

U.S. CRIMINAL JUSTICE POLICY

A CONTEMPORARY READER

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The U.S. Juvenile Justice Policy Landscape

CHAPTER

10

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■ Introduction

State governments enacted sweeping changes in law and policy in recent decades, profoundly affecting the juvenile justice landscape in the United States. Many of the changes mirror those made to the adult justice system (Butts & Mears, 2001; Howell, 2003; Kitzmann, 2002; Wool & Stemen, 2004). Reduced sentencing discretion, increased information sharing among juvenile and adult justice systems, greater public access to juvenile records, and the transfer of juveniles to adult courts for prosecution are just a few examples. The last two decades have also been marked by innovation aimed at preventing delinquency and promoting the fair treatment and rehabilitation of young offenders (Butts & Mears, 2001). Recent advances include the proliferation of problem-solving courts (e.g., juvenile drug, mental health, and truancy court programs), developmentally based diversion programs, competency assessments, and increased efforts to integrate treatment and evidence-based approaches into the fabric of juvenile justice (Bishop, 2006; Mihalic, Fagan, Irwin, Ballard, & Elliott, 2006; Snyder & Sickmund, 2006).

New juvenile justice laws and policies continue to emerge as state lawmakers respond to fluctuations in crime, public sentiment, and changing policy priorities. Between 2005 and 2007, states proposed over 1000 juvenile justice measures, with roughly 100 new laws enacted annually (Buck Willison, Mears, Shollenberger, Owens, & Butts, 2008). In 2007 alone, roughly 70% of the states (35) passed a combined total of 113 juvenile justice-related laws (National Conference of State Legislators, 2008). Like the reforms of the preceding decade, the substance of these measures varies considerably. Many seek to advance public safety and crime reduction through

increased penalties and harsher sentences, particularly for specific classes of offenders. Others mandate the use of specific approaches, including case management, evidence-based practices, and restorative justice principles. Some laws clearly enhance the rehabilitative capacity of the juvenile justice system, while others diminish the system's influence and further erode the barrier between juvenile and criminal justice. Each of these new laws affects the administration of justice for young offenders, either contributing to or detracting from the goals of the juvenile justice system.

The diverse mix of policies and practices introduced in recent years raises important questions about the posture of juvenile justice today. Most scholars agree that decades of "get-tough" reforms diminished the influence of the juvenile court (Bernard, 2006; Butts & Mears, 2001; Fagan, 2008; Scott & Steinberg, 2008). Many contend that these changes rendered the criminal (adult) and juvenile justice systems largely indistinguishable (Butts & Mitchell, 2000; Feld, 1993). Recent research, however, calls these claims into question (Bishop, 2006) and suggests that rehabilitation remains a critical goal for juvenile justice professionals (Buck Willison et al., 2008).

An accurate description of the present orientation of the juvenile justice system is essential to guide future decisions about policy, practice, and the role of the juvenile court. This chapter examines the state of juvenile justice policy nationally. The goal is to explore whether juvenile justice today is uniformly punitive in its orientation or whether it reflects the founding tenets of the original juvenile court. The extent to which states differ in their approach to juvenile justice is also examined to determine whether juvenile justice is as uniform as is implied. We draw on analyses of recent legislation and practice to identify emerging policy trends at the national level, and we review findings from a national survey of juvenile justice practitioners.

The remainder of the chapter proceeds as follows: First, we briefly review the origin and mission of the juvenile court and the founding tenets of that system to set the present analysis in context and provide a framework to evaluate both the present orientation of juvenile justice and the significance of various changes to the system. Second, we consider the circumstances under which policy reforms of the last two decades occurred to identify key factors prompting these changes. Third, we review recent juvenile justice legislation to identify emerging policy trends. Fourth, we examine current practice, as defined by the prevalence of selected policies and practices across the states, to evaluate the prevailing approach (punitive or rehabilitative) to juvenile justice. Finally, we present evidence from practitioners about their views on current policy and practice and how they would improve both. These analyses draw heavily from and greatly expand on findings from the recently completed Assessing Policy Options (APO) project, conducted by the authors under the auspices of the National Institute of Justice, U.S. Department of Justice.

■ Juvenile Justice in the United States: Then and Now

A brief view of the origin, evolution, and original mission of juvenile justice in the United States is required to fully appreciate the changes, challenges, and opportunities facing the system today, and to properly assess its present orientation.

Each of the 50 states and the District of Columbia operates its own juvenile justice system with distinct laws, policies, and practices for handling legal matters involving children and youth (King, 2006). While the structure and organization of these systems vary from state to state, common components exist. Juvenile court (called family court in some jurisdictions) is the heart of the juvenile justice system. It is dedicated to resolving matters involving individuals not legally defined as adults, including delinquency, status, and dependency matters. Other components of the juvenile justice system include detention facilities to hold and house youth charged or adjudicated for law infractions (these facilities are similar to adult jails, but because they serve children, most operate full-day classrooms) and juvenile probation and parole services, including aftercare, to supervise young offenders in the community. Many police departments and prosecutor's offices also have special units that handle cases involving juvenile delinquents.

Juvenile justice in the United States has evolved over time. In its current form, it is, arguably, quite different from what its founders envisioned. Notably, in today's juvenile court, judges possess less discretion, procedures are more formal and, thus, less flexible, and the focus is primarily on the offense (crime) as opposed to the young offender (Feld, 1993; Feld, 2006; Urban, St. Cyr, & Decker, 2003). Furthermore, the juvenile court is at a critical crossroads. Opponents question its necessity, citing the lack of evidence of its effectiveness. Proponents point to the growing body of evidence from the field of developmental psychology, substantiating the significant ways in which adolescents differ from adults, as justification for a separate justice system.

The concept of juvenile justice in the United States emerged near the turn of the 20th century. Until that time, children as young as 7 years old were typically handled in adult court and often received adult punishments, including prison sentences and the death penalty (Bernard, 2006; Snyder & Sickmund, 2006; Urban et al., 2003). Formation of the first juvenile court in Chicago, Illinois, in 1899 reflected the philosophy of European reformers that children were developmentally different—less cognitively and morally developed—than adults. Reformers saw immaturity, not calculated criminal intent, behind the law-breaking behavior of young offenders (Scott & Steinberg, 2008, p. 16). Early reformers also believed children were more amenable to change than adults, in part because their identities were not yet fully formed (Steinberg & Scott, 2006). As such, the law-breaking behavior of children and youth was thought

to be more appropriately addressed in a separate legal process, one that took into account their cognitive capacities, moral development, and potential for rehabilitation (Bernard, 2006).

The doctrine of *parens patriae* (commonly translated “state as parent”) guided early juvenile court policies and operations. Focused on the child, not the offense as in the adult court, the juvenile court assumed the role of benevolent parent, weighing the best interests of the child in its decisions and facilitating the child’s rehabilitation through treatment and other services (Butts & Mitchell, 2000). In keeping with *parens patriae*, the juvenile system sought to advance the welfare, rehabilitation, and fair treatment of the errant child. Meting out appropriate consequences was an equally important function. These goals stood in stark contrast to the adult criminal court, which focused on the severity of the offense, the culpability of the offender, retribution, and public safety.

The most prominent distinction between the two systems is jurisdiction. Originally, the age of the offender defined the system’s scope of legal authority; the age of majority—i.e., the age at which an individual is recognized as having the rights and privileges assigned to adults (right to vote, enter into binding legal agreements, etc.)—was the determining factor for jurisdiction. Today, the severity of the offense frequently determines which system (juvenile or adult) a young offender enters. Additionally, the juvenile court addresses a range of behaviors and issues (status, dependency, delinquency) that would fall outside the purview of the legal system if the defendant were an adult. Figure 10-1 presents key legal stages in the juvenile court process.

