

05hr_JC-Au_Misc_pt46a



Details: Information on juvenile justice and the adult criminal system

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Joint

(Assembly, Senate or Joint)

Committee on Audit...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



131 W Wilson Street
Suite 610
Madison WI 53702-0001

Phone: (608) 266-3323
Fax: (608) 266-6676
www.oja.wi.gov

June 12, 2006

Senator Carol Roessler
State Capitol
8 South
Madison, WI 53708

Re: Letter from the Governor's Juvenile Justice Commission Letter, September 2005

Dear Senator Roessler:

Thank you so much for spending so much time with Dave Steingraber and myself last Monday afternoon with regard to the GJJC's request for a Legislative Audit Bureau study of the impact of changing the age of criminal responsibility back to 18 years.

As we mentioned in the letter the Commission is not prepared to take a position on the question because we do not feel that we know enough factual information to assess the cost effectiveness of the change on recidivism or the impact that changing it back could have. A Legislative Audit Bureau study could go a long way to putting some facts and figures before those who must debate this policy.

Please find enclosed some of the background materials that were described during our discussion. We are also enclosing a list of the Governor's Juvenile Justice Commission members, our Three Year Plan and a copy of the 2005 Annual Report to the Governor on grants. The other documents we are sending along include:

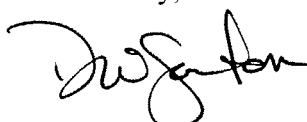
- A short summary and syllabus of Roper v. Simmons, the case in which the U.S. Supreme Court determined that new brain development research is important when deciding about criminal justice policies when the court ruled against the death penalty for juveniles.
- Rethinking the Juvenile in Juvenile Justice, the recent Wisconsin report that explains why new research about adolescent brain development raises particular concerns over Wisconsin's treatment of minors in the criminal and juvenile justice systems.
- Articles on the Mendota Juvenile Treatment Center research that summarize the program's great reductions in future violence, including homicides, for those juveniles treated.
- A brief summary report on Dennis Maloney's work on Balanced and Restorative Justice programs and models.

In our meeting, we described developments in program evaluations and cost benefit analyses in Wisconsin and across the country. We thought you would also be interested in seeing copies of:

- What Works, Wisconsin – The report and cost benefit analysis from UW-Madison that demonstrates that the research now exists to know what works for preventing and treating juvenile delinquency in our own state, and
- Benefits and Costs of Prevention and Early Intervention Programs for Youth – A summary of the 2004 report by Washington State Institute for Public Policy that involved an extensive review of all available program research and a set of recommendations for their state.

It was a pleasure to meet with you and Representative Jeskewitz. We appreciate your attention to these important new developments regarding research on high risk youth. Please let us know if there is a need for further information or discussions. And again, thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Wilson Garton". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Deirdre Wilson Garton
Chair, Governor's Juvenile Justice Commission

CR -
Do you want to review?
Have interim summary?

Please



SUE JESKEWITZ

STATE REPRESENTATIVE

mark 40

- In response to your recent request.
- I thought you might be interested in the enclosed material.

Carol,

This is that info Sue was talking about at the last co-chair meeting regarding youth offenders in adult facilities.

[Handwritten signature]

P.O. Box 8952 • Madison, Wisconsin 53708-8952
(608) 266-3796 • Fax: (608) 266-7038
Toll-Free Legislative Hotline: 1 (800) 362-9472
Rep.Jeskewitz@leais.state.wi.us

Summary:

Articles
you wanted
from Sue

Juvenile Justice and the Adult Criminal System

- I. Does treating kids like adults make a difference?
 - a. 2 assumptions
 - i. Young offenders will receive sentences as adults, which are harsher and more proportional to their crimes.
 - ii. This threat will result in lowered juvenile crimes
 - b. Do juveniles receive stiffer sentences when tried as adults?
 - i. 1996 TX Study: Juveniles in adult court received longer terms than if they would have been tried in juvenile court. (Average served only 27% of this sentence)
 - ii. NY and NJ Study: Adolescents transferred to criminal court were more likely to be convicted and sentenced to periods of incarceration.
 - c. According to several studies, no evidence exists to support that stricter transfer laws result in lowered juvenile crime rates.
 - d. Studies found that juveniles tried as adults had a higher recidivism rate than those who remained in the juvenile justice system.
- II. Adolescence, Brain Development and Legal Culpability
 - a. Adolescent brains are far less developed than previously believed.
 - i. The teenage brain undergoes an intense overproduction of gray matter (the brain tissue that does the "thinking"). Then a period of "pruning" takes over, during which the brain discards gray matter at a rapid rate.
 - ii. The frontal lobe undergoes far more change during adolescence than at any other stage of life.
 - b. "Adolescents cannot reason as well as adults."
 - i. If the neural substrates of these behaviors have not reached maturity before adulthood, the behaviors themselves will most likely not reflect mature thought processes.
 - ii. Age 21 or 22 is closer to the "biological age of maturity".
 - c. Child Abuse and Violence: More than 30% of death row juvenile offenders had experienced six or more distinct areas of childhood trauma.
- III. Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners
 - a. Historical Perspective
 - i. 1899 – Jane Addams established the first court designed for children.
 - ii. Juvenile crime rate has not increased, but an increasing number of juvenile cases are being transferred to adult court.
 - iii. From 1992-1995, 40 states and DC passed laws facilitating this transfer:
 1. *Prosecutorial Discretion* → Gives prosecutors authority to file certain juvenile cases in either court they choose (subject to judicial review in only a few states).
 2. *Statutory Exclusion* → Excludes certain categories of offenders from juvenile court jurisdiction based either on age or offense charged.
 3. *Lowered age limits* → Lowers age that child becomes an adult.
 4. Once an adult, always an adult → Requires that once a juvenile is prosecuted in a criminal court, all subsequent cases involving that juvenile will be under adult jurisdiction.
 - b. Practitioner's Perspective
 - i. Children transferred to adult court are disadvantage:
 1. Children readily "confess" to police or over-implicate themselves.
 2. Children are held on low bail amounts which most adults could easily pay.
 3. Public defenders seldom spend sufficient time with their young clients.
 4. Interviewing children takes more time than adults and attorneys do not always have the time, thus resulting in children filtering info.
 5. Children are not good witnesses
 6. Children can't grasp significance of long term consequences and plea agreements.
 7. Children are penalized because probation officers who recommend sentencing are more familiar with the adult programs.
 - ii. Unjust treatment

1. Children in adult facilities are 7.7 times more likely to commit suicide, 5 times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than children at juvenile institutions.
 2. Their convictions become public record.
 - iii. Increased Racial Disparity → After sentencing, 77% of juveniles sent to adult prison are minorities.
 - c. Effective Prevention Strategies
 - i. Community-wide mentoring programs
 - ii. Family-focused programs
 - iii. School-based programs that focus on conflict resolution, peer mediation, violence prevention counseling, bullying reduction, social competence development and drug education.
- IV. Trends in Transfer of Juveniles to Adult Criminal Court
 - a. Relying on data from the Office of State Courts Administrator and the Department of Health and Rehabilitative Services, researchers found that of 475 pairs of offenders, 49% recidivated, compared with 35% of those who remained in the juvenile justice system.
 - b. Of 98 pairs in which both youth re-offended, in 40% of the youth, the transferred youth committed a more serious felony or violent crime, while in 24% of the pairs, the youth retained in the juvenile justice system committed a more serious crime.
- V. Development of Transfer Policy
 - a. Indictment by a Grand Jury
 - b. Judicial Waiver
 - c. Direct Filing of an Information (Direct File)
- VI. Innovative Program → Miami-Dade Juvenile Sentencing Advocacy Project: Encourages judges to use the “sentence-back” option (sentencing youth found guilty in the criminal court back to the juvenile justice systems for sanctions there).
- VII. Assessing the Economic Consequences of Juvenile versus Adult Justice
 - a. Programs demonstrating positive returns:
 - i. Juvenile court diversion services
 - ii. Intensive supervision programs
 - iii. Coordinated service based programs
 - iv. Family-based therapy approaches
 - v. Juvenile sex offender programs
 - b. Minnesota study found that treatment programs based on cognitive-behavioral approaches were more cost-beneficial than traditional probation or strict-monitorial programs.
 - c. Policy Definitions
 - i. Once youth have exceeded their state’s upper age of juvenile court jurisdiction (which is not always 18), they are legally adults for the purposes of criminal prosecution.
 - ii. In many states, the juvenile status privilege can be withdrawn on a case-by-case basis.
 - d. Policy Choices (3 basic options available to US policymakers supporting reform)
 - i. Complete abolition of the juvenile justice system
 1. All offenders formerly handled in the juvenile justice system would fall under the jurisdiction of expanded justice system (Ending any formal age consideration)
 2. All criminal acts would be crimes, independent of age of suspect.
 3. At best, age would be used as a mitigating factor.
 - ii. Legal abolition of the juvenile justice system with reinvention of a juvenile-like system within the criminal system
 1. States could keep the infrastructure, agencies, and staff that form the juvenile justice system.
 2. They could encourage local jurisdictions to handle younger offenders with different trial procedures, separate probation agencies, and separate confinement facilities.

3. An offender's age would have no bearing on legal culpability, but courts could establish different trial procedures, separate probation agencies, and separate confinement facilities.
- iii. Incremental jurisdictional changes
 1. Reduce the scope of one system and expand use of the other system on a case-by-case or class-by-class basis.
 2. Large number of outcomes to consider
 - a. Number of crimes averted by policy choices
 - b. Educational levels attained by young offenders
 - c. Cost-benefit models could attach monetary value to the labor market experiences of former offenders and compare those handled by the juvenile justice system and those in the adult system.
 - d. Processing costs
 - e. Psychological effects
 - f. Legitimacy
 3. A cost-benefit study would include three components:
 - a. Measuring the costs of processing different populations in either justice system.
 - b. Measuring the economic value of changes in future offending.
 - c. Measuring the economic value of the other changes in human and social capital.
- e. Research Designs
 - i. Different methods could be used to estimate particular components of framework, which collectively could be used to estimate the impact of jurisdictional change:
 1. Short-term consequences for individuals
 2. Short-term consequences across jurisdictions
 3. Long-term consequences for communities (fear of crimes)
 4. Long-term consequences (property values)



FRONTLINE
e-mail this page
research outline
schedule
bulletin
search
FRONTLINE homepage



FRONTLINE

JUVENILE JUSTICE

HOME FOUR KIDS FROM BOTH SIDES FACTS & STATS

**: DOES TREATING KIDS LIKE ADULTS
: MAKE A DIFFERENCE?**

Two assumptions are behind recent legislation passed in many U.S. states which make it easier to try juvenile offenders as adults.

