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Juvenile Justice? The Increased Propensity for Juvenile Transfer to the Criminal Court System in Pennsylvania and the Need for a Revised Approach to Juvenile Offenders

Anthony R. Holtzman*

I. Introduction

On Thursday, April 24, 2003, fourteen-year-old James Sheets calmly walked into the Red Lion Junior High School cafeteria in Red Lion, Pennsylvania.¹ Classes were scheduled to start in fifteen minutes, and the cafeteria was filled with students busily conversing, eating breakfast, and preparing for class.² Suddenly and unexpectedly, Sheets brandished a gun and shot his principal in the chest.³ He then shot

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1. *School Shooting Leaves 2 Dead*, THE HOLLAND SENTINEL NAT'L, Apr. 25, 2003, available at http://hollandsentinel.com/stories/042503/new_042503030.shtml (last visited Sept. 1, 2004).

2. *Id.*

3. *Id.*

himself in the head.⁴ Both Sheets and his principal died as a result of the incident.⁵

Dozens of newspaper articles were written about the Red Lion school shooting immediately after it occurred. The *York Daily Record* alone printed no less than forty articles detailing the shooting and its aftermath.⁶ These articles feature headlines such as “All The Precautions Still Didn’t Work,”⁷ and “Afraid to Go Back: Two Teens Are Afraid to Return to the School, and Especially the Cafeteria.”⁸ The latter article describes two students at Red Lion Junior High School who professed to be so frightened following the shooting that they vowed to never return to the school cafeteria, the sight of the tragedy, again.⁹ The article ends with a quote from one of the students’ parents, who said, “I’m terrified because my kid has to go back to school there.”¹⁰

These newspaper responses illustrate that while incidents of juvenile violence like the one in Red Lion are indeed disturbing, the media has a tendency to be sensationalistic and excessive with its coverage of these stories, striking fear into the hearts of the many Americans who are justifiably concerned for their safety and for the safety of their children.¹¹ Consequently, Americans operate under the assumption that the juvenile courts, as a method of controlling juvenile crime rates and reforming juvenile¹² offenders, have failed.¹³ Therefore, many Americans,

4. *Id.*

5. *Id.* The principal, Eugene Segro, was shot once in the chest and pronounced dead at the hospital. *Id.* Sheets died at the scene of the shooting. *Id.* The shootings were committed with two different handguns, a .44-caliber weapon and a .22-caliber weapon. *Id.*

6. See *School Shooting*, YORK DAILY REC., available at <http://www.ydr.com/news/rljh-shooting/full/normal/0/> (last visited Sept. 1, 2004).

7. Mike Argento, *All the Precautions Still Didn’t Work*, YORK DAILY REC., Apr. 29, 2003, available at <http://www.ydr.com/story/rljh-shooting/8952/> (last visited Sept. 1, 2004) (remarking that even though the guns used in the Red Lion school shooting were kept in locked gun safes and the shooter was educated about guns, the shooting was not prevented).

8. Michelle Canty, *Afraid to Go Back: Two Teens are Afraid to Return to the School, and Especially the Cafeteria*, YORK DAILY REC., Apr. 28, 2003, available at <http://www.ydr.com/story/rljh-shooting/8881/> (last visited Sept. 1, 2004).

9. *Id.*

10. *Id.*

11. Lori Robertson, *When Children Kill*, 20 AM. JOURNALISM REV. 56, 57 (1998). Sociologists suggest that insensitivity and undue sensationalism occur with respect to school shootings when newspapers and other media outlets focus too much attention on the shooting suspect and not enough attention on broad issues such as the nexus between children and violence. *Id.* Moreover, the sociologists suggest that sensationalism is facilitated when certain details of the shootings are not explored sufficiently, which leaves room for people to invent facts regarding the shooting and, in so doing, to create an unnecessary panic. *Id.*

12. A juvenile is a person who has not reached the age, usually eighteen, at which he is treated as an adult by a state’s criminal justice system with respect to each and every

including many Pennsylvanians, have supported recent state legislation making it easier and more common to prosecute juvenile offenders in state criminal court systems rather than in the juvenile courts.¹⁴

Americans broadly assume that placing more juveniles in the criminal courts will create a "general deterrent effect," which will, in turn, protect the public by causing a reduction in juvenile crime rates.¹⁵ However, the increased propensity for the transfer of juvenile offenders to state criminal court systems has not had a general deterrent effect, as juvenile crime rates have not decreased since the implementation of measures increasing the propensity for transfer.¹⁶ Therefore, Pennsylvania, a Commonwealth that made it easier to place juvenile offenders in its criminal court system by enacting statutory amendments in 1996, should repeal these 1996 amendments to the Pennsylvania Juvenile Code and thereby restore a lower propensity for transfer.

Part II discusses the history and evolution of the juvenile courts in America. Part III examines recent developments in state juvenile court systems and describes how the states have made it easier to prosecute juveniles in criminal courts. Part IV undertakes a case study of

criminal charge brought against him. BLACK'S LAW DICTIONARY 699 (7th ed. 2000).

13. Katherine Hunt Federle, *Is There A Jurisprudential Future for the Juvenile Court?*, 564 ANNALS OF THE AM. ACAD. OF POLITICAL AND SOC. SCI. 28, 28 (1999). Violent acts committed by juveniles undermine public support for and confidence in the juvenile courts, and also diminish the political viability of separate state juvenile justice systems. *Id.* The belief that juvenile crime was increasing and that the juvenile courts had failed to adequately address the problem reached a head in the mid to late 1990s when states began enacting measures designed to place an increasing number of juveniles in their criminal court systems. *Id.* However, this climax was unfounded because national juvenile murder arrest rates, violent crime arrest rates, and property crime arrest rates had plummeted from the early to mid 1990s. *Id.*

14. *Attitudes Toward the Treatment of Juveniles Who Commit Violent Crimes*, Sourcebook of Criminal Justice Statistics Online, at <http://www.albany.edu/sourcebook/> (last visited Sept. 1, 2004) (in this 2000 Gallup poll, 65% of those Americans surveyed said that juveniles between the ages of fourteen and seventeen who commit violent crimes should be treated the same as adults, while only 24% said that such juveniles should be given more lenient treatment in a juvenile court; 67% of Republicans in the survey said that juveniles should be treated the same as adults, as did 60% of Democrats and 68% of Independents).

15. *Does Treating Kids Like Adults Make A Difference?*, PBS FRONTLINE, available at <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/kidslikeadults.html> (last visited Sept. 1, 2004). The general deterrent effect occurs when a prospective juvenile offender is dissuaded from actually committing a crime by the threat of being subjected to the same sort of harsh punishment that was meted out to a previously convicted offender. *Id.*

16. Ctr. for the Study and Prevention of Violence, *CSPV Fact Sheets: Judicial Waivers: Youth in Adult Courts*, CSPV Online, at <http://www.colorado.edu/cspv/publications/factsheets/cspv/FS-008.html> (last visited Sept. 1, 2004). Additionally, juveniles transferred to state criminal court systems are more likely to recidivate, and in so doing to commit more serious offenses, than juveniles who are prosecuted in the juvenile courts. *Id.*

Pennsylvania, which focuses on the 1996 amendments to the Pennsylvania Juvenile Code that make it easier to place juvenile offenders in Pennsylvania's criminal court system, and examines the correlative lack of reduction in juvenile crime rates. Part V sets forth additional policy arguments against the increased propensity for the transfer of juvenile offenders to state criminal court systems. Part VI concludes by recommending that Pennsylvania repeal the 1996 amendments to its Juvenile Code and thereby restore a lower propensity for transfer.