The juvenile court concept quickly spread across the United States in the early 1900s. By 1910, virtually every state in the Union (32 of the 46 established states) had a juvenile court (Bernard, 2006; Butts & Mitchell, 2000; Snyder & Sickmund, 2006). At that time, most juvenile courts had exclusive jurisdiction over youth ages 17 years and younger, and juvenile court judges possessed a great deal of discretion regarding how best to handle delinquency cases; due process protections were scarce. The juvenile court operated largely unfettered until the 1940s when critics questioned the court’s efficacy and necessity (Butts & Mitchell, 2000). Over the next 60 years, the pendulum of juvenile justice reform would swing between punishment and rehabilitation in keeping with public sentiment (Bernard, 1992).

As discussed in subsequent sections, reform and innovations, like juvenile crime, reached new levels during the 1990s. Unlike juvenile arrests, which peaked in 1994 then steadily declined, new laws and policies continued to emerge as state lawmakers sought to improve the system’s effectiveness.

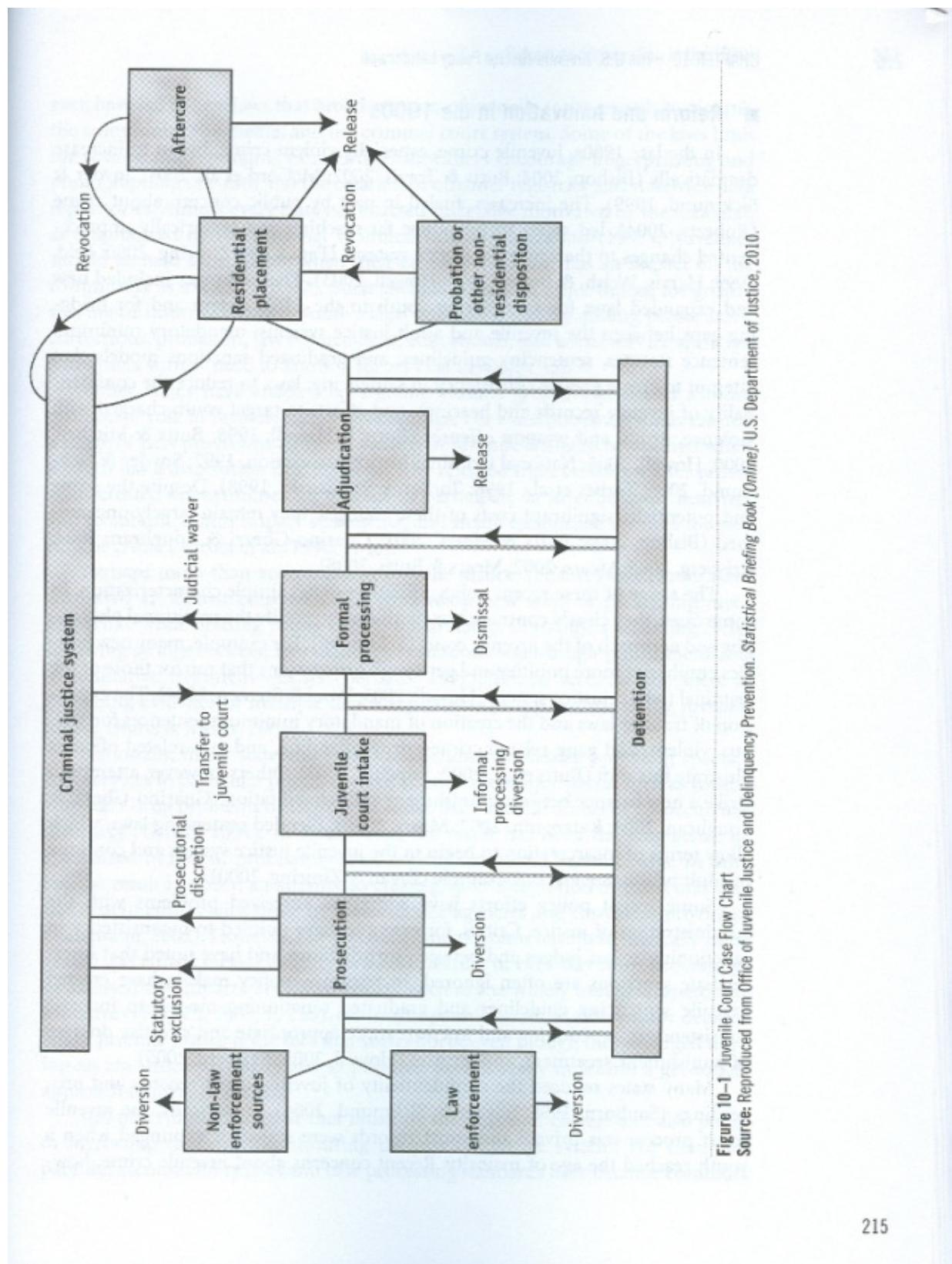


Figure 10-1 Juvenile Court Case Flow Chart
 Source: Reproduced from Office of Juvenile Justice and Delinquency Prevention. *Statistical Briefing Book* [Online]. U.S. Department of Justice, 2010.

■ Reform and Innovation in the 1900s

In the late 1980s, juvenile crime, especially violent crime, began to increase dramatically (Bishop, 2004; Butts & Travis, 2002; McCord et al., 2001; Snyder & Sickmund, 1999). The increases, fueled in part by public concern about crime (Roberts, 2004), led states to introduce far-reaching and historically unprecedented changes to their juvenile justice systems (Fagan and Zimring, 2000; Feld, 1999; Harris, Welsh, & Butler, 2000; Howell, 2003). These changes included new and expanded laws for transferring youth to the adult system and for bridging gaps between the juvenile and adult justice systems; mandatory minimum sentence statutes, sentencing guidelines, and graduated sanctions models that attempt to create greater consistency in sentencing; laws to reduce the confidentiality of juvenile records and hearings; and efforts to target youth charged with violence, drugs, and weapon offenses (Butts & Harrell, 1998; Butts & Mitchell, 2000; Howell, 2003; National Criminal Justice Association, 1997; Snyder & Sickmund, 2006; Torbet et al., 1996; Torbet & Szymanski, 1998). Despite the scope and potentially significant costs of these changes, they remain largely unexamined (Bishop, 2004; Butts & Mears, 2001; Guarino-Ghezzi & Loughran, 2004; Krisberg, 2005; Mears, 2002; Mears & Butts, 2008).

The range of these recent policy initiatives defies simple characterization. In some cases, they clearly contradict or significantly modify the traditional philosophy and approach of the juvenile court (Feld, 1999). For example, many new policies emphasize more punitive and get-tough orientations that mirror those of the criminal (adult) justice system (Howell, 2003; Wool & Stemen, 2004). The expansion of transfer laws and the creation of mandatory minimum sentences for serious, violent, and gang-related crimes, drug offending, and gun-related offenses illustrate this shift (Butts et al., 2002; Kupchik, 2003). Others, however, attempt to strike a new balance between punishment and rehabilitation (Guarino-Ghezzi & Loughran, 2004; Katzmann, 2002; Mears, 2000). Blended sentencing laws, which allow terms of incarceration to begin in the juvenile justice system and continue in adult prison, are just one example (Fagan & Zimring, 2000).

Some recent policy efforts have addressed perceived problems with the administration of justice. Critics, for example, have pointed to inconsistency in sanctioning across judges and between jurisdictions, and have noted that intermediate sanctions are often ignored. In response, policy makers have created juvenile sentencing guidelines and graduated sanctioning models to increase consistency in sanctioning and to create more appropriate and effective dosages of punishment, treatment, and services (Howell, 2003; Krisberg, 2005).

Many states reduced the confidentiality of juvenile court records and proceedings (Sanborn, 1998; Snyder & Sickmund, 2006). Historically, the juvenile court process was private and court records were sealed or expunged when a youth reached the age of majority. Recent concerns about juvenile crime, how-

ever, have led to new laws that broaden access of juvenile court records to victims, the community, the media, and the criminal court system. Some of the laws limit the sealing and expunging of records while others encourage fingerprinting and photographing of youth and the creation of offender registries and statewide data repositories. Almost every state has enacted such laws, motivated by the idea that, as emphasized by the National Criminal Justice Association (1997), "juveniles should be held accountable when their criminal behavior has an impact on the community as a whole" (p. 37). Such laws allow, among other things, for greater sharing of information of a youth's legal and social history among prosecutors, corrections, probation, law enforcement, educational, and social service agencies, and others with a "need to know" (Torbet et al., 1996, p. 35).

