The Juvenile Court: Analysis and Recommendations

In counties having over 500,000 population, the judges of the circuit court shall, at such times as they shall determine, designate one or more of their number, whose duty it shall be to hear all cases coming under this act. A special court room to be designated as the juvenile court room, shall be provided for the hearing of such cases, and the findings of the court shall be entered in a book or books, to be kept for that purpose, and known as the ‘Juvenile Record,’ and the court may for convenience be called the ‘Juvenile Court.’”

With these words, the Illinois legislature created the first juvenile court in 1899. The legislation contained a comprehensive set of definitions and rules “to regulate the treatment and control of dependent, neglected, and delinquent children.” The Illinois legislature further directed that the legislation was to be “liberally construed,” with the goal that the “care, custody, and discipline” of these children “shall approximate as nearly as may be that which should be given by [its] parents.”

The concept of a special court, or division of a court, to handle matters related to juveniles spread rapidly throughout the country. By 1907, juvenile court laws had been enacted in 26 states and the District of Columbia. Today, some version of a juvenile court or juvenile division exists in all 50 states. These courts are products of state law and vary from state to state in terms of their status and placement within the state’s court hierarchy, the types of cases they hear, how they are staffed, their relationship to child welfare and juvenile probation agencies, and the level of resources appropriated to them. (See the article by Rubin in this journal issue.)

Over the past century, the court has been shaped and challenged by a number of factors. First and foremost, juvenile court practice has been formed by state statute. U.S. Supreme Court and state appellate court decisions and federal legislation have had an influence on the court’s practice. Social science has also shaped the court: understanding of parent-child bonding has shifted the priorities and the procedures of the court’s work with abusive and neglectful families. Knowledge about the effectiveness of
various forms of intervention with juvenile offenders has shaped correctional programs and other approaches to addressing the behavior of delinquent youth. As with any institution dealing with human behavior, the juvenile court has been greatly influenced by larger social trends and problems. The violence in American society—on the streets and in the homes—the persistence of child poverty, and the increase in single-parent households all impact the court’s day-to-day work.

As the 100th anniversary of the juvenile court approaches, it provides an opportunity to examine the strengths and weaknesses of this special court and to identify opportunities for improvement. The goal of this journal issue is to present a clear description of the court today and to address challenges for the future. It is important to note, however, that this is not a publication about juvenile crime or child abuse; it is about the court’s relationship to these important issues. No article in this journal issue questions the need to continue some version of a specialized court to handle some child-related issues.

Although there have been calls to eliminate or greatly curtail the court’s jurisdiction over criminal acts committed by juveniles (these proposals are discussed in the article by Ainsworth in this journal issue), there is a widespread consensus that a specialized court for some set of child-related matters is necessary. The greatest difference of opinion lies in defining the scope and describing the specifics of the court’s jurisdiction.

This analysis has four sections. The first provides an overview of the historical mission of the juvenile court. In the second section, more detail about the court’s role in handling delinquency, status offenses (noncriminal misbehavior of juveniles), and child abuse and neglect cases is presented. The third section examines the current status of the court as an institution, and the fourth section discusses the future of the juvenile court.

**The Mission of the Juvenile Court**

The proponents of the Illinois statute quoted above believed that children differed from adults in significant ways and that these differences led to the need for a specialized court to handle legal issues involving children. Acknowledgment of these differences continues to support the mission of the court today.

First, children are dependent on adults in a way that adults are not dependent on one another. If children are abused or neglected by their parents, not only must the abusive action be addressed, but the state through its courts must step in to ensure adequate care for the child. As one Illinois advocate wrote, “The fundamental idea of the juvenile court is so simple it seems anyone ought to understand it. . . . It is the acknowledgment by the state of its relationship as the parent to every child within its borders.”

Second, proponents of the juvenile court recognized that children are developing
emotionally and cognitively; they are impressionable and can be influenced, for good or for evil. The entire purpose of the juvenile court was to avoid treating the child as the system treated an adult criminal and, instead, to shape and mold the child as a parent would. Young offenders were not convicted as criminals but adjudicated as delinquents; they were not sentenced to prison or reformatory but committed to the care of a probation officer or an institution. A subjective determination of the needs of the offender replaced strict rules of evidence: “It will be seen at once that this procedure contemplated a complete change; instead of punishment and reformation, it was formation.”

Third, children have different levels of understanding than adults. Thus, although courts in Illinois in the late 1800s were cognizant of due process requirements for adults, the procedures in place in adult courts simply were not comprehensible to children. In describing the need for a juvenile court, the chief probation officer for Cook County wrote, “Imagine the solemn farce of proceedings where the child rarely understood a scintilla of their nature or purpose.” Proponents of the Illinois statute believed that children needed a special forum in which they could understand and be understood. Indeed, such varying levels of children’s understanding relate directly to their ability to take responsibility for their actions.

Although there have been significant changes in the mission and function of the juvenile court since 1899, these basic differences between children and adults remain and continue to support the need for a specialized court. However, the goals of the court have also evolved over time. For example, the goals of the juvenile court in delinquency cases continue to include formation or rehabilitation of the individual child, but they also include providing procedural protections of the law guaranteed by the U.S. Constitution as well as meeting society’s interests in protection and punishment. Such changes are discussed in more detail in this journal.

Finally, since 1899, the juvenile court has had to work very closely with a wide array of public and private agencies both to identify children in need and to provide services to these children and their families. The Illinois statute formalized the relationship between the court and public and private child welfare associations by requiring certification of associations caring for neglected or delinquent children, requiring regular inspection of these associations, and authorizing judges to require from these associations such information and statistics about the children in their care as the judges deemed necessary. The need for close, working relationships between the court and agencies caring for children is greater than ever today; this theme echoes throughout this journal issue.

The Jurisdiction of the Juvenile Court Today

Since 1899, the juvenile court has primarily handled three types of cases: delinquency, status offenses, and child abuse and neglect. Juvenile delinquency cases are law violations by minors which, if committed by an adult, would be crimes. By contrast, status offenses are noncriminal misbehaviors which are illegal only for minors. Common examples include truancy and running away. Until the early 1960s, both criminal and noncriminal behavior were considered to be forms of delinquency; the law did not distinguish between status offenders and delinquents. In child abuse and neglect cases, the court provides protection to children who are allegedly abused or neglected. During 1994, delinquency cases comprised 64% of the total national juvenile court caseload while status offenses made up 15%, and abuse and neglect cases, 16%.

Each of these case types is discussed below, with descriptions of the children and court processes involved and the current practices and policy issues. However, before turning to this jurisdiction-specific discussion, it is important to note that, although each of these types of cases is very different from the others, there are some common themes. The most obvious, of course, is the need for judges handling these cases to understand the development of children and to make legal decisions with attention to the needs of children and their families.

Second, even though the court is only one of many institutions working with chil-
The Juvenile Court: Analysis and Recommendations

Children and their families, it wields unique and quite awesome power in delinquency, status offense, and child abuse cases. Juvenile court judges can separate children from their parents; they can order children to live in confined settings; they can terminate the rights of biological families and create new parental rights.

Because these decisions are so serious and fundamental, ensuring that the court has adequate resources is very important as it handles each type of case. Judges need training, information, and workable facilities. Adequate representation must be available for the parties in court proceedings. Communities need to have sufficient, safe, and effective programs and placements available for the children who come before the court.

As will be clear from the following discussion, the juvenile court’s work is very difficult and involves some of the most emotion-laden and controversial issues in our society. As such, its decisions often find disagreement. The extent to which the court’s discretionary authority in individual cases should be expanded or restrained continues to be debated for all types of cases before the court.

Finally, because these courts make decisions regarding so many difficult societal problems, they are often the subjects of intense media attention and political firestorms. An important theme in this journal is the need for judges to play a leadership role, both among child-serving agencies and within the broader community, to encourage deliberative and thoughtful approaches to these problems, rather than ones that are hastily reached.

Delinquency

The handling of delinquency cases is the work of the juvenile court that is best known to the general public. When minors commit law violations, typically their cases are brought (petitioned) as delinquency cases in juvenile court. These cases include misdemeanors such as petty theft and vandalism as well as felonies such as robbery and aggravated assault. The maximum age of the court’s delinquency jurisdiction is set by state law; in 37 states and the District of Columbia, it is 17 years old; in 10 states, it is 16; and in 3 states, it is 15.

Today, the juvenile court has become a focal point for public concern about the country’s high rate of crime and the increasing violence of juvenile crime. In recent years, there has been continuing criticism of the juvenile court’s perceived leniency toward juvenile delinquents. The inability of the juvenile court in many jurisdictions to impose a sentence that continues beyond the age of 21 is a common example. High-visibility serious and violent crimes committed by juveniles have captured the public’s attention and drawn the treatment of juvenile offenders into the larger efforts to "get tough" on crime that have been politically popular for the past 20 years.