II. History of the Juvenile Courts

The juvenile courts are only about one hundred years old, but the roots of the juvenile court movement can be traced back to the earliest stages of American history.¹⁷ Throughout most of the history of the juvenile courts, a majority of Americans believed that young criminals should be treated differently from adult criminals.¹⁸ This belief was based on the assumption that juveniles were fundamentally different from adults in their ability to form the criminal intent necessary to commit crimes, as well as in their responsibility for crimes.¹⁹ Only recently have many Americans begun to support treating juvenile criminals in the same manner as adult criminals.²⁰ Generally, deciding how to process, treat, and detain juveniles has always been a challenge for Americans.²¹

A. *Treatment of Juvenile Offenders in America Prior to the Creation of the Juvenile Courts*

Colonial and post-revolutionary American courts adopted and built upon the English common law rules of criminal law and criminal procedure.²² By the early nineteenth century, a special substantive

17. FRANCIS BARRY MCCARTHY, PENNSYLVANIA JUVENILE DELINQUENCY PRACTICE AND PROCEDURE 3 (The Harrison Co., 2d ed. 1992).

18. *Id.*

19. *Id.*

20. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 89 (1999). The 1990s were a time of unprecedented change in juvenile justice in America. *Id.* Between 1992 and 1997, all but three states changed their laws in order to (i) make it easier to transfer juveniles from their juvenile court systems to their criminal court systems; (ii) expand juvenile sentencing options; or (iii) modify or remove traditional juvenile code confidentiality provisions. *Id.*

21. MCCARTHY, *supra* note 17, at 3.

22. PAUL W. TAPPAN, JUVENILE DELINQUENCY 171 (McGraw-Hill Book Co., Inc., 1st ed. 1949). The precedents of a harshly punitive common law were carried over from England. *Id.* For example, in the Plymouth Colony, capital punishment was used in

doctrine developed in American criminal courts to govern the prosecution of children.²³ Under this doctrine, each child's "capacity" to commit the crime of which he was accused had to be ascertained and considered.²⁴ A child whom a criminal court determined did not have the capacity to commit an offense was released without consequence under what was known as the "infancy defense."²⁵ For purposes of the infancy defense, children were divided into three categories. First, the courts indicated that children under the age of seven had absolutely no capacity for crime.²⁶ Second, the courts determined that children over the age of fourteen had full capacity for crime, and held them to the same standard as adults in establishing a defense.²⁷ Third, the courts presumed that children between the ages of seven and fourteen lacked the capacity to commit an offense, but this presumption could be rebutted in certain instances.²⁸

In addition to substantive allowances, special rules of procedure were developed in colonial and post-revolutionary America to ensure that children received a fair trial.²⁹ For example, the criminal courts recognized that children were more susceptible to external pressures than adults, and thus required a more thorough analysis of the circumstances in which juvenile confessions were obtained to avoid coerced confessions.³⁰

As the special procedural rules governing the prosecution of children developed, many states also enacted statutes creating special offenses applicable only to children.³¹ Offenses of this type are now known as "status offenses."³² The early status offense measures usually targeted youthful misbehavior and parental defiance.³³

connection with sixteen different offenses. *Id.*

23. MCCARTHY, *supra* note 17, at 3.

24. H. TED RUBIN, *JUVENILE JUSTICE: POLICY, PRACTICE, AND LAW* 52-53 (McGraw-Hill Book Co., Inc., 2d ed. 1985). A child who had the "capacity" to commit a crime was one who was capable of forming criminal intent. *Id.*

25. MCCARTHY, *supra* note 17, at 3.

26. RUBIN, *supra* note 24, at 52-53. The idea that all children under the age of seven were unable to form criminal intent was derived from an old English common law principle, and was thus not entirely unique to American courts. *Id.*

27. *Id.* at 53.

28. *Id.* The presumption could be rebutted if, for example, it appeared to the court and the jury that the child in question could discern between good and evil. *Id.*

29. MCCARTHY, *supra* note 17, at 4.

30. *Id.*

31. *Id.*

32. CLIFFORD E. SIMONSEN, *JUVENILE JUSTICE IN AMERICA* 405 (MacMillan Publishing Co., 3d ed. 1991). Contemporary status offenses include incorrigibility, running away from home, unruliness, school truancy, disregard for or abuse of lawful parental authority, and repeated use of alcoholic beverages. *Id.*

33. MCCARTHY, *supra* note 17, at 4. Two such statutes, measures enacted in

Eventually, juveniles convicted of crimes began to be detained in a manner different from their adult counterparts.³⁴ The public was concerned that confining children in jails with adult criminals, or in almshouses³⁵ with paupers, only served to make the children themselves criminals and paupers.³⁶ Therefore, places known as houses of refuge, houses of reformation, or reform schools were founded to keep young offenders separate from adults in the hope that they would learn to lead productive lives.³⁷ State statutes eventually authorized criminal courts to place juvenile offenders in these institutions.³⁸ As the institutions developed over the years, they ultimately spurred the inception of the juvenile courts.³⁹

B. *The Establishment and Development of the Juvenile Courts*

In 1899, Illinois enacted the Illinois Juvenile Court Act,⁴⁰ which is generally credited for establishing America's first juvenile courts.⁴¹ The Illinois statute served as a model in other states, and within a short time virtually every state had established its own juvenile court system.⁴² Pennsylvania's juvenile court system was established in 1901, two years after the Illinois juvenile court system, with the passage of the Pennsylvania Juvenile Court Act.⁴³

When the juvenile courts were established, they were given broad powers of intervention, and were intended to act on the basis of *parens*

Connecticut in 1642 and Massachusetts in 1646, continue to have great influence on state juvenile code provisions governing status offenses based on incorrigibility. *Id.*

34. RUBIN, *supra* note 24, at 53.

35. Almshouses were dwellings for the publicly or privately supported poor of a city or county. BLACK'S LAW DICTIONARY 61 (7th ed. 2000).

36. MCCARTHY, *supra* note 17, at 7.

37. DEAN J. CHAMPION, THE JUVENILE JUSTICE SYSTEM: DELINQUENCY, PROCESSING, AND THE LAW 10 (Prentice Hall, 1992). The first house of refuge was established in New York in 1825. *Id.* The houses of refuge, houses of reformation, and reform schools were institutions largely devoted to managing juvenile status offenders, who were usually runaways or incorrigible children. *Id.* Mandatory education and other forms of training and assistance were provided to children in these institutions. *Id.* Many of the juvenile offenders who were sent to such institutions were the offspring of immigrants. *Id.*

38. *See, e.g.*, 1824 N.Y. Laws 126, amended by 1826 N.Y. Laws 24.

39. MCCARTHY, *supra* note 17, at 7.

40. 1899 Ill. Laws 131.

41. SIMONSEN, *supra* note 32, at 228-29. The Illinois Juvenile Court Act brought every type of juvenile case under one jurisdiction and created features that have since characterized most of the juvenile court systems in the United States. *Id.*

42. *Id.* at 229. Within twelve years after the enactment of the Illinois Juvenile Court Act, twenty-two states had followed Illinois' example and created juvenile court systems, and by 1925 all but two states had juvenile court systems. *Id.* By 1945, those two states—Maine and Wyoming—had joined. *Id.*

43. 1901 Pa. Laws 279.

*patriae*⁴⁴ to help rehabilitate children in need.⁴⁵ Neither the guilt nor blameworthiness of the parent or the child was an issue of great concern.⁴⁶ Rather, the courts attempted to function with the mentality of a medical clinic, so that a child's problem could be "diagnosed" and "treated."⁴⁷ The juvenile court judges sought to act as parents and do what was in each juvenile offender's best interests, whether that was placing the child in a juvenile detention home or requiring the child to meet regularly with a parole officer.⁴⁸ Accordingly, the juvenile court judges were only slightly more legally encumbered than private citizen-parents.⁴⁹

The juvenile courts operated in this generally unrestrained fashion until the 1960s. At that time, the lack of procedural protections in many states' juvenile court proceedings were increasingly seen as unjustifiable denials of basic civil rights.⁵⁰

C. Federal Activity Regarding Juvenile Justice

Beginning in 1966, a series of decisions by the United States Supreme Court infused a variety of procedural requirements into juvenile court proceedings and greatly altered the operation of the juvenile courts.

44. RUBIN, *supra* note 24, at 54. *Parens patriae* is often defined as "substitute parents." *Id.* The concept of *parens patriae* was transplanted from the English courts of equity, where it had been introduced to protect the property interests and guardianship needs of children. *Id.* *Parens patriae* was consistent with both the broad scope of jurisdiction afforded the early juvenile courts and their desire to protect and redirect children. *Id.*

45. *Id.*

46. *Id.*

47. MCCARTHY, *supra* note 17, at 13.

48. RUBIN, *supra* note 24, at 54. The writings of early juvenile court judges reflect that the judges were intimately familiar with their cases, possessed an enormous commitment to helping children, were interested in reforming social institutions to make them less oppressive to children, and were disinterested in legal procedures and safeguards. *Id.* These writings likewise reveal the philosophy of the early juvenile courts: that intervention with a dependent or neglected child would prevent what is now know as a status offense, that court-ordered supervision of status offenders would eliminate or reduce juvenile delinquency, and that programs for juvenile delinquents would prevent them from later becoming criminals. *Id.*

49. MCCARTHY, *supra* note 17, at 13.

50. CHAMPION, *supra* note 37, at 303. Until the mid-1960s, juvenile courts had considerable procedural latitude in regulating the affairs of minors. *Id.* The freedom to act on the child's behalf pursuant to the doctrine of *parens patriae* had largely gone unchallenged. *Id.* Juveniles who entered state juvenile court systems were not advised of their right to legal representation, to have an attorney present during any interrogation, or to remain silent. *Id.* They could be questioned at length without any notification being given to their parents. *Id.* Generally, they had little, if any, protections against violations of adult constitutional rights that were committed by law enforcement officers and others. *Id.* at 303-04.

