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Juvenile Justice in Transition

JULIAN C. DIXON*

On February 1, 1974, Speaker of the Assembly Robert Moretti appointed a select committee on juvenile violence which was chaired by the author. The purpose of the committee was to investigate juvenile violence and to determine if a reduction in criminal and violent acts by juveniles could be realized through legislation. The committee held hearings and heard from numerous witnesses, investigated many aspects of the juvenile crime problem and heard most points of view with regard to the causes and effects of juvenile crime. Its report was issued in November of 1974.

At page 3 of its report, the committee reported the following findings regarding the magnitude of juvenile crime:

1. The number of juveniles arrested in California for crimes against persons (which include homicide, robbery, assault and forcible rape) rose sharply between 1968 and 1973 (46.8 percent) compared with a decline (10

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percent) in all other juvenile arrests. The number of adults arrested in California for crimes against persons rose 18.5 percent between 1968 and 1973, but did not increase as sharply as did the "all other" category (37.8 percent).

2. The proportion of males to females among juvenile offenders arrested in California between 1968 and 1973 showed little change. In 1968, males comprised 77.3 percent and females 22.7 percent of those arrested; in 1973 males comprised 75.3 percent and females 24.7 percent. Adult offenders also showed little change in the male-female proportions.
3. Compared to the national picture, California showed an alarming increase in the number of arrests for violent crimes from 1968 to 1973 while the national percentage of juvenile arrests remained approximately the same.
4. Based on total arrests, the national percentage of juveniles arrested for violent crimes showed no substantial increase; but the actual number of crimes against persons rose sharply.
   Between 1968 and 1973, there was a 59 percent increase in the number of juveniles arrested for murder; burglary increased 18 percent, aggravated assault rose 42 percent, and juvenile arrests for rape doubled to 52 percent.

These findings, coupled with an increased demand by the news media and the public for a solution, made it apparent that the juvenile justice system was inadequate to cope with the current problem and that legislative changes should be attempted.

ESTABLISHMENT OF THE JUVENILE JUSTICE SYSTEM

The juvenile justice system was originally established as a means of separating non-violent, reasonably rehabilitatable juvenile offenders from the adult system. A review of the era surrounding the establishment of juvenile courts reveals that the majority of the acts and/or actors posed no substantial danger to the persons or properties of others and that a substantial majority of the offenders could readily be rehabilitated if offered proper sevices. Therefore, the juvenile court was set up to emphasize rehabilitation of the juvenile. The proceedings were held in private because, as opposed to criminal trials in the adult courts, there was little public need, such as protection, to be served by public trials in the juvenile courts. On the contrary,

when no need for protection was present, public trials would only serve to mitigate against rehabilitative measures instituted and prescribed by the court and against rehabilitative conduct on the part of the minor. In keeping with this philosophy of rehabilitation, lawyers were not placed into the juvenile court. It was believed that a probation officer, acting as an objective officer of the court, should have the obligation and duty to determine which process or method could best rehabilitate the minor. This objective court officer would report to the court the information he had garnered and the proposals he had drawn up; the court could then make its order for the juvenile. Without lawyers, the process was relatively non-adversary in nature.

THE ORIGIN OF THE DEFICIENCIES IN THE JUVENILE COURT SYSTEM

Two major changes have occurred in recent years which substantially altered the functions of the juvenile court and created two other effects which brought into serious question the ability of the juvenile court to properly deal with its present juvenile population.

First

The United States Supreme Court decided *In re Gault*. In *Gault* the Court determined that minors in juvenile court proceedings had the right to counsel. Subsequent cases have extended the *Gault* rationale. Minors now have nearly all the rights of adults except the right to bail and the right to a jury trial.

