

The Contemporary Juvenile Court

CHAPTER 10

CHAPTER OBJECTIVES

After studying this chapter, you should be able to

- Delineate the ways in which the juvenile court is the center and focus of the juvenile justice process
- Describe how the juvenile court, through its leadership and employees, acts as an advocate for children and families
- Describe the structure of the modern juvenile court and where the key personnel fit in that structure
- Describe the primary functions of key juvenile court personnel
- Describe the purpose and importance of the adjudication and disposition hearings conducted in the contemporary juvenile court
- Describe the due process protections that juveniles currently have when they appear in juvenile court and assess their importance
- Explain the role of attorneys in the adjudicative and dispositional hearings
- Describe how the juvenile court's place in the local court hierarchy can affect the resources made available to the juvenile court
- Describe the roles that legal and extralegal factors play in juvenile court dispositions

CHAPTER OUTLINE

Introduction

Case Trends and Types of Cases Processed in Juvenile Court

The Philosophy Behind Case Processing in the Juvenile Court

The Structure of the Juvenile Court

Juvenile Court Personnel: The Key Players

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■ Introduction

juvenile court

The juvenile court is responsible for holding hearings and making decisions regarding the disposition of juveniles who have entered the juvenile justice process. This court plays many roles, including children's advocate, program leader, fund-raiser, consensus builder, guardian, and protector of youths and the community.

The **juvenile court** is the heart of the juvenile justice process. It is in the juvenile court that previous decisions made by law enforcement agencies, probation officers, child welfare workers, school personnel, and prosecuting attorneys are supported or altered. It is there that additional decisions—ones that can have a lasting effect on children, their families, and the community at large—are made. Indeed, the juvenile court is the most powerful institution within juvenile justice, and it plays a central role in determining the quality of justice available to juveniles in the community. Not only does the juvenile court determine the outcomes of individual cases (outcomes that can result in the removal of children from their homes and, in some cases, the termination of parental rights), but also, through its legal authority, it can determine how other institutions and agencies respond to children. For example, by interpreting laws, issuing various orders, and developing policies, juvenile courts can determine which categories of youths are subjected to and which are diverted from formal court processing. Moreover, in carrying out its role, the juvenile court sends an important message about its concern for children and its desire to serve the interests of children and the community.

Because of its focus on children, the juvenile court typically plays a central role in the child welfare system. Because the juvenile court is often seen as the institution having the greatest responsibility for responding to youths who violate the law, it often is looked to for leadership in efforts to understand juvenile crime and to develop more effective responses to delinquency. In many instances, the burden of acting as an advocate in the political arena on behalf of families and children falls on the shoulders of the juvenile court. Children have little political power, especially children who are poor, and judges and other court personnel frequently testify in front of legislative committees on issues affecting children and families. Local and state bar organizations often have family law and juvenile law committees made up of judges or referees, who are in positions to influence juvenile law practice. Furthermore, many charitable organizations, such as the United Way, seek input from juvenile court personnel about children and family concerns.

Many juvenile courts also find themselves in the role of consensus builder, fostering agreement among the various community agencies, such as social service and mental health agencies, that work with children and families. Much of the difficulty in dealing with child and family problems involves the scarcity of funding for meeting the needs of children and families. In some communities, juvenile courts are more consistently and better funded and staffed than local social service agencies. As a result, these agencies regularly look to the courts for assistance in their efforts to serve clients.

Like other social institutions, the juvenile court is made up of many individuals who perform a variety of functions. Ultimately, the individuals who occupy various roles in the juvenile court strive (at least theoretically) to protect public safety, serve the

best interests of children and their families, and ensure the smooth and efficient operation of the juvenile justice process. Yet, like other institutions, the juvenile court is sometimes unable to meet its goals, and occasionally some of its goals are displaced or overridden by other goals. This chapter examines the structure, organization, and operation of the contemporary juvenile court. It also examines critical decision-making events in the juvenile court, the legal context within which juvenile court decisions are made, and the important players who influence juvenile court practice.

FYI JUVENILE COURTS PERFORM MULTIPLE ROLES

Today, juvenile courts and their personnel perform multiple advocacy roles for children and families. Courts and their personnel act as legal experts, political advocates, community consensus builders, and consultants on children's issues.

best interests of the child

A catchphrase that serves as a reminder that the primary focus of a juvenile court should be on the rehabilitation of the children who come before it.

■ Case Trends and Types of Cases Processed in Juvenile Court

Most delinquency cases are referred to courts by law enforcement agencies, and these agencies have been sending an increasing number of cases to juvenile courts. For example, in 2009, juvenile courts processed more than 1.5 million delinquency cases. This represented a 30% increase in the number of delinquency cases processed since 1985. Moreover, the number of drug law violation cases increased 116%, public order offense cases increased 108%, and person offense cases increased 98%. The only type of offense showing a decline was property offense cases. They declined by 19% between 1985 and 2009 (see [Figure 10-1](#)).¹ The increase

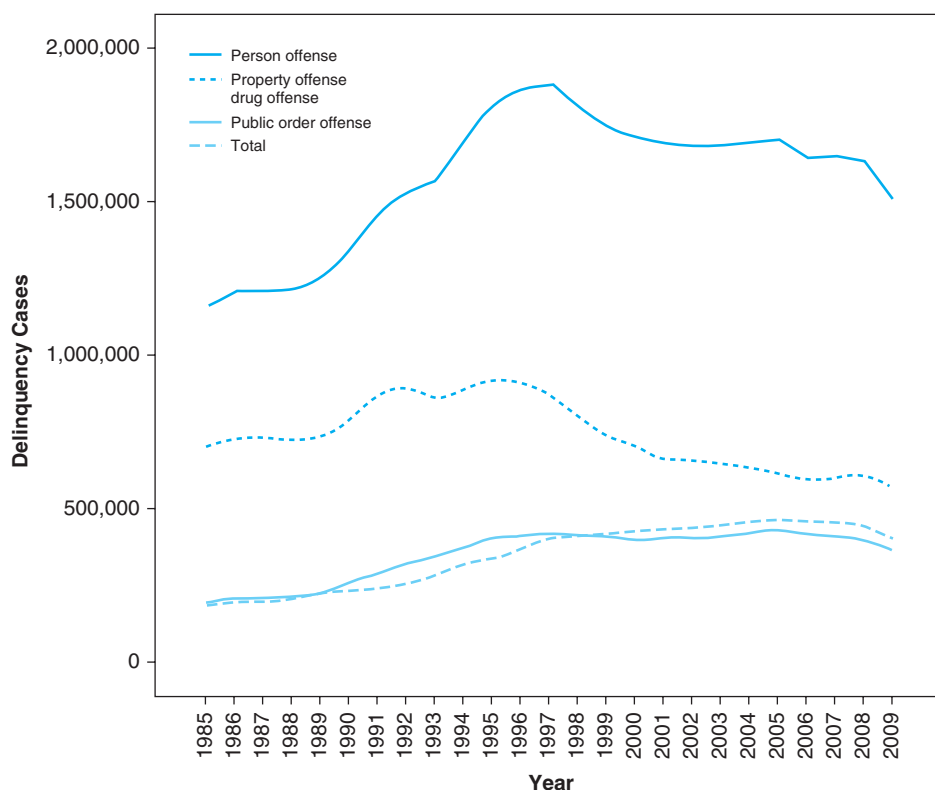


FIGURE 10-1 Delinquency Cases Processed in Juvenile Courts by Type of Offense, 1985–2009

Source: National Center for Juvenile Justice

in the number of cases being formally processed by juvenile courts since the mid-1980s is a result of a general trend by the police and other agencies to respond formally to youths' problem behaviors. However, it is important to note that most of the increase in cases being referred to juvenile courts occurred during the 1990s— a time of heightened concern about juvenile crime and a sharp increase in juvenile arrests for Index violent offenses. Indeed, since that time there has been a consistent reduction in the overall number of cases referred to juvenile courts. Thus, although the number of cases referred to juvenile courts increased substantially from the mid-1980s and into the mid-1990s, and is still above 1980s levels, it has declined since the mid-1990s, as Figure 10-1 indicates. This trend mirrors the trends in juvenile arrests noted previously. Unfortunately, although many juvenile courts are dealing with more cases today than in the past, juvenile court budgets and resources have not expanded to meet growing needs.

As the data in Figure 10-1 indicate, there has been a substantial change over time in the types of cases referred to the juvenile courts. For example, in 1985, property offense cases made up a majority (60.6%) of the cases referred to juvenile courts, followed by public order offense cases (16.8%), person offenses (15.9%), and drug offense cases (6.7%). By 2009, however, property offense cases accounted for just over one-third (37.7%) of case referrals. Showing substantial increases over time were person and public order offense cases, followed by drug cases. Indeed, by 2009, public order and person offenses each accounted for slightly more than 22% of case referrals, followed by drug offense cases, which accounted for slightly more than 11% of all case referrals.²

The increase in the number of person, drug offense, and public order cases being handled by juvenile courts is an important trend. Although juvenile courts are, in general, more likely to **formally process** serious offenses than nonserious offenses, a majority of person, property, drug, and public order offense cases are formally processed by juvenile courts. For example, in 2009, approximately 58% of person offense cases, 51% of property offense cases, 54% of drug offense cases, and 57% of public order offense cases were formally processed by juvenile courts.³ Although juvenile courts formally processed fewer cases in recent years than in the mid- to late 1990s, the long-term trend has been to process cases formally. As can be seen in **Figure 10-2**, prior to 1989, a majority of the cases referred to juvenile courts were handled informally. However, since that time, there has been an increasing trend toward formal processing of cases, which has been particularly evident since the mid-1990s. For example, in 1985, approximately 46% of the cases referred to juvenile courts were handled formally, but this percentage had increased to almost 54% by 2009.⁴

Other facts that are worthy of note is that case referrals to court increase with the age of the juvenile, and referrals are more likely for males and for many minority youths. Moreover, older youths, males, and youths who are members of particular minority groups are more likely to be formally processed by juvenile courts. For example, in 2009, the *formal case processing rate per 1,000 youths* for youths 12 years of age (the number of cases formally handled by juvenile courts for every 1,000 12-year-old youths in the population) was 6.7 per 1,000, compared with 40.2 per 1,000 for 17-year-old youths.⁵

Indeed, the likelihood of formal court processing for 17-year-old youths was much higher than that for 12-year-old youths, even though a number of states do not process youths who are 17 years of age because they are considered adults. Moreover, the formal case processing rate for males was 37.9 per 1,000, compared with 11.8 per 1,000 females. For white youths, the formal case processing rate was 19.5 per 1,000 youths, compared with 57.0 per 1,000 African American youths, 29.5 per 1,000 American Indian youths, and 7.9 for youths categorized as Asian.⁶

formally process

Handle a case in a way that leads to a formal court hearing.