In *Kent v. United States*,⁵¹ regarded as the first major juvenile rights decision, the Supreme Court held that Fourteenth Amendment procedural due process⁵² requires that waiver hearings be conducted in state juvenile courts before juveniles can be transferred to the jurisdiction of state criminal court systems.⁵³ The Court also held that juveniles are entitled to consult with counsel prior to and during such hearings.⁵⁴

Kent was followed by *In re Gault*⁵⁵ in 1967, which is perhaps the most noteworthy of all juvenile rights cases. In *Gault*, the Court held that Fourteenth Amendment procedural due process⁵⁶ gives juveniles the right to adequate notice of all charges brought against them in state juvenile and criminal courts,⁵⁷ as well as the right to assistance of counsel in all juvenile court delinquency proceedings.⁵⁸ Moreover, the Court held that the Fifth Amendment,⁵⁹ as applied to the states through the Fourteenth Amendment,⁶⁰ gives juveniles the right against self-incrimination.⁶¹ Additionally, the Court held that the Sixth

51. 383 U.S. 541 (1966).

52. The Due Process Clause of the Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

53. *Kent*, 383 U.S. at 561.

54. *Id.* The Court stated that a juvenile's right to counsel in waiver hearings is "of the essence of justice," and that the appointment of counsel to a juvenile without affording him an opportunity for a hearing is equivalent to an outright denial of counsel. *Id.* The Court reprimanded a District of Columbia juvenile court for its failure to grant a waiver hearing prior to transferring a juvenile to the District of Columbia criminal court system in a case where the transfer decision was made at the discretion of the juvenile court judge. *Id.* at 561-62.

55. 387 U.S. 1 (1967).

56. U.S. CONST. amend. XIV, § 1. *See supra* text accompanying note 52.

57. *Gault*, 387 U.S. at 33. The Court indicated that notice of charges against juvenile defendants must be given sufficiently in advance of scheduled juvenile court proceedings so that the defendants can adequately prepare for those proceedings. *Id.* Also, the notice must "set forth the alleged misconduct with particularity." *Id.*

58. *Id.* at 36. A juvenile delinquency proceeding is a proceeding by which a juvenile court determines whether a juvenile is guilty of criminal behavior that is punishable in the juvenile court system by special juvenile laws and penalties not pertaining to adults. BLACK'S LAW DICTIONARY 699 (7th ed. 2000). The *Gault* Court's decision to extend the right to counsel in all juvenile delinquency proceedings was influenced by the need to ensure evenhandedness in such proceedings, which involve "the awesome prospect of [a juvenile's] incarceration in a state institution until the juvenile reaches the age of 21." *Gault*, 387 U.S. at 36-37. Also, the Court noted that at the time of its decision, one-third of the states provided for the right to counsel in all delinquency proceedings. *Id.* at 38.

59. U.S. CONST. amend. V (providing, in pertinent part, that a person may not "be compelled in any criminal case to be a witness against himself").

60. U.S. CONST. amend. XIV, § 1.

61. *Gault*, 387 U.S. at 55. The Court further held that if a juvenile's counsel was absent when a confession was obtained, then a reviewing court must be careful to ensure that the confession was voluntary, not only in the sense that it was uncoerced, but also "that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair." *Id.*

Amendment,⁶² as applied to the states through the Fourteenth Amendment,⁶³ gives juveniles the right to confront and cross-examine witnesses when they are involved in criminal court proceedings.⁶⁴

Federal activity regarding juvenile rights continued throughout the 1970s. *In re Winship*,⁶⁵ decided in 1970 on the heels of *Gault*, was another landmark case. In *Winship*, the Court held that Fourteenth Amendment procedural due process⁶⁶ requires the “beyond a reasonable doubt” standard to be used by juvenile court judges in establishing a child’s delinquency, rather than the “preponderance of the evidence” standard, which had previously been utilized in many states.⁶⁷

After having extended various rights to juveniles in preceding cases, the Supreme Court denied juveniles the right to a jury trial in 1971, in *McKeiver v. Pennsylvania*.⁶⁸ The Court held that the Sixth Amendment,⁶⁹ as applied to the states by the Fourteenth,⁷⁰ does *not* require a trial by jury in the adjudicative stage of all state juvenile court proceedings.⁷¹

Following *McKeiver*, Congress passed the Juvenile Justice and Delinquency Prevention Act⁷² in 1974 as a response to national concern regarding growing juvenile crime rates.⁷³ This Act authorized the establishment of the Office of Juvenile Justice and Delinquency

62. U.S. CONST. amend. VI (providing, in pertinent part, that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him”).

63. U.S. CONST. amend. XIV, § 1.

64. *Gault*, 387 U.S. at 57.

65. 397 U.S. 358 (1970).

66. U.S. CONST. amend. XIV, § 1. *See supra* text accompanying note 52.

67. *Winship*, 397 U.S. at 368. The Court reasoned that the proof beyond a reasonable doubt standard is necessary in juvenile court delinquency proceedings because children who are found guilty in such proceedings are subjected to loss of liberty in much the same way as adults convicted of criminal offenses. *Id.* at 366. The Court rejected the idea that affording juveniles the protection of proof beyond a reasonable doubt would jeopardize the beneficial and unique aspects of state juvenile court systems. *Id.*

68. 403 U.S. 528 (1971).

69. U.S. CONST. amend. VI (providing, in pertinent part, that “[i]n all criminal prosecutions, the accused shall enjoy a right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed”).

70. U.S. CONST. amend. XIV, § 1.

71. *McKeiver*, 403 U.S. at 545. The Court reasoned that a mandatory trial by jury would risk turning each juvenile court proceeding into a fully adversary process and would “put an effective end to what has been the idealistic prospect of intimate, informal protective proceedings.” *Id.* Moreover, the Court indicated that there is nothing to prevent a juvenile court judge from using an advisory jury in appropriate situations. *Id.* at 548.

72. Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §§ 5601-5784 (1974).

73. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 20, at 87-88.

Prevention ("OJJDP"),⁷⁴ which has been influential in providing information about juvenile crime and its prevention.⁷⁵ In addition, the Juvenile Justice and Delinquency Prevention Act allocates federal funds to state juvenile research, rehabilitation, and delinquency prevention programs, and authorizes the OJJDP to distribute these funds.⁷⁶ Finally, in 1975, the Supreme Court held in *Breed v. Jones*⁷⁷ that the Double Jeopardy Clause of the Fifth Amendment,⁷⁸ as applied to the states by the Fourteenth Amendment,⁷⁹ forbids prosecuting a person in a state criminal court system for the same offense for which he had previously been tried in a juvenile court.⁸⁰

III. Recent Developments in State Juvenile Court Systems

A. *The General Movement Towards Punishment*

The Supreme Court has heard several other cases involving the rights of juveniles since *Breed v. Jones*,⁸¹ but most of the law governing juvenile offenders has been formulated by the states. Until the early 1990s, most state statutes remained focused on prosecuting juvenile offenders in juvenile courts and treating them in juvenile facilities.⁸² In

74. 42 U.S.C. § 5611.

75. CHAMPION, *supra* note 37, at 54. In 1975, the OJJDP assumed responsibility for acquiring juvenile court dispositional records from the states and periodically publishing statistical reports concerning juvenile offenses and adjudicatory outcomes. *Id.*

76. 42 U.S.C. § 5631 (giving the OJJDP authority to make grants and contracts to improve state juvenile justice systems); 42 U.S.C. § 5632 (outlining how funds are to be allocated by the OJJDP to the states each fiscal year).

77. 421 U.S. 519 (1975).