Other states have enacted laws giving victims greater rights and a more prominent role in juvenile justice proceedings. For example, some states created a range of new provisions allowing victims of juvenile crime to be notified when a youth has a disposition hearing or is to be released from custody. Other provisions created opportunities for victims to participate in juvenile court hearings and to submit victim impact statements, and many established services for victims of crime (Torbet et al., 1996, p. 48).

Perhaps more than any period in juvenile justice, the last two decades have witnessed an almost ceaseless effort to develop new ways of preventing juvenile crime while holding young people accountable. Certainly, a recurring cycle, involving swings between two distinct orientations—get-tough punishment and rehabilitative treatment—exists (Bernard, 1992). Yet, in recent years, there is increasing evidence of multiple new ways of structuring and achieving juvenile justice (Butts & Mears, 2001).

Nationally, many state and local jurisdictions emphasize providing specialized services to particular populations of youth with unique needs, such as youths who have drug problems or those who suffer from mental illness or co-occurring disorders (Grisso, 2004). In some cases, the result has been the emergence of specialized modes of processing, such as drug or mental health courts. In others, the result has been an attempt to create greater integration of court and justice system efforts with those of social service agencies and treatment providers (Katzmann, 2002). However, few juvenile justice systems have systematically integrated specialized service delivery as a basic feature of everyday court processing, or assessed the impacts of related efforts, such as the widely touted wraparound initiatives (Howell, 2003, p. 236), on court operations. More relevant for debates about juvenile justice is the fact that such efforts, even though they emerged during an era widely characterized as punitive, do not really fit within a get-tough approach to juvenile justice.

Still other initiatives exist that illustrate the theme of change and also point to increasing challenges confronting the juvenile justice system. For example, parental accountability laws and case processing standards have become common

(Butts & Sanborn, 1999; National Criminal Justice Association, 1997). Accountability laws make parents civilly or criminally liable for the behavior of their children. Case processing laws and standards place limits on the amount of time the courts can allow for the adjudication and/or disposition of delinquency cases. Alongside such changes are new federally sponsored efforts that promote a range of other policies, such as expanding the use of risk and needs assessment and restorative justice programs (Andrews & Marble, 2003). Collectively, these and other emerging efforts aim to improve juvenile justice through a myriad of ways, some punitive, some rehabilitative, and some not neatly fitting into either category. These efforts also can create burdens on juvenile courts and practitioners that may undermine their effectiveness.

Some issues generate prolonged debate. Blended sentencing laws, for example, continue to raise the question of whether there should be two separate justice systems, one for juveniles and one for adults. Opponents argue that blending harms juveniles, while proponents argue that it brings greater efficiencies, protection of juvenile rights, and ultimately improved outcomes for young offenders (Fagan & Zimring, 2000). Other laws—including those that exclude entire age groups from the purview of the juvenile justice system (Torbet et al., 1996) and others that “criminalize” the juvenile justice system by modeling it increasingly after the adult justice system (Feld, 1999)—have led to similar debates. Although no state has begun to formally unify its juvenile and adult justice systems, it remains unclear how many court practitioners would oppose or embrace such a change (Butts & Harrell, 1998). The debate continues, as do attempts to modify various sentencing laws to better achieve such goals as deterrence, retribution, rehabilitation, and accountability.

■ Analysis of Juvenile Justice Legislation

As we have discussed, reform and innovation characterized juvenile justice over much of the last two decades. The content and purpose of these reforms varied greatly. Many instituted harsher penalties in an effort to reduce crime and enhance public safety. Other reforms sought to improve the effectiveness and accountability of the system through enhanced treatment and greater transparency. Innovation flourished. New approaches and practices (e.g., balanced and restorative justice, graduated sanctions, specialized courts) emerged to satisfy the system’s often competing goals of rehabilitation, accountability, and public safety. Whether these developments signal a return to the original philosophy of the juvenile court (rehabilitation model) or an advance of the adult model (punitive model) is not entirely clear. Our central question—What is the prevailing approach for handling young offenders today?—remains unanswered.

To arrive at a clearer picture of today’s juvenile justice landscape, we examine the scope and nature of state-level juvenile justice legislation proposed and

enacted between calendar years 2005 and 2007, and the composition of the measure enacted.¹ Here, we take a closer look at the composition of recent legislation falling within four broad topics: jurisdiction, sentencing and penalties, confidentiality, and treatment and rehabilitation. The extent to which these measures contribute to or detract from primary juvenile justice goals—rehabilitation of the child, offender accountability, and public safety—provides clues about prevailing policy orientations among states.

Juvenile Court Jurisdiction

Age specifications delineate the parameters for juvenile court original jurisdiction (legal authority), determining which children are the responsibility of the juvenile court and which are the responsibility of the adult criminal justice system, and define case processing policies for petitioning, transfer, and sentencing. It is difficult to overstate the significance of age in juvenile justice policy. Therefore, legislation that amends the upper age limit of the juvenile court—either lowering or increasing the age boundary—or the statutory definition of the age of majority affects the welfare of literally thousands of children (Sickmund, 2008).

Historically, juvenile courts had exclusive jurisdiction over children aged 17 years and younger involved in delinquency and status offenses and dependency matters (Butts & Mears, 2001; Snyder & Sickmund, 2006). As noted earlier, the proliferation of get-tough policies in the 1990s chipped away at the court's jurisdiction. Laws increasing the number of transfer-eligible offenses and reducing the upper age limit for juvenile court jurisdiction further eroded the court's jurisdiction (Bernard, 2006; Butts & Mitchell, 2000; Redding, 2008; Snyder & Sickmund, 2006). By 2004, 13 states² had set the upper age for juvenile court jurisdiction over delinquency offenses at 15 and 16 years of age (Snyder & Sickmund, 2006, p. 103).

Recent legislation suggests this trend may be reversing. Since 2005, more than half the states introduced measures to restore and expand the jurisdiction of the juvenile court. Rhode Island and Connecticut, for example, passed laws³ that expanded juvenile court jurisdiction to youth aged 18 years of age and under. Connecticut's bill was significant not only because it expanded the original jurisdiction of the juvenile court in that state from youth 16 years and under to 18 years and under, but also because its passage reduced the number of states to just two—New York and North Carolina—in which 16 year olds qualify as adults and are automatically handled in the criminal justice system.⁴

States also expanded the jurisdiction of juvenile courts in more subtle ways. Idaho⁵ lawmakers, for example, returned status offenders aged 18 years and younger to the jurisdiction of the juvenile court; previously, juvenile court jurisdiction in Idaho was limited to status offenders aged 14 years and under (Schmid, 2005, p. 52). Arkansas amended its juvenile code under House of Representatives

Bill 1475 to “ensure that a felony or misdemeanor committed by a juvenile before age 18 may be prosecuted as a delinquency offense in juvenile court.”⁶ Additionally, a number of states adopted measures to extend the period for which juvenile courts could retain jurisdiction over adjudicated youth. New Hampshire (H.R. 627) and Rhode Island (S. 1141), for example, passed bills delineating circumstances under which family courts in those states could retain jurisdiction for youth over the age of 18 years. Legislation seeking to limit the use of mandatory minimums, life without parole, and the death penalty also figured prominently on state legislative agendas; these measures are discussed in more detail in subsequent sections.

In summary, juvenile court jurisdiction figures prominently in recent state legislation, with more states passing measures to expand the court’s jurisdiction than to reduce it—although several states introduced measures with the latter objective in mind. Measures that appropriately expand the reach of the juvenile court are generally considered to be progressive in nature because they support the goals of juvenile justice.

