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Juvenile Waiver: What Does It Mean for American Teens?

Terence Lee Robinson

The use of juvenile waiver alters the juvenile court system from its original purpose—rehabilitation—and transforms it into a quasi-criminal court in which juveniles are denied constitutional rights.

Keith Brennan, a sixteen-year-old from Cape Coral, Florida, wanted to leave town with his friend Joshua Nelson. On 10 March 1995, Nelson coaxed Brennan into stealing Tommy Owens’s car. The two boys lured Owens out of his car and attacked him. Brennan tried to slash Owens’s throat with a box cutter; Nelson beat the victim to death with a baseball bat. The two boys hid the body in some bushes and stole the car. Brennan, who previously had no criminal record, was convicted of first-degree murder and given the death penalty, which, upon appeal, was later changed to life without parole. Crimes such as this have fueled a national debate about how to end violent juvenile crimes.

Juvenile crime is a sensitive subject in America. Each day, the media report stories of juvenile crime and suggest how America should “get tough on crime.” Many fear that the growing juvenile population will lead to increased crime rates. These fears are the basis behind the national debate over what should be done with juvenile offenders like Brennan. Politicians and legislators argue that “get tough” policies will keep juvenile criminals off the streets and deter future juvenile crime.

The use of juvenile waiver, through which juveniles can be transferred into adult courts and thus receive heavier sentences, has changed juvenile sentencing. Today the juvenile justice system is aimed at retribution and not rehabilitation. Juveniles can be tried as adults in all fifty states, and as a

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result, the percentage of juveniles incarcerated in adult prisons increased by fourteen percent from 1985 to 1995. The Bureau of Justice estimates that 8,100 juvenile offenders are currently held in adult prisons. This increase in the use of juvenile waiver has paralleled a decrease in sentences stressing rehabilitation.\(^2\) Juveniles are often waived into adult courts with the sole goal of increasing sentences in order to deter future juvenile crime and keep current juvenile criminals off the street, thereby reducing recidivism.\(^3\)

Through a historical discussion of the philosophies that formed the United States juvenile justice system, we can see why juveniles today are readily waived into adult court. However, it is apparent that juvenile waiver actually damages efforts to rehabilitate delinquent youth, increasing recidivism. Furthermore, the use of juvenile waiver is unconstitutional because it does not provide juveniles the right to trial by jury when facing adult charges.\(^4\) The use of juvenile waiver alters the juvenile court system from its original purpose—rehabilitation—and transforms it into a quasi-criminal court in which juveniles are denied full constitutional rights.

**History of the Juvenile Justice System**

Two factors have largely influenced the American juvenile justice system: English common law and the efforts of a group of nineteenth-century American reformers known as the “child-savers.”\(^5\) English common law essentially saw juveniles as equal to adults in their capacities to understand right from wrong and form criminal intent. When a child turned seven years old he or she could be tried in court for criminal charges, and once the child turned fourteen he or she had to be tried in court for criminal charges.\(^6\)

\(^5\) DeJong and Merrill, 178.
Unfortunately, the court often supports this notion that children and adolescents differ from adults only in stature and age. Proponents of juvenile waiver erroneously claim that juveniles have the ability to form criminal intent and claim this as the basis for transferring juveniles into adult courts.

Contrasted with this harsh treatment of juveniles under the common law of England, the child-savers, led by Jane Addams, developed the recapitulation theory, which held that delinquent juveniles could be rehabilitated through proper treatment and correction. Addams and her supporters believed in the doctrine of *parens patriae*, or that the state has an obligation to assist in the rearing of children. The child-savers argued that the state was required to act as the guardian of neglected, abused, and delinquent children. The influence of the child-savers ideas eventually led to the development of a separate juvenile justice system in America.

The reformers sought to compensate for the lack of parenting in the delinquents' lives. Through the reformers' efforts, juvenile sentencing was changed so that when juveniles were sentenced, judges tried to analyze each child's personality and then give the child a treatment that would best help rehabilitate him or her. The main objective in sentencing was to prevent the child from becoming an adult criminal. The court gave sentences as appropriate treatment, not as a specific punishment based on the crime itself. When juvenile offenders' sentences required that they be taken out of their homes, they would be sent to state-run juvenile training schools. Indeed rehabilitation, not punishment, was the original objective of the juvenile court system.

Such notions of punishment and rehabilitation merged into one as twentieth-century politicians began to see juvenile criminals as deviants who needed a combination of rehabilitation and punishment. These ideas have directly influenced the development of the juvenile court system in the United States. Illinois created the first juvenile court system in 1899, and by 1925 the vast majority of states had adopted a juvenile court system. Today, all states have a juvenile court system, although the systems vary slightly.
Currently, juvenile waiver is used for youths who are accused of serious offenses such as homicide, rape, aggravated assault, and robbery. When the juvenile court system waives juveniles into adult court, it fails in its attempts to rehabilitate delinquent youth. Large caseloads and increasing expenses have aided in pushing the juvenile justice system's emphasis from rehabilitation to punishment. Waiver proponents have tried to paint in Americans' minds the ideas of Princeton Professor John Diulio, who claims that we are being faced with a tidal wave of "super-predators" who are hardened juvenile criminals. This theory, along with the increasing number of juvenile crimes, has caused American judges to send more juveniles to adult prisons in an attempt to send a message to the youth of America that crime and delinquency will not be tolerated in the United States. Despite the belief that transferring juveniles into adult prisons will give other youngsters incentives to stay away from crime, such predicted effects of juvenile waiver have not been seen. According to Corriero, seventeen percent of juvenile convictions are repeat offenders; thus, the vast majority of juvenile offenders are first-time offenders that have not effectively been scared out of crime by "get tough" policies.

