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Reset The Boundary: State Activism in Juvenile Transfer Reform

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To anyone who is reading this thesis, I hope my writing on juvenile transfer reform is informative and provides a critical understanding of the court and its relationship with the public opinion and science. The mobilization behind juvenile transfer reform is that, and much research showed, children and adolescents who are tried in criminal court, if convicted, will go to adult prison and face increased risk of injury, sexual abuse, and death. I hope the implications of juvenile transfer on youths would lead to continued reform in this area, rooted in rationale and compassion.

Law and policy are deeply intertwined. States themselves are the main venues to deliberate and implement policies that alter the status quo of juvenile transfer. The policymaking process in some states can increase our ability to understand and predict how others will similarly react. This learning model has been the foundation for juvenile justice reform where lessons are drawn from past successes or failures to keep more youths from incarceration. Legislative and judicial capacity to influence criminal justice reforms are complementary, and there is an ongoing debate on the designated function of the judiciary, whether it should be more active or reserved in front of the high-stakes cases presented to them. My thesis, at least within the context it examines, argues that judicial activism is needed in juvenile transfer reform.

This thesis is dedicated to my mother and all at-promise youths.

Table of Contents

Introduction

Since the creation of juvenile court in 1899, the perspective and policies of protecting juvenile's rights, specifically from the jurisdiction of criminal justice system, were different in important ways from period to period. The pendulum-like swing of attitude toward offending youths has swung among rehabilitation to punitive punishment to proportional punishment and rehabilitation over the last century. During the past two decades, many factors have contributed to reform efforts in retaining young offenders in the juvenile justice system, from the dissatisfaction with the "get-tough" policies of past generation to the lingering budgetary pressure on local governments. These reform efforts first existed independently in few jurisdictions but later spread across the map. The country has now witnessed a broad roll-back on juvenile transfer laws since early 2000, after the nationwide decrease in juvenile crime rates since 1996 and the landmark Supreme Court decisions based on the recognition of adolescent immaturity.

Despite waves of reforms, transferring juveniles to adult court, in some form, still seems to be a permanent feature of the American juvenile justice system (Patrick Griffin, 2008). Today, all states allow juveniles to be tried as adults under certain circumstances. Admittedly, criminal justice policy and practice vary widely across states because of their diverse political and social environments, as well as different legal practices and resources for implementation. I intend to answer *what* factors translate into the variance in the direction states choose to proceed with their juvenile transfer laws resultant from the last generation's punitive reforms. Specifically, my research is intended to ascertain why the juvenile transfer mechanism has been rationalized in some states but not in others. I am also interested in the lessons juvenile justice watchdogs might

draw from the reforms that have taken place and apply to future efforts to keep more youths from the adult system.

Criminal law has significant impact on individuals and community safety. Despite rich research on the effectiveness and implications of criminal justice policy, not enough writings have been devoted to understanding its development. I hope to connect understanding the development of policy that would reform juvenile transfer with the possible influence from pivotal player in the criminal justice policy community and the restraints resultant from court decisions. The ultimate goal of this paper is to accumulate knowledge about reasons behind the changes to states' juvenile transfer laws and to inform future efforts to limit the number of youths tried as adults.

The first chapter summarizes three periods of juvenile justice history. The first section probes the creation process of juvenile court before the "get tough" movement for understanding the court's original purpose. The section highlights a period of progressive achievement by the Supreme Court to inject due process protections in juvenile proceedings with an effort to preserve the original mission of juvenile court: acting in the "best interest of the child." In addition, it discusses the limitation of the Court's rulings in practice, due to the unsettled problem of adjudication competency implied in the *Dusky* standard, and its implication for the creation of harsher juvenile transfer policies during the later period.

