The Role of the District Attorney in Juvenile Court: Is the Juvenile Court Becoming Just Like Adult Court?

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INTRODUCTION

California juvenile law has changed dramatically in the past two years. Dissatisfied with the statutory law created in the early 1960s, legislators made significant modifications in the law in both 1975 and 1976. Much of the legislative focus has been on the so-called status offenders and the sixteen and seventeen-year-old youth accused of hard core criminality and his relationship to the courts of criminal jurisdiction.

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Yet by almost any standard the most significant change in the juvenile court has been one of the least publicized, the arrival of the district attorney as a full participant in the juvenile justice system. In this paper, we will sketch the history of the prosecutor in juvenile court, describe the legislative changes that lead to his recent emergence in juvenile court and discuss data we have collected on the impact the new legislation has had upon prosecutor's offices and the juvenile justice system. Our major focus will be on the changes in the resources and duties of the district attorneys in the juvenile court, the changes in the nature of the proceedings in juvenile court as a result of the presence of the district attorney, and the relationship between the juvenile probation department and the district attorney's office.

From its creation in 1899 in Illinois, the juvenile court has had no place for the prosecutor. The philosophy underlying the juvenile court disdained the notion of an ad-

vocate fighting to have young people punished for what they had done just as it shunned the defense attorney and his efforts to assert legal rights for his client. Juvenile court was conceived as non-adversarial, non-legal, and non-punitive. Instead it was created to provide an agency which would detect and then cure problems unique to minors. Its stress was upon rehabilitation through man's growing expertise in the social sciences and away from the legal system's punishment of persons for illegal acts.

For many years in California the prosecutor appeared in juvenile court only by request of the juvenile court or the juvenile probation department. Even the landmark case of *In re Gault* had little impact upon the prosecutor because that case focused exclusively upon the rights of a minor before the juvenile court.

The experience for most California juvenile courts prior to 1977 was for the juvenile probation department to handle all cases from intake through disposition. The district attorney was typically called in only when a contested issue of fact was before the court and then only for the technical purpose of calling, examining and cross-examining witnesses, and arguing legal matters.

All of this changed on January 1, 1977 when AB 3121 became law.[1] This was the most important piece of legislation relating to juvenile court in over a decade. A product of political compromise, the bill toughened the state's approach to youths accused of certain serious crimes and restricted the state's power with regards to minors beyond control of their parents, runaways, and truants.

The get tough approach was reflected in several statutory changes. First, the law was modified to include language expressing to the state's concern with protecting the public from delinquent youths.[2] Second, upon motion of the petitioner, sixteen and seventeen-year-old minors who were accused of certain violent crimes would be presumed to be unfit for juvenile court unless evidence was produced to rebut that presumption. Third, the district attorney was designated the petitioner in juvenile court in all delinquency matters and was specifically mandated to speak for the people in all juvenile delinquency hearings.[3]

On the face of the statute, the district attorney would now appear to be the agency reviewing evidence, deciding what charges, if any, to file, arguing for or against detention, filing motions to have minors found unfit for juvenile court, prosecuting cases and arguing for certain programs at the dispositional hearing. Just how the various district attorney's offices in California have in fact responded to the new statute is the focus of the remainder of this paper.

METHOD

QUESTIONNAIRE INSTRUMENT

A detailed questionnaire concerning the duties of the district attorney in the juvenile court was sent to all district attorney offices in the state of California. The areas of inquiry covered in the questionnaire included the resources available to the district attorney offices, the duties assigned to the office, and juvenile court procedures and practices before and after the new law. Specific questions were also asked about detention hearings, fitness hearings, and dispositional hearings. Both open-ended and structured questions were used.

SUBJECTS

Forty-two out of the fifty-eight counties in California responded to the questionnaire. This represents seventy-five percent of the offices in the state and ninety-four percent of the state population.

The questionnaire was typically filled out by the senior district attorney assigned to the juvenile section or by the head of the office if there was no such section.

RESULTS

CHANGES IN JUVENILE COURT RESOURCES AND PROCEDURES

The survey revealed that there was a significant manpower increase as a result of the expanded district duties after passage of the

new law. The great majority of the reporting counties at least doubled their attorney staff in juvenile court, and all but one of the remaining offices increased their staff. Eighty-five percent of the district attorney offices reporting had a separate division or person assigned to juvenile court, yet thirty-three percent complained that they still had too few attorneys to complete their juvenile court work.

