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The Border of Juveniles and Criminal Justice

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Many would argue that moving away from and then moving back to treating juveniles as adults in criminal court, demonstrates that society has come full circle with beliefs about juvenile accountability and punitive justice. Juvenile transfers (juveniles transferred to adult court from juvenile court) exemplify this movement. For many, juvenile transfers are a necessity, not only within society, but also in the court system and in the name of justice. For others, juvenile transfers to criminal court, shows society's inability to understand the psychological needs and the overall well-being of juveniles. This paper sought to evaluate the cost and utility of juvenile transfer policies. Although these transfer policies were discussed at a nationwide level, consideration of transfer policies within the State of Washington was also presented to demonstrate how transfer policies were being utilized within the author's state of residence. Conclusions based on how different types of transfer policies should be evaluated, and what the different evaluations suggested, led to the understanding that there is not a clear and direct answer regarding the cost and benefits of transfer policies. Based on the evidence presented in the essay, an argument for further exploration of blended systems was advocated. Preliminary findings of blended systems showed a compromise between those who sought punitive punishment and those who sought to rehabilitate juveniles.

Keywords: juvenile court, juvenile justice, criminal justice, juvenile transfer, blended systems

Many argue that the juvenile system has come full circle in how it deals with its population of young offenders. The juvenile system has moved from being nonexistent and treating juveniles in much the same light as adults, to a separate system, which emphasizes rehabilitation, treatment, and education, and now back to holding the most serious and chronic offenders to the same standards as adult offenders. Treating juveniles as adults is accomplished by transferring the specific juvenile to criminal court, thus allowing for adult sanctions. This essay seeks to evaluate the overall cost and utility of transfer policies. The background information provided will give light to the treatment of juveniles throughout the last 100 years, as well as the differences between juvenile and court systems, and different types of transfer policies.

How transfer policies have been implemented on a national level, and how the laws operated within the State of Washington, will be considered in this paper. How to evaluate transfer policies, whether on a legal, empirical, or on a psychological level is assessed to demonstrate how they look better in one light and much worse in another. Finally, an argument for blended systems is put forward, which provides a compromise between the need for punitive punishment and the ideals of rehabilitation within the juvenile courts.

History of Juvenile Justice in the United States

Understanding the history of anything is important when trying to understand its current state of being. Not only does

history provide a chronological order of events, but history also assists in reflecting on the current thought process of society. The juvenile justice system in the United States is no exception to this concept. The evolution of the juvenile justice system not only paints a picture of what society deems acceptable in the treatment of juveniles, but it also demonstrates which ideals have been kept and which have been discarded. This section seeks to provide a brief account of the juvenile justice system in the United States to demonstrate how we have come full circle in our treatment of juveniles. This section will also show that even though the creators of the juvenile justice system sought to be separate from the criminal system, ensuring juveniles were rehabilitated rather than punitively punished, these ideals were never fully developed and a clear distinction between the systems was never clearly established.

Treatment of juveniles in a punitive fashion is far more common than not. Dating back to the 14th Century, courts have used numerical age to determine culpability of criminal acts (Tanenhaus, 2000). Under common law jurisdiction juveniles under the age of seven were immune to criminal prosecution. Tanenhaus (2000) noted that children in that age bracket were presumed to be incapable of having any real capability to commit criminal acts. Juveniles aged seven to fourteen were presumed to be incapable of intent to commit serious criminal acts. The caveat to this, however, according to Tanenhaus (2000), is that juveniles in this age bracket were able to be tried as adults if the court saw fit. He also noted that once juveniles became fourteen years of age and older, they were presumed to be adults under the law and were tried as such.

The Illinois Juvenile Court Act (1899) would demonstrate a change in how some experts thought juveniles should be dealt

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with (Bartol & Bartol, 2009). According to Bartol and Bartol (2009), this act created the juvenile court system and established this system's jurisdiction over delinquent, neglected, and dependent children. More important to this discussion, they posited that the Act provided a basis for the Progressive Era to place greater emphasis on rehabilitative initiatives, rather than punitive punishment. Also important to the discussion of forming a juvenile justice system in the United States is the establishment of the fundamental distinction between juveniles and adults. Bartol and Bartol (2009) also noted that those who believed and supported the Progressive movement, thought many juveniles would benefit from a more informal, less stigmatizing system. They further noted that this system was operated under the *parens patriae* model, which suggests a need for the state to take over the parental role and teach delinquent juveniles the proper way to behave (see also Tanenhaus, 2000).

The rehabilitative process of the Progressive Era continues, but has been bombarded by the constant pull of the criminal court system and the need for punitive punishment pushed by public and political pressures. The push pull relationship between the juvenile and criminal system really began to take shape when the United States Supreme Court began granting to juveniles the due process rights that were normally afforded to those only in criminal court (Bartol & Bartol, 2009). Such rights were previously only awarded in criminal court, because of the juvenile justice system's continuous attempt to keep the process as informal as possible (Bartol & Bartol, 2009).

Two significant cases brought juvenile due process rights to the forefront. First, *Kent v. United States* (1966) provided new guidelines for transfers from juvenile court to criminal court and also focused on establishing a concept of what was procedurally fair with respect to the parental model of the juvenile system (Tanenhaus, 2000). What may be most important to this discussion is that *Kent* brought attention to the study of juvenile transfers among criminologists (Tanenhaus, 2000). The second Supreme Court case, that is note worthy in the due process rights of juveniles, is *In re Gault* (1967). In this case, the Supreme Court ruled that juveniles should enjoy the right to an attorney, the right to confront, as well as cross-examine witnesses, and the right to not incriminate themselves (Bartol & Bartol, 2009).