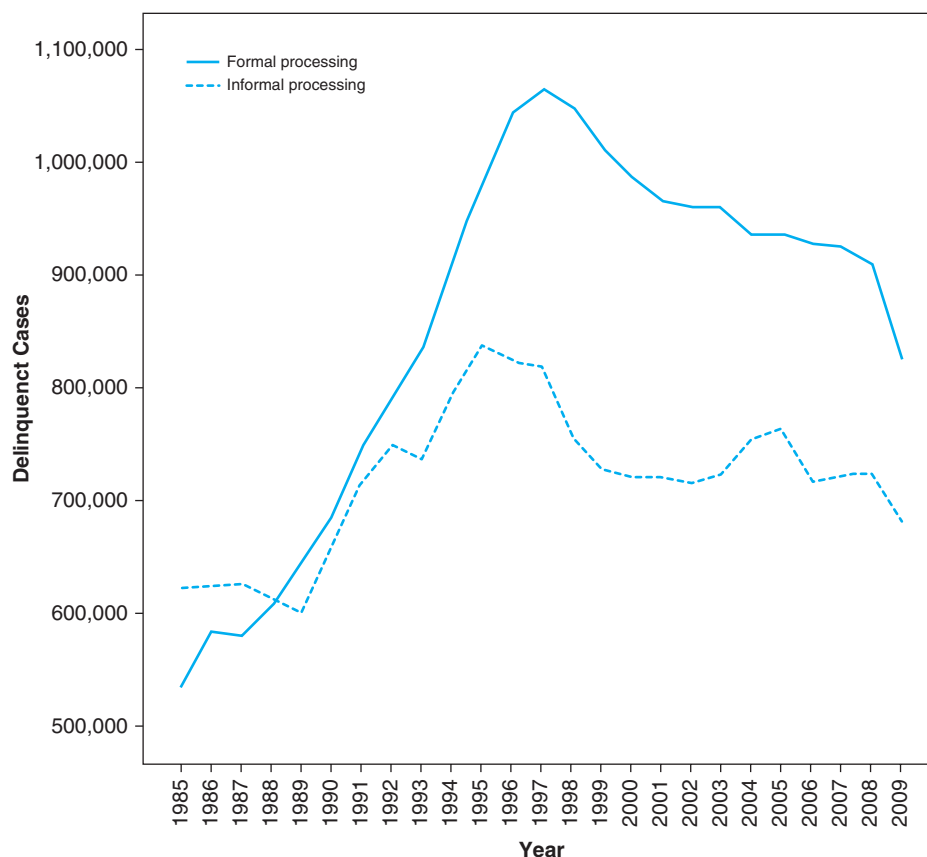


FIGURE 10-2 Number of Cases Handled Formally and Informally by Juvenile Courts, 1985–2009

Source: National Center for Juvenile Justice

FYI GETTING UP-TO-DATE INFORMATION ON CASES PROCESSED IN JUVENILE COURTS IS BECOMING MORE DIFFICULT

As this edition is being completed in the fall of 2012, the most recent data available on cases processed by juvenile courts are from 2009.

■ The Philosophy Behind Case Processing in the Juvenile Court

The early juvenile courts were characterized by informality,⁷ and they paid little attention to due process protections—protections recognized as the cornerstone of adult criminal court operation because they help prevent governmental abuse of power. In the juvenile courts, however, an emphasis on due process protections was thought to be unnecessary and possibly counterproductive. It was thought to be unnecessary because the juvenile courts had been created to serve the best interests of children. Moreover, it was thought to be potentially counterproductive because it could hinder the efforts of the courts to respond quickly to the needs of children.



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FYI

The logic used to downplay the importance of due process in juvenile courts was this: Because they were established to serve the best interests of children, children did not need to be protected from these institutions. As the history of juvenile justice makes clear, however, juvenile courts and other institutions that make up the juvenile justice process have not always operated in ways that help children or serve their interests. Moreover, this is a problem that continues today.

Although contemporary juvenile court operation is still marked by considerable informality in many jurisdictions, U.S. Supreme Court rulings such as *Kent v. United States*, *In re Gault*, *In re Winship*, and *Breed v. Jones*, as well as state court rulings, have led to more formal procedures in juvenile courts. For example, in many jurisdictions, it is now common practice for juveniles to be represented by counsel in juvenile court hearings, for records to be made of juvenile proceedings, for courts to carefully detail the rights of youths and parents when they appear before the court, and for courts to follow the same procedural rules used in adult criminal courts. Nevertheless, it is also true that the extent to which courts employ more formalized procedures and protect due process rights varies considerably across jurisdictions. Indeed, in some states many youths still appear before juvenile courts without representation by counsel.⁸ Furthermore, the quality of representation that many youths receive is inadequate.⁹

These realities highlight the sharp differences in juvenile court operation found in the United States. These differences include not just variations in the quality of representation, but also differences in the structure of the courts, as explained in the following section.

FYI ATTORNEYS DO NOT ALWAYS PROVIDE ADEQUATE REPRESENTATION TO JUVENILE CLIENTS

Unfortunately, youths and their parents often get what they pay for. Most attorneys who appear in juvenile courts are not retained by the parents of the juvenile to represent their child or themselves. Most are court appointed, and the pay is minimal. New attorneys, recently admitted to the bar, typically try to get on court-appointed lists as a way to get court experience and to earn some income. The lack of experience on the part of some attorneys who practice in juvenile court may be one factor that accounts for the inadequate representation that juveniles sometimes receive in juvenile courts. In addition, several other factors may contribute to inadequate representation of youths. These factors include high caseloads, inadequate training in areas such as child development, learning disabilities, child mental health and juvenile law, and a lack of resources for mounting a strong defense.¹⁰ Moreover, attorney perspectives of their role in the juvenile court may influence the type of representation that is provided. Attorneys who believe that their role is to act as a surrogate guardian for the child or those who believe that their role is to assist the court in serving the best interests of the child¹¹ may be less inclined to mount vigorous defenses for clients because such tactics may not be seen as serving the best interests of the child.

Of course, effective and competent representation is found in the juvenile courts. Many veteran attorneys practice in juvenile courts as appointed counsel, not so much for the money but because they want to have a positive effect on young lives. Many attorneys take the position that if they can help juvenile offenders straighten out their lives, they may not have to provide legal representation to these same individuals after they become adults.

■ The Structure of the Juvenile Court

Each state, as well as the District of Columbia, has at least one court with authority over minors who engage in illegal behavior. Generally, courts that handle delinquency cases are either part of the highest court of general trial jurisdiction or part of a lower trial court where less serious

criminal cases or limited-claim civil matters are heard. In some states, however, delinquency cases are heard in separately organized **family courts** by judges who specialize in juvenile and domestic relations matters.

Although a court that hears delinquency cases is generally referred to as “the juvenile court,” in most states this term is not used as the official name of the court. In fact, the structure of courts with juvenile jurisdiction varies considerably from state to state, and can even vary within a state. A court with jurisdiction over juveniles may be part of a district, superior, circuit, county, municipal, or family court. It typically has a separate division that handles juvenile cases involving criminal or status offense behaviors, and it may handle abuse and neglect cases as well as adoption, termination of parental rights, and emancipation of minors.¹² For example, the juvenile court in North Carolina is part of the district court, a lower general trial court within the state. One or more district court judges, depending on the size of the jurisdiction, volunteer to specialize in juvenile cases, or if there are no volunteers, one or more judges may be appointed by the chief district court judge to hear juvenile cases. In Florida, the juvenile court is part of the circuit court, a court of general jurisdiction where most criminal and civil matters originate. In California and Alaska, the juvenile court is a part of the superior court, which is also a court of general trial jurisdiction, whereas in Rhode Island and South Carolina, the juvenile court is part of a separately organized statewide family court system. In Michigan, the juvenile court was a division of the probate court until 1998, at which time it became part of the family division of circuit court, the general trial court in that state. Colorado has a hybrid model: Denver has a separately organized municipal juvenile court, but in the remainder of the state, the juvenile court is part of the district court, which is a court of general trial jurisdiction.

As noted earlier, in some states juvenile courts are part of lower trial courts. National standards recommend that states establish family courts as a division of the general jurisdiction trial court. This would allow these courts to hear a wide range of juvenile and family-related issues and theoretically would allow better coordination of cases when families are involved with multiple courts. However, there has been only limited movement in this direction to date. Some states (e.g., Rhode Island, New York, Delaware, and South Carolina) have placed jurisdiction for delinquency matters in a family court.¹³ One state that has recently taken some steps in this direction is Massachusetts. In Massachusetts, there is a statewide juvenile court under the Administrative Office of the Trial Court that has 11 divisions around the state, has its own chief justice, and holds court in more than 40 locations around the state. The Massachusetts juvenile court has general jurisdiction over delinquency, children in need of services (CHINS), care and protection **petitions**, adult contributing to the delinquency of a minor cases, adoption, guardianship, termination of parental rights proceedings, and youthful offender cases.¹⁴ Also, a number of other states (e.g., Alaska, California, Colorado, Florida, Illinois, and Wisconsin) have moved jurisdiction over delinquency cases to the highest court of general trial jurisdiction. Altogether, a variety of juvenile court models exists—indeed, sometimes more than one type of court structure can be found within the same state (e.g., Colorado).

According to H. Ted Rubin, who has studied courts extensively, “The structure of any court is significant because it affects the status of the court, in part the quality of the judges of the court, and frequently the budget and the adequacy of the staff of the court.”¹⁵ Within each state, the state supreme court is the court of highest status. At the trial level, however, the court of highest status is the **general trial court**, whatever it happens to be called (e.g., circuit court, superior court, district court, or court of common pleas). The general trial court hears felony cases and civil claims that have no maximum dollar limit.¹⁶

When a juvenile court is part of the general trial court, it occupies a prestigious position in the state court structure. As a result, it is in a better position to attract a larger share of state resources than lower courts, which command less prestige. It also has higher-paid personnel, including judges and others who staff the court; better facilities; and more support services

family court

A unified trial court where all cases involving families are heard, including divorce, adoption, custody, guardianship, paternity, neglect and abuse, and in some jurisdictions, delinquency cases. Family court advocates claim that when all family matters are handled by one court, there is less chance for overlapping services, redundant reports, and fragmented intervention.

petition

A pleading to initiate a matter in juvenile court. A petition sets forth the alleged grounds for the court to take jurisdiction of a case and requests court intervention.

general trial court

A court of high status within a state's legal system that hears felony criminal cases and civil cases with unlimited dollar amounts.

than it would if it were part of a lower trial court. In some cases, the additional resources allow more effective and efficient court administration.¹⁷ Conversely, when a juvenile court is part of a lower trial court of limited jurisdiction, it may have difficulty attracting sufficient resources to support its mission.

COMPARATIVE FOCUS

The United States Is Unusual Because It Has More Than 51 Juvenile Justice Systems

There is not a single national juvenile justice process in the United States. Although there are many commonalities in juvenile justice practice across each state, the District of Columbia, U.S. territories, and American Indian courts that handle misdemeanor offenses committed by juvenile members of recognized tribes, there are also a number of differences across these jurisdictions. In many countries, juvenile laws are passed at the national level. Thus, juvenile justice processes are more uniform across the country. In the United Kingdom, for example, juvenile laws are passed by the National Parliament, unlike in the United States, where each state develops its own juvenile laws.¹⁸

When the early juvenile codes were initially enacted, few felt there was a need for a full-time court to handle delinquency matters. Consequently, juvenile judges spent only part of their time hearing juvenile cases. These judges were generalist judges who heard all types of legal matters. Indeed, in many instances, judges who had the least seniority or had the lowest status among the sitting judges were assigned to hear juvenile cases, regardless of their level of interest in juvenile law. The chance of a juvenile case being heard by a judge with little interest in juvenile law was especially high in small, one-judge jurisdictions.¹⁹

Despite the trend toward placing juvenile courts within more prestigious general trial courts, some juvenile courts are still part of lower trial courts, perhaps because of a belief held by some that lower trial courts may be able to relate more effectively to parents and youths in the community.²⁰ The more likely reason, however, is that state legislatures, as well as the legal profession itself, have traditionally seen juvenile courts as less important than the courts that deal with adult crime. In addition, as mentioned earlier, the juvenile courts' clients have never been politically powerful, and the courts' prestige may have suffered as a result. Furthermore, the early juvenile courts were viewed as playing a parental role and had the responsibility not only of dealing with juvenile crime, but also of protecting children. Thus, many attorneys practicing in juvenile courts viewed themselves more as **guardians ad litem** (persons appointed by courts to represent children and serve their best interests) than as ardent defenders of their clients' legal rights.

As a result of the *Kent* and *Gault* decisions in the 1960s and the introduction of due process into the juvenile courts, attorneys, judges, litigants, and legislators are more likely to view these courts as "real" or "normal." Even so, more intense scrutiny of the juvenile courts by the U.S. Supreme Court and the public has its drawbacks. For example, since the mid-1970s, many state and federal legislators, persons who work in the field of juvenile and criminal justice, and a number of people who work in the area of juvenile justice and crime policy have questioned the effectiveness of juvenile courts in dealing with serious juvenile offenders. In response, many juvenile courts have attempted to implement a more **balanced approach to juvenile justice**, one that protects the rights of juveniles and families but lets the courts address the needs of other community groups, such as victims and those who feel that juveniles should be held accountable for their actions. This balance will be discussed later in the section on adjudication hearings.

