



The Future of the Juvenile Court: Promising New Directions

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The Future of the Juvenile Court: Promising New Directions

Hon. Leonard P. Edwards

Abstract

The juvenile court of the future will be a viable, but changed, institution largely because of society's need to hold parents accountable for their children's well-being and youths accountable for their actions. The author describes three current trends in juvenile court which will continue to impact the court in the future. First, more jurisdictions will refine and streamline their court structures, either through better coordination or by creating unified family courts. This will result in better handling and supervision of multiple cases involving the same family. Second, the use of a wide variety of alternative dispute resolution techniques will grow, and the court will assume a monitoring and oversight function over these mediated agreements. Third, private and voluntary efforts will be utilized to assist the court in providing services to children and families, as well as to mobilize communitywide efforts on behalf of children. Ideally, the juvenile court of the future will place itself squarely in the community and work with others concerned about the well-being of children and families to provide an appropriate and meaningful response to each child who comes within the court's purview.

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What is the future of the juvenile court? The authors of articles in this journal issue have identified trends which indicate that one possibility is the elimination of some of the court's delinquency function as more and more jurisdiction over youth criminality is transferred to the adult criminal system. Another possibility is the removal or reduction from juvenile court jurisdiction of status offenses, including truancy, beyond control of parents, running away from home, and other noncriminal conduct. Instead of utilizing the juvenile court, this type of behavior would be addressed increasingly by community-based services. A third possibility is the juvenile court's expanding jurisdiction over abuse and neglect cases. Oversight of abuse and neglect cases and of the social service agencies which deliver services to families has become a major portion of the work of the juvenile court. Whether these responsibilities continue to expand remains to be seen as the federal government considers shifting funding and oversight of the nation's child welfare policies to the states.

Even with these changes, the juvenile court should remain a critical societal institution, principally because there is no alternative. The juvenile court is society's means of holding children accountable for their conduct and parents accountable for raising children to be productive members of the larger community. It will continue to be the final authority concerning some of the most important legal and social issues relating to children and families. The question is not whether there will be a juvenile court, but what form it will take, what status it will have within the hierarchy of the court system, what types of cases it will hear, what resources will be available to it, and how well it will serve the needs of children, their families, and the community.

In addition to the trends identified by the authors in this journal issue, others are emerging which indicate what the juvenile court may look like in 10 to 20 years. These include changes in court structure, new dispute resolution techniques, and the increased use of volunteers and public-private partnerships in the court. As will be described in this article, these other trends reflect an effort by court leaders to provide children and families with easier access to the court process and to services, as well as to offer better methods of resolving disputes.

Court Structure

In many jurisdictions and particularly the larger metropolitan areas, the juvenile court of the future will probably exist within a different court structure. The result should be an improved relationship between the juvenile court and other divisions of the court which address issues relating to children and families, such as domestic relations, child custody, adoptions, and emancipation. (See the article by Rubin in this journal issue.)

Changes are likely to occur because of recognition that the current court structure serves neither courts nor litigants well. The American court system was created more than 200 years ago, principally for the resolution of civil and criminal matters. With the dramatic growth of juvenile and family court cases over the past two decades, scholars, judges, and administrators have reexamined court structure to determine how adequately it serves the legal problems facing children and families today.¹

In many ways, it does not. A family may have several related legal problems which, under the existing judicial structure, are heard by different judges in different courts at different times and places. For example, a domestic relations court may award custody to one parent only to have a juvenile court remove the child from that parent and make

a different custodial order. A family may have to go to one judge for paternity determination or child support enforcement, to another to determine the child's delinquency status, to another for a restraining order in a domestic violence case, and still another to receive a custody order. Such a system requires families to return to the courthouse many times, strains both court and litigant resources, and maximizes the possibility that court orders will be in conflict with one another.