- Young offenders will receive sentences in the adult criminal system which are harsher and more proportional to their crimes.
- The threat of this harsher punishment will result in lowered juvenile crime rates.

Although there has not been extensive research into the deterrent effects of the stricter laws, the evidence that does exist indicates that deterrent effects are minimal or nonexistent, and that, in fact, trying juveniles in criminal court may actually result in higher rates of reoffending.

**• DO JUVENILES RECEIVE STIFFER SENTENCES
WHEN THEY ARE TRIED AS ADULTS?**

To date, there's no extensive research comparing the lengths of prison sentences received by juveniles convicted in criminal court with those who remained in the juvenile system. What research exists indicates that juveniles convicted in criminal court, particularly serious and violent offenders, are more likely to be incarcerated and receive longer sentences than juveniles retained in the juvenile system. Despite this, however, they often actually serve only a fraction of the sentences imposed, in many cases less time than they would have served in a juvenile facility.

A 1996 Texas study found that juveniles sentenced in adult court did receive longer terms than they would have received in juvenile court. However, for all offenses except rape, the average prison time actually served was only about 27 percent of the sentence imposed, in some cases shorter than the possible sentence length in a juvenile facility.[1]

In a study of the sentences received by youth offenders in New York and New Jersey, researcher Jeffrey Fagan came to similar conclusions. He found that adolescents transferred to criminal court were more likely to be convicted and sentenced to periods of incarceration than those adjudicated in the juvenile system. However, all juveniles sentenced to incarceration received nearly identical sentence length, regardless of

whether they were tried in the criminal or the juvenile system.[2]

**• DOES TREATING JUVENILES AS ADULTS
HELP REDUCE CRIME?**

To date, only two studies have examined whether stricter transfer laws result in lowered juvenile crime rates. Both found that there was no evidence to support that the laws had the intended effect.

Criminologists Simon Singer and David McDowell evaluated the effects of New York's Juvenile Offender Law on the rate of serious juvenile crime. This landmark piece of legislation was passed in 1978, and lowered the age of criminal court jurisdiction to thirteen for murder, and to fourteen for rape, robbery, assault, and violent categories of burglary. Singer and McDowell analyzed juvenile arrest rates in New York for four years prior to the enactment of the law, and six years after. These rates were compared with those for control groups of thirteen and fourteen year olds in Philadelphia, and with slightly older offenders in New York. The researchers found that the threat of adult criminal sanctions had no effect on the levels of serious juvenile crime.[3]

A later study by social scientists Eric Jensen and Linda Metsger reached a similar conclusion. They sought to evaluate the deterrent effect of the transfer statute passed in Idaho in 1981, which required that juveniles charged with certain serious crimes (murder, attempted murder, robbery, forcible rape, and mayhem) be tried as adults. They examined arrest rates for five years before and five years after the passage of the law, and found no evidence that it had any deterrent effect on the level of juvenile crime in Idaho.[4] The researchers also compared the arrest rates for the target offenses with those in neighboring states Montana and Wyoming, which were demographically similar to Idaho, and had in place a discretionary waiver system similar to the system Idaho had before the new legislation. They found that juvenile arrests for the offenses targeted by the legislation actually increased in Idaho, while decreasing in the other two states.[5]

**• DO KIDS WHO RECEIVE ADULT PENALTIES
REOFFEND LESS OFTEN THAN THEIR PEERS
WHO ARE TREATED AS JUVENILES?**

Two recent large-scale studies indicate that juveniles who receive harsher penalties when tried as adults are not "scared straight." In fact, after their release, they tend to reoffend sooner and more often than those treated in the juvenile system.

Columbia University researcher Jeffrey Fagan compared 15- and 16-year olds charged with robbery and burglary in four similar communities in New York and New Jersey. Both states had similar statutes for first- and second-degree robbery and first-degree burglary. However, in New York, 15 and 16 year olds' cases originated in criminal court, while in New Jersey they were adjudicated in juvenile court. The sample consisted of 400 robbery offenders and 400 burglary offenders randomly selected. Fagan examined the recidivism rates of offenders from each state after their release. He found that while there were no significant differences in the effects of criminal versus juvenile court processing for burglary offenders, there were substantial differences in recidivism among robbery offenders. Seventy-six percent of robbers prosecuted in criminal court were rearrested, as

compared with 67% of those processed in juvenile court. A significantly higher proportion of the criminal group were subsequently reincarcerated (56% vs. 41%). And those that did reoffend did so sooner after their release.[6]

A 1996 Florida study authored by Northeastern University researcher Donna Bishop also found that juveniles transferred to the criminal system were not less likely to reoffend, but in fact often had higher rates of recidivism. This research compared the recidivism rates of 2,738 juvenile offenders transferred to criminal court in Florida with a matched sample of nontransferred juveniles. Bishop and her colleagues found that although juveniles tried as adults were more likely to be incarcerated, and incarcerated for longer than those who remained in the juvenile system, they also had a higher recidivism rate. Within two years, they were more likely to reoffend, to reoffend earlier, to commit more subsequent offenses, and to commit more serious subsequent offenses than juveniles retained in the juvenile system. The authors concluded that:

"The findings suggest that transfer made little difference in deterring youths from reoffending. Adult processing of youths in criminal court actually increases recidivism rather than [having] any incapacitative effects on crime control and community protection."[7]

Following the same offenders six years after their initial study, the researchers again found higher recidivism rates for most juveniles transferred to criminal court. The exceptions were property felons, who were somewhat less likely to reoffend than those tried in juvenile court, although those who did reoffend did so sooner and more often than those tried in juvenile court.[8]

In an overview of all the research on whether the stricter transfer laws are resulting in harsher sentences and lowered juvenile crime, researcher Donna Bishop cautions, "Unfortunately, assessments of the extent to which transfer achieves these dual aims are few and recent."[9] The little evidence there is, however, does not indicate that the laws are having the desired effect. And there is some evidence, in fact, that they may be backfiring.

• DISCUSSION

For analysis and discussion of these studies, and other issues involving juveniles in adult courts, see:

Youth Crime/Adult Time: Is Justice Served?
by Jolanta Juskiewicz, from the Pretrial Services Resource Center

Juvenile Offenders in Criminal Court and Adult Prison: Examining Legal Issues
by Richard Redding, from *Corrections Today*, a publication of the American Corrections Association.

• FOOTNOTES

[1] Eric J. Fritsch, Tory J. Caeti, and Craig Hemmens, "Spare the Needle But Not the Punishment: The Incarceration of Waived Youth in Texas Prisons," *Crime and Delinquency*, vol. 42 (1996), p. 593.

[2] The Comparative Advantage of Juvenile vs. Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders, Jeffrey Fagan, *Law and Policy*, Vol. 18 # 1 and 2, Jan/Apr. 1996.

[3] Singer, Simon I., and David McDowall. 1988. "Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law." *Law and Society Review* 22:521-35; cited in "Bishop, Donna, "Juvenile Offenders in the Adult Criminal System," 27 *Crime and Justice* 81 (2000).

[4] Jensen, Eric L., and Linda K. Metsger. 1994. "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime." *Crime and Delinquency* 40:96-104, cited in "Bishop, Donna, "Juvenile Offenders in the Adult Criminal System," 27 *Crime and Justice* 81 (2000)

[5] Id.

[6] Fagan, Jeffrey, 1996. "The Comparative Advantage of Juvenile versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders." *Law and Policy* 18:77-112; cited in "Bishop, Donna, "Juvenile Offenders in the Adult Criminal System," 27 *Crime and Justice* 81 (2000)

[7] Donna M. Bishop and others, "The Transfer of Juveniles to Criminal Court: Does It Make a Difference?," *Crime and Delinquency*, vol. 42 (1996)

[8] Winner, L., Lanza-Kaduce, L., Bishop, D., and Frazier, C. 1997. The transfer of juveniles to criminal court: Reexamining recidivism over the long term. *Crime and Delinquency* 43(4): 548-563.

[9] "Bishop, Donna, "Juvenile Offenders in the Adult Criminal System," 27 *Crime and Justice* 81 (2000)

manny · shawn · marquese · jose
from both sides of the bench · facts & stats · related report: little criminals
discussion · synopsis · press · tapes & transcripts · credits
FRONTLINE · wgbh · pbs

web site copyright 1995-2005 wgbh educational foundation

Cruel and Unusual Punishment: The Juvenile Death Penalty **Adolescence, Brain Development and Legal Culpability**

"[They] frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.... Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability."

*Atkins v. Virginia, 536 U.S. 304, 318,
122 S.Ct. 2242, 2250 (2002)*

In 2002, the U.S. Supreme Court banned the execution of mentally retarded persons. This decision, *Atkins v. Virginia*, cited the underdeveloped mental capacities of those with mental retardation as a major factor behind the Justices' decision.

Adolescence is a transitional period during which a child is becoming, but is not yet, an adult. An adolescent is at a crossroads of changes where emotions, hormones, judgment, identity and the physical body are so in flux that parents and even experts struggle to fully understand.

As a society, we recognize the limitations of adolescents and, therefore, restrict their privileges to vote, serve on a jury, consume alcohol, marry, enter into contracts, and even watch movies with mature content. Each year, the United States spends billions of dollars to promote drug use prevention and sex education to protect youth at this vulnerable stage of life. When it comes to the death penalty, however, we treat them as fully functioning adults.

The Basics of the Human Brain

The human brain has been called the most complex three-pound mass in the known universe. This is a well deserved reputation, for this organ contains billions of connections among its parts and governs countless actions, involuntary and voluntary, physical, mental and emotional.

The largest part of the brain is the *frontal lobe*. A small area of the frontal lobe located behind the forehead, called the *prefrontal cortex*, controls the brain's most advanced functions. This

part, often referred to as the "CEO" of the body, provides humans with advanced cognition. It allows us to prioritize thoughts, imagine, think in the abstract, anticipate consequences, plan, and control impulses.

Along with everything else in the body, the brain changes significantly during adolescence. In the last five years, scientists, using new technologies, have discovered that adolescent brains are far less developed than previously believed.

New Technology, New Discoveries

Scientists are now utilizing advances in magnetic resonance imaging (MRI) to create and study three-dimensional images of the brain without the use of radiation (as in an x-ray). This breakthrough allows scientists to safely scan children over many years, tracking the development of their brains.¹

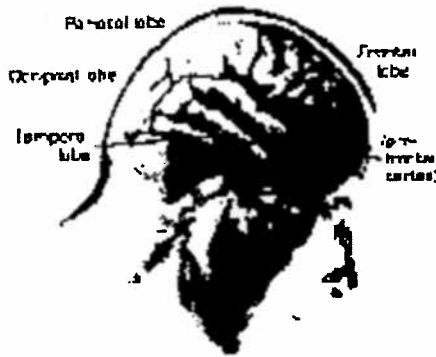
Researchers at Harvard Medical School, the National Institute of Mental Health, UCLA, and others, are collaborating to "map" the development of the brain from childhood to adulthood and examine its implications.



