Juvenile Crime and Justice
Juvenile Offenders in Adult Courts

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The historical precedent of providing differential treatment for juveniles who break the law dates as far back as the first written records of law found in the Code of the Hammurabi, 4,000 B.C.E. In general, the modified response to juvenile offending has consisted of some form of mitigation of punishment based on the presumption that youths are not fully culpable for their actions due to immaturity. In more modern times, this distinction has not only been drawn at the punishment stage, but an entirely separate system of justice, the juvenile court system, has evolved to process and respond to the delinquent behavior of youths.

However, the boundary between juvenility and adulthood is nebulous, and as such, many disagreements persist concerning which youths, and for which offenses, the more lenient juvenile justice system is appropriate. In this discussion, any youth under the age of 18 is considered a juvenile. Thus, the processing of such a youth in the adult criminal justice system is the topic at hand. To fully understand the implications of such processing, one must first hold a basic understanding of the distinctions between the adult and juvenile justice systems; then, which juveniles make it to adult court, and the differing opinions on the benefits and drawbacks of adult court for juveniles.

Differentiating Juvenile and Adult Justice

The practice of providing mitigated responses to the offending of juveniles is based on the premise that due to their youthful status, children are not capable of fully
understanding the consequences of their actions. For example, 18th-century English common law prescribed a tripartite approach to the administration of justice. At the first level were children under the age of seven who were deemed incapable of having criminal intent, or what is referred to today as mens rea, and were therefore exempt from all prosecution and punishment. On the second tier were persons between seven and 14 years of age who were presumed to lack the mental capacity to form criminal intent; however, the prosecution could attempt to prove otherwise. The third tier was comprised of persons 14–21 years of age for which the above scenario was reversed. That is, they were presumed to have the mental capacities to be fully culpable for the crimes committed; however, the defense could argue otherwise.

While these early distinctions applied to different levels of prosecution and punishment in an adult system of justice, the 19th and 20th centuries witnessed the evolution of a totally separate system of justice for juveniles. This newly evolving juvenile justice system was not merely distinct from its adult counterpart in regards to the age of offenders brought before it, but in its very structure and purpose. The adult system maintains a focus on procedural justice and promotes the primary purposes of retribution for acts committed, as well as incapacitation to prevent future law-violating behavior. The juvenile justice system, however, emerged during the Progressive Era and was premised on the underlying notion that juveniles, being not yet fully developed, were still malleable to outside influences. Thus, the purpose of the juvenile justice system was to provide for children in danger of growing up to be criminals the necessary influences to turn them into productive adults instead. With a focus on rehabilitation and care, the juvenile justice system then emerged as a civil, not criminal court, and its structure did not provide for the focus on procedural protections and adversarial justice prescriptive of the adult system.

In addition to these key distinctions in purpose and process, other differences of note include that, for the most part, juvenile court proceedings and records have been maintained as confidential to protect the child from stigmatization. Moreover, a juvenile adjudication of delinquency has not held the same weight as an adult conviction in any subsequent adult court processing (e.g., considerations of prior record) and has not produced the same [p. 133 ↓] collateral civil consequences as an adult conviction, such as restrictions on educational loans, employment and housing opportunities, and the right to vote or hold office. Juvenile adjudications have also historically been
open to expungement, meaning the youths can start over as an adult with a truly clean slate. Finally, the juvenile system, existing as a separate entity from the adult system, maintains separate facilities for the treatment and care of juveniles, meaning that youths processed in this system are not in contact with older, more experienced offenders.

However, since the evolution of this separate system of justice for juveniles, there have always been exceptions to the rule and ways to prosecute some youths as adults. While the juvenile justice systems of today differ significantly from the original model, most still maintain a focus on rehabilitation, thus making them a distinct entity from the adult criminal court. The decision to prosecute a youth as an adult therefore entails much more than symbolic gesture, but rather encompasses the fundamental differences in sentencing philosophies represented by the two systems. Criminologist Donna Bishops suggests that the transfer to adult court embodies a core status transformation from “redeemable youth” to “unsalvageable adult.”

The current debate surrounding the prosecution of juveniles as adults encompasses arguments concerning the appropriateness of various mechanisms of transfer (the means by which the juvenile reaches adult court); the actual population of youths captured by such mechanisms; and ultimately, the adult court outcomes of these youths.