The Unified Family Court

The most significant proposal for structural changes in the juvenile court has been the unified family court. Under the unified family court, the juvenile court becomes a part of a larger administrative structure. Such a court has integrated jurisdiction over most or all legal problems that involve family-related issues. A unified family court typically brings together under one court administration all juvenile, domestic relations (including custody, spousal support, child support, and property division), paternity, emancipation, domestic violence, adoptions, guardianships, termination of parental rights, and child support enforcement. In some courts, jurisdiction extends to criminal and civil cases involving family members, such as intrafamily criminal cases and lawsuits between family members.²

Several states and cities have created unified family courts. Delaware, Hawaii, New Jersey, Rhode Island, and Washington, D.C., are the most noted examples, while several jurisdictions have recently developed or are considering similar structural changes.³

No two of these courts are the same. There are differences in the types of cases heard, in judicial selection and retention, and in court administration. Hawaii, New Jersey, and Washington, D.C., are three of the largest such courts. In less populous jurisdictions, there are scores of de facto unified family courts. In these one-judge courts in rural America, the family has all of its legal business heard by the same judge. There are no coordination or communication problems among judges in these jurisdictions, and the otherwise inevitable conflicting orders are eliminated.

Coordinated Courts

Despite great interest in the unified family court concept, implementation has been slow. Many court systems have tried to achieve the benefits and efficiencies of unified family courts through better coordination, without changing the entire judicial structure. Coordination has occurred in a variety of ways.

First, some courts periodically convene personnel who may deal with the same family in different legal settings. It is common practice in these court systems for domestic relations and juvenile court judges and personnel to meet and discuss the administration of child abuse case procedures which arise in one setting and which may be transferred or filed in the other court.⁴

Second, some court systems have developed procedures that allow cases involving families to be heard together, before one judge. The family's legal business can be addressed in one setting.⁵

Third, some courts seek to ensure that investigative and supervisory staff who report to the court concerning child custody and other family-related issues have coordinated their activities with each other so that information is shared. A metropolitan court may have a probation department investigating and monitoring delinquency matters, a social service or children's services agency

working on child welfare cases, a domestic relations staff investigating and supervising child custody issues, a child support agency determining paternity and establishing and enforcing child support obligations, and a probate investigator reporting on guardianship issues. These different investigators and supervisors serve various calendars within the same court system, yet they may be responsible for the same child or family. Other court systems coordinate the relationship between criminal court child abuse prosecutions and juvenile court abuse and neglect cases.⁶

Fourth, the coordination of juvenile, domestic relations, probate, and family-related calendars has led some jurisdictions to examine the representation of children throughout the court system. Some believe that children should be represented by an

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advocate in any legal proceedings in which their significant legal interests are at stake.⁷ Other jurisdictions mandate or encourage the same children's attorney or guardian ad litem (GAL) to represent the child in related proceedings. The coordinated court system makes it more likely that children's interests will be represented regardless of the legal context in which they arise.

Fifth, the goal of case coordination has led some jurisdictions to develop a case management system, including computer software to keep track of children and families within the court system. This allows a judge, agency investigator, or court administrator to learn of related legal proceedings. The use of such information can maximize the coordination of related cases and improve the quality of information available to decision makers within the court system.⁸

Alternative Dispute Resolution Techniques

The utilization of alternative dispute resolution (ADR) techniques in legal matters has

evolved over the past 10 years and continues to grow. Alternative dispute resolution techniques permit family members to meet, often in a confidential setting and usually with trained professionals, in an attempt to resolve the legal and social issues which are before the court. Such techniques include mediation, peer or teen courts, family conferencing, and settlement conferences, each offering the parties an opportunity to resolve the legal and social issues without formal legal proceedings. ADR techniques have proven to be effective and successful alternatives to the more formal legal process and have received strong support from all participants in the juvenile court process.⁹

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The juvenile court of the future will likely have at its disposal a wider array of ADR techniques and use the formal adversarial court process only as a last resort. The principal role of the court will be to monitor and approve the agreements worked out by the parties and to make appropriate orders.