Transfer, Sentencing, and Penalties

Perhaps the most prominent change in juvenile justice in recent decades has been the explosion of new laws for transferring juveniles to adult court. These laws allow juvenile courts to waive jurisdiction, or, as some accounts describe it, to allow children to be certified adults and prosecuted in criminal court. Whatever the terminology—transfer, waiver, or certification—the laws create diverse mechanisms for placing young offenders into the criminal justice system. Motivation for enacting ever-new ways of sending young people to adult court stems from several concerns, including real and perceived increases in violent crime and frustration with some of the limits of sanctions available in juvenile court (Zimring, 2005). The popularity of transfer as a focus of policy change is reflected in trends nationally; as Snyder and Sickmund (2006) noted, “since 1992, all states but Nebraska have changed their transfer statutes to make it easier for juveniles to be tried in criminal court” (p. 113).

Transfer laws remain popular with state lawmakers despite the recent movement to reclaim and expand juvenile court jurisdiction. Roughly 43 states considered transfer measures between 2005 and 2007, of which 17 states adopted these measures. Many of the transfer laws enacted during the study period focused on weapons offenses and violent crimes such as murder; some sought to expand the laws’ reach by lowering the minimum age for transfer on already transfer-eligible crimes, while others, interestingly enough, restricted the use of transfer.

During the years examined, at least six states passed transfer-enhancing measures. In 2006, for example, Oklahoma legislators enacted Senate Bill 1760 providing for the automatic transfer to adult court of children as young as 13 years charged with first-degree murder, unless previously certified as a youth-

ful offender; a related portion of the bill excludes youths between the ages of 15 and 17 years charged with first-degree murder from being considered as juveniles. California and Louisiana both expanded the number of transfer allowances (terms) under which a child could be transferred to criminal court; California policy makers also lowered the age (from 16 to 14 years of age) under which a youth could be found unfit for juvenile court (S. 520) if charged with selected violent crimes.

Some states restricted the number of transfer-eligible offenses during the review period. Delaware limited criminal court jurisdiction to youth with prior felony adjudications and abolished the automatic transfer of youth charged with first-degree robbery to criminal court (S. 200, 2006). In 2007, Virginia (H.R. 3007) stipulated that juveniles tried as adults must be convicted of the crime to be recognized or processed as an adult in future legal actions.

These legislative changes suggest increasing support among lawmakers, and arguably the public, for reserving transfer to adult court for serious violent crimes such as murder and leaving less serious delinquency offenses to the juvenile court. In short, it appears legislators are working to strike a more balanced approach with respect to transfer and sentencing (Snyder & Sickmund, 2006). Changes to other laws governing sentencing and penalties also support this observation.

Confidentiality and Juvenile Records

Confidentiality has been the tacit hallmark of the juvenile justice system since its inception more than 100 years ago. Historically, juvenile court hearings were closed to the public, the names of juvenile offenders protected, and records expunged once the delinquent child reached the age of majority (National Criminal Justice Association, 1997). Designed to protect the vast majority of children it served from stigma and labeling that could inhibit meaningful rehabilitation, these measures reflected the traditional mission of the juvenile court to act in the best interest of the child. In keeping with the increased emphasis on public safety and individual accountability in recent decades, the confidentiality of juvenile court proceedings and records has eroded. States increasingly open juvenile proceedings to the public and press, mandate the collection of DNA and other personal data from young offenders, and retain the records of adjudicated youth offenders in administrative databases accessible to law enforcement, social services, schools, and the general public.

Juvenile records were the policy focus of legislation in 33 states between 2005 and 2007. Proposed and enacted measures addressed a variety of issues, including (1) access to juvenile court records by victims and the public; (2) the type of personal data that may be collected (e.g., DNA, fingerprints, photographs) from juveniles at various stages in the legal process, and how the data could be used; (3) conditions under which records would be sealed or expunged; and (4) information sharing between justice agencies and youth-serving systems. The most

notable trend observed during this period was the expansion of DNA collection from juveniles. In 2006 alone, six states (Arkansas, Arizona, Colorado, Illinois, Kansas, and Ohio) passed measures governing the collection, storage, and use of DNA specimens collected from juveniles adjudicated for serious or violent offenses. Some states (Ohio, Kansas, Michigan) also passed legislation allowing juvenile arrest records to be added to and retained in statewide criminal records databases. Changes in confidentiality laws served multiple purposes, often highlighting the tension between the system's conflicting objectives: protecting public safety and promoting the welfare of the children it serves.

As noted earlier, collecting such information from juvenile offenders ran counter to the mission of the juvenile court and its stated goals. While many states passed laws expanding the collection and retention of personal data from juveniles, some states enacted measures restricting these practices. North Carolina (S. 1211) specified a limited set of circumstances under which juveniles could be photographed or fingerprinted prior to actual adjudication. Montana (S. 119) and several other states strengthened provisions for sealing and expunging juvenile records.

Treatment and Rehabilitation

Increased awareness of and growing empirical evidence about the use of drugs and alcohol and mental health needs of young offenders have propelled treatment to the forefront of juvenile justice (Grisso, 2007). During the study period, states appropriated funding for substance abuse and mental health treatment and services (Arkansas, Colorado, Indiana, Massachusetts, Nebraska, Tennessee), specialized courts (Indiana, Tennessee), and pilot programs to increase capacity for community-based treatment and services (IL, S. 1145; MD, S. 882). These bills mandated a wide range of treatment-related practices, including screening, assessment, individualized treatment plans, treatment services, counseling, the use of evidence-based treatment and programming, and multidisciplinary service teams. Much of the legislation enacted in 2007, in particular, focused on the treatment needs of juvenile justice-involved youth.

Among the most innovative provisions were those mandating evidence-based practices, including screening and assessment, integrated treatment approaches, and multidisciplinary teams. In 2007, Colorado (H.R. 1057) legislation, for example, called for a system of care and services for juveniles with mental health needs. The year before, Colorado (S. 06-122) increased funding statewide for substance abuse treatment based on data indicating that between 60% and 80% of juvenile justice-involved youth required some level of treatment. Also, in 2006, Massachusetts (H.R. 5097) directed its Commissioner of Public Health to fund a "comprehensive and accessible continuum of substance abuse treatment and prevention programming" (National Juvenile Defender Center [NJDC], 2007, p. 106). West Virginia (S. 517, 2006) mandated multidisciplinary teams at juvenile diagnostic

centers as part of initial assessment at facilities where juveniles adjudicated delinquent are in custody, and Hawaii (S. 3207, 2006) called for the development of “community-based programs to encourage positive youth outcomes” (NJDC, 2007, p. 41).

Other notable treatment measures passed during the period of review include the following:

- California (S. 81) established the Youthful Offender Block Grant in 2007 to build county capacity to provide “appropriate rehabilitative and supervision services to youthful offenders” (NCSL, 2008).
- Washington (H.R. 1483, 2006) established goals and objectives for early intervention and services to juvenile justice-involved youth under the Reinvesting in Youth program.
- Oklahoma (H.R. 2999) identified the Office of Juvenile Affairs as the coordinating and oversight agency for services to juvenile delinquents (alleged and adjudicated) and defined the range of “core community-based” services to be provided to juveniles as the continuum of screening, evaluation, assessment, treatment planning, and case management (NJDC, 2007, p. 110).
- Oregon (H.R. 2149, 2007) authorized courts to mandate assessment and treatment for alcohol use.
- Tennessee (H.R. 1871) provided juvenile courts with the authority to “develop and operate drug treatment programs” (National Conference of State Legislatures, 2008).

Mental health treatment measures were equally diverse, although one theme emerged: States are willing to fund mental health treatment and services. Under Senate Bill 1455 in 2006, Idaho allocated \$700,000 for services to juvenile offenders diagnosed with mental illness, and Senate Bill 1389 called for a comprehensive mental health center to provide intensive support services and transitional housing for juveniles (and adults) with mental illness or addiction disorders (NJDC, 2007, p. 113). Also in 2006, Alaska appropriated \$600,000 for juvenile mental health services. On a slightly different note, Colorado (S. 6005) mandated insurance plans to pay for court-ordered “medically necessary mental health services” if such services were deemed necessary as a result of the youth’s contact with the criminal or juvenile justice systems (NJDC, 2007, p.113).