Regardless of whether a juvenile court is part of an upper or lower trial court, generalist judges can still be found on the bench. This raises the question of whether juvenile matters

guardian ad litem

A person, usually an attorney, who is appointed by the court to represent the best interests of a child involved in legal proceedings and with social service agencies.

balanced approach to juvenile justice

The belief that juvenile justice should give equal attention to public safety, offender accountability, the needs of victims, and the correction and treatment of juvenile offenders.

are being given adequate attention by these judges. Indeed, if a judge is required to hear juvenile matters but is not particularly interested in the types of cases that come before the juvenile court, these cases will likely get less attention than they deserve. Even if a generalist judge has an interest in juvenile matters, he or she may have difficulty developing expertise in juvenile law, not to mention adolescent and family issues, because of the variety of cases the judge must hear.²¹

Concerned that generalist judges are devoting insufficient attention to juvenile matters, leading juvenile court advocates have called for a separate juvenile or family court with specialist judges. These advocates maintain that specialization is required if judges are to understand the complex legal, family, and adolescent issues involved in juvenile cases. They also argue that specialist juvenile court or family court judges, unlike generalists, will be able to more effectively oversee juvenile cases that sometimes take considerable time and resources.²²

An innovation beginning to receive attention is the idea of “one judge, one family.” The thinking behind this idea is that keeping one judge with a family allows that judge to get to know the entire dynamics of that family and thus to take a “holistic” approach in handling the case. Those who support the “one judge, one family” concept argue that, even though a judge may not be a family court expert, he or she could become an expert on a particular family and its problems. Of course, each judge would be responsible for multiple families, but even then the support staff, referees, and caseworkers would have the ability to know the families individually. Instead of trying cases, judges would preside over families. Although this is an intriguing concept, there are some clear drawbacks. One drawback is the possibility that a judge could lose his or her objectivity and become unable to treat the family fairly. For example, knowledge about a youth’s sibling’s involvement with law enforcement and the court or knowledge about the criminal behavior of a youth’s parents might bias a hearing officer against a youth.

Another trend has been toward the establishment of a **unified trial court**. In this approach, a single trial court capable of dealing with all matters requiring legal intervention would be established in each community. Within this single trial court would be more specialized courts dealing with family matters, delinquency, traffic, civil litigation, and adult criminal behavior. Advocates of the unified trial court maintain that tying separately organized courts together would make court administration more efficient and effective, would eliminate overlapping jurisdictions, and would allow better utilization of court personnel and other resources.²³ Some argue that a unified court encompassing several specialist courts, such as courts devoted to delinquency and family matters, would be better positioned to deal with delinquency cases than a general trial court. Although there is little evidence of a trend toward the development of separately organized juvenile courts, there has been some movement toward more specialized courts dealing with juvenile and family matters within a unified trial court. Illinois has a unified trial court system consisting of 23 circuits, where the circuit court acts as the court of original jurisdiction for all matters that are properly brought before the court.²⁴ The juvenile court is one division or department of the circuit court. For example, in the Circuit Court of Cook County (Chicago), the Juvenile Justice and Child Protection Department contains the juvenile court, which is headed by a presiding judge.²⁵

Still another type of specialized juvenile court that has been established in some jurisdictions is the **juvenile drug court**. The first juvenile drug court was implemented in 1989 in Miami, Florida. Since that time, juvenile drug courts have been started in a number of states. Drug courts are special courts that handle cases “involving substance-abusing offenders through comprehensive supervision, drug testing, treatment services and immediate sanctions and incentives.”²⁶ What is important to note about drug courts is that not only do they hear cases and deal with legal issues around substance possession and use, but they also play a critical role in the coordination of treatment for youths with substance abuse problems. Indeed, these

unified trial court

Comprehensive court encompassing several specialist courts, such as courts devoted to delinquency and family matters, as well as other types of courts. Also see **family court**.

juvenile drug court

Specialized juvenile court that handles cases involving substance-abusing offenders through comprehensive supervision, drug testing, treatment services, and immediate sanctions and incentives.

courts follow the therapeutic jurisprudence model that is designed to (1) provide immediate intervention, (2) use nonadversarial adjudication, (3) employ active judicial intervention, (4) utilize treatment programs, and (5) have clear rules and goals.²⁷ Courts practicing therapeutic jurisprudence are what Judith S. Kaye, chief judge of the State of New York, calls “hands-on courts.” She says, “In these courts judges are active participants in the problem-solving process. . . . What’s so different about this approach? First is the court’s belief that we can and should play a role in trying to solve the problems that are fueling our caseloads. Second is the belief that outcomes—not just process and precedents—matter.”²⁸ Although these courts hold youths accountable for their behaviors, the judge, attorneys, probation staff, and treatment providers also work as a team with the youth and family to encourage behavioral changes.

FYI NOT ALL JUVENILE CASES ARE HEARD BY JUVENILE COURTS

As noted earlier, criminal courts hear cases of juveniles who are transferred to adult courts. Also, because there is no separate federal juvenile justice system, juveniles who are arrested by federal law enforcement officials may be handled by U.S. District Courts.²⁹ Moreover, various tribal courts handle misdemeanor cases of juvenile members of recognized American Indian tribes, and federal courts have jurisdiction over felony offenses committed by tribal members.³⁰

Juvenile Court Personnel: The Key Players

judicial administration

The daily and long-range management of a court. The judge, as head of the court, is ultimately responsible for judicial administration, but can choose to delegate many of the particular duties to others, such as a court administrator, paralegal, or administrative aide.

judicial leadership

Guidance provided by a judge in the areas of programming, personnel, and budget administration. Also shown in his or her efforts to act as children’s advocate and consensus builder within the community.

The juvenile court, of course, is more than just a structure. It is made up of a number of individuals who work within the organizational framework of the court. These individuals perform a variety of roles—roles that regularly require them to make important decisions about the lives of youths and families and community safety. Collectively, these roles and the decisions made by the individuals who work in and in concert with the court determine the quality and quantity of justice dispensed by the juvenile court. The following sections describe some of the key decision makers who determine the quality of justice dispensed by the juvenile court.

The Juvenile Court Judge

The most important decision maker in the juvenile court is the judge. The judge has ultimate responsibility for the operation of the court and for the legal direction the court takes. The judge exerts influence through (1) **judicial administration** of the court and (2) **judicial leadership**.

As the ultimate leader of the court organization, the juvenile or family court judge may be responsible for hiring and firing of court personnel, court policies, work rules, and the level and priority of court staffing. Usually, a court administrator is hired to handle the day-to-day operation of the court, hire and fire staff, oversee the budget, and perform other administrative and policy tasks. In smaller courts that do not have court administrators, many of these tasks may be delegated to a paralegal, administrative assistant, or clerk who assists the judge. The amount of authority delegated to the court administrator and other middle-management personnel in the court, however, often depends on the philosophy of the judge. If the judge takes a “hands-on” approach, he or she will take an active interest in the day-to-day operation of the court. The judge may want to review all personnel, policy, and budget decisions before they



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are implemented. Furthermore, court staffing may well reflect the judge's view as to what the court's emphasis should be. For example, if the judge believes strongly in probation and the development and operation of programs for youths, then extra resources might go to hiring probation officers and developing and staffing various treatment programs, assuming that the court budget makes these activities feasible. In another court, the emphasis might be on community protection, and the judge might want money spent on a detention center and out-of-home placements. The main disadvantage of a hands-on approach is that the judge's involvement in administrative matters takes time away from his or her courtroom duties. It also can lead to frustration on the part of the court administrator and other staff, who may resent a judge's constant incursions into their professional domains. Of course, in many jurisdictions, judges may have little or no control over probation, detention, and other resources because these are operated by other state agencies, not the court. Thus, the number of individuals who can be directly influenced by the juvenile court judge varies across jurisdictions. Nevertheless, within the court itself, judges are the key decision makers, and as we note below, their influence can be seen well beyond the court itself.

If the judge views his or her role as setting broad administrative guidelines and policies and letting the hired managers run the court, a different atmosphere is present. A hands-off approach allows court managers to do what they do best—run the court. The advantages are obvious. People in the court are able to perform the roles their professional training prepared them for. The disadvantages include the possibility that the judge will become isolated from the daily life of the court and lose touch with the employees. Another concern is that administrators, because they are hired and not elected, may not be attuned to community priorities and concerns to the same extent as judges. Thus, the ideal is for the judge to set broad guidelines for the administrator and the other managers, but to continue to actively review the progress and outcomes of court programs.

In the judicial arena, the judge is paramount. He or she is the role model for other court employees, including the quasi-judicial officers such as referees, masters, commissioners, and magistrates employed in the court. The judge decides how the courtroom will be run, what cases have priority, what outcomes are preferred, and the extent to which due process is emphasized for juveniles and families. For example, if the judge decides that status offenders are not going to be dealt with by the court, that decision not only affects the types of cases heard by the court, but also can influence the types of staff the court will need and the types of programs operated by court personnel.

Judicial leadership is not simply relegated to the court, but is found in the community as well. Judicial leadership carries into the community, as judges commonly serve on numerous community boards and committees. How the citizens of the community perceive the judge and react to that perception will have much to do with their support for the court as a whole and for individual court programs. The judge must maintain favorable relations with business and community leaders and elected officials. Many times, the court's budget is controlled by the county board or council, and how they feel about the judge may be translated into dollars and cents. Importantly, most juvenile court judges are elected officials. Once elected, they are always "running" for reelection when in the public eye, and their ability to deal with the political pressure they experience is crucial to their success and the success of the court. For instance, they may be under considerable public pressure to take a tough stand on juvenile crime, which can sometimes conflict with their desire to help youths.

In large urban counties with several juvenile court judges, the judges typically elect one of their colleagues to be chief judge, usually on the basis of seniority,³¹ although the chief judge in some jurisdictions is chosen by the state's highest court. In a statewide juvenile court system like that found in Massachusetts, there is a chief justice who is appointed by the governor and acts as the overall administrator for the juvenile court divisions around the state. Regardless

BOX 10-1 INTERVIEW: THE HONORABLE STEPHEN GORSALITZ, CHIEF JUDGE OF THE NINTH CIRCUIT COURT, FAMILY DIVISION

Q: How did you come to serve on the family court bench?

A: I had been a lawyer in full-time private practice for 25 years doing personal injury litigation primarily. Earlier in my career, for the first 8½ years of my practice, I had done some court-appointed work in the juvenile court, both in delinquency cases representing accused delinquents and in child protective proceedings as attorney for the parents and lawyer guardian *ad litem* for the children. I found that the work I had done in these juvenile court cases was far more rewarding than my personal injury practice, so when the judge position in the family division opened up, I ran for it and was elected.

Q: What types of cases do you hear or preside over on a regular basis?

A: There are quite a varied number and types of legal matters that the family court has jurisdiction over. It has been and continues to be a challenge to stay current with the changing laws in so many legal areas, but the vast majority of hearings I preside over are delinquency cases, child protective proceedings, divorces, and cases arising from divorces such as child support and visitation matters. I will list for you the various types of cases I preside over: child protective proceedings, delinquency matters, divorce with and without children, custody, paternity and child support, parenting time, adoptions, guardianships, mental commitment proceedings, parental waiver cases where the court authorizes minor girls to obtain an abortion without their parents' permission, personal protective orders, and drug treatment court cases.

Q: How heavy is your weekly work schedule given the many types of matters that you handle?

A: Typically I spend between 25 and 30 hours per week on the bench presiding over court cases. For each hour I spend on the bench, I have preparation time of 5 to 10 hours per week, which includes signing orders. As the chief judge, I have administrative duties that typically take from 4 to 6 hours each week. I don't have a law clerk, so I do my own legal research, which takes approximately 5 hours each week. So you can see that I keep busy as a judge.

Q: How much do you get paid for your work?

A: My salary, which is paid by the state of Michigan, is \$139,000 per year, and judges have not had a raise in several years.

Q: What is your education background?

