



**YOU DO THE CRIME, YOU DO THE TIME:
A SOCIO-LEGAL HISTORY OF THE JUVENILE
COURT AND TRANSFER WAIVERS**

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In an attempt to understand the recent conflict surrounding the responsibility and direction of the juvenile justice system, this paper views the social and legal changes occurring from the systems inception to the present. The juvenile justice system was created in 1899 to reform U.S. policies regarding youthful offenders. Since that time, a number of reforms aimed at protecting the "due process" rights of youth while simultaneously creating transfer laws, have made the juvenile justice system more comparable to the adult criminal court system than what was originally intended.

INTRODUCTION

The aim of creating a juvenile court for children was not only for it to differ from that of the criminal court, but the way of these differences manifested themselves was to be unique and individualized. Procedure was to be socialized in a way to prevent the child from being stigmatized, tried, and treated like a criminal. As a means of preventing this, the original court permitted jury trials under no circumstances, allowed no public trials, and allowed the judge to represent both parties of the law. The informality of the court allowed individual circumstances surrounding each case to be identified and considered by judges when ruling. The transformation of the juvenile jurisdiction began in the late 1960's with landmark cases by the Supreme Court granting due process rights to juveniles where, becoming eerily similar to criminal courts, juvenile transfers were established such that the most serious young offenders could be tried as adults.

The American judicial system and the treatment of juvenile offenders have undergone considerable changes in the past 30 years. With the rising levels of juvenile crime combined with media discourse, an increase in public fear and a 'get tough' government approach to crime has emerged. The notion of "adult time for adult crime" has brought significant changes in the juvenile justice system and its philosophy for dealing with adolescents, ultimately resulting in an increasing number of juveniles being transferred and sentenced in the adult criminal justice system.

THE SOCIAL CONSTRUCTION OF YOUTH: THE JUVENILE JUSTICE MODEL

Offender-Based Sentencing

Incorporating changing ideas about differences between children and adults, Progressive reformers of the nineteenth century sought to create a separate system that would remove children from the harmful potential of the criminal justice system and provide an individualized system that focused on the specific needs of juveniles rather than their offenses (Grossberg, 2002). Juvenile courts were therefore developed upon the realization that children were different than adults when it came to committing a crime. Adolescents were seen as less amenable, less mature, and not fully able to comprehend the full scope of their actions. As Delger (1980) states, "Children began to be seen as different from adults; among other things they were considered now more innocent; childhood itself was perceived as it is today as a period of life not only worth recognizing and cherishing but extending." Adolescents would therefore benefit from different intervention strategies that focused on treatment that encouraged sentencing and

rehabilitation based upon the age and maturity level of the offender (Feld, 1999a; Rothman, 1980).

The initial juvenile courts were intended to be informal and rehabilitative (Bernard, 1992; Lemert, 1970; Rothman, 1980), where the main goal was to rehabilitate and re-socialize the young offender to make him or her a productive member of society. By identifying children and adolescents as being different than adults in terms of their needs, the juvenile court reflected and legitimated important social meanings relating to childhood and adolescence. The juvenile court is offender-oriented rather than offense oriented, making it much easier for offenders to get a second chance at being a productive member of the community. The socially constructed boundary that separated the juvenile and criminal jurisdictions was recognized as the juvenile court became a legitimate institution, where the crossing of this boundary would eventually require an increase in legal justification.

Informal Court Setting

The formality of the juvenile court model is much more casual when compared to its criminal counterpart. Because the court feels that adolescents do not possess the same degree of criminal responsibility and maturity as adult offenders, the social actors within juvenile courts recognize these mitigating factors when sentencing young criminal offenders. The informality of the offender-based juvenile court allows for a greater array of personal information to be obtained on the defendant than what would normally be allowed in criminal court. Information on the offenders' family, friends and circumstances surrounding the offense will be taken into consideration when deciding a sentence. This array of personal information about the juvenile offender allows the judge, defense attorney, and prosecutor to decide what the best approach would be to help rehabilitate the youth.

