Juvenile Delinquents: Reclamation, Not Retribution

David Stankiewicz

Follow this and additional works at: https://scholarsarchive.byu.edu/byuplr

BYU ScholarsArchive Citation
Available at: https://scholarsarchive.byu.edu/byuplr/vol16/iss1/7

This Article is brought to you for free and open access by the All Journals at BYU ScholarsArchive. It has been accepted for inclusion in Brigham Young University Prelaw Review by an authorized editor of BYU ScholarsArchive. For more information, please contact scholarsarchive@byu.edu, ellen_amatangelo@byu.edu.
Juvenile Delinquents: Reclamation, Not Retribution

David Stankiewicz

Instead of harsh retributive punishments for juveniles, the best way to reclaim these youth is with an environment of care and concern, in special juvenile facilities or with intensive counseling.

For years, legislators have struggled to form laws to curb the trend of rising juvenile crime. In 1999 the United States housed 108,931 juveniles in correctional facilities.¹ A year later 2,369,400 people under eighteen were arrested,² representing seventeen percent of all arrests in that year.³ Ominously, the National District Attorney’s Association foresees “a new breed of juvenile delinquent—the serious, violent, and habitual juvenile offender.”⁴ Others foresee the rise of the “super predator,” delinquents that will kill others indiscriminately. Naturally lawmakers have responded to this problem, yet their answer has been more reactionary than rational. The rhetoric is common: “get tough” on juvenile offenders by giving them longer and more serious punishments.⁶ However, instead of harsh retributive punishments,

¹Stankiewicz, a junior from Lewisburg, Pennsylvania, will graduate with a B.A. in English with minors in both business and computers in the humanities. He is interested in practicing law in the nonprofit sector.
juveniles should receive intensive individual counseling. America’s delinquent youth can be reclaimed only with juvenile rehabilitation facilities specific to their needs.

**REACTIONARY ROOTS TO JUVENILE DELINQUENTS**

Michael Grunwald of *The Washington Post* points out the roots of our current legislative reaction to juvenile crime:

In the wake of the Columbine High School shootings in April of 1999, both the United States Congress and state legislatures clamored that laws combating juvenile crime must be strengthened in order to protect society from young criminals.7

In reaction to Columbine, the House rewrote the Consequences for Juvenile Offenders Act of 1999.8 This bill, which died in committee, eventually became the foundation for the more recent Consequences for Juvenile Offenders Act of 2001, which passed the House on 16 October 2001.9 These two acts contain almost identical language; both “provide grants to ensure increased accountability for juvenile offenders.”10 In this case “increased accountability” is a synonym for “more punishment.” It includes funding for states that provide “graduated sanctions,” which are “imposed on a juvenile offender for each delinquent offense” and which “sanctions escalate in intensity with each subsequent, more serious delinquent offense.”11 As defined in the 2001 bill,

The term “sanctions” means tangible, proportional consequences that hold the juvenile offender accountable for the offense committed. A sanction

---

may include counseling, restitution, community service, a fine, supervised probation, or confinement.\textsuperscript{12}

The bill also provides for “hiring juvenile court judges, probation officers, and court-appointed defenders,” “hiring additional prosecutors,” and “establishing juvenile gun courts.”\textsuperscript{13} In other words the bill provides additional funds for more courts, more prosecutors, and more punishment.

Although the sanctions above are defined to include “counseling” or “community service,” most juveniles receive more severe punishments: incarceration and formal parole. From 1989 to 1998, the number of juveniles placed in correctional facilities increased thirty-seven percent, making juvenile offenders account for twenty-six percent of all adjudicated cases. Seventy-two percent of these youth were placed in public facilities in 1997 and sixty-two percent were in facilities holding over 100 people. During this time period, the percentage of juveniles placed on probation increased seventy-three percent to total fifty-eight percent of all adjudicated cases.\textsuperscript{14} This means that juveniles are punished more harshly and given longer sentences than ever before. Furthermore, these juveniles are, for the most part, placed in large state-run facilities. Amnesty International has responded to this fact, issuing a report that cites the U.S. for jailing too many children.\textsuperscript{15} And yet, the Consequences for Juvenile Offenders Act of 2001, with its focus on punishment, may end up incarcerating even more young offenders.

