitative model might be less than ideal was witnessed. The case of Gerald Gault¹ involved a fifteen-year-old who was sentenced to the Arizona Training School for six years. The nature of his crime was the alleged commission of an obscene telephone call. If Gerald had been tried as an adult, his sentence would have been a maximum of two months in jail and a \$5—\$50 fine. Although not directing its primary attention to the inequities in punishment, the Supreme Court in its landmark decision *in re Gault* (1967)² imposed minimal due process safeguards for delinquents who, having violated criminal statutes, might be committed to an institution. As we know, this decision was a catalyst to the Supreme Court's attempt to recognize certain procedural safeguards which need to be inherent in the court processing of minors.

However, neither the Supreme Court nor most state legislative bodies have been able to deal with the broad and encompassing authority given to the juvenile court. Jurisdiction over promiscuity, truancy, running away, and other "status crimes" have certainly impacted on its ability to deal with the serious and law violative behavior, felonious in nature. It is thus the central theme of this paper that the juvenile court can no longer be the ideal legal, social and rehabilitative model envisioned by its founders in 1899. Instead, the court must recognize its limitations and, in order to reestablish its credibility, develop realistic goals in the management of problem youth.

Professor George in his position paper summarizes the major criticisms of the court as two-fold:

- (1) The juvenile court's inability to retain control past a certain age;

- (2) The changing character of the juvenile court in light of the changing legal and administrative structure of child welfare services in Michigan.

These criticisms are a direct result of the concern expressed by many constituents that not only is the juvenile court's role too encompassing in attempting to regulate the problems of youth, but that it is especially ineffective in dealing with specific behavior, primarily the violent criminal activities committed by a small proportion of youth.

Rather than discuss solely the need to reorganize the court structure by which children might be more effectively served (*i.e.*, family court model), this author wishes to direct attention to two areas which must be changed through legislative action if the court is going to be seen as a realistic child serving institution.

- (1) The need to remove from the jurisdiction of the juvenile court the most serious crimes of violence committed by youth fifteen and up;
- (2) The need to reduce the purview of the juvenile court in regulating status behavior.

Removal of Jurisdiction From the Juvenile Court of Serious Crimes of Violence

The July 11, 1977, issue of *Time*³ magazine portrayed a violent expose of youthful crime in our society. Stating that over fifty percent of all serious crime in the United States is committed by youth (the legal definition of youth varies by state jurisdiction), the article presents numerous "war stories" of the violent acts committed by youth, some as young as age six. The reader cannot help but identify with the many victims of juvenile crime, especially the aged and defenseless individuals in our large cities who fall prey to crimes against person committed by youth. The article exerts considerable effort to convince the reading public that the reason for this increase in crime can be attributed to certain factors:

- (a) The breakdown of the role of the family in our society, especially as it relates to the inability of the family to control the social activities of its members;
- (b) The high regard for material items on the part of youth in our society;
- (c) The identification by youth with violent behavior often emulated on T.V. or other media sources.

Although the above-mentioned factors may in fact contribute to the incidence of violent criminal behavior on the part of youth, it provides little assistance to those who must deal directly with this behavior, such as police, prosecutors, school officials, and especially victims. Instead of trying to ameliorate social injustices, officials and citizens are demanding youth be punished for serious violent acts in a system capable of imposing strict sanctions. In a recent attitudinal survey conducted of participants in a Criminal Justice Symposium in Michigan (*Criminal Justice Forum*),⁴ seventy-five percent of the respondents agreed juveniles who commit serious crimes should be tried as adults. Although there was some variance by age, race, and geographic location, overwhelming support existed on the part of the citizenry to try juveniles as adults for serious crimes.

Waiver and Transfer

The manner by which most states deal with serious law violative behavior is by waiver and transfer proceedings. Nearly all states permit a juvenile court judge to waive jurisdiction and transfer a juvenile to the adult criminal system for adjudication or disposition. Only New York and Vermont, where the maximum age for original jurisdiction is fifteen, do not allow voluntary waiver. However, the discretion for waiver rests primarily with the juvenile judge and is contingent upon state statute.

In a recent analysis of the juvenile court,⁵ statutory provisions were not predictive of the use of waivers except in the states where voluntary waiver is prohibited—New York and Vermont. The author has determined that organizational characteristics of the juvenile court and local community characteristics were most likely to contribute to the philosophy of how waiver was used as opposed to specific statutory provisions.