### Mechanisms of Transfer

The oldest and most popular mechanism by which a juvenile can reach adult court is known as a judicial waiver. This practice dates as far back as the turn of the 20th century in the first juvenile court in the United States in Chicago. In his court, Judge Tuthill created a culture in which older juveniles with lengthy prior juvenile records (in other words, “experienced delinquents”) were sent to the adult court for prosecution. His rationale for such transfer was that these older, experienced juveniles were beyond the rehabilitative reach of the juvenile court and could only serve to further corrupt more innocent and younger juveniles within the auspices of the juvenile courts. The practice of judicial transfer thus evolved at the local level, taking on the flavor and culture of individual courts, and differed greatly across jurisdictions and states. It wasn’t until 1966 when the case of Morris Kent was decided by the U.S. Supreme Court that this
mechanism became formalized and standards for transfer set. In Kent v. United States, the Court set forth criteria that must be met before a youth can be denied the protection of the juvenile court. These criteria include the right of the juvenile to be represented by a defense attorney at a formal waiver hearing and the requirement that the judge consider a host of individual and legal factors at the hearing, including: seriousness of the offense, whether the offense was against a person, the prosecutorial merit of the case, the sophistication and maturity of the juvenile, the prospects for adequate protection of the public, and the likelihood of reasonable rehabilitation of the juvenile. The Court also required a written transcript of the reasons for transfer to be provided. Although this particular case was based on interpretation of the juvenile code of Washington, D.C., and therefore applied only directly to this jurisdiction, other states quickly came into compliance with these prescribed practices to avoid questions of constitutionality.

A waiver hearing such as this is typically referred to as a discretionary waiver hearing. Similar to English common law, the youth is presumed to lack responsibility for his or her actions, and it is up to the prosecutor to convince the juvenile court judge otherwise. Over time, several variations on the theme of judicial waiver have also evolved, known as a presumptive waiver and a mandatory waiver. A presumptive waiver is most closely related to that which was assumed for juveniles 14–21 years of age in English common law. The presumption is that the youth is responsible for his or her actions, but the defense attorney has the opportunity to argue otherwise before the juvenile court judge. A mandatory waiver hearing further limits the discretion of the juvenile court judge in that the only issue at hand is whether or not the juvenile meets legislatively prescribed age, prior record, and current offense criteria for mandatory transfer.

Statutory or Legislative Exclusion

In addition to judicial waiver, another mechanism by which juveniles reach adult court is known as statutory exclusion or legislative exclusion. These laws give original jurisdiction over certain youths to the criminal courts, rather than to the juvenile courts. That is, these youths go directly to criminal court, and do not pass through the juvenile court on their journey. Statutory exclusion laws can be based upon age, offense, prior record, or any combination of the above. While not directly referred to as legislative
exclusion, not all states maintain 17 as the maximum age of juvenile court jurisdiction. For example, North Carolina and New York maintain a maximum [p. 135 ↓] age of 15, meaning all 16-and 17-year-olds are denied the protections of the more rehabilitative juvenile justice system. Similarly, 11 states set the maximum age at 16, meaning all 17-year-olds are subject to adult penalties for all offenses.

Another method of reducing juvenile court jurisdiction places unfettered discretionary power in the hands of the prosecutor. Rather than providing original jurisdiction over certain offenses to either the juvenile court or the criminal court, 15 states have passed laws that provide both the juvenile court and the adult criminal court with what is termed concurrent jurisdiction over certain offenses, which means that both courts have original jurisdiction over the same offenses at the same time. The prosecutor is free to decide whether to process the case in juvenile court or in criminal court. Since the prosecutor decides whether or not the juvenile is tried in adult court, this type of transfer is often termed prosecutorial waiver or direct file.

Most states maintain more than one method of transfer, with 46 states maintaining judicial waiver, all 50 states and the District of Columbia maintaining statutory exclusion, and 15 states utilizing concurrent jurisdiction procedures.

Who Reaches Adult Court?