The placement of defense attorneys in the juvenile court procedures, with their ethical obligations to obtain their clients' releases, rendered the procedures no longer non-adversary in nature. Present in court to counter the defense attorney, if anyone, was the probation officer. Unfortunately, the probation officer was not supposed to act as a representative or counsel for either side but was obligated to act as an objective analyzer for the court. As vacuums are seldom left unfilled in human interactions, many probation officers took it upon themselves to act as representatives of the People and to attempt to oppose defense attorneys. The result was chaos. This activity was in conflict with the probation officer's legislatively mandated role and further resulted in ineffective representation of the People.

In attempting to fulfill his stated role, the probation officers' advocacy was seldom wholehearted, and since he was not legally trained he was unable to effectively counter the defense attorney in this legal arena. In seeking to resolve the dilemma of attempting to simultaneously represent conflicting interests, many probation officers felt it no longer their essential duty to represent the interest of the minor in the rehabilitation effort but believed that their primary duty was to represent the interests of the People of the State of California. Obviously, this somewhat chaotic situation could not last very long.

In some counties, including the County of Los Angeles, the prosecuting attorney was invited into the juvenile proceedings by the presiding judge. Unfortunately, there was no clear legislative provision for such action. Hence, numerous difficulties were encountered in defining roles between the prosecuting agency and the probation agency within counties attempting such programs. For example, it was unclear whether the prosecutor was independent of the probation officer and acted as a prosecutor or, on the contrary, whether the prosecutor was the counsel for the probation department which was statutorily the petitioner in juvenile court matters.

Second

The other phenomenon which brought the entire juvenile court system under attack was the dramatic rise in violent crimes against persons and property by juveniles within the State of California. With this advent of violent activity, the purposes sought to be achieved by non-public trials and the concentration on rehabilitation were brought into question. If the public was endangered by the acts of juveniles, it no longer made sense to have private hearings. It no longer made sense to ignore the interest of the public and to concentrate solely on the interest of the minor if the public was seriously endangered by juvenile crime. Further, it was becoming increasingly more difficult to justify the rehabilitative concept as the singular or primary purpose of the juvenile court in view of the increasing difficulty of rehabilitating the older, more violent juveniles.

Third

Effects of these two changes could be observed in the activities of the personnel within the juvenile court process. As more and more juveniles were committing violent acts, more of the energies of the personnel were concentrated thereon. For example, if a member of the juvenile court system was pre-

sented with two hypothetical cases, one involving a twelve-year-old boy who is charged with the theft of a loaf of bread from a local market and the other concerning a seventeen-year-old youth, with a history of violence, who was charged with a serious, violent rape, virtually all of that member's energies would be expended upon the latter juvenile. The first juvenile, would, at most, be placed on six-months probation and merely called at the end of the probationary period to determine whether or not he was getting along well. Perhaps this result is caused by the natural human tendency to want to involve oneself in the more interesting and somewhat tougher case. Whatever the cause, however, the result was a shifting of juvenile court resources away from those minors who best fit within the traditional purpose of the juvenile court and who could, in all likelihood, be diverted from further criminal activity. These minor offenders, in many instances, only received the court's full attention once they also had committed serious, violent acts.

Fourth

It was further observed that roughly 23 percent of the males and 70 percent of the females held in correctional institutions by juvenile authorities would not be guilty of any crime for which an adult could be arrested or prosecuted. These juveniles are status offenders—runaways, truants, incorrigibles, etc.—who for one reason or another must be temporarily removed from their homes by the juvenile authorities. These status offenders filled the jails and detention centers and were being housed in much the same way as criminal offenders.

Juvenile authorities bemoan the practice of detaining status offenders in secure facilities, yet to many the situation seems hopeless and inevitable without reasonable alternatives.

It was felt that the difficulties outlined above, together with numerous tangential problems, required legislative changes to return the juvenile justice system to some measure of effectiveness. The prior legislative framework no longer fit the realities of present juvenile activities.