Another manner by which juvenile courts impose sanctions on juvenile offenders is to sentence them to adult correctional institutions. Approximately twenty-two states statutorily permit a juvenile court to commit a juvenile to an adult correctional institution.⁶

In Michigan the present juvenile code provides for waiver in the following circumstances:⁷

Where a child who has attained the age of fifteen years is accused of any act, the nature of which constitutes a felony, the judge of probate of the county wherein offense is alleged to have been committed may waive jurisdiction pursuant to this section upon motion of the prosecuting attorney whereupon it shall be lawful to try such child in the court having general criminal jurisdiction of such offense.

As can be noted, the present statute provides that all felonious behavior can constitute grounds for waiver. This has generally been a criticism of most statutory provisions enabling waiver since they are often arbitrary and capricious in their definition of offenses to be waived.

At present, HB 4376⁸ provides for waiver of an individual fifteen and over, who is alleged to have committed an offense which is designated murder, kidnapping, criminal sexual conduct in the first degree, armed robbery, burning an occupied dwelling house or various levels of assault. The criteria for waiver must include documentation of the following:

- (a) The programs and facilities available to the juvenile court for the respondent are inadequate to rehabilitate the respondent;
- (b) The best interests and the protection of the public demand that the respondent stand trial as an adult offender.

Although the waiver provisions also include the ability of the juvenile court to waive jurisdiction for juveniles who commit other felonies, the above provisions are worthy of some analysis. The important fact is that waiver can be effected only if the juvenile system is inadequate to rehabilitate the individual or if the best interests of society would best be served by trial in a court of general criminal jurisdiction. We still respond to the rehabilitative ideal of the juvenile court often justifying its intervention on the basis of its capacity to rehabilitate and effect change among youth.

The adult court system basically does not hold itself out as a treatment and rehabilitative institution, but instead a legal agency charged with the processing and sentencing of adult offenders. In fact, the impact in the area of adult corrections has been the development of a punitive determinant model by which offenders are sentenced as punishment and utilize their correctional experience as they desire. This emphasis on determinant sentencing and even reduction of a parole authority (Maine recently eliminated parole) directs attention that the adult system's primary and almost exclusive goal upon incarcerating individuals is protection of society. In a recent description of the adult justice system entitled *The Justice Model*⁹ the author stated that "the incarceration of adults in a fair humane setting must be separated from the rehabilitative myth that has been held out to many individuals in our correctional system."

Why can't the justice model in fact be applicable to youth who are at least fifteen years of age and who have allegedly committed serious crimes of person, specifically those provided for in the current waiver proposal for Michigan, HB 4376¹⁰ provision. However, instead of a waiver statute, enabling legislation should permit concurrent jurisdiction between the juvenile court and the court of general adult criminal jurisdiction. Thus, instead of evoking a waiver process, the county prosecutor would have the option of filing a petition in juvenile court or a complaint in the court of general criminal jurisdiction.

In order to ensure protection over the discretionary role of the prosecutor, provisions might be provided for by a review of each individual case by the presiding judge of the court of adult criminal jurisdiction to ensure that the best interests of society and of the defendant are being served. If the case was accepted, the full range of due process safeguards available in the adult criminal system would be available to these youth. Although most of these safeguards are also available in the juvenile court system, the adult system monitors closely the processing of due process safeguards when processing serious felony behavior.

The sentencing process for the serious law violator must provide fair, humane correctional programs available to serve the serious youthful offender. The warehousing of youth in large crowded maximum security facilities will only reinforce the violent atmosphere in which they have most likely committed their violent crime(s). Development of smaller institutions as well as a wide range of community-based services permitting the ultimate reintegration of these individuals in society, remains critical. However, the system of concurrent jurisdiction is basically a punitive model which places punishment over treatment.