78. The Double Jeopardy Clause provides "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V.

79. U.S. CONST. amend. XIV, § 1.

80. *Jones*, 421 U.S. at 541. The Court noted that in some cases, a juvenile who is tried in a state criminal court system for the same offense for which he had previously been tried in a juvenile court does not face the risk of more than one punishment. *Id.* at 532. The Court indicated that even in these cases the Double Jeopardy Clause is violated, because it exists to prevent both the risk of more than one punishment for the same offense *and* the risk of more than one trial for the same offense. *Id.*

81. *E.g.*, *Fare v. Michael*, 442 U.S. 707, 724 (1979) (holding that a juvenile's request to speak with his probation officer does not constitute a per se invocation of his Fifth Amendment right to be free from self-incrimination); *Schall v. Martin*, 467 U.S. 253, 268 (1984) (holding that pre-trial detention of juveniles charged with crimes does not violate the Fourteenth Amendment Due Process Clause); *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989) (holding that the imposition of capital punishment on an individual for a crime committed at sixteen or seventeen years of age does not constitute cruel and unusual punishment under the Eighth Amendment).

82. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 20, at 89. In addition, until the early 1990s, public resources were channeled into community-based programs intended to rehabilitate juvenile offenders and diversionary programs

the early 1990s, however, a period of great change in juvenile justice began in America. Perceptions of a juvenile crime epidemic fueled public scrutiny of the ability of state juvenile court systems to control juvenile crime rates and rehabilitate young offenders.⁸³ Almost every state in America began to make juvenile crime and juvenile court procedures a major focus of the political process,⁸⁴ and statutes governing juvenile offenders have since changed dramatically. The statutory changes represent an effort by legislators to drastically curb juvenile crime.⁸⁵

In their effort to become more stringent towards juvenile offenders, many states have amended the "purpose clause" located within each of their juvenile codes to balance or replace rehabilitation with punishment or accountability as the primary goal of their juvenile court systems.⁸⁶ Although purpose clauses do not usually have significant substantive impact, they provide a philosophical foundation that influences the way juvenile courts and participants in juvenile court proceedings view their roles and functions.⁸⁷

Substantive impact *is* certainly present, however, in another set of statutory changes recently implemented in many states regarding the placement of juvenile offenders in state criminal court systems. Since 1992, nearly every state has enacted or amended statutory transfer provisions, making it significantly easier to prosecute juveniles in criminal courts.⁸⁸

B. Placement of Juvenile Offenders in State Criminal Court Systems

There are generally four ways in which statutes facilitate the transfer of juvenile offenders to state criminal court systems. The first way a juvenile can be transferred to a state criminal court system is

intended to dissuade children from adopting criminal lifestyles. *Id.* at 88.

83. COALITION FOR JUVENILE JUSTICE, 1998 ANNUAL REPORT 30-31 (1999).

84. *Id.*

85. *Id.*

86. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 20, at 89. Pennsylvania, for example, added the phrases "attention to the protection of the community" and "the imposition of accountability for offenses committed" to the purpose clause of its Juvenile Code. *Compare* 42 PA. CONS. STAT. § 6301(b)(2) (1995) *with* 42 PA. CONS. STAT. § 6301(b)(2) (2000).

87. *See, e.g., In re McDonough*, 430 A.2d 308, 312 (Pa. Super. Ct. 1981) (remarking that the purpose clause of the Pennsylvania juvenile code indicates that "the Commonwealth's role [in its juvenile justice system] is twofold: to protect the public interest, and to supervise and rehabilitate youthful offenders").

88. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 20, at 89. By 1997, all but six states had made changes to statutory transfer provisions in order to make it easier to transfer juvenile offenders from their juvenile justice systems to their criminal justice systems. *Id.*

through a statutory exclusion provision.⁸⁹ Such a provision automatically and entirely excludes a group of enumerated criminal charges from juvenile court jurisdiction.⁹⁰ Second, a juvenile can be transferred to a state criminal court system through a mandatory waiver provision.⁹¹ A mandatory waiver provision requires juvenile courts to exclude certain enumerated charges, and therefore is closely related to a statutory exclusion provision.⁹² In contrast to a statutory exclusion provision, however, a mandatory waiver provision requires juvenile courts to receive a case initially, conduct a preliminary hearing to ensure that the provision applies, and then, upon determining that it applies, issue an order transferring the case to a criminal court.⁹³ Third, transfer to a state criminal court system can occur by the operation of a discretionary waiver provision, which gives juvenile court judges the discretion, after first considering a list of enumerated factors, to waive a juvenile court's jurisdiction over individual cases in which a juvenile is charged with certain crimes.⁹⁴ Finally, juveniles can be transferred to a state criminal court system by way of a presumptive waiver provision.⁹⁵ Such a provision creates the presumption that a certain group of enumerated criminal charges are best suited for prosecution in criminal court.⁹⁶ However, a juvenile facing one of these charges can attempt to rebut the presumption.⁹⁷

Most states have recently made it easier to transfer juveniles to their adult criminal court systems by adding to the list of charges that are statutorily excluded from juvenile court handling, changing the criteria to be considered when a transfer decision is made under their discretionary

89. Nat'l Ctr. for Juvenile Justice, *State Profiles: Glossary*, NCJJ State Profiles Online, at <http://www.ncjj.org/stateprofiles/asp/glossary.asp> (last visited Sept. 1, 2004).

90. *Id.* For example, California's statutory exclusion provision excludes from the state's juvenile court system all charges of rape and sodomy or oral copulation brought against a juvenile age 14 or older. See CAL. WELF. & INST. CODE § 602(b) (West Supp. 2003).

91. Nat'l Ctr. for Juvenile Justice, *State Profiles Glossary*, *supra* note 89.

92. *Id.*

93. *Id.*

94. *Id.* For example, in Vermont, a juvenile court faced with a discretionary waiver decision considers, among other things, the maturity of the juvenile, the extent of his prior record of delinquency, the nature of past efforts to treat him, his response to past treatment efforts, and his culpability at the time he committed the alleged offense. See VT. STAT. ANN. tit. 33, § 5506(d) (2001).

95. Nat'l Ctr. for Juvenile Justice, *State Profiles Glossary*, *supra* note 89.

96. *Id.*

97. *Id.* In California, the presumption can be rebutted if the juvenile convinces the reviewing juvenile court that he is not criminally sophisticated, is amenable to rehabilitation prior to the age of twenty-one, has little or no previous delinquent history, has been rehabilitated successfully by a juvenile court in the past, or committed the offense of which he is accused in sympathetic circumstances or in a manner that was not particularly egregious. See CAL. WELF. & INST. CODE § 707(a)(2) (West Supp. 2003).

waiver provisions, increasing the number of charges that may be transferred through discretionary and presumptive waiver provisions, or lowering the age at which juveniles are subject to transfer.⁹⁸ A broad assumption lies behind the recent state legislation making it easier to prosecute juveniles in criminal courts. The assumption is that placing juveniles in state criminal court systems will create a general deterrent effect on juvenile offenders, which will, in turn, protect the public by causing a reduction in juvenile crime rates.⁹⁹

IV. Case Study of Juvenile Transfer in Pennsylvania

A. *The Increased Propensity for Juvenile Transfer in Pennsylvania*

As with many other states, Pennsylvania recently implemented measures that make it significantly easier to place a greater number of juveniles¹⁰⁰ in its criminal court system.¹⁰¹ Pennsylvania's increased propensity for transfer came in the form of Act 33, which was enacted in March of 1996.¹⁰² Act 33 made changes to the preexisting Pennsylvania Juvenile Code,¹⁰³ specifically to the purpose clause, the statutory exclusion provision, the discretionary waiver provision, and the presumptive waiver provision.¹⁰⁴

With respect to Pennsylvania's Juvenile Code purpose clause, one notable change was made to the pre-1996 purpose clause with the enactment of Act 33. Prior to 1996, the purpose clause provided that one of the purposes of the Commonwealth's juvenile court system was, "[c]onsistent with the protection of the public interest, to remove from

98. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 20, at 88.

99. *Does Treating Kids Like Adults Make A Difference?*, *supra* note 15.

100. In Pennsylvania, a juvenile is defined as an individual who: (i) is under eighteen years old; (ii) is under twenty-one years old and committed an act of delinquency before reaching the age of eighteen; or (iii) is adjudicated dependent before reaching the age of eighteen and, while engaged in a course of instruction or treatment, requests that the Commonwealth's juvenile court system retain jurisdiction until the course is completed, provided that he will not remain in the course past the age of twenty-one. 42 PA. CONS. STAT. § 6302 para. (1)-(3) (2000) (defining "child").