EARLIER LEGISLATION

Although, prior to 1975, bills addressing themselves to changes within the juvenile justice system had been introduced,

1975 clearly saw the largest number of major legislative proposals for change since the present juvenile justice system had been legislatively established. Initially, the author introduced A.B. 1428. The main features of A.B. 1428 were to place the prosecuting attorney into the juvenile court as the representative of the People, to add "protection of the public" as a purpose of the juvenile court system and to place with the prosecuting attorney the discretion of filing cases in the adult court against 16-17 year olds who commit certain listed offenses.

Other major measures introduced included A.B. 2672 by Assemblyman Art Torres, which was introduced on behalf of the Probation Officers Association of the State of California, and the comprehensive package A.B. 2385 by Assemblyman Alan Sieroty. Measures were also introduced by Assemblyman Alister McAlister and former Assemblyman Robert McLennan.

The above-referenced measures all attempted, by widely varying means, to address the juvenile crime phenomena. An example, A.B. 2385 contained a major feature for community youth boards. It was proposed in that measure that community youth boards be set up in each of the high school attendance areas. Misdemeanors and some minor felonies committed by minors would be referred to these boards which would consist of 15 members chosen from the community. It was hoped that these boards would demoralize the juvenile court process and would bring into play the pressures and resources of local communities. These community youth boards were modeled after successful community projects in various locations, including East Palo Alto, California.

Each of the above measures were amended numerous times and each measure, including A.B. 1428, sponsored by the author, died.

A.B. 3121

In the spring of 1976, the history of A.B. 1428 was thoroughly and carefully reviewed by the author with numerous other persons and groups. Following that analysis, A.B. 3121 was drawn up. A.B. 3121 was supported by numerous groups whose input helped determine its content. Initially, A.B. 3121 called for: (1) placing the prosecuting attorney into the juvenile court as the representative of the People; (2) instilling in the minor a sense of responsibility for his own acts; (3) a list of violent felonies, the commission of which, by a 16 or 17 year old, together with a prior conviction, would allow the prosecuting attorney to file

directly in the adult court. Numerous extended discussions were conducted concerning the content of A.B. 3121, and it was substantially revised in the Criminal Justice Committee of the State Assembly. The bill then passed on the floor of the Assembly, and was set for hearing in the Senate Judiciary Committee. In the Senate Judiciary Committee it was again substantially revised in the direction of its initial form. Thereafter, discussions were conducted with regard to the content of A.B. 3121 between members of the community, the Senate, the Assembly, law enforcement agencies and the Governor's Office.

The bill's final form was arrived at on August 30, 1976, which was the final day for passage of legislation. The measure cleared the Assembly shortly after 11:30 on August 30, 1976 and cleared the State Senate with approximately three minutes to spare and was the second to last bill to clear that body during the 1975-76 session.

In its final form, A.B. 3121 addressed the issues that were believed to cause the difficulties within the juvenile court system. The changes implemented by A.B. 3121 attempt to make the juvenile more rational and to return it to its primary function of rehabilitation.

PURPOSES OF A.B. 3121

First

The Welfare and Institutional Code Section 601 status offender should be dealt with under general juvenile law principles. The status offender is generally brought within the juvenile system merely because of his age. Therefore, a program to handle status offenders should offer different treatment than that afforded criminal offenders. Further, the program should avoid punishment and emphasize rehabilitation. Placing status offenders in secure facilities with criminal offenders mitigates against rehabilitation and hasn't the counterveiling purpose of protecting the public from the minor's acts. Further, the use of secure facilities to house status offenders is a misuse of scarce resources and the cost, in terms of that procedure's potential negative impact on the juvenile status offender, is beyond calculation.

A.B. 3121 therefore seeks to make the juvenile system more responsible to the rehabilitative function by "deinstitutionalizing" the status offender. The bill seeks to foster the development of creative programs by the various counties to house the hundreds of status offenders who have to be temporarily removed from their own homes.