Often as is done in criminal court, the social actors within the court look at the severity of the offense as well as the juveniles' previous record to determine the appropriate action to be taken. The court will also look at the offender's home situation and if the offense was committed in a group setting. For instance, being that juveniles often engage in "group offending", where peer pressure has an impact on the offender participating in a crime (Zimring, 1998), the court will use this information in deciding if the juvenile is a threat to the community, or if they are deserving of another chance.

A classic study conducted by Robert Emerson (1969) on juvenile courts focused on the interaction of court actors and how they resolve courtroom conflicts. Court actors in juvenile courts were found to reduce caseload pressure and uncertainty by developing "going rates of punishment", shared characterizations of "normal" delinquents, and incentive systems for pleading guilty (Emerson, 1969; see also Bortner, 1982). The court actors would therefore come to a decision collaboratively about a fair sentence, and the judge will ultimately decide if the juvenile will be incarcerated, receive treatment, or be released back to his or her legal guardian. Often, leniency will be granted to those offenders who the judge feels made a mistake and can be rehabilitated. To understand why the juvenile court was set up in the aforementioned way, one must recognize the origins and many reforms made to the juvenile justice system over time.

HISTORY OF THE JUVENILE COURT

The Juvenile Court System

Prior to the development and establishment of the juvenile court, the United States dealt with juvenile offenders using legal traditions inherited from the English. These traditions dichotomized individuals as either “infants” or “adults,” and allowed only a limited number of legal options available for children who broke the law (Feld, 1999a). English law stated that any child below the age of seven could not be held responsible for any crime because they were incapable of criminal intent. It was also held that youth between the ages of seven and fourteen were incapable of having the necessary intent to engage in a criminal behavior, however this could be refuted where the child could invoke the “infancy defense” in an attempt to convince the court of their incapability of criminal intent. Finally, English law held that any child over the age of fourteen would be prosecuted and punished in the same manner as adult criminals (Fagan & Zimring, 2000).

The start of the nineteenth century saw delinquent, neglected, dependent, and runaway children in the United States being treated in a similar manner to adult criminal offenders (Siegal & Senna, 1997). Late in the nineteenth century, public sentiment began to shift and recognize childhood as a distinct and separate entity from adulthood. It was argued that juveniles were developmentally inferior compared to adults and would be more responsive to rehabilitation efforts. It was decided then in 1899, that juveniles would no longer be held criminally responsible for their actions (Feld, 1999a).

In 1899, the Illinois Legislature authorized the first juvenile court in the United States. Changes in the cultural conceptions of children and how they were to be controlled during the nineteenth century led to the creation of this specialized court (Feld, 1998). The movement towards a just juvenile justice system sought to remove youth who were tried in criminal jurisdictions and instead provide them with individualized rehabilitation (Lemert, 1970; Platt, 1977).¹ Once Progressive reformers realized that children were different than adults and would benefit from positive intervention, treatment, and punishment strategies, the newly created juvenile jurisdiction encouraged age-graded decision-making standards and treatments (Feld, 1999a; Rothman, 1980, Ryerson, 1978). Progressive era reformers thus established the court with the intention of meeting the needs of both society and the juvenile offender. The ultimate goal of juvenile courts was “to resolve the wayward juvenile’s family, social and personal problems and prepare the juvenile to be a healthy, productive, and law abiding adult” (Fagan & Deschenes, 1990).

Juvenile courts in the United States were created with the philosophy of *parens patriae*, where those who could not care for themselves were essentially cared for by the state.² This doctrine

¹ Referring to the “juvenile jurisdiction” and “criminal jurisdiction” as a single entity overlooks much of the variation among individual courts within each jurisdiction type. This paper considers these two jurisdiction types as they have traditionally been known to be understood.

² See *State of West Virginia v. Charles Pfizer & Co.*, 440 F.2d 1079, 1089 (2d Cir. 1971). “*Parens patriae* literally means ‘parent of the country’ and refers traditionally to the role of the state as sovereign and guardian of persons under a legal disability to act for themselves (i.e. juveniles, the insane, or the unknown”).

gave the government the right to intervene in the lives of the child regardless of obtaining consent from the parents or guardians. Therefore any adolescent offender who did not have adequate direction from his or her guardian would receive rehabilitative treatment from public authorities. By creating a juvenile jurisdiction as an alternative to the adult criminal model, juvenile courts rejected the criminal law's jurisprudence and its procedural safeguards such as juries and lawyers (Feld, 1999a).