Public fear of juvenile crime has resulted in changes in the delinquency jurisdiction of the juvenile court. Since 1992, legislative and executive branch activity in 41 states has limited the juvenile court’s jurisdiction over cases involving serious, violent, and chronic offenders, and shifted the court’s philosophy from the rehabilitative tradition of addressing the offender rather than the offense toward a more punitive system focused on the offense itself. For example, since 1990, 14 states have amended their codes to explicitly list public safety as a purpose of the juvenile justice system; 28 states now list punishment of offenders as either the primary or one of several purposes of the juvenile justice system. More significantly, since 1992, all but 10 states have adopted or modified laws to make it easier to prosecute juveniles in adult criminal court. In most instances, conviction of a minor in adult court exposes the minor to the possibility of a state prison sentence instead of placement in a juvenile facility offering rehabilitative programs.

Although violent juvenile crimes grab headlines and tend to have a great influence on the juvenile justice system, most juvenile court cases involve far less serious crimes. In fact, the bulk of the court’s delinquency work is in the handling of a large volume of crimes against property such as larceny, vandalism, and motor vehicle theft. In 1992, police made 2.3 million arrests of juveniles nationally. Of these, approximately two-thirds, or 1,471,200, resulted in a referral to juvenile court. Contrary to public perception, the most serious charge was a property offense in 57% of the cases; an offense against a person, such as robbery or
aggravated assault, in 21% of the cases; a public order offense, such as disorderly conduct, in 17% of the cases; and a drug law violation in the remaining 5% of the cases.14

Although young people are not disproportionately responsible for violent crime, they do commit more than their share of property crimes.15 In 1992, for example, 10- to 17-year-olds comprised 13% of the U.S. population and were responsible for 13% of all violent crimes cleared by arrest but a full 23% of all property crimes.16

**Youths Referred to Juvenile Court**

Juvenile court statistics show that a large percentage of juvenile crime is committed by a small percentage of the juvenile population. In 1993, 80% of the juveniles referred to juvenile court on delinquency matters were male,17 61% were under age 15, 65% were white (which includes Latinos), 32% were African American, and approximately 4% were other races. Juveniles in urban areas had a 30% higher delinquency case rate than those in rural areas of the country, and the cases handled in large counties involved more crimes against people and drug offenses than those of less populated counties.

African-American minors are disproportionately involved in juvenile court processes relative to their representation in the population at large. The article by Snyder in this journal issue provides details about the over-representation of African-American minors at every stage of the juvenile court process. For example, in 1991, while only 15% of the juvenile population was African American, 66% of the youths confined in long-term public juvenile correctional facilities were African American.18 Federal law requires states that have disproportionate representation to make efforts to reduce the proportion of minority juveniles detained or confined in all secure facilities.19 Juvenile court judges can play a role in addressing the disparate treatment of minority youths through their decisions regarding pretrial detention and final disposition and their leadership in the community in the development of programs for minority youth.

Fifty-nine percent of the young people coming into juvenile court never return a second time. However, as Snyder points out, each subsequent time a juvenile is referred to court, the odds that he will be in court again increase. Forty-one percent of all juveniles with one referral will have a second referral to court, 59% of those with a second referral will return for a third time, and 67% of those will be back a fourth time. The small group of juveniles referred to court four or more times—16% of all juveniles referred to court—is responsible for nearly two-thirds of all violent crimes and half of all property crimes handled in juvenile court.20

**Juvenile Court Process**

The juvenile justice system includes law enforcement, the juvenile court, the juvenile probation department, and juvenile corrections. The juvenile court process varies across states and communities but can best be conceptualized as a series of decision points, each of which directs the case along a particular path.

Eighty-five percent of delinquency case referrals come from law enforcement; the remainder come from social service agencies, schools, parents, probation officers, and victims.21 Following arrest, approximately one-third of all juvenile arrests are diverted from the juvenile court system into alternative community programs such as community service and restitution, and no formal charges are made. The remaining cases are referred to juvenile court intake, which is generally the responsibility of the juvenile probation department or the prosecutor’s office. Of the cases that continue in the system, approximately half are handled formally through filing of a petition in the juvenile court. The other half are dismissed, diverted to juvenile justice or community programs at intake, or handled informally through such means as voluntary agreements or informal probation, in which the voluntary agreements are monitored by a probation officer. The cases that are handled formally by the juvenile court always include those involving the most serious and chronic juvenile offenders.

At each of these decision points, a set of highly subjective factors can come into play. Nonlegal factors such as the juvenile’s ties to family, school, and community influence whether an arrest is made, whether diversion occurs, and the nature of placement ordered. This decision-making process has been criticized because it can lead to erroneous, inequitable, and inconsistent decisions.22
The Juvenile Court: Analysis and Recommendations

Current Policy and Practice Issues
The sweeping changes in public policy affecting the juvenile court’s delinquency jurisdiction have been the responses to concerns about serious, violent, and chronic offenders and the perceived leniency of juvenile court sanctions toward these juveniles. A survey of recent state legislative action summarizes the types of changes in five broad categories: removing more serious offenders from the juvenile justice system in favor of criminal court; experimenting with new disposition and sentencing options; changing correctional programming in light of a new population of young criminals in adult prisons; modifying confidentiality laws in favor of more open proceedings; and including victims of juvenile crime in the juvenile justice process. This discussion focuses on three critical issues facing the court today: (1) transfer, (2) legal representation, and (3) dispositional alternatives.

Transferring Juveniles to Adult Court.
Juveniles can end up in adult court through one of three methods. First, juvenile court judges can transfer cases to adult court following a hearing, a process known as judicial waiver. Second, prosecutors in some states can directly file certain cases in either juvenile or adult court. Finally, some state statutes exclude certain types of crimes or chronic offenders from juvenile court jurisdiction; this is known as statutory exclusion or legislative waiver.

Between 1992 and 1995, 40 states and the District of Columbia changed their laws to restrict juvenile court jurisdiction in a variety of ways. Some states lowered the age of jurisdiction for adult criminal court for all offenses or for serious offenses; others expanded the types of offenses eligible for transfer to criminal courts or allowed or mandated transfer of juveniles to adult court through statutory exclusions; and a number gave prosecutors the discretion to file certain cases in criminal court. In addition, state statutes have changed the criteria for judicial determination of transfer decisions so that youths are presumed to be unfit for juvenile court in serious cases.

Getting tough on juvenile crime is the primary motivation for moving more cases to the adult criminal justice system. Some commentators argue that transferring juveniles to the adult system is worthwhile for its symbolic value alone; transfer is a statement that juvenile crime is taken seriously. Others believe that the fear of being transferred to adult court will deter juveniles from criminal behavior. Still others support the transfer of more cases to adult court to provide the additional due process protections required in adult court, such as the right to a jury trial.

Nationwide, the number of formal delinquency cases transferred by judicial waiver to criminal court increased from 7,005 cases in 1988 to 11,798 cases in 1992. However, the total number of delinquency cases waived by all transfer methods cannot be tabulated because there are no national data on the numbers of juvenile cases filed directly in criminal court by prosecutors or the numbers of juveniles who are in adult court because of a statutory exclusion. Reported data from selected jurisdictions show that the rates of direct filing by prosecutors vary: in some jurisdictions, the number of such cases is as high as 10% of all formally processed juvenile court cases; in others, it is as low as 1%.

Transfer is not being used only to send violent offenders to adult court. While there is a higher likelihood of a juvenile’s being transferred when charged with an offense against a person or a drug offense, in 1992, property offenses made up the largest proportion of juvenile cases transferred to adult court by juvenile court judges.

While the stated purpose of moving more cases to adult court is increased public safety, research findings do not substantiate the claim that transfer of increasing numbers of juveniles to adult criminal court reduces the rate of reoffending by this juvenile population.

Who Best Makes the Transfer Decision?
The option of transferring cases to adult court is available to juvenile court judges in 46 states and the District of Columbia. Legislative waivers make transfers automatic in certain cases in 37 states and the District of Columbia. Ten states and the District of Columbia give the prosecutor the option to file a case directly in either adult or juvenile court. There are several dangers in each approach. A prosecutor’s decision to file a case directly in adult criminal court is made
unilaterally without the benefit of a hearing where defense counsel and probation officials can provide important information about the juvenile in question. Prosecutorial discretion to determine where a juvenile is tried is potentially subject to political pressure. State statutes mandating transfer if there is a specified combination of age and the number and seriousness of the offenses preclude the consideration of the individual circumstances that apply in each case. Moreover, such legislative changes can be driven by a single, high-visibility case rather than a comprehensive assessment of the cases before the court.