This brief analysis suggests that many states are moving toward more progressive reforms and away from the sweeping punitive get-tough responses that dominated juvenile justice policy in the previous decade (Bernard, 2006; Bishop, 2006; Snyder & Sickmund, 2006; Urban et al., 2003). Notable shifts include restoring the jurisdiction of the juvenile court, instituting more stringent confidentiality measures to protect young offenders, increasing focus on the treatment needs of juvenile justice-involved youth who use drugs and alcohol or who are mentally ill, and emphasizing research-based programming and services that, together,

build a continuum of care for at-risk, as well as delinquent youth. Several states appear to be headed in the direction of adopting more strength-based, not just risk-oriented, approaches to remediate the unique circumstances of the individual youth served by the juvenile justice system. These shifts suggest a return to the founding tenets of the juvenile court: rehabilitation through individualized interventions focused on the unique circumstances of the youth (Bernard, 2006; Butts & Mitchell, 2001; Snyder & Sickmund, 2006).

Transfer continues to enjoy support among policy makers, as evidenced by the number of measures introduced. Although widely used in some jurisdictions (Olsen, 2009), others appear to be setting limits on its use. This observation, coupled with the trend toward expanding the jurisdiction of the juvenile court, suggests that policy makers and legislators are working to strike a proper balance in sentencing and handling delinquent youth, a challenge that underscores the tension of balancing the system's multiple goals. The diversity of measures proposed and enacted between 2005 and 2007 further underscores the dynamic nature of juvenile justice policy, a theme discussed in earlier sections of this chapter.

■ Is Juvenile Justice Punitive or Rehabilitative?

Analysis of legislation offers a national perspective on which direction policy is leaning at a specific time; it may be best interpreted as an indicator of the current policy climate and probable future direction. The preceding analysis of recent juvenile justice legislation, for example, suggests that states are moving toward more progressive reforms. While a valuable indicator, it alone cannot describe the entire landscape and orientation of juvenile justice. We must also consider policy activity prior to the period of the legislative analysis to obtain a more complete picture.

In this section, we examine the prevalence of selected practices and policies—some punitive, some progressive—enacted across the states to determine whether juvenile justice today is primarily punitive, as some assert, or progressive in nature.⁷ Two composite indicators are used to rank the states on the relative punitiveness and progressiveness (i.e., rehabilitativeness) of their approach to juvenile justice. Indicators of “punitive” juvenile justice consist of 10 practices that emphasize accountability, penalties, and punishment. Indicators of “progressive” juvenile justice consist of 7 practices that facilitate rehabilitation through treatment and services, and that take into account a child’s developmental capacities. States received a point for each policy enacted. For the punitive indicator, 10 points were possible, and scores ranged from 1 to 7. For the progressive indicator, 7 points were possible, and scores ranged from 1 to 5.

Punitive Indicators

Punitive indicators cover three broad categories: age specifications related to the jurisdiction of the juvenile court; transfer mechanisms; and penalties similar

in nature to those traditionally reserved for adults. Each is briefly described in the following list. In general, these practices and policies are considered to be punitive because they facilitate the processing and punishment of children as adults. Figure 10–2 indicates how a relative punitiveness score is calculated.

- *Age specifications.* The first three indicators in the composite address age specifications—exclusion of all 16 year olds, exclusion of all 17 year olds, and no minimum age specified for which a child could be found culpable for a delinquent act (i.e., no child is considered too young to adjudicate). The lower the upper age limit for processing juveniles, the more punitive a state's approach. Again, states receive a point for each applicable policy.
- *Juvenile transfer.* Transfer-related indicators include legislative transfer, prosecutorial transfer, and blended sentencing (also called concurrent jurisdiction [Snyder & Sickmund, 2006]). These mechanisms are the most common by which transfer to adult criminal court occurs. Legislative transfer refers to laws that remove certain cases from juvenile court jurisdiction; here, again, such laws are limited by age and offense criteria. Prosecutorial transfer laws allow prosecutors to determine independently whether to file a case in juvenile or adult court; in such cases, this arrangement, referred to as “concurrent jurisdiction,” imposes age and offense criteria on prosecutorial decision making. Blended sentencing allows the juvenile court to impose criminal (adult) sentences while retaining jurisdiction over the youth; actual imposition of the adult sentence typically hinges on the youth's compliance with his or her juvenile disposition (Snyder & Sickmund, 2006). As of 2004, 15 states had concurrent jurisdiction provisions, and 29 had statutory exclusion provisions (Snyder & Sickmund, 2006, p. 113). Every state employs at least one form of transfer. Transfer provisions are primarily punitive in nature.
- *Penalties.* Life without parole and DNA collection are the final indicators in the punitiveness composite. Until relatively recently, both practices were reserved for adults. With the U.S. Supreme Court's *Roper v. Simmons* decision (2005) declaring the juvenile death penalty unconstitutional, life without parole is now the most severe punishment possible for juvenile delinquents. DNA collection, like the trend toward photographing and fingerprinting juveniles, is a relatively recent innovation that mirrors the adult system; such practices were frowned upon by early juvenile justice advocates because they increase the risk of labeling and stigma that may inhibit the child's rehabilitation.

Punitive Scores

Scores ranged from 1 to 7. No state scored a 0, indicating that every state had at least one punitive policy in place. Roughly 25% of the states (12) scored 6

Indicators of "Punitive" Juvenile Justice	
State excludes all 17-year-olds from juvenile court jurisdiction	1 point
State excludes all 16-year-olds from juvenile court jurisdiction	1 point
State does not specify a minimum age for juvenile court jurisdiction	1 point
State mandates Life Without Parole for crimes committed under age 18	1 point
State permits Life Without Parole for crimes committed under age 18	1 point
State uses "automatic" (i.e., legislative) exclusion for criminal courts	1 point
State uses prosecutor discretion for criminal court transfer	1 point
State juvenile courts permitted to "blend" adult-system sanctions	1 point
State permits collection of juvenile DNA	1 point
10 points possible	
Indicators of "Progressive" Juvenile Justice	
State juvenile court hearings closed to the public	1 point
State juvenile court records are confidential	1 point
State juvenile code has provisions for competency determination	1 point
State juvenile code includes provisions for treatment (mental health, drug and alcohol, or sex offender)	1 point
State juvenile code has provisions for specialized juvenile courts (teen, drug, mental health, reentry, etc)	1 point
State juvenile Purpose Clause specifies adherence to BARJ principles	1 point
State juvenile Purpose Clause specifies adherence to Child Welfare principles	1 point
7 points possible	

Figure 10–2 Indicators of "Punitive" and "Progressive" Juvenile Justice

Source: Data from recent issues of Szymanski, L., *NCJJ Snapshot*. Pittsburgh, PA: National Center for Juvenile Justice; data from "State Data," National Juvenile Defender Center. Available: http://www.njdc.info/state_data.php; and data from Snyder, Howard N., and Sickmund, Melissa. 2006. *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

or higher on the punitive scale. Four states (Florida, Georgia, Illinois, Michigan) scored 7, securing the distinction as most punitive. As Figure 10–3 illustrates, almost half the states (21) scored 3 or lower on the punitive composite measure. Kansas was the only state to score a 1; provisions authorizing DNA data collec-

