Washington State's Solo Path: Juvenile Sentencing Guidelines

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In April 1977, Washington State enacted a major reform of its juvenile justice system. The reform was founded on principles of a "justice" philosophy that emphasizes uniformity, equity, and accountability, with strong parallels to the determinate sentencing philosophy that has been adopted in many states for adult offenders. Washington was the first, and remains the only, state to rely on a sentencing grid for juvenile offenders. Recent statutory amendments have expanded judicial discretion, but the key principles of the 1977 legislation have remained in law. Why did Washington take this independent path, and what forces have maintained it for two decades?

I. 1977 Juvenile Justice Act

A. History and Rationale

Washington's reconsideration of juvenile justice began in the early 1970s. Three developments triggered the changes that followed. Several U.S. Supreme Court decisions mandating due process and procedural safeguards for juveniles sparked the debate. In addition, federal legislation in the early 1970s offered financial rewards to states that removed status offenders from juvenile court jurisdiction. Status offenders are youth whose offenses would not be crimes if committed by an adult. Examples are truancy, incorrigibility, and promiscuity. During this same time period, the Institute of Judicial Administration and the American Bar Association (IJA/ABA) released their recommended juvenile justice standards. These standards embraced determinate sentencing. The document also challenged the prevalent view that state intervention was always, or even often, in the youth's best interest, arguing that court authority to impose treatment on juveniles who violated the law was not inherently beneficial to the youth. In doing so, the recommended standards undermined the traditional belief on which juvenile courts were founded in the early 1900s, that government institutions could "moralize the lives" of delinquents.[1] The founder of Chicago's juvenile court, Judge Julian W. Mack, argued in 1902 that the juvenile court should treat juvenile offenders and neglected children as a "super-parent."

> Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is physically, mentally, morally, and then if it appears that he is treading the path that leads to criminality, to take him in charge, not so much as to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.[2]

Challenging this view, the new thinking about juvenile law represented in the IJA/ABA recommendations came when Washington State was evaluating alternatives to its juvenile laws. Dissatisfaction with the state's system was prevalent. Many believed the system was too lenient, particularly with regard to serious offenders, while simultaneously treating status offenders too harshly. Increasing juvenile crime rates and the consequential cost increases for taxpayers also worried many people.

Between 1973 and 1976, the Washington legislature considered eleven comprehensive reform proposals related to juvenile justice, and although most passed at least one house, all died before passage. In 1976, the Institutions Committee in the House of Representatives undertook a year-long study of the juvenile system. The members visited all state facilities, held hearings throughout the state, and ultimately reached consensus on principles to reform state law. A concurrent resolution expressing this consensus was passed in 1976. The resolution criticized the treatment orientation as ineffective, proposed greater emphasis on work rather than treatment, and stated that "maintaining the family unit should be the first consideration in all cases of state intervention into children's lives."[3]

Following this resolution, committee leaders pressed forward. Three significant documents related to the topic of juvenile justice were issued in 1976. They included a summary of the problems with the current system and law that were raised in a statewide conference, a paper by a legislative staff member that reviewed more than 100 articles and books concerning juvenile justice, and a discussion of the justice model of sentencing issued by the prosecutor's office in the largest county, King County. The latter described the principal features of the justice model as a limitation on the right to punish, a connection between the amount of punishment and the harm done, the importance of uniform punishment, and a rejection of the view that acts done for purposes of rehabilitation are benign.[4]

As deliberations occurred across the state, political consensus began to emerge around the need for more "accountability," both by the juvenile offender as well as the juvenile justice system. The picture emerged of a juvenile court currently operating with extensive discre-

tion and few checks and balances, where decision-making occurred behind closed doors. Legislators learned that of the more than 45,000 cases referred to juvenile courts in 1974, fewer than 10,000 were filed.[5] Probation staff had authority to decide which cases to file, and these decisions occurred in closed settings without judicial or public review.