Transfer decisions are best made by judges who are given explicit directions as to the factors that must be considered. This is not because individual judges are immune to biases and pressures, but because, unlike the prosecutor, the judge makes this decision only after hearing from a variety of perspectives in a judicial proceeding: the prosecutor, defense counsel, and probation officials. This more deliberative decision-making process retains some of the benefits of juvenile court jurisdiction while addressing public safety and accountability concerns regarding serious and violent juvenile offenders.

RECOMMENDATION

The determination as to whether a minor charged with a serious crime should be transferred to the criminal court for trial as an adult is best made by judicial hearing.

The varied circumstances of each case and the distinct characteristics of each minor require close examination by an experienced judicial officer who can hear from all parties to the case and evaluate the important personal and community factors related to the choice of jurisdiction.

Representation. In the past, the juvenile court’s role in intervening with wayward and criminal youths was justified by the theory of *parens patriae*, that the state stands in the place of parents and substitutes its authority for that of the family. Because of an interest in individualizing responses to cases, early court decisions were left largely to judicial discretion, often at the expense of the juveniles’ due process rights. However, landmark U.S. Supreme Court cases of the 1960s rejected the *parens patriae* rationale and early court practices, and required that the basic constitutional safeguards of due process of the law apply in juvenile court proceedings. Since the U.S. Supreme Court cases of *Kent v. United States* and *In re Gault*, juveniles in delinquency proceedings have had the right to counsel, the right to notice of the charges against them, the right to cross-examine the witnesses against them, and the privilege against self-incrimination. For example, in the *Gault* case, the U.S. Supreme Court found that the benefits of more informal, individualized justice in the juvenile court system were not a substitute for due process protections guaranteed by the U.S. Constitution. In the intervening 30 years, juvenile courts have struggled, with varying success, to meet the Supreme Court’s requirements.

Unfortunately, as the article by Ainsworth in this journal issue describes, considerable research shows that the juvenile court system today has failed to fulfill the promise of procedural fairness envisioned by the Supreme Court. Some critics argue that the changes necessitated by the *Gault* decision have led only to a more formalized, legalistic, and adversarial court. Others cite the juvenile court’s inability to fulfill the due process guarantees as a reason for moving all juvenile offenders into adult criminal court.

In juvenile court, as in any legal forum, a juvenile’s key to knowing and exercising his or her rights is the effective assistance of legal counsel. Today, as juveniles face the potential for longer sentences and transfer to adult court, the role of legal counsel is critical to ensure that minors are not held unnecessarily in secure detention, improperly transferred to adult criminal court, or inappropriately committed to institutional confinement.

As Mitchell points out in this journal issue, and other court insiders and observers have confirmed, the sheer volume of cases heard by juvenile court makes it difficult for each alleged delinquent to receive adequate and fair treatment. A recent report on the quality of legal representation in juvenile delinquency matters cited examples of
defense attorneys handling more than 450 cases per year when national standards for juvenile cases call for caseloads not to exceed 200 annually. Lawyers may have as many as 40 to 50 cases on calendar for a single day.37

Not only are underrepresented juveniles and those represented by unprepared attorneys deprived of their constitutional rights, but their inadequate legal representation may also preclude informed judicial decision making about appropriate dispositions of the case. When defense counsel is unprepared to provide information about a delinquent’s home or school life, or to investigate and recommend dispositional alternatives, the judge is more likely to act on the basis of the probation official’s report, the prosecutor’s input, or personal biases.

In some large jurisdictions, the rate of petitioned cases represented by counsel is as high as 97%; in other, predominantly rural, jurisdictions, as few as 65% of all juvenile cases are represented.38 Given the seriousness of potential sentencing outcomes in juvenile cases, the fact that in certain jurisdictions a substantial percentage of juveniles waive their right to counsel altogether is a cause for concern.39 The circumstances surrounding these waivers—suggestions from the bench and prosecutors that counsel is not needed because the case is not serious, parents’ fears about the potential cost of representation, and the typically huge caseloads of defense attorneys—when combined with the youthfulness and inexperience of defendants, raise the possibility that juvenile waivers of counsel are not always made with the full understanding by the minors or their parents of the implications of such a decision.40

**RECOMMENDATION**

- Every youth who is referred to juvenile court for formal processing in delinquency matters should be represented by trained counsel from the time of the detention hearing throughout the court process.

Because of the possible inability of juveniles and their parents to understand the implications of waiving their right to counsel, this right should not be waivable at any phase of the juvenile court process for juveniles who are facing the possibility of out-of-home placement.

**Dispositional Alternatives.** Once a juvenile has been found to be delinquent, the task of the juvenile court is to order and oversee the appropriate disposition or sentence in the case. A hallmark of juvenile court has been the ability of the juvenile court judge to order sanctions that can potentially address the individualized needs of the juvenile delinquent before him, all the while balancing goals of rehabilitation of the juvenile, accountability for the delinquent’s actions, and safety of the community. The availability of a range of effective alternative dispositions is key to the fulfillment of these multiple goals of the juvenile court.

As the article by Greenwood describes, a few exceptional communities have developed a wide array of programs that offer varying degrees of supervision and security. A large review of a number of studies that evaluated such programs found that community-based programs were significantly more effective than institutional placements in reducing recidivism (the percentage of youths who reoffend within a particular time period after their first conviction). Highly structured programs with education, vocational training, and life skills development components had better outcomes than less structured interventions such as counseling or general supervision. While less structured interventions produced rates of 50%, the highly structured community-based programs had recidivism rates of 30% to 40%.41

Ideally, all types of correctional programs serving large numbers of juveniles would be evaluated, and those found to be ineffective would be discontinued. In reality, a number of factors—including available resources and political will—may have a greater effect on which dispositions or programs are available than does reliable research. A good example cited by Greenwood is the rapid proliferation of boot camps for juveniles which have been instituted in 29 states since 1983 without any evidence as to their effectiveness. A 1995
evaluation of these programs in eight states found that four had no effect on recidivism, one resulted in higher rates, and three were effective on some recidivism measures. The programs with the best results had therapeutic components characteristic of some of the effective programs mentioned above.42

RECOMMENDATION

■ Communities should ensure that a range of dispositional alternatives, providing a continuum of sanctions from community service and supervised probation to incarceration of juvenile offenders, is available to respond to juvenile crime; particular attention should be given to those models that have shown, through evaluation, success in reducing recidivism.

To develop such a continuum of sanctions, the court must work closely with the probation department and community service providers and must enlist the cooperation of other public agencies including schools, health, and mental health departments. For quality control, the court should have access to accurate, ongoing data about the effectiveness of the programs to which juveniles are referred.

Future Directions

If present trends continue, the juvenile court will continue to be subject to changing legislation regarding its jurisdiction over delinquency cases. Policymakers interested in addressing the underlying problems of violent juvenile crime are seeking innovations that can address concerns about public safety and accountability while retaining some alternatives to adult prison sentences. One approach is to strike a midground between adult and juvenile jurisdiction, by combining the stricter due process protections and potential for more severe sanctions of adult court with the potential for rehabilitative dispositions available through juvenile court.

■ Blended Sentencing Sixteen states have recently passed legislation to create blended sentencing options for certain delinquency cases.43 A more comprehensive approach that includes blended sentencing was established by Minnesota’s 1994 Juvenile Crime Act.44 It creates a new category of serious offenders, extended jurisdiction juveniles (EJJs), who are tried as juveniles but receive full adult due process protections, including a jury trial, if they wish. EJJs minors are given an adult criminal sentence which is applied only if the juvenile does not complete the juvenile court disposition. The law gives serious offenders a final chance to benefit from the rehabilitative dispositional options of the juvenile court while limiting transfers to adult court by creating an intermediate category of juvenile offenders.