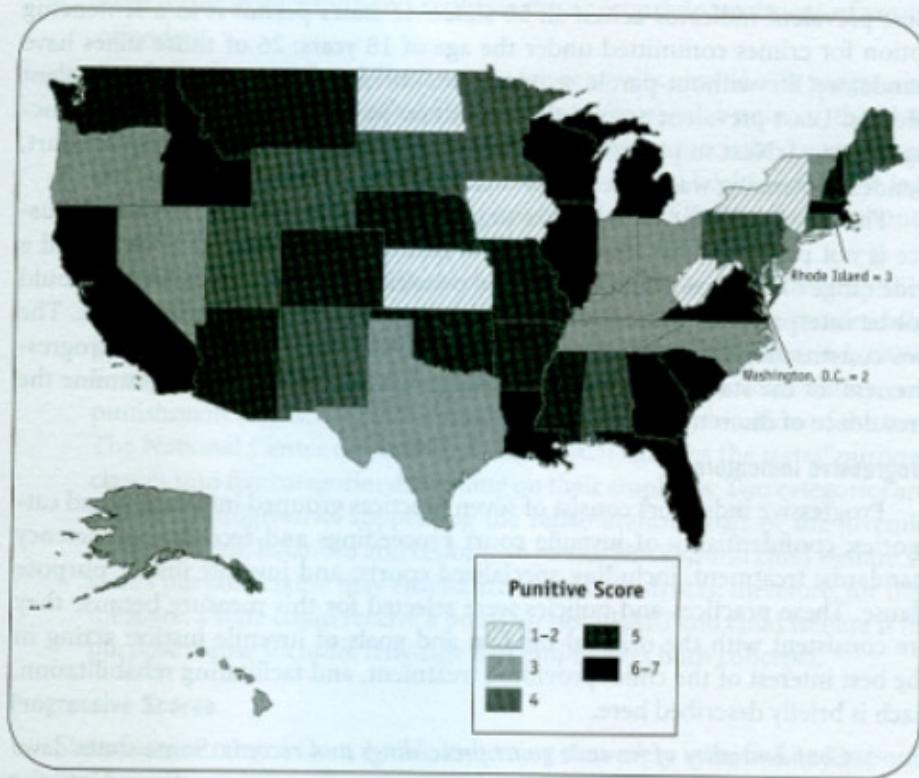


Figure 10-3 Composite Scores of Punitiveness by State

tion from juveniles was that state's only punitive policy among those included in the composite measure. Of the six states (Delaware, Washington, D.C., Maine, New York, North Dakota, West Virginia) that scored 2 on the punitive composite, only one (ME) had provisions for juvenile DNA collection. The most prevalent policy among these six largely nonpunitive states was the lack of a specified lower age limit for juvenile court jurisdiction; five of the six states did not have provisions for this at the time of our review.

Among the 32 states scoring in the moderately punitive range (3–5), most employed a mix of punitive practices. Twenty-two states received a point because they did not specify a lower age limit at which a child may be presumed too young to act with purposeful criminal intent and, thus, unfit for prosecution (Snyder & Sickmund, 2006). Twenty-one of the 32 states earned a point for laws that permitted DNA collection from juveniles, while 15 states also had mandatory life-without-parole penalties for juveniles. Indeed, juvenile life without parole is the

most prevalent indicator across all 50 states: 41 states permit it as a sentencing option for crimes committed under the age of 18 years; 26 of those states have mandatory life-without-parole requirements for certain crimes, namely violent offenses. Least prevalent among these 32 states was the use of blended sentencing (7 states). Next to provisions excluding 16 year olds from the juvenile court, blended sentencing was the least prevalent practice across the 50 states.

The distribution of states' scores suggests that the orientation of juvenile justice is not predominantly punitive. Just a quarter of the states (12) employed a wide range of punitive adultlike criminal penalties. This finding, however, should not be interpreted as evidence that juvenile justice is primarily progressive. The two constructions are not inversely related. To determine the relative "progressiveness" of the states, and thus juvenile justice as a whole, we must examine the prevalence of discrete progressive practices.

Progressive Indicators

Progressive indicators consist of seven practices grouped into four broad categories: confidentiality of juvenile court proceedings and records; competency standards; treatment, including specialized courts; and juvenile justice purpose clause. These practices and policies were selected for this measure because they are consistent with the original mission and goals of juvenile justice: acting in the best interest of the child, providing treatment, and facilitating rehabilitation. Each is briefly described here.

- *Confidentiality of juvenile court proceedings and records.* Some states' laws governing juvenile court proceedings are more open than others. Until the 1980s, juvenile court proceedings were typically closed (Snyder & Sickmund, 2006). Closing hearings to the general public was designed to protect delinquent youths from the stigma and labeling that could preclude meaningful rehabilitation. Some states also "seal" or restrict access to a juvenile's record, or in some instances expunge the record once the juvenile reaches adulthood. These practices are considered protective or progressive, not punitive, in orientation.
- *Competency proceedings and standards.* The issue of juvenile competence concerns a youth's ability to fully participate in legal proceedings owing to emotional and cognitive immaturity (MacArthur Foundation, 2008).⁸ A growing body of research supports the notion that children and youth are developmentally different from adults, thus official responses to their law-breaking behaviors should consider their cognitive capacities and maturity of judgment, as well as the severity of the offense. The number of states with laws establishing procedures to assess or address juvenile competence in juvenile court proceedings is growing (MacArthur Foundation, 2006). Such measures are generally viewed as progressive and consistent with the traditional mission of juvenile justice because they recognize that chil-

dren differ from adults and facilitate the appropriate treatment of young offenders.

- *Specialized courts.* Specialized courts are generally viewed as a progressive measure that supports rehabilitation. States received a point if they had legislation establishing at least one of the following specialized courts: teen court, juvenile drug court, truancy court, or mental health court; the legislation represents a threshold of support that is different from a county starting a specialized court on its own initiative.
- *Juvenile justice purpose clause.* A state's purpose clause delineates its philosophical approach toward the handling of young offenders and, theoretically, guides policy decisions (Bishop, 2006; Feld, 1993; Snyder & Sickmund, 2006). Some emphasize rehabilitation while others focus on accountability and punishment (Snyder & Sickmund, 2006), or some combination of the two. The National Center on Juvenile Justice (NCJJ) groups the states' purpose clauses into five categories depending on their emphasis. Two categories are primarily progressive, supporting the rehabilitation goals of the juvenile justice system: balanced and restorative justice (BARJ), and child welfare. A state's purpose clause may emphasize several constructs; therefore, for this measure, a state could receive a point for both BARJ and child welfare if its purpose clause includes language that emphasizes both concepts.

Progressive Scores

States' scores ranged from 1 to 5, indicating that every state had at least one progressive policy in place. Roughly 25% of the states (13) scored 4 or higher on the progressive composite indicator. Two states (Florida and Kentucky) scored 5, securing the distinction as most progressive relative to the other states. Eight states (Hawaii, Iowa, Louisiana, Maine, Missouri, Nevada, North Dakota, South Dakota) scored just one point on the composite; the most prevalent policy across these states was confidentiality of juvenile court records. As **Figure 10-4** illustrates, 60% percent of the states (31) scored 3 or higher on this composite measure of progressive juvenile justice.

The distribution of states' scores suggests a solid progressive orientation. Statutes protecting the confidentiality of juvenile court records (found in 46 states), legislation establishing or affirming specialized courts (found in 30 states), and provisions in support of treatment (found in 18 states) were the most prevalent progressive policies in place across the 50 states. In contrast, just 15 states have firm policies that close juvenile hearings to the public and media (Snyder & Sickmund, 2006), and 4 incorporate specific child welfare principles in their respective purpose clause.

These findings, however, should be viewed with some caution. Confidentiality in juvenile court proceedings is the most prevalent progressive policy across the states, and while most states' statutes declare juvenile records closed to the

