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Abstract

As we enter the 21st century, many States have introduced fundamental changes to their juvenile justice systems. The changes focus on jurisdictional authority, especially transfer to adult court; sentencing guidelines and options; correctional programming; inter-agency information-sharing; offender confidentiality; and victim involvement. At the same time, attention has turned increasingly to prevention, early intervention, rehabilitation, and the use of specialized courts. Because of their special significance in the historical context of the juvenile court, this paper focuses on the emergence of sentencing guidelines to identify underlying trends and issues in the transformation of juvenile justice. In so doing, the paper argues that the considerable attention given by policymakers and researchers to transfer rather than other changes provides a distorted picture of current juvenile justice practice.

## Sentencing Guidelines and the Transformation of Juvenile Justice in the Twenty-First Century

The past decade witnessed dramatic changes to juvenile justice in America, changes that have altered both the focus and administration of juvenile justice as it enters the 21st century (Feld, 1991; Butts & Mitchell, 2000; Harris, Welsh, & Butler, 2000). In contrast to the philosophical foundation and practice of the first juvenile courts, punishment and due process today constitute central features of processing. These emphases, which run counter to the rehabilitative *parens patriae* (“state as parent”) foundation of the first juvenile courts, emerged in the 1960s with a series of U.S. Supreme Court decisions. In cases such as *In re Gault*, the Supreme Court recognized that juvenile courts served not only a rehabilitative function but also a punishment function, and that, consequently, due process rights and procedures should figure more prominently in juvenile proceedings (Feld, 1999). In recent years, the transition has become more pronounced, with states enacting sweeping legislative changes affecting all aspects of the juvenile justice system (Torbet et al., 1996; National Criminal Justice Association, 1997; Torbet & Szymanski, 1998).

It is important to recognize, however, that the changes have not been entirely or even primarily focused on punishment. One would not know this from a review of research, the bulk of which has examined patterns, correlates, and effects of transfer (for a review, see Butts & Mitchell, 2000). The focus is understandable -- transfer provides an easily identifiable symbol for debates about the merits of maintaining two separate juvenile and adult systems (Hirschi & Gottfredson, 1993; Feld, 1999). Indeed, why have a juvenile justice system if youths are being

sent into adult courts? But the fact is that only about one percent of all formally processed delinquency cases ultimately are transferred (Snyder & Sickmund, 1999, p. 171).

Focusing solely on transfer ignores the fact that other equally if not more significant transformations have occurred in juvenile justice. These include enactment of sentencing guidelines; creation of blended sentencing options for linking the juvenile and criminal justice systems; enhanced correctional programming, with an increasing emphasis on treatment; greater inter-agency and cross-jurisdiction cooperation and information-sharing; reduced confidentiality of court records and proceedings; and increased participation of victims in juvenile justice processing (Guarino-Ghezzi & Loughran, 1996; Torbet et al., 1996; National Criminal Justice Association, 1997; Fagan & Zimring, 2000). In addition, states increasingly are turning their attention to prevention, early intervention, rehabilitation, and the use of specialized courts to address juvenile crime (Howell, 1995; Coordinating Council on Juvenile Justice and Delinquency Prevention, 1996; Butts & Harrell, 1998; Cocozza & Skowrya, 2000; Cullen & Gendreau, 2000; Lipsey, Wilson, & Cothorn, 2000; Rivers & Anwyl, 2000; Butts & Mears, 2001).

It is apparent that juvenile justice has been evolving along many dimensions. With all of these changes, the question arises: What, if any, are the common trends and issues underlying these different changes? To answer this question, I examine sentencing guidelines, showing that they reflect many of the major trends and issues in juvenile justice. I focus on guidelines because typically they apply to all juvenile offenders and embody a range of goals, thus reflecting many of the conflicts and tensions inherent in attempts to modify the focus and administration of juvenile justice. By contrast, transfer laws, which have received much more attention in the

research literature, focus only on select age groups and offenders and have the delimited purpose of punishing and deterring offenders.

The primary goal of this paper, in short, is to use an analysis of sentencing guidelines to highlight a range of critical underlying trends and issues in juvenile justice. A secondary goal is to show that research on transfer laws provides little insight into juvenile justice as it is practiced today, and, in the absence of research on or attention to other reforms, can provide a distorted picture of current practice. To achieve these goals, I begin by briefly describing both the history of the juvenile court and the emergence of juvenile sentencing guidelines. I then use this discussion to identify key trends and issues in juvenile justice.