In regards to sheer number of juveniles reaching adult court, although there are no exact national figures available, statisticians from the National Center for Juvenile Justice estimate that most youths who reach adult court do so through statutory exclusion provisions. The most recent estimates suggest that between 200,000 and 300,000 youths under the age of 18 reach adult court each year through this mechanism alone. Regarding judicial waiver, estimates show that the popularity of this mechanism increased from the mid 1980s through the 1990s, with a more recent decline in numbers. For example, in 1985, 7,200 juveniles nationally reached adult court via judicial waiver. This number increased to 13,200 in 1994, but then declined to 6,300 in 2001.
This decline has been interpreted several ways; however, the most prominent assumption appears to be that juveniles who would have typically been waived to adult court are now being captured by the new and expanded transfer mechanisms, therefore decreasing the need for judicial waiver. Prosecutorial discretion is the least-common method for transferring juveniles, as it is available in only 15 states; however, in those states, it generally accounts for a large majority of transfers. For example, both prosecutorial discretion and judicial waiver are available in Florida, but in 2000, 95 percent of transfers were accomplished by prosecutorial discretion, and only five percent by waiver (hence supporting the previous interpretation of the decline in waiver usage). Moreover, in 2001, when there were 6,300 judicial waivers nationwide, Florida alone transferred over 2,000 juveniles to criminal court by prosecutorial discretion.

In addition to sheer numbers of juveniles reaching adult court, the question has also been raised as to whether the “right” youths are being transferred and whether one of these mechanisms of transfer is superior to the others in capturing the intended population of older, violent juveniles. While there is no conclusive evidence on this topic, early studies of judicial waiver found that those youths most likely to be waived were older youths with extensive prior records, regardless of the seriousness of the current offense. That is, the juvenile court judges, similar to Judge Tuthill, were transferring to adult court those juveniles who had exhausted the rehabilitative efforts of the juvenile system. However, data compiled by the National Center for Juvenile Justice show that while property offenses dominated the judicial waiver caseload in the 1980s, by 1993, offenses against persons were more prominent, indicating a shift in waiver decision making to perhaps focus more on the gravity of the current offense.

In addition, a greater portion of younger offenders with less substantial prior records also appear to be reaching adult court. Although no formal studies have been conducted to date, it is thought that these youths reach adult court primarily through statutory exclusion provisions, which often focus only on the seriousness of the current offense rather than the extralegal considerations present at a waiver hearing, such as amenability to treatment and culpability for offenses committed, which may have previously benefited such young, inexperienced delinquents.
Transfer Biases

Perhaps the most salient criticism of all transfer mechanisms is that they are either intentionally or unintentionally biased against certain types of offenders. First, it is well known that most juveniles transferred to adult court are male. Studies have found that over 95 percent of all transferees are male. While at first glance it might be assumed that this discrepancy could be explained away by frequency and seriousness of offending, a study of six states by the U.S. General Accounting Office found that within each offense category, males were still considerably more likely than females to be waived to adult court. For example, in California, a male charged with a violent offense was 42 times more likely to be waived to adult court than a female charged with a violent offense.

Research addressing racial bias in transfer decisions paints a slightly more abstract picture. On the surface, it is clear that minority youths are disproportionately represented in the number of youths transferred. Jeffrey Butts reported that while African American youths made up about 20 percent of the juvenile population in 1994 and 36 percent of juvenile court referrals, they represented more than half of all transfers. National data such as these may also significantly underestimate the actual numbers of minority youths transferred, as Hispanic youths are normally coded as “white,” thereby masking their numbers in transfer decisions. A study by Elizabeth McNulty in Arizona found that while 29 percent of the juvenile population was Hispanic, 44 percent of the youths transferred to adult court in this state were Hispanic. However, many have argued that these racial disparities do not represent bias, but rather could possibly be accounted for by other legal determinants.

M. A. Bortner, Margory Zatz, and Darnell Hawkins provide an exhaustive review of the literature in this area and conclude that while race may not have direct effects on waiver decisions, it has been found to interact with offense type, particularly in relation to young, African American males charged with drug or weapons violations. These youths bear the unfortunate stigma of outwardly fitting the stereotype of the violent gangbanger so successfully portrayed by national media. In addition to drug crimes, some studies have also indicated that youths of color fare worse in waiver decisions when charged with a violent offense. For example, researchers Jeffrey Fagan, Martin Forst, and T.
Scott Vivona found that in a four-city study spanning Boston, Detroit, Newark, and Phoenix, minority youths charged with homicide were more likely to receive a transfer than white youths charged with the same offense.