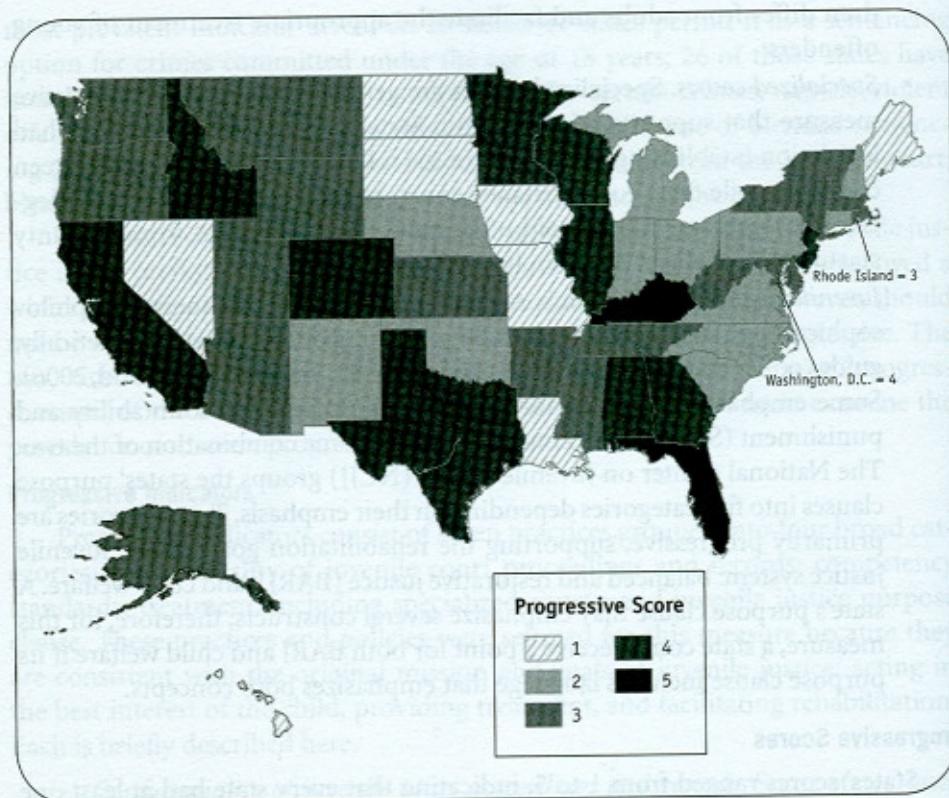


Figure 10-4 Composite Scores of Progressiveness by State

public, many also provide exceptions that open the files of violent or predicate offenders. While only a handful of states (Arizona, Iowa, Kansas, Washington, West Virginia) do not afford juvenile records any confidentiality, it would be misleading to conclude the majority of states are upholding juvenile confidentiality standards as envisioned by the court's founders.

Additional cautions and limitations should be noted. First, this analysis focuses on state law as the sole indicator of a state's orientation toward policy and practice; it does so, in part, because formal legislation connotes priority. Many practices and policies, especially those associated with programming and treatment, are not formally legislated; because sentencing and punishment involve issues of due process and the rule of law, they will be legislated and therefore easier to systematically identify. Thus, our analysis runs the risk of failing to detect a state's emphasis on largely unlegislated progressive measures and potentially overstating a state's emphasis on punitive measures. Second, our measures

merely indicate if the state has a law in place; it does not, except as noted, offer details about the provisions of the policy itself, nor does it reveal if the policy is widely used or enforced. Because the scope of implementation is unknown, the true impact of the policy is likewise unknown.

Nonetheless, these composite measures are highly illustrative and offer clues about the current orientation of juvenile justice and how individual states approach it. Briefly, the distribution of states' relative punitiveness scores suggests that the states' collective orientation toward juvenile justice is not primarily punitive. Just a quarter of the states (12) employ a wide range of punitive adult-like criminal penalties, as demonstrated by the selected punitive laws across the states. Half (21) scored within the low-to-moderate range. Practices in these states were largely limited to policies permitting life without parole for juveniles, transfer to adult court, and failure to specify a minimum age for juvenile court jurisdiction. These patterns are consistent with trends identified by our legislative analysis. Interestingly, a similar percentage of states achieved high scores on the composite measure of progressiveness. Thirteen states scored either a 4 or a 5, indicating they employ more than half the practices comprising the composite measure.

Some states scored high on both measures (California, Florida, Georgia, Illinois, Idaho, Wisconsin), which suggests these states have a well-developed continuum of practices that embrace both punitive and progressive measures. Others scored high on one measure and low on the other, suggesting one orientation prevails over the other. For example, Iowa and Louisiana both scored 6 on the punitive composite measure and 1 on the progressive composite; this suggests a proclivity toward legislating punitive measures. As mentioned previously, progressive measures including treatment and programming that supports rehabilitation may simply not be legislated in these states but may be prevalent in the community nonetheless. The same ambiguity about a states' punitive orientation is unlikely because most punitive indicators, as discussed earlier, must be established by a legislative process. The risk of undercounting punitive measures is low.

Regardless, states that scored high on the progressive composite (California, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Kentucky, Minnesota, New Jersey, Texas, Wisconsin) typically scored high on the punitive composite, suggesting these states not only have a well-developed continuum of practices but an equally well-developed legislative agenda for juvenile justice (i.e., policies and practices are formalized).

States with low scores on both composites tend to have a greater number of punitive measures in place. Exceptions include the District of Columbia and Kansas.

On balance, however, the distribution of states scores suggests two conclusions. First, most states employ a range of measures but trend slightly toward a

progressive orientation. Second, analysis suggests that states employ different combinations of these practice and policies, presumably to address the unique local context in which juvenile justice is administered. In short, analysis suggests that the orientation and landscape of juvenile justice today varies depending on the state.

■ Practitioner Perspectives

Thus far we have examined recent legislation and the prevalence of various practices across the states to gain a better understanding of the present posture of juvenile justice. We have concluded that some practices and policies are more prevalent than others and that juvenile justice is tougher in some states and more progressive in others. In either case, it may be reasonable to presume the practices and policies employed have been selected because they are effective in achieving specific outcomes. Very little of the extant research, however, focuses on the effectiveness of juvenile justice policies and practices (Mears, 2000). Indeed, the rapid growth of new juvenile justice policies stands in marked contrast to the dearth of studies examining their implementation or impacts, or the opinions of juvenile justice practitioners toward these policies. Most studies focus on a few specific juvenile justice policies, most notably transfer (Butts & Mears, 2001), while opinion surveys typically focus on the public (e.g., Schwartz, Guo, & Kerbs, 1993; Sprott, 1998) or individuals under correctional supervision (Landsheer & Hart, 2000; Miller & Foster, 2002; Veneziano, Veneziano, & Gill, 2001). As Bishop (2006) noted, "there is a paucity of research on the contemporary juvenile court, and on the philosophies and practices of intake officials, judges, prosecutors, defense attorneys, and those who administer and work in the juvenile correctional system" (p. 58).

In absence of empirical evidence, practitioner perceptions offer an informed perspective about the effectiveness and necessity of recent changes. Charged with implementing diverse new measures, seasoned practitioners are uniquely positioned to remark on the effectiveness, necessity, and unintended consequences of these changes. With this in mind, researchers at the Urban Institute, Florida State University, and the Chapin Hall Center for Children at the University of Chicago conducted an online survey of juvenile justice professionals to measure their impressions of recent policy changes and the critical needs facing today's juvenile justice system. The survey also sought to garner recommendations for improving policy administration and effectiveness. Between March and August 2007, juvenile court judges, chief probation officers, court administrators, prosecutors, and juvenile defenders from the nation's 285 most-populated jurisdictions completed a 15-minute survey about the critical needs facing the juvenile justice system and the perceived effectiveness of 17 prominent policies and practices; the survey also solicited their recommendations for improving practice. In this last section, we consider practitioner perceptions of effectiveness and their recommendations. To what extent do practitioner opinions align with current practice? What practices do juvenile justice professionals rate as effective?

Effective Policies and Practices

The survey asked practitioners to rate the ability of 17 prominent policies and practices to achieve six different outcomes: (1) reduce crime in the community, (2) reduce recidivism, (3) provide appropriate punishment, (4) facilitate fair treatment, (5) enhance the efficiency of the system, and (6) support the traditional mission of juvenile justice. **Figure 10–5** lists the policies and practices practitioners assessed.

APO National Practitioner Survey

The APO National Practitioner Survey was an online self-administered questionnaire consisting of four sections. Respondents used a unique “username” and private password assigned by the Urban Institute to log-on to the survey. Most participants completed the survey in about 15 minutes.

