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Prosecuting Juveniles in Adult Court

An Assessment of Trends and Consequences

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Overview

Fear of out-of-control juvenile crime and a coming generation of “super-predators,” compellingly if erroneously described publicly and to Congress in 1996, has undermined the traditional practice of treating young offenders as different from adult criminals – less culpable because of their age and more amenable to rehabilitation. In recent years, the focus has turned to punishment and in particular to the transfer of increasing numbers of youthful offenders from juvenile to criminal courts. These “solutions” have been demonstrated to be doing more harm than good. This policy paper provides information on changes in the juvenile justice system and analyzes why the increased prosecution of juveniles in adult court is another failed “get tough” policy which is unjust and harmful to children and does nothing to increase public safety.

The Juvenile Court System is Historically Distinct from Adult Courts

The first court designed specifically to deal with children was established in Chicago one hundred years ago and led to the development of a separate juvenile justice system nationwide. Juvenile courts are responsible for dealing with children who are accused of committing two types of offenses: status offenses – violations of laws with which only children can be charged (e.g., running away from home); and delinquency offenses – acts committed by a child which, if committed by an adult, could result in criminal prosecution.

The premise on which the separate juvenile system rests is that children are developmentally different from adults and thus are more amenable to treatment and rehabilitation. The juvenile justice process centers on the individual child and takes into account the child’s problems and needs, focusing less on punishment than on helping the child to change and so minimize the likelihood of future criminal behavior.

During the past ten years, fear of juvenile crime and criminals has undermined the basic concepts on which the juvenile court was founded. State legislatures and the federal government have turned increasingly to the more punitive adult model, requiring that even pre-teen children in some instances be treated as if they were equal in culpability and understanding to adults who commit similar crimes.

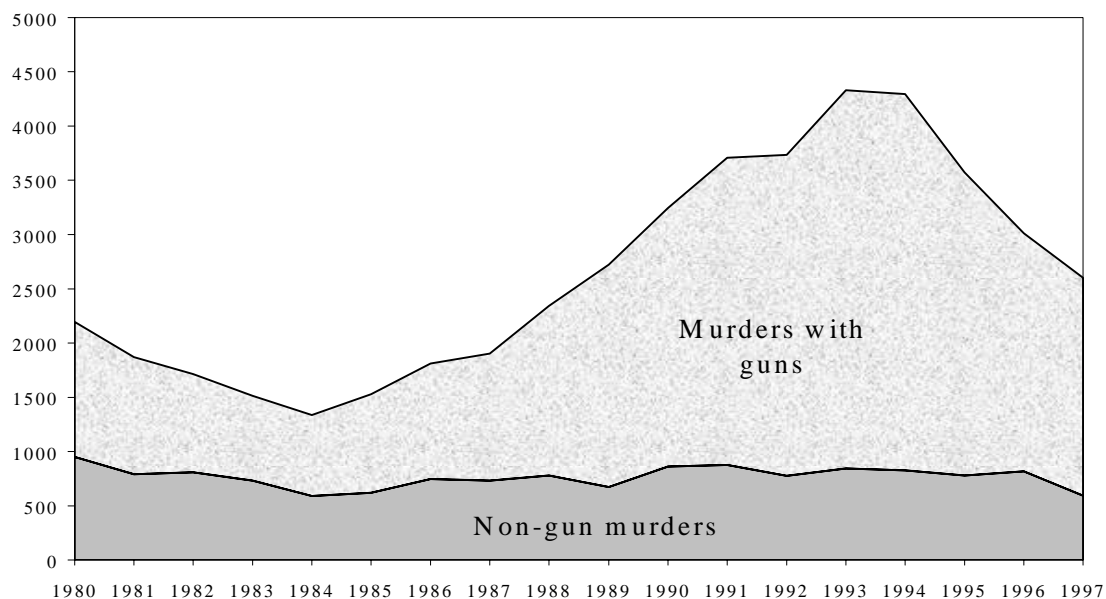
Recent trends in juvenile crime

Trends in juvenile crime provide no evidence that young people have become more crime prone or dangerous than in past 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. The one category of crime that diverged significantly from the overall trends during this period is murder.