Juveniles waived into adult prisons do not receive proper rehabilitation. Education is one such aspect of the rehabilitation process that is virtually destroyed when juveniles are waived into adult courts. Often, incarcerated juveniles no longer have access to education and counseling programs. Sadly, the majority of juveniles that are waived into adult courts and sent to adult prisons already have low levels of education. Significant numbers of these youths are functionally illiterate, reading below the fourth-grade reading level. With significantly low levels of education and practically no educational opportunities, incarcerated juvenile offenders are denied the
most important qualification needed to participate in today’s economy—knowledge and skills.

Educational attainment greatly influences job hiring and salaries. Yet when juvenile offenders are released from confinement, they do not have the advantage of an education or even a high school reading level to help them find employment. When jobs can be obtained, the former offenders receive low salaries. This lack of education and marketable skills increases the probability of juvenile offenders’ returning to delinquency. Juveniles reentering society face the same problems that led to their incarceration: poverty, drugs, and a lack of education.17

In addition, adult prisons are schools for crime and increase recidivism among juveniles. Older inmates not only teach juveniles new techniques for breaking the law and evading authorities, but also teach them to accept criminal behavior.18 Waiving juveniles into the adult court system does not deter youth from committing further crimes. On the contrary, the use of juvenile waiver actually leads to increased recidivism.19 Proponents of juvenile waiver argue that juvenile offenders have been subject to socialization patterns of violence, drugs, and crime, making it virtually impossible for criminals to be rehabilitated. Proponents also claim that society’s need to be protected outweighs criminals’ right to rehabilitation. There is no doubt some juveniles are hardened criminals who offer little hope for rehabilitation, but can juvenile waiver proponents justifiably argue that all juveniles are past rehabilitation—when these offenders are not offered the means to prove they can positively participate in society? With a renewed emphasis on rehabilitation and education, juvenile offenders would be able to reenter society and function as positive participants.

THE UNCONSTITUTIONALITY OF JUVENILE WAIVER

Juvenile waiver represents a clear violation of constitutional rights. One reason that juvenile waiver is used is to “replace the somewhat less formal

17 Conward, 2447.
18 DeJong and Merrill, 186.
19 Ibid, 190.
proceedings of the juvenile court with the full due process formalities of a criminal trial . . . but there is no constitutional right to jury trial, no matter how serious the charge, and other trial procedures may be more streamlined than in comparable criminal trials." The development of the juvenile court system and juvenile waiver is paralleled with a trend in denying juveniles basic rights while subjecting them to criminal punishments.

The United States Supreme Court has laid out the factors that must be considered when using juvenile waiver. In the 1967 case In re Gault, the Supreme Court set out certain procedural safeguards for all juvenile delinquency proceedings: a notice, a hearing, the right to counsel, the right to confront and cross examine witnesses, and the privilege against self-incrimination. In Kent v. State the Supreme Court also established that courts should provide due process in waiving juvenile offenders; in Breed v. Jones, the court declared that juveniles are protected from double jeopardy, being prosecuted in juvenile and adult court for the same crime.

Even though the Supreme Court has granted juveniles some of the procedural guarantees outlined in the Constitution, the Court has not granted juveniles the right to a trial by jury when tried on criminal charges and given sentences similar to those of adult offenders convicted of the same crime. In McKeiver v. Pennsylvania the Supreme Court officially denied juveniles the right to a trial by jury. The Court argued that it would not grant juveniles the right to a trial by jury because it would harm prospects for rehabilitation. The Supreme Court stated it felt that jury trials would essentially sabotage any efforts at rehabilitation by destroying the "intimate, informal, and protective proceedings of the juvenile court system."

Juveniles who face criminal charges and stand to receive punitive sentences deserve the right to a trial by jury. Under current circumstances it is the judge's sole decision whether the juvenile is guilty or innocent beyond reasonable doubt. Any court proceeding in which a person is sentenced to

20 Schulhofer, 436.
22 DeJong and Merrill, 181.
23 Sullivan, 489–90.
24 Ibid., 490–1.
multiple years in prison is criminal by nature, therefore entitling the defendant to all procedural protections of a criminal court, including the right to trial by jury.

By denying juveniles the right to a jury trial, the Court is ensuring that juveniles do not receive full legal protection as outlined in the Constitution. The United States Supreme Court in *Duncan v. Louisiana* held that "constitutional rights do not mature and come into being magically only when one attains the state defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." It is hypocritical of the Supreme Court to champion the universality of the Constitution and then deny juveniles the right to a jury trial. Yet, courts continue to use juvenile waiver. It is time *McKeiver v. Pennsylvania* be overturned and the right to trial by jury be extended to juveniles facing criminal charges.

**Conclusion**

The juvenile justice system should attempt to rehabilitate juvenile offenders. If efforts fail by the time offenders reach the age of majority, the adult court system should then be allowed to step in. Our nation is facing a major problem, but simply pushing juveniles into adult courtrooms in an effort to scare them out of a life of crime is not the answer. Juvenile waiver destroys rehabilitative opportunities, denies constitutional rights, and does not accomplish its goals of lowering crime and recidivism. We need to search for a way to use rehabilitation and prevention programs to their fullest capacity. Juvenile waiver should be used as it was originally intended—for those few cases in which rehabilitation is impossible.

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25 Sullivan, 506.