Because this law is new, little is known about its implementation in the courts. Ironically, it may be used by juvenile judges to place certain offenders in the EJJ category who would not have been likely to be transferred to adult criminal court. If these juveniles violate their juvenile court dispositions (probation, for example), they may end up serving adult sentences.45

■ Restitution and the Balanced Approach. Another reform strategy is the balanced and restorative justice approach, which combines community protection with efforts to hold juveniles accountable for their actions and to assist them in becoming more competent young adults. Some state statutes have adopted the balanced approach as their juvenile court philosophy. In a probation department using this approach, youths work under adult supervision on a project that creates something positive for the community and provides skill training while they earn money to repay the victims of their offenses. In contrast, in the traditional probation program, the youths are poorly supervised, receive no skill training, and have only minimal contact with their probation officers. Probation departments throughout the country have been trying to implement this approach, often by reorganizing old methods to fit into the model’s goals of protection, accountability, and skills competency. General institutional resistance and limits in funding make the true reform necessary to implement this approach difficult to attain.46

Restitution is an increasingly popular way to hold juvenile offenders accountable for
their actions by obliging them to “make
amends” by paying their victims directly or
performing community service. This prac-
tice is likely to grow in the future.47

Status Offenses
The juvenile court in particular and society
generally have long struggled with how best
to respond to status offenses, acts that are
unlawful when committed by a minor but
are not illegal if committed by an adult such
as truancy, running away, and ungovernabil-
ity. The continuing needs of young people
for protection, supervision, and guidance by
adults and the belief that antisocial adoles-
cent behavior can be shaped and changed
have been, and continue to be, justifications
for juvenile court intervention in these cases.

Court jurisdiction over noncriminal
youths predates the official arrival of the
juvenile court in Illinois. As Fox describes in
his article in this journal issue, nineteenth-
century beliefs regarding the moral dangers
of poverty led to intervention in the lives of
poor children who were perceived to be in
danger of becoming criminals if left in their
“depraved” homes.48 Little distinction was
made between these noncriminal youths
and young criminal offenders in terms of
intervention and treatment. Status offending
continued to be treated as a type of delin-
quency until the 1960s and 1970s, when crit-
ics argued for services rather than incarcera-
tion for status offending youth, and states
passed laws distinguishing status offenses
from delinquency cases.49 The federal
Juvenile Justice and Delinquency Prevention
Act of 1974, described below and in the arti-
cle by Steinhart in this journal issue, further
solidified the distinction between status
offense and delinquency cases.

A Profile of Status Offenders
The number of status offense cases nation-
wide is unknown. As Steinhart points out in
his article, data are available only on the sta-
tus offense cases formally brought (peti-
tioned) to juvenile court, but there is no doc-
umentation of the cases that are handled
informally. In addition, many cases that fit in
the status offense category, such as running
away, never come to the attention of author-
ities at all.50

Status offense cases formally processed
by the court totaled approximately 97,000 in
1992: roughly 17,000 of those were runaway
cases, 26,000 were truancy cases, 11,000 were
ungovernability cases, 30,000 were liquor law
violations, and 13,000 were other cases
including violations of curfew and of valid
court orders (VCOs) involving the juvenile.51

Overall, African Americans were only
slightly more likely than whites to appear
before the court for status offenses. How-
ever, the rate for runaway cases was 50%
greater for African Americans than for
whites; the truancy and ungovernability rates
for African-American juveniles were twice
those of whites; and liquor law violations
were four times higher for white juveniles
than for African Americans.51 These data do
not include numbers of curfew violations by
racial group, nor do they reflect recent
increases in the enforcement of municipal
curfew ordinances.

Forty-two percent of all status offense
cases in 1992 involved females. This is in
sharp contrast to the percentage of delin-
quency charges that were brought against
females in 1992 (only 15%). Of all runaways
brought into juvenile court that year, 62%
were female and 38% were male. Females
were involved in approximately one-third of
all liquor law violations.52

Juvenile Court Process
Today the juvenile court still retains jurisdic-
tion over status offenses in every state,
although processing of these cases varies
from virtually no intervention in some
locales to highly developed intervention pro-
grams in others. Most status offense cases
are not formally processed by the court. As
many as 80% of all cases are diverted to com-


themselves turn their children over to the court under state statutes which give the juvenile court jurisdiction over young people who are “ungovernable” or “beyond control.”

**The Juvenile Justice and Delinquency Prevention Act of 1974**

Status offenders whose cases are processed by the juvenile court have essentially the same due process rights in court as do delinquents, but dispositions are very different. Federal law now discourages, except under very limited circumstances, the placement of status offenders in secure detention facilities (jails). The Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, a response to criticisms against state practices of punishing rather than treating noncriminal minors, conditioned the receipt of federal funds on state efforts to deinstitutionalize noncriminal youth. It pronounced that juveniles “charged with or who have committed offenses that would not be criminal if committed by an adult . . . shall not be placed in secure detention facilities or secure correctional facilities.” The act also encouraged states to develop service programs for status offenders as alternatives to secure detention.

According to the Office of Juvenile Justice and Delinquency Prevention, in December 1992, 34 states and three territories participating under the JJDPA were in full compliance with deinstitutionalization mandates. As Steinhart reports, detention levels have declined since the passage of the JJDPA. One study shows that detention rates for status offenders in the states participating in the JJDPA dropped by an average of 95% between each state’s compliance start date and 1988.

There are a number of indications that policy toward status offenders is moving toward greater control and more punitive responses. In 1980, the JJDPA was amended to allow the secure detention of status offenders who had violated valid court orders. Some states have exercised this detention authority more aggressively than others. In an article in this journal issue, Steinhart describes recent state challenges to the overall federal policy of deinstitutionalization of status offenses. Washington State, for example, changed its law in 1995 to permit secure detention of arrested status offenders, contravening the requirements of the JJDPA. Reauthorization of the JJDPA, which expired October 1, 1996, was debated in Congress. No decision was reached. The shape of the legislation and whether it will retain the status offender deinstitutionalization mandate are unknown.

**Current Policy and Practice Issues**

In addition to changes in state laws with regard to deinstitutionalization policies, changes in local practices with regard to status offenders reveal a trend toward greater regulation of this population. This is exemplified by the ever-increasing number of cities that have passed and are enforcing curfew ordinances. In contrast, some communities are focusing their efforts on providing better service programs and other alternative interventions to status offenders.

**Curfews.** According to a 1995 U.S. Conference of Mayors survey, more than 250 cities nationwide have curfew ordinances. In 1992, of 77 American cities with populations of 200,000 or more, 59 had curfew laws in place. Local political leaders justify municipal curfew ordinances as a way to decrease the number of crimes committed by youths and to protect children from crime by assisting parents to restrict their children’s late-night activities and allowing police to remove juveniles from the streets during curfew hours. Some communities that claim success in reducing nighttime offenses with curfews are implementing daytime curfews as well. For instance, Austin, Texas, has a curfew between 9:00 A.M. and 2:30 P.M. on school days; children who are out on the streets during those hours can be brought in by authorities.

The use of curfews is not without controversy. Some curfew ordinances have been successfully challenged on constitutional grounds for being overly vague or too broadly applied. However, the majority have been upheld. In addition, there may be unequal enforcement of curfew ordinances across races. For example, nearly 60% of the juveniles detained under a new curfew ordinance in San Jose, California, were Latino, although less than 30% of the city’s youth population is Latino.

The effectiveness of curfew laws in reducing juvenile crime is unclear. In fact, a 1995 review of existing literature on curfews
found that “there is so little existing research on the effects of curfews that policymakers have next to nothing to guide them concerning the benefits and costs of a curfew.”

**Developing Alternative Interventions.** The violation of curfew laws or the commission of other status offenses is frequently a warning sign of problems in a youth’s life. Some status offenders, such as runaways, are, in fact, victims of abusive situations at home. A 1984 study of 199 runaways indicated that 75% had been severely maltreated at home in the year prior to running away.

Status offenses seldom result in direct harm to anyone other than the status offender. Placement of status offenders in secure detention is inappropriate both because status offenders are often victims and because their acts are of minimal harm to society. Furthermore, the placement of status offenders in secure detention may expose them to the negative peer influences of juveniles who have committed more serious offenses. More important, institutionalization separates minors from their families and does not provide status offenders and their families with the opportunity to receive appropriate services.

Though the policy of deinstitutionalization of status offenders reflected in the 1974 JJDPA has reduced the number of such youths incarcerated with delinquent youths, in most communities the need for alternative interventions through services and shelter has never been fully realized. The Metropolitan Court Committee of the National Council of Juvenile and Family Court Judges recommends a continuum of community services for status offenders, particularly truants, runaways, and substance-abusing and beyond-control children. Needed services may include counseling, medical care, social services, alcohol or substance abuse treatment, and both short- and long-term shelter.

Successful programs for status offenders are flexible and offer a wide variety of services. Juvenile court judges, because of their ability to convene community members and their role as advocates for children, are in strong positions to help communities develop successful programs to handle status offenders and their families. Communities can develop programs that adequately serve most status offenders. Given that, community programs should be the first line of intervention for status offenders. When initial community efforts at providing service fail in these cases, the court—with its ability to hold parties accountable—may be able to elicit positive action.

**RECOMMENDATION**

- The first line of response to status offenders should be community and public services designed to help children and their families, with court intervention only after services have been offered but have not been successful, or if the child’s behavior continues to pose a threat to his or her own safety or well-being.

