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Preventing Juvenile Crime through Adult Sentencing

Eric Nelson

The transfer of juveniles to adult systems is a proven deterrent, and most youth seem to respond to the increased likelihood of adult sentencing.

In 1996, authors William Bennett, John Dilulio, and John Walters made the argument that a new class had emerged among the adolescent criminals in the United States:

America is now home to thickening ranks of juvenile “super-predators”—radically impulsive, brutally remorseless youngsters, including even more preteenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders. They do not fear the stigma of arrest, the pains of imprisonment, or the pangs of conscience. They perceive hardly any relationship between doing right (or wrong) now and being rewarded (punished) for it later. To these mean-street youngsters, the words “right” and “wrong” have no fixed moral meaning.¹

For decades, politicians, legal scholars, and concerned citizens have argued for a variety of means to curb the seemingly incessant increase in juvenile crime. While adult crime rates have leveled off, or even seen slight decreases in some areas, juvenile arrests have skyrocketed.² As part of this debate, many have promoted a system in which juvenile offenders be confronted with

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sufficient deterrents to committing crime by being subjected to many of the same criteria that are used when judging their adult counterparts. It appears at this time that juvenile waiver and legislative offense exclusion are the best methods for achieving such a goal.

Over the last 150 years, this discussion has arrived at a variety of different solutions. Although changes began early in the nineteenth century, the first juvenile court was formed in 1899 in Illinois as the result of “child savers” who sought, in their efforts, to reform the juvenile system. They believed that they could both inspire more virtuous behavior in the youth as well as prevent any harsh treatment or punishment unbefitting of minors.

While these early juvenile proceedings wanted to protect the children and eventually rehabilitate these young delinquents, the emphasis in recent decades has shifted to protecting society from increasingly violent crimes. What was created as a system for protecting and reforming the child now exists to protect other individuals while “children are being viewed as less likely to be rehabilitated.”

The former method is referred to as parens patriae, an insistence on “helping the child and intervening in his or her best interest because the parents are unable to provide adequate guidance.” Indeed, prior to the 1960s, children were not viewed as having constitutional rights and would often be recipients of court actions that adults would deem a gross infringement of their right to due process. Later court decisions such as In re Gault held that juveniles have a right to adequate notice of charges, representation by counsel, and privilege against self-incrimination. Newer schemes approach the offender with a more legalistic approach that emphasizes the crime and punishment rather than the delinquent and their “needs.”

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4 Elsea, 135.
5 In re Gault, 387 U.S. 1 (1967).
6 Bell, 209, 212.
In 1994 with increasing public concern over juvenile crime, Congress passed the Violent Crime Control and Law Enforcement Act, commonly referred to as the Crime Bill. The bill provides that juveniles as young as thirteen could be tried as adults for serious violent crimes such as rape, robbery, attempted murder, and murder through legislative offense exclusion. Additionally, as many street gangs had used minors to perform violent crimes as a way of protecting those who had reached the age of majority, adult prosecution was to be considered for serious juvenile offenders involved in gangs.\footnote{Elsea, 135–36.}

This legislation was primarily aimed at delineating specific criminal acts for which juveniles would be promoted to the adult court system. With juvenile waiver youthful offenders could be considered for adult court under other circumstances as well. The Supreme Court ruled in \textit{Kent v. United States}\footnote{\textit{Kent v. United States}, 383 U.S. 541 (1966).} that eight “determinative factors” were to be examined when waiving juvenile court jurisdiction: (1) the seriousness of the offense and danger to the community; (2) the degree of aggressiveness, violence, and premeditation involved; (3) whether the offense was against a person rather than property; (4) the likelihood of a grand jury indictment; (5) whether the juvenile’s associates in the alleged offense were adults likely to be charged in district court; (6) the juvenile’s level of maturity and sophistication; (7) the juvenile’s record of contact with the law; and (8) the likelihood of rehabilitation in the juvenile system.\footnote{Bell, 211.} Any of the criteria given by the Court is sufficient to remove a minor from the juvenile system.

In \textit{K.L.J. v. State}\footnote{\textit{K. L. J. v. State}, 824 P2d 361 OK (1990).} the Oklahoma Court of Criminal Appeals concurred with the lower court that the defendant would not get the necessary prescribed drug treatment if left in the care of the Department of Human Services. The sixteen-year-old appellant had no previous criminal record, nor any violent intent with the commission of his crime, but he did have a drug problem that the juvenile system could not adequately treat. So, despite his failure to meet any of the first seven factors described by the Court, the eighth was applicable. “The Judge nevertheless declined to certify appellant as a child stating, ‘I can’t send him back on the streets. And DHS won’t place
him to a secure setting. So I don't have any other choice but to have him stay in the adult system." In this case the judge determined that the adult system was not only better suited to reform the juvenile, but a stricter punishment would act as a deterrent to future criminal acts by the individual and other minors.

The Crime Bill and the case of *K.L.J. v. State* demonstrate the two primary methods by which a juvenile may be ordered to criminal (adult) court. The first, legislative offense exclusion, arises from amendments to juvenile codes or other legislative action that facilitates the transfer of youths to criminal court for trial as adults. This focus on specific penalties or courses of action for particular crimes has arisen from a "legislative distrust of judicial discretion in sentencing juveniles and . . . a shift from the individualized treatment philosophy in the juvenile courts to a more retributive one." The second method for juvenile transfer is juvenile waiver wherein the court, after examining the criteria set forth in *Kent v. United States*, establishes that the adult system is better suited to hear the case. A third, but less common method, is prosecutorial waiver, which is only allowed in certain states. In these cases the prosecutor has the discretion to file the charges in either juvenile or criminal court and control not only the crimes the individual is charged with, but in the manner in which the case will be heard.