### Foundation of the Juvenile Justice System

Juveniles have not always been viewed the same way throughout U.S. history. For example, in the 18th century, juvenile offenders were treated as adults and received the same types of punishments. During the 19th century, a movement began that focused on the unique, less-than-adult capacities and needs of youths. This movement highlighted the need for a specialized sanctioning process, one that emphasized rehabilitation and de-emphasized punishment.

The result of this movement was the development of the first U.S. juvenile court in Cook County, Illinois in 1899. By 1925, juvenile courts were established in all but two States, with most courts defining juveniles as individuals who were 17 years of age or younger. (For histories of the juvenile court, see Platt, 1977, Bernard, 1992, Feld, 1999, Butts & Mitchell, 2000.)

These new youth-centered courts were grounded in the doctrine of *parens patriae*. The guiding rationale was that States had an obligation to intervene in the lives of children whose

parents provided inadequate care or supervision. Juvenile court interventions were to be benevolent and in the “best interests” of the child.

For this reason, court processing entailed fundamentally different notions of procedural and substantive justice. Unlike adult court, juvenile court proceedings were to be informal, conducted on a case-by-case basis, with the aim of improving the lives of children through individualized treatment and varying dispositional options, ranging from warnings to probation to confinement.

The basis for intervening in the lives of juvenile offenders derived not from criminal law but civil law, further highlighting the focus on helping youths rather than sanctioning them for their crimes. Similarly, the philosophy of *parens patriae* clearly suggested that the courts had an obligation to help youths who committed crimes or who clearly needed help. As a result, juvenile courts could use coercive means to help youths, even when relatively minor crimes had been committed or when there was insufficient basis for determining that a crime in fact was committed.

The potential for abuse of this discretionary authority is evident in critiques of the juvenile court (see Feld, 1999). Indeed, as many scholars have shown, the transition to establishing a juvenile justice system was not motivated entirely by benevolent concerns. Under the guise of providing social services and crime control, juvenile courts could, for example, be used instead to provide a form of social control over “undesirable classes,” including minorities, immigrants, and indigents (Butts & Mitchell, 2000).

By the 1960s, deep-rooted concerns arose about the procedural and substantive unfairness of juvenile court proceedings, leading the U.S. Supreme Court, through a series of decisions, to emphasize greater procedural parity with criminal court proceedings. The result was an increasingly criminal-like juvenile court. This trend, coupled with tougher transfer provisions in

the 1990s, led to considerable debate about the merits of having two separate court systems, one for juveniles and one for adults (Feld, 1999).

### Juvenile Sentencing Guidelines: An Overview

The early juvenile court emphasized individualized, offender-based treatment and sanctioning. Indeed, almost every justification of the juvenile court rests on the notion that the most appropriate and effective intervention for youths is one that takes into account their particular needs and resources. Ironically, despite the establishment of this view over 100 years ago, recent research provides considerable empirical support for it -- the most effective interventions are those premised on addressing the specific risk, needs, and capacities of youths (Lipsey, 1999; Cullen & Gendreau, 2000).

Under the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Wilson & Howell, 1993; Howell, 1995), States have been encouraged to adopt individualized sanctioning and to emphasize risk and needs assessment. Many have responded by enacting guideline systems that are modeled to a considerable extent on the Comprehensive Strategy.

In some States, these guideline systems are voluntary, in others there are incentives to use them, and in still others they are required. In each instance, the guidelines typically are offense-based and outline a sequence of increasingly tougher sanctions, while at the same time emphasizing rehabilitative interventions when appropriate.

In 1995, for example, Texas enacted what it termed the Progressive Sanctions Guidelines. The Guidelines outline seven tiers of sanctioning, with each linked to the instant offense and the



offender's prior record. Once the appropriate level of sanctioning is established, courts are encouraged to include additional, non-punitive interventions. Although the Guidelines are voluntary, Texas documents the extent to which county-level sanctioning deviates from the Guideline recommendations (Texas Criminal Justice Policy Council, 2001). Similar approaches have been implemented in other states, including Illinois, Kansas, Nebraska, New York, Utah, Virginia, and Washington (Torbet et al., 1996; National Criminal Justice Association, 1997; Corriero, 1999; Demleitner, 1999; Lieb & Brown, 1999; Fagan & Zimring, 2000).