Court-ordered incarceration of a status offender is appropriate only in exceptional cases when an adjudicated status offender repeatedly refuses to cooperate with the court or service providers, or when a status offender’s behavior is proven to be of significant risk of harm.

**Child Abuse and Neglect Cases**

The juvenile court, working with law enforcement and child protective service agencies, is responsible for protecting those children whose parents or other legal caretakers abuse or neglect them. Cases that come before the court are those involving children who have been physically or sexually abused, abandoned, or so neglected by their parents that their care does not meet even minimal standards.

The goal of the court in handling these cases has always been to protect the children by first determining the validity of child abuse and neglect allegations and then deciding whether the children need to be placed in foster care or can remain at home with supervision and services from public or private agencies. However, as the article by Hardin in this journal issue discusses, several new roles were given to the court in the late 1970s. At that time, there was great dissatisfaction with the state intervention after child
abuse and neglect had been identified. Many families were not receiving services from child welfare agencies, and although children were most often physically protected, a large number of children who were removed from home were being transferred from foster home to foster home with little or no effort made to secure a permanent home for them. Around the same time, there was a growing belief that parent-child bonding and attachment are critical for children and can best be provided through a stable and permanent home.

The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) was passed to address the widespread dissatisfaction with child welfare practice and to promote permanency for children. The legislation put in place federal standards that states must implement to qualify for federal funding for out-of-home care. In response, many state laws were changed to adopt the following priorities in handling abuse and neglect cases: prevent out-of-home placement; reuniﬁy the family after a child is placed in foster care; or if reunification is impossible, find a safe and permanent home for the child in a timely manner. Federal law speciﬁed that, although this ﬁnal step could be taken earlier, it must occur within 18 months of placement of a child in out-of-home care.

To achieve these goals, the federal legislation greatly expanded the court’s role in handling these cases. Child welfare agencies would continue to plan and provide the services to families to keep them together or to reunify them. However, the new law gave the court many more responsibilities. Whenever a child is involuntarily removed from parental custody, the court must make a speciﬁc ﬁnding that continued placement with the family is contrary to the child’s welfare. In addition, the court must ﬁnd that the child welfare agency made “reasonable efforts” to prevent out-of-home placement of children or to reunify them if they have been removed. Federal funding for foster care placements is conditioned on the court’s making the required ﬁnding of reasonable efforts. To make these decisions and perform an ongoing monitoring role, the court is required to hold periodic hearings.

These statutory changes greatly increased the workload of the court in each child abuse and neglect case it handled. Although courts have always worked with child welfare agencies in handling these cases, the oversight responsibilities given to the court complicated that relationship with regard to the legal requirements and the day-to-day operations of both entities. Handling these cases now requires multiple hearings, not just one or two. This increased time demand in individual cases combined with an ever-greater number of cases reaching the court substantially increase the percentage of time courts devote to child abuse and neglect cases.

Profile of Child Abuse and Neglect Cases

Comprehensive and reliable data about child abuse and neglect reports and resulting juvenile court cases are not currently available. However, some estimates are available from developing national databases. In 1994, 4% of America’s children, or 2.9 million youngsters, were reported as being abused or neglected. Nearly half of these reports were of neglect; 26% were of physical abuse; and 14% were of sexual abuse. Reports were made to either law enforcement (who then typically referred them to child welfare) or to child welfare agencies who either closed the case as unfounded or inappropriate for the agency to investigate, or investigated the allegations. Of the 2.9 million reports, about 1.6 million led to investigations. Approximately one million reports were found to be substantiated or indicated. Of these, most were handled informally by the child welfare agency entering into agreements with the family for services with no court oversight. There are no national data about the percentage of reports that result in court action. In some local jurisdictions, it has been as low as 3% to 4% of all reports or 21% of all substantiated cases.

African Americans are overrepresented at several points in the child welfare system. Twenty-six percent of the annual child abuse and neglect reports concern African-American children, yet African Americans comprise only 21% of the general population. Overrepresentation is more striking in out-of-home placement. For example, approximately 4% of all African-American children are in foster care in New York and California, whereas the rates for Caucasian
Children in these same states range between 0.5% and 2%.83,84

**Juvenile Court Process**

Once a petition is filed by the child welfare agency alleging that the child has been abused or neglected and is within the court’s jurisdiction, the court’s work is substantial. First, if an out-of-home placement to protect the child’s safety is deemed necessary by the child welfare agency, there is an emergency hearing either immediately before or immediately after removal to determine whether the child can be returned home while the trial is pending. The next step is a hearing to determine whether the child has been abused or neglected and whether the court has a basis for jurisdiction over the child. If abuse or neglect is established, the court makes a dispositional decision. In this hearing, the court reviews the child welfare agency’s recommendations regarding custody and services for the child and family and makes a dispositional order. At that point, the child welfare agency typically takes over the day-to-day supervision of the case. However, the court will hold review hearings at least every six months. At each hearing, the court must determine if the child can remain in, or be returned to, the care of his parents. If the child is in out-of-home care, the court must make a decision about the permanent placement of the child within 18 months. If there is no possibility of family reunification, a decision may be made to terminate the parental rights, freeing the child for adoption. Depending on the state’s law, hearings on the termination of parental rights may or may not be handled by the juvenile court.

**Current Policy and Practice Issues**

Implementation of Public Law 96-272 and compliance with its monitoring and permanency planning requirements continue to be the biggest challenges for the juvenile court in its work with child abuse and neglect cases. Unfortunately, it is not possible to know in any comprehensive way to what extent juvenile courts and the public child welfare agencies they monitor are successful in meeting the goals of this law. Public child welfare agencies have been sued in at least 21 states on behalf of children who have not received the benefits of permanency planning envisioned by this law.85 Likewise, in many instances, juvenile courts have been ineffective in their role as monitors of the social service agencies’ delivery of services to families, because of both lack of understanding of the law and disagreement with its principles.76

The juvenile court is not alone in struggling to meet national goals of protecting children and ensuring safe and permanent homes for them in a timely manner. Other public and private agencies are working hard to find better ways to serve abused and neglected children and their families. There are many current initiatives to improve support for families,86 to identify early those children who may be most at risk for abuse,87 and to mobilize entire communities to take more responsibility for the problem of child abuse and neglect and more initiative in finding solutions to this problem.88

However, the focus of this journal is on the juvenile court. The court has a particularly important role to play in meeting the goals of Public Law 96-272. Three current policy and practice issues are: (1) the court’s need for data, (2) the court’s responsibility to ensure timely permanency decisions for children, and (3) the opportunity and need for judicial leadership on these issues.

**Data.** Juvenile courts, as well as child welfare agencies, need comprehensive data about their effectiveness in responding to child abuse and neglect cases. Currently, across the country, such data are missing at national, state, and local levels. For example, judges handling child abuse and neglect cases often do not know the answers to basic questions such as: What percentage of the children who are left in their homes after a report of abuse or neglect were subsequently abused? What percentage of children reunified with their families reentered the system? How long do children remain in foster care, and what is the number of placements? How long does the court process take? How many hearings are rescheduled and why? What percentage of children whose parents’ parental rights have been terminated have been adopted and how quickly?

Such data are tools, not solutions, but they can show courts and child welfare agencies where improvements and reforms are needed. Indeed, with recent federal funding for state juvenile court needs assessments,
over 33 state court systems have identified better information as a high-priority need.\textsuperscript{89} Separate federal funding is now providing incentives for states to build comprehensive, automated, child welfare data systems. These are important opportunities to make real progress toward documenting the effectiveness of a jurisdiction in responding to child abuse and neglect cases and how effective this response is.\textsuperscript{90}

**RECOMMENDATION**

- In each state and locale, every effort should be made to assess the data system needs of juvenile courts and child welfare agencies and to address these needs in a coordinated and complementary manner.