In addition, emerging research suggests that the increase in transfers, particularly those achieved through statutory exclusion provisions, only serves to perpetuate this pattern. While on the surface, these transfer mechanisms may seem race-neutral and focusing on offense severity, given the previously noted interaction effect between race and offense classifications, some scholars predict that these mechanisms reflect institutionalized racism. Preliminary studies of legislative exclusion have found that upward of 98 percent of youths captured by these provisions are minorities.

What Happens to These Transferred Youths?

The results of processing youths in the criminal courts are found in the adult correctional system, where on the average day in 2004, adult correctional facilities held about 9,500 youths under the age of 18. About 7,000 of these youths were held in adult jails nationwide, and the remaining 2,500 were held in state prisons.

A growing literature is developing that examines actual sentence and later life outcomes of these youths. Some of these studies compare juveniles transferred to adult court to similar juveniles retained in the juvenile system. Much of this work suggests that in adult court, the historical legacy of juvenile leniency remains. For example, research by M. A. Bortner reported that almost two-thirds of juvenile offenders sentenced in adult court received sentences to probation rather than a more severe adult penalty. Also, research by Simon Singer, and more recently by Aaron Kupchik, suggests that juvenile status is unrelated to early case processing, but serves as an important mitigating factor in the determination of punishment in adult court. This has led some to conclude that the prosecution of juveniles in adult court is more likely to symbolize toughness than to actually deliver it.
However, several more recent studies have found that significantly harsher punishments are meted out to juveniles in adult court when compared to juveniles in juvenile court, particularly for serious or violent offenses. For instance, a recent examination of Pennsylvania youths reported that after controlling for a broad range of factors, comparable juveniles were significantly more likely to be incarcerated in the adult criminal justice system, compared to youths maintained in the juvenile justice system. In addition, research by criminologists Megan Kurlychek and Brian Johnson has found that juveniles processed in the adult system receive even more severe penalties than similarly situated adult offenders. Specifically, studies by these researchers in both Pennsylvania and Maryland have found that juvenile defendants in adult courts are more likely than their young adult counterparts (aged 18–21) to receive sentences of incarceration and to be incarcerated for significantly longer periods, even after matching defendants on relevant legal and extralegal factors such as prior record, offense seriousness, mode of conviction, gender, and race.

While the verdict is still out on why these youths may be receiving harsher sentences, arguments presented include the fact that the mere transfer from the juvenile system may in some way stigmatize the offender in the eyes of the adult court, and/or that the juvenile, due to reduced decision-making capabilities, does not fully understand the adult criminal justice process and is not capable of making adequate decisions regarding his or her legal representation and defense. Regarding the later point, research has found that most juveniles under the age of 15 fall short of the standardized competence measures deemed appropriate for legal decision making. Even more importantly, these studies find that juveniles under this age do not comprehend the meaning of their right to remain silent, nor do they possess appropriate decision-making capabilities to understand the plea bargaining process.

In addition, much research has suggested that once incarcerated in adult prisons, the lifelong outcomes of these young offenders are dismal. In sum, these studies have found that juveniles in adult prisons are more likely to by physically and sexually assaulted by staff and other inmates; are more likely to suffer depression and other mood disorders; and perhaps most importantly, are more likely than youths processed in the juvenile justice system to later recidivate.
Pro: Arguments in Support of Juveniles in Adult Court

“Do adult crime, do adult time” was the battle cry of the 1990s, and perhaps one of the most persuasive political agendas of all time. The primary assumption behind this slogan is that if the crime is the same, the punishment should be the same, regardless of the age of the offender. If a homicide is committed, a person has lost his or her life. Surely, the punishment should be the same regardless of whether the perpetrator was a juvenile or adult. This focus on the offense and its consequences are hallmarks of the adult criminal justice system as compared to the more individual and rehabilitative focus of the juvenile system. Thus, from this perspective, the proper policy response is to transfer the juvenile to adult court, where he or she can be subject to the punishment proportional to the offense committed.