State guideline systems often identify their goals explicitly. In Texas, for example, the Progressive Sanction Guidelines are used to "guide" dispositional decision-making in providing "appropriate" sanctions and to promote "uniformity" and "consistency" in sentencing (Dawson, 1996). At the same time, the Guidelines are seen as furthering the newly established and explicitly stated goal of the Texas Juvenile Justice Code -- namely, punishment of juveniles. But they also promote rehabilitative sanctioning by encouraging appropriate treatment and interventions for each recommended sanction level. In addition, the Guidelines implicitly promote certain goals, including public safety through incapacitation of the most serious or chronic offenders and reduced crime through "get tough," deterrence-oriented sanctioning.

Other states have followed similar paths. For example, the State of Washington established sentencing guidelines aimed directly at reducing the perceived failings of a system founded on practitioner discretion (Lieb & Brown, 1999). The guidelines focus not only on offense-based considerations, but also on the juvenile's age, with younger offenders receiving fewer "points" and thus more lenient sanctions. Similarly, Utah has enacted sentencing guidelines focusing on proportionate sentencing, early intervention, and progressively intensive supervision and sanctioning for more serious and chronic offenders (Utah Sentencing Commission, 1997).

Because many States increasingly are adopting sentencing guidelines, and because the guidelines focus on all youths rather than simply those who may be transferred, an examination of them can help to identify underlying trends and issues emergent in juvenile justice. By contrast, a focus on transfer, typical of most research on recent reforms, provides relatively little leverage to do so. Transfer laws typically focus on “easy cases,” those in which the seriousness of the offense largely vitiates, rightly or wrongly, concerns many would have about individualized or rehabilitative sanctioning. Any resulting debate therefore centers on extremes: Should we retain or eliminate the juvenile court?

But a broader issue in juvenile justice is how to balance individualized, offender-based sanctioning with proportional and consistent punishment. These issues, among several others, are a consideration in almost every case coming before the juvenile court. It is appropriate, therefore, to focus on a recent reform, such as sentencing guidelines, that typically target, in one manner or another, all youths, and that reflects attempts to shape the entire juvenile justice system. For this reason, the remainder of this paper uses a focus on sentencing guidelines to identify key trends and issues in the transformation of juvenile justice.

## Juvenile Sentencing Guidelines: Trends and Issues in the Transformation of Juvenile Justice in the New Millennium

### Balancing Multiple and Conflicting Goals

The motivation for transforming juvenile justice has come from many sources. Scholars cite a range of factors, including the desire to address violent crime, inconsistency and racial/ethnic

disproportionality in sentencing, financial burdens faced by counties versus states, and public support for both “get tough” and rehabilitative measures (Bazemore & Umbreit, 1995; Bishop, Lanza-Kaduce, & Frazier, 1998; Butts & Mitchell, 2000).

As suggested by the different motivations for reform, a key trend in juvenile justice is the move toward balancing multiple, and frequently competing, goals, only one of which includes the punitive focus associated with transfer (Bazemore & Umbreit, 1995; Guarino-Ghezzi & Loughran, 1996; Mears, 2000). Today, many juvenile justice codes and policies focus on retributive/punitive sanctioning (through “get tough” sanctions generally), incapacitation, deterrence, rehabilitation, individualized as well as consistent and proportional sentencing, and restorative sanctioning.

Reduced crime is a broad goal underlying many but not all of these more specific goals. For example, “get tough” sanctions are viewed as a primary mechanism to instill fear and achieve specific or general deterrence (i.e., reduced offending among sanctioned or would be offenders), or to reduce crime through temporary incapacitation of offenders. In many instances, retribution serves as the primary focus of sanctioning, irrespective of any potential crime control impact.

Some goals, like rehabilitation, serve as steps towards enhancing the lives of juveniles, not simply reducing their offending. Others, such as restorative sanctioning, focus on reintegrating offenders into their communities while at the same time providing victims a voice in the sanctioning and justice process. Still others, including proportional and consistent sentencing, focus primarily on fairness rather than crime control. That is, the motivation is to provide sanctions that are proportional to the crime and that are consistent within and across jurisdictions, so that juveniles sanctioned by Judge X or in County X receive sanctions similar to those administered by Judge Y or in County Y.

Historically these different goals, including what might be termed intermediate goals leading to reduced crime, have overlapped considerably with those of the criminal justice system (Snyder & Sickmund, 1999, pp. 94-96). In general, though, criminal justice systems have given greater weight to punishment than rehabilitation, while juvenile justice systems generally have favored rehabilitation over punishment.

In reality, the goals in each system are diverse, as are the weightings given to each goal. Indeed, the diversity of goals, and their weightings, can make it difficult to determine how exactly the two systems differ, especially if we focus only on new transfer laws (see, however, Bishop & Frazier, 2000). But one major difference between the two is that juvenile justice systems -- as is evident in their sentencing guideline systems -- are actively struggling to balance as wide a range of goals as possible. By contrast, most criminal justice systems have veered strongly towards retribution and incapacitation (Clark, Austin, & Henry, 1997).