Prior to the establishment of a separate juvenile court system, children were subject to the same unsympathetic realities and punishments as adults in the criminal justice system. Under the semblance of *parens patriae*, the original objective of the juvenile court was to get children out of institutions, focus on rehabilitation rather than stigmatizing punishment, and to provide informal and confidential court proceedings that was in direct contrast to the adult criminal court (Coalition of Juvenile Justice, 1998; Platt, 1977; Rothman, 1980).

The offender-based rehabilitative ideal assumed in the original juvenile courts was drastically different than retributive aims of the offender-based adult criminal court. Being that adolescents were seen as less culpable and immature, juvenile courts were focused on the best interests of the youth, primarily how the youth could become a productive member of society. Youth were not seen as being fully culpable of their actions, allowing juvenile court hearings to decide what was in the best interest for the youth. Adult criminal courts however, were directed solely at punishing the offender with little or no attention being paid to the individual circumstances surrounding the crime. Adult offenders received harsher punishment and more punitive sentences.

There were also considerably different processes within the juvenile and criminal court systems (Fagan & Zimring, 2000; Feld, 1999a). For example, the juvenile court controlled its own intake, as opposed to the criminal court where grand juries and prosecutors controlled intake. In contrast to the criminal jurisdiction, the juvenile court had the option of handling cases informally, having less formal hearing procedures, and having confidential proceedings. Also, in the wake of serious cases, the absence of lawyers was acceptable. The use of such civil proceedings for juveniles was not initially viewed as a denial of a juvenile offender's right to due process under the guise of *parens patriae*.

The creation of the juvenile justice system at the beginning of the twentieth century has undergone numerous juvenile justice reforms that have reshaped how adolescents are tried, prosecuted, and punished in the United States (Fagan & Zimring, 2000; Feld, 1999a). While the original juvenile courts were used to deal with truants and not violent offenders (Collier, 1998; Wilson, 2000), the increase in the publicity and discourse surrounding juvenile crime led to an outcry for more serious measures to be taken when sentencing and punishing serious juvenile offenders. The juvenile justice reforms allowing the transfer of adolescent offenders to adult criminal court facilitated a means for handling more serious and violent offenses. The increase in numbers of chronic violent and offending youth has led to the belief that communities need to be protected from these violent adolescent offenders, hence allowing more flexibility to juvenile courts to sentence more punitively than before.

Modern Era of Juvenile Justice

In the late 1960's and into the 1970's, the rise in urban youth crime instigated the discourse on 'get tough' policies (Beckett, 1997). Politician's fear of being labeled lenient on crime ushered in a new punitive punishment paradigm on juvenile offenders. The discourse and rhetoric in which crime is presented to the public was very influential regarding crime and how it should be addressed. As David Garland (1990) stated, "It is not 'crime' or even criminological knowledge about crime which most affects policy decision, but rather the ways in which 'the crime problem' is officially perceived and the political positions to which these perceptions give rise (p. 20).

Concerns regarding the right of juvenile offenders during the 1960's and early 1970's were responded to by the United States Supreme Court to amend the juvenile court procedures in a shift away from *parens patriae* doctrine. Critics were concerned that under this doctrine, judges were allowed unlimited judicial discretion over defendants. During this time period, three major cases concerning the treatment of juvenile offenders were brought before the U.S. Supreme Court. The cases of *Kent v United States*³, *In re Gault*⁴, and *In re Winship*⁵, mandated that the juvenile courts must grant due process protection to youth. In the first of these landmark cases, *Kent v. United States* (1966), the Court concluded that juveniles had a right to a hearing before being transferred to adult criminal court, as well as representation by counsel, access to social service records, and a written statement of the reasons for the transfer.

In *Gault* (1967), the most famous of these cases, Justice Abe Fortas announced that it was time for the "constitutional domestication" of the nation's juvenile courts and began this process by extending limited due process protection to offenders during adjudicatory hearings. Fortas believed that these protections would shield juveniles from unlimited judicial discretion, while still retaining the juvenile court's founding ideals of individualized treatment and rehabilitation that were embodied in the legal concept of *parens patriae* (Manfredi, 1998).