This new law also led to several major changes in the duties performed by the district attorney. Prior to 1977, 21.42 percent of the reporting district attorneys reviewed petitions for evidentiary sufficiency in dependency cases; after 1977 only 7.14 percent review such petitions. In status offender cases, 23.80 percent reviewed petitions before 1977; now only 9.5 percent of the district attorneys review such cases. In delinquency cases, on the other hand, prior to 1977, forty percent of the district attorneys reviewed the petitions for evidentiary sufficiency; after the new law all offices that responded review these petitions.

Major changes have also occurred in the amount and type of court appearances in delinquency cases.

TABLE I
APPEARANCES IN JUVENILE COURT BY PROSECUTORS

Hearing	Prior to 1977 -Appearances-	After January 1, 1977 -Appearances-
Detention	14.28%	88.09%
Fitness	26.19%	90.48%
Jurisdiction	45.23%	87.62%
Disposition	4.76%	88.09%
Traffic	2.3 %	4.76%
Supplemental	21.42%	76.19%
Probation Violation	14.28%	71.42%

As can be seen from Table 1, there has been a marked increase in appearances for all types of hearings, particularly for dispositional detention and fitness hearings. The frequency of appearance in the jurisdictional, supplemental, and probation violence hearings has also increased. Prior to 1977, twenty-six district attorneys said that they appeared in these hearings only when requested by the probation department or the court, and eight said that they appeared in contested hearings only. Only one district attorney said that his office appeared on its own initiative.

After 1977, thirty respondents said that they were required by the new law to appear in all delinquency hearings and, therefore, automatically appeared in all hearings involving delinquent cases. Two offices said they appeared in contested delinquency cases, and six offices still only appeared when requested by the probation department, the court, or the welfare department.

The juvenile court practices and procedures in delinquency cases have become more like those in adult criminal courts as a result of the new law. Now 52.38 percent of the district attorney offices file enhancement clauses, if appropriate, as part of the juvenile court petition. An enhancement clause is a penal code provision which increases the potential punishment a particular person faces if it is found to be true. Examples include arming clauses (Penal Code Sections 12022 and 12022.5), and great bodily injury clauses (Penal Code Section 1203.07). Sixty-nine percent of the responding offices said they filed great bodily injury clauses in appropriate, 71.42 percent file arming clauses and 26.17 percent file enhancement clauses in heroin cases involving one-half ounce or

more. Prior to 1977, enhancement clauses were rarely filed in juvenile court according to the respondents.

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Plea bargaining is perhaps the most famous characteristic of the adult criminal court. Fifty-nine and five-tenths percent of the offices now engage in plea bargaining in the juvenile court, 7.14 percent do it sometimes, and only 38.09 percent reported that they never use plea bargaining in the juvenile court. Seventy-three percent said that they would offer a reduced charge or dismissal of one or more counts in return for an admission by the minor. However, in the dispositional phase of the juvenile process, 80.95 percent would not engage in plea bargaining. In other words, they would not agree to a certain dispositional recommendation in return for an admission to a particular charge. Likewise, 83.33 percent said that they do not engage in plea bargaining involving the issue of fitness hearings.

The issue of plea bargaining in juvenile court appears to be a confusing one for the district attorney. Several open-ended comments indicated that the different offices are still trying to develop a satisfactory plea bargaining policy. Half of the counties claim to have an articulated office policy on plea bargaining, while the rest do not. The tendency is to engage in more plea bargaining than previously in the juvenile court, but the extent and nature of the bargaining remains unclear.

A major change in the new law was the introduction of harsher provisions relating to sixteen and seventeen-year-olds accused of serious crimes. Under the current law when the petitioner raises the fitness question and the minor has been accused of one of the crimes listed in Welfare and Institutes Code Section 707(b),[4] the burden shifts to the minor who must demonstrate that he is amenable to treatment in the juvenile court.

Prior to 1977 and the new law, the provisions relating to fitness hearings were less specific and there were fewer such hearings.[5] Since the passage of the new law most of the counties in our sample had at least doubled the number of fitness hearings held in their respective counties.