Section 1: Demographics

Section 2: Critical Needs (13 items; 5 domains)

Staff development & training • Gender responsive services • Culturally relevant services • Developmentally appropriate services • Resources for non-English speakers • Policymaker support for rehabilitation • Public support for rehabilitation • Effective juvenile defense counsel • Effective prosecution • Alternatives to secure detention • Disproportionate minority contact • Information technology • System capacity to measure performance and evaluate programs

Section 3: Policy Outcomes (17 items, 4 domains)

Curfew laws • Parental accountability laws • Reduced confidentiality • Victim participation • Restorative justice • Time limits on proceedings • Specialized courts • Transfer • Graduated sanctions • Risk and needs assessments • Coordination with social services • Effective mental health treatment • Effective substance abuse treatment • Effective sex offender treatment • Targeting gang-involved youth • Community-based alternatives to secure detention • Reentry services and planning

Six outcome measures of policy effectiveness included

Less crime • Less recidivism • Fair treatment • Appropriate punishment • System efficiency • Traditional mission

Section 4: Practitioner Recommendations for System Improvement

Figure 10–5 APO National Practitioner Survey

Source: Data from Urban Institute. (2007). APO Practitioner Survey was designed for the Assessing the Past, Present and Future of Juvenile Justice Policy (APO) Project under NIJ grant #2005-I-CX-0039.

The following five practices garnered the most support across practitioner groups, with the largest percentage of respondents *strongly agreeing* that these were effective in achieving all six outcomes: mental health treatment (54%), substance abuse treatment (51%), sex offender treatment (47%), reentry services and planning (46%), and coordination of juvenile justice with wraparound services (37.5%).

In contrast, respondents consistently identified a set of five punitive practices as largely ineffective by reporting that they *strongly disagree* the following practices were effective in producing any of the six desired outcomes: reduced confidentiality of juvenile records (23%), transfer of juveniles to adult court (19%); time limits on delinquency proceedings (13%); parental accountability laws (9%); targeting of gang-involved youth for special prosecution (8%). While these findings indicate that most practitioners view the majority of practices and policies as effective, these five measures garnered the least support. These trends generally held across practitioner groups, although some differences were observed between prosecutors and practitioners, reflecting their differing roles and responsibilities. Prosecutors, for example, were more likely to favorably rank the effectiveness of these five measures than were juvenile defenders (Mears, Sholtenberger, Buck Willison, Owens, & Butts, 2008).

Practitioner Recommendations

Practitioner recommendations addressed a number of issues that often fall outside the scope of policy evaluation but are critical nonetheless to the health and welfare of the system. Collaboration, increased information sharing, greater coordination among system stakeholders, and adequate funding to train and retain staff were frequent suggestions.

Recommendations specific to programming and services called for implementation of evidence-based practices that would yield a balanced continuum of approaches. Practitioners offered an array of suggestions focused on prevention and intervention, and the application of graduated sanctions and restorative justice principles. In keeping with this latter recommendation, practitioners also directed policy makers to expand their focus to include treatment and rehabilitation in addition to appropriate punishment.

These findings are consistent with those trends discussed in earlier sections of this chapter and lend additional support to the notion that juvenile justice policy is moving in the direction of rehabilitation. Practitioner perceptions of treatment and specialized services programming as effective suggests that policies and practices advancing rehabilitation will be embraced and implemented by practitioners, increasing the likelihood that such practices may positively affect young offenders.

Conclusion

Claims abound that juvenile justice today is primarily punitive. Decades of wide-scale reforms, many punitive in nature, are frequently cited as evidence. Little effort, however, has been devoted to substantiating the accuracy of this claim. This chapter has examined the state of juvenile justice policy nationally to investigate this claim, particularly whether juvenile justice today is uniformly punitive in its orientation or whether it reflects the founding tenets of the original juvenile court. Analysis of state legislation and current practice indicates that juvenile justice today clearly represents a mix of punitive and rehabilitative approaches and that states vary dramatically in the extent to which they lean toward greater punitiveness or rehabilitation.

On the whole, our review of proposed and enacted legislation (2005–2007) across the states suggests that lawmakers are embracing a broad expanse of progressive measures aimed at advancing rehabilitation and retaining the balance of young offenders in the juvenile court. That is not to suggest a scarcity of punitive measures. Transfer to criminal court remains popular. Many states sought to expand the number of potential transfer mechanisms during the period examined, as well as increase penalties for violent crime or habitual offending. Yet, on the whole, it appears recent policy is trending toward rehabilitation.

We find additional support for our observation when we examine current practice. Again, we find evidence that states employ a range of measures, both punitive and progressive, but that most trend slightly toward a progressive orientation. Clearly, juvenile justice is tougher in some states (Louisiana, Missouri, Nevada) and more progressive in others (Kentucky, Colorado). Second, this analysis suggests that states employ different combinations of these practices and policies, presumably to address the unique local context in which juvenile justice is administered. Third, looking at a mix of different practices and the extent to which states employ these practices allows us to examine the extent to which the states' approaches to policy differ. Some clearly have well-developed policy agendas, as evidenced by the extent to which both punitive and progressive practices are legislated. Policy agenda is arguably less formal, if not less developed, in states with fewer laws governing juvenile justice practices and policies. In short, analysis suggests that the orientation and landscape of juvenile justice today varies depending on the state.

Practitioner input garnered from a recently completed survey of juvenile justice professionals suggests wide-scale support for progressive practices that support the original mission and ethos of the juvenile justice system. Treatment and services were consistently identified by juvenile justice professionals as effective, while punitive measures such as transfer were viewed by practitioners as less likely to achieve critical outcomes. In turn, practitioners offered a host

of recommendations for improving the juvenile justice system, many of which reinforced the need for a broad range of responses to facilitate offender rehabilitation and accountability.

These observations underscore the importance of providing more balanced assessments of the state of juvenile justice by examining a broad spectrum of policies and practices, and consulting a variety of data sources. Focusing on only one policy issue or consulting only one perspective provides a distorted view of juvenile justice. Our analysis consulted several sources and examined a range of policies and practices to determine the present posture of juvenile justice. We conclude that juvenile justice is neither rigidly uniform—it varies greatly from state to state and even within states—nor predominantly punitive in its orientation. Rather, most states employ a range of measures. While some punitive measures such as transfer remain popular, analysis of recent legislation and current practice suggests that states employ many progressive reforms. Findings from a recent survey of juvenile justice practitioners indicate strong support for progressive practices like treatment and evidence-based programming and services.

Harkening back to the beginning of this chapter, we recall that juvenile justice in the United States consists of 51 different juvenile justice systems with unique structures, policies, and practices tailored to address the distinct issues and needs of their respective jurisdictions. Our analysis reaffirms the accuracy of this observation. Likewise, the diverse mix of laws, policies, and practices employed by each state suggests that the innovation, flexibility, and emphasis on the individual that characterized the early juvenile justice system remains central today. Future assessments of juvenile justice policy must examine not only national trends but state-specific trends to determine the status of practice, policy, and progress, and juvenile justice practitioners should be consulted on a regular basis to comment on these issues. Together, these will ensure that an accurate portrait of juvenile justice emerges.

■ Endnotes

1. Multiple sources were consulted for this analysis, including the National Juvenile Defender Center (NJDC), the National Conference of State Legislatures (NCSL), and the National Center for Juvenile Justice (NCJJ).
2. These states include Connecticut, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, New York, North Carolina, South Carolina, Texas, and Wisconsin.
3. Illinois Senate Bill 458 passed in 2005; the same Illinois bill also specified that all juvenile drug offenses must be charged in juvenile court but are subject to presumptive waiver.
4. See www.ncsl.org/programs/cj/07jjsummary.htm.
5. Idaho passed House of Representatives Bill 205 in 2005.

6. See www.ncsl.org/programs/cj/07jjsummary.htm.
7. The present analysis focuses on state law as the sole indicator of a state's orientation toward policy and practice; many practices and policies, especially those associated with programming and treatment, are not formally legislated. In turn, because sentencing and punishment involve issues of due process and rule of law, they will be legislated and therefore easier to systematically identify. Thus, this analysis risks failing to detect a state's emphasis on progressive measures.
8. See www.adjj.org/downloads/9805issue_brief_1.pdf.

■ Discussion Questions

1. In what ways has the original mission of juvenile justice in the United States changed over time?
2. Discuss the various policies that have been implemented in the area of juvenile justice since the 1990s. Which policy trends are positive, and which are negative? What criteria should be used to make this assessment?
3. Is current juvenile justice policy punitive or rehabilitative? What evidence can help to make this determination?
4. To what extent should policy makers consider the views of practitioners when developing juvenile justice policy?
5. What explains the variation in juvenile justice policy across the United States?

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