The "get tough" movement would bring society full circle in the treatment of juveniles in a punitive fashion, as well as continue the push and pull relationship that currently exists between the juvenile and criminal justice systems. This movement provided a basis to do away with the rehabilitative efforts, which had been advertised to be ineffective in many notable works, including, "Nothing Works Doctrine." Following such works, as well as the public's perception of the emergence of the super predator, many states would expand their statutes in order to transfer more juveniles who were committing the most serious crimes, reached a certain age bracket, committed an offense that is excluded from juvenile jurisdiction, or were constant recidivists (Department of Justice, Office of Juvenile Justice & Delinquency Prevention [OJJDP], 1997).

Juvenile System vs. Criminal System

The juvenile and criminal systems are quite different within their structures. Both the juvenile and criminal justice systems

seek the same end goal (crime reduction), but the paths to the end goal are unique in each system. The juvenile system seeks to keep the young offender as the center of concern, while the criminal system emphasizes punitive punishment and accountability. This section seeks to demonstrate general differences between the juvenile and criminal justice systems.

According to Kupchik (2006), the juvenile justice system is an informal system which seeks to rehabilitate delinquents following specific standards of treatment and decision making based on age. He further posited that rehabilitative efforts of the juvenile courts sought to take delinquents and provide them with tools to seek a pro social and moral lifestyle. The individual needs of each juvenile are seen as the top priority of this system, rather than following adversarial rules and procedures (Kupchik, 2006).

Kupchik (2006) also postulated that the criminal system, on the other hand, was very formal in its processes and sought to punish criminals by following adversarial and due process laws through interactions from court room actors. He believed that judges, prosecutors, defense attorneys, administrative staff, juries, and outside personnel interacted in a cooperative fashion to get criminals in and out of the system as quickly and efficiently as possible without violating individual rights and liberties. He also believed that the individual needs of criminals were not the focus of the criminal system, as it was an offense-based system. The degree of punishment was not based on the character of the offender as much as the offense which was committed (Kupchik, 2006).

Different Types of Juvenile Transfers

There are numerous avenues taken to move jurisdiction from juvenile court to criminal court. The criminal court is also afforded the opportunity to move jurisdiction back to juvenile court when it is thought that the person would be better served there. This portion of the essay seeks to identify the different types of transfers that exist.

Judicial transfer/judicial waiver. Most states have some form of judicial waiver process that is utilized within their juvenile justice system (Dawson, 2000). In a judicial waiver, a judge may choose to move jurisdiction from a juvenile to a criminal court (Feld, 1981). There are three main considerations that a judge takes into account before the juvenile is waived to criminal court. The first is the juvenile's age. Many states have some sort of age requirement that needs to be met before juveniles can be waived to criminal court by a judge. According to Dawson (2000), in most states, this age is 17 or 18 years, with only three states with the age set at 16 years. He noted that the age of the juvenile at the time of the offense was generally considered to be the boundary age, with only a few states referring to the age of the juvenile as the time in which the court proceedings began. Feld (1981) noted that the second consideration of the judge in a judicial waiver proceeding was the juvenile's ability to be rehabilitated by the juvenile system. He further noted that this consideration brought about much debate as to "what works" in rehabilitating both juveniles and adults alike (p. 503).

Finally, Feld (1981) postulated that judges must evaluate whether or not the juvenile was going to be a danger to society.

He noted that, with this, the judge will consider previous offenses or seriousness of actions of juveniles in the context of public safety. He further noted that if the offender was a chronic offender or participated in a serious crime, the judge could move for jurisdiction to be moved to criminal court. Feld (1981) believed that, for chronic recidivists, there was some sort of understanding that the judge would be able to predict the future actions of juveniles and those actions were far too serious for the juvenile justice system to handle. He also believed that juveniles were transferred more under the concept of being a danger to society, than their ability to be rehabilitated.

Legislative or statutory exclusions. Legislative and statutory exclusions place automatic jurisdiction of a juvenile into criminal court based on the severity of the offense or the offender's prior record (Feld, 1981). In this type of waiver, a juvenile offender never goes before a judge for a transfer hearing or sees juvenile court. Juveniles who commit a specific offense or who are constant recidivists are sent directly to criminal court (Feld, 1981).

Legislative and statutory exclusions take the focus off the offender and place it on the offense and the prior record of the offender, or a combination of both (Feld 1981). Although this sort of thinking is counterintuitive to the juvenile system, legislative and statutory exclusions allow for retribution and incapacitation of those who commit the most serious acts or are chronic offenders (Feld, 1981).

Direct file/prosecutorial transfers. Direct file and prosecutorial transfers serve as yet another way in which juvenile jurisdiction can be moved from the juvenile justice system to the criminal court system. In roughly 15 jurisdictions, depending on the offense and the juveniles, prosecutors are given the ability to file charges in either system (Dawson, 2000; McCarthy, 1993). Dawson also noted that under this provision, the prosecutor was the sole decision-maker as to which jurisdiction charges would be filed. He further noted that the defendant, defense attorney, and juvenile judges had no right to participate in this process. In essence, the jurisdiction of juvenile courts was considerably limited under this type of transfer.

Reverse waivers. Roughly 23 jurisdictions have some type of reverse waiver (Dawson, 2000). In its most basic form, juveniles who are not of age to be tried in criminal court, but are being tried in criminal court because of exclusions, may be transferred to juvenile court jurisdiction (Dawson, 2000; McGowan et al., 2007). Such transfers take place when the criminal court finds it inappropriate for the offender to be tried as an adult (McGowan et al., 2007).