Not only has the new law resulted in more fitness hearings, 26.19 percent of the district attorneys reporting interpret the new code as requiring a fitness hearing whenever a sixteen or seventeen-year-old minor is charged with a crime listed in Section 707(b). Of the cases petitioned for findings of unfitness under the new law, forty-five percent of the offices reported that fifty percent or more of the cases had been found unfit. Four of the offices reported that one hundred percent of the cases heard had been found unfit.

RELATIONSHIP TO THE JUVENILE PROBATION DEPARTMENT

Prior to 1977, the juvenile probation department was the principle agency involved in the processing of juvenile delinquency cases. The probation department would make the decision whether to put a minor on informal probation or to petition the court for formal sanctions. The juvenile probation officer was the petitioner. Only rarely did a district attorney appear in juvenile court and only then when requested by the probation department or the court.

All of this changed with the passage of the new law. AB 3121 specifically designates the district attorney as petitioner and indicates that he is a full-time participant in the juvenile court proceedings. This change in the law has led to friction between the district attorney and the probation department. Both agencies appear unclear and confused about how to adjust to their new relationship.

After AB 3121, the probation department has retained some rights and duties such as the right to divert juvenile offenders from the court system and put them on informal supervision. Even this power is subject to the right of the victim or any person who has applied to the probation officer requesting the commencement of juvenile court proceedings to apply directly to the prosecuting attorney. The prosecutor may either affirm the diversion decision or commence juvenile court proceedings. (See Welfare and Institutions Code Section 655).

Whether this provision has been utilized was asked of the district attorney's offices. Half of the respondents reported they did and half did not.

The opinions were quite mixed on what the proper relationship between the probation department and the district attorney's office should be with respect to diverting cases. Six of the respondents believed that the district attorney should make the decision, five said that the probation department should, three said that the district attorney should make the decision and the probation department review the cases, whereas six believed that the probation department should make the decision with a review by the district attorney. Four said that it should be a mutual decision, but with final decision resting with the district attorney.

In fitness hearings, the probation department still exerts a great deal of influence on the court. Seventy-one percent of the district attorneys said that the judge generally followed the fitness recommendation of the juvenile probation officers. Thirty-eight percent said that the judge followed the recommendation of the probation department in more than eighty percent of the cases. The probation department also often suggests the holding of a fitness hearing. Seventy-one percent of the district attorneys said that the probation department often suggests that such a hearing should be held. Yet, the opinions on who has the legal right to request such a hearing are sharply divided. Fifty-two of the district attorneys said that they are the only ones who can request a fitness hearing, while 33.3 percent definitely feel that they are not the only ones. Those who felt that only district attorneys could request such a hearing, cited the new law in support of their opinion. A recent California case, however, indicates that the minor may be able to request such a hearing and be sent to adult court.[6]

We asked what would happen if there was a disagreement with the probation department about the necessity of a fitness hearing. Here, again, the opinions were sharply divided. Twenty-one (forty-two percent) of the offices would go along with the probation department, 7.14 percent would reconsider, and 40.47 percent would strongly oppose the probation department's action. Twenty-one percent would do nothing to implement the probation department's request. Those who would object to the probation department, strongly argued that only district attorneys can file a petition in a fitness hearing.

Several of the respondents (64.28 percent) also indicated that they often disagree with the probation department in dispositional (sentencing) recommendations, particularly in delinquency cases. The rest felt that the dispositional phase of the juvenile process should be the exclusive duty of the probation department, and that the district attorneys should have no input on this matter.

VIEWS ON THE DISTRICT ATTORNEY'S FUNCTIONS

In spite of the legal confusion and interpretative variation following in the wake of AB 3121, all respondents (one hundred percent) felt that the district attorney has an important function to perform in the juvenile court. Most responded that a district attorney is needed to represent the people, because the juvenile court at some stages is an adversarial proceeding. One said that the district attorney was necessary to offset the ever-present public defender and his/her ill advice. Two said that the district attorneys were not adequately trained to handle the legal aspects of juvenile cases.