#### Giving Priority to Punishment through Offense-Based Guidelines and Changes in Discretion

Most State guideline systems use offense-based criteria for determining which types of sanctions to apply (Coolbaugh & Hansel, 2000). Once the punishment level has been established, the court is supposed to consider the needs of the offender and how these may best be addressed. However, these needs frequently are only vaguely specified and rarely assessed. One result is that priority implicitly and in practice may be given to punishment.

This priority can be reinforced through various mechanisms that place greater discretion in the hands of prosecutors rather than judges. For example, laws that stipulate automatic sanctions for certain offenses do not eliminate discretion; instead, they shift it to prosecutors, who can

determine whether and how to charge an offense (Sanborn, 1994; Singer, 1996; Feld, 1999; Mears, 2000). Consequently, in practice many guideline systems make punishment a priority not just for youths who may be transferred, but for all youths referred to juvenile court.

Sentencing guidelines have not gone unopposed. For example, research on the Texas Progressive Sanction Guidelines indicates that many judges resisted enactment of the Guidelines and then, once they became law, using them (Mears, 2000). One reason is their belief that offense-based criteria provide too limited a basis for structuring decision-making. Thus, even though compliance with the Guidelines is voluntary, some judges feel that the Guidelines symbolize too narrow a focus, one that draws attention from factors they believe are more important, such as the age and maturity of the youth and their family and community contexts. Such concerns have been expressed about adult sentencing guidelines (see, e.g., Forer, 1994). One difference with juvenile sentencing guidelines is that, despite the views of opponents, they generally state explicitly that there are multiple goals associated with sanctioning and that practitioners should consider a range of mitigating factors (Howell, 1995).

#### Balancing Discretion vs. Disparity and Consistency, and Procedural vs. Substantive Justice

In stark contrast to the early foundation of the juvenile court, many States today are intent on eliminating disparity and inconsistency in sentencing (Torbet et al., 1996; Feld, 1999). The widespread belief, evident in many sentencing guidelines, is that (a) judicial discretion causes disparity and inconsistency and (b) that offense-based systems can eliminate or reduce these problems. Both beliefs prevail despite the fact that little empirical evidence exists to support them (Sanborn, 1994; Yellen, 1999; Mears & Field, 2000).

But the fact that such strategies may not work does not belie the underlying trend toward discovering ways to promote fairness and consistency in sentencing. Nor does it belie the fact that, as with adult sanctioning, there likely will continue to be an ongoing tension between the use of discretion and the need to have sanctions that are relatively similar for different populations and within and across jurisdictions.

This tension is captured in part by the distinction in the sociology of law between procedural and substantive justice. From the perspective of procedural justice, fairness emerges from decisions that are guided by established rules and procedures for sanctioning cases that exhibit specific characteristics. By contrast, from the perspective of substantive justice, fairness emerges from decisions that are guided by consideration of the unique situational context and characteristics of the defendant (Gould, 1993; Ulmer & Kramer, 1996).

In recent years, and as exemplified by the creation of offense-based sentencing guidelines, juvenile justice systems increasingly are focusing on procedural justice. In the case of transfer particularly, the Supreme Court and state legislatures have attempted to ensure that there is procedural parity with adult proceedings. Yet, despite the increased proceduralization, for most cases facing the juvenile courts, substantive justice also remains a priority, especially when sanctioning first-time and less serious offenders. In these instances, States have devised strategies, outlined in their guidelines, that promote diversion, rehabilitation, and treatment.

### Maintaining the View That Most Youths Are “Youths,” Not Adults

Public opinion polls show that while most people consistently support rehabilitative sanctioning of youths, they also support punitive, “get tough” measures for serious and violent

offenders (Roberts & Stalans, 1998). Moreover, even when the public supports transferring youths to the adult system, they generally prefer youths to be housed in separate facilities and to receive individualized, rehabilitative treatment (Schwartz, Guo, & Kerbs, 1993).

The apparent contradiction likely constitutes the primary reason that wholesale elimination of the juvenile justice system has not prevailed. In the debate about abolishing the juvenile court, this fact frequently is omitted, perhaps because so much attention has centered on changes in transfer laws. Indeed, were one to focus solely on recent trends in transfer, one might conclude that an eventual merging of juvenile and adult systems is inevitable (Feld, 1999).