Furthermore, Dawson (2000) noted that although reverse waivers offer some sort of individualized treatment of juveniles in criminal court, these waivers were not easy to secure. He noted that the burden of proof was set on the side of the defendant and his/her attorney. Therefore, the defense must prove that the juvenile will not be adequately served by the criminal court and will be better served in the juvenile court (Dawson, 2000).

Blended systems. In the most basic form, blended systems offer an opportunity for juvenile and criminal systems to work hand in hand. Currently, 15 states offer juvenile blended systems, while 17 states offer criminal blended systems (Griffin, 2003). Within the concept of the blended system, the juvenile

may be sentenced in juvenile and criminal courts (McGowan, et al., 2007). This alternative to the above waivers allowed for juvenile treatment with a potential criminal sanction, if the juvenile did not follow the treatment plan or if there were re-offenses (Dawson, 2000).

Blended systems also offer a reevaluation of the disposition at a later time to determine if there is some reason for the juvenile to be placed in the criminal court system (Dawson, 2000). In whatever capacity, the blended system offered juveniles one last chance to be treated under juvenile jurisdiction before being placed in the criminal court setting (Dawson, 2000).

How Transfer Policies have been Implemented

The all around effects of transfer laws on the juvenile and criminal justice system can differ from jurisdiction to jurisdiction leaving much of the variance due to different types of implementation. The purpose of this section is to look at how transfer laws have been implemented in different states. Looking at Wisconsin, New Mexico, and Minnesota, there is an ability to see three very different types of transfer laws. Transfer policies in these states will be discussed in detail, with respect to the legislation itself, as well as the impact of the new legislation.

Wisconsin. Torbet, Griffin, Hurst, and MacKenzie (2000) noted that, in response to the increase in visible juvenile crime, Wisconsin lowered the age of adulthood from 18 to 17 years of age. They also noted that, in the same policy, the age at which the juveniles could be brought under juvenile court jurisdiction changed from 12 to 10 years of age. Aside from creating uniformity among neighboring states, the overall goal of this transfer policy was to increase accountability among the older juvenile offenders, as well as make resources more readily available to Wisconsin's younger juvenile population (Torbet et al., 2000).

Moreover, Torbet et al. (2000) noted that once the age was lowered, it decreased the number of youth eligible for adjudication in Wisconsin's juvenile court by 12%. They further noted that even with lowering the age in which the juvenile could be brought into the juvenile justice system, the work load in the juvenile system decreased significantly with the new transfer policy. Wisconsin's work load in the criminal system increased significantly, increasing the jail population by 40% between 1996 and 1997 and increasing the prison population by 70% between 1995 and 1997 (Torbet et al., 2000).

According to Torbet et al. (2000), the policy and programming for prisons and jails and the juvenile system, in Wisconsin, saw significant impact. They noted that many suggested this transfer policy may have relieved the juvenile population, as intended, but passed additional constraints to criminal court. They further noted that the criminal court experienced issues in trying to accommodate the educational and treatment needs of the young criminals. In addition, Torbet et al. (2000) noted that the probation and public defenders expressed difficulty in working with these young offenders because of their immaturity and dependence on their parents. Finally, they postulated that those in the juvenile system felt frustrated in their attempts to assist a younger juvenile population because resources did not materialize as intended.

New Mexico. New Mexico took a different approach to the implementation of transfer laws than Wisconsin and every other state in the Union. New Mexico's unique policies sought to repeal the judicial waiver and grant power to judges in juvenile court to impose either juvenile or criminal sanctions (Torbet et al., 2000). This policy also excluded juveniles aged 15-17 years from juvenile jurisdiction for first degree murder, as well as giving the title of "youth offender" to those aged 14-17 years who committed certain felony offenses (Torbet et al., 2000, p. 9).

New Mexico's drastic policies saw many implementation issues, as well as having significant impact on both justice systems. In regards to implementation, there was no training, no new resources allocated, and no new programs implemented to assist the affected juveniles and corresponding court systems (Torbet et al., 2000). In all reality, those who had to actually work with the program were left with little to no resources to handle the differing case loads.

The impact of this new legislation was felt on every level. Torbet et al. (2000) posited that there was much confusion in how to properly detain juveniles prior to trial, as well as who fit into the categories of juvenile, "youth offender", or adult (p. 9). They noted that there was a lacking in uniformity depending on urban or rural setting, as well as increased plea bargaining from prosecutors by juveniles who feared criminal sanctions. They further noted that those sentenced under the youthful offender status were predominantly Hispanic males and they were sentenced to straight prison terms. Additionally, there was confusion and frustration with judges and their lack of confidence in the new system, as well as with other staff in regards to lack of training, resources, and inability to deal with the new offender population (Torbet et al., 2000).

Minnesota. In 1994, Minnesota created new legislation expanding its abilities to try juveniles in criminal court. Under a blended system model, Minnesota sought to provide juvenile offenders who committed a serious offense or who were repeat offenders a "last chance" option to stay under juvenile court jurisdiction (Torbet et al., 2000, p. 10). With the Extended Juvenile Jurisdiction (EJJ), Minnesota provided for compromise between the need for punitive punishment and the last efforts to keep the juvenile in a rehabilitative model (Torbet et al., 2000).