101. See 1995 Pa. Legis. Serv. Act 1995-33 (West).

102. *Id.*

103. The Pennsylvania juvenile code is codified at 42 PA. CONS. STAT. § 6301 *et seq.*

104. Compare 42 PA. CONS. STAT. § 6301(b)(2) (1995) with 42 PA. CONS. STAT. § 6301(b)(2) (2000); compare 42 PA. CONS. STAT. § 6355(e) (1995) with 42 PA. CONS. STAT. § 6355(e) (2000) and 42 PA. CONS. STAT. § 6302 para. (2)(i) (2000) (defining "delinquent act") and 42 PA. CONS. STAT. § 6302 para. (2)(ii)(A)-(I) (2000) (defining "delinquent act") and 42 PA. CONS. STAT. § 6302 para. (2)(iii)(A)-(H) (2000) (defining "delinquent act"); compare 42 PA. CONS. STAT. § 6355(a)(4)(A) (1995) with 42 PA. CONS. STAT. § 6355(a)(4)(A)-(G) (2000); and see 42 PA. CONS. STAT. § 6355(g)(1)-(2) (2000).

children committing delinquent acts the consequences of criminal behavior, and to substitute therefore a program of supervision, care, and rehabilitation.”¹⁰⁵ With the enactment of Act 33, this portion of the purpose clause was changed to read:

Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care, and rehabilitation which provide balanced *attention to the protection of the community, the imposition of accountability for offenses committed* and the development of competencies to enable children to become responsible and productive members of the community.¹⁰⁶

The purpose clause was thus amended to include the phrases “attention to the protection of the community” and “the imposition of accountability for offenses committed.”¹⁰⁷ These additions to the purpose clause suggest a change in the underlying philosophy of the Pennsylvania juvenile court system. Prior to 1996, the system was primarily concerned with the rehabilitation of young offenders; however, the Act 33 amendments place an equal emphasis on accountability and punishment. This emphasis is most clearly manifested in the Juvenile Code provisions governing the transfer of juveniles to Pennsylvania’s criminal court system.

Perhaps the greatest change relating to transfer in the Pennsylvania Juvenile Code occurred in the statutory exclusion provision, which was expanded to encompass many more charges.¹⁰⁸ Prior to the enactment of Act 33, statutory exclusion applied only to juveniles under the age of eighteen who were charged with murder.¹⁰⁹ Juveniles charged with murder continue to be excluded from Pennsylvania’s juvenile court system.¹¹⁰ However, statutory exclusion now also applies to juveniles who were between the ages of fifteen and eighteen at the time of their alleged criminal conduct and who are charged with using a deadly weapon while committing rape, involuntary deviate sexual intercourse, aggravated assault, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, or attempting,

105. 42 PA. CONS. STAT. § 6301(b)(2) (1995).

106. 42 PA. CONS. STAT. § 6301(b)(2) (2000) (emphasis added).

107. Compare 42 PA. CONS. STAT. § 6301(b)(2) (1995) with 42 PA. CONS. STAT. § 6301(b)(2) (2000).

108. Compare 42 PA. CONS. STAT. § 6355(e) (1995) with 42 PA. CONS. STAT. § 6355(e) (2000) and 42 PA. CONS. STAT. § 6302 para. (2)(i) (2000) (defining “delinquent act”) and 42 PA. CONS. STAT. § 6302 para. (2)(ii)(A)-(I) (2000) (defining “delinquent act”) and 42 PA. CONS. STAT. § 6302 para. (2)(iii)(A)-(H) (2000) (defining “delinquent act”).

109. 42 PA. CONS. STAT. § 6355(e) (1995).

110. 42 PA. CONS. STAT. § 6355(e) (2000); 42 PA. CONS. STAT. § 6302 para. (2)(i) (2000) (defining “delinquent act”).

conspiring, or soliciting to commit any of these crimes or to commit murder.¹¹¹ Also, juveniles who were between the ages of fifteen and eighteen at the time of their alleged criminal conduct and who are charged with any of the aforementioned offenses, and who have previously been adjudicated delinquent¹¹² of any such offenses, except for aggravated assault, are statutorily excluded from Pennsylvania's juvenile court system.¹¹³

In addition to the increase in the number of criminal charges subject to statutory exclusion in Pennsylvania, the factors considered by the Commonwealth's juvenile courts when deciding whether to effect transfer pursuant to the discretionary waiver provision became more punishment-oriented. Prior to 1996, a juvenile age fourteen or older at the time of his alleged criminal conduct could be transferred to the Pennsylvania criminal court pursuant to the discretionary waiver provision if he was charged with a felony not statutorily excluded from the juvenile courts, and a juvenile court determined him to be unfit for treatment in available juvenile facilities.¹¹⁴ This determination was based upon consideration of the juvenile's age, mental capacity, maturity, degree of criminal sophistication, previous records, nature and extent of any prior delinquent history, probation or institution reports, nature and circumstances of charges, and likelihood of rehabilitation.¹¹⁵ In 1996, however, the discretionary waiver provision was amended to require Pennsylvania's juvenile courts to consider the following additional factors: (i) the impact of the juvenile's offense on the victim(s); (ii) the impact of the offense on the community; (iii) the threat to the safety of the public or any individual posed by the juvenile; (iv) the degree of the juvenile's culpability; and (v) the adequacy and duration of the dispositional alternatives available in the criminal courts.¹¹⁶ These

111. 42 PA. CONS. STAT. § 6355(e) (2000); 42 PA. CONS. STAT. § 6302 para. (2)(ii)(A)-(I) (2000) (defining "delinquent act").

112. In Pennsylvania, a juvenile who is adjudicated delinquent is one who is "ten years of age or older whom the [reviewing juvenile] court has found to have committed a delinquent act and is in need of treatment, supervision, or rehabilitation." 42 PA. CONS. STAT. § 6302 (2000) (defining "delinquent child"). A "delinquent act" is defined as "an act designated a crime under the law of [the] Commonwealth, or of another state if the act occurred in that state, or under Federal law, or under local ordinances or an act which constitutes indirect criminal contempt under 23 PA. CONS. STAT. CH. 61 (relating to protection from abuse)." 42 PA. CONS. STAT. § 6302 para. (1) (2000) (defining "delinquent act"). This definition is subject to various exceptions. 42 PA. CONS. STAT. § 6302 para. (2) (2000) (defining "delinquent act").

113. 42 PA. CONS. STAT. § 6355(e) (2000); 42 PA. CONS. STAT. § 6302 para. (2)(iii)(A)-(H) (2000) (defining "delinquent act").

114. 42 PA. CONS. STAT. § 6355(a)(4)(A) (1995).

115. *Id.*

116. 42 PA. CONS. STAT. § 6355(a)(4)(A)-(G) (2000).

additional factors are clearly more conducive to placing a juvenile in Pennsylvania's criminal court system, and reflect a more punitive attitude towards juveniles charged with crimes.

Act 33 also made transfer more prominent in Pennsylvania by creating presumptive waiver. The presumptive waiver provision created by Act 33 indicates that, in certain situations, a juvenile is presumed to be best suited for prosecution in the Pennsylvania criminal court system, and the burden of proving that he should *not* be transferred to a criminal court rests with the juvenile.¹¹⁷ The provision applies, specifically, when the juvenile was fourteen or older and used a deadly weapon at the time of his alleged criminal conduct, or was fifteen or older and previously adjudicated delinquent of a felony at the time of his alleged criminal conduct, and there is a *prima facie* case that he committed rape, involuntary deviate sexual intercourse, aggravated assault, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these offenses, or an attempt to commit murder.¹¹⁸

Finally, Act 33 increased the propensity for the transfer of juveniles to the criminal court system in Pennsylvania by instituting a "once an adult, always an adult" provision.¹¹⁹ This provision ensures that once a juvenile has been adjudicated guilty in a proceeding in the Commonwealth's criminal court system, he will automatically be tried as an adult when *any* subsequent criminal charges are brought against him.¹²⁰

Clearly, the Pennsylvania Juvenile Code has become more punitive in its philosophy regarding juvenile offenders and more expansive in its ability to place juveniles in Pennsylvania's criminal court system since the implementation of Act 33 in 1996. However, these changes have not served their intended primary purpose of reducing juvenile crime rates in the Commonwealth.