There are a number of reasons for this increased reliance on ADR. First, not all cases can be adjudicated by the juvenile court. There are not enough courtrooms, judicial resources, or hours in the day to hear all of the cases involving children and their families.

Second, utilization of ADR may be preferable to the court process. Court proceedings are, by their nature, formal and adversarial. This formality can make it difficult to engage in problem-solving discussions about what is best for the parties before the court. Most ADR processes, on the other hand, enable all parties to have meaningful discussions about the pertinent issues and reach agreement as to their resolution.

Third, ADR enables children and families to shape the resolution of the issues. Reaching an agreement which a person has helped in forming is an empowering process, one which makes it more likely that

the person will honor the terms of that agreement.

Fourth, ADR can be accomplished in less time and with less expense than the court process. Court proceedings with attorneys, court staff, and crowded calendars are the most expensive and slowest means of resolving disputes.

There is a wide range of ADR programs for the resolution of all types of cases that might otherwise come before the juvenile court judge. As a part of court proceedings, there may be settlement conferences, pretrial hearings, or plea conferences to resolve cases prior to trial.¹⁰

The juvenile court system has also traditionally offered a variety of ADR processes, which take place prior to the initiation of formal legal proceedings. The investigating agencies that bring delinquency, status, and child welfare cases to the court use ADR extensively. Probation departments and social service agencies resolve many cases at the intake level by informal agreements or diversion. These resolutions usually involve the child's or the parents' agreeing to complete certain requirements over a period of time in exchange for not filing formal proceedings. (See the articles by Snyder, by Steinhart, and by Hardin in this journal issue.)

In addition to these traditional forms of ADR, many new techniques have been developed, and others will likely follow as communities become more involved in the resolution of issues facing children and families.¹¹ School-based truancy courts address the needs of truant children.¹² Often led by judges who volunteer their time or by volunteer attorneys who sit as temporary judges, these less formal proceedings have proven to be effective, partly because of the partnership between the juvenile court and schools. Community panels also address truancy by bringing parents and children before a representative community group and impressing upon them the importance of school attendance.¹³ Some prosecutors have also become involved in efforts to ensure that children attend school. Through warning letters and citations to appear, parents who fail to ensure that their children go to school are threatened with prosecution as a means

of motivating them to comply with school attendance laws.¹⁴

Peer courts offer an innovative method by which minor delinquency cases can be resolved without juvenile court involvement.¹⁵ These courts usually bring the accused youth together with trained students, judges, and attorneys who volunteer their time in an effort to decide whether a delinquent event took place and the appropriate disposition of the case. The accused youth and his parents must agree to participate in the process, and a juvenile court judge often oversees the proceedings to ensure fairness. Regardless of the form, there are significant educational benefits to all of the youths who participate as jurors, court personnel, or observers.

Mediation has become an important ADR option for some juvenile courts. Mediation brings together all parties with a trained mediator in a confidential setting, with the goal of resolving the legal and social issues by agreement. Mediation can be utilized in delinquency cases, where the offender and victim may meet to resolve restitution and other issues, as well as in abuse and neglect cases, where the parents, social worker, and child representative meet to resolve the child protection issues. The juvenile court usually reviews any proposed agreement before the case is officially resolved. Evaluations of current mediation programs indicate that they reach court-approved agreements in a high percentage of cases, that the resolutions are acceptable to all parties, that the parties are more likely to understand what they have agreed to, and that they are more likely to follow through with case plans than if they had been simply ordered to do so by the court without being involved in the process.¹⁶

An extremely promising mediation model has been developed in New Zealand. Called the Family Conference model of dispute resolution, this approach brings together all family members (including extended family) in juvenile cases and, with some guidance from a caseworker, asks them to resolve the issues facing the family. All of the decisions are made by family members in a confidential setting. The investigating social worker and the court must approve any proposed resolution.¹⁷

The Family Conference model has been very successful in New Zealand in all types of juvenile court cases.^{17,18} Large numbers of families have been able to resolve the concerns which brought the child to the attention of the state. As the resolution is often placement with a member of the extended family, foster care in New Zealand has been significantly reduced. The success of the