Although this new policy sounds good in theory, there were some serious implementation and impact issues. Torbet et al. (2000) noted that, in regards to implementation, the lag time in enacting these new policies had an effect on funding in the next year. They also noted that the lack of community planning allowed for much confusion among those who would have been using it. They further noted that case processing was impacted by the new legislation, in regards to those who were chronic recidivists and those who committed serious crimes. Torbet et al. (2000) further postulated that each district saw serious or chronic offending in a different light, leveling the community at risk. They also noted that case processing also saw a significant increase in plea bargaining when EJJ status was used to plea down from criminal sanctions.

Sentencing and correctional systems felt significant impact with the new legislation. According to Torbet et al. (2000), in regards to sentencing, there was a great difference between urban and rural judge's decisions to place juveniles under EJJ ti-

tle, 2% vs. 28%, respectively. They noted that placement issues for juveniles under EJJ title were also evident. In terms of corrections, there were issues in implementing proper services for both juvenile and adult settings, as well as license and safety issues with the EEJ in either setting (Torbet et al., 2000).

Washington State and Juvenile Transfers

As many other states have in the last 20 years, Washington State has formalized transfer laws for juveniles whose crimes warranted criminal intervention. Formalization of transfer laws in Washington State have sought to single out juveniles who committed the most serious crimes, who were chronic recidivists, as well as those who were unable to be properly treated under the rehabilitative model of the juvenile justice system. Evaluation and analysis of transfer laws in Washington State will be discussed in this section.

Housed under a division of the state supreme court and one of the most structured courts in the country, Washington State's juvenile justice system developed the get tough movement and increased punitive punishments for young offenders (Leib, Fish, & Crosby, 1994). Beginning in 1977 with the Juvenile Justice Act, Washington State began to place more emphasis on legislature-authorized punishments (Barnoski, 2003). These punishments were structured with sentencing grids, as done in the criminal court, allowing for sanctioning such as mandatory minimums, as well as safe guards such as administrative guidelines (Barnoski, 2003). The use of sentencing grids offers advantages to the courts by providing guides to imposing punishment as well as making sure punishments are fair across the board. Although there are guidelines to make punishments fair, they do take away from the individuality that other types of waivers may offer.

According to Barnoski (2003), expanding punitive punishment for juveniles would continue in Washington State through the 1990's with legislation taking place in 1994 and 1997. He further noted that, in the 1994 legislation (the Violence Reduction Act) jurisdiction was given to criminal court for 16- and 17-year-olds who committed specific violent acts. Legislation, which took place in 1997, expanded the instances where juveniles could be transferred to criminal court from juvenile court (Barnoski, 2003).

Washington State employs two forms of transfers from juvenile to criminal court. Barnoski (2003) noted that the first was through the *discretionary transfer of jurisdiction*. The discretionary transfer of jurisdiction was similar to the prosecutorial transfer described above. He also noted that in this type of transfer the prosecutor could move to have jurisdiction waived in juvenile court, placing jurisdiction in the hand of criminal court. According to Barnoski (2003), the second form of transfer used in Washington State was the *automatic transfer of jurisdiction*. This type of transfer is similar to legislative or statutes exclusions as described above. He noted that the *automatic transfer of jurisdiction* provided juveniles aged 16 to 17 years with direct placement into criminal court for serious and violent crime. He further noted that serious violent crimes were a part of automatic transfer to criminal court. These included murder, rape of a child in the first degree, and violent felony with allegation of use of a firearm (Barnoski, 2003).

Although both types of transfer waivers sought to place juveniles into criminal court, targeting the most serious and chronic offenders, the reality was that the demographics and amount of persons sent to criminal court was quite different under each transfer mechanism. Barnoski (2003) noted that discretionary transfer of jurisdiction sought to target offenders who the prosecuting attorney saw fit to place in criminal court. He also noted that this was more of an abstract type of transfer, where the decision about who stayed in juvenile court and who went to criminal court was left up to the prosecuting attorney. He further noted that such cases consisted of violent and non-violent offenses, with some offenders on the higher side of recidivism rates. Furthermore, Barnoski (2003) postulated that *automatic transfer of jurisdiction* was a more structured type of transfer, which had a specific criterion that needed to be met before the juvenile could be placed in criminal court. He believed that this type of transfer sought to single out juveniles who were 16 to 17 years of age. Once juveniles reached this specific age group, they had to commit one of the serious violent crimes that enjoyed the liberty of the automatic transfer (Barnoski, 2003).

Juvenile violent crime trends in Washington State matched trends at a national level. Barnoski (2003) noted that, at the national and state level, juvenile violent crime arrest rates peaked in 1994 and then began a steady decline through the turn of the century. He further noted that automatic transfer rates of violent offenders in Washington State also mirrored this trend. Barnoski (2003) posited that although transfer rates increased dramatically after the 1994 and 1997 legislation, which allowed more juvenile violent crime into criminal court jurisdiction, the increase had remained stable, but decreased slightly in 2002. He also posited that cases transferred under the discretionary model have decreased significantly since the enactment of automatic transfers.

The 1994 and 1997 legislation changed the characteristics of who was being transferred to criminal court. With the automatic transfer legislation more juveniles aged 16 years have been transferred to criminal court (Barnoski, 2003). There was an increase in the transfer to criminal court of females and Whites, while there was a 9% decrease in Blacks being transferred to criminal court (Barnoski, 2003).

According to Barnoski (2003), characteristics of confinement, costs, and other related topics have also changed with the new legislation in Washington State. He noted that although conviction rates had been lowered, confinement rates had increased. He further noted that minimum lengths of confinement had increased, as well as longer sentences for juveniles convicted of serious violent crimes. Finally, the costs of housing juveniles had increased with this legislation (Barnoski, 2003).