B. Pennsylvania Juvenile Crime Statistics

Pennsylvania juvenile crime statistics indicate that the increased propensity for the transfer of juvenile offenders to Pennsylvania's criminal court system has not had a general deterrent effect on juvenile offenders, as juvenile crime rates have not decreased in Pennsylvania after the implementation of Act 33.

In order to understand Act 33's relationship to Pennsylvania

117. 42 PA. CONS. STAT. § 6355(g) (2000).

118. 42 PA. CONS. STAT. § 6355(g)(1)-(2) (2000).

119. 42 PA. CONS. STAT. § 6302 para. (2)(v) (2000) (defining "delinquent act").

120. *Id.*

juvenile crime statistics, it is useful to first examine the Pennsylvania juvenile population before the enactment of Act 33 in 1996, as well as after its enactment. The average juvenile population in Pennsylvania from 1993-1995 was 2,932,602.¹²¹ The population of juveniles in 1996 was 2,945,567.¹²² The population of juveniles in 1999 was 2,943,906.¹²³ The population of juveniles in 2000 was 2,896,337.¹²⁴ And, the population of juveniles in 2002 was 2,863,452.¹²⁵ Thus, the population of juveniles in Pennsylvania increased between 1993-1996 and then steadily decreased from 1996-2002. Table 1.1, which follows, illustrates this occurrence.

Table 1.1: PA Juvenile Population

Year	Population
1993-95	2,932,602
1996 (Act 33)	2,945,567
1999	2,943,906
2000	2,896,337
2002	2,863,452

Given that the juvenile population decreased after the enactment of Act 33 in 1996, it is notable that both the number of juvenile arrests and the juvenile arrest rates¹²⁶ in Pennsylvania were greater after the enactment of Act 33 than before, indicating the absence of a general deterrent effect. The average number of juvenile arrests per year from 1993-1995 was 103,008.¹²⁷ The average yearly juvenile arrest rate during that period was 3512.5.¹²⁸ The number of juvenile arrests in 1996 was 115,979.¹²⁹ The juvenile arrest rate that year was 3937.4.¹³⁰ The

121. Nat'l Ctr. for Juvenile Justice, *Persons Under Age 18 Population Trends*, Pennsylvania Electronic Juvenile Justice Databook, at http://ncjj.servehttp.com/padatabook/population.asp?County=5300&table=POPAGE1&hid_year=1996&hid_type=1&hid_perc=1&hid_trend=&Print=yes (last updated July 2003).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. The juvenile arrest rate for a given year is calculated based on the number of juvenile arrests in that year per 100,000 juveniles.

127. Nat'l Ctr. for Juvenile Justice, *Arrests by Age in State of Pennsylvania*, Pennsylvania Electronic Juvenile Justice Databook, at http://ncjj.servehttp.com/padatabook/arrest_trend.asp?County=5300&table=ARAGE&hid_year=1998&hid_type=1&hid_perc=&hid_trend=3&Print=yes (last updated July 2003).

128. *Id.*

129. *Id.*

130. *Id.*

number of juvenile arrests in 1999 was 106,997.¹³¹ The juvenile arrest rate that year was 3634.5.¹³² The number of juvenile arrests in 2000 was 107,284.¹³³ The juvenile arrest rate that year was 3704.1.¹³⁴ And, the number of juvenile arrests in 2002 was 105,397.¹³⁵ The juvenile arrest rate that year was 3680.8.¹³⁶ As Table 1.2 illustrates, juvenile arrest rates in Pennsylvania were higher after the enactment of Act 33 despite the increased propensity for transfer to the adult court.

Table 1.2: PA Juvenile Arrest Rates

Year	Arrest Rate
1993-95	3512.5
1996 (Act 33)	3937.4
1999	3634.5
2000	3704.1
2002	3680.8

Intriguing trends are also apparent with respect to the number of delinquency cases and the delinquency case rates¹³⁷ in Pennsylvania. As with juvenile arrest rates, delinquency case rates have not declined since the enactment of Act 33 in 1996, which likewise indicates the absence of a general deterrent effect. The average number of delinquency cases heard per year by Pennsylvania's juvenile courts from 1993-1995 was 34,839.¹³⁸ The average yearly delinquency case rate during that period was 1188.0.¹³⁹ The number of delinquency cases in 1996 was 35,619.¹⁴⁰ The delinquency case rate that year was 1209.2.¹⁴¹ The number of delinquency cases in 1999 was 40,763.¹⁴² The delinquency case rate that year was 1384.7.¹⁴³ And, the number of delinquency cases in 2000 was

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. The juvenile delinquency case rate for a given year is calculated based on the number of delinquency cases in that year per 100,000 juveniles.

138. Nat'l Ctr. for Juvenile Justice, *Most Serious Offense Disposed in State of Pennsylvania*, Pennsylvania Electronic Juvenile Justice Databook, at http://ncj.servehttp.com/padatabook/jcs.asp?County=5300&table=JCOFF_Total&hid_year=1996&hid_type=1&hid_perc=&hid_trend=&Print=yes (last updated July 2003).

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

41,773.¹⁴⁴ The delinquency case rate that year was 1442.3.¹⁴⁵ These figures show that delinquency case rates rose steadily in Pennsylvania despite the increased threat of transfer to the adult court.¹⁴⁶ Table 1.3, which follows, reflects this trend.

Table 1.3: PA Delinquency Case Rates

Year	Delinquency Case Rate
1993-95	1188.0
1996 (Act 33)	1209.2
1999	1384.7
2000	1442.3

Additionally, as with delinquency case rates in general, delinquency case rates for person offenses,¹⁴⁷ such as homicide, violent sex offenses, robbery, aggravated assault, simple assault, and nonviolent sex offenses,¹⁴⁸ did not decline in Pennsylvania after the enactment of Act 33 in 1996. This is especially indicative of the absence of a general deterrent effect, inasmuch as charges for person offenses are those most likely to be transferred to the adult criminal court.¹⁴⁹ The average number of delinquency cases for person offenses heard per year by Pennsylvania's juvenile courts from 1993-1995 was 9,612.¹⁵⁰ The average yearly delinquency case rate for person offenses during that period was 327.8.¹⁵¹ The number of delinquency cases for person

144. *Id.*

145. *Id.*

146. Post-2000 Pennsylvania statistics regarding yearly quantities of delinquency cases and yearly delinquency case rates are presently unavailable.

147. The juvenile delinquency case rate for person offenses for a given year is calculated based on the number of delinquency cases for person offenses in that year per 100,000 juveniles.

148. A person offense is a crime against the body of another human being. BLACK'S LAW DICTIONARY 886 (7th ed. 2000). The common-law person offenses were murder, manslaughter, mayhem, rape, assault, battery, robbery, false imprisonment, abortion, seduction, kidnapping, and abduction. *Id.*

149. See 42 PA. CONS. STAT. § 6355(e) (2000); 42 PA. CONS. STAT. § 6302 para. (2)(i) (2000) (defining "delinquent act"); 42 PA. CONS. STAT. § 6302 para. (2)(ii)(A)-(I) (2000) (defining "delinquent act"); 42 PA. CONS. STAT. § 6302 para. (2)(iii)(A)-(H) (2000) (defining "delinquent act"); 42 PA. CONS. STAT. § 6355(a)(4)(A)-(G) (2000); 42 PA. CONS. STAT. § 6355(g)(1)-(2) (2000).

150. Nat'l Ctr. for Juvenile Justice, *Most Serious Offense Disposed in State of Pennsylvania*, Pennsylvania Electronic Juvenile Justice Databook, at http://ncjj.servhttp.com/padatabook/jcs.asp?County=5300&table=JCOFF_Total&hid_ye ar=1996&hid_type=1&hid_perc=&hid_trend=&Print=yes (last updated July 2003).

151. *Id.*

offenses in 1996 was 8,991.¹⁵² The delinquency case rate for person offenses that year was 305.2.¹⁵³ The number of delinquency cases for person offenses in 1999 was 12,159.¹⁵⁴ The delinquency case rate for person offenses that year was 413.0.¹⁵⁵ And, the number of delinquency cases for person offenses in 2000 was 12,629.¹⁵⁶ The delinquency case rate for person offenses that year was 436.0.¹⁵⁷ These figures show that the delinquency case rate for person offenses rose in Pennsylvania despite the increased threat of transfer to the adult court.¹⁵⁸ Table 1.4, which follows, illustrates this trend.