**APPARENT PROBLEMS WITH SENDING JUVENILES TO PRISON**

These “get tough” strategies of imprisonment and probation have failed to deter juvenile offenders. In 1990, two Rutgers University professors, Albert Roberts and Michael Camassa, published a study of forty-six different

\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid.
types of treatment programs for juvenile offenders. Their study showed that incarceration is the only treatment that actually raises recidivism.\(^1^6\) Many other professionals are also finding that imprisonment is ultimately making the problem of juvenile delinquency worse.\(^1^7\)

Specific problems with sending youth to prison include the damaging effects older criminals have on the impressionable nature of young offenders. Dr. David Altschuler, the principal research scientist at the Johns Hopkins Institute for Policy Studies, finds that after being in a regulated and harsh prison environment, “youths return [to the community] either less capable of functioning autonomously or more attached to their deviant peers and patterns.”\(^1^8\) As several experts note, prisons are often simply “schools for crime.”\(^1^9\) We cannot expect teenagers to live unaffected in an environment with adult criminals. Another problem is that troubled youth are also less likely to receive needed help in crowded prisons, and they are more likely to be victimized.\(^2^0\) Additionally, most juveniles already in prison come from disadvantaged backgrounds and a prison term on their record will only hurt their prospects further down the road, making it more difficult for them to get employment, gain the trust of others, or even apply for a loan.\(^2^1\)

Doubtless, juveniles who commit violent crimes need to be punished. Yet more important than punishment is the need to teach the immature mind, which may still be testing its social boundaries, that delinquent behavior is clearly wrong. In the case of \textit{In re L. T.}, Judge Schwelb states,


\(^{18}\) Altschuler, 225.


\(^{20}\) Forst and Blomquist, 301.

\(^{21}\) Altschuler, 218.
A first offense can often be treated leniently, but if you do it again, you are subject to an escalating series of winces and you had better believe it because the judge does not promise severe consequences and then just slap your wrist.22

**Rehabilitation Instead of Prison**

Troubled juveniles need even closer attention and care than normal ones. Instead of simply punishing these children, we must focus on rehabilitating them. Professor of sociology Anne Mahoney of the University of Denver studies troubled youth closely. She states that “programs to reduce serious juvenile crime need to help today’s juvenile offenders envision and create a law-abiding future for themselves.” This does not mean that punishment should be avoided, but that it should be balanced with deterrence and rehabilitation.23

A clear solution is to place young offenders in juvenile detention facilities with treatment programs that are specific to their needs as troubled youth. These facilities avoid the problem of placing impressionable youth with adult criminals. In addition, the facilities provide youth with support and counseling while maintaining a sense of punishment for the youth’s wrongful actions. Professors Martin Forst and Martha-Elin Blomquist, of the URSA Institute and the University of California–Berkeley respectively, find that juvenile facilities are “less violent and destructive than adult prisons.”24 Two other experts, Denise Gottfredson of the University of Maryland and William Barton of Indiana University, studied the effects of various types of treatment for juveniles. They find that “more intensive and structured treatment programs using behavioral and cognitive approaches were found to hold the most promise, regardless of the type of setting.”25 Although intensive behavioral care facilities are expensive they end up being much cheaper than incarceration, since they are designed to rehabilitate

23 Altschuler, 218.
24 Forst and Blomquist, 301.
juveniles in only a few years. In addition, Forst and Bloomquist say that
these facilities are better for youth than prisons because they are “more likely
to provide opportunities for program participation and personal growth
[such as education].”

Another promising juvenile delinquent reformation plan, blended sen-
tencing, combines the counselling of juvenile facilities with the threat of
“adult time.” Illinois State is currently using a blended sentencing program
called Extended Jurisdiction Juvenile Prosecution (EJJP). In this program
children over thirteen who commit a felony offense are tried with full adult
rights. If convicted they are given two sentences, one to be served in a juve-
nile facility and one “adult” sentence. If they successfully complete the
juvenile treatment, the adult sentence is dropped. However, should they fail
to do this, or commit another offense, the court can force the offenders to
serve their adult sentence.