A final note about Washington States legislation, with regards to transfer policies, is recidivism rates. Early results of juvenile transfers to criminal court showed neither an increase nor a decrease in recidivism rates (Barnoski, 2003). What this may indicate is a greater importance placed on retribution and the public's need for punitive punishment, rather than on effective crime control and reduction practices. This assertion should be cautioned though, as the full effect of the new legis-

lation has yet to be seen. Juveniles in criminal court are incarcerated far longer than those in juvenile court, thus it will take time for the full effects of the legislation to be seen and understood (Barnoski, 2003).

Costs and Benefits Associated of Juvenile Transfers

Considering the costs and benefits of transfers of juveniles into criminal court is an important element in understanding this policy's full effect. Demonstrating the costs and benefits explains what is useful and what is not when it comes to transfers of juveniles to criminal court. With such explanations, we are able to see how we can improve or change to better serve juveniles and society alike. This section seeks to demonstrate a few of the costs and benefits associated with transfer policies.

The costs and benefits of transfer policies can be hard to sort out. Whereas one area seems like a cost, it may also be a benefit depending on which way a person looks at it. Monetarily speaking, it is cheaper to house juveniles in adult correctional facilities than in juvenile facilities (Fass & Pi, 2002). Does this mean that juvenile facilities should be abolished? In terms of immediate out of pocket cost, this is possibly so. Nevertheless, there are other factors to consider when making the argument for or against transfer policies.

Other factors, such as the development of the juvenile, should be taken into account when considering the cost and utility of transfer policies. The juvenile system allows for a juvenile's developmental needs to be taken into account where the adult system does not (Scott & Steinberg, 2008). Within the juvenile system, there are educational, therapeutic and other intensive programs that, when implemented properly, have been shown to have a positive effect on young offenders (Scott & Steinberg, 2008). In short, for many, transfer policies are seen as a policy that undermines the entire concept of being a juvenile and, in turn, the juvenile system.

Ignoring the developmental needs of juveniles can have consequences that are not fully understood. Scott and Steinberg (2008) argued that proportionality and an understanding of the juveniles' developmental capabilities should be used to determine punishing young offenders, rather than transfers to a court system where, in theory, little is known about the juvenile offenders' needs. In essence, it is suggested that there are no good reasons to send juveniles to criminal court, as they should have the opportunity to be rehabilitated in the ideal juvenile system.

The overall welfare of juveniles in adult correctional facilities is another important factor to be considered when looking at the utility of transfer policies. Redding (2003) painted a bleak view of how juveniles were being treated within adult correctional facilities. He noted that juveniles that were being housed in adult facilities were at greater risk for suicide, as well as sexual and physical abuse from other older inmates, as compared to those housed in juvenile facilities. Statistically speaking, he further noted that juveniles were five times more likely to be abused sexually and twice as likely to be abused with a weapon or assaulted by a correctional staff in adult facilities. In addition, juvenile inmates reported a need to become more violent in order to survive and to adjust (Redding, 2003).

On the other side of the coin, many see transfer policies as a twofold necessity. First, many argue that the juvenile system is not equipped to handle the tough cases (e.g., murder, rape, etc.); hence transfers are a must (Zimring, 2000). Transfers allow for the juvenile system to treat juveniles who are amenable to treatment, while excluding those who either commit a serious offense or those who are repeat offenders (thus not amenable to treatment) (Zimring, 2000).

The second major reason for transfer policies is the public's perception that justice is being done and their safety insured. With the general public's thoughts being driven by policies of just deserts and punitive punishments, it is only natural that the public will not be as accepting of rehabilitative methods that the juvenile justice system emphasizes. Thus, punitive punishment and incapacitation of juveniles who meet transfer criteria are entertained because they meet the public's criteria of safety and justice.

There are a few potential burdens of transfer policies where continued research is necessary. Scott and Steinberg's (2008) theory regarding development warrants further exploration, more specifically, their concept of proportionality includes a gradual level of culpability until the brain is finished maturing. A second area for further consideration is the concept of labeling and transfers. Redding (2003) noted there was a need for more research on the manner in which juveniles perceived self and others after being tried and convicted in criminal court. Another area for further consideration and one which is explored in the next section is recidivism and transfers to criminal court. Although a conclusion is already drawn as to whether or not transfers to criminal court deter future offending, understanding why is worthy of future research. Finally, specific states, such as the ones discussed above warrant further study of what provides the most all around benefit.

How Transfer Policies should be Assessed and the Associated Effectiveness

Up until this point, transfer policies have been explained in the context of what they are and what they entail. There has also been a discussion of the possible cost and utility that transfer policies hold. The question that remains is how transfer policies should be assessed and how effective these policies are in relation to such assessments.

No matter how one looks at this particular policy, each form of analysis can paint a one sided picture. For instance, one could assess transfer policies based on empirical analysis of recidivism rates by comparing criminal versus juvenile sanctioning of 16-17-year-old offenders. Although this may show the ineffectiveness of transfer policies based on recidivism of the studied offenders, it leaves out the possible utility of transfer policies based on public perception of safety and justice. The overall goal of this section is to examine how legal, empirical, and psychological roles affect how we see the usefulness of transfer policies. In conveying the effectiveness of transfer policies based on legal, empirical, and psychological stand points, the author would suggest the importance of coming to a general consensus on criteria for evaluating transfer policies. A gen-

eral consensus would allow for better evaluation of the effects of transfer policies.