Table 1.4: PA Delinquency Case Rates: Person Offenses

Year	Case Rate: Person Offenses
1993-95	327.8
1996 (Act 33)	305.2
1999	413.0
2000	436.0

The increased propensity for the transfer of juvenile offenders to the adult criminal court system in Pennsylvania has not had a general deterrent effect on juvenile offenders, as juvenile arrest rates and delinquency case rates, including delinquency case rates for person offenses, have not decreased in Pennsylvania since the implementation of Act 33.

V. Additional Policy Arguments Against the Increased Propensity for Juvenile Transfer

In addition to the fact that the increased propensity for the transfer of juvenile offenders to Pennsylvania's criminal court system has not had a general deterrent effect, there are other significant policy arguments against the increased propensity for juvenile transfer.

A. *Recidivism*

Relatively recent studies show that the harsher punishments

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Post-2000 Pennsylvania statistics regarding yearly quantities of delinquency cases for person offenses and yearly delinquency case rates for person offenses are presently unavailable.

inflicted upon juveniles by criminal courts have not deterred juveniles prosecuted in state criminal court systems from recidivating upon being released into society.¹⁵⁹ In fact, these studies show that after their release, juveniles prosecuted in state criminal court systems tend to reoffend sooner and more often than those prosecuted in the juvenile courts.¹⁶⁰ One such study was conducted by Columbia University researcher Jeffrey Fagan, who examined juvenile offenders in New York and New Jersey.¹⁶¹ Another was conducted by Northwestern University researcher Donna Bishop and her colleagues, who examined juvenile offenders in Florida.¹⁶²

The Fagan study compared fifteen and sixteen-year-old juveniles who were charged with robbery and burglary¹⁶³ in four similar communities in New York and New Jersey.¹⁶⁴ At the time of the study, these states had similar statutes for first and second-degree robbery and first-degree burglary.¹⁶⁵ However, in New York, the juveniles were prosecuted in the state criminal court system, while in New Jersey they were prosecuted in the state juvenile court system.¹⁶⁶ The sample of

159. *Does Treating Kids Like Adults Make A Difference?*, *supra* note 15. In addition to indicating that the increased propensity for juvenile transfer has not stunted recidivism, research suggests that juveniles convicted in state criminal court systems, particularly violent offenders, are more likely to be incarcerated and receive longer sentences than juveniles retained in state juvenile court systems. *Id.*

160. *Id.*

161. Jeffrey Fagan, *The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, 18 *LAW & POL'Y* 77 (1996).

162. Donna Bishop et al., *The Transfer of Juveniles to Criminal Court: Does it Make a Difference?*, 42 *CRIME & DELINQ.* 171 (1996).

163. Robbery is the illegal taking of property from the person of another, or in the person's presence, by violence or intimidation. *BLACK'S LAW DICTIONARY* 1066 (7th ed. 2000). Burglary is the breaking and entering of any building with the intent to commit a felony. *Id.* at 157.

164. Fagan, *supra* note 161, at 84-85. The study compared juveniles from two northern New Jersey counties with matched samples of juveniles from two counties in southeastern New York state. *Id.* at 84. The four counties are part of the same metropolitan area and regional economy, and have similar demographic, social, and cultural features. *Id.* at 84-85. The risk factors for juvenile delinquency are comparable in all four counties. *Id.* at 85.

165. *Compare* N.Y. PENAL LAW § 160.15 (McKinney 1995) with N.J. STAT. ANN. § 2C:15-1(a) and (b) (West 1995); *compare* N.Y. PENAL LAW § 160.10 (McKinney 1995) with N.J. STAT. ANN. § 2C:15-1(a) and (b) (West 1995); *compare* N.Y. PENAL LAW § 140.30 (McKinney 1995) with N.J. STAT. ANN. § 2C:18-2(a) and (b) (West 1995).

166. Fagan, *supra* note 161, at 86. Under the applicable New York statutes, juveniles charged with first or second-degree robbery and first-degree burglary were automatically excluded from the state juvenile court system and prosecuted in the state criminal court system. *See* N.Y. CRIM. PROC. LAW § 1.20(42) (McKinney 1995); N.Y. CRIM. PROC. LAW § 180.75(3)(a) (McKinney 1995). In New Jersey, on the other hand, these charges originated in the state juvenile court system. *See* N.J. STAT. ANN. § 2A:4A-24(a) (West 1995). In order to avoid dismissals prior to arraignment, the cases used in the study were

juveniles used in the study consisted of 400 robbery offenders and 400 burglary offenders who were randomly selected.¹⁶⁷

Fagan examined the recidivism rates of the juvenile offenders from New York and New Jersey after their release.¹⁶⁸ He found that while there were no significant differences in recidivism between burglary offenders prosecuted in the New York criminal court system and those prosecuted in the New Jersey juvenile court system,¹⁶⁹ there were notable differences in recidivism among robbery offenders.¹⁷⁰ Seventy-six percent of robbery offenders prosecuted in the New York criminal court system were subsequently re-arrested, as compared to only 67% of those prosecuted in the New Jersey juvenile court system.¹⁷¹ Moreover, 56% of those prosecuted in the New York criminal court system were subsequently reincarcerated, while only 41% of those prosecuted in the New Jersey juvenile court system were reincarcerated.¹⁷² And, those prosecuted in the New York criminal court system who reoffended did so sooner after their release than those prosecuted in the New Jersey juvenile court system.¹⁷³

Similar results were evident in the Bishop study. Bishop compared the recidivism rates of 2,738 juvenile offenders who were transferred to the criminal court system in Florida with a similarly situated group of non-transferred juveniles.¹⁷⁴ The study revealed that although juveniles

selected only after charges were formally filed in the New York criminal courts and the New Jersey juvenile courts, respectively. Fagan, *supra* note 161, at 88.

167. *Id.* A multi-stage sampling procedure resulted in random samples of 200 juvenile offenders from each of the New York and New Jersey counties involved in the study. *Id.*

168. *Id.* at 91-98.

169. *Id.* at 92. Precisely 80.9% of the burglary offenders prosecuted in the New York criminal court system were subsequently re-arrested, as compared to 81.3% of those prosecuted in the New Jersey juvenile court system. *Id.*

170. *Id.*

171. *Id.* Moreover, 91% of the juvenile robbery offenders who were sentenced to incarceration in the New York criminal court system were re-arrested, as compared to only 73% of the robbery offenders who were sentenced in the New Jersey juvenile court system. *Id.* at 93. And, only 64% of the robbery offenders who were sentenced to probation in the New Jersey juvenile court system were re-arrested, while 81% of the robbery offenders who were sentenced in the New York criminal court system were re-arrested. *Id.*

172. *Id.* at 92.

173. *Id.* at 94. The amount of time that elapsed prior to the re-arrest of robbery offenders sentenced in the New Jersey juvenile court system was over 50% longer than for robbery offenders sentenced in the New York criminal court system (631 versus 392 days). *Id.*

174. Bishop, *supra* note 162, at 176. To ensure that the group of transferred juveniles was equivalent to the nontransferred juveniles, the Bishop study sampled the nontransferred juveniles and then employed a matching procedure to control for the seriousness of the transfer offense, number of charges, number of prior offenses, severity of prior offenses, and sociodemographic characteristics, such as age, gender, and race.

prosecuted as adults were more likely to be incarcerated, and incarcerated for a longer time, than those who remained in the state's juvenile court system,¹⁷⁵ they also had a higher recidivism rate.¹⁷⁶ Within two years, they were more likely to reoffend,¹⁷⁷ to reoffend earlier,¹⁷⁸ and to commit more serious subsequent offenses¹⁷⁹ than juveniles prosecuted in the juvenile courts.

B. *Developmental Psychology*

The increased propensity for juvenile transfer to state criminal court systems is rash in light of the psychological development of most juveniles. Researchers have examined the effects of criminal prosecution and incarceration on juveniles from a developmental perspective.¹⁸⁰ They conclude that because juvenile offenders are in a psychologically formative period of their lives, exhibit low levels of adjudicative competence, and are generally less culpable than adult criminals, the increased propensity for juvenile transfer is, in most cases, unsound public policy.¹⁸¹

Juvenile transfer to state criminal court systems is unwise in light of three interrelated aspects of the psychological formation of juveniles.¹⁸²

Id. at 175.

175. *Id.* at 183.