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Family Conference model has led to considerable interest in the United States and Canada, and pilot programs are under way in Illinois, Michigan, Oregon, and Eastern Canada.¹⁹

The trend seems clear. As it continues, the juvenile court will oversee an ever-growing system of ADR models operating in all types of cases that come before the court. The juvenile court will ensure that a comprehensive system of ADR with appropriate procedural safeguards is in place. The court will continue to monitor all agreements reached through ADR. Ideally, in such a system, only the most serious and contested cases will require the formal court process.

Private Sector and Volunteer Resources

To accomplish its goals, the juvenile court of the future will probably form more integrated partnerships with the private sector and with volunteers. It is evident that there are insufficient resources available to the juvenile court and public agencies working with the court to accomplish the prevention and intervention goals necessary to protect children, support families, and protect the community. Private sector and volunteer support have become important resources utilized by the juvenile court. This trend should continue to grow in the years to come.

Juvenile court systems have worked directly with community-based organizations serving children for decades. Girls and boys clubs, Big Brothers and Big Sisters, Boy

and Girl Scouts and a host of other organizations have provided thousands of children with activities and support, and increased the likelihood they would grow into productive adults. Service clubs such as Rotary and Elks have also provided youths with opportunities. In the past 20 years, however, it has become clear that some children and families who appear before the juvenile court have needs that traditional community-based organizations are unable to serve. New organizations have focused on these needs.

The Court-Appointed Special Advocate (CASA) Program was started by a juvenile court judge who was concerned that abused and neglected children were not getting the special attention they needed.²⁰ CASA volunteers are trained to monitor and advo-

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cate for the interests of these children and to report on their needs to the juvenile court. The program has grown dramatically. There are now over 564 local programs nationwide with more than 37,000 volunteers working with over 128,000 abused and neglected children.²¹ The juvenile court of the future should have larger, stronger CASA programs.

Youth mentoring programs have expanded significantly over the past decade.²² These programs match trained volunteers with delinquent youth. As with the CASA programs, many are connected with the juvenile court and are growing in numbers across the country.

Juvenile courts have also led in the creation of community partnerships for children and families. Combining private, public, and nonprofit resources, these partnerships work together to accomplish goals that no one partner could achieve on its own. Typically, the group is convened by a juvenile court judge, identifies community needs for children and families, and develops an action plan to address those needs.

The accomplishments of these partnerships are impressive and have led other communities to copy the model.²³ Significant examples of these partnerships include: Jefferson Parish, Gretna, Louisiana;²⁴ the Children's Cabinet in Reno, Nevada;²⁵ Oakland County, Michigan;²⁶ the Children's Network in San Bernardino County, California;²⁷ and Kids in Common in Santa Clara County, California.²⁸ Scores of similar partnerships exist across the country.

The juvenile court of the future should be able to take advantage of community resources more effectively by turning to volunteers and public-private partnerships for support. Communities seem ready to give their time and resources to children and families.²⁹ The challenge for each court will be to identify the most effective ways by which communities can be organized to work with the court on behalf of children.

A Comprehensive Juvenile Justice System: The Community Role of the Juvenile Court

An important challenge for the juvenile court of the future is to ensure that there exists a comprehensive juvenile justice system which has an appropriate response for each child who comes within the purview of the court.³⁰ Every youth who commits a delinquent act should be held accountable. In addition, there should be a measured response for a child who commits a status offense and an intervention on behalf of each child who has been abused or neglected.

Most cases involving delinquent behavior or status offenses by youths or maltreatment of children by adult caregivers never reach juvenile court. They are resolved informally by law enforcement, probation personnel, child protective services workers, or other professionals. Only the more serious cases result in the filing of petitions and juvenile court intervention. For the less serious matters, effective alternative interventions should continue to be developed by each community. No child should slip through the cracks. A comprehensive juvenile justice system which ensures that all cases receive appropriate attention will maximize accountability and enhance prevention of

future problems. Prevention is an elusive concept, difficult to identify and to measure. It is clear, however, that one form of prevention is timely intervention in response to all acts of youthful delinquency or status offenses, as well as incidents of abuse and neglect. The response sends a message that the behavior is not acceptable, that adults are concerned, and that there will be accountability.