Legal. From a legal standpoint, there are various benefits of transfer waivers. First, the transfer waiver assists in demonstrating the limitations of the juvenile court system. According to Zimring (2000), the purpose of the juvenile justice system was to deal with young offenders under a rehabilitative concept that was administered in a far less formal type of system. He further noted that because of this purpose, the juvenile system was not equipped to handle the toughest cases (i.e., serious and violent felonies). Zimring (2000) argued that this should not be seen as a flaw in the juvenile system, but in reality it was one of the juvenile systems' strengths. Furthermore, he noted that transferring 16-17-year-old serious, violent, often times repeat offenders, preserved the juvenile system abilities to help many other young offenders.

Discretionary challenges are another important topic when it comes to the legal analysis of juvenile transfers. According to Zimring and Fagan (2000), discretionary challenges suggested flaws within judicial and prosecutorial waivers, which allowed for specific subsets of persons to be transferred at higher rates than others. They further to noted that although discretionary transfers held two major utilities, one in keeping with the individuality as set forth by the juvenile system and the other transferring the least amount of juveniles to criminal court, racial disparities among African American juveniles had increased. This then gave an advantage to systems that employed direct or legislative transfers because it lowered the severity of racial concentration of transferred juveniles, even though more juveniles would be transferred to criminal court (Zimring & Fagan, 2000).

Within the concept of just deserts, transfer policies can hold a large amount of utility. Zimring and Fagan (2000) noted that the utility was formed through the eyes of the general public who were viewing a glorified case of juveniles who were committing serious violent offenses and demanding action. They also noted that this particular utility may not have made sense to those educated in the field, but for the majority of society, it enhanced the perception of safety, as well as the need to voice outrage. This form of policy making is completely haphazard and only furthers failed ideas; but, it allows the public to feel safe. Society wants justice for the wrong that was done, furthering harsher punitive punishments across the board for juveniles. Politicians then fuel the fire with the energy of emotion and anger over these "super predators." The beauty of all of this is that society does not know or understand how to get to the end result. Zimring and Fagan (2000) posited that this brought in political leaders who were willing to provide them with the means to the end; hence a redundant policy.

Flowing from the concept of just deserts, personal accountability is yet another legal perspective to consider. Accountability stems from the idea that you must answer for your actions whether they are good or bad. Morse (1999) noted that scholars' deduction of the concept of personal responsibility was not easily understood when dealing with juvenile offenders, even though society demands it. He also noted that the law viewed accountability and responsibility on the premise that offender's ability to apply reasoning at a minimal level, as set forth by our social standards, was functioning. In other words,

citizens were assumed to understand the rules set forth and follow them, as well as understand the consequences associated with law breaking (Morse, 1999).

Discretionary waivers promote the final portion of legal analysis. Discretionary waivers allow juveniles to remain in the juvenile justice system until they are considered to be not amenable to treatment. What this means is that at a specific point it is decided that the juvenile may no longer be helped by the juvenile system and are then sent to the criminal courts (Zimring, 2000). The utility behind this is that it frees up resources within the juvenile court for people who can be treated, as well as a possible utility in keeping society safe from predators who will continue to recidivate (Zimring, 2000).

Thus, there are many conclusions to be drawn as to the effectiveness of transfer policies based on the above assessment. For instance, Zimring (2000) posited that transfer policies could be an indication of effectiveness based on the fact that it assisted the juvenile system in taking the cases which the adult system was not equipped to handle. By taking out the most chronic serious offenders, the juvenile system is able to then reach the larger majority of offenders who will most likely follow age crime trajectories.

In addition, transfer policies are found to be ineffective by legal assessment when it comes to the policy itself. The downfall of the policy lies in the fact that they can be redundant, which leaves many to wonder if we are really solving the problem (Zimring & Fagan, 2000). It could be argued that policy makers play on the public's internal need for "safety," as well as the public's need for punitive punishment for the criminal, by throwing random policies in the air with no real understanding of their effects (Zimring & Fagan, 2000, p. 414).

Another area of note on the legal effectiveness of transfer policies is in regards to accountability and just desert. In this light, accountability and just desert entail juveniles being punitively punished for the crimes that they have committed. According to Redding (2003) juveniles transferred to the adult criminal courts were roughly 68% more likely to be convicted and incarcerated for serious and violent crimes than those in juvenile court.

There is a sentencing disparity that should be noted with this. Although juveniles received lengthy sentences, they served less time. Scholars have found that over half of Pennsylvania's juveniles convicted in criminal court were out within four years (Redding, 2003). Furthermore, with the exception of rape, those charged with serious or violent crimes only served an average of 3.5 years within a correctional facility (Redding, 2003). This discrepancy may indicate a flaw in the effectiveness of this policy as juveniles do not actually serve lengthy sentences.

Empirical. Empirical research allows for many avenues to be considered when assessing juvenile transfers to criminal court. In essence, empirical research allows for observation or statistical research to be done to answer a specific question about a specific subject. For transfer waivers, this could raise a multitude of questions ranging from recidivism rates and deterrent effects to juvenile transfers' impact on the criminal system. In this section, there will be a discussion on the different avenues that empirical research on transfers to criminal court can

take, as well as a conclusion on juvenile transfers' utility based on the research provided.