In addition to concerns regarding the treatment of juvenile offenders, practices surrounding status offenders were also controversial. The extent of juvenile court involvement with status offenders was estimated at 40% of all court referrals in the mid-1970s.[6] Youth who ran away from home or refused to attend school sometimes lost more liberties than youth convicted of serious crimes. Finding political consensus regarding status offenders was an exceptional challenge. When a crime is committed, the state's role is clear: to restore balance to the social contract. When a juvenile runs away to the streets and refuses to return to his or her family, the state's role is more ambiguous. Should the state arrest and confine the youth in a detention facility or an institution? Is a group home with locked doors perhaps a better option? Does the answer change if the youth left home because of physical or sexual abuse by a parent?

Washington's legislative leaders reached an overall compromise solution during the final deliberations on the bill. Status offenders were removed from the court's jurisdiction, with the court to be replaced by voluntary social services available for families in conflict. Although this resolution was politically more vulnerable than the consensus on accountability and the justice model reached on the juvenile offender side, a strong coalition of supporters for overall system reform emerged. The coalition was bipartisan, spanning the political spectrum, including the American Civil Liberties Union and the defense bar, as well as prosecutors and law enforcement. The "missing links" in the reform coalition, however, were juvenile court administrators, probation staff, and judges, some of whom actively lobbied against the reform.

The 1977 bill delayed the reform's implementation date for one year to allow legislative refinements before the law took effect. However, for reasons unrelated to the juvenile law, the Governor surprised the state in 1978 by not calling a legislative session, an option that had been rarely exercised in recent history. Thus, the law went into effect with some internal contradictions and inadequate funding for services.

B. Juvenile Offender Provisions

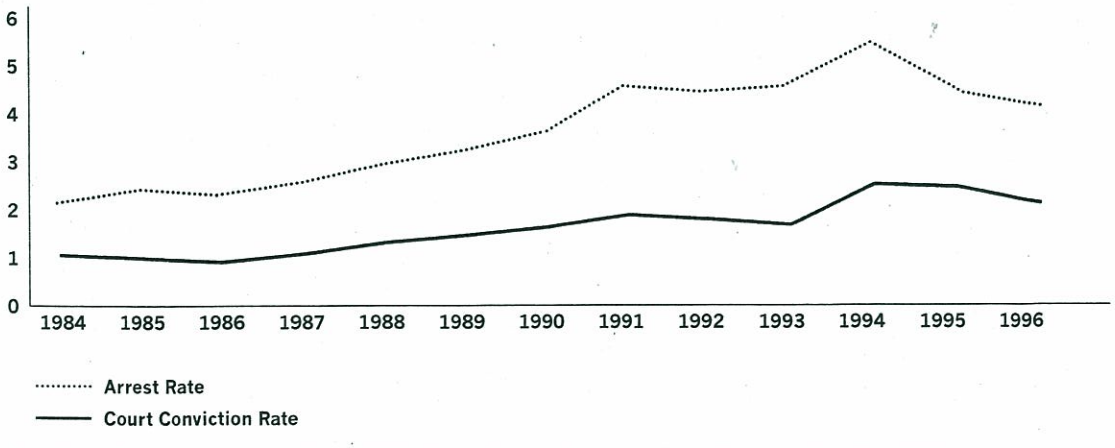
The key changes in the juvenile offender portion of the law were as follows: (1) formalizing decision-making procedures, with discretion shifted from the probation staff to the prosecutor, (2) providing due process rights and other procedural guarantees to juveniles, and (3) enacting a presumptive sentencing system.

The 1977 legislation delineated the upper and lower boundaries of the sentencing system. Serious offenders were defined as youth 15 years or older who committed a Class A offense or a Class B offense that involved use of a weapon or resulted in grievous bodily harm. Such offenders were to be committed to the state Department of Social and Health Services. On the lower end, those who committed minor offenses or who were first-time offenders with Class B offenses could not be confined in local detention centers or placed in group homes. For the remaining group of "middle offenders" more sentencing options were available.