Murder by juveniles remained at a relatively constant level for the decade before 1985, but then underwent a large and disturbing increase. In 1993 the rate peaked, followed by a 48% drop in juvenile arrests for murder by 1998. As seen in the figure below, this overall rate hides two very different trends.

- Until 1985, the rates of gun and non-gun homicides followed a similar pattern.
- Between 1985 and 1994, non-gun homicides continued at a similar rate while homicides with guns more than tripled.

MURDERS BY JUVENILES



As criminologist Alfred Blumstein and others have argued, the large sudden increase in gun killings was tied to the development of crack markets in the inner city where fierce turf wars were waged and juveniles were actively recruited by the organizers of the markets. As more guns came onto the streets, more juveniles began to carry them for self-defense and the number of deaths spiraled. The sharp decline in recent years resulted from fewer turf battles as drug markets “stabilized” and a concerted effort by police in some cities to keep guns out of the hands of juveniles.¹

¹ 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.

Legislative Responses to Juvenile Crime

Legislative actions in recent years have emphasized measures requiring harsher punishment of juveniles rather than ones to restrict the availability of guns. Following the Colorado school shootings in April 1999, the Senate added some gun control measures to the juvenile justice bill then under consideration in Congress. However, no such measures were included in the House version of the bill and the process of reconciling the two versions stalled at the end of the first session of the 106th Congress. In the discussion and heavy lobbying over the gun control measures, less attention was paid to the other proposals contained in the House bill which would:

- allow youth as young as 13 to be tried as adults in the federal system
- expand the range of federal crimes for which a juvenile can be prosecuted as an adult
- provide for additional mandatory sentences for juveniles in federal court
- reduce the restrictions on the housing of juveniles in adult prisons and jails.

Policy Changes Have Expanded The Range of Juveniles Who Are Transferred to Adult Court

Both state and federal legislative responses to juvenile crime have focused on sending more and younger children to adult criminal court. Since 1992, almost every state has made it easier to try juveniles as adults. Congress provided additional encouragement to this trend in 1998 by making some federal grants contingent on states having policies allowing for the prosecution of those over the age of 14 as adults.

State juvenile codes have long permitted the most serious, chronic or older youthful offenders to be transferred to the adult criminal court by a process of judicial “waiver” following a hearing in front of a judge in juvenile court. However, in recent years there have been significant changes in the processes by which juvenile offenders end up in adult court.

- **Judicial Waiver** has been broadened to allow juvenile court judges to transfer younger juveniles and those charged with less serious offenses and to subject more cases to a presumption in favor of waiver or to mandatory waiver .
- **Prosecutorial Discretion** has been expanded to give prosecutors more authority to file certain juvenile cases in either juvenile or criminal court as they choose.
- **Statutory Exclusion** – increasingly states have passed laws to exclude certain categories of juvenile offenders from juvenile court jurisdiction based either on age or offense.
- **“Once an adult, always an adult”** – most states have provisions in effect requiring that once a juvenile is prosecuted in criminal court, all subsequent cases involving that juvenile will be under criminal court jurisdiction.

Policy Changes Have Resulted in Many More Children Being Tried as Adults

There are no all-encompassing national data collected, but:

- A report issued by Amnesty International in 1998, based on data from the Department of Justice and from individual states, estimates that as many as 200,000 youth under the age of eighteen are prosecuted in criminal court annually, an estimated 180,000 of those in 13 states which have set the upper age of juvenile court jurisdiction at 15 or 16 rather than 18.²
- In 1996, 10,000 cases were waived to criminal court by juvenile court judges. The number of waivers has declined slightly since its high point in 1994 as increased numbers of juveniles are sent directly to adult court.³
- Florida, one of the first states to give prosecutors the right to direct file juvenile cases, continues to be the most aggressive in prosecuting juveniles in criminal court with 6,525 cases (either direct filed or waived) cases in 1998.⁴

While many of the laws facilitating prosecution in adult court may have been a response to increased homicide and violent crime rates, their impact has been much wider.

- In 1996, more than half the cases waived to criminal court were non-violent drug or property offenses:
 - 43% of cases waived were person offenses
 - 37% property offenses
 - 14% drugs
 - 6% public order.⁵

Racial Disparities in Juvenile Transfers

A disproportionate number of minority children are prosecuted as adults. Latest statistics from the Department of Justice⁶ show that:

- 67% of juvenile defendants in adult court are black.
- 77% of juveniles sent to adult prison are minorities (60% black, 15% Hispanic, 1% American Indian, 1% Asian).