A: I graduated from Western Michigan University in 1972 with a BS in psychology and sociology. I was a scholarship athlete for the Broncos, running track and cross country. I went to law school after graduation, and graduated from Cooley Law School in Lansing, Michigan, in 1976.

Q: Do you support the family court concept as the best way to make the system work better for families and children?

A: Yes, very much so. In Michigan, our family court statute talks about "one judge, one family," and that is the principle that we try to follow. The more informed and knowledgeable I am about a family and their history, the more readily I can get right to the fundamental issues and problems that need to be addressed and corrected. It prevents communication lapses between courts and makes us more efficient. The only downside, however, is that after a long time with a family, it is sometimes hard to be objective about them.

Q: Do you believe that judges need specific expertise in handling delinquency matters and child protective proceedings?

A: Yes, I definitely think so. One needs a background in the behavioral sciences and a fundamental understanding of how human beings function. The purpose of court jurisdiction is to assist people in changing negative behaviors and helping them to make better decisions. It also helps to have an understanding of how the service provision system works and how services are funded. There are also special areas of the law that judges need to be familiar with, such as the Indian Child Welfare Act, Title 4D and 4E federal laws, which impact the state family court. It goes without saying that, as a judge, I need to know the court rules, statutes, and forms that I use every day, and it does not hurt to understand the legislative process.

BOX 10-1 (CONTINUED)

Q: In Michigan, does the family court have the responsibility for the delivery of services and case supervision in child protective proceedings and delinquency cases?

A: The answer is yes in both instances, but in different ways. In child protective proceedings, the court does not provide direct services to families and children but performs the job of “watchkeeper” over the Department of Human Services and private agencies that directly deliver the services. It is the court’s job to make sure that the court’s orders are followed and that the needed services are delivered. That may sound like a “no brainer,” but people make the system go, and people make mistakes and misjudgments.

As for delinquency cases, the court is responsible for direct delivery of services and supervision of delinquent juveniles under the court’s authority. The court has an experienced probation department that supervises juveniles allowed to return to the community, a day treatment program that serves juveniles during and after school hours, and a 60-bed juvenile home and treatment center for juveniles who present special challenges to their families and the community.

Q: What are the most important legal or social issues facing your court in 2012 and beyond?

A: I can think of four major challenges to the court and community now and into the future. First is access to justice. Michigan is just one of three states that place the financial burden on local governments to fund court-appointed attorneys for indigent persons. In the family court, all delinquents are presumed indigent, so we have quite a significant financial obligation to provide adequate representation for them. In child protective proceedings, the children are provided with a lawyer-guardian *ad litem* at no cost to them, and most parents qualify for court-appointed counsel.

Second, it is an ongoing challenge to make sure that services ordered are carried out to reunite families. With the states contracting out services and case supervision to private child-care agencies, having the budgetary money to pay for these private services is a challenge. Any extras that are needed in cases have to be funded by grants or foundation money, which is not always available or easy to obtain.

Third, there was a lawsuit filed against the DHS (Department of Human Services) a few years ago that resulted in a settlement that required the DHS to do certain things differently in their supervision of and provision of services in child protective proceedings. Neither the local courts nor the legislature was party to this lawsuit, nor were they consulted about the consequences of the settlement. As a result, the legislature needs to catch up in implementing legislation to help with the settlement-mandated changes and to provide the necessary additional funding for those changes.

Last, there is a significant problem with the negative stigmatization of juveniles due to convictions that get posted on the Internet. The entire premise of the juvenile court is that children should be able to correct youthful mistakes and not have to live with the consequences for their entire lives. With the advent of the Internet, delinquency convictions that are public knowledge are posted and never go away. The court does not have the ability to expunge the Internet.

Q: If you could change or modify the juvenile justice system, what changes would you make?

A: I would require more education in the schools about the consequences of illegal drug use, especially meth. I would mandate that schools cooperate with even earlier intervention to at-risk families. I would focus more funding on access to justice matters and education. Finally, I would stress that communities are responsible for their children and that more emphasis should be placed on the value of fatherhood and parenthood. Too many children are growing up without proper male role models in too many of our communities.

Q: What have been your most rewarding experiences while sitting as a family court judge?

A: Seeing families successfully navigate the system and be reunited with their children is a great experience, knowing that in some way you helped out in the process. It’s great when young people come back to visit and stop in to thank me for holding them accountable, but also for believing in them and helping them to do the right thing and make better decisions for themselves.

Source: Stephen Gorsalitz, September 20, 2012.

of how the chief judge is chosen, and the range of his or her administrative authority (e.g., whether it is a county or a statewide system), the chief judge has the ultimate responsibility for court administration and judicial leadership, although daily court operations may be delegated to a court administrator in larger jurisdictions. In large courts, the burden of this responsibility can be extremely taxing, and therefore good administration is even more important in these courts, whether administration is directed by the judge, an administrator, or a judge and administrator team.

Juvenile court judges wield tremendous power over juveniles and families who come before the court, and they exercise wide discretion in how they respond to cases. This is most clearly seen when judges remove children from their homes. Indeed, the ability to take juveniles from their homes and detain them or impose some other out-of-home placement represents a conspicuous example of the power vested in judges. Yet juvenile court judges exercise tremendous power in a variety of ways—they issue orders that require youths to seek treatment, obey their parents, avoid unsavory persons or places, attend school, cooperate with probation officers, adhere to curfews, and engage in other actions that judges feel are appropriate. In addition, juvenile court judges may also order parents to engage in (or refrain from) certain actions. For example, a judge may order parents to attend counseling, transport their child to court-ordered counseling, clean their home, ensure that their child attends school, cooperate with probation officers, and pay some or all of the costs of the services provided by the court. Furthermore, a juvenile court judge may hold the parents or guardian of a child in contempt of court and have them jailed for not complying with court orders.

Clearly, juvenile court judges have considerable power. Not surprisingly, some juvenile court judges abuse their power and act like tyrants or dictators when they are on the bench. Many others, however, are dedicated and able jurists. These judges are careful to protect the rights of juveniles and families before the court, and they strive to balance the best interests of children and families against the need to protect public safety.

FYI MOST JUVENILE COURT JUDGES ARE ELECTED

Juvenile court judges are selected in a variety of ways. In most states, they are elected in partisan or nonpartisan elections. In other states, they are appointed by the governor from a list of candidates chosen by a screening board. In Connecticut, a Judicial Selection Commission identifies and recommends qualified candidates to the governor, who must select an individual from the list of candidates. The nominee is then sent to the General Assembly's Judiciary Committee, who must confirm the appointment after a public hearing. Finally, both chambers of the state legislature must approve the nominee.³² In South Carolina, candidates must be screened and found qualified by the Judicial Merit Selection Commission. Qualified candidates are then elected by a vote of the legislature.³³ Also, about a dozen states have adopted the Missouri plan. Under this plan, an elected official, usually the governor, appoints a candidate from a list compiled by a commission. Once appointed to the bench, however, incumbent judges must run on their records in nonpartisan and uncontested elections.³⁴ Although there are many dedicated and competent judges who sit on the juvenile court bench, present methods of selecting juvenile court judges do have some drawbacks. Because successful political campaigns require substantial amounts of money, a heavily bankrolled politician can prevail over a more qualified candidate. Moreover, the appointment of candidates to the bench is often a highly political affair, and work for the party in office may be treated as more important than judicial qualifications.³⁵

FYI JUDGES ARE REWARDED WITH SUBSTANTIAL SALARIES

In 2011, the median salary of a judge in a general jurisdiction trial court in the United States was \$132,500.³⁶

Juvenile Court Referees and Other Quasi-Judicial Hearing Officers

Among the critical players in many contemporary juvenile courts are individuals appointed by judges as **quasi-judicial hearing officers**. These individuals, who are usually attorneys, are referred to by such titles as “referee,” “commissioner,” “master,” “administrative law judge,” and “magistrate.” No matter what they are called, their primary role is to hear cases. Indeed, in some jurisdictions, the great majority of cases heard in juvenile courts are presided over by quasi-judicial hearing officers who are not judges.³⁷

Although a variety of factors often enter into the selection of referees and similar quasi-judicial hearing officers, three stand out: (1) knowledge of and expertise in juvenile law, (2) judicial demeanor and interpersonal skills, and (3) ability to assist the court in handling its caseload. As noted earlier, the vast majority of judges are elected. Unfortunately, however, judicial elections are often treated as less important than those for other offices. Furthermore, voters frequently have a hard time distinguishing one candidate from another because ethical considerations prevent judges from campaigning “against” their opponents. As a result, judges are often elected because of name recognition or political connections rather than expertise in the appropriate area of law.

Referees or similar quasi-judicial hearing officers who are appointed by judges, in contrast, are frequently chosen for their expertise. In many instances, they constitute the true repository of knowledge regarding the applicable case and statutory law in the area of juvenile justice, and in some courts, they have far more experience on the juvenile court bench than the sitting judges. In addition to their legal knowledge, their judicial demeanor (i.e., how they conduct themselves on the bench) and their interpersonal skills can be highly valued by juvenile court judges.

It has long been recognized in many states that judges alone cannot handle the large volume of cases that are referred to the juvenile court. There are also a number of minor judicial tasks that, from a practical and an economic point of view, could be better performed by someone other than a judge. Consequently, as the volume of work in juvenile courts has increased, the use of quasi-judicial hearing officers has expanded to keep pace. In many courts, these people preside over most of the same types of hearings as judges, and their recommendations are treated as having the same force and effect as the judges’ orders. Nevertheless, most states place some limits on the authority of referees and other quasi-judicial hearing officers, such as preventing them from conducting waiver hearings or presiding over jury trials where they are available.³⁸

Administratively, referees and other quasi-judicial hearing officers are often looked to as the people to go to for legal advice in the court. Increasingly, they are required to be attorneys, and in many courts, they are more accessible to the line staff than the judges. In some courts, quasi-judicial hearing officers act as legal advisors to the court administrators and thus have a significant influence on court policy. They are also popular in many jurisdictions because they are uniformly less expensive than judges. Their salaries are usually significantly less, and they may require less support staff. For example, a judge may need a personal secretary and a court recorder. In contrast, referees and other quasi-judicial court officers frequently do their own recording and use the court’s clerical pool for processing orders, reports, and other legal documents. As caseloads and docket pressures have increased in many jurisdictions, the creation of quasi-judicial hearing officer positions has become a popular way of dealing with these pressures, and they are seen as economically efficient alternatives to the creation of new judgeships.

The use of referees and other quasi-judicial hearing officers in juvenile courts does have some potential problems. In jurisdictions where quasi-judicial hearing officers hold a majority of the hearings, they are arguably “judicial substitutes rather than judicial supplements,”³⁹ despite claims that they are intended to assist judges, not replace them.⁴⁰ Moreover, heavy

quasi-judicial hearing officer

A hearing officer empowered by the court to hear cases. Hearing officers are often attorneys and hear a variety of cases, although state law typically places some limits on their authority.

reliance on referees may send a message that juvenile court matters are not sufficiently important to merit more judges, thus diminishing the stature of the juvenile court. Still another problem is that judges, in situations where they are required to review the findings and orders of referees, may do little more than rubber-stamp them. Finally, because referees are hired by judges and serve at their pleasure, a newly hired referee would not have the same degree of power and independence that a judge in a newly created judgeship would have.⁴¹

MYTH VS REALITY QUASI-JUDICIAL HEARING OFFICERS OFTEN HAVE CONSIDERABLE EXPERTISE IN JUVENILE JUSTICE

Myth—Juvenile court referees (or masters, commissioners, and magistrates, as they are called in some states) lack the expertise of juvenile court judges.

Reality—Quasi-judicial hearing officers may be hired by a juvenile court judge precisely because of their knowledge of juvenile and family law. In addition, some quasi-judicial hearing officers have far more experience on the juvenile court bench than some juvenile court judges.

on call

Available for emergency service. Some jurisdictions require that a judicial officer be available to make emergency decisions about the placement of youths who are alleged to have violated the law.