Figure 1

Trends in Rates of Juvenile Violence* in Washington State: 1984–1996

(Arrest and Conviction Rates per 1,000 10-to 17-Year-Old Offenders)



* *Violent offenses include those defined by the FBI: murder, manslaughter, rape, robbery, and aggavated assault.*

Source: Washington Association of Sheriffs and Police Chiefs, Office of the Administrator for the Courts, and the Washington State Institute for Public Policy, April 1998.

The sentencing guidelines were designated as presumptive rather than mandatory, allowing the court to depart from the guidelines if necessary to impose a just sentence. This provision, typically called an exceptional sentence in the adult system, was labeled a "manifest injustice sentence" and could be used to increase or reduce the amount of punishment.

With these parameters set in the 1977 law, the state agency responsible for the juvenile institutions was directed to develop detailed procedures and rules. The grid that emerged relied on the following steps to determine a sentence:

1. Calculate an initial point total by referencing the seriousness levels of the offense (ten levels available).
2. Modify the points depending on the juvenile's age at the time of the offense, with lower points for younger offenders.
3. Determine the juvenile's criminal history. A history increases the point total, with the greatest increase resulting from prior offenses that are either more serious or more recent than the offense for which the juvenile is to be sentenced.

Once the point total is calculated, the sentencing guidelines inform the following decisions: whether the juvenile's punishment will be handled at the county level or through commitment to the state; designation of the duration and range of punishment for youth committed to the state; and establishment of the punishment range for youth placed on community supervision at the county level. In contrast to adult sentencing grids that typically measure punishment in months and years, the juvenile sentencing grid relies on hours, days, and weeks.

As mentioned earlier, the reform shifted key decision-making authority from probation officers to prosecutors. For legally sufficient cases, prosecutors are mandated to take official action, either by filing information with the court or diverting the case. Serious felonies must be filed; misdemeanors are presumed suitable for diversion unless the juvenile has a substantial prior record. Offenders under diversion are obligated to pay restitution and perform community service.

C. Changes in State Practices: Research Findings

In the early 1980s researchers funded by the National Institute of Juvenile Justice and Delinquency Prevention studied the consequences of Washington's juvenile reform. The study results were published in eleven volumes, incorporating empirical analysis of individual case records, qualitative assessment of attitudes and process evaluations. The key findings included:[7]

- Informal decision-making on which cases to refer to the court was almost eliminated by 1980. As envisioned, prosecutors made the key intake decisions.
- Decisions became more uniform and predictable, with a clear link between the severity of the sentence and the harm caused by the juvenile.
- Overall court compliance with the law was high – 90% – and resulted in more uniform sentencing.
- The majority of departures from the guidelines initially resulted in harsher sentencing; downward departures occurred in only a minority of cases.
- For juveniles committed to state institutions, younger children and females were significantly more likely to be sentenced under the manifest injustice clause and to receive harsher sentences than older youths and males. Moreover, minority youth were sentenced to disproportionately longer terms in state institutions based on manifest injustice findings.

In the first year after implementation of the changes, the manifest injustice clause resulted in significant fiscal consequences to the state. Slightly over half of the total institutional commitments were youth sentenced under a manifest injustice finding. In the 1983 session, legislators placed more restraints on judicial discretion regarding enhanced sentences, requiring a finding that the youth presents a serious and clear danger to society. By 1984, manifest injustice commitments as a percentage of total commitments decreased by half,[8] and have remained at that level.

As mentioned earlier, the reform significantly restricted state power over status offenders, with an alternative emphasis on voluntary services for such offenders and their families. The research on state practices found, however, that the law's carefully drawn distinctions between status and juvenile offenders blurred in day-to-day practices. Because status offenders often commit minor crimes, they can be charged and convicted of delinquent acts. Researchers found many cases where police contact with runaway youth resulted in the filing of criminal charges, thus triggering the court's jurisdiction.