² *Betraying the Young*, Amnesty International USA, November 1998.

³ *Juvenile Offenders and Victims: 1999 National Report*, Howard Snyder and Melissa Sickmund, National Center for Juvenile Justice, OJJDP, September 1999.

⁴ Reported by Florida Department of Juvenile Justice, Bureau of Data and Research.

⁵ *Juvenile Court Statistics 1996*, Anne Stahl, Melissa Sickmund, et al., National Center for Juvenile Justice, OJJDP, July 1999.

⁶ *Juvenile Felony Defendants in Criminal Courts*, Bureau of Justice Statistics, September 1998.

Despite using drugs at a lower rate than white youth (15.7% of blacks, 16.5% of Hispanics and 19.6% of whites aged 12-17 used drugs in the last year):⁷

- 75% of juvenile defendants charged with drug offenses in adult court are black.
- 95% of juveniles sentenced to adult prison for drug offenses are minorities.

Juveniles in Adult Prisons Face an Array of Problems

Juveniles who receive custodial sentences in the criminal court usually serve their sentences in adult prisons and jails.

- In June 1998, more than 6,500 juveniles were held in adult jails either tried or awaiting trial as adults.⁸
- The 36 states supplying data to the National Corrections Reporting Program report that juveniles accounted for 5,600 (2%) of new court commitments to state adult prisons in 1996.⁹
- Of 15,620 youth under the age of 19 serving sentences in adult prisons at the end of 1997, 1,484 were under age 16.¹⁰

Children in adult correctional facilities suffer higher rates of physical and sexual abuse and suicide. Compared to those held in juvenile detention centers, youth held in adult jails 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
- 50% more likely to be attacked with a weapon¹¹

Children in adult facilities, particularly in jails, frequently do not receive the education 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

⁷ *National Household Survey on Drug Abuse: Population Estimates 1997*, DHSS Substance Abuse and Mental Health Services Administration, July 1998.

⁸ *Prison and Jail Inmates at Midyear 1998*, Bureau of Justice Statistics, March 1999.

⁹ *Juvenile Offenders and Victims: 1999 National Report*, Howard Snyder and Melissa Sickmund, National Center for Juvenile Justice, OJJDP, September 1999.

¹⁰ *1998 Directory of Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities*, American Correctional Association, 1998

¹¹ *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*, No. 2, 1989.

agencies provide special programming developed for this age group and most states do not provide special staff training on handling juvenile offenders.¹² The situation for girls is particularly troublesome as there are so few of them nationally (262 in 1998) that there will often be only one female under 18 in a particular prison and therefore little likelihood of special services being provided.

Being Tried as an Adult May Have Long-term Consequences

In addition to receiving an adult sentence and possibly serving time in an adult prison, juveniles convicted in criminal court may suffer other long-term legal consequences. Depending on the laws of their state, they may:

- Be subject to criminal court jurisdiction for any subsequent offense committed as a juvenile
- Have their conviction a matter of public record
- Have to report their conviction in employment applications
- Lose the right to vote, sometimes for life
- Lose the right to serve in the military.

Prosecuting Juveniles as Adults Undermines Justice

The adult criminal system is designed for the prosecution of adults. The process is adversarial, the structure is rigid and hierarchical, and no allowance is made for the limited experience and understanding of a young mind. Judges and lawyers in adult court are not trained to understand children's levels of cognitive development nor attuned to the way they speak. As a result, children in adult criminal court are at a disadvantage as compared to adults in the same courts.

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.¹³ Defense lawyers and child psychologists working with children in the adult system have identified some of the disadvantages they face at each stage of the process:

¹² Juveniles in Offenders in Criminal Court and Adult Prison, Legal, Psychological, and Behavioral Outcomes, Jichared E. Redding, Jr., *Juvenile and Family Court Journal*, Winter 1999.

¹³ 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.