FYI REFEREES HAVE SUBSTANTIAL AUTHORITY TO ACT ON BEHALF OF JUDGES

Referees and other quasi-judicial hearing officers are often **on call** or on weekend duty because of state laws that require a judicial review to be conducted within 24 to 48 hours following the placement of a juvenile in detention. Their role as on-call judicial officers gives referees substantial authority to determine which juveniles should be kept in detention and for what types of offenses. The decision to detain a youth is important because there is evidence that youths who are detained are more likely to receive more severe dispositions at later stages of the juvenile justice process.⁴² They also conduct preliminary hearings or arraignments, where they make important decisions about bond and the need for further court action. This screening function is crucial for the efficient processing of cases.

The Juvenile Court Administrator

The court administrator is the manager of the court. He or she has primary responsibility for (1) personnel, (2) budget, and (3) programming. The court administrator hires and fires employees, interviews new employees, oversees employee performance evaluations, negotiates with any collective bargaining units, and acts as a liaison with other government agencies on employment-related matters. For example, many juvenile courts are subject to the financial controls of state or local governments (county or city). Usually, these governments have personnel offices and directors who work with local employees in animal control, police, fire, mental health, and parks and recreation departments. In some jurisdictions, court employees are also local government employees and are subject to the same policies as other such employees. These situations require the court administrator to act as a liaison and coordinator between the court and the local government. If the court is a separate government unit, then the court administrator is primarily responsible for developing and implementing personnel policies, conducting and overseeing employee evaluations, and engaging in other employment-related functions. His or her actions, however, may be subject to the final approval of the judge.

In addition to their employment-related responsibilities, juvenile court administrators also have budget responsibilities. Many juvenile courts have large budgets, and it is the administrator's job to create a responsible budget and then make sure the court uses its monetary resources wisely. Budgetary items needing consideration may include (1) capital expenses for buildings and grounds, (2) employee salaries and fringe benefits, (3) placement costs for out-of-home care, (4) juvenile detention center costs,

(5) court-appointed attorney fees, (6) witness fees, (7) security costs, (8) equipment costs and amortization, (9) training costs, and (10) mileage and travel costs. It is evident from this list that a great deal of economic tradeoff and balancing must be done to meet the needs of children, families, and the community without forgetting the employees of the court who provide services to the court's clientele.

Finally, the court administrator must exercise leadership in developing and implementing programs to serve children and families and to accomplish the mission of the court. To do this effectively, the administrator must be familiar with the needs and resources of the community, the preferences of the judges, and the economic constraints of the court budget. Ideally, the court administrator should be knowledgeable in a variety of areas, including (1) community corrections, (2) diversion alternatives, (3) detention resources and secure placement options, (4) group and foster care programs, (5) substance abuse treatment, (6) mental health options, (7) domestic violence programs and shelters, and (8) institutional placement options. In many jurisdictions, the court actually operates some of these programs and must fit them with other programs to provide a **continuum of care** for children. The creation of a continuum of care requires not only staffing and managing court-operated programs, but also connecting with other state and local resources and agencies that operate programs for children and families. The administrator must be able to develop needed programs, see that they are properly staffed and managed, evaluate their effectiveness, and know when resources outside the court must be used to aid in the treatment of juveniles and to protect the community.

continuum of care

A range of comprehensive and connected services for families and children.

BOX 10-2 INTERVIEW: R. SCOTT RYDER, TRIBAL COURT ADMINISTRATOR FOR THE NOTTAWASEPPI HURON BAND OF POTAWATOMI INDIANS AND PRIVATE PRACTICE ATTORNEY

Mr. Ryder is former Juvenile Division Director/Referee, 45th Circuit Court, Family Division, St. Joseph County, Michigan, and Chief Referee for the Family Division, Ninth Judicial Circuit Court, Kalamazoo, Michigan

Q: What were your responsibilities as an administrator, and how did you like them?

A: As a court administrator, I conducted hearings from time to time—I have presided over more than 20,000 hearings in my career. Primarily, I worked on financial issues, including preparing and overseeing the budget; personnel issues, hiring, firing, and contract negotiating; court scheduling and docket control; legal research and policy preparation; acting as a liaison between the court and other public and private agencies dealing with juveniles; and finally just managing the day-to-day activities of the court. I enjoyed the challenge and the opportunity to be involved in all facets of the court's operations.

Q: You worked for more than 25 years as chief referee in a juvenile court and you still heard cases. What did you like about the referee position?

A: I liked the challenge of making decisions that can have a positive impact on children and families. I also liked the challenge of articulating community standards and the challenges that arise in the course of hearings, and I enjoyed very much the people I worked with.

Q: What were the most difficult challenges you faced as chief referee?

A: Being in a supervisory position is always a challenge, especially when you are responsible for supervising independent judicial officers, because there is not always a simple "right" decision. My approach has always been to ensure that the right procedures and policies are followed. Of course, anytime one works in government there are a variety of political issues you must face. Unfortunately, political decisions that influence juvenile justice are often made without input from people who work in the field. Another challenge was working with families. There is a lot of poor parenting, and it can be difficult trying to get parents to be more responsible and positively involved in their children's lives.

(continues)

BOX 10-2 (CONTINUED)

Q: What was a typical presenting problem in the cases you heard in court?

A: An absence of responsible parenting. Many of the parents didn't properly supervise their children, impart appropriate values to them, or support their children in positive activities. Too many parents were so caught up in their own lives that they failed to play a positive role in the lives of their children.

Q: What qualities does it take to be a successful hearing officer?

A: You have to know family and child law, how the court works (what it can and cannot do), and how it fits into a continuum of services for youths and families. You have to know the fundamentals of appropriate parenting. You must be able to be confrontational when necessary, but you also need to be patient and understanding. I also think it is important to have a deep compassion for those involved in the court and a genuine desire to help them make their situations better.

Q: What do you feel is unique to the referee position in the court?

A: Referees can bring some unique qualities to the court that, unfortunately, are not always recognized. Because referees are not elected, they can be more independent. Also, referees can bring tremendous experience to the court that can take judges years to develop.

Q: What are the challenges that you faced as a court administrator?

A: I worked in a small rural county in southwestern Michigan. The entire court budget was slightly under \$1 million, including employees' salaries and fringe benefits. The court always had to be diligent in overseeing how the money was spent because economic resources influenced our ability to help children and families. Consequently, the court had to be creative in utilizing community resources and do a "better than good" job at determining which youths threaten community safety and should be removed from the community. It also meant the court had to be very proactive, not only in developing local programs, but also in networking with local public and private agencies to coordinate services for youths.

Q: What qualities does it take to be successful as a court administrator?

A: You have to know family and child law, how the court works, legally what it can and cannot do. You must understand the local services culture, which agency does what, who you need to contact so that resources can be directed to those who need them most. Most of all, you must understand how to manage, motivate, and lead people. You must understand the strengths and weaknesses of your employees, how to best motivate them, and what incentives or discipline works with each. You must be a good listener, open always to both sides of the story, and, finally, you must be decisive. Nothing paralyzes an organization more than leaders who do not lead. I was a "middle" manager, so I had to know my position in the county hierarchy and understand that my real bosses were the citizens and taxpayers of the county. Political understanding, "moxie," can never be overlooked in importance. Finally, you have to understand the judge you work for, how he or she works, his or her philosophy, and how he or she intends to implement it.

FYI COURT ADMINISTRATORS ARE SOME OF THE HIGHEST PAID PROFESSIONALS IN JUVENILE JUSTICE

The median salary for a state court administrator in 2011 was \$130,410.⁴³

The Prosecuting Attorney

The prosecuting, district, state, or commonwealth attorney is the chief law enforcement officer of the county, district, or local government. All police work goes to the prosecutor for review, and in most cases, only the prosecutor can issue charges of delinquency against juveniles (see [Figure 10-3](#)). Indeed, the prosecutor plays a key role in determining which cases will go to court, what the specific charges will be, which cases will be considered for waiver to adult courts, and what the disposition of each case will be.⁴⁴

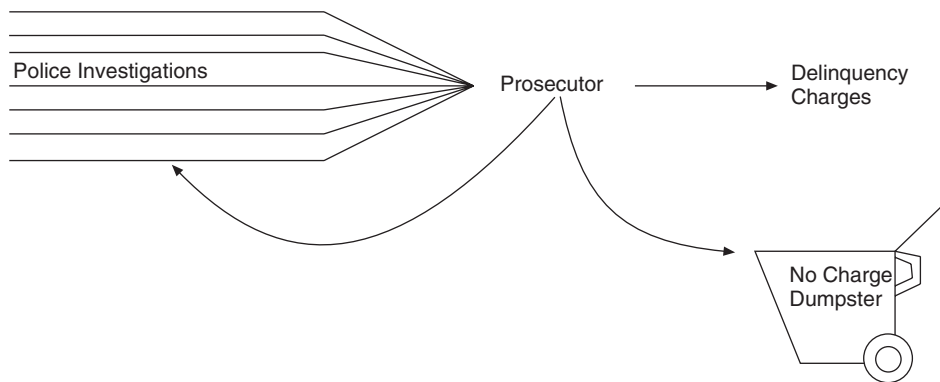


FIGURE 10-3 The Role of the Prosecuting Attorney

FYI PROSECUTORS SHOULD BALANCE JUVENILES' INTERESTS WITH THOSE OF THE COMMUNITY

Although the prosecutor has an important obligation to protect community safety, the prosecutor should take a balanced approach to juvenile cases, according to the National District Attorney's Association (NDAA). According to NDAA, "The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and the welfare of the community, including the victim, is their primary concern, prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without compromising that concern."⁴⁵

Like other juvenile justice decision makers, the prosecutor has considerable discretion. Given the discretion vested in the office of the prosecutor, the prosecutor can virtually control the juvenile court's delinquency docket by deciding which cases to formally charge and prosecute. In addition, by deciding what kinds of cases are to be charged, the prosecutor helps determine community standards of acceptable conduct. The decision, for example, to enforce a community curfew makes a statement to youths and their parents about when minors should be at home in the evening. By enforcing a standard for behavior, the prosecutor articulates the community standard, sets forth consequences for violation of that standard, and influences the behavior of some youths and their parents.

Prosecutors, in many states, also have legislatively mandated obligations to victims. In a very real sense, when prosecuting a crime, a prosecutor becomes the victim's attorney. Only recently have victims been recognized as more than just necessary witnesses. As a result, the prosecutor may have an obligation to seek restitution on behalf of a victim or the victim's estate and to take special measures to protect the victim both in the court proceedings and out of court.

Prosecutors also play a crucial role in ensuring that the court operates as efficiently as possible. Any court has a finite amount of courtroom time available. An attempt by a prosecutor to charge each juvenile and adjudicate each case would more than use up available courtroom time and would completely exhaust judges, referees, and other court personnel. By careful use of plea negotiating, the prosecutor can save the state's resources for the most important cases and keep the juvenile court docket from getting clogged up.

The Defense Attorney

It is the defense attorney's job to represent the wishes of his or her client (e.g., an accused juvenile), ensure that the client's rights are not violated, and present the client's case in the most

favorable light, regardless of the client's involvement in illegal activity.⁴⁶ In order to provide effective legal representation, the juvenile defense attorney must establish a good relationship with the client and strive to understand the client's needs and wishes.⁴⁷ Theoretically, the attorney must follow the wishes of the client and vigorously defend the client's interests,⁴⁸ but many attorneys believe they also should act as an advisor. As mentioned earlier, a defense attorney typically wants to ensure that his or her client receives any help and assistance needed, but the attorney must also ensure that the court has legal grounds for exercising authority over the youth.⁴⁹

What usually happens is that the defense attorney insists on the juvenile's due process rights at the initial detention hearing and continues to insist on them through the adjudicative or trial stage. After a conviction by trial or plea has been obtained, however, the defense attorney may become more of a guardian *ad litem*, focusing on the juvenile's best interests. A guardian *ad litem* is a person appointed by the court to represent the best interests of a child involved in legal proceedings and with social service agencies. When the attorney assumes this role, then he or she gives more consideration to the needs of the client as a child than to the expressed wishes of the client as a legal defendant.