- **Commitment to Timely Decisions.** Children need to grow up in safe and stable homes. It is harmful for them to grow up being moved in and out of the custody of their families and/or from one foster placement to the next.\textsuperscript{91} This is particularly true for very young children, whose physical, emotional, and cognitive development is so rapid and so critical.\textsuperscript{91} Two years pass quickly for an adult but are half of the lifetime of a four-year-old. The 1980 federal legislation was correct in affirming the importance of achieving safe, stable, and permanent placements for all children within at least 18 months. In addition, states should seriously consider more developmentally sensitive child welfare practices, with special attention to the needs of very young children.\textsuperscript{91}

Timely decision making by courts and child welfare agencies is critical to meeting the developmental needs of children for safe and permanent homes. Although data are limited, a number of studies and specially created data archives have documented the difficulty of securing permanent placements for children in a reasonable period of time. As Barth discusses in his article, in Illinois, more than half of the children are in foster care for 35 months; in New York, for 25 months.\textsuperscript{83} This is true even for very young children. A recently conducted study in California shows that about two-thirds of the approximately 24,000 children entering foster care in any one year are children five years old and younger. From 25\% to 40\% of these children will remain in out-of-home care for at least four years, and at least 30\% of these children will experience three or more foster care placements during that time.\textsuperscript{84}

There is much a court can do to improve this situation. First, the strong commitment of each juvenile court judge to timely decision making is critical. The judge must play two roles. Next, the judge can prevent unnecessary delay by such strategies as implementing concurrent planning, handling a case from beginning to end, and setting strict rules regarding continuances. Such steps can yield great progress in resolving these cases in a timely manner.\textsuperscript{92,93}

In addition to ensuring that its own processes are expeditious, the court also plays a very important role in monitoring and ensuring that child welfare agencies and others involved in these cases make decisions and meet their legal obligations (such as making reasonable efforts toward family reunification) in a timely manner. As the article by Hardin in this journal issue discusses, this monitoring role, created by Public Law 96-272, is not without controversy.\textsuperscript{94} Although there is consensus that, for highly sensitive decisions such as involuntarily removing children from their families or terminating parental rights, courts must be involved, there is controversy as to whether courts should review case plans of child welfare agencies and to what extent. This monitoring role continues to be critical, and the courts have made considerable progress in performing it. One of the main reasons for the court to play this role is the interrelated nature of court decisions and decisions of child welfare agencies. In a sense, the court performs an important managerial function. Court review is critical to identify gaps and dangers in selected service approaches, to emphasize statutory timelines, and to keep all parties working together.\textsuperscript{92}

**RECOMMENDATION**

- Every juvenile court in the country should work with local child welfare agencies to improve their effectiveness in providing abused and neglected children with safe and
permanent homes in a timely manner as specified by law.

Some states have augmented such local efforts with legislation mandating or otherwise encouraging earlier permanency decisions, especially for young children. Colorado, for example, has adopted a new framework for child welfare decisions for children under the age of six. Except in very special circumstances, they must have a permanent placement within 12 months of out-of-home placement.  

Leadership. As noted above, the court plays a valuable role in ensuring the timeliness of its own proceedings, as well as the decision making of child welfare and other agencies. In addition, however, juvenile court judges are in a position to play a greater leadership role in the broader community. In communities across the country, individual judges have been catalysts for change. They have highlighted the importance of the problem of abuse and neglect, and have convened community agencies and interested parties in collaborative efforts to improve community-wide responses to the problem. Too often, policy and practice changes occur in the handling of abuse and neglect cases only in response to particularly disturbing incidents highlighted by media attention. Courts, given their stature and authority in communities, can help prevent this. As Judge Edwards has written, there is a public role for judges which includes being open to the public and working to ensure that the public understands the role and performance of courts and child welfare agencies in handling these reports. Sometimes, judges can also play important roles in helping to draft legislation that is necessary for the court to perform its work. In addition, a judge can take action to rally the community and help garner resources to ensure that there is actually a system of services in place for children and families who come before the court.

RECOMMENDATION

Juvenile court judges should be educators and spokespersons in their communities on behalf of abused and neglected children. Judges should advocate for adequate court resources and community systems to respond promptly and appropriately to child abuse and neglect.

The Current Status of the Juvenile Court

Judges are on the front line in dealing with some of society’s most difficult problems. They need to be supported in their work, and they, in turn, need to be highly trained and motivated for their difficult responsibilities. Yet, as detailed in the article by Rubin, juvenile courts today vary greatly in jurisdiction, organization, staffing, resources, and facilities. For instance in some states, all juvenile court cases are heard by fully qualified judges, while in others, quasi-judicial officers known as referees or commissioners hear a large part of the juvenile court caseload. Typically, there is no required experience or training for juvenile court judges. This situation is particularly critical given that law school education and prior practice most often do not prepare a lawyer to handle cases involving juveniles. Most judges learn while on the job, but this valuable experience is lost in many jurisdictions where judges are assigned to the juvenile division for only a short period of time, for example, six months to one year. The lack of training and experience is particularly troublesome given the unique nature of juvenile court work. Handling cases involving children requires knowledge not only of statutory and case law but also of child development and of a community’s system of social services and its educational and correctional institutions.

Other professionals working in the juvenile court, such as public defenders and prosecutors, often also lack the training and experience needed to work with children and their families. And even the experienced professionals may find it difficult to provide sufficient services because of the huge caseloads and limited staff resources. Newly hired prosecutors are frequently given the juvenile court as their first assignment. Defense attorneys often carry so many cases at one time that they cannot adequately prepare for each. A 1990 study of three courts found that district attorneys handled an average of 377 delinquency cases per year in one court and 725 delinquency cases per
year in each of the other two. Public defenders in these same courts handled an average of only 115 cases annually in one court, but 1,015 per year in a second, and 616 per year in the third. Caseloads such as these can render the legal representation of parties before the juvenile court insufficient.

As the article by Rubin discusses, juvenile courts also vary in their stature, resources, and organization. The juvenile court frequently operates as the “poor sister” in the local court system. Facilities, particularly in urban areas, are often grossly inadequate and not designed to meet the varied needs of the court and its clients.

Of these distinctions, the most important is the stature of the juvenile court within the state court system. Although in most states the juvenile court is part of the court of general trial court jurisdiction, as are the adult criminal and civil courts, in some states (for example, Virginia) the juvenile court has a lower status. In these states, if a party who appeared before the court disagrees with its ruling, that party is automatically entitled, upon request, to a complete rehearing in a court of general jurisdiction.

Although many aspects of juvenile court operations need attention, significant progress could occur if state and local jurisdictions took action on the following three recommendations:

**RECOMMENDATION**

- Juvenile courts should be at the level of the highest trial court of general jurisdiction in each state.

Because nearly all juvenile courts are created by either state statute or judicial rule, such a change would require either legislation or rule making in a state. Judges, rather than referees or commissioners, should be the dominant judicial officers in this court. This is important to receive adequate funding and other resources for the court. Heightened court status also makes it easier to retain judges and to encourage them to be strong leaders in the community.

**RECOMMENDATIONS**

- All judges and other judicial officers serving in a juvenile division or juvenile court should be required to have intensive and ongoing training not only in the statutory and case law governing delinquency, status offense, and dependency matters but also in child development, cultural factors, resources for families, the court’s relationship with and duties toward social welfare agencies, and research findings regarding rehabilitative interventions.

- Juvenile court judges should serve in the juvenile court division for at least two to three years.

Judges need not make a lifetime commitment to serving on the juvenile court. However, rotations of only six months to one year unnecessarily prevent judges from being able to develop the experience and relationships necessary to make them effective in juvenile court.

Several states have already taken some of these steps. California, for example, makes judicial training available to all judges, including those serving on the juvenile bench. However, such training is not required. In addition, the California Rules of Court specify that “the presiding judge of the Superior Court should assign judges to the juvenile court to serve for a minimum of three years,” a requirement that is being complied with in most counties in the state.

**The Future of the Juvenile Court**

The articles by Moore and by Edwards in this journal issue discuss trends and models for the juvenile court in the future. The article by Moore suggests that the juvenile court of the future should have increased legal power to hold parents and community agencies accountable for the care of children. Under this model, the court could bring parents in as parties in status offense and delinquency cases, as it currently does in child abuse cases, and compel them to be involved in the rehabilitation of their delinquent or status offend-
ing children. In addition, the federally mandated power of the court to monitor the efforts of social service agencies with regard to services offered to families in child abuse and neglect cases would extend to delinquency and status offense cases as well.\(^\text{100}\)

Moore’s approach may sound radical, but some states have already taken steps in this direction. Recently a number of state legislatures have enacted parental responsibility laws which give the courts the power to hold parents accountable for the acts of their delinquent or status-offending child. An Oregon law, for example, allows judges to fine parents or require them to attend parenting classes if their children violate a law.\(^\text{101}\) The law’s proponents claim that poor parenting is at the root of juvenile crime and that parental responsibility laws encourage better parenting. Critics argue that Oregon’s law, which holds the parents responsible for their children’s acts regardless of the degree of parental supervision, penalizes parents for being parents. Though local law enforcement officers claim that juvenile crime has decreased since the passage of the Oregon law, the effectiveness of parental responsibility laws in reducing juvenile crime has not been evaluated.