- At **arrest**: children like talking to authority figures and will readily "confess" to police in detail. They tend to over-implicate themselves -- young girls involved with older boys or men will "protect" their male accomplices by taking on more responsibility than was in fact theirs. Children lack time references and seldom narrate events with consistency, so that their accounts of events appear to contradict themselves over time and may be discredited before a judge or a jury.
- At **bail or bond hearings**: the questions asked in adult court to set bond are not appropriate for children, who are never employed, seldom own property, and frequently lack "ties to the community." Judges often set bail that would be low for an adult but may be unattainable for a child from a low-income family, and many children remain in jail on these low bonds.
- At **probable cause and preliminary hearings**: adult courts are crowded and public defenders or assigned counsel who represent poor people have many clients. Their first interviews often last only a few minutes in a crowded lockup. Children are penalized by their inability to prioritize facts and information to provide attorneys what they need to begin work on the case.
- In **preparing for trial**: children have difficulty remembering names and addresses, and sorting out facts that are important to the adults defending their case. They frequently filter out information they think is damaging and embellish whatever they think helps, under total misconception as to which is which. They try to protect parents or elders; they idealize roles and tell stories designed to picture the world the way they want it. Interviewing children for trial preparation takes many hours more than for adults; and most attorneys do not have the time required.
- At **trial**: children make terrible witnesses. They appear to be without emotion when emotion is eating them up. They are easily led; they are prey to cross examination that takes advantage of "prior inconsistent statements," a child's desire to protect family or friends, and simple language shortcomings. 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.
- In **plea negotiations**: children have marginal competency to understand many aspects of the court system but they suffer most in being asked to accept or reject plea offers. They are likely to accept any arrangement that gets them "out" or home, and 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**: even when facing less serious charges, 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.

Prosecuting Juveniles as Adults Undermines Public Safety

The usual rationale 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 repeatedly shown that the transfer policy has had exactly the opposite effect from that intended.

- A Florida study comparing recidivism rates for matched groups of youthful offenders (comparable on the basis of the number and seriousness of past and current offenses committed as well as sociodemographic characteristics) found that juveniles coming out of the adult system 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.¹⁴
- A study of over 500 youth charged in Pennsylvania found that youths transferred to adult court are more likely to be convicted and incarcerated but their recidivism rates are higher than the rates for those who remain in juvenile court.¹⁵
- A study comparing 15-16-year olds charged with robbery in New York and New Jersey found that the New York juveniles whose cases originated in criminal court were more likely to reoffend and to reoffend sooner than the New Jersey juveniles whose cases were heard in juvenile court.¹⁶

By contrast, evaluations of programs which provide intensive community- and family-based interventions with delinquent, violent and substance abusing juvenile offenders have demonstrated reduced crime and considerable cost savings. Programs such as Multisystemic Therapy and Multidimensional Treatment Foster Care have been shown to substantially reduce arrest rates and drug use among serious and chronic juvenile offenders who complete the programs by comparison with control groups of similar non-participating juveniles – and they cost far less to implement than they save in reduced criminal justice expenditures.¹⁷

¹⁴ 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.

¹⁵ Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver, David Myers, University of Maryland, 1999

¹⁶ 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.

¹⁷ For detailed evaluations of these and other programs, see, e.g., Lawrence W. Sherman, et al., *Preventing Crime: What Works, What Doesn't, What's Promising*, National Institute of Justice, 1997; Steve Aos, Polly Phipps, Robert Barnoski, Roxanne Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime*, Washington State Institute for Public Policy, May 1999; and the *Blueprints for Violence Prevention* series from the Center for the Study and Prevention of Violence at Colorado University directed by Dr. Delbert Elliott.

Summary

The move to send 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 and belong in a system that focuses primarily on rehabilitation rather than punishment. Remarkably, the nationwide transformation to this more punitive approach is taking place despite the continuing, multi-year, decline in juvenile crime.

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 in the system. There is mounting evidence of the long-term and damaging consequences suffered by children who are imprisoned in adult prisons and jails. Furthermore, the imposition of adult punishments, far from deterring crime, actually increases the likelihood that a young person will commit further criminal offenses.

The transfer of increasing numbers of children from juvenile to criminal courts is continuing in the face of mounting evidence of the harm it does both to the children and to public safety – once again “tough on crime” politics undermines good public policy.