A three dimensional "map" showing portions of gray matter "pruned" from the brain between adolescence and adulthood. The dark portions in the two boxes indicate sections that will be discarded from the frontal lobe. The box on the far right indicates the **prefrontal cortex**, a subsection of the frontal lobe that controls judgment.

Image adapted from *Nature Neuroscience*.

Lobes of the Brain.



©2002 Hybrid Medical Animation

The scientists, to their surprise, discovered that the teenage brain undergoes an intense overproduction of *gray matter* (the brain tissue that does the “thinking”). Then a period of “pruning” takes over, during which the brain discards gray matter at a rapid rate.² This process is similar to pruning a tree: cutting back branches stimulates health and growth.

In the brain, pruning is accompanied by *myelination*, a process in which *white matter* develops. White matter is fatty tissue that serves as insulation for the brain’s circuitry, making the brain’s operation more precise and efficient.³

Researchers have carefully scrutinized the pace and severity of these changes and have learned that they continue into a person’s early 20s. Dr. Elizabeth Sowell, a member of the UCLA brain research team, has led studies of brain development from adolescence to adulthood. She and her colleagues found that the frontal lobe undergoes far more change during adolescence than at any other stage of life.⁴ It is also the last part of the brain to develop, which means that even as they become fully capable in other areas, adolescents cannot reason as well as adults: “[m]aturation, particularly in the frontal lobes, has been shown to correlate with measures of cognitive functioning.”⁵

Biology and Behavior

Jay Giedd, a researcher at the National Institute of Mental Health, explains that during adolescence the “part of the brain that is helping organization, planning and strategizing is not done being built yet.... It’s sort of unfair to expect [adolescents] to have adult levels of organizational skills or decision making before their brain is finished being built.”⁶

Dr. Deborah Yurgelun-Todd of Harvard Medical School has studied the relation between these new findings and teen behavior and concluded that adolescents often rely on emotional parts

of the brain, rather than the frontal lobe. She explains, “one of the things that teenagers seem to do is to respond more strongly with gut response than they do with evaluating the consequences of what they’re doing.”⁷

Also, appearances may be deceiving: “Just because they’re physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So we may be mistaken if we think that [although] somebody looks physically mature, their brain may in fact not be mature.”⁸

This discovery gives us a new understanding into juvenile delinquency. The frontal lobe is “involved in behavioral facets germane to many aspects of criminal culpability,”⁹ explains Dr. Ruben C. Gur, neuropsychologist and Director of the Brain Behavior Laboratory at the University of Pennsylvania. “Perhaps most relevant is the involvement of these brain regions in the control of aggression and other impulses.... If the neural substrates of these behaviors have not reached maturity before adulthood, it is unreasonable to expect the behaviors themselves to reflect mature thought processes.”

“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.... Indeed, age 21 or 22 would be closer to the ‘biological’ age of maturity.”¹⁰

Other Changes in the Body

In addition to the profound physical changes of the brain, adolescents also undergo dramatic hormonal and emotional changes. One of the hormones which has the most dramatic effect on the body is testosterone. Testosterone, which is closely associated with aggression, increases tenfold in adolescent boys.¹¹

“Just because they’re physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So, [although] somebody looks physically mature, their brain may in fact not be mature.”

Deborah Yurgelun-Todd, PhD
Brain Imaging Laboratory,
McClean Hospital
Harvard University Medical School

Emotionally, an adolescent “is really both part child and part adult,”¹² explains Melvin Lewis, an expert in child psychiatry and pediatrics at Yale University School of Medicine. Normal development at this time includes self-searching, during which the adolescent tries to grow out of his or her childlike self. This change is complicated by the conflict between an adolescent’s new sense of adult identity and remaining juvenile insecurities.

American Bar Association Juvenile Justice Center

Notes

- ¹ For an excellent overview, see Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind*, Oxford University Press (2001).
- ² Sowell, Elizabeth R, Paul M. Thompson, Colin J. Holems, Terry L. Jernigan and Arthur W. Toga. *In vivo evidence for post-adolescent brain maturation in frontal and striatal regions*. 2 *Nature Neuroscience* 10 (1999), also Paus, Tomas, Jay Giedd, et. al. *Structural maturation of neural pathways in children and adolescents: in vivo study*. *Science*, 283 (1999).
- ³ *Id.*
- ⁴ *Id.*
- ⁵ Sowell, Elizabeth R, Paul M. Thompson, Kevin D. Tessner and Arthur W. Toga. *Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: inverse relationships during postadolescent brain maturation*, 21 *Journal of Neuroscience* 22 (2001), at 8819, also Reiss, A.L., et. al., *Brain development, gender and IQ in children, a volumetric imaging study*. *Brain*, 119 (1996).
- ⁶ PBS Frontline, *Inside the Teen Brain*. See *Interview with Jay Giedd*, online at www.pbs.org/wgbh/pages/frontline/shows/teenbrain/.
- ⁷ *Id.*, at *Interview with Deborah Yurgelun-Todd*.
- ⁸ *Id.*
- ⁹ Gur, Ruben C. Declaration of Ruben C. Gur., PhD, *Patterson v. Texas*. Petition for Writ of Certiorari to US Supreme Court, J. Gary Hart, Counsel. (Online at: www.abanet.org/crimjust/juvjus/patterson.html)
- ¹⁰ *Id.*
- ¹¹ See Adams, Gerald R., Raymond Montemayor, and Thomas P. Gullota, eds. *Psychosocial Development during Adolescence*. Thousand Oaks, CA, Sage Publications (1996).
- ¹² Lewis, Melvin. *Child and Adolescent Psychiatry: A comprehensive textbook*, Lippincott Williams and Wilkins (2002).
- ¹³ See *id.*, and Cobb, Nancy J. *Adolescence: Continuity, Change and Diversity*. Mayfield Publishing, CA (1998).
- ¹⁴ American Society of Pediatrics, *Policy Statement*, 1 *Pediatrics*, 103 (1999).
- ¹⁵ Phyllis L. Crocker. *Childhood Abuse and Adult Murder: Implications for the Death Penalty*, 77 *NC L. Rev.* 1143 (1999).
- ¹⁶ Mallett, Chris. *Socio-Historical Analysis of Juvenile Offenders on Death Row*, 3 *Juv. Corr. Mental Health Report* 65 (2003).
- ¹⁷ *Id.*, at 77.
- ¹⁸ *Id.*, at 78.
- ¹⁹ *Id.*, at 77.
- ²⁰ *Id.*, at 78.
- ²¹ *Id.*
- ²² *Id.*
- ²³ *Id.*
- ²⁴ Robinson, DA and Stephens, OH; *Patterns of mitigating factors in juvenile death penalty cases*, 3 *Criminal Law Bulletin* 28 (1992).
- ²⁵ Lewis, DO, Pincus, Bard, Richardson, Pritchep, Feldman, Yeager. *Neuropsychiatric, psychoeducational, and family characteristics of 14 juveniles condemned to death in the United States*, 5 *Am. J. of Psychiatry* 145 (1988).
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ Office of the U.S. Surgeon General, *At a Glance, Suicide Among the Young*: Online at www.surgeongeneral.gov/library/calltoaction/fact3.htm
- ³² White House Office of National Drug Control Policy, *Juveniles and Drugs*, at www.whitehousedrugpolicy.gov/drugfact/juveniles/index.html

This publication was supported in part by a grant from the Soros Justice Fellowship of the Open Society Institute. By Adam Ortiz.

Defending Liberty
Pursuing Justice

The behaviors associated with this process include self-absorption, a need for privacy, mood swings, unique dress, and escapism, such as video games, music, and talking on the phone, as well as riskier behaviors, such as drug use or sexual activity.¹³

Childhood Abuse and Violence

In addition to this context of change and volatility, research shows that abusive childhood experiences can trigger violent behavior. The American Academy of Pediatrics has identified several risk factors that can spark violence in adolescents, including being witness to domestic violence or substance abuse within the family, being poorly or inappropriately supervised, and being the victim of physical or sexual assault.¹⁴

Researcher Phyllis L. Crocker of Cleveland-Marshall College of Law has written that "the nexus between poverty, childhood abuse and neglect, social and emotional dysfunction, alcohol and drug abuse and crime is so tight in the lives of many capital defendants as to form a kind of social historical profile."¹⁵

"The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable...."

Ruben Gur, MD, PhD
Director, University of
Pennsylvania Medical Center

Dr. Chris Mallett, Public Policy Director at Bellefaire Jewish Children's Bureau in Ohio, recently completed the most comprehensive study of traumatic experiences in the lives of death row juvenile offenders to date.¹⁶ He found that:

- 74% experienced family dysfunction¹⁷
- 60% were victims of abuse and/or neglect¹⁸
- 43% had a diagnosed psychiatric disorder¹⁹
- 38% suffered from substance addictions²⁰
- 38% lived in poverty²¹

More than 30% of death row juvenile offenders had experienced six or more distinct areas of childhood trauma with an overall average of four such experiences per offender. Most children and adolescents do not face even one of these defined areas of difficulty.²² Mallett also found that such mitigating evidence was presented to juries in fewer than half of the offenders' trials.²³

Mallett's research confirmed findings in previous studies. In 1992, researchers found that two-thirds of all juveniles sentenced to death had backgrounds of abuse, psychological disorders, low IQ, indigence, and/or substance abuse.²⁴



Dr. Jay Giedd of the National Institute of Mental Health. Image courtesy of PBS Frontline report *Inside the Teenage Brain*.