Reforming existing juvenile facilities could be made more productive if
these facilities were simply not overcrowded. By keeping these facilities
small, correctional staff can keep in closer contact with the juvenile residents.

A 1993 study on the conditions of confinement of juveniles found institu-
tional crowding to be pervasive. Institutional population exceeds the facili-
ity’s design or program capacity. More than seventy-five percent of the
confined population in juvenile detention and correctional facilities was
housed in facilities that violated one or more standards related to living
space. The study also reported the following: (1) juveniles injured 6,900
staff and 24,200 other juveniles, (2) 11,000 juveniles committed 17,600 acts
of suicidal behavior, with ten suicides in 1990, and (3) more than 18,600
incidents required emergency medical care.

Yet even utilizing overcrowded facilities is better than sending juveniles
to adult prisons. When the State of Maryland closed Montrose Training
School, one of its juvenile correction schools, Gottfredson and Barton

---

26 Ibid.
27 Forst and Blomquist, 361.
28 Sullivan, 494–95.
29 Cynthia M. Conward, “Where Have All the Children Gone?: A Look at Incarcerated
performed a study on the recidivism rates of the youths who had been in the school and those who had not received treatment there. Their research "implies that the alternatives available when Montrose was closed were less effective in reducing crime than [Montrose] would have been."³⁰

Yet with the rising number of juvenile incarcerations, where do we find the space? Dr. Altschuler offers an interesting solution. He points out the rather astonishing fact that most incarcerated juveniles are in prison for non-violent crimes.³¹ Dr. Altschuler suggests taking these juveniles out of special facilities and placing them on probation or using any one of many other solutions. Then the scarce resources allotted to rehabilitation of violent juveniles can be focused on the small percentage who are actually violent.³² These youth tend to be repeat offenders and are the most likely to become adult offenders;³³ it merely makes sense to focus most of the attention on them.

The effect of this type of treatment on one life could be enormous. When In re L. J. was brought before the District of Columbia Court of Appeals, L. J., who had been found guilty of spraying a car with automatic gunfire, was showing great improvement after only six months of treatment. It was recorded in the facts of the case that while L. J.'s treatment had gone extremely well, one of the youths he had committed his crime with, who was not placed in care, had already been killed on the streets.³⁴

While juvenile facilities are important in combating delinquency, they are not enough. It is extremely important that juveniles participating in a schooling system for delinquents are aided after they finish treatment. This is known as "after care," and Dr. Altschuler finds that it needs to start early after the release of a juvenile. Once teenagers are back out on the street, they need guidance to avoid slipping back into the habits they once had. "After care" can be accomplished through a variety of methods, including probation, working with peer groups and schools, graded preparation for entrance into the community, and close monitoring.³⁵

³⁰ Gottfredson and Barton, 604.
³¹ Altschuler, 224.
³² Ibid., 227.
³³ Mahoney, 443–44.
³⁴ In re L. J., 439.
³⁵ Altschuler, 233–33.
Conclusion

It is obvious the only benefit to society in imprisoning juveniles is the temporary protection of society from them. But in the end no one is protected, for these newly minted adults will be hardened by their experience in jail and will have difficulty forming habits and desires different from the ones with which they went into prison. According to Dr. Altschuler, “There is no quick fix, no panacea”\(^{36}\) to stopping juvenile crime. Yet schooling, facilities, supervision, and support will work much better than incarceration. Professor Mahoney warns,

Incarceration of serious juvenile offenders, particularly if not coupled with intensive rehabilitation and prevention efforts, may become a bottomless pit into which we pour millions of dollars and the lives of untold numbers of youths, without any real progress toward solving the problem.\(^{37}\)

Better programs and facilities can be produced to help these youth, and we can prevent them from being sent into harmful prison environments. The first step is to encourage Congress to make explicit provisions for better care of juveniles in the law. As of this writing, the Consequences for Juvenile Offenders Act of 2001 has not yet been signed into law. Is it too late to make it provide for reclamation, not retribution?

\(^{36}\) Ibid.

\(^{37}\) Mahoney, 452.