These changes in the juvenile court system have made the environment more retributive and focused on deterrence. With this the question naturally arises: have shifts in the juvenile system and increasingly harsh sentences truly been effective in the deterrence of criminal behavior? The main sponsor of the Crime Bill, Congressman Bill McCollum, stated that serious juvenile offenders "should be thrown in jail, the key should be thrown away and there should be very little or no effort to rehabilitate them." The primary sentiment he voiced was that rehabilitation is not working and

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13 Ibid., 363.
14 Elsea, 138.
that more deterrents to criminal action are needed, with the implication that lengthier, stricter punishments will produce this needed deterrent. Through statistical evidence Dr. Steven Levitt, a professor of economics at the University of Chicago, argues that

changes in relative punishments can account for 60 percent of the differential growth rates in juvenile and adult crimes between 1973 and 1993. Juvenile offenders appear to be at least as responsible to criminal sanctions as adults. Moreover, sharp changes in criminal involvement with the transition from the juvenile to the adult court suggest that deterrence, rather than simply incapacitation, plays an important role.17

Dr. Levitt's investigation includes an inquiry into the relative punitiveness of adult versus juvenile systems by measuring the ratio of prisoners to the number of violent crimes committed by that group. His findings indicate that the juvenile punishments "were comparable to adult punishments in 1978, but were only half as severe by 1993."18 It is quite likely that many of the recent actions are an attempt by legislatures and judges to correct this apparent discrepancy between the severity of adult and juvenile punishments.

Despite the changes in code and judicial action, it appears that minors, when transferred to the adult system, are rarely treated any more harshly. A study conducted of the Texas penal system indicated that time served by juveniles convicted of violent offenses in adult courts averaged "only three and a half years." This period is only "an average of about twenty-seven percent of the sentence imposed" and is "shorter than the possible sentence length in a juvenile facility."19

While juveniles may not be serving quite as much time as desired, the changes in punitive structure appear to be having some effect on crime rates, not only because of incapacitation effects, but also deterrence effects. Since Gary Becker's 1968 paper20 on the relationship between punishment and

18 Ibid., 2.
19 Redding, 95.
effects on the crime rate, scores of papers have attempted to demonstrate a link between sentencing and deterrence of criminal action. As sentencing guidelines are imposed and stricter sentences are handed down, an immediate reduction in crime rates may be seen as offenders are deterred by the possibility of longer imprisonment. In a model using California’s Proposition 8, which imposed a variety of sentence enhancements, eligible crimes fell by “four percent in the year following passage and eight percent three years after passage.” This analysis of sentence enhancements is especially applicable to juvenile sentencing because, although Proposition 8 covered a wider range of criminal behavior than merely actions by minors, it increased penalties in a way that allows researchers to investigate how much a stricter sentence acts as a deterrent. The measurements allow insights as “the criminal incorporates the increased punishment associated with the sentence enhancement into the decision calculus.”

This internal calculation that occurs in an individual’s mind immediately before the commission of a crime weighs the possible outcomes and arrives at a decision of whether or not to proceed. Some have argued that juveniles lack this inherent ability, or have not fully developed it, and for this reason should remain in juvenile courts. Indeed, the Supreme Court held in Thompson v. Oklahoma that juveniles are generally less capable of evaluating the consequences of their conduct and may be considered less culpable for their actions. Although they lack maturity and responsibility, studies such as that conducted by Dr. Levitt demonstrate that youth still evaluate the consequences of their actions and respond to changes in penalties. One glaring example of this is the reduction in crime that occurs at the transition point between juveniles and adults in states with lenient juvenile justice systems.

For example, in states where the juvenile courts are most lenient vis-à-vis the adult courts, violent crimes committed by a cohort fell by 3.8

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22 Ibid., 343–64.
23 Ibid., 343.
24 Ibid., 345.
26 Levitt, 1–29.
percent on average when the age of majority is reached. In contrast, violent crimes rose 23.1 percent with passage to the adult criminal justice system in those states where the juvenile courts are relatively harsh compared to the adult court.27

From the information presented we can conclude that sentence enhancements for minors, particularly those that occur when they are tried in the adult rather than juvenile systems, are a deterrent to criminal action.

While the increasing use of judicial waivers and legislative action have curtailed the rise in juvenile crime, is this deterrent long lasting or only temporary? Some studies have demonstrated that recidivism rates are higher in transferred juveniles and may contribute to the creation of a criminal class or career criminals.28 However, recent research shows that juvenile waiver is effective at lowering crime rates. And, although many experts have begun to argue that preventive measures are the real key to curbing juvenile crime,29 the transfer of juveniles to adult systems is a proven deterrent and most youth seem to respond to the increased likelihood of adult sentencing.

In theory, the answer to juvenile crime resides in a conglomeration of rehabilitation, punishment, and prevention. While punishment is not the sole answer to solving the “super-predator” problem, deterrent effects definitely occur because of stricter penalties. The juvenile mind does respond to the threat of harsher sentencing, which contributes to declining crime rates. This harsher sentencing results from the increased use of legislative offense exclusion, juvenile waiver, and prosecutorial waiver. While some may argue that prevention and rehabilitation are more desirable solutions to juvenile crime, the evidence strongly supports stricter sentencing as an important element in the elimination of juvenile crime.

27 Levitt, 4.
28 Redding, 96.
29 Beresford, 827. See also fns. pp. 822–27.