In 1987, an investigation into 14 juveniles on death row²⁵ (40% of the total at the time) revealed that nine had major neuropsychological disorders²⁶ and seven had psychotic disorders since early childhood.²⁷ All but two had IQ scores under 90.²⁸ Only three had average reading abilities, and another three had learned to read only after arriving on death row.²⁹ Twelve reported having been physically or sexually abused, including five who were sodomized by relatives.³⁰

Delinquency Link

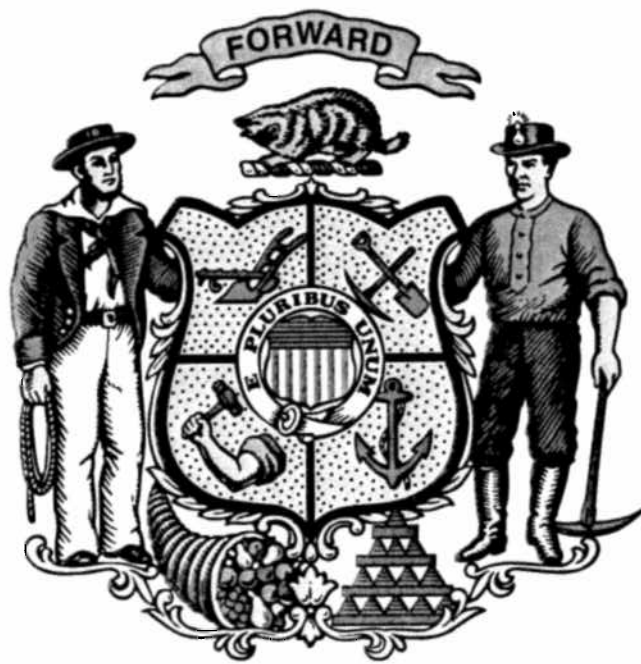
The turmoil often associated with adolescence can result in poor decisions and desperate behaviors. For example, studies have found that 20 to 30% of high school students consider suicide. Suicide is the third-leading cause of death among teenagers, occurring once every two hours, or over 4,000 times a year, according to the U.S. Surgeon General.³¹ Approximately 30% of youths reported using an illicit drug at least once during their lifetime, and 22.2% reported using an illicit drug within the past year.³²

Conclusion

New discoveries provide scientific confirmation that the teen years are a time of significant transition. They shed light on the mysteries of adolescence and demonstrate that adolescents have significant neurological deficiencies that result in stark limitations of judgment. Research suggests that when compounded with risk factors (neglect, abuse, poverty, etc.), these limitations can set the psychological stage for violence.

These discoveries support the assertion that adolescents are less morally culpable for their actions than competent adults and are more capable of change and rehabilitation. The ultimate punishment for minors is contrary to the idea of fairness in our justice system, which accords the greatest punishments to the most blameworthy.

This fresh understanding of adolescence does not excuse juvenile offenders from punishment for violent crime, but it clearly lessens their culpability. This concept is not new; it is why we refer to those under 18 as "minors" and "juveniles"—because, in so many respects, they are *less than adult*.





514 10TH STREET NW, SUITE 100
WASHINGTON, DC 2000
TEL: 202.628.0871 • FAX 202.628.109
STAFF@SENTENCINGPROJECT.ORG
WWW.SENTENCINGPROJECT.ORG

COMMENTARY

**PROSECUTING JUVENILES IN ADULT COURT:
PERSPECTIVES FOR POLICYMAKERS AND PRACTITIONERS**

PATRICIA ALLARD AND MALCOLM YOUNG

2002

This commentary, "Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners," has been reprinted from the *Journal of Forensic Psychology Practice* and published by The Sentencing Project in an effort to aid lawyers and advocates who labor on behalf of children transferred into (adult) criminal court and to inform the public of the implications of policies which permit these prosecutions.

The Sentencing Project is a national non-profit organization which promotes sentencing reform and the use of alternatives to incarceration through program development and research on criminal justice issues.

This publication was supported by Grant Number 2001-DD-BX-0012 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the authors and do not represent the official position or policies of the United States Department of Justice.

For additional copies or information contact:
THE SENTENCING PROJECT
514 Tenth Street NW, Suite 1000
Washington, DC 20004
(202) 628-0871
www.sentencingproject.org

Abstract

Fear of juvenile crime has reversed the long-accepted practice of treating young offenders in special juvenile courts. Thousands of children annually are now being transferred "automatically," without judicial review, from juvenile court jurisdiction to adult criminal court and into adult corrections. These transfers place children into a court setting in which they are at a disadvantage at every stage of the process. Children who are incarcerated in adult facilities are at great risk. Those who are convicted but not imprisoned may still suffer long lasting negative consequences.

The imposition of adult punishments, far from deterring crime, actually seems to produce an increase in criminal activity in comparison to the results obtained for children retained in the juvenile system. Reliance upon the criminal courts and punishment ignores evidence that more effective responses to the problems of crime and violence exist outside the criminal justice system in therapeutic programs. Because there is considerable racial disparity in the assignment of children to adult prosecution, the harshness, ineffectiveness, and punishing aspects of transfer from juvenile to adult court is doubly visited on children of color.

Fear of out-of-control juvenile crime fueled by the image of a "super-predator" generation has reversed a century-old practice of treating young offenders as different from adult criminals – less culpable and more amenable to rehabilitation because of their age. As a result, public policy in recent years has turned to punishment and, most significantly, to the transfer of increasing numbers of youthful offenders from juvenile court to adult criminal court. However, experience is quickly showing that such transfers are doing more harm than good, both for children and public safety. This paper explains the problems that transfer poses for criminal justice practitioners concerned with the well being of children and the community at large.

An Historical Perspective

Development of the Juvenile Court System

In July 1899, Jane Addams and her Hull House colleagues in Chicago, Illinois, established the first court designed specifically to deal with children. The court derived its powers to regulate and provide for minors whose parents were "unworthy" of the task of "education" of their children from the concept of *parens patriae*, or the "common guardian of the community."¹ Contemporaneously, Judge Ben Lindsey of Denver, Colorado, popularized a personal, individualized, treatment-focused approach that distinguished the new juvenile courts from criminal court.² A separate juvenile system soon developed nationwide. Ideally, juvenile courts were to focus less on the question of punishment than on helping the child to change and so minimize the likelihood of future criminal behavior.

But the ideal proved difficult to achieve. Juvenile courts and agencies were often underfunded and understaffed. Juvenile judges sometimes exercised their considerable discretion to incarcerate children for petty offenses for the rest of their minority without requiring the same standards of proof and other protections afforded adult defendants in criminal court. In 1967 in the case of *In re Gault*,³ the United States Supreme Court reversed one such conviction and sentence in the case of a boy who allegedly made an obscene telephone call. The Court held that children charged with offenses in juvenile court were entitled to basic due process: notice of the charge, a right to counsel, and elements of the right to trial including confronting witnesses as opposed to trial by hearsay. A child's liberty could not be restricted without the child being given many of the due process rights to which adults were entitled. Key among these was the right to counsel.

More than 25 years after *Gault*, children were still being denied its promise. A national survey conducted by the American Bar Association Juvenile Justice Center in 1993 found: frequent incidents of questionable "waiver" of counsel; crushingly high defender caseloads; missed opportunities to interview, investigate and intervene when services might have helped a child; and, a sense among attorneys that their own efforts to help arrange dispositions, or sentences, for their

¹ A. M. Platt, *The Child Savers: The Invention of Delinquency* University of Chicago Press, 2nd Edition 1977; cited with discussion in Laurence Steinberg and Robert G. Schwartz "Developmental Psychology Goes to Court" in Thomas Grisso and Robert G. Schwartz, eds., *Youth on Trial: A Development Perspective on Juvenile Justice* University of Chicago Press 2000, pp. 11-12.

² S. J. Fox "A Contribution to the History of the American Juvenile Court to 1980," paper presented at the National Council of Juvenile and Family Court Judges 1977, cited in Steinberg and Schwartz op. cit., at p. 12.

³ *In re Gault* 387 U. S. 1, 87 S. Ct. 1428 (1967).

clients was deficient.⁴ The survey describes a system which raises "serious concerns that the interest of many young people in juvenile court are significantly compromised, and that many children may literally be left defenseless."⁵ Other studies and reports describe the insufficiency of programs for rehabilitation and over use of detention, and abuse of children in juvenile facilities.⁶

Despite its failings, few questioned that juvenile court was the appropriate venue for most children in trouble. For the relatively small number of children for whom age, or the severity or repetitiveness of their crimes, made juvenile court jurisdiction inappropriate, in almost all states a juvenile court judge could waive juvenile court jurisdiction. Even then, there had to be safeguards. In *Kent v. United States* the U. S. Supreme Court held that judicial waiver of juvenile court jurisdiction required a hearing with the essentials of due process. These included notice, right to counsel, confrontation of witnesses, written findings, and most importantly, satisfaction of minimum criteria including the maturity to face trial as an adult.⁷ Only after careful judicial review were children to be removed from the protective setting of juvenile court.

Recent Trends in Juvenile Crime

Advocates for transfer postulate increased juvenile crime and violence to justify prosecution of children as adults. Yet with only one fast-fading exception, there is no evidence that young people have become disproportionately more crime prone or dangerous in recent years. The juvenile proportion of all arrests for serious violent crime in 1998 was about average for the preceding twenty-five years, while the percentage of property-crime arrests involving juveniles has actually declined throughout most of this period. Victimization studies show that juvenile violence in and out of schools generally declined as well.⁸ The one exception to the downward trend is found in murder rates.

Murder by juveniles remained at a relatively constant level for the decade before 1985, but then underwent a large and disturbing annual increase. Juvenile murder rates peaked in 1994. Then, in only four years, by 1998, juvenile arrests for murder fell 52%.

⁴ Patricia Puritz, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, American Bar Association Juvenile Justice Center (1995) pp. 44-49, 55.

⁵ *Id.*, pp. 41-42.

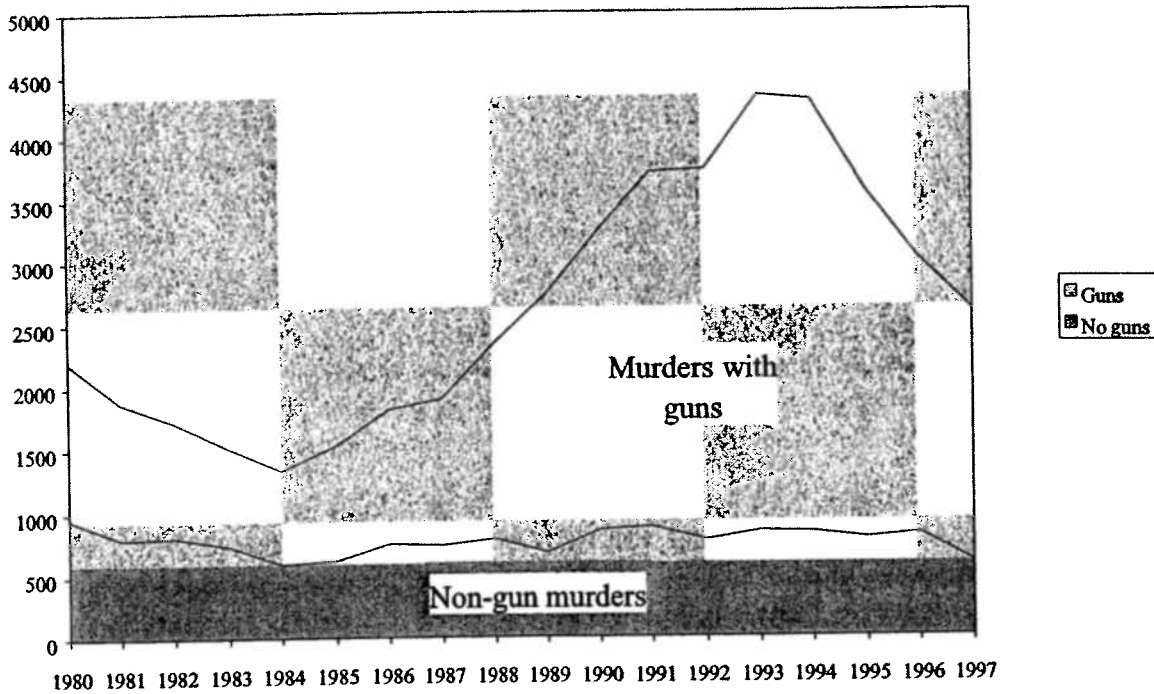
⁶ *E.g.*, *High County Lockup: Children in Confinement in Colorado*, Human Rights Watch Children's Rights Project (1997) (one in a series of reports from Human Rights Watch on children in state correctional facilities); Youth Law Center, *Juvenile Detention and Training School Crowding: A Clearinghouse of Court Cases* (August 1998); Soler, M., *The Treatment of Juveniles in the United States*, Youth Law Center, (December 6, 1996) (unpublished paper).