Some believed that the duties of the district attorney in juvenile proceedings should be increased, while others felt that their duties should be limited. For example, five of the respondents said that the district attorneys should have full discretion with respect to intake, informal probation and the filing of petitions, and that the proceedings in the juvenile court should be identical to those in adult court. On the other hand, four of the respondents felt that the district attorney should be present only at the jurisdictional, fitness and prima facie hearings, and that they should have nothing to do with dependency hearings.

In conclusion, the role of the district attorney in juvenile court is subject to some debate.[7] The divergent opinions and concerns in the final comments from our respondents speak for themselves. One prosecuting attorney said:

> As long as the juvenile justice system remains quasi-criminal/quasi-parental, effectiveness as well as the role of participants will remain uncertain. Another said: There is a need for a more realistic attitude on the part of everyone, as to what type of procedure these really are or are not. The minors all know they are committing a crime, but we covert the wording. This is not a game, it is a serious business and yet the language of the whole attitude is a game and false. It should be shown that this system is for a two-fold purpose: (1) rehabilitation and (2) as important — punishment. Too often do we neglect that aspect of the disposition. The whole attitudes must change or we will continue to lose these people to the adult courts and jails. A quicker action as to punishment might aid and stop partially this steady flow of juveniles to the adult system. Just as at home a swift handling of a situation works much better than ignoring it. Because once it gets to the point of no return it is too late. We all too often in this system neglect the cries of these juveniles for the necessary help and give them a bunch of sweet nothings.

A third district attorney had this to say: "The legalistic approach to juvenile problems is not in the best interest of minors — it teaches them to beat the system and get by with more."

DISCUSSION

The data show that the district attorney has had a significant impact upon the juvenile court. The number of district attorneys and attendant staff has increased at least two-fold. Their presence has made the court appear more like the adult criminal courts. The district attorney is present at all delinquency hearings through all the phases of the proceedings. He engages in behavior similar to his role in the original courts such as plea bargaining and the use of enhancement clauses. More fitness hearings are held and more minors are being sent to the adult courts than prior to 1977.

Our data also show that this has not been an easy transition. There is a great deal of disagreement as to the new statute's interpretation and how much power the district attorney should have in the juvenile court. There is some confusion with respect to the relationship between the district attorney and the juvenile probation department. Different prosecutor's offices have approached the interpretation of the law and their relationship with the probation department and the court in different ways. Finally, the district attorney offices throughout the state have been struggling with the dual purpose of the juvenile court, rehabilitation of the minor, and protection of the public. Office policies and practices attempting to resolve the tension between the dual purposes vary from county to county. The majority of the respondentses protection of the public and punishment, yet many voice the opinion that this should not be done in a legalistic fashion.

AB 3121 brought about a great change in the California juvenile justice system. In delinquency cases the trend was in the direction of becoming a criminal court. A major part of the change has been the role of the district

attorney in the new system. Whether the various district attorney offices throughout the state establish and maintain consistent policies about their participation in the juvenile court remains to be seen.

FOOTNOTES

[1]1976 Cal. Legis. Serv., Ch. 1070, Section 28.5, at 4526.

[2]California Welfare and Institutions Code, Section 502 (West Supp., 1977).

[3]See Welfare and Institutions Code Section 602 (West Supp., 1977).

[4](1) Murder; (2) Arson of an inhabited building; (3) Robbery while armed with a dangerous or deadly weapon; (4) Rape with force or violence or threat of great bodily harm; (5) Kidnapping for ransom; (6) Kidnapping for purpose of robbery; (7) Kidnapping with bodily harm; (8) Assault with intent to murder or attempted murder; (9) Assault with a firearm or destructive device; (10) Assault by any means of force likely to produce great bodily injury; (11) Discharge of a firearm into an inhabited or occupied building.

[5]For a complete analysis of the old and new law, see: "The Case for Abolishing Fitness Hearings in Juvenile Court," by Leonard Edwards, *Santa Clara Law Review*, Vol. 17, No. 3, 1977, pp. 595-630.

[6]*Rucker v. Superior Court*, 75 Cal. App. 3d 197 (1978).

[7]"Here's Looking at You, Kid: Prosecutors in the Juvenile Court Process," David Hicks, *Pepperdine Law Review*, Vol. 5, p. 741, 1978.