Second

The legislation added, as a purpose of the juvenile justice system in dealing with the Section 602 criminal offender, the concept of instilling in a minor a sense of responsibility for his own acts (e.g., by ordering that the minor make restitution). This addition to the avowed purpose of the system together with 1975 legislation which added the goal of public protection, allows the juvenile court and the juvenile justice system to equally consider the rights of the public, the rights of victims, and the rights of the juvenile. These new purposes were not intended to supplant the old purpose of rehabilitation but were rather intended to co-exist with it.

Third

The bill placed the prosecuting attorney into juvenile court as the representative of the People in Section 602 (criminal) matters. The purpose of the prosecutor's presence was to ensure that the People of the State of the California would receive adequate representation in matters in which their property or persons were being threatened or had been damaged. By engaging the prosecutor in criminal matters, the violent acts of juveniles can be addressed by persons trained to deal with such activity. Further, defense attorneys will be confronted by legally-trained prosecutors and the probation officers will be able to resume the role of an objective officer of the court charged with the duty of determining which actions would be best for the minor commensurate with the goal of protecting society from the acts of violent juveniles. No longer will the probation officer's role in the junveile court system be distorted by requiring him to assume a secondary duty as prosecutor.

Fourth

The Bill provides that 16 or 17 year olds charged with one of fourteen listed felonies are presumptively unfit for trial within the juvenile court. The juvenile has the burden of going forward with evidence to rebut the presumption. This provision of A.B. 3121, coupled with S.B. 1695 (which allows the court to look at

the present offense alone to determine fitness for trial in juvenile court), will make much easier the transfer of violent juveniles to adult court.

The juvenile court, operating as it does under the *in loco parent's* concept, is not equipped to handle violent crimes. Removal of these cases from the juvenile court, cases which the court is not truly equipped to handle, should free resources which can be applied to those juveniles most amenable to the rehabilitation purpose of the juvenile justice system.

An arbitrary age limit dividing the classes of juvenile and adult offenders makes eminent sense when the acts involved constitute relatively minor crimes. The arbitrary line is amply justified when juveniles are stealing watermelons from the backyard garden patch but the justification is not as easily perceived when a juvenile 17 years and 11 months old commits armed robbery and is tried in juvenile court while a person 18 years old, who commits the same crime, is tried as an adult.

The previous system will continue to be utilized for other 16 or 17 year olds who, it is believed, should be tried in the adult court. In these situations the presumption of fitness for trial in the juvenile court still remains, and the burden of going forward with the evidence to show unfitness remains with the petitioner who seeks removal to adult court.

CONCLUSION

It is hoped that, by these changes, the entire area of juvenile justice will be made more rational and be brought more into line with the original purpose of rehabilitation.

Those minors who have not committed criminal acts but who have only committed status offenses will no longer be treated as if the public needs to be protected from them but will be offered new and, hopefully, innovative rehabilitative services.

Obviously, no one knows if any of the features of A.B. 3121 will have the desired effect. Even if A.B. 3121 does have the intended effect, passage of the law is certainly not going to correct all of difficulties that exist among juveniles in our society. The difficulties can only be corrected by much more basic changes. A total dedication on the part of our society to early

childhood education, a return to family concerns and less reliance on the government or the police to solve problems between parents and juveniles are necessary.

The results of A.B. 3121 will be carefully monitored to see if the law has had the desired effect and if further legislative changes are necessary. For example, the provisions with regard to status offenders will be carefully watched to determine if the provision preventing those minors from being placed in secure facilities actually assisted in fulfilling the objective of helping those minors. If, for example, it is determined that many status offenders can only be rehabilitated by some new type of limited, secured attention, then legislation to provide for such will seriously be considered.

A.B. 3121 should not be looked upon as a solution to the problems of the juvenile justice system but should be looked upon as a good faith effort to initiate some changes within the system and as an attempt to initiate innovation within the agencies and departments that provide rehabilitative services for the minors who come within the juvenile justice system.