⁷ *Kent v. United States* 383 U. S. 541, 86 S. Ct. 1045 (1966).

⁸ Total non-fatal victimization rates for young people generally declined between 1992 and 1999 in and out of school. *Indicators of School Crime and Safety 2001* Bureau of Justice Statistics, U. S. Department of Justice and National Center for Education Statistics, U. S. Department of Education (October 2001) , Executive Summary.

Some details are important. Between 1985 and 1994, juvenile gun homicides more than tripled. Juvenile homicides committed with other weapons remained flat. This trend is shown in Figure 1, below. After 1994, gun homicides declined sharply towards 1980 levels.⁹ Thus, the in-

MURDERS BY JUVENILES



⁹ *Easy Access to the FBI's Supplementary Homicide Reports: 1980-1998*, Online, H. Snyder, T. Finnegan, W. Kang, R. Poole, A. Stahl, and Y. Wan (2001). Available: <http://ojjdp.ncjrs.org/ojstatbb/ezashr/>.

crease in homicides is completely attributable to murder committed with a gun. Criminologist Alfred Blumstein explains this phenomenon as the result of the chaotic development of crack markets in the inner cities in the late 1980's. Drug dealers were waging fierce turf wars and recruiting and arming juveniles for battle. In the early 1990's, stabilization in the illegal drug market and a concerted effort by police in some cities to keep guns out of the hands of juveniles led to a decline in these homicides.¹⁰

Legislative Responses to Juvenile Crime

The dramatic rise in juvenile homicide rates helped fuel media attention to juvenile and school violence in the early and mid 1990's. The actual declines in juvenile violent crime did not register. When Professor John DiIulio, a charismatic Princeton professor and Brookings scholar testified before the United States Senate Judiciary Committee in February 1996 about juvenile crime committed by "superpredators" being "bad and getting worse,"¹¹ he found an uncritically receptive audience in both politicians and the media.

The legislative response to violent juvenile crime drew upon the "get tough" rubric that politicians had been applying to crime generally since the mid 1970's. At the federal level, a major juvenile justice bill advanced in the 106th Congress would have allowed criminal prosecution of children as young as 13, expanded the range of crimes for which children could be prosecuted, and required mandatory prison sentences for those convicted. The legislation died because of disagreements between anti-and pro-gun control factions in Congress.

From 1992 through 1995, 40 states and the District of Columbia passed laws making it easier to try juveniles as adults.¹² A number of states broadened their judicial waiver laws. Some allowed juvenile court judges to transfer younger juveniles and those charged with less serious offenses. Some states created a presumption in favor of waiver for children of a certain age or for certain offenses. But in addition, many states adopted one or more procedures for transferring children to adult court without judicial review:

- **Prosecutorial Discretion**, which gives prosecutors authority to file certain juvenile cases in either juvenile or criminal court as they choose. These transfers are subjected to judicial review in only a few states, such as Pennsylvania, where a defendant can request a "reverse waiver" hearing in adult court.

¹⁰ Alfred Blumstein and Richard Rosenfeld, *Assessing Recent Ups and Downs in U.S. Homicide Rates*, The National Consortium on Violence Research, 1998; Andrew Lang Golub and Bruce D. Johnson, *Crack's Decline: Some Surprises Across U.S. Cities*, National Institute of Justice, 1997.

¹¹ John J. DiIulio, Jr. "Fill Churches, not Jails: Youth Crime and 'Superpredators,'" Prepared statement submitted to the Senate Judiciary Committee February 28, 1996. "...America's juvenile crime problem is bad and getting worse. No one relishes the thought of locking up more juveniles. But it must be done....OJJDP and the rest of the federal juvenile justice establishment needs to get out of its anti-incarceration time warp..."

¹² Patrick Griffin, Patricia Torbet, Linda Szymanski *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions* (Office of Juvenile Justice and Delinquency Prevention (1998) pp. iii, 1-11. A detailed state-by-state analysis of waiver and transfer provisions, except for the "lowered age limits" law changes which Amnesty International credits with placing a large proportion of the total number of juveniles into adult court.

- **Statutory Exclusion** excludes certain categories of offenders from juvenile court jurisdiction based either on age or offense charged. Categories may be for serious or violent offenses, as in Georgia, or for non-violent offenses like small drug possession within 1000 feet of a school, as in Illinois. These provisions are sometimes called "automatic" transfers..
- **Lowered age limits.** Simply by lowering the age at which a child becomes an adult, or is no longer protected by juvenile court jurisdiction, a state subjects large numbers of children to criminal court jurisdiction. In states such as New York, however, special "youthful offender" sentencing provisions apply to younger offenders in criminal court.
- **"Once an adult, always an adult"** requires that once a juvenile is prosecuted in criminal court, all subsequent cases involving that juvenile will be under criminal court jurisdiction.

These various new transfer laws are now sending thousands of children to adult courts and adult corrections. The predicted onslaught of juvenile violence for which they were to be a solution never materialized.

Problems with Transfer: A Practitioner's Perspective

Fundamental Unfairness of Prosecuting Children as Adults

New transfer laws and prosecution policies have resulted in many more children being prosecuted as adults. Except for judicial waivers, for which data is recorded and reported, the actual number of children transferred to adult court can only be approximated. An accepted estimate is that more than 200,000 children a year are now prosecuted as adults in criminal court.¹³ Judicial waivers are a declining and small portion of these --down to 8,147 in 1998 from an historic high of 12,136 in 1994.¹⁴ Consequently, the number of juveniles transferred into adult court without judicial review -- and therefore, without the protections provided under *Kent*-- is dramatically increasing. And this means that the large majority of transferred children have not, at the time of the transfer, been evaluated by psychologists or other experts for mental or emotional maturity.

Yet these children enter a hostile environment. The adult criminal court process is adversarial, the structure is rigid and hierarchical. Little allowance is made for the limited experience and understanding of an immature mind. Recent studies on child development and competency question the extent to which young children are able to assist counsel or understand the meaning of their legal rights given their developmental immaturity and incapacity to understand the trial process.¹⁵

The problem is not only that children transferred to adult criminal court are disadvantaged in comparison to children in juvenile court, but that children prosecuted in criminal court are at a

¹³ *Betraying the Young*, Amnesty International USA (November 1998). This number includes children prosecuted under statutes which lowered the age at which a person is legally defined as an adult.

¹⁴ *Easy Access to Juvenile Court Statistics: 1989 - 1998* Online, H. Snyder, T. Finnegan, W. Kang, R. Poole, A. Stahl, and Y. Wan (2001). Available: <http://ojjdp.ncjrs.org/ojstatbb/ezajcs98>.

¹⁵ See, e.g., Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, *Psychology, Public Policy, and Law*, Vol. 3, No.1, March 1997; *Recognizing the Child in the Delinquent*, *Kentucky Children's Rights Journal*, Vol. VII, No. 1, Summer 1999.

disadvantage compared to adults in the same courts. Actual trial experience shows how this is so at every stage in the process.¹⁶

- At arrest, **children readily "confess" to police and to over-implicate themselves**. Children appear to contradict themselves in the statements they give and as a result are easily "impeached" or confused when questioned before a judge or a jury.
- At bail or bond hearings children, who are rarely employed, seldom own property, and frequently lack "ties to the community," are often **held on low bail amounts** which most adults could more easily pay.
- In crowded probable cause and preliminary hearing courts, **public defenders or assigned counsel seldom spend sufficient time** with their young clients, who have difficulty remembering names and addresses and sorting out facts that are important to the adults defending their case.
- In trial preparation, **interviewing children takes many more hours than for adults**. Many attorneys do not have the time required. Children frequently filter out information they think is damaging and embellish whatever they think helps. They try to protect parents or elders; they idealize roles and tell stories designed to picture the world the way they want it to be.
- At trial, **children make terrible witnesses**. They seldom show emotion, they are easily led, and they are prey to cross examination that takes advantage of "prior inconsistent statements." The very rules of evidence that work to get at the truth for adults may obscure the truth when children speak in their own defense.
- **Children suffer most in being asked to accept or reject plea offers**. They cannot grasp or act on the significance of long term consequences, such as for failure to comply with terms of probation. They barely grasp the significance of a sentence of months or years incarceration, and are at a complete loss to weigh the strength of a case against them against their desire to be free of prison "right away!"
- At sentencing, **children in adult court are penalized because probation officers and others who recommend sentencing options are most familiar with the needs and programs that work for adults and are generally not knowledgeable about resources for children**.

To ameliorate these problems, some public defender offices have initiated new programs. The Bureau of Justice Assistance has published recommendations for the design of such programs. Key among these is that children be served by a multidisciplinary team of which the attorney is but one member, and that the same legal team represent the child from start to finish.¹⁷ Few defender offices have these programs, or their staffing, in place. Nor can the best defense compensate for all the disabilities a child faces in criminal court.

Juveniles in adult correctional facilities suffer unjust treatment

¹⁶ Malcolm C. Young, "Representing a Child in Adult Criminal Court," 15 Criminal Justice Magazine No. 1 (Spring 2000).

¹⁷ Malcolm C. Young Providing Effective Representation for Youth Prosecuted as Adults Bureau of Justice Assistance Bulletin, U. S. Department of Justice (August 2000).