This argument was mainly promoted for crimes of violence in which there was direct physical injury to a victim. Transfer of such serious juveniles to the adult system also provided for more victim involvement in case processing as compared to the more secretive juvenile system, which had historically kept offenders’ names and outcomes confidential. Thus, many victim advocacy groups support the transfer of serious and violent juveniles to adult courts.

The transfer of serious juvenile offenders to adult court also enhances the sentencing options, particularly in regard to potential time incarcerated. For example, most states’ juvenile justice systems can maintain jurisdiction over an adjudicated delinquent until his or her 21st birthday. That means for a 17-year-old offender, the maximum time of confinement is four years. Proponents of transfer insist that for older, serious offenders, these time limits do not sufficiently allow for either proper punishment of the offender, or protection of the victim and community from the offender.

Another advantage to transferring the most serious and violent juveniles to the adult system is that it allows the juvenile system to focus on the younger, more malleable offenders for which it was originally designed. Similar to the practices set forth by Judge Tuthill in the country’s first juvenile court, the idea is twofold. First, older, experienced
juvenile offenders are beyond the rehabilitative responses available within a juvenile court setting, and therefore are most necessarily a waste of scarce resources that could have been better directed at a younger, less delinquent youth. Second, if maintained in the juvenile system, these older, more serious youths would only serve to further corrupt the younger, more naïve youth. Thus, not only would the older offender not be reformed, but he/she may in fact also prevent the salvation of a more deserving child.

Types of Offender and Transfer Mechanisms

Among proponents of transfer, however, there are still divides over the exact type of offender who should be transferred and the most appropriate transfer mechanism. Regarding type of offender, the debate centers on whether youths should be transferred based on the seriousness of the current offense, or whether this decision should be determined by prior record, signifying a pattern of behavior and perhaps previous attempts of the juvenile system to reform the youngster; and age, with age serving as a proxy for both time left for the juvenile system to intervene and maturity/culpability for offenses committed. The arguments surrounding transfer mechanisms are even more divisive. Proponents of statutory exclusion promote it as the least-biased mechanism, as it reduces judicial and prosecutorial discretion and excludes entire classes of juveniles based on clear-cut age, offense, and prior record patterns rather than individual, and necessarily subjective, considerations of culpability and malleability. Proponents of judicial waiver maintain that the original Kent hearings are the best transfer mechanism, as they allow the juvenile court judge to fully examine the specifics of the case to ensure that only appropriate youths are being transferred. Those favoring prosecutorial waiver, though less numerous, [p. 141 ↓ ] adamantly affirm that the prosecutor is the correct authority to make this decision in the best interests of the state. That is, the prosecutor is the state’s primary representative, and promotes the key purposes of justice, including protection of the public.
Con: Arguments against Juveniles in Adult Court

Arguments against juveniles in adult court encompass an even greater variety of issues. First, even those that favor the transfer of some youths to adult court object to one or another of the transfer methods. For example, judicial waiver, the oldest and most popular means of transfer, is under fire for placing too much discretion in the hands of the judicial authority, which can lead to bias. While the *Kent* decision did set forth criteria for consideration at waiver hearings, there are no standard scientific assessments to determine such abstract concepts as “culpability” and “amenability to treatment,” which leads to great disparity across jurisdictions and even between judges within the same jurisdiction. Criminologist Barry Feld argues that judges’ application of such ambiguous criteria lead to arbitrary, capricious, and discriminatory transfer decisions. Research by the U.S. General Accounting Office has documented disparities in the use of waiver criteria across states, and research by criminologist Donna Hamparian has gone as far as to suggest that the judicial waiver is truly “justice by geography,” meaning that one’s status as juvenile or adult is more dependent upon where he or she resides than the offense committed.

The criticisms, however, do not end with judicial waiver; prominent scholar Frank Zimring lambasts statutory exclusion provisions for being grossly overbroad and leading to “subterranean discretion” in the hands of the prosecutor, who traditionally enjoys the authority to select which charges to file. In addition, the constitutionality of both statutory exclusion and prosecutorial waiver have been brought into question, as they circumvent the due-process protections provided through a formal waiver hearing as set forth in *Kent*. However, to date, the constitutionality challenges to these provisions have been unsuccessful. While opponents argue that the need for such a hearing is compelling based on the importance of the decision for the affected individual, the courts to date have determined that both legislative statute and prosecutorial charging are executive functions, and that by necessity, the constitutional separation of powers precludes the judicial branch from reviewing or controlling such executive functions.
Inherent in these various arguments regarding the modes of transfer is the second argument that somehow, the wrong youths might be reaching adult court and, more importantly, that these transfer decisions are racially biased. As demonstrated by the research, there is formidable evidence that existing transfer policies unduly impact minority male defendants. However, it remains unclear as to what extent this bias exists at the individual level (judicial decision making) or is intertwined with legislative classifications of offense categories and prescribed punishments.