The court of the future must oversee a juvenile justice system that provides a comprehensive response to each case, according to the article by Edwards. To do so successfully, the court must better coordinate its handling of family matters and increase the use of alternative dispute resolution methods.

**Coordination of Courts**

Edwards highlights the structural changes some courts have made to improve court coordination of case processing. Currently in many states not all family-related cases are handled by one branch of the court system. Studies have found, however, that often it is the same families who are appearing before different branches of the court for family-related matters. For example, a couple contesting custody in a divorce action may also be involved in a child abuse and neglect proceeding where custody is also an issue. One national survey of 150 courts conducted by the National Center for State Courts found that approximately 40% of families came before the court more than once for family-related matters and generated a disproportionate number of such cases.\(^\text{102}\) The study’s parallel three-site examination found court records showing that 41% of families had appeared in another family-related case within the previous five years.\(^\text{103}\)

Unfortunately, when the same family appears in two or more courts, there can be very negative consequences. It is logistically difficult for the family. It is inefficient for several judges to be trying to learn about the same people. It often results in a judge’s making a decision without benefit of long-term or comprehensive knowledge of the family. At its worst, the families can be subjected to conflicting court orders.

The article by Rubin discusses efforts by several states to reorganize the processing of all or most family matters into a unified family court system. Other jurisdictions, while not changing the court structure, have improved coordination among the different court branches so that there is more consistent treatment of the families who appear for multiple matters.

**RECOMMENDATION**

- All courts should work to better coordinate case processing by different branches of the general court that handle family-related matters including the juvenile court.

**Alternative Dispute Resolution**

As seen from the statistics about the court’s formal caseload, the majority of situations involving delinquency, status offenses, and child abuse and neglect are already handled outside the formal court process. Nevertheless, the formal juvenile court process in many jurisdictions fails to be timely; allows inadequate time to hear each case, and is marked by deficiencies in the representation of the parties. Given the current situation and projections that caseloads will rise,\(^\text{104}\) the court needs help in devising more effective ways to handle the disputes that are brought before it.

Alternative methods of resolving disputes allow parties to settle a legal matter outside the confines of formal court proceedings.
Advantages to alternative dispute resolution include reducing the court’s caseload by creating opportunities for parties to resolve their differences outside the courtroom setting and directly involving the parties in the crafting of the solutions.

**Mediation**

Mediation is one promising form of alternative dispute resolution. Mediation is a non-binding form of dispute resolution in which the resolution must be acceptable to all parties involved in the process. Formal mediation in child abuse and neglect cases involves the use of a trained mediator to help parties (usually the parents, child welfare caseworker, and the child’s legal advocate) reach a settlement which will ideally protect the best interests of the child while acknowledging the concerns of all involved and using, to the extent possible, the resources of the family. Such mediation programs assist the court by facilitating quicker settlements that family members are more likely to support. Mediation can provide participating families with an example of constructive problem solving.105

Mediation is also being used as a diversion alternative for status offender and minor delinquency cases. For example, Connecticut established a statewide Juvenile Mediation Program for minor delinquency cases. Probation officers who were trained to maintain a neutral facilitator role served as mediators to assist parents and children in resolving the intrafamily conflicts underlying the problematic behavior. Communications made during the mediation process were strictly confidential, with only the terms of the agreement being presented to the court. An evaluation of the first year of the program found that 85% of the minor delinquency cases brought to this program were resolved through mediation.106 An evaluation of the long-term effectiveness of the program has not been conducted.

**Family Group Conferences**

Family group conferences, a new alternative dispute model developed in New Zealand, encourage family members, including extended family and close friends, to meet together to solve the family matter that has been brought to the attention of the court.107 The solution crafted through the family conference process is subject to final court approval.

This approach is being used in Oregon’s Family Unity Meetings, which are convened for families in crisis, in which family members, friends, and community support people such as neighbors or clergy, develop a plan for improving the situation.108 A main tenet of this model is building solutions to family problems using the resources of the extended family and the local community. In a child abuse and neglect case, for example, a child who cannot remain at home with parents can be placed in the home of a member of the extended family. Pilot Family Unity programs have been credited with contributing to the decrease in numbers of foster care placements in Oregon. The model is now being adopted throughout Oregon, and variations of the model are being considered in other parts of the country.108

**Peer Courts**

As Edwards discusses in his article, some states have established peer courts in which minor delinquency cases are heard by trained youths with the assistance of volunteer attorneys and judges. Another community court model uses (adult) citizen tribunals to handle minor delinquency cases that have been diverted from the formal court process. An evaluation of New Jersey’s network of citizen tribunals, the Juvenile Conference Committee program, revealed that some of the objectives of the program were met. However, the evaluation exposed difficulties in fact finding, lack of follow-up case monitoring, and inadequacies in the training of committee members. For example, the standard training did not provide adequate information about social service resources. As a result, dispositions that included referrals to social services were primarily made by committee members who were independently knowledgeable about those resources. Finally, because these citizen tribunals are informal mechanisms, there are limits to the types of dispositions they can propose. For example, they cannot place a juvenile in confinement or on probation.109

**RECOMMENDATION**

- Juvenile courts should encourage the development and use of more alternative dispute resolution techniques.
However, because these methods occur outside the formal juvenile court process with its procedural protections, the court must ensure that attention is given to the structure and process of alternative methods to assure fairness to all parties involved.

**Conclusion**

The need for quality juvenile courts continues today. The 100th anniversary of the court should be a time of renewed dedication to ensuring that these extremely important legal decisions in children’s lives are handled with sensitivity to and understanding of children and their development; with good communication and coordination among the many people and institutions on whom children depend; and with full attention to procedural fairness for children, parents, and all parties.

The role of the judge remains critical. Judges are in the best position to ensure due process of law and to use their authority to coordinate the efforts of the myriad agencies involved in these cases to prevent unnecessary delay and to keep the focus on the child, his habilitation, or his protection. As discussed in this analysis and throughout this journal issue, these important tasks can be accomplished only if sufficient priority and resources are given to the work of the juvenile court.

Much from 1899 remains the same. Children are still different from adults. They are still dependent on having safe and nurturing families and communities with agencies that support them in their education and development. The coercive power of the state to order confinement of children, to remove them from their homes, and to terminate their parents’ rights is equally as awesome now as it was then. The argument by the proponents of the juvenile court in 1899 that these factors, in combination, necessitate a specialized court remains relevant and persuasive today.

But much has also changed. Our country has 100 years of firsthand experience in identifying and responding to the many challenges in the work of the juvenile court. As discussed above and throughout this journal, there are many problems in policy and practice that must be faced. It is our hope that the upcoming centennial will cause all citizens to look again at the juvenile court, to affirm its critical role and value, and to recommit to improving the court for the benefit of children and their families.

Carol S. Stevenson, J.D.
Carol S. Larson, J.D.
Lucy S. Carter, J.D.
Deanna S. Gomby, Ph.D.
Donna L. Terman, J.D.
Richard E. Behrman, M.D.

---

2. Section 22 of the act. See note no. 1, Hurley, p. 39.
4. “Prior to the 1899 statute, the law viewed mankind, its varied distinctions as to sex, age, environment and mental equipment notwithstanding, as a single class. Before the bar of a criminal court there was no difference from the viewpoint of the law between the adult and the family.” See note no. 1, Hurley, pp. 9–10.
5. See note no. 1, Hurley, p. 56.
7. See note no. 1, Hurley, pp. 10–11.


16. A crime is considered cleared once someone is charged with that crime. Clearance and arrest statistics answer different questions and give very different pictures of the juvenile contribution to crime. Arrest statistics show the number of individual arrests that were made. Because juveniles, more than adults, tend to commit crimes in groups, arrest statistics tend to attribute a greater percentage of crime to juveniles. Clearance data give a better indication of how much crime was committed by juveniles because they count crimes, not arrestees. See note no. 15, Snyder and Sickmund, pp. 48, 99, 101.

17. See note no. 14, Butts, Snyder, Finnegan, et al., p. 20, Table 30.


21. See note no. 15, Snyder and Sickmund, p. 125.

22. As a result, some juvenile justice systems have adopted more formal procedures for decision-making, including sentencing guidelines, standardized risk and needs assessment instruments, and classification systems which identify the needed level of supervision and help determine appropriate placement. When properly implemented, such procedures can provide greater structure and consistency to the juvenile justice system’s decision-making process and can be used to allocate limited resources more efficiently by directing the most intensive interventions to the most serious offenders. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. *Guide for implementing the comprehensive strategy for serious, violent and chronic juvenile offenders*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1995, pp. 189–230.