Yet the focus and structure of juvenile sentencing guidelines, which explicitly call for rehabilitation and early intervention, suggests otherwise. In contrast to “get tough” developments in the criminal justice system (Clark, Austin, & Henry, 1997), most states -- even those without guideline systems -- have struggled to maintain a focus not only on the most violent offenders, but also on efficient and effective intervention with less serious offenders.

This trend is reflected in the proliferation of alternative, or specialized, courts, including community, teen, drug, and mental health courts (Butts & Harrell, 1998; Office of Justice Programs, 1998; Santa Clara County Superior Court, 2001). These courts focus on timely and rehabilitative sanctioning that draws on the strengths of families and communities and the cooperation and assistance of local and state agencies.

Some authors suggest that these courts threaten the foundation of the juvenile court (Butts & Harrell, 1998). But specialized courts can be viewed as symbolic of the reemergence of the juvenile justice system as historically conceived -- namely, as a system designed to intervene on an individualized, case-by-case basis, addressing the particular risks and needs of offenders (Butts & Mears). Indeed, to this end, many guidelines promote diversion of first- and second-

time, less serious offenders from formal processing to informal alternatives available through specialized courts.

### Limited Conceptualization and Assessment of the Implementation and Effects of Changes in the Juvenile Justice System

One last and prominent trend in juvenile justice bears emphasizing -- the lack of systematic attention to conceptualizing and assessing both the implementation and effects of recently enacted laws. A focus on sentencing guidelines illustrate the point: Few States have systematically articulated precisely what the goals of the guidelines are, how specifically the guidelines are expected to achieve these goals, or what in fact the effects of the guidelines have been (Coolbaugh & Hansel, 2000; Fagan & Zimring, 2000; Mears, 2000).

One example common to many guidelines is the focus on consistency. Several questions illustrate the point. What exactly does “consistency” mean? Is it identical sentencing of like offenders within jurisdictions? Across jurisdictions? Does it involve similar weighting of the same factors by all judges, or judges within each jurisdiction in a State? Across States? Apart from definitional issues, does “consistency” lead to reduced crime or increased perceptions of fairness? If so, how? What precisely are the mechanisms by which increased consistency would lead to changes in crime or perceptions of fairness? The failure to address these questions means that it is impossible to assess whether there has been more or less “consistency” resulting from guideline systems.

Similar questions about many other aspects of recent juvenile justice reforms remain largely unaddressed, with two unfortunate consequences. First, as noted above, it is impossible to assess



the impacts of the reforms without greater clarity concerning their goals and the means by which these goals are to be reached. As a result, it is difficult if not impossible to make informed policy decisions, including those focusing on maintaining or eliminating the juvenile justice system (Schneider, 1984; Singer, 1996). Second, without conceptualization and assessment of the impacts of recent reforms, there is an increased likelihood that research on delimited aspects of juvenile justice systems will be generalized into statements about entire systems, even though there may be little to no correspondence between the two.

### Conclusion

Recent changes to juvenile justice systems throughout the U.S. indicate a trend toward developing more efficient and effective strategies for balancing different, and frequently competing, goals. This trend is evident in recent juvenile sentencing guidelines. As the above discussion demonstrate, guidelines focus on more than transferring the most serious offenders to the criminal justice system. They also focus on balancing competing goals, reducing discretion and promoting fair and consistent sanctioning, and tempering procedural with substantive justice. More generally, guidelines aim is to preserve the notion that youths are not adults.

One result of such trends is increasing interest in alternative administrative mechanisms for processing youthful offenders. Specialized “community,” “teen,” “drug,” “mental health” and other such courts have been developed to do what the original juvenile court was supposed to do -- provide individualized and rehabilitative sanctioning. But the “modern” approach involves doing so in a more timely and sophisticated fashion, and in a way that draws on the cooperation and assistance of local and state agencies as well as families and communities.

In the new millennium, juvenile justice thus involves more than an emphasis on due process and punishment. It also involves substantive concerns, including a range of competing goals, a belief in the special status of childhood, and the desire to develop more effective strategies for preventing and reducing juvenile crime.

By focusing on sentencing guidelines, these types of issues become more apparent, highlighting the need for researchers to look beyond transfer laws in assessing recent juvenile justice reforms. Indeed, there is a need for research on many new and different laws, policies, and programs in juvenile justice, most of which remain unassessed. As we enter the new millennium, it will be critical to redress this situation, especially if we are to move juvenile justice beyond “juvenile” vs. “adult” debates and to develop more efficient and effective interventions.

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