Defense attorneys also can influence the court's docket by deciding when they will take a case to trial and when they will attempt to negotiate a plea. For example, in 1997, Michigan enacted a sexual offender registration act that requires all people who are convicted of a sexual offense to be placed on a list available to local law enforcement agencies. Before the registration law, many attorneys would engage in plea bargains in sexual offense cases out of concern for their clients' future and possible need for treatment. Now most of these cases are going to trial because of attorneys' desires to keep their clients from suffering the stigmatization that goes with appearing on the sexual offender list. This is a good example of the unintended consequences associated with new legislation. The legislature wanted communities to know who convicted sexual offenders were, for obvious public safety reasons, but the unintended results of the law appear to include an increase in sexual offense trials and a corresponding increase in court expenses.

To understand the role of defense attorneys in juvenile court, it is necessary to distinguish the ways attorneys become involved in the court. Usually, attorneys who appear in delinquency cases are (1) client retained, (2) court appointed, (3) legal aid or public defender attorneys, or (4) members of a consortium of attorneys.

Client-Retained Attorneys

These attorneys typically represent clients in criminal proceedings and are hired by the youth's parents to represent the youth in court. In many instances, however, privately retained attorneys know little about how the juvenile court operates. In fact, it may be to a client's advantage to have a court-appointed attorney, because an attorney who practices regularly in juvenile court knows the court process and personnel. However, court-appointed attorneys may have relationships with the court or prosecution that prevent them from acting as zealous advocates for their clients.⁵⁰

Court-Appointed Attorneys

Court-appointed attorneys usually must apply to the chief judge or court administrator to be placed on a list of attorneys available for representing clients in the juvenile court. Minimum levels of training and expertise are often required for qualification, and continuing education is frequently mandated. Court-appointed attorneys are usually called by the court on a rotating basis, and parents of children represented are often required to meet with the court's finance officer to determine the family's ability to reimburse the court for attorney fees.

Legal Aid or Public Defender Attorneys

These attorneys often appear in juvenile courts because of a contract between the court and their agency to provide legal services. The extent of the services provided is determined by the contract.

Attorney Consortia

These attorneys belong to a group of attorneys who have joined together in order to offer their services to the court for a set amount of money. Although a contract between the court and the consortium dictates the terms of the representation, these private attorneys have a specific interest in juvenile court practice.

In assessing juvenile defense practice in the United States, H. Ted Rubin, a former judge of the Denver Juvenile Court and evaluator of juvenile courts across the country, noted the following about the need for forceful defense of juveniles:

I sense that quite a few juvenile justice professionals, including judges, presume juveniles to be guilty, rather than innocent, and are bothered when defense lawyers vigorously challenge legal procedures and the apparent good intentions of law enforcement, probation, and community corrections officials. However, juveniles must have independent counsel whose primary goal is ensuring that the law and the Constitution are fully adhered to. The courts must require such advocacy, and attorneys should zealously apply these standards.

I also see a preference among court and state agency professionals to use intervention and control methods without legal checks. In the belief that they know what is best, they often move youths back and forth between secure and non-secure resources without legal review. Similar practices are what brought us the *Gault* decision. . . . The best check on uncertain intervention and legal accomplishments is judicial oversight and the forceful legal defense for juveniles. This is in everyone's best interest.⁵¹

Probation and Other Casework Staff

In addition to hearing officers and attorneys, a variety of caseworkers play important roles in the juvenile court process, including court hearings. One of the most important is the probation officer. Probation officers perform six basic roles in juvenile courts: (1) screening cases in intake, (2) conducting presentence investigations, (3) supervising and monitoring youths' adherence to their rules of probation, (4) providing assistance to youths placed on probation, (5) providing ongoing assessments of clients' needs, and (6) completing a variety of job-related administrative tasks. In other words, probation officers are the people who may visit youths' homes, locate youths who are not where they are supposed to be, confront parents when they fail to assist their children, check with school and other agency personnel to monitor youths' behavior and progress, and, when necessary, request that a youth's probation be revoked. They may also make decisions about how new cases should be processed, conduct investigations, provide testimony and reports for court hearings, work with attorneys in developing dispositional plans, serve summons, and make arrests.

Probation officers or other caseworkers may be employed in specialized programs operated by or on behalf of courts. For example, juvenile courts or other government agencies may operate a variety of programs, such as diversion programs and foster care. Furthermore, they may also operate their own shelter care units, group homes, and detention centers. Probation officers or other caseworkers may be used to staff these programs or be given responsibility for providing casework services to youths in these programs.

Probation and other caseworkers who work for or with juvenile courts clearly perform a number of vital tasks. Indeed, those who occupy these positions can influence which youths penetrate farther into the juvenile justice process. They can influence youths' involvement in a variety of juvenile justice programs, from diversion to probation to institutional placement. They can also influence how long youths are involved with the juvenile court. In short, probation officers and other caseworkers act as the eyes and ears of the court. These individuals gather and analyze different types of information and make important recommendations to the court that almost always carry weight with judges and other juvenile justice decision makers.

■ The Adjudication and Disposition Hearings

All of the key players in the juvenile court—judges and other quasi-judicial hearing officers, prosecuting and defense attorneys, probation officers, and other caseworkers—make decisions that can have a profound effect on youths and families. Although decisions about youths and families are made at many points in the juvenile justice process, they typically are made either in preparation for critical events or during critical events. Critical events that occur prior to the adjudication include the arrest, the juvenile court intake process, the decision to try a juvenile as an adult, and the detention hearing. This section examines two more critical events in juvenile justice: the adjudication hearing and the disposition hearing. These hearings are significant decision-making points in the juvenile justice process because they determine which youths will fall under the formal jurisdiction of the court and how the court will handle those youths.

The Adjudication Hearing

adjudication hearing

The juvenile court equivalent of an adult court trial. It is at the adjudication that the juvenile court attempts to ensure due process, find the facts, uphold the law, and make decisions concerning jurisdiction over the juvenile.

The **adjudication hearing** is a critical event in the juvenile justice process that serves as the juvenile court equivalent to a criminal trial.⁵² It is the adjudication hearing that determines whether the juvenile comes within the jurisdiction and under the formal authority of the court. If the juvenile is adjudicated (if it is found that the allegations are true), the court has the power to issue orders affecting the juvenile and his or her parents (or custodian or guardian). Without an adjudication, the court has no legal authority to intervene in the life of the juvenile and his or her family.

The adjudication hearing can take one of two forms. It can be a plea-taking hearing, in which the juvenile admits to a delinquency offense, or it can be a trial. A plea-taking hearing is by far the most common type of adjudication hearing.⁵³ Ideally, at a plea-taking hearing, the purpose and potential outcomes of the plea and the rights that the juvenile and parents have are clearly explained to them. If the plea is the result of plea bargaining between the prosecuting and defense attorneys and the juvenile, which is common in juvenile justice, the terms of the negotiation must be placed on the court record, including what the juvenile gets from the plea and what he or she gives up.⁵⁴ Usually, the juvenile admits to a less serious delinquency charge or fewer charges, the tradeoff being that the juvenile avoids the chance of a more severe sentence and the prosecuting attorney is assured of a conviction.

In theory, the juvenile's due process rights at the adjudicative phase are virtually identical to those of adults at trial. Consequently, in order to take a valid plea, a complete advice of rights should be given and an understanding waiver or "giving up" of those rights should be placed on the record. Unlike an adult proceeding, however, the juvenile's parents should also be consulted about whether they agree with the waiver of rights. By accepting a plea at the adjudication, the court not only acquires formal jurisdiction over the child, but it will likely exercise authority over the parents as well.

plea bargaining

Negotiation of an agreement between the prosecuting and defending attorneys, often with the consent of the court, to have the accused plead guilty to a reduced charge or to fewer charges than originally brought.

The prosecutor benefits by gaining a certain conviction, and the defendant benefits by avoiding the possibility of a more severe sentence.

FYI PLEA BARGAINS ARE COMMON EVENTS IN JUVENILE JUSTICE

A **plea bargain** is a deal between the defense attorney (who represents the defendant) and the prosecuting attorney (who represents the state), according to which the defendant agrees to plead guilty to a lesser charge or to fewer charges than originally at issue. Like other deals, both sides get something and give up something. What the prosecutor gets is a conviction and the court's jurisdiction and power over the juvenile. What the prosecutor gives up is the opportunity at a trial to convict the juvenile of all the charges or the more serious charge. What the juvenile gets is an adjudication on a less serious charge or fewer charges. What the juvenile gives up is the opportunity to have his or her day in court and be found not guilty.

If the juvenile chooses to contest the delinquency charges, the only resolution of the matter is to have a contested adjudication hearing or trial. In many jurisdictions, contested

adjudications proceed much like trials in criminal courts, although there can be considerable variation in the court rules and procedures that govern juvenile court adjudications. Moreover, there can be important differences between juvenile and criminal court processes. For example, the rules of evidence may not be the same in juvenile court as in adult court, requirements for proving a crime may be less rigorous in juvenile court, the rules of procedure used in juvenile court may not be completely the same in juvenile court as in adult court, and all of the defenses available to adults may not be available to youths in juvenile court.⁵⁵ In other states, there are no clear statutory requirements regarding rules of evidence in the areas of “**opinion testimony**, **hearsay evidence**, **rules of impeachment**, and so forth.”⁵⁶ As a result, hearsay evidence from social investigations is sometimes used in juvenile court adjudications. This practice would not be acceptable in criminal courts because information about how children are doing in school, their peer associations, and their family circumstances are not relevant to their guilt or innocence.⁵⁷ Moreover, the informality of the juvenile court often provides parents an opportunity to convict their children by criticizing them during the adjudication process.⁵⁸ In still other states, civil law rules of evidence are used in delinquency matters.⁵⁹ There are also differences between jurisdictions in the extent to which adult process such as **pretrial discovery** is afforded to juveniles. In Michigan, for example, juveniles are entitled to limited pretrial discovery,⁶⁰ and motion practice is governed by virtually the same rules as in adult criminal proceedings.⁶¹

In regard to due process protections, there also can be differences between juvenile adjudications and criminal trials. For example, in many states, juveniles have most, but not all, of the due process protections available to adults, such as the right to be proven guilty “beyond a reasonable doubt,”⁶² to have the assistance of counsel, to receive written and timely notice, to cross-examine witnesses, and to remain silent.⁶³ However, in an important U.S. Supreme Court case, *McKeiver v. Pennsylvania*, the Court refused to guarantee a jury trial to juveniles,⁶⁴ although a number of states have granted juveniles this right. Even in these states, jury trials rarely occur, however, and they typically result in the same outcomes as uncontested cases.⁶⁵ Thus juveniles are often denied the same quality of legal protections that are afforded adults in criminal trials.

Given the “get-tough” approach toward many juvenile offenders and the increasingly harsh punishment alternatives available to juvenile courts, it is important that juvenile defendants be afforded meaningful due process protections at the adjudication. (A complete list of the due process rights afforded juveniles in one Michigan court is displayed in **Exhibit 10-1**.) Undoubtedly, the most important of the protections available to juveniles at the adjudication is the right to be represented by counsel. Representation by counsel is critical because attorneys are trained in the law and have an obligation to ensure that the rights of their clients are protected. Despite the obvious importance of this due process right, many juveniles appear in juvenile court without attorney representation. For example, in a study based on juvenile court data in six states, Barry Feld found that, in cases where a petition had already been filed, only about half of the juveniles were represented by counsel.⁶⁶ Similar findings have been presented in other studies of attorney representation in juvenile courts.⁶⁷ These findings raise questions about the extent to which due process protections are in fact a reality in many juvenile courts, despite U.S. Supreme Court rulings mandating these protections.

Hearing officers in juvenile courts must be sufficiently cognizant and protective of the due process rights of the juvenile if the court is to have credibility with those it is intended to serve. If, after a conviction at trial, the juvenile or his or her family believes that the trial was unfair or that their rights were slighted by the court, cooperation at the disposition will be affected. Even though many juveniles will continue to proclaim their innocence after trial, it is crucial that the adjudication be conducted in a clear and fair manner in order to facilitate subsequent court decisions made at the disposition hearing.

opinion testimony

Testimony based on one's opinions as opposed to objective facts.

hearsay evidence

Secondhand evidence, such as a witness's testimony that he or she heard someone say something.

rules of impeachment

Process of demonstrating that a witness is not telling the truth or does not have the knowledge to provide specific testimony.

pretrial discovery

Part of the pretrial process in which the defense and the prosecution request information from the other side in an effort to discover pertinent facts regarding a case.