176. *Id.* The group of juveniles transferred to the Florida criminal court system recidivated at a higher rate than the nontransferred juveniles in all seven classes of offenses that were included in the study. *Id.*

177. *Id.* at 182. Of the transferred juveniles, 30% were rearrested within two years after their release, compared to 19% of the matched juveniles who were not transferred. *Id.*

178. *Id.* For those transferred juveniles who reoffended, the average time that elapsed between their release and reoffending was 135 days, while for the nontransfer group it was 227 days. *Id.*

179. *Id.* Of the transferred juveniles who were rearrested, 93% of the rearrests were for felony offenses. *Id.* Of the nontransferred juveniles who were rearrested, 85% of the rearrests were for felony offenses. *Id.* at 182-83.

180. See Laurence Steinberg, *A Developmental Perspective on Serious Juvenile Crime: When Should Juveniles be Tried as Adults?*, 63 FED. PROB. 52 (1999); see also David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision Making*, 14 STAN. L. & POL'Y REV. 13 (2003); JULIUS SEGAL, *A CHILD'S JOURNEY: FORCES THAT SHAPE THE LIVES OF OUR YOUNG* 46-49 (McGraw-Hill Book Co., Inc., 1978).

181. See Arredondo, *supra* note 180, at 16-17; Steinberg, *supra* note 180, at 57. Steinberg proposes that for purposes of juvenile transfer, juvenile offenders should be grouped into three categories: juveniles (individuals under age thirteen), who should not be prosecuted in adult courts; adults (individuals age seventeen and older), who should; and youths (individuals between the ages of thirteen and sixteen), who may or may not be developmentally appropriate candidates for transfer depending on their individual characteristics and circumstances. *Id.*

182. *Id.* at 53.

First, the stage in life during which juveniles are most likely to be transferred, adolescence, is a transitional time, during which there are rapid and dramatic changes in the physical, emotional, and social capabilities of juveniles.¹⁸³ Second, adolescence is a period of great adaptability, during which a juvenile's experiences in the family, peer group, school, and other settings are highly likely to influence the course of his development.¹⁸⁴ And third, adolescence is a period during which many developmental characteristics become well-established and increasingly difficult to alter.¹⁸⁵ Taken together, these factors imply that the increased propensity for juvenile transfer to the adult criminal courts, and incarceration in adult facilities, is imprudent because it forecloses the possibility that psychologically flexible juvenile offenders will receive the treatment necessary to prevent them from reoffending.¹⁸⁶

With respect to adjudicative competence, there is ample evidence to suggest that adolescents under the age of fifteen are not competent to participate in criminal trials.¹⁸⁷ Many juveniles have serious troubles assisting counsel, entering pleas, and considering plea bargains in the criminal courts.¹⁸⁸ These realities indicate that the increased propensity for juvenile transfer is unsound policy.¹⁸⁹

Finally, the increased propensity for juvenile transfer is ill-advised because juvenile offenders are generally less culpable for their crimes than adult criminals.¹⁹⁰ A person is culpable for the commission of a crime if he committed the crime purposely, knowingly, or recklessly, and

183. Arredondo, *supra* note 180, at 14. Other than during infancy, there is probably no period of human development that involves more rapid or pervasive transformations in individual capabilities than adolescence. See DIANE E. PAPALIA, *A CHILD'S WORLD: INFANCY THROUGH ADOLESCENCE* 563-64 (McGraw-Hill Book Co., Inc., 1975).

184. Arredondo, *supra* note 180, at 14. Unlike infancy, a period during which human development is influenced primarily by biology, and unlike adulthood, by which time most intellectual, physical, emotional, and social development is complete, adolescence is a period during which development is heavily influenced by changes in the environment. Steinberg, *supra* note 180, at 53.

185. Arredondo, *supra* note 180, at 14. Events that occur in adolescence often have a significant impact on adulthood, including events related to physical health, family formation, and interpersonal relationships. See PAPALIA, *supra* note 183, at 538-39.

186. Steinberg, *supra* note 180, at 57. Steinberg emphasizes that it is not possible to draw generalizations about the likelihood of juvenile rehabilitation as a function of the offender's age. *Id.* As such, he staunchly opposes laws that prevent transfer decisions from being made on a case-by-case basis. *Id.*

187. *Id.* at 55. Among individuals age fifteen and younger, scores on standardized adjudicative competence tests generally fall into the range in which competence is deemed questionable by experts. *Id.*

188. *Id.*

189. *Id.* Steinberg contends that no juvenile under the age of thirteen is competent to stand trial in a criminal court, and that the competence of juveniles between the ages of thirteen and seventeen should be determined on a case-by-case basis. *Id.*

190. Arredondo, *supra* note 180, at 14.

with some correlative ability to form reasonable expectations of the potential consequences of his actions.¹⁹¹ Most juveniles do not exhibit these characteristics before the age of twelve, and some do not exhibit them even at the age of seventeen.¹⁹² Because juveniles tend not to exhibit these characteristics, they are less culpable for their crimes than adult criminals and, therefore, the increased propensity for juvenile transfer to state criminal court systems, which has caused harsh penalties to be inflicted upon juveniles, does not constitute sound public policy.¹⁹³

VI. Conclusion

Historically, the juvenile courts have existed to intervene when children are accused of committing crimes, and in so doing to help rehabilitate children in need.¹⁹⁴ However, many Americans have recently begun to support prosecuting juvenile offenders in state criminal court systems rather than in the juvenile courts.¹⁹⁵ By supporting state statutes that make it easier to prosecute juveniles in state criminal court systems, Americans operate under the broad assumption that placing juveniles in criminal courts will create a general deterrent effect on juvenile offenders, which will, in turn, protect the public by causing a reduction in juvenile crime rates.¹⁹⁶

Unfortunately, the increased propensity for juvenile transfer in Pennsylvania, which came in the form of Act 33,¹⁹⁷ has failed to create a general deterrent effect, inasmuch as juvenile arrest rates and delinquency case rates, including delinquency case rates for person offenses, have not decreased in Pennsylvania since the implementation of Act 33.¹⁹⁸ Moreover, two recent studies reveal that the harsher

191. See BLACK'S LAW DICTIONARY 314 (7th ed. 2000). Also, culpability sometimes implies certain capabilities that are interpersonal or emotional in nature, including the ability to control impulses, to manage behavior when pressured by others to violate the law, and to avoid potentially problematic situations. Steinberg, *supra* note 180, at 56. Very little is known about the development of these social and emotional capabilities in juveniles. *Id.*

192. *Id.* Moreover, few individuals demonstrate adult-like psychological maturity and, consequently, adult-like judgment before age seventeen. *Id.*

193. *Id.* at 57. Steinberg proposes that when a juvenile is prosecuted in a state criminal court system, developmentally-normative immaturity should be added to the list of possible mitigating factors, along with self-defense, mental state, and extenuating circumstances. *Id.*

194. See RUBIN, *supra* note 24, at 54.

195. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 20, at 89.

196. *Does Treating Kids Like Adults Make A Difference?*, *supra* note 15.

197. 1995 Pa. Legis. Serv. Act 1995-33 (West).

198. See generally Nat'l Ctr. for Juvenile Justice, Pennsylvania Electronic Juvenile Justice Databook, at <http://ncjj.servehttp.com/padatabook> (last updated July 2003) (illustrating the lack of reduction in juvenile crime rates in Pennsylvania after the

punishments inflicted upon juveniles by criminal courts have not deterred juveniles prosecuted in state criminal court systems from recidivating upon being released into society.¹⁹⁹ Further, researchers assert that the increased propensity for juvenile transfer is perilous in light of the psychological development of most juveniles.²⁰⁰

Taking into account these policy arguments, Pennsylvania should repeal the 1996 amendments to its Juvenile Code, which were created by Act 33, and thereby restore a lower propensity for juvenile transfer to its criminal court system. Doing so will show that Pennsylvanians have not given up on the juvenile courts nor lost faith that troubled young people are capable of rehabilitation. In the words of one Pennsylvania court:

[When loss is caused by a juvenile], moral outrage causes us to cry out for a punishment that satisfies the moment, and which hopefully satisfies our anger at our loss. However, it is that same sense of morality and character that demands a dispositional determination that both befit the unconscionable behavior of [the juvenile] and the requirements of the law. The guiding tenet of our judicial process requires that we respond in a manner that, while it may not seem fair or satisfactory to some, fulfills the mandates of justice.²⁰¹

enactment of Act 33).

199. See Fagan, *supra* note 161, at 100; Bishop, *supra* note 162, at 183.

200. See, e.g., Steinberg, *supra* note 180, at 57.

201. In re Clarke, 61 Pa. D. & C.4th 263, 279 (Pa. Com. Pl. 2003).