This finding mirrored the 1989 conclusion of a national study by the Office of Juvenile Justice and Delinquency Prevention:

> Deinstitutionalization has too often meant, not transferring youth from reform schools to caring environments, but releasing them to the exploitation of the streets. Moreover, youth may be spared a criminal record for the act of running away, but life on the street often leads to the same end. Many runaways are arrested and ultimately enter the judicial system, no longer as status offenders, but as criminal offenders – facing charges for crimes committed in order to survive.[9]

II. Juvenile Guidelines Become Model for the Adult System

In the late 1970s, Washington's criminal justice leaders turned their attention toward reforming the adult sentencing system with key leaders in the juvenile reform playing a similar role in adult reform. The political concerns about the adult system mirrored earlier complaints about the juvenile system, including a rapidly escalating prison population, disparity in sentences, and disenchantment with a rehabilitation-based system. Because they defined similar deficits and solutions, the adult and juvenile reforms reinforced each other's political legitimacy. The deficits were: (1) the unfairness of disparate sentencing for similar offenders, (2) serious offenders receiving inadequate punishment because of crowded prisons, and (3) judges whose decisions were overly influenced by their personal preferences. Statewide sentencing guidelines were the principal solution for both the adult and juvenile systems.

The Sentencing Reform Act for adults passed in 1981, with an independent body directed to develop the system over the next three years. This group, the Sentencing Guidelines Commission, included several members who were key architects of the juvenile reform. The juvenile reform thus served as a key building block for the new adult system.

III. The Role of the Juvenile Disposition Standards Commission

The 1977 Act created a Juvenile Disposition Standards Commission (Commission) to evaluate the effectiveness of the sentencing and dispositional standards created. Although the Commission's responsibilities paralleled those of the typical adult commission, its structure and operations were far less independent. The body was housed within the state Department of Social and Health Services and chaired by the division director over juvenile institutions. The chair called meetings and set agendas. The Commission was directed to report to the legislature every two years regarding changes to the sentencing grid; its recommendations went into effect unless the legislature passed separate legislation. Early on, the group set operating procedures that required consensus decisions for any recommended statutory changes. However, consensus was difficult to reach in a group that included prosecutors and the defense bar, resulting in few significant changes to the code during the 1980s.

By the late 1980s, legislators began to put pressure on the juvenile commission to revise the guidelines and set harsher sentences. The juvenile commission recommended changes in sentencing policy in 1990 that toughened some penalties and reduced others. The changes increased penalties for some crimes against persons, allowed some offenders to receive supervision instead of state commitment, and altered the sentencing grid rules to reduce some sanctions.[10]

By the early 1990s, legislative leaders became increasingly frustrated by the juvenile commission's control of juvenile laws and what they perceived as the group's insensitivity to public safety concerns. In particular, legislators who pressured the juvenile commission in 1991 and 1992 to raise the penalties for drug offenses were distressed when this body elected to maintain the status quo. In response the legislature altered the juvenile commission's statutory authority so that its recommendations required legislative endorsement to become law. In 1995, it eliminated the juvenile commission entirely and transferred its responsibilities to the adult Sentencing Guidelines Commission.

IV. Increases in Youth Violence

As in many states, in 1994, the prevalence of youth violence in Washington became a key issue before the state legislature. (Figure 1 depicts the increase in youth violence.) The legislature responded with an omnibus bill entitled *The Youth Violence Prevention and Community Safety Act* that covered sentencing laws, firearms crimes, prosecution of juveniles as adults, and prevention.[11]

Although some prominent legislators stated their intent to alter the juvenile sentencing laws radically – in their words, "to blow up the grid" – the final outcome of the 1994 session was relatively minor adjustments to the juvenile guidelines.

What stood in the way of wholesale changes? Two forces became apparent during the debates: Uniformity and proportionality in sentencing continue as strong political values in the state; and the price tag for significant changes to the system causes "sticker shock" for fiscal leaders.