This transformation of the juvenile court was a very different social institution than was originally intended by Progressive reformers. *Gault* was the beginning of the convergence between the individualized rehabilitative juvenile jurisdiction with the adult criminal courts (Feld, 1993). In *Gault*, the Court decided that juveniles had a Fifth Amendment right against self-incrimination, a right to a notice of charges, the right to counsel, and the Sixth Amendment right to confront and cross-examine witnesses that is normally extended to adults in criminal court.⁶ The emphasis on procedural formality shifted the focus of juvenile proceedings from deciding what was best for the individual child to proof of legal guilt in adversary proceedings (Fagan & Zimring, 2000; Feld, 1997).

The *In re Winship* (1970)⁷ Court went even further in extending procedural protections to the child in juvenile court, stating that the finding of "delinquency" for juveniles, such as "guilt" for adults, must be made "beyond a reasonable doubt." This requirement includes juveniles who

³ 383 U.S. 541 (1966). *Kent* was the first major decision addressing juvenile court procedures.

⁴ 387 U.S. 1 (1967).

⁵ 397 U.S. 358 (1970).

⁶ *In re Gault*, 387 U.S. 31-42 (1967).

⁷ *In re Winship*, 397 U.S. 365 (1970).

face incarceration as a possible outcome. The extension of due process rights to juvenile offenders altered the once informal court to a formal and adversarial atmosphere similar to the adult criminal court. While critics have argued that the similarities between juvenile and criminal jurisdictions eradicate the need for two separate systems, the juvenile court remained as a source of rehabilitation rather than punishment to adolescents who, in many cases, were seen as less culpable than adult offenders (Fagan & Deschenes, 1990). However, the rehabilitation model of the juvenile court in comparison to the punitive model of criminal court made it necessary for two courts to exist simultaneously.

In contrast to this procedural rights shift, the *McKeiver v. Pennsylvania* (1971)⁸ ruling by the U.S. Supreme Court moved in the conflicting direction when it denied juveniles the Constitutional right to jury trials in delinquency proceedings. It was during this period when the juvenile court first began using words such as “punishment” and “accountability,” language that is commonly used in adult criminal courts. The juvenile court also began focusing more on the criminality of committed offenses and adopted due process rights that were given to criminal court defendants (Feld, 1993, 1999a). The *McKeiver* ruling relied on the contrasts between the juvenile courts’ rehabilitative ideal with the criminal courts’ punitive method to justify the procedural differences between the two systems (Feld, 1999a).

YOUTH IN AN ADULT SYSTEM

Juvenile Transfer to Criminal Court

A juvenile transfer or waiver is the act of moving a juvenile’s case from juvenile court to adult criminal court (Fagan & Zimring, 2000; Feld, 1993, 1999a). Transfers were created by state legislatures as a means to more appropriately address serious juvenile offenders in the criminal jurisdiction. The original juvenile court operated on the idea that a juvenile would be waived to criminal court only in exceptional cases being that its intention is rehabilitation and not criminalization. A transfer is the harshest sanction that can be imposed on a juvenile offender within the juvenile court. It not only determines which jurisdiction the youth will be tried in, but it also decides whether the juvenile will be deprived of certain “special rights and immunities”⁹ available only in juvenile court and whether the juvenile will face the consequences associated with being convicted as an adult¹⁰ (Fagan & Zimring, 2000; Feld, 1999a).

The importance of the juvenile transfer was acknowledged in *Kent v. United States*. The fingerprints of Morris A. Kent, Jr., aged 16, were found in the apartment of a woman who had been raped and her wallet stolen. Kent, who had been in trouble with the law in the past, admitted to housebreaking, robbery, and rape.¹¹ Being that he was still considered a juvenile offender, he would be tried on criminal charges only if the juvenile court judge “waived”

⁸ 403 U.S. 528 (1971).

⁹ The U.S. Supreme Court describes the “special rights and immunities” accorded by the juvenile justice system: The juvenile is “shielded from publicity. He may be confined, but with rare exceptions he may not be jailed along with adults. He may be detained, but only until he is 21 years of age.” *Kent v. United States*, 383 U.S. 541, 556 (1966).