In 1997, 7,400 offenders under age of 18 were admitted to state prison, more than double the 3,400 admitted in 1985.¹⁸ In 1999, more than 8,500 juveniles were held in adult jails, either tried or awaiting trial as adults.¹⁹ They are at risk. Children incarcerated in adult facilities are 7.7 times more likely to commit suicide, 5 times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than children incarcerated in juvenile institutions.²⁰

Children in adult facilities, particularly in jails, frequently do not receive educational or other services appropriate to their needs. In many states juveniles are treated the same as adults and are provided the same health, educational and recreational services. Few adult correctional agencies provide special programming developed for this age group and most states do not provide special staff training on handling juvenile offenders.²¹ The situation for girls is particularly troublesome as there are so few of them nationally that there will often be only one female under 18 in a particular prison and, therefore little likelihood of special services being provided.

Adult convictions carry long term consequences for juveniles

Whether incarcerated or not, children convicted in criminal court may suffer other long-term legal, political and socioeconomic consequences. They may be subject to criminal court jurisdiction for any subsequent offense committed as a juvenile. Their convictions become a matter of public record, and they may be compelled to report their conviction on job applications once they are old enough to seek employment. In addition, certain states bar ex-offenders with felony convictions from particular types of jobs, therefore possibly limiting future employment opportunities for youth. Adult convictions may also result in the loss of voting rights, even before a child is old enough to vote, and of government entitlements such as federal financial aid for post-secondary education.

Adult punishment for juvenile offenders adversely impacts public safety

A rationale often given for transferring juveniles to the criminal justice system is that more severe punishment and less concern with rehabilitation will result in reduced crime and greater public safety. However, studies comparing groups of similar juvenile offenders in the adult and juvenile systems have consistently shown that transfer has the opposite effect. Although youths transferred to the adult criminal justice system are more likely to be convicted and incarcerated,²² they are more likely to re-offend, re-offend earlier, and to commit more serious subsequent offenses than those who remain in the juvenile system.²³ A recent Florida study found that Dade

¹⁸ Kevin J. Strom, *Profile of State Prisoners under Age 18, 1985-97*, Bureau of Justice Statistics, February 2000.

¹⁹ James J. Stephan, *Census of Jails, 1999*, Bureau of Justice Statistics, September 2001.

²⁰ Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy, J. Fagan, M. Frost and T.S. Vivona, *Juvenile and Family Court Journal*, No. 2, 1989.

²¹ Juveniles Offenders in Criminal Court and Adult Prison, Legal: Psychological, and Behavioral Outcomes, Richard E. Redding, Jr., *Juvenile and Family Court Journal*, Winter 1999.

²² *Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver*, David Myers, University of Maryland, 1999.

²³ The Transfer of Juveniles to Criminal Court: Does It Make a Difference? D. Bishop, C. Frazier, L. Lanza-Kaduce, and L. Winner, *Crime & Delinquency*, Vol. 42 No. 2, April 1996. *Excluding Violent Youths from*

County youth receiving adult sanctions – including those in jail and in prison - were 81% more likely to have a technical violation or a new case against them than were youth receiving a juvenile sanction.²⁴ The higher recidivism rates for juveniles transferred to the adult system are in large part attributable to the lack of rehabilitative services tailored for children in adult correctional systems.

Criminal prosecution of children supplants programs and services that could have a positive impact on crime reduction.

The transfer of children to adult court for the purpose of enhancing punishment is an ineffective and expensive substitute for use of prevention strategies that reduce juvenile violence and problems such as drug abuse, property crimes, and disruptive behavior. Psychologist Dewey Cornell and his colleagues at the Virginia Youth Violence Project have carefully catalogued effective prevention strategies:

- Community-wide mentoring programs and after-school programs have proven highly effective in reducing drug use, truancy and juvenile crime generally.
- Family-focused programs that emphasize parent education and family strengthening offer critical prevention strategies. For example, multi-systemic therapy is recognized as one of the most cost-effective and successful treatment program for high-risk or delinquent children and their families.
- School-based programs that focus on conflict resolution, peer mediation, violence prevention counseling, bullying reduction, social competence development, and drug education can lead to less disruptive learning environments and improve the children's social and coping skills. For example, a bullying reduction program implemented in Norway and then in the United States led to a "50% reduction in bully/victim problems, as well as marked reductions in vandalism, truancy, and fighting."

In addition to prevention programs, Cornell notes that treatment of juvenile offenders is one of the most cost-effective forms of prevention. Studies show that the most effective treatment programs make extensive use of individual counseling, interpersonal skills training, and mental health rather than juvenile justice personnel. Cornell specifically contrasts these programs to less effective but politically popular program models such as boot camps.²⁵

Psychologist James Garbarino, who has studied violence in young males in Palestine, Kuwait, and Chicago counsels that even violent youth can be treated and "lost boys" reclaimed. Interventions designed to stimulate empathy, protect boys from abuse and humiliation, and provide

Juvenile Court: The Effectiveness of Legislative Waiver, David Myers, University of Maryland, 1999. The Comparative Advantage of Juvenile vs. Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders, Jeffrey Fagan, *Law and Policy*, Vol. 18 # 1 and 2, Jan/Apr. 1996.

²⁴ Craig A. Mason and Shau Chang, *Re-Arrest Rates Among Youth Sentenced in Adult Court*, Evaluation report for Juvenile Sentencing Advocacy Project, Miami Dade County Public Defender's Office, (October, 2001) at p. 8.

²⁵ Dewey G. Cornell, Prevention of Youth Violence. Chapter 24 in Elissa Benedek & Diane Schetky (eds.) *Principles and practice of child and adolescent forensic psychiatry* (pp. 247-256). Washington DC: American Psychiatric Press. (2001). Also available in similar form on line and from other publications.

spirituality and mentoring can change even the worst-appearing child. The tools Garbarino recommends are multi-systemic therapy and skills building, not long-term imprisonment with adults.²⁶

Juvenile Transfers Increase Racial Disparity

Research shows that minority youth are arrested at disproportionately higher rates than white youth, and that minority over representation increases as the juvenile moves through the juvenile justice system. Minority over representation is further exacerbated under the transfer process, so that a disproportionate number of minority children are prosecuted as adults and sent to adult prison. Department of Justice data show that 67% of juvenile defendants in adult court are black whereas white children account for 31%. After sentencing, 77% of juveniles sent to adult prison are minorities.²⁷ And while 17% of blacks and 20% of whites aged 12-17 used drugs in the last year²⁸, fully 75% of juvenile defendants charged with drug offenses in adult court are black. About 95% of juveniles sentenced to adult prison for drug offenses are minorities. Research conducted in California shows that "minority youths are transferred to adult court and imprisoned more often than their proportions of violent crime arrestees would predict."²⁹ And a recent study in Illinois found that while African American youth account for 15% of the state's youth population, they constituted almost 86% of the youth automatically transferred to adult court and 88% of the youth imprisoned for drug crimes statewide. Most significant to any claim that over representation reflects rates of involvement in crime, studies of children "automatically transferred" to adult court in Cook County under the state's law mandating transfer for youth committing certain drug offenses within a thousand feet of a school or public housing project revealed that 99% of youth automatically transferred to adult court for drug crimes between 1995 and 2000, and 99% of all youth transferred to adult court for all crimes in 1999-2000, were youth of color.³⁰ Statistics like these move us past the time when reasonable people can believe that policing and prosecution practices leading to transfer are even close to the same for children of color as they are for white kids.

²⁶ James Garbarino, Ph. D., Lost Boys: Why our Sons Turn Violent and How We Can Save Them (New Press 1999).

²⁷ *Juvenile Felony Defendants in Criminal Courts*, Bureau of Justice Statistics, September 1998.

²⁸ Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *National Household Survey on Drug Abuse*, 1999 and 2000.

²⁹ Hispanic children are 2.3 times and African American children are 6.7 times as likely as white children to be arrested for violent offenses but after their transfer to and prosecution in adult criminal court Hispanic children are 7.3 times and African American children are 18.4 times more likely to be incarcerated than white children. *The Color of Justice*.

³⁰ Jason Ziedenberg, "Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Drug Offenders to Adult Court" Justice Policy Institute and the Building Blocks for Youth Initiative (April 2001).

Conclusion

The move to transfer more children into the adult criminal justice system is a radical rethinking of the traditional view that delinquent children need help to turn their lives around. This nation-wide transformation is taking place despite a decline in much juvenile crime that began before most of the new transfer laws were enacted. As the number of juvenile cases heard in criminal court increases, more people involved in the system are recognizing that adult courts are inappropriate and unjust settings for children whose developmental immaturity puts them at a disadvantage at every stage. There is mounting evidence of the damaging consequences to children who are incarcerated in adult prisons and jails. Those who are not imprisoned suffer consequences that children can hardly begin to grasp. Furthermore, the imposition of adult punishments, far from deterring crime, actually seems to produce an increase in criminal activity in comparison to the results obtained for children retained in the juvenile system. More effective responses to the problems of crime and violence exist outside the criminal justice system.

The harshness, ineffectiveness, and punishing aspects of transfer from juvenile to adult court is doubly visited on children of color.

For all these reasons, professionals called upon to review either the policy or practice of transferring children to adult court would be well served to do so with skepticism at every turn.



A DJJ Success Story

**Trends in Transfer of Juveniles to
Adult Criminal Court**



Florida Department of Juvenile Justice
Jeb Bush, Governor
W.G. "Bill" Bankhead, Secretary
January 8, 2002

DJJ Management Report Number 02-03

This is a summary of research contained in *Juvenile Transfer to Criminal Court Study: Final Report*, with additional comments. For the full text of this report, point your browser to

<http://www.djj.state.fl.us/RnD>

A DJJ SUCCESS STORY: TRENDS IN TRANSFER OF JUVENILES TO ADULT CRIMINAL COURT

Strengthening specialized treatment and deep-end capacity by the Florida Department of Juvenile Justice is showing positive results. Researchers have recently completed a 5-year study, summarizing the results in *Juvenile Transfer to Criminal Court Study: Final Report*. The researchers found that youth who receive sanctions and rehabilitation in Florida's juvenile justice system have a lower rate of recidivism than their counterparts who are transferred to adult criminal court. The group reported that when the youth did recidivate, those transferred to the adult system committed more felony offenses.

Transfer is more likely to aggravate recidivism than to stem it.

Juvenile Transfer to Criminal Court Study

In February 1995 the legislature's task force for the Review of Criminal Justice and Correctional Systems received a report from Drs. Charles Frazier, Donna Bishop, Lonn Lanza-Kaduce and Lawrence Winner titled *Juvenile Justice Transfer Legislation in Florida: Assessing the Impact on the Criminal Justice and Corrections Systems*. Relying on data from the Office of State Courts Administrator and the Department of Health and Rehabilitative Services, the researchers found that transferred youth were more likely to recidivate than youth retained in the juvenile system. They also recidivated at a faster rate, with more serious offenses and with a greater number of offenses.