Empirical studies on the general deterrent effects of juvenile transfers to criminal court do not serve favorably for this policy. Singer and McDowall (1988), using time series analysis, concluded that New York's Juvenile Offender Law of 1978 had no effect on recidivism rates, even though juvenile arrest and conviction in criminal court increased dramatically under the new law. Other scholars have used regression and multiple time series analysis to demonstrate that even though arrest rates went down, juvenile violent crime rose by 18% after the enactment of transfer laws (Steiner, Hemmens, & Bell, 2006). Additionally, scholars who assessed the Juvenile Reform Act in the state of Georgia found no change in arrests rates for juvenile violent crime (Steiner et al., 2006). Overall, the deterrent effect of transfer laws seemed to have little or no effect on juvenile serious and violent crime rates.

Empirical analysis may also show how transfer laws affect recidivism rates among juveniles transferred to criminal court, as well as give us insight as to the specific deterrent effect. From the data to be presented, transfer laws did not seem to be an effective form of crime control. For example, Redding (2003) noted that in Minnesota there was evidence of a much higher recidivism rate for juveniles who were transferred to criminal court than those who were not transferred. He noted that researchers have found those who were transferred to criminal court on robbery offenses had greater recidivism rates than those who were not transferred. Interestingly, he further noted that researchers also found no difference in those charged with burglary. In this same study, it was found that those sentenced to incarceration in criminal court had higher recidivism rates than those who were not, and they reoffended much sooner than those who were incarcerated in a juvenile institution (Redding, 2003). In addition, McGowan et al. (2007) found that juveniles who were transferred to criminal court had an higher risk of continued violent behavior, than those retained in juvenile court.

Therefore, the specific deterrent effects of transfer policies are mixed. The above data on recidivism rates indicate that many juveniles who are incarcerated under adult correctional may not experience the deterrence factors, as the policy would indicate. The flip side to this, according to Glassner, Ksander, Berg, and Johnson (1983), is that personal interviews of juveniles, who were under New York's transfer law, indicated an understanding of the laws. They also noted that this law would transfer juveniles to criminal court for specific offenses once they reached a specific age, which may have indicated some sort of deterrent effect in that regard.

Development, maturity, and juvenile transfers. Psychology and an understanding of human maturity may be a key component in evaluating the cost and utility of transfer policies. Psychosocial, cognitive, and neurological development promotes the idea that juveniles are different from adults (Kupchik, 2006; Scott & Steinberg, 2008). Thus, it may almost seem haphazard that policy makers seek to extend adult style punishment to juveniles who are not mature. Through an understanding of differences between adolescents and adults, transfer policies should be evaluated.

Adolescent decision making is quite different than adults. Kupchik (2006) noted that psychologists have demonstrated that adolescents were not able to foresee the consequences of their actions because they were not fully developed. He further noted that adolescents were also more apt to act irrationally, be influenced by their peers, as well as to act without thinking. Therefore, because of the immaturity of adolescents, it is not too much to suggest that this population of offenders may not understand the law and the consequences of their actions (Kupchik, 2006).

Transfer policies seek to treat young offenders in an adult setting, requiring adult decision making and competence through the criminal process. As these young offenders are quite different from adults, they may not be able to fully grasp and understand rules, assist their attorney, and properly participate in criminal proceedings (Kupchik, 2006; Scott & Steinberg, 2008). Attorneys out of Wisconsin expressed this concern by stating that there were difficulties in dealing with adolescent offenders in criminal court because of their immaturity and their great dependence on their parents (Torbet et al., 2000).

The overall psychological effect of being tried, convicted and incarcerated in criminal court is another important area to consider. As a result of the immaturity of adolescents, it is not farfetched to think that there may be some adverse effects of being placed in adult correctional facilities. McGowan et al. (2007) noted that juveniles transferred to criminal court and placed in adult correctional facilities had a higher rate of increased violence than those who participated in the juvenile justice system. Others argued that incarceration of young offenders took away from the overall development process and decreased the young offenders' ability to come full circle into adulthood (Kupchik, 2006).

Lessons of the cost and utility of transfer policies are already coming to light. Increased work load in the criminal system was not fully understood. For example, Torbet et al. (2000) noted that, in Wisconsin, those who implemented the new policies were not fully aware of the constraints it would place on their courts, corrections, and other administrators. They also noted that many states were also ill prepared to deal with the psychological issues that these young offenders possessed. Moreover, they noted that uniformity with implementation was also felt in states like New Mexico. Finally, the overall monetary costs associated with transfers were not fully understood (Torbet et al., 2000).

Should these Policies be Maintained?

With all of the above analysis, the question arises as to whether or not juvenile transfer policies should be maintained. The answer is quite complex. Transfer policies seem to hold an interesting amount of utility in the public's perception, with the need to feel safe, as well as some sort of justice being done. The flip side to this suggests that transfer policies hold little or no utility when it comes to deterrence, recidivism rates, and the psychological understanding and impact on the juveniles who are being transferred to the criminal courts. This leaves us with the question of what matters most. Do we sacrifice the relatively small number of juveniles, which transfer laws target in the name of public safety and punitive justice, or do we understand

that there may be something wrong with this portion of the juvenile offender population and seek to help them become pro-social individuals? The answer to this dilemma may lie within the confines of blended systems.

According to Redding and Howell (2000), blended systems may be the compromise between those who demand punitive punishment and those who call for rehabilitation of these young criminals. They also noted that both juvenile and criminal blended systems offer the concept of accountability, while giving juveniles who committed the most serious crimes or who were chronic offender's one last chance to have the therapeutic services offered through the juvenile justice system. Blended systems also offered a more comprehensive look at the individual offender before they were given criminal sanctions (Redding & Howell, 2000). Again, this allows for the juvenile to be evaluated one more time, making sure they are being sanctioned properly.