¹⁰ Consequences associated with adult criminal conviction include the loss of civil rights and the disqualification for public employment.

¹¹ *Id.* at 544.

jurisdiction after a full investigation. Being that Kent was a repeat offender of serious crimes against persons and property, the judge, without explanation to the court, transferred him to criminal court where he was found guilty of six counts of housebreaking and robbery and sentenced to a total of 30 to 90 years in prison.¹²

Before Kent's trial was to occur, his counsel had moved to dismiss the indictment on the ground of impropriety surrounding the transfer of the case. The District Court denied the motion on the grounds that a full investigation into the case had been conducted, and therefore no hearing was required. The *Kent* Court declared that the transfer mechanism does not grant the juvenile court power to arbitrarily or automatically order juveniles to adult criminal court. The Supreme Court reversed the District Court decision, granting juveniles the right to a hearing, competent counsel, access to records and reports considered in the case, and a statement by the court explaining the transfer decision.¹³ Court Justice Fortas stated that "The Statute does not permit the Juvenile Court to determine in isolation and without the participation of the child or any representative of the child the 'critically important' question whether a child will be deprived of the special protections of the Juvenile Court Acts."¹⁴

In addition to the procedural requirements, the *Kent* Court laid out a series of factors that the juvenile court should take into consideration when contemplating a transfer to criminal court. These factors addressed many issues, including the seriousness of the crime, maturity of the individual, and the individual's previous criminal record.¹⁵ The Court recognized that the juvenile transfer was created to relieve the juvenile court of individuals who could not be rehabilitated, not to criminalize those individuals.

Transformation of Juvenile Transfer after Kent

The ability to transfer juvenile offenders to criminal court has been a part of the juvenile justice system since its inception. During the early stages of the court, a transfer would primarily occur as a result of a judicial decision, a legislative provision, or through the juvenile court's passive

¹² Kent was not found guilty of rape by reason of insanity.

¹³ *Id.* at 561-63.

¹⁴ *Id.* at 553.

¹⁵ The *Kent* Court recommended that the following factors be considered when determining if a juvenile will be transferred to criminal court:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires a waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, with greater weight being given to offenses against persons, especially if physical injury was sustained.
4. The prosecutive merit of the complaint, i.e., if there is evidence upon which a Grand Jury may be expected to return and indictment.
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services, and facilities currently available by the Juvenile Court.

Id. at 566-67.

'overlooking' of the criminal court's extension of jurisdiction over young offenders (Fagan & Zimring, 2000). After the *Kent Court* granted due process safeguards that are necessary in any transfer decision, the modern era of juvenile transfers began. This era acknowledges the period where transferring juvenile offenders into criminal court assumed an apparent and primary position in the juvenile justice system.

The actual juvenile transfer process can occur through three wide-ranging mechanisms – judicial discretion, statutory exclusion, and prosecutorial discretion (Feld, 1999a). The judicial transfer method was created as a safety valve to direct juvenile offenders amenable to rehabilitation to adult criminal court, and allows the juvenile court judge to use individual discretion as the primary decision-maker in the transfer process. The juvenile court judge can decide if a case will stay in the juvenile jurisdiction, or if the case will be waived to the criminal system (Fagan & Zimring, 2000). Individual cases are considered for transfer upon filing a motion by the prosecutor, and following a due process hearing where a judge makes the transfer decision based upon criteria as stated by the *Kent Court* (Redding, 2003).

Despite such criteria addressed in the *Kent Court*, judicial transfer has been criticized for allowing the judge too much discretion in the transfer process. While these criteria are to serve as a guide for the judges in determining transfer, discretion is still allowed as long as due process is granted to the offender. Today, very few states include all of the *Kent* criteria in their statutes. Thus, when deciding if a transfer is necessary, judges primarily use the criteria of the dangerousness of the offender, and the amenability of the juvenile towards rehabilitation to decide which jurisdiction is most appropriate for each individual case¹⁶ (Dawson, 2000; Torbet et al., 1996).