Following the Progressive Era, the second section covers the "get tough" movement in which the mechanism of juvenile transfer got expanded nationally. Throughout this period, public anxieties about high-profile juvenile crimes reported in media and their perception of the issue played a key role in affecting the assessment of criminal justice policy options, that is, getting tough or being soft on crimes. This section starts by familiarizing the readers with the

nomenclature of juvenile transfer, its various forms and implications for youths subject to these transfer laws. It then continues by discussing the considerable influence that public attitudes about crime control have over judicial decisions, in addition to legislative decisions, suggested in the use of the evolving societal standard of decency required by the Eighth Amendment to recognize certain punishment as cruel and unusual. As mentioned above, the primary problem about juvenile transfer is the lack of adjudication competence in some youths, and it is true that many youths who are convicted in criminal court receive longer and severer sentences than their counterparts in the juvenile system. The point here is to foreground the role of attentive public in the decision-making process of the broad criminal justice policy community, using two Supreme Court's rulings on juvenile sentencing during this period (*Thompson v. Oklahoma*, 1988; *Stanford v. Kentucky*, 1989). The section ends with the analysis of these two cases which for the first time prompted the need to scientifically evaluate juvenile's criminal culpability.

The final section looks into the future of juvenile transfer reform. It begins with another landmark Supreme Court decision *Roper v. Simmons* (2005) which overruled the juvenile death penalty in order to show the growing influence of the developmental approach to juvenile justice. The third period witnessed a reversed rhetoric about young offenders, demonstrated in polls of public opinions and media accounts. First introduced in the second section, public sentiment of crime control within a certain period provides a context for understanding the content of juvenile transfer policies in that period. This section dives into the relationship between public sentiment about juveniles and ultimate content of transfer policies passed by state legislatures and suggests that the public view on juvenile crime has always been more nuanced than it appears, and its influence on juvenile justice policy creation is not monolithic. Instead, the views of the attentive public can be categorized by different interest group representations, from children's advocates to

district attorney association who speak for not only themselves but also crime victims. This final section also serves as a segue into my first hypothesis about how influential interests and voices in the criminal justice policy community would produce changes to states' juvenile transfer policies, and, just as importantly, the second hypothesis about the reasoning of the state court in its ruling against juvenile transfer.

I rely on theories of lawmaking to assess the potential influence and role of the elite in criminal justice policy community. I closely analyze the reform processes that twenty-one states have taken and the varying roles different actors play in shaping juvenile transfer reform. In doing so, I try to present a systematic account of the roles of different influential actors in the policymaking process and to assess the importance of their influence for passing the juvenile transfer reform.

My research of policy development is not without limitations. As other scholars who study American Political Development may acknowledge, this methodology of testing theories on numerous cases from the past assumes, at least implicitly, that the theories operate equivalently across different historical contexts.[1] This research with its limitation is unable to capture the infinite idiosyncratic variables relevant to the juvenile transfer reform happened or failed to happen in each state. Neither is it able to study all types of reform concerning juvenile transfer. However, the two arguably most important reforms, raising the upper age of juvenile court jurisdiction and limiting the criminal prosecution of certain offenses, and their sheer volume of examples happened in different states are adequate to operate this research.

[1] John Dearborn, the author of a recent book *Power Shifts* (2021), mentioned this limitation for his study of the influence of Congress on modern American presidency.

Foundations, Revolution, and Future of Juvenile Transfer

Protecting the Rights of Juveniles

The juvenile justice system is a relatively recent development in the United States. A system tailored for troubled youths began in the 1800s when societies experienced industrialization, urbanization, and immigration (Bernard and Kurlychek, 2010). Before the 1800s, most youths (except the very young) who were charged with crimes were tried as adults and imprisoned with adults. Movements of urban reform in the 1800s, led by middle- and upper-class Protestants, temporarily ended the incarceration of youths in the adult system and created separate juvenile institutions. For example, the "gentlemen reformers" founded the House of Refuge in New York City to confine youths who were considered to be delinquents or in danger of becoming delinquents due to parental negligence (Bernard and Kurlychek, 2010). The elite who created the first juvenile institutions thought, by saving young delinquents from their 'inferior' habitat, they could solve the problem of pauperism and urban property crime committed by lower-class children (Bernard and Kurlychek, 2010).