A major contagion contributing to the emphasis on more severe sanction with the serious juvenile offender is the philosophical change occurring in the treatment and sentencing of adult offenders entitled "determinate sentencing." The evolution of this movement, which has received the support of many liberals as well as conservatives, can be traced to the civil rights and prisoners' rights struggles of the late 1960s. The general philosophy behind determinate sentencing is the adoption of specific uniform penalties for all crimes, either through statute or through promulgation of guidelines which judges, prosecutors, and corrections personnel must adhere to. In reference to juveniles, several states have recently adopted sentencing provisions primarily within their juvenile codes which permit a juvenile to remain in confinement for a mandatory minimum sentence.¹¹ The most noted of these legislative changes occurred in the State of Washington. Legislation passed June 20, 1977, is scheduled for implementation July 1, 1978. The stated purposes of the new law are as follows:

- (1) Make the juvenile offender accountable for his or her behavior;
- (2) Protect citizenry from criminal behavior;
- (3) Provide punishment commensurate with the age, crime, and criminal history of the offender.

The law identifies various categories of offenders and mandates diversion of minor or first offenders (those under sixteen who have

committed a minor felony or a misdemeanor and who have no record of violent crime) from institutionalization. The serious offender who is fifteen and over and has committed a serious crime against person such as rape, assault, or murder, is sent to an institution for a minimum-maximum term, which approximates the determinate sentencing model. Although the law received support primarily for its imposing of standards in the juvenile process, many court and treatment personnel feel that the system will impact on the rehabilitative treatment models that exist. In fact, this may be an argument for maintaining the determinant sentencing model as applicable only in the adult court system where the punitive nature of the system is primary. If we can deal with the relatively small but visibly recognized number of serious law violative youth through a system of concurrent jurisdiction and through existing waiver procedures, it appears our juvenile system will not have to adopt the determinate sentencing model of the adult system. If we do the danger of creating large warehouse institutions for serious juvenile offenders will be a reality.

Reduction of the Juvenile Court Role in Regulating Status Behavior

The major controversy regarding the juvenile court remains the controversy over whether the court should maintain jurisdiction over status offenses—truancy, incorrigibility, ungovernability, or as provided in Michigan's current juvenile code, "One who habitually idles away his or her time." Statutes are different from state to state with respect to the definition of what constitutes a status offense. More often than not applicable statutes are ambiguous and give the court considerable rationale for intervening in the life experience of the juvenile.

The basis for challenging statutes which punish someone for maintaining a "certain status" can be traced back to 1926.¹² In that case the United States Supreme Court ruled that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." With precedent back that far and the recognized change in societal values of youth, how can we expect a court to monitor normative behavior for youth when numerous environmental and societal expectations really dictate what is in fact expected of them.

It is thus recommended that the juvenile court maintain primary jurisdiction for the protection of minors whose physical and mental state is such that a protective judicial monitoring of their status is mandatory. This refers primarily to what we think of as supervision of dependent and neglect situations in which the court's protective role is mandatory. The one primary function of the court should be to assume responsibility for

law violative behavior. Imposing more effort in working with this group will help not only reduce the large overwhelming caseload, but also prioritize the court as a legal entity with authority to deal with acts which are dangerous to person. In our society we are faced with many challenges by youth to our normative system. Instead of attempting to regulate this through the authority role of the court, we need to provide the court with the authority and control to deal with serious law violative behavior.

FOOTNOTES

¹387 U.S. 1 (1967)

²*Id.*

³TIME, July 11, 1977, pp. 18-28

⁴CITIZENS RESEARCH COUNCIL OF MICHIGAN, CRIMINAL JUSTICE FORUM, Report 253, October, 1977

⁵R. Sarri and Y. Hasenfeld, BROUGHT TO JUSTICE?, National Assessment of Juvenile Corrections, Ann Arbor (1976)

⁶R. Sarri and M. Levin, JUVENILE DELINQUENCY: A STUDY OF JUVENILE CODES IN THE U.S., National Assessment of Juvenile Corrections, Ann Arbor (1974)

⁷MICH. COMP. LAWS 712A, 46

⁸Michigan House of Representatives Bill No. 4376, introduced March 21, 1977, and referred to the Committee on Judiciary. As of April 25, 1978, Status, still in House Judiciary Committee.

⁹D. FOGEL, WE ARE THE LIVING PROOF: THE JUSTICE MODEL FOR CORRECTIONS, Anderson Co., Cincinnati (1975)

¹⁰*Supra* note 8

¹¹CORRECTIONS, VOL. III, NO. 3, SEPTEMBER, 1977

¹²269 U.S. at 391



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