Sample Guilty Plea Checklist

Judge/Referee _____ APA _____ Date _____

- ☐ Minor waives attorney ☐ Parents/guardian agree with attorney waiver
 Minor's attorney _____ ☐ Parents/guardian present

☐ Proceedings on the record:

- Plea of ☐ Guilty ☐ Original charge ☐ Lesser _____
☐ Nolo contendere

1. ☐ Court has stated why plea is appropriate.
2. ☐ Evidence presented to support finding of guilt.

ALL PLEAS—MINOR PERSONALLY ADVISED

- ☐ Nature of charge
☐ Disposition court could impose
☐ Minor on probation
☐ Plea admits violation of probation
☐ Parents/guardian contest verbally to minor waiving these rights. (Be sure both parents state so on record.)

MINOR ADVISED THAT BY PLEA HE GIVES UP

- ☐ Jury trial
☐ Trial by just judge without jury
☐ Presumption of innocence
☐ Proof beyond reasonable doubt
☐ Compulsory process
☐ Confront witness
☐ Remain silent
☐ No adverse inferences from silence
☐ Right to testify

DISPOSITION AGREEMENT

- ☐ Terms on record
☐ Petitioner agrees ☐ Minor agrees ☐ Minor's attorney agrees
☐ Minor's parents/guardian agree
☐ Court states if prior agreement in plea or disposition

MINOR ASKED

- ☐ Promised anything beyond stated disposition
☐ Threatened
☐ His choice to plead ☐ Parents agree

COURT SATISFIED

- ☐ Plea freely, voluntarily made
☐ Crime committed (Question minor for elements)
☐ Minor involved or took part in
☐ Plea accepted

Disposition Date _____

EXHIBIT 10-1 Probate Court for the County of Kalamazoo, Michigan, Juvenile Division: Delinquency Guilty Plea Checklist

Source: Courtesy of R. Scott Ryder.

FYI HAVING A RECORD OF JUVENILE COURT PROCEEDINGS IS AN IMPORTANT DUE PROCESS SAFEGUARD

The term *on the record*, when used to describe hearing procedures, means that an audio or audiovisual recording was made of the hearing. This record of the proceedings is a fundamental due process safeguard for the juvenile, because any appeal of the adjudication or disposition is based on this record. Having such a record helps prevent judges and quasi-judicial hearing officers from acting capriciously or inappropriately.

The Disposition Hearing

The **disposition hearing** is “the primary feature that distinguishes the juvenile system from the adult criminal court.”⁶⁸ Unlike the sentencing in criminal court, where a sanction is applied to the offender, the juvenile court disposition is intended to assist the youth and protect the community. It is at the disposition hearing that formal plans designed to meet the needs of the youth, the family, and the community are initiated. It is also at this hearing that the judge or other hearing officer attempts to balance the “best interests” of the youth and the need for community safety. Judges and other quasi-judicial hearing officers often have great latitude and discretion in making dispositional decisions.

In formulating a disposition, the court usually seeks a great deal of input and information, which is gathered and interpreted for the hearing officer by a caseworker (e.g., a probation officer) in the form of a predisposition report or social history. In preparing the predisposition report, the caseworker collects information from various sources in order to present a detailed social history of the youth and the family. The sources may include (1) school reports, (2) victim impact reports and restitution reports, (3) psychological evaluations, (4) substance abuse assessments, (5) financial statements and tax returns, (6) letters from the friends and family of the juvenile, (7) criminal histories of the juvenile and other family members, (8) child abuse and neglect history, and (9) the caseworker’s own observations and conclusions. The purpose of this report, which basically outlines “problems” perceived by the caseworker and recommended responses to those problems, is to ensure that the juvenile receives “individualized” justice.⁶⁹

Juvenile court hearing officers often rely heavily on the predisposition reports prepared by caseworkers and on recommendations in these reports in determining how best to respond to adjudicated youths. The amount and type of information contained in these reports is determined by state laws, court procedures,⁷⁰ and local custom. In some jurisdictions, predisposition reports are very lengthy and reflect a detailed investigation into the background and present circumstances of the juvenile and the family. In other jurisdictions, only limited information about the juvenile’s background is included.⁷¹

In most instances, hearing officers follow the recommendations contained in the predisposition report.⁷² However, this may be because probation officers are sensitive to hearing officers’ beliefs about what is appropriate in particular types of cases and tailor their recommendations accordingly. Indeed, as discussed in the next section, there is considerable evidence that both legal factors (such as the seriousness of the offense, the youth’s prior record, and earlier decisions to detain a youth) and nonlegal factors (such as race, ethnicity, and gender) play a significant role in court dispositions.

disposition hearing

The sentencing phase of the juvenile court process. During this phase, the court tries to establish individualized plans for juveniles that balance rehabilitation and community safety.

MYTH VS REALITY JUVENILES HAVE SOME, BUT NOT ALL, OF THE SAME RIGHTS AS ADULTS

Myth—Juveniles have the same due process protections at trial as adults.

Reality—Juveniles do not have a right to a jury trial in all states, and even in states where this right is available, it is rarely exercised. Moreover, juvenile hearings are often characterized by practices that would not be acceptable in criminal court proceedings.

FYI EFFORTS TO PROVIDE JUVENILES WITH QUALITY LEGAL REPRESENTATION EARLY IN THE JUVENILE JUSTICE PROCESS ARE MADE IN SOME COMMUNITIES

One example is the Youth Advocacy Division (YAD), which provides legal representation to youths in Massachusetts juvenile courts and has offices in Boston, Fall River, Hyannis, Lowell, Quincy, Roxbury, Salem, Somerville, Springfield, and Worcester. YAD takes a holistic approach to working with clients by examining problems that led to the youths' involvement in the juvenile justice process and by coordinating services with community agencies in order to meet youths' needs during and after court involvement. In addition, it offers consultation to individuals and community groups interested in delinquency, and it provides training to attorneys, parents, youths, and other groups interested in child advocacy.⁷³

FYI THE PREDISPOSITION REPORT IS AN IMPORTANT DOCUMENT IN THE JUVENILE COURT

Although predisposition reports aid judges and quasi-judicial hearing officers in deciding on appropriate dispositions, they contain a considerable amount of opinion and hearsay evidence. Indeed, much of the information contained in a typical predisposition report would not be legally admissible during the adjudicatory hearing. Consequently, the hearing officer must not see any of this information prior to the trial or plea. Furthermore, the caseworker should not begin his or her investigation and preparation of the report until after jurisdiction is obtained at the adjudication. Initiating a sentencing investigation, which clearly implies a presumption of guilt before any guilt has been formally determined, undermines the presumption of innocence and gives the juvenile reason to doubt the court's objectivity. Unfortunately, predisposition investigations are sometimes started prior to adjudication, and hearing officers sometimes view the information gathered prior to adjudication.

on the record

Recorded in some fashion. Making audio or audiovisual recordings of critical hearings, including adjudication and disposition hearings, can facilitate the appeal of a verdict and, in general, provides some form of due process protection.

least restrictive available alternative

An available placement that restricts a juvenile offender's freedom the least while ensuring the safety of the juvenile and the community.

Given the importance of the disposition hearing, it is critical that the juvenile receive competent representation by counsel. Moreover, it is important that the juvenile and his or her counsel have access to copies of all documents that are considered by the court in formulating the disposition—a practice supported by the U.S. Supreme Court in *Kent v. United States*.⁷⁴ Also, all documents considered by the court should be marked as exhibits and entered as evidence, **on the record**, at the dispositional hearing. Despite the obvious importance of attorney representation, in some jurisdictions many, if not most, juveniles are not represented by counsel at the disposition hearing.⁷⁵ Moreover, site visits by researchers from the American Bar Association Juvenile Justice Center, the Juvenile Law Center, and the Youth Law Center revealed that when attorneys did represent youths at dispositions, they often felt ill prepared because of high caseloads and the lack of resources and support staff.⁷⁶

Although the predisposition report plays an important role in formulating the disposition, the hearing officer is not bound by the recommendations of the caseworker. Furthermore, state statutes, local resources, and funding level place some limits on the dispositional authority of juvenile courts. Nevertheless, hearing officers often have rather broad discretion in determining the disposition,⁷⁷ although courts are usually required to use the **least restrictive available alternative** that meets the child's needs and ensures public safety. Dispositional alternatives available to courts may include the following options:

- probation in the juvenile's own home (the most common disposition employed by courts)⁷⁸
- placement in a relative's home on probation, or placement in a foster home on probation
- probation with restitution to the victims or probation with community service
- commitment to the state for placement in a state facility
- detention for a specified time period, then release on probation

- placement in a private institutional setting funded by the court and/or the state or a state agency
- placement on intensive probation or house arrest
- placement in a boot camp program
- in-state or out-of-state placement in a private correctional facility
- some combination of the previous alternatives

Although some communities and courts may have all of the above options available to them at disposition, many others, particularly courts in smaller jurisdictions, do not. As a result, although courts may be required by law to use the least restrictive alternative when deciding on a disposition, the lack of options available to the court makes the least restrictive alternative requirement more of an ideal than a reality.

COMPARATIVE FOCUS

Most Countries Provide Attorneys to Represent Children Facing Criminal Penalties

Most countries, even many that do not provide attorneys for the average citizen, provide attorneys to represent children who face criminal penalties.⁷⁹ Moreover, according to the United Nations *Convention on the Rights of the Child*, Article 37, “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent, impartial authority and to a prompt decision on any such action.”⁸⁰ Unfortunately, too many youths in the United States may be deprived of these rights in the juvenile justice process.

Research on Factors Influencing Dispositional Decision Making

Research on juvenile court dispositions suggests that a variety of factors may play a role in dispositional decision making, including *legal factors* (e.g., prior record, severity of offense, and prior juvenile justice processing decisions) and *nonlegal factors* (e.g., race, gender, social class, family structure, and age). The research results consistently show that prior record and severity of the offense are strongly related to the severity of the disposition.⁸¹ In addition, there is considerable evidence that previous juvenile justice decisions, such as the decision to detain a youth, influences juvenile court dispositions.⁸²

Research on the effect of nonlegal variables on dispositions has produced mixed findings. Although the effects of age on dispositions has rarely been examined, an early study by Robert Terry found that older youths were more likely to receive severe dispositions.⁸³ Similar findings have been found in a more recent study of one Iowa county.⁸⁴ As regards the effects of race, social class, and gender, some studies indicate that minority youths, lower-class youths, and females are more likely to receive harsher dispositions.⁸⁵ However, other studies have failed to find that these variables influence dispositional decisions.⁸⁶ At least one study found that males are more likely to be treated more severely than females for criminal offenses but that females receive harsher dispositions for status offenses.⁸⁷ Moreover, a 2008 study by Michael Leiber and Joseph Johnson in one Iowa county found that black youths were more likely to be given a community-based sanction at disposition compared with white youth, who were more likely to receive an out-of-home placement.⁸⁸

Overall, the research on disposition decision making has produced mixed results. Although some studies fail to find evidence of bias at the dispositional phase of the juvenile court process, other studies suggest that, in some jurisdictions or courts, nonlegal variables such as gender, race, and social class influence dispositions, raising serious questions about bias in dispositional decision making in some juvenile courts.

COMPARATIVE FOCUS

Comparative Focus on Indian Justice

One of the constant challenges for the contemporary juvenile court is to continually search for programs and ideas that will efficiently and effectively use taxpayers' dollars and that will work in rehabilitating juveniles involved in the court system. To that end, juvenile courts would be well advised to look at the emerging Indian tribal courts for philosophy as well as programming.