Originally, the early preventive juvenile institutions like the House of Refuge were lenient in handling juvenile criminal and status offenders, until it failed to reduce delinquency. This prompted tougher responses and transformed institutions to coercive social work agencies. As the parent of the state (*parens patriae*), the juvenile institutions incarcerated youths, usually from poor and immigrant families, without the agreement of the natural parent, even when the youth did not commit any crime.[2] It was until the case of *People ex rel. O'Connell v. Turner*

[2] *Ex parte Crouse* (1838). Mary Ann Crouse was being held at the Philadelphia House of Refuge against her father's wishes but at the bequest of her mother, who felt Mary Ann had become unruly and unmanageable. The Pennsylvania Supreme Court ruled that sending Mary Ann Crouse to the house of refuge was legal because the house of refuge is reformatory rather than punitive, but considered releasing Mary Ann to her parents would be extremely cruel.

(1870) that the Illinois Supreme Court challenged the sweeping practice of *parens patriae* doctrine, discarded the idealized view of juvenile institutions, and ruled that children who had not committed felonies should not be taken away from the custody of their parents.

But the general society at the time continued to believe that it was important to reform children who had not committed felonies but lived with their "weak and criminal parents" who were unwilling or unable to provide adequate care and supervision for the children (Bernard and Kurlychek, 2010, p. 74). In 1899, the Illinois Legislature unanimously passed the statute that would establish the nation's first juvenile court and defined it as a chancery court, instead of a criminal court, in order to circumvent the legal objection raised in *O'Connell*. The original Illinois law charged the new juvenile court with the responsibility to help children of any age who were dependent, neglected, or delinquent, in other words who were identified as possibly in need of attention. Like the juvenile institutions, since the new juvenile court only served the purpose of treatment, not punishment, it assumed that the accused juveniles had no need to defend themselves. This non-adversarial assumption is also entailed in the names of juvenile cases. The name of a juvenile case obviates the question of dispute with the state and only focuses on the juvenile, using the phrase *In re* which means "in the matter of" to express the state's concern for the child. The creation of the juvenile court, however, was no replacement of the criminal justice system for children who committed serious crimes and were still sent to criminal courts. This pattern of waiving the jurisdiction of the juvenile court would become increasingly common till the late twentieth century.

Despite the higher court's critical view of the juvenile institutions in *O'Connell*, the founding of the juvenile court readopted the legal basis of *parens patriae* and generated

optimism that its *good intention* would soon solve the problem of delinquency.[3] But in practice, the results had not been satisfactory, both of reducing delinquency and treating juveniles in the court process. Objections to the juvenile court's informal proceedings emphasizing rehabilitation had been raised in the early 1900s. From the left to the right, critics claimed that the court's rehabilitative mission had never been achieved. Liberal advocates argued that the juvenile court harmed youths whose interests it claimed to serve, since its casual standards and procedures often resulted in capricious decisions which let many youths be wrongly adjudicated delinquent and sentenced to dispositions in prison-like facilities (Paulsen, 1957; Allen, 1964; Handler, 1965). Statements about strengthening the rules of juvenile proceedings were made to preserve the fairness and legitimacy of the juvenile court.[4] Conservative critics were discouraged by evaluations of rehabilitative programs that failed to generate strong and consistent effects (Martinson, 1974). The juvenile court was attacked on the basis of the victimization of the public due to the court's lenient treatment of dangerous youths (Cullen et al., 1983).

Several influential cases eventually found their way to the U.S. Supreme Court, sixty years after the juvenile court was established, to challenge the argument that a more lenient juvenile court could not accommodate formal due process protections. The *parens patriae* power of the juvenile court had denied juveniles due process rights that would be applied to the criminal court's defendants facing prosecution by the state. The absence of due process standards had not

[3] In 1909, Judge Julian Mack, one of the first judges to preside over the nation's first juvenile court in Cook County, Illinois, upheld a separate juvenile court jurisdiction over children charged with a criminal offense: "… the child who has begun to go wrong, who is incorrigible, who has broken a law or an ordinance, is to be taken in hand by the state, not as an enemy but as a protector, as the ultimate guardian."