The legislative transfer method allows states to directly transfer juveniles charged with specific offenses to criminal court by automatically excluding them from juvenile court (Feld, 1991). In wake of the subjective criteria used in the judicial method, the legislative transfer uses objective requirements as an automatic basis for transfer, eliminating the need for a transfer hearing.¹⁷ Besides using specific crimes as a basis for automatic transfer, some state legislatures will exclude juvenile offenders from juvenile court due to age requirements (Feld, 1991, 1999a).¹⁸

Finally, the prosecutorial transfer method provides concurrent jurisdiction in the juvenile and criminal courts over statutorily specified youth and allows the prosecutor to decide where to file individual cases (Bishop, 1991). This method is consistent with the trend towards excluding offenders from juvenile court. By allowing the prosecutor to determine which court the juvenile will be tried in, the juvenile is ultimately denied the opportunity for rehabilitation which contributes to an erosion of the *parens patriae* philosophy upon which the system was originated (Bishop & Henretta, 1989).

¹⁶ States consider many factors when determining a juvenile's amenability to treatment, including prior offenses, success of past treatment efforts, and the physical, emotional, and mental health of the child.

¹⁷ Offenses excluding a juvenile from juvenile court in legislative transfer include murder, rape, kidnapping, burglary, robbery, and arson.

¹⁸ The maximum age after which juveniles can no longer be tried in juvenile court varies by states from sixteen to twenty-one years of age.

The move from judicial discretion to statutory exclusion and prosecutorial discretion is representative of the shift in how the juvenile justice system decision-making process has been reshaped and reorganized, ultimately removing power from the judiciary and placing more power in the hands of a law enforcement office (Feld, 1999a). This is also representative of juveniles crossing the previously established boundary that separated the juvenile and criminal jurisdictions. Statutory exclusions have established a borderline by removing judicial discretion to decide that a juvenile is to be considered an adult based upon one's age and offense committed. In an attempt to understand why transfer methods shifted from judicial discretion to statutory exclusion and prosecutorial discretion, it is important to address the change in public sentiment and media discourse during a sudden increase in serious juvenile offenders during the 1980's.

The Juvenile Super-predator and Increased Legislation

During the 1980's and early 1990's, a dramatic rise in crime, particularly in violent offenses, shifted the focus of the nation's attention to juvenile offenders and their treatment within the juvenile justice system. Between 1980 and 1994, the juvenile arrest rate for violent offenses increased 64%, with the number of arrests for murder increasing 99% during this same period (Butts & Travis, 2002). During the ten-year period from 1984 to 1994, homicides committed by juveniles tripled; juvenile arrests for aggravated assault increased 78%, and juvenile arrests for robbery increased 63% (Fox, 1996). This period was witness to dismal predictions that were used to suggest that the United States was heading towards an inescapable era of juvenile violence (Butts & Travis, 2002).

Public fear intensified when known academic scholars began predicting the coming of the juvenile super-predator (Elikann, 1991; Hanson, 2001). Fearing the worst, states hastily began to change their policies regarding juvenile offenders between 1992 and 1999. During this short time period, all but one state expanded or enacted legislation making it easier for juveniles to be transferred and tried as adults (Feld, 1999a; Hanson, 2001). Despite the grandiose warnings of the coming age of the juvenile super-predator, juvenile crime rates began to drop, a trend that continued through 2003. Between 1994 and 2003, while juvenile crime was proclaimed to reach epidemic proportions, all serious violent crimes decrease substantially (Snyder, 2005). Thus, juveniles who may not necessarily belong in criminal court are subjected to it based on rapidly occurring new legislation and mandated transfer statutes.

Despite the recent shifts in the juvenile court decision-making process and the rapid legislation brought upon by the fear of era of rampant juvenile crime, research has shown that the most serious juvenile offenders (i.e., murderers and rapists) comprised less than half of one percent of all arrested juveniles (Jones & Krisberg, 1994). State legislatures had originally intended the juvenile transfer for repeat offenders within this small group of serious violent offenders. Thus, while states continue to broaden the scope and availability of transfer for serious juvenile offenders, it is primarily those adolescents who have committed minor offenses (i.e., primarily drug and property offenses) that are paying the price. It seems as if the rehabilitative ideal on which the original juvenile court was founded has been undermined by the use of excessive transfer laws.