State prosecutors and others were quick to point out that the data used in the research did not capture all of the information which differentiated transfer cases from those which remained in the juvenile system. In response, the Juvenile Justice Advisory Board of the Florida Legislature submitted a research proposal to the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention in 1996. The intent of the proposal was to replicate the study using case file reviews rather than automated data. The JJAB contracted with the authors of the previous research to conduct the study. The researchers were asked to take a closer look at offender and offense characteristics that would enable them to match youth retained in the juvenile system to those who had been transferred to adult criminal court more accurately.

The researchers first matched on seven criteria:

1. gender;
2. age;
3. race;
4. presenting offense;
5. number of current counts or charges;
6. number of previous juvenile referrals; and
7. most serious prior referral offense.

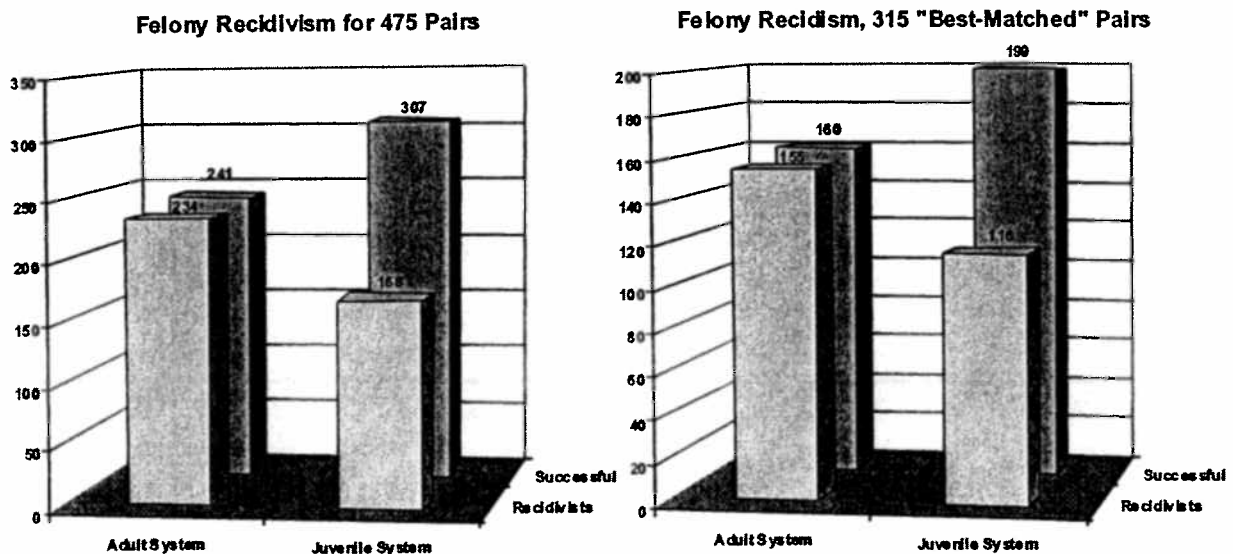
Initially obtaining 475 pairs of offenders, one a transfer to the adult system, the other retained in the juvenile system, the researchers conducted a careful review of court documents, police affidavits and DJJ case files to compile a complete history on each youth.

The case file review took into account such factors as weapon use, victim injury, property damage/loss, gang involvement, involvement with accomplices and co-defendants, the number of counts or charges involved, the complexity of the case (whether it was a single incident or stemmed from multiple incidents), intervening legal complications (failure to appear, new arrests, escapes, violation of conditions of release), and extra-legal problems (e.g., dropping out of school, functioning below grade level, learning disabilities, drug use/addiction, alcohol abuse/addiction, prior abuse history). Using these more specific criteria, the researchers refined the sample to 315 "best-matched" pairs, making the study the most methodologically sound of its type ever completed.

Research Results

Having obtained 315 pairs of best-matched offenders from both systems, the researchers compared their subsequent offending behavior. They followed the pairs to determine whether either member committed a felony after reaching 18 years of age (the pairs were matched on age, so the follow-up period was the same for both members of each pair).

Of the initial group of 475 pairs of offenders, 49% of the youth transferred recidivated, compared with 35% of those who remained in the juvenile system. Of the best-matched pairs, 49% of the youth transferred to adult court recidivated, compared with 37% of those who remained in the juvenile system.



The researchers also examined the 98 pairs in which both youth re-offended. Although in more than a third of these pairs re-offenses were of an equally serious nature, in 40% of the pairs, the transferred youth committed a more serious felony or violent crime, while in 24% of the pairs the youth retained in the juvenile system committed a more serious crime.

Development of Transfer Policy

Under the current laws of Florida, there are three means by which a youth may be transferred to criminal court where the juvenile may be prosecuted as an adult. These methods are:

- **Indictment by a Grand Jury.** The state attorney may seek a grand jury indictment against a child of any age who is charged with an offense punishable by death or life imprisonment.
- **Judicial Waiver.** There are two types of waivers, voluntary (upon request by the youth and the parent, guardian or guardian ad litem) or involuntary (upon request by the state attorney, or statutorily mandated). In either case, a hearing is held and the court decides where the case must be processed.
- **Direct Filing of an Information (Direct File).** State attorneys have discretion in circumstances detailed in Florida Statute to file charges against a juvenile directly in adult criminal court. In other circumstances, Florida laws mandate that the state attorney *must* file in criminal court.

Consequences for Youth

Once a youth has been transferred to criminal court and has been adjudicated as an adult, the youth must be handled thereafter as an adult for any subsequent violations of state law.

Involuntary waivers and direct file provisions apply mostly to youth who were 14 to 17 years of age at the time of the commission of specific serious crimes listed in statute. Mandatory direct files apply to youth 16 or 17 years of age at the time of a subsequent violent crime against a person, if they had previously been adjudicated delinquent for commission, attempted commission or conspiring to commit any of the following violent crimes against a person:

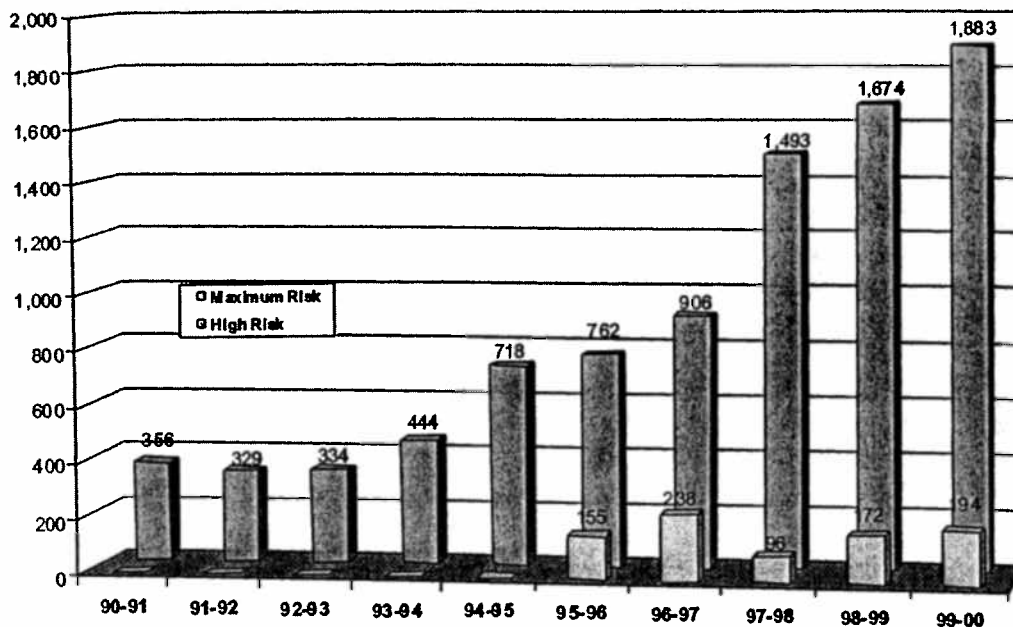
- murder;
- sexual battery;
- armed or strong-armed robbery;
- home-invasion robbery;
- carjacking
- aggravated battery; or
- aggravated assault.

Indictment and waiver were established in Florida in the 1960's, and transfer provisions were broadened through the establishment of direct filing in 1978. The goal of these efforts was to ensure that juveniles who by the severity or chronicity of their offenses proved to be incorrigible were dealt with in the adult system, for their punishment and incapacitation. During the decade of the 1990's, juvenile crime increased faster than expansion of the Florida juvenile justice system could accommodate it. In an attempt to stem the tide of serious juvenile crime, Florida policy makers responded by enacting major reforms of the juvenile justice system, particularly in 1990 and 1994. These reforms contained shifts in policy that included:

- Separating the child welfare system from the juvenile delinquency system, creating a new Department of Juvenile Justice;

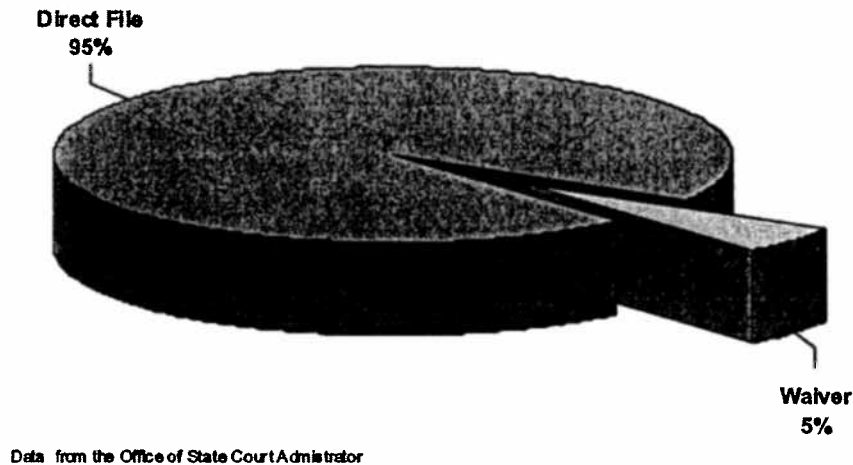
- Emphasizing the importance of public safety with a determined effort to provide swift, sure consequences for youth, while meeting their need for treatment and education;
- Increasing the funding for resources and facilities to accept more high-risk offenders with serious need for treatment; and
- Increasing the discretionary authority of state attorneys to transfer youth to the adult system.

High- and Maximum-Risk Capacity



Development of deep-end capacity, spurred by the *Bobby M* case, began in the early 1990's. Even with funding in place, there was a considerable lag in time until programs could be contracted, sited and opened to accept juvenile offenders. In the five years from 1990 to 1995, deep-end capacity doubled. In 1995, the new "Maximum Risk" programs came on line, and by the end of the decade, deep-end capacity had more than doubled once again.