[4] *Mill v. Brown*, 31 Utah 473, 487 (1907). Judge Frick of the Utah Supreme Court wrote in the majority opinion, "While juvenile courts cannot, and are not expected to, be conducted as criminal or other courts usually are, the judge should still not wholly disregard all wholesome rules in an attempt to establish guilt which he suspects, or, worse yet, merely imagines. … The fact that the American system of government is controlled and directed by laws, not men, cannot be too often nor too strongly impressed upon those who administer any branch or part of the government."

necessarily meant that the court always acted in the juvenile's "best interest" and juveniles were compensated with careful and individualized treatment. In fact, the Supreme Court found evidence that, in *actual performance* of the juvenile court, "the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children" (*Kent v. United States*, 1966). Regardless of the juvenile court's *intention*, the concern over the loss of the juvenile's liberty upon adjudication was essential to the Court's decisions to transform the modern juvenile court from an interventionist system to a diversionary system that protects children from the harm inflicted by the court proceeding.[5] By mandating procedural changes in *Kent* and later cases,[6,7,8,9] the Court restricted the state's power over juveniles and gradually expanded juveniles' right to constitutional safeguards from the notice of charges to the stage of adjudication. This booming

[5] Scholars observed that the Warren Court's decisions to restore due process in juvenile court could be influenced by the Civil Rights movement of the 1960s and early 1970s when the national focus on civil rights and personal liberties infiltrated both the adult and the juvenile courts (Bernard and Kurlychek, 2010; Field, 1993). Hence, it is not surprising that the Supreme Court at this time tended to focus on the actual practice (punishment) of the juvenile system rather than its stated good intentions (rehabilitation).

[6] *Kent v. United States*, 383 U.S. 541 (1966). Morris A. Kent Jr., a 16-year-old boy, was charged with robbery and rape and was waived to a district court. The Court held that the Juvenile Court's waiver of jurisdiction was not valid because there was not a sufficient investigation prior to the waiver, and Kent did not receive a hearing, access to counsel, or access to his Juvenile Court's Social Service file prior to the waiver.

[7] *In re Gault,* 387 U.S. 1 (1967). The Court held that the proceedings of the Juvenile Court used in Gault's case failed to comply with the Fourteenth Amendment's Due Process Clause, which requires adequate notice of charges, notification of both the parents of the juvenile, right to counsel, opportunity for confrontation and cross-examination at the hearings, and adequate safeguards against self-incrimination.

[8] *In re Winship*, 397 U.S. 358 (1970). The Court held that the New York statute that permits juvenile conviction, founded on a charge of criminal conduct, to rest on "preponderance of evidence" burden of proof, as opposed to the stricter "beyond a reasonable doubt" which would be obtained in an adult criminal case, violates the Fourteenth Amendment's Due Process Clause. Two years after the *Winship* decision, the Supreme Court made the decision fully retroactive, meaning that youths who had been adjudicated on a preponderance of the evidence would either have to be released from institutions or readjudicated by evidence that was beyond a reasonable doubt.

[9] *Breed v. Jones*, 421 U.S. 519 (1975). The Court unanimously held that trying a juvenile as an adult after an adjudication hearing in juvenile court put the juvenile in double jeopardy.

era of Supreme Court's decisions basically proclaimed the death of abusing *parens patriae*[10] and had a powerful national impact on affording the juvenile process the benefits of the opposing criminal process.