Tribal courts have played an increasingly important role in the movement toward tribal sovereignty that began in earnest in 1934 with the Indian Reorganization Act, also known as the Wheeler-Howard Act. The movement was given additional impetus in 1979 when Congress passed the Indian Child Welfare Act (ICWA).⁸⁹ Among its other provisions to preserve Indian families and to protect Indian children from non-Indian adoptions was recognition of the authority of tribes and tribal courts to intervene in state child welfare cases and even have the cases removed to tribal courts for adjudication and disposition. ICWA not only recognized the existence of tribal courts, it also acknowledged their primacy and competency in handling matters involving Indian children and Indian families. Since 1979, tribal courts have continued to develop and refine how they work with children and families, often combining both traditional and contemporary practices.

In understanding how tribal courts work, it is imperative that Indian perspectives on the role of courts in their society and the underlying philosophy about courts and the human condition be explored and explained. "To become human again"⁹⁰ is the phrase used by Judge/Magistrate Mike Jackson, the Keeper of the Circle of the Kake people in Alaska, to describe what it means for tribal members who have committed crimes in the community to rejoin the community as full members once again. In this phrase, he has captured the essence of Indian philosophy for courts in Indian country. But to fully understand what this phrase really means, certain legal concepts and commonly held beliefs have to be discussed.

Western legal philosophy, as embodied in English common law, assumes that: (1) the best way to arrive at the *truth* in any dispute is to use the adversarial system; (2) out of two zealous advocates opposing each other in court, the actual facts will emerge; and (3) blame or responsibility must be assigned to someone, although, in fairness, blame can be apportioned or shared by more than one person or party. These concepts were brought to the Americas by the European colonists and were, in large part, imposed upon the existing native population. The people who colonized the Americas never gave much thought to the fact that the native people already had their own system of dispute resolution and justice that worked very well for them. This traditional system is worth looking at because of the valuable lessons and principles it contains.

Indian legal and justice concepts are closely intertwined with their religious and spiritual beliefs. Although each tribe has its own individual belief system, there are certain common themes:

- Ancestors are respected, remembered, and present in community life. What was thought and taught by them is followed as part of daily life.
- Every living thing has a spirit that needs to be recognized and respected. Because human beings also have spirits, they are connected in this way with all other living things. Before tapping the maple trees for sap in the spring to make maple syrup, prayers were said and thanks were given by the Notawaseppi Huron Band of Potawatomi Indians to the maple trees for what the tribe was taking from them. To many Indians, life is seen as a "seamless continuity" in which human existence and spiritual existence were connected and coexist.
- Observations made by Indians of the living creatures that they share the earth with demonstrate that these creatures have an important place in the overall natural system and that their innate intelligence, how they adjust to the conditions of their existence, not only shows their essential spirit but provides valuable examples for humans to follow.⁹¹
- Indians focus on the connectedness of all things. The tribe is a unit that shares common ancestors, customs, and traditions that connect them with each other, with their ancestors, and with the world around them.
- The peace and harmony of the community is very important and central to the focus of Indian justice concepts.
- Ethical behavior for human beings goes far beyond human society and requires respect for and sensitivity toward all living things.

With these concepts in mind, the primary focus for Indians in dealing with criminal offenders is to reconcile them with the community. This is accomplished by the community or community representatives meeting with the offender and victim. The purpose of the meeting is to personally reconcile the offender and victim and arrive at a consensus within the community as to how this reconciliation can best be accomplished. The natural antagonism between offender and victim is not emphasized as much as the need for the community to be restored to peace and harmony. Focus is on the relationship, not on potential individual consequences. When the offender is reconciled with the community, then and only then has that person “become human again.”

What lessons can the juvenile justice system learn from the Indians? First, rather than focusing on blame and consequences, focus should be put on community peace and reconciliation. Second, both the offender and the victim are, in reality, members of the same community and may very well end up living in that community after their involvement in the juvenile justice process. This makes the community’s interest in harmony paramount! Third, systems of justice should focus on how people are connected rather than what separates them. The system should focus on restoring the sense of community rather than excluding and alienating people from the community by jailing them or otherwise removing them. Only in the very worst cases is separation felt to be appropriate, because, historically, separation from the tribe was tantamount to a death sentence.

There may be important lessons that other citizens can learn from the approach to justice practiced by Indian peoples. Perhaps it is time to take a long look at that system and its traditions and consider how it might help us respond more effectively to youth offending, and what it could do to reduce the present prison and detention populations and their associated human and financial costs.

CRITICAL THINKING QUESTION

How might Indian approaches to justice be used in place of or in concert with present responses to youths who violate the law?

CHAPTER SUMMARY

As noted at the beginning of this chapter, the juvenile court is the heart of the juvenile justice process. It is a place where previous decisions made by personnel in other agencies, including law enforcement officers, prosecuting attorneys, probation officers, and others, are supported or altered and where a variety of decisions are made that can have an indelible effect on children, their families, crime victims, and the community at large. Furthermore, not only does the juvenile court determine the outcome of individual cases, but through its legal authority it can determine how other institutions and agencies respond to children.

Although the juvenile court occupies a central position in juvenile justice, its position as a legal institution is far from secure. Indeed, there are various trends under way that will affect the juvenile court in the near future. For example, the number of cases being processed by juvenile courts continues to grow, and this growth will tax the personnel, financial, and other resources of the juvenile court for some time to come.

Another trend is toward reformation of juvenile court organizational structures. Currently, a variety of structures are found around the country. Unfortunately, some do not allow the juvenile court the status or the resources that it deserves. Moreover, some jurisdictions still employ generalist judges who hear a variety of cases and whose commitment to juvenile and family matters is suspect. Although some jurisdictions have moved toward family courts or unified court structures that may lend more prestige to juvenile and family law matters, the extent to which these changes will continue is unknown.

Of course, juvenile courts, like other juvenile justice agencies, are made up of people who perform a variety of roles. Key personnel include the judges, a variety of quasi-judicial hearing officers (referees, masters, magistrates, or commissioners), court administrators, prosecuting and defense attorneys, and probation officers and other caseworkers. Clearly, the most important figure in the juvenile court (and juvenile justice in general) is the juvenile court judge. Indeed, the juvenile court judge makes decisions that not only influence the lives of youths and their parents, but also affect the operation and mission of the juvenile court as well as other juvenile justice agencies. Of course, the juvenile court judge and other hearing officers do not make these decisions without assistance. They are surrounded by a supporting cast of professionals who exercise considerable discretion and who themselves make a number of important decisions, including decisions that determine which youths move to the adjudicatory and dispositional stages of the juvenile justice process.

The adjudication and disposition hearings determine which youths come within the formal jurisdiction of the court. Moreover, it is in these hearings that attorneys, probation officers, and others provide information that assists the court in determining guilt and innocence and in making decisions about how to respond to the adjudicated delinquent. Yet, despite the significance of these hearings, there is considerable evidence that youths are not always treated fairly. In some jurisdictions, youths are not afforded representation by counsel; when youths are represented by counsel, that representation is sometimes inadequate; adjudicatory and dispositional decisions are, at times, based on opinion and hearsay evidence; and gender, race, and social class bias sometimes affect judicial decision making. As a result, minority and poor youth are disproportionately involved in the formal juvenile justice process.

Clearly, serious problems confront juvenile courts in the United States, and in some jurisdictions, these problems undoubtedly affect the quality of justice that juveniles receive. However, it should not be forgotten that most juvenile court personnel, from judges to caseworkers, are highly motivated and skilled individuals who are committed to serving the best interests of children and protecting community safety—and who are frequently able to achieve both of these sometimes conflicting goals.

KEY CONCEPTS

adjudication hearing: The juvenile court equivalent of an adult court trial. It is at the adjudication that the juvenile court attempts to ensure due process, find the facts, uphold the law, and make decisions concerning jurisdiction over the juvenile.

balanced approach to juvenile justice: The belief that juvenile justice should give equal attention to public safety, offender accountability, the needs of victims, and the correction and treatment of juvenile offenders.

best interests of the child: A catchphrase that serves as a reminder that the primary focus of a juvenile court should be on the rehabilitation of the children who come before it.

continuum of care: A range of comprehensive and connected services for families and children.

disposition hearing: The sentencing phase of the juvenile court process. During this phase, the court tries to establish individualized plans for juveniles that balance rehabilitation and community safety.

family court: A unified trial court where all cases involving families are heard, including divorce, adoption, custody, guardianship, paternity, neglect and abuse, and, in some jurisdictions, delinquency cases. Family court advocates claim that when all family matters are handled by one court, there is less chance for overlapping services, redundant reports, and fragmented intervention.

formally process: Handle a case in a way that leads to a formal court hearing.

general trial court: A court of high status within a state's legal system that hears felony criminal cases and civil cases with unlimited dollar amounts.

guardian ad litem: A person, usually an attorney, who is appointed by the court to represent the best interests of a child involved in legal proceedings and with social service agencies.

hearsay evidence: Secondhand evidence, such as a witness's testimony that he or she heard someone say something.

judicial administration: The daily and long-range management of a court. The judge, as head of the court, is ultimately responsible for judicial administration, but can choose to delegate many of the particular duties to others, such as a court administrator, paralegal, or administrative aide.

judicial leadership: Guidance provided by a judge in the areas of programming, personnel, and budget administration. Also shown in his or her efforts to act as children's advocate and consensus builder within the community.

juvenile court: The court responsible for holding hearings and making decisions regarding the disposition of juveniles who have entered the juvenile justice process. This court plays many roles, including children's advocate, program leader, fund-raiser, consensus builder, parent, and protector of youths and the community.

juvenile drug court: Specialized juvenile court that handles cases involving substance-abusing offenders through comprehensive supervision, drug testing, treatment services, and immediate sanctions and incentives.

least restrictive available alternative: An available placement that restricts a juvenile offender's freedom the least while ensuring the safety of the juvenile and the community.

on call: Available for emergency service. Some jurisdictions require that a judicial officer be available to make emergency decisions about the placement of youths who are alleged to have violated the law.

on the record: Recorded in some fashion. Making audio or audiovisual recordings of critical hearings, including adjudication and disposition hearings, can facilitate the appeal of a verdict and, in general, provides some form of due process protection.

opinion testimony: Testimony based on one's opinions as opposed to objective facts.

petition: A pleading to initiate a matter in juvenile court. A petition sets forth the alleged grounds for the court to take jurisdiction of a case and requests court intervention.

plea bargaining: Negotiation of an agreement between the prosecuting and defending attorneys, often with the consent of the court, to have the accused plead guilty to a reduced charge or to fewer charges than originally brought. The prosecutor benefits by gaining a certain conviction, and the defendant benefits by avoiding the possibility of a more severe sentence.

pretrial discovery: Part of the pretrial process in which the defense and the prosecution request information from the other side in an effort to discover pertinent facts regarding a case.

quasi-judicial hearing officer: A Hearing officer empowered by the court to hear cases. Hearing officers are often attorneys and hear a variety of cases, although state law typically places some limits on their authority.

rules of impeachment: Process of demonstrating that a witness is not telling the truth or does not have the knowledge to provide specific testimony.

unified trial court: Comprehensive court encompassing several specialist courts, such as courts devoted to delinquency and family matters, as well as other types of courts. Also see **family court**.

REVIEW QUESTIONS

1. What is the basis for claiming that the juvenile court is the center of the juvenile justice process?
2. What responsibility does the juvenile court judge have as an advocate for children?
3. How might being part of a lower-level trial court influence juvenile court operations?
4. How might being part of an upper-level trial court influence juvenile court operations?
5. Who are the key personnel in the juvenile court, and what functions do they perform?
6. What is an adjudication hearing?
7. What due process protections exist at the adjudication hearing?
8. What is the disposition hearing, and what type of information is usually presented to the court at this hearing?
9. What is a family court, and how does it differ from a juvenile court?
10. What is the role of the prosecuting attorney in the juvenile court?
11. What is the role of the defense attorney in the juvenile court?
12. What does it mean to say that a judge is a "hands-on administrator"? Is this a good thing to be?
13. What function does the court administrator have in the juvenile court?
14. How many different roles or functions does a caseworker (such as a probation officer) have in the juvenile court?
15. What are the multiple factors that affect the disposition decision? How do courts weigh them?

ADDITIONAL READINGS

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