While the development of capacity quietly pushed forward, Florida policy makers were engaged in the process of developing wider discretionary and mandatory waiver and direct file laws. This trend continued through the 2000 legislative session: The *Juvenile "Four Strikes"* law and the *"10-20-Life for Juveniles"* law are recent examples that provide for adult prosecution of juveniles who are serious chronic offenders, or who possess or discharge a firearm during the commission of a crime. As the pioneer of the direct filing system in the late 1970's, Florida has led the nation in transferring youth to the adult criminal court system mostly via direct file.

2000 Transfers by Waiver or Direct Filing

Florida has been widely recognized as the leader of the transfer experiment. During almost the entire last decade, Florida transferred between 6,000 and 7,000 juvenile cases to adult court, mostly through direct filings. The Bureau of Justice Statistics reported that Florida held more juveniles in prison in the year 2000 than any other state.¹

To better understand the factors contributing to the increased use of transfer, one part of the first phase of the *Juvenile Transfer* research involved telephone interviews of judges and prosecutors in the summer of 1997. The purpose of the survey was to examine the reasons behind their decisions to waive or direct file youth to adult court. Twenty-eight (28) prosecutors and 25 judges from throughout the state were surveyed about practices in their jurisdictions

What the researchers found was that the perceptions of judges and prosecutors were largely that the capacity of the juvenile justice system to deal with serious and chronic offenders was less than adequate.

- Less than a third of respondents believed that current DJJ program options for serious offenders were adequate.

¹ Beck, A. J. & Karbey, J. S. (2001). Prison and jail inmates at midyear 2000. Washington, DC: Bureau of Justice Statistics, Department of Justice.

- All but two of the prosecutors responding to the survey indicated that the availability of more severe punishments in the adult criminal courts was an important consideration in the transfer decision.
- Prosecutors tended to under-estimate the seriousness of sanctions received by juveniles in adult court. Juvenile prosecutors estimated that almost 25% of the transfers who were convicted go to adult prison as compared to an average estimate of only half that (12.5%) by criminal prosecutors. In 1995, about 74% of those who pled or were found guilty as adults were sentenced to incarceration (39% to prison and 35% to jail).²
- Only 36% of the prosecutors indicated that they believed changes (up to 1997) in DJJ programs have had an impact on practice in their circuits. They attributed this to the addition of Level 8 and 10 beds. Even a smaller portion (20%) of the judges had this perception.

Changing Perceptions of Juvenile Transfer

Policy-makers, legislators, judges, state attorneys, public defenders, private attorneys and others continue to ask whether transfer mechanisms are successful in effectively reducing crime and recidivism. The original study, *Juvenile Justice Transfer Legislation in Florida*, brought the effectiveness issue into open debate. Since then, other research has tended to confirm that earlier study, including the *Juvenile Transfers to Criminal Court Study: Final Report*.³

The mounting evidence of the greater effectiveness of juvenile treatment of serious offenders, coupled with the availability of deep-end juvenile resources may motivate prosecutors and judges to re-examine direct filing and waiver practices. The Department's development of high- and maximum-risk juvenile justice programs, featuring longer stays and specialized treatment, present prosecutors and judges with more satisfactory options, compared to what was available in 1997.

Innovative programs, such as the Miami-Dade Juvenile Sentencing Advocacy Project, encourage judges to use the "sentence-back" option: sentencing youth found guilty in criminal court back to the juvenile system for sanctions there. At least one evaluation study has found the practice successful in decreasing recidivism and obtaining rehabilitative treatment

JSAP

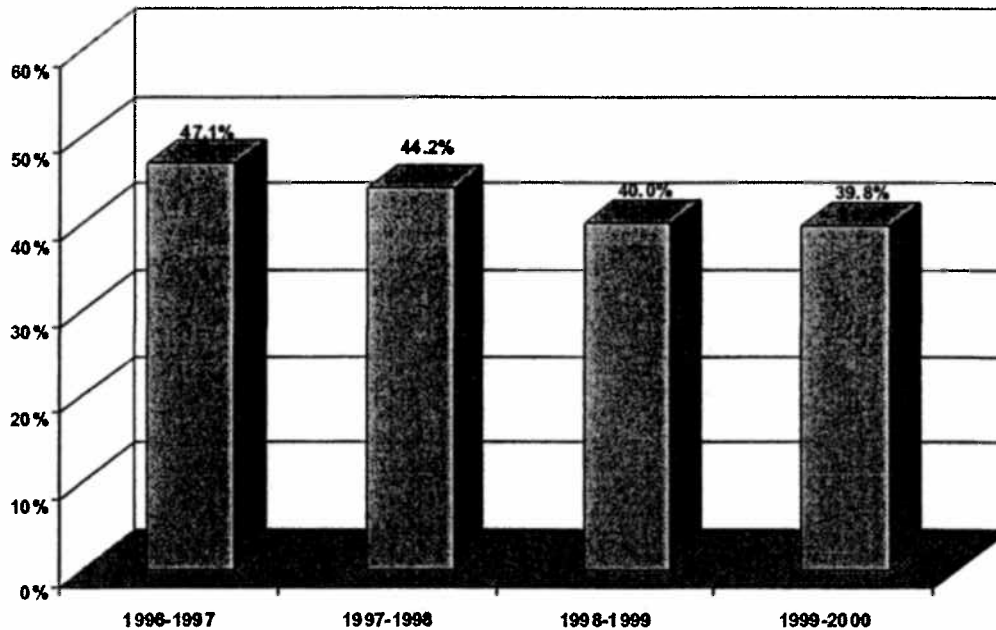
The Juvenile Sentencing Advocacy Project (JSAP) of the Miami-Dade Public Defender's Office collected, analyzed and provided information that helped adult court judges make informed sentencing decisions that included sentencing youth back to the juvenile system. An evaluation study conducted by Dr. Craig Mason (then) of the University of Miami found that the number of youth receiving juvenile court sanctions increased 350% from 1998 to 1999, and that juveniles sentenced back offended less than half as often as their counterparts sentenced as adults. This was found to be true even when they had similar offense histories.

² Based on 1995 data from the Office of the State Courts Administrator.

³ See also Fagan, J. (1996). The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. *Law & Policy*, 18, 77-114; and Mason, C. A. & Chang, S. (2001). *Re-arrest rates among youth sentenced in adult court*. Submitted to Miami-Dade County Public Defenders Office. Miami, FL: Miami-Dade Public Defender's Office <<http://www.pdmiami.com>>.

for these juveniles (See note 4, below). In addition, high-risk and maximum-risk DJJ programs have continued improvement in their ability to minimize recidivism to commend them.

Recidivism Rates for High- and Maximum-Risk Programs

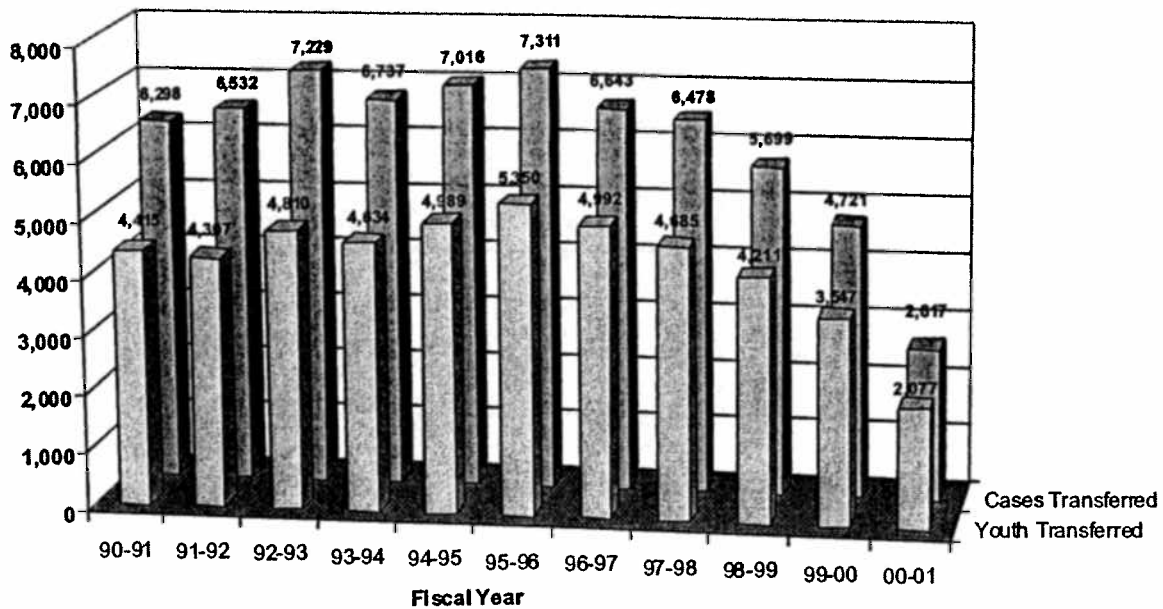


These positive outcomes are the result of the Department's emphasis on treatment and rehabilitation. These factors were reflected in interviews conducted by the *Juvenile Transfer to Criminal Court* researchers with the youth themselves. Youth cited longer time in deep-end programs and the greater intensity of skills training and treatment offered there as reasons why believed deep-end programs were more beneficial. In the following excerpt one youth discussed the differential impacts of probation (formerly community control) and the Level 10 program he was in at the time of interview:

I didn't like the community control counselor; I was trying to get over on the system. I needed somebody to stop me. I needed a program to teach me manners and stuff. . . . This place [Level 10] is good. They treat me right. They understand and talk to you when you're mad. They are helping to try to teach me to spell and read, and I am learnin'. Somebody needed to make me sit in my seat and do stuff. I didn't like it, but it was good for me. . . . I been here for eight months, I've made lots of changes. They taught me respect, to say, "sir, yes sir"--if you have a problem to talk it out, not use violence. They need to make more Level 10s.

Judging from recent changes in the numbers of youth being transferred, enhancements in deep-end capacity and treatment effectiveness have not escaped the attention of prosecutors responsible for direct filings. High-risk and maximum-risk juvenile correctional facilities have become a viable alternative to adult criminal sanctions. In Florida, the number of juveniles sent to the adult system has decreased dramatically to the lowest level in 15 years.

Youth and Cases Transferred to Adult Criminal Court



Most would agree that there will always be a small subset of youth who by the severity or chronicity of their offenses are best dealt with by the adult system. The findings of the *Juvenile Transfer to Criminal Court Study: Final Report*, the increase in deep-end capacity and specialized treatment, the continuing improvement of success rates, and the dramatic decline in the number of juveniles transferred to the adult system are evidence that Florida's juvenile justice system is gaining credibility among prosecutors and judges as an appropriate place to rehabilitate serious juvenile offenders.

For the full text of the report, *Juvenile Transfer to Criminal Court Study: Final Report*, point your browser to

<http://www.djj.state.fl.us/RnD>