However, the extensions of due process rights by the Supreme Court in juvenile proceedings did not bring a broad change to the fate of juvenile cases. The practice of the juvenile court continued to stray from its theory of using state power to care for delinquent children. One reason was that the Court has not yet addressed the question of competency — that is, whether all juveniles were competent to exercise their rights from the moment of arrest to the actual adjudication. In criminal proceedings, the requirement of the defendant's adjudicative competence is explicit (*Dusky v. United States*, 1960). Adjudicative competence is evaluated upon two capabilities (the *Dusky* standard): the defendant must have the sufficient present ability to consult with a defense lawyer and must have a reasonable degree of rational understanding of the charges, the adversarial proceedings, and possible penalties. If the defendant is so disabled that he or she cannot participate meaningfully, then the trial must lack fundamental fairness that is required by the due process clause under the Fourteenth Amendment. The requirement of adjudicative competence is important because it reduces the likelihood of wrongful conviction; a

[10] An exception was *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). The Court held that the Sixth Amendment right to a jury trial, as extended to the states through the Due Process Clause of the Fourteenth Amendment, does not apply to juveniles, since juvenile prosecution is not considered either civil or criminal. By the time of the *McKeiver* case, two liberal justices, Chief Justice Warren and Justice Fortas, were replaced by President Nixon's conservative appointments of the new Chief Justice Burger and Justice Blackman. In his opinion written for the majority, Justice Blackman focused on preserving the original good intention of the juvenile court, despite conceding that actual practice had not always lived up to the ideal. While one might see *McKeiver* reversed the Court's stance on juveniles' due process protection, it could also be argued that the decision was in consistent with former rulings that adding the benefits of the criminal court does not mean entirely transforming the juvenile process into the criminal trial process. It also struck down one reform that would have been the most costly to the taxpayers: provision of trial by jury. (Bernard and Kurlychek, 2010, pp. 113, 118)

competent defendant who understands the rights is assumed to behave in favor of his or her defense.

The issue of defendant's adjudicative competence is not fully addressed in the restructured juvenile proceedings. Although some state courts incorporated the adjudicative competence requirement into juvenile proceedings, they wrongfully assumed that the incompetence of juveniles only stands for what incompetence is to their adult counterparts, that is, being mentally ill or disabled. But the requirement of adjudicative competence in juvenile proceedings for the purpose of due process protection is more complicated than that in criminal proceedings, given the general immaturity of juveniles. The informality in juvenile proceedings led a vast majority of juveniles,[11] influenced by police, court officials, and sometimes even their parents and defense counsels,[12] to admit to the offense with which they were charged but probably did not commit (Snyder and Sickmund, 2006; Handler, 1965). Typically, at the intake hearing, the youth is offered that if he or she admits the offense and agrees to be supervised for a period of time on *informal probation*, and if he or she successfully completes all the conditions of the informal probation, then the charge will be dropped, and there will be no formal record of delinquency. However, if the youth fails to meet all the conditions, a petition will be filed by the probation officer, and the youth will go though a formal adjudication hearing before a judge. Since the youth has already confessed to the alleged offense, as a condition of receiving the

[11] National estimates suggest that in the 1970s and 1980s, about sixty percent of all juvenile cases were handled through some type of informal procedure. Although there has been a trend toward more formal processing of juvenile defendants over the years, in the year 2002, the National Center for Juvenile Justice estimated that almost forty-five percent of all referred cases were still handled informally.