Criminal or Juvenile Justice?

The past twenty-five years has seen nearly every state either revise their laws or adopt new legislation that helps facilitate the transfer of juvenile offenders from the juvenile jurisdiction to the criminal jurisdiction (Feld, 1998, 1999a; Snyder & Sickmund, 1999; Zimring, 1998). Lawmakers have responded to the overwhelming growth of public concern regarding serious and violent juvenile offenders by transferring these youth to criminal court, which has historically been reserved for adults. Transfer laws granted in the *Kent* Court were designed to protect the community by deterring serious or violent juvenile offenders with more punitive and longer incarceration through sentencing in criminal court. These newly created transfer laws reflected the changing ideology that youth were responsible and culpable for crimes committed. In response to the increased violence crime of juveniles in the last half-century, State legislatures have moved away from the traditional offender-based sentencing options toward more offense-based options. This is evident in the mandatory sentencing laws created to move a juvenile straight to criminal court.

In the past, judges often had discretion of whether or not a juvenile would be transferred from the juvenile jurisdiction to a criminal jurisdiction. However, between 1978 and 1994, 44 states amended their juvenile justice statutes to increase their ability to transfer adolescents younger than 18 to criminal court, relying less on judges and more on the law enforcement office (Torbet et al., 1996). According to Feld (1993, 1997, 1999a), changes in the judicial decisions, legislative amendments, and administrative changes have transformed the juvenile court from a nominally rehabilitative social welfare agency, into a second-class criminal court for young offenders that provides them with neither therapy nor justice.

In creating transfer laws, policy-makers very clearly pronounce the distinctions between juvenile and criminal justice (Kupchik, 2003). Transfer procedures were initially put into place to deal with serious juvenile offenders. Yet with an increasingly large number of juveniles being transferred for multiple property, drug, and minor assault charges, there has been a violation of the boundary that was meant to separate the juvenile and criminal jurisdictions. Given that all fifty states now have the ability to transfer juveniles into criminal court, many of which have set a minimum age of 14 or under (Snyder & Sickmund, 1999), researchers have been much more focused on the prosecution of adolescents in criminal court. Transfer can have harsh consequences for the juvenile offender, including lengthy incarceration, abuse in adult prison, and fewer rehabilitation resources (Redding, 2003).

The acceptance of the juvenile court has been evident by its implementation throughout the entire United States. While the concept of the individualized rehabilitative court has formed the basis of the court, its form and function has been shaped by an array of social forces throughout its history. The increase in legal reforms during the civil rights movement in the 1960's and 1970's afforded juvenile offenders both procedural and substantive rights that were previously unavailable. These reforms were part of an effort to improve the ability of the court to rehabilitate juvenile offenders, and decrease the potential for arbitrary decision-making by judges (Allen, 1964; Rosenheim, 1976).

The late 1970's was witness to a counter-set of reforms in the juvenile justice system. This shift was a part of broader changes occurring in the U.S. justice system toward more punitive and control-oriented goals (Beckett, 1997). A dramatic increase in the number of people going into the criminal justice system as well as the changing social and political discourse surrounding crime and punishment dominated American politics (Garland, 2001). The rise of the juvenile superpredator (Elikann, 1991) led to numerous legislative changes that made the juvenile justice system much more punitive, making it easier to transfer juvenile offenders to criminal court (Fagan & Zimring, 2000; Feld, 1999a; Torbet et al., 1996).

Current state transfer laws are much different from what the Progressive reformers originally intended for the juvenile court. The philosophy of *parens patriae* has been replaced by a system that views juveniles as more responsible, mature, and culpable for their actions. The increasing trend to treat children as adults is directly related to the broader discourse concerning how juveniles are perceived by the public and through the media. Thus, despite over a century of recognizing that a separate justice system was needed to handle the unique needs of juveniles, states have shifted to treating and increasing number of adolescents as fully culpable adults. Rather than receiving many of the services that was intended for the juvenile court, many of these youth are now placed in the criminal system which is unqualified to effectively treat and rehabilitate juvenile offenders.

ABOUT THE AUTHOR

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