23. The questions related to changes in juvenile confidentiality laws are not discussed in this issue or the analysis. This important trend is complex. It calls into question traditional notions of protecting juvenile delinquents in hopes of reducing the stigmatizing effects of publicity and also raises important questions about the use of juvenile records for treatment-related purposes and in criminal court proceedings. For discussion, see Martin, G.A. *Open the doors: A judicial call to end confidentiality in delinquency proceedings*. New England Journal on Criminal and Civil Confinement (1995) 21:2:393–410.

24. California Welfare and Institutions Code § 707(b) and (c).


29. See note no. 27, U.S. General Accounting Office, p. 11.

30. Two studies, one in Florida using data from 1985–1988 and one comparing cases from New York (which requires all cases involving 16-year-olds to be filed in adult criminal court) with cases from neighboring counties in New Jersey, found that transferring large numbers of juveniles to adult courts did not result in reduced recidivism rates for this population of offenders. The New York and New Jersey study found that, while the likelihood of a severe sanction was higher in criminal court, for those actually sentenced to incarceration, the length of sentences was nearly identical. Criminal cases took months longer to resolve than juvenile court cases, often leaving the accused free on bail pending the trial. What is more important, recidivism rates were higher for criminal court cases. The researcher concluded that public


32. These factors typically include the seriousness of the offense; whether the offense was willful, violent, or premeditated; the danger of the individual offender to the community; whether the offense was against a person or property; the maturity of the juvenile and his prior record; and whether the juvenile is likely to be rehabilitated utilizing the services and dispositions available to the juvenile court.


40. See note no. 37, Puritz, Burrell, Schwartz, et al., p. 44.


43. See note no. 13. Torbet, Gable, Hurst, et al., pp. 19–23 and Figure 6.


51. See note no. 15, Snyder and Sickmund, p. 138.

52. See note no. 15, Snyder and Sickmund, p. 139.
53. See note no. 49, Edwards, pp. 11–12.
54. See note no. 15, Snyder and Sickmund, p. 147.
56. Dodge, L. Noncriminal juveniles: Detentions have been reduced but better monitoring is needed. GAO/T-GGD-91-30. Washington, DC: U.S. General Accounting Office, 1991. The compliance start dates varied from state to state; therefore, there was no uniform start date for measuring the state-by-state reductions.
57. Juvenile Justice and Delinquency Prevention Act, 1980 amendments, Public Law 96-509, § 11(a)(13). The JJDPA was amended again in 1984 to define a valid court order (Public Law 98-473 § 613 [b]).
59. These cover a wide range of cities including Biloxi, Mississippi; Carson City, Nevada; Hampton, Virginia; Flint, Michigan; Wailuku, Maui, Hawaii; and Hutchinson, Iowa; Pionke, J. Mayors moving toward implementation of daytime curfews. *U.S. Mayor* (May 28, 1996), p. 15.
61. See note no. 60, Ruelle and Reynolds, p. 349.
62. See note no. 60, Ruelle and Reynolds, p. 357.
63. See, for example, *Johnson v. Opelousas*, LA 658 F.2d 1065 (1981). Most curfew ordinances have been held to be constitutional, however. For a more complete discussion of the constitutional issues regarding curfew, see Federle, K. Children, curfews, and the Constitution. *Washington University Law Quarterly* (Fall 1995) 73,3:1315–68.
65. See note no. 60, Ruelle and Reynolds, p. 361.
67. See note no. 66, Metropolitan Court Judges Committee, p. 5.
70. See note no. 66, Metropolitan Court Judges Committee, pp. 25–26, Appendix A.
72. Some juvenile courts are working with local community agencies to develop effective programs for certain groups of status offenders. Truancy programs that include truancy courts are examples of this effort. The Hamilton County (Ohio) Juvenile Court, in conjunction with the Cincinnati Public Schools, has developed a truancy program that uses community resources initially and turns to court involvement only when necessary. It includes investigations by teachers or social workers who visit the child’s home and work with parents to develop plans to ensure that their children attend school. If the child continues to miss school, the juvenile court holds a truancy hearing at the school to discuss methods for encouraging the child’s attendance. An evaluation of the first five years of the Hamilton County Truancy Program did not show improvements in overall attendance at the program schools. However, a survey of program participants revealed general approval of the program because it was a source of services to families for whom truancy was the sign of more serious underlying problems. See note no. 49, Edwards, p. 21; and note no. 66, Metropolitan Court Judges Committee, pp. 27–49, Appendix B; see also Yux, F. *Truancy program evaluation: Comparison 1989–90 through first semester of 1994–95*. Cincinnati, OH: Hamilton County Juvenile Court, 1995.
73. In the late 1970s, about 50% of all court cases resulted in removal of children from their homes. Over 500,000 children were in foster care and would remain there for three years or more, with many of them subjected to frequent changes in placement. Wald, M.S. State intervention on behalf of “neglected” children: Standards for removal of children from their homes, monitoring the status of children in foster care, and termination of parental rights.
27

The Juvenile Court: Analysis and Recommendations


77. See Figure 1 in the article by Hardin in this journal issue.

78. For a good discussion of the major national data sources and the difficulties in collecting child abuse data, see Lewit, E.M. Child indicators: Reported child abuse and neglect. The Future of Children (1994) 4,2:233–42. The most promising advance in the development of child welfare data is that data can now be analyzed on the individual level in at least five large states (California, Illinois, Michigan, New York, and Texas) as part of the multistate data archive effort led by the Chapin Hall Center for Children in Chicago, Illinois. In the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), Congress appropriated funding to assist states in implementing statewide automated child welfare information systems. With this incentive, most states are building systems to provide comprehensive automated data about child abuse and neglect cases.


80. The Administrative Practices Improvement Project in Santa Clara County, California, found that, in 1993, of 24,454 reports received, 22,437 (91.8%) were closed at intake, 1,142 (4.7%) resulted in voluntary services to the families, and 875 (3.6%) resulted in a petition to the juvenile court to take jurisdiction. For further information about this project, call John Oppenheim, chief deputy director, Social Services Administration, Santa Clara County, at (408) 441-5666.


87. For example, the Healthy Start Program in Hawaii seeks to identify those children who are at most risk for abuse and neglect and provide home visiting and other services to them. This program is being replicated and evaluated at many sites throughout the country. Gomby, D.S., and Larson, C.S., eds. Appendix: Brief descriptions of selected home visiting programs. The Future of Children (1995) 3,3:206–14; Minow, M. Revisiting the issues: Home visiting. The Future of Children (1994) 4,2:243–46.

88. A number of private foundations, including Annie E. Casey in Baltimore, Maryland, and Edna McConnell Clark in New York, have initiatives focusing on communitywide mobilization to prevent child abuse and neglect.

89. Gable, R.J. Court improvement program: Report to the nations survey. Pittsburgh, PA: National Center for Juvenile Justice, August 1996. For more information on various state court
improvement programs, contact Lou Ethel Smith at the Administration for Children and Families, U.S. Department of Health and Human Services, (202) 401-9215.

90. See note no. 78, Omnibus Budget Reconciliation Act (Public Law 103-66).

91. For a comprehensive discussion of the attachment and psychological parent theories underlying this belief that children need safe, stable, and permanent placements, see note no. 84, Berrick, Needell, Barth, and Johnson-Reid, Chapter 1.


95. See, for example, Colorado Rev. Stat. §§ 19-1-102 to 19-3-100.5; 19-3-505; 19-3-604; and 19-3-703 and 19-3-704 (1995). See also note no. 84, Berrick, Needell, Barth, and Johnson-Reid, Chapter 9.

96. For example, the death of Eliza Izquierdo in New York City was the catalyst for numerous actions to understand child abuse and improve the city’s response to it. See Firestone, D. Giuliani seeks tough laws to help abused children. New York Times. February 2, 1996, at B6.

97. Sanborn, J. The juvenile, the court, or the community: Whose best interests are currently being promoted in juvenile court? The Justice System Journal (1994) 17:2:429–63.


100. There are problems with this model. Courts hold power over parents in dependency cases because they can terminate parental rights if efforts at providing family reunification services are unsuccessful. Parents of delinquents or status offenders stand in a different relationship to the court. They may be seeking the help of the court because they have lost control over their child; conversely, they may be willing to walk away from their child and his or her problems without addressing their contribution to the situation. In addition, in a political arena in which the jurisdiction of the juvenile court over delinquency cases is being diminished by states’ “get tough on juvenile crime” laws, it is unlikely that state legislatures will expand the court’s powers to hold parents and agencies accountable in these cases. Furthermore, the expansion of the juvenile court’s ability to evaluate agency performance does not address the limitations that decreasing financial resources put on agencies’ abilities to provide adequate services.


104. See note no. 15, Snyder and Sickmund, p. 111.