Modern Advances in Adolescent Research

Moreover, some go as far as to argue that no youths below the age of 18 should ever reach adult court, thus making any method of transfer, or any youth, inappropriate. This particularly stringent argument is based not only upon the historical precedent of providing leniency to youths, but modern advances in medical and psychological research. According to research, there are several key differences between the adult and adolescent brain that specifically diminish the adolescent's culpability for actions committed. The most notable difference is the underdevelopment of the frontal lobe during adolescence. Since this portion of the brain controls reason, reflective thought, and impulse control, scientists posit that adolescents simply cannot understand and monitor their own behavior in the same way that adults can. Moreover, with this portion of the brain not yet developed, research shows adolescent thought to be more controlled by emotion and impulse, both of which can lead to deviant behavior. This finding of modern medicine in fact supports the original proposition of the Progressives, which was that these youths are indeed still malleable and can be reformed into law-abiding adults. In addition, it suggests that youths truly may not be culpable for their actions in the same way as an adult, thus making them less blameworthy and deserving of the benefit of treatment theoretically offered in the juvenile justice system.

Adult Court Outcomes for Youth

The final, and perhaps most compelling, argument surrounds the adult court outcomes of these youths. This particular argument encompasses three distinct components,
including: the juveniles’ competency to stand trial as an adult, biases in adult court sentencing outcomes of such youths, and life-long outcomes for youths held in adult prisons.

[p. 143 ↓] Regarding the first component, there is an expanding body of literature that suggests juveniles simply do not possess the mental abilities to fully understand the complicated procedures of the criminal justice system, and are thus at risk of forfeiting important rights and/or not being able to present a viable defense. A recent study by Thomas Grisso and colleagues specifically compared the abilities of adolescents and adults on a variety of legally relevant variables deemed “relevant for determinations of competence to stand trial.” This study found several key distinctions that would disadvantage youths in adult court, including adolescents’ tendency to underestimate risk, to not fully grasp the long-term consequences of their decisions, and to be more likely to confess or agree to a plea that represented compliance with authority. The authors further note that many youths, particularly those under the age of 16, performed at levels consistent with the definition of “incompetent to stand trial.”

The research regarding adult court sentencing and later life outcomes further feeds the arguments against transfer of any youth to adult court. Specifically, this argument asserts that despite the aforementioned medical and social scientific research documenting differences in juvenile and adult decision making, impulsivity, and competency to stand trial, youths processed as adults actually receive more severe sentences than other adults, even when controlling for a variety of offense and offender-related characteristics.

Critics further argue that these youths then spend the most formative years of their development in adult prisons learning how to be better criminals, instead of how to be better citizens. Moreover, research shows that juveniles in adult prisons are more likely than adults to be victimized, both physically and sexually. Research also indicates that youths processed in the adult system are more likely than youths processed in the rehabilitative juvenile justice system to commit crimes in the future. Such findings have implications not only for these particular youths, but also for the overall crime rate in society and general safety and well-being of all citizens.
Conclusion

The arguments regarding the transfer of juveniles to adult court are necessarily complex, as they encompass both the difference between adolescents and adults and the inherent differences between the juvenile and adult justice systems. Transfer of at least some youths to adult court has been a hallmark of the American juvenile justice system since its inception. As such, it is likely to continue in some form long into the future. While the get-tough [p. 144 ↓] politics of the 1980s and 1990s sought to expand transfer mechanisms and the number of youths transferred, it appears the current trend is to take a second and closer look at transfer policies and perhaps limit the number and type of youths being transferred. Advances in developmental research and clinical assessment of competency will no doubt play a key role in the evolution of transfer policies in the years to come.

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See Also:

Further Readings


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