Griffin (2003) noted that there were currently 15 states that offered juvenile blended systems, while 17 states offered a criminal blended system. He further noted that, under the juvenile blended system, young offenders stayed under the jurisdiction of the juvenile system with the understanding that if they did not cooperate with probation or treatment they would be placed in the criminal system. Furthermore, under the criminal blended system, juveniles who had been transferred to the criminal system had the opportunity to abide by a juvenile sanction, with agreement of good behavior (Griffin, 2003). Thus, criminal blended systems offer the opportunity to lessen the impact that the criminal system can have on young offenders.

In this regard, four types of blended systems are offered under the juvenile and criminal courts. According to Redding and Howell (2000), the juvenile inclusive model gave the court the opportunity to impose both criminal and juvenile sanctions. They posited that the criminal court sentence was suspended as long as the juvenile abided by the juvenile sanction or treatment and did not commit a new offense. They further argued that the juvenile contiguous model extended the sanction to the age of 18 or 21 years, when at such time a hearing would take place to see if the juvenile should be sent to criminal court to serve out the remainder of the sentence. Moreover, they noted that the criminal exclusive model gave the courts the power to impose either criminal or juvenile sanctions to young offenders. The criminal inclusive model resembled the juvenile inclusive model; in that, there is a suspension of criminal sentencing as long as the juvenile did not commit a new offense and followed the sanction/treatment set forth by the courts (Redding & Howell, 2000).

Putting blended systems and transfer laws side by side, the comparison is not all that complex. Redding and Howell (2000) noted that blended systems offered a unique integration of juvenile and criminal law to remove some of the detrimental ideals that the criminal system could impose. They also noted that juveniles who were transferred directly to criminal court lost out on any other protective or rehabilitative efforts that took place under juvenile jurisdiction. This could have lasting effects that are not favorable to reducing crime. Finally, blended systems may reduce transfers that did not need to happen (Redding & Howell, 2000).

A legal analysis of the blended system offers a more individualized consideration of the juvenile who may end up with criminal sanctioning. Redding and Howell argued that under blended models, juveniles were subjected to more plea bargaining with a mandated transfer to criminal court if the juvenile did not abide by the sanction or committed a new crime. In many states juveniles who agreed to a blended sentence also agreed to waive their right to a jury trial. Although the constitutionality of this comes to mind, the actual challenge may not work because the juvenile voluntarily waived their right to the jury trial (Redding & Howell, 2000). Adjudicative competence is also taken into account under blended systems. According to Redding and Howell (2000), this offered the court opportunity to make sure the juvenile had the ability to withstand criminal court procedures with relatively the same understanding as their adult counterpart. They also noted that blended systems also incorporated open hearings, allowing for victims to speak out during the court proceedings.

Not all of the effects of blended sentencing have been examined, but there are some interesting conclusions that may be drawn from preliminary findings. For instance, blended systems may both widen and narrow the net. This is done by expanding the age range that is eligible for blended sanctions, while assisting in keeping some offenders out of the adult system. Texas blended system, for example, widened the net because it reached a younger subset of juveniles, but it also narrowed the net by protecting certain offenders (Redding & Howell, 2000). In the state of Texas, roughly 47% of juveniles would normally be transferred to criminal court, while roughly 53% of juveniles were saved under the new blended model (Redding & Howell, 2000).

Sentencing patterns also pose interesting ideas about the benefit of blended systems. Plea bargaining allows the juvenile the opportunity to have little to no criminal sanction imposed (Redding & Howell, 2000). Once the juvenile defies the suspended sanction or commits a new offense, transfer to criminal court is the next imposition. Redding and Howell (2000) noted that formal sanctions were handed down to a large number of juveniles at this point. They further highlighted that in Texas, for instance, there was an overall transfer rate of 44%, with sanctions varying depending on the degree of the offense.

Blended systems are a relatively new idea in the criminal justice world; thus there is a need for further research. According to Redding and Howell (2000), further research should be done to demonstrate how many juveniles were given criminal or juvenile sanctions under the blended model. They believed that knowing whether or not blended systems targeted their intended group of people was important in understanding its effectiveness. Greater knowledge of how the juvenile perceives their experience under the blended model is also important. Public perception of safety and justice would also pose great importance in demonstrating the effectiveness of blended systems. Furthermore, research should be done to see if blended systems reduce recidivism more than transfers to criminal court (Redding & Howell, 2000).

Conclusion

This essay has evaluated transfer policies in the United States. With all the above stated information, there are some preliminary conclusions that may be drawn. First, even though most of society sees juveniles as young impressionable people, this does not seem to remain when it comes to serious offenses or chronic recidivists. Society, fed by politicians and fear, seek strong punitive punishment for our so called "super predator." Another conclusion that may be drawn is that empirical research does not pose any real benefits to transfer policies. Instead, some scholars demonstrate that transfer laws may actually have little to no deterrent effects and in some cases increase recidivism. On a psychological level, transfer policies may damage the juvenile, inhibiting his/her development into adulthood in a normal manner.

Finally, argument for blended systems was posed to suggest a "meet in the middle" type of approach to juvenile crime. Blended systems offer juveniles one last chance to be helped through the rehabilitative methods offered by the juvenile court with the possibility of a criminal sanction if they reoffend or do not abide by the treatment model set forth. With the possibility of the juvenile being sanctioned in criminal court, the punitive punishment demanded by society is not ignored, but acknowledged. Further research is needed to fully evaluate blended systems, but as stated above, blended systems offer a compromise between criminal and juvenile sanctions, possibly providing the best possible scenario for all involved.

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