Studies of Washington's juvenile system have demonstrated that the defendant's race matters in juvenile court, but the research has not been able to separate the contribution of race from other factors. The findings parallel those from other states. Perceptions of family stability, for example, are found to influence decisions on issues such as pre-trial detention. This is more distressing as a correlation can be found between the decision to detain a youth and a subsequent sentence. Given these findings, proposals to expand discretion leave many people worried that greater, especially race-based, inequities will result.[12]

In terms of the resource concerns, Washington State divides criminal justice costs between the local governments – 39 counties – and the state. The local government funds all detention, supervision, and diversion sentences, with the state funding the institutions and distributing block grant funds to the counties. Because of the existence of sentencing guidelines for the juvenile and adult system, state budget staff can calculate the local and state costs for the guidelines, as

well as forecast the costs of proposed changes. Changes to the guidelines that increase local government costs can be challenged in court if they are not adequately funded. Several lawsuits contesting such changes have been resolved in favor of the local governments.

As a result of these two forces, Washington's juvenile sentencing guidelines have endured for two decades in spite of complaints from judges and advocates who have called for increased discretion.

V. Twenty Years Later: The 1997 Act

Political calls to change the juvenile justice system surfaced again in 1997, causing passage of another omnibus bill.[13] Although sponsors and advocates heralded the modifications to the law as a "new reform," the principal features of juvenile sentencing guidelines were retained.

The sentencing grid was modified in two significant ways. All juvenile offenders now face possible detention time, and judges have more discretion in determining the appropriate sentence. In addition, the law expanded the category of juvenile offenders who are subject to automatic prosecution as adults, created a sentencing option for youth who are chemically dependent, increased requirements for parental involvement in court hearings, and enhanced the penalties for offenses committed with a firearm. The sentencing changes went into effect for crimes committed beginning in July 1998. No statewide information is yet available on how the revisions have influenced day-to-day sentencing practices.

State law provisions regarding status offenses have been amended over a dozen times in the last two decades. Clearly, finding an appropriate governmental response to children who run away or refuse to attend school is an enormous challenge. Each change in the law has increased state and parental controls. The most significant legislative modification occurred in 1995, with a bill that allowed parents to commit their child involuntarily as a protective measure, and involved the court in truancy issues. The bill became known as "The Becca Bill," named for a teenager who died on the streets after her family was unable to gain any assistance in controlling her.[14]

VI. Conclusion

Washington State was the first, and remains the only, state with sentencing guidelines for juvenile offenders. Although the restricted discretion of the law was, and is, controversial, the major features of the sentencing guidelines system have remained intact for two decades. Two forces exert pressure to maintain the reform: concerns about racial disproportionality resulting from increased judicial discretion, and worries about the price tag of changes on state and local governments. The laws regarding state control of status offenders, however, have been revised numerous times in the twenty-year history of the Act. Consensus on how the government should best respond to families with runaway and truant children has been difficult to reach and sustain.

Notes

[1] JOHN R. SUTTON, STUBBORN CHILDREN: CONTROLLING DELINQUENCY IN THE UNITED STATES, 1640–1981, 130 (Berkeley: University of California Press, 1988).

[2] Julian Mack, *The Juvenile Court*, 23 HARVARD LAW REVIEW 105–126 (1902).

[3] Mary Kay Becker, *Washington State's New Juvenile Code*, 14 GONZAGA LAW REVIEW 290–91 (1979).

[4] Anne Larason Schneider & Donna D. Schram, *A Justice Philosophy for the Juvenile Court, Grant Report No. 79–JN–AX–0028*, at 17–18 (U.S. Department of Justice, Mar. 1983).

[5] *Id.* at 27.

[6] *Id.* at 28.

[7] Thomas C. Castellano, *The Justice Model in the Juvenile Justice System: Washington State's Experience*, 8 LAW AND POLICY 487 (1986).

[8] *Id.* at 487.

[9] Verne L. Speirs, *Assessing the Effects of the Deinstitutionalization of Status Offenders* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1989).

[10] Juvenile Disposition Standards Commission, *A Report to the Legislature: Recommended Juvenile Disposition Standards Modifications* (Olympia, WA: Washington State Department of Social and Health Services, Nov. 1990).

[11] E2SHB 2913, Laws of 1994.

[12] George Bridges, *Different Strokes*, SEATTLE POST INTELLIGENCER, Mar. 7, 1999, at A1.

[13] E3SHB 3900, Laws of 1997.

[14] Ch. 312, Laws of 1995.