To accomplish this goal, the justice system working with the community must have in place the necessary resources to hold youths accountable for each delinquent act, provide effective interventions for each status offender, and have protective services in place for each abused and neglected child. The nature of the response and the resources utilized will depend on the particular case and the needs of the child and family. For a delinquent youth, a range of responses must be available, including community service and monetary restitution, drug and alcohol counseling and mentoring programs, and activities such as athletic and boys club opportunities. For a status offender, there must be emergency housing and counseling for runaway and beyond-control behavior, and school-based services and interventions for the truant. For the abused or neglected child, intensive family preservation services and other family support must be available, as well as drug and alcohol counseling, domestic violence protection and programs, mental health services, and parenting classes. For each of these informal resolutions, supervision and monitoring must be in place to ensure that the youth or family follows through. If the informal intervention is ineffective, the case may have to be referred to the juvenile court.

The juvenile court has an important role in the establishment and maintenance of a comprehensive juvenile justice system. While the court is not responsible for the creation of services, it can convene the professionals, agencies, volunteers, and community-based organizations to determine whether there are appropriate responses and services available for each type of case. Where gaps exist, the court should be ready to work with community leaders to ensure that they are filled. Juvenile court judges are effective conveners and organizers.³¹ They are in a unique position to work with agency leaders to call

together key members of the justice system and community to assess the justice system's response to cases that may never reach the courtroom.

A challenge for the juvenile court of the future is to ensure that there is an appropriate response for each situation which might come to the attention of the court. The juvenile court should identify and promote the goal of a comprehensive response to youthful delinquency, status offense, and

One form of prevention is timely intervention in response to all acts of youthful delinquency or status offenses, as well as incidents of abuse and neglect.

abuse and neglect cases. To that end, the court should convene community groups and the juvenile justice system and then oversee the process by which cases are informally resolved. There should be some assurance that the youth or family has been properly identified, the intervention is completed in a timely fashion, parents and other family members are involved in any resolution, the response is fair, and the intervention is monitored.

Conclusion

The juvenile court of the future will likely remain as society's most significant enterprise to intervene on behalf of children and families in crisis. The court's jurisdiction may be reduced in delinquency cases involving older youths and serious criminality, as well as in status offense matters, while the court will continue to have an active role in child welfare cases. The rehabilitative ideals of the court, however, will not be forgotten. In fact, should the court help create a juvenile justice system which addresses the full range of delinquency, status offenses, and child abuse and neglect cases, its influence on the community will increase. Other changes should include modifications in court structure with increased utilization of unified family and coordinated courts, improved and expanded ADR programs, and the expansion of volunteer organizations and partnerships with the private sector. Such developments will be necessary, in light of the likelihood of reduced federal

resources for children and families through budget cuts and block grants. In spite of the anticipated reductions, these changes should enable the court to remain effective in the resolution of problems facing children and families in crisis.

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25. For further information about the Children's Cabinet, contact Judge Charles McGee or Executive Director Sheila Leslie, the Children's Cabinet, 1090 S. Rock Boulevard, Reno, NV 89502, (702) 785-4000.
26. For further information, contact Chief Judge Eugene Arthur Moore, Probate Court, County of Oakland, 1200 N. Telegraph Road, Pontiac, MI 48341-1043.
27. For further information about the Children's Network, write: Children's Network, County Government Center, Second Floor, 385 North Arrowhead Avenue, San Bernardino, CA 92415-0121, (714) 387-8966.
28. For further information about Kids in Common, contact Judith Kleinberg, Executive Director, 55 S. Market Street, San Jose, CA 95113, (408) 882-0900.
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