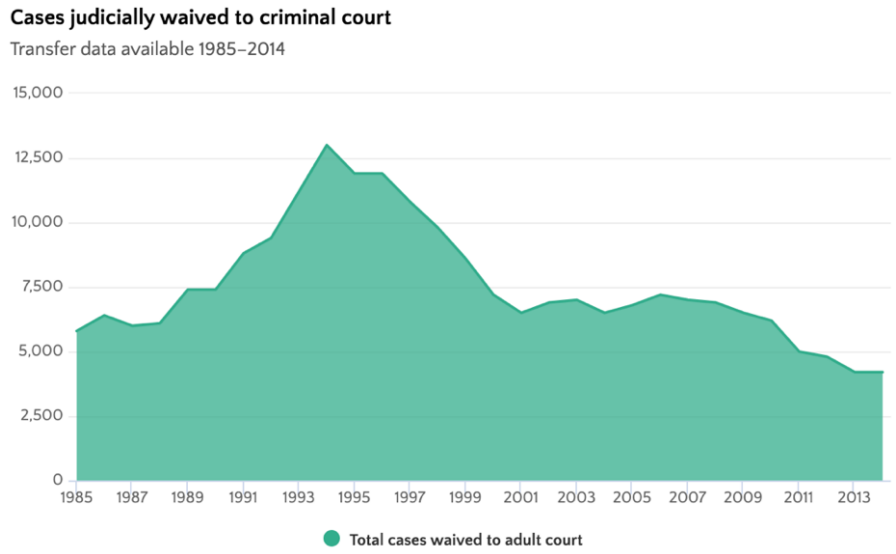
[12] Many parents were not informed of the right to be represented by counsel, until the child was at the hearing and the court was ready to proceed. Probation officers also frequently advised the parents against hiring attorneys as a needless expense, assuring them there will be no difference in the case's outcome. In addition, the refusal of the Supreme Court to grant juveniles the right to a trial by jury in *McKeiver* may contribute to the trend of increasing criminalization in juvenile court, since defense counsel can advise juveniles to plead guilty in front of a judge who wanted to reduce the time devoted to the juvenile court assignment.

informal probation, his or her privilege to the remainder of the due process protections granted by the Supreme Court (notice, defense counsel, confront and cross-examine witnesses, and proof beyond a reasonable doubt) is *inoperative in practice*. In addition, even if a juvenile's case ends in a formal adjudication hearing, the juvenile may not be under full procedural protection because he or she could waive the right to counsel without fully understanding the consequence of the waiver (Feld, 1993).

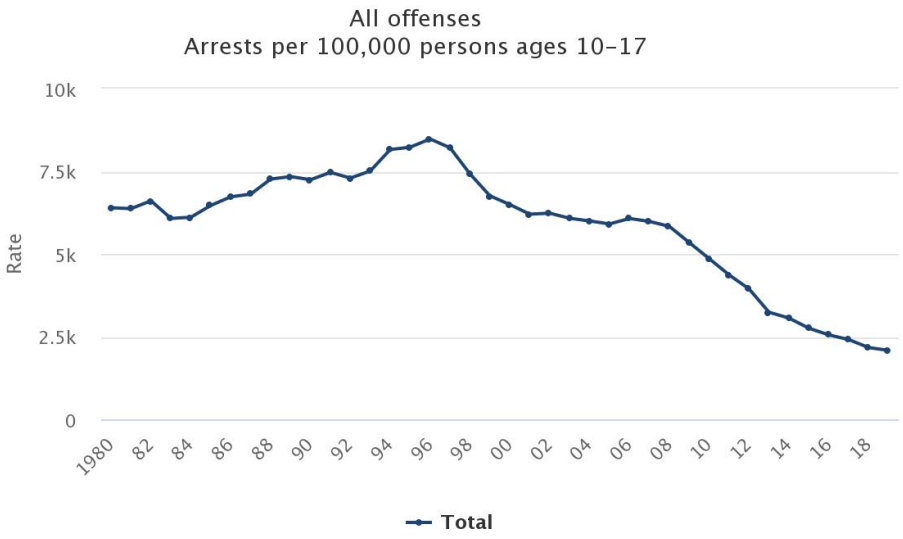
Furthermore, the "get tough" movement beginning in the 1980s escalated the issue of juvenile's adjudicative incompetence into a major institutional challenge, when more and more young offenders were transferred to criminal court where the stakes of punishment are much higher. During this period, many states set the minimum age of adult prosecution very low, often around age fourteen. The procedure issue of whether young offenders processed in criminal court might be incompetent to participate adequately in criminal proceedings was deemed irrelevant to the punitive reformers who only wanted to incarcerate these young criminals. The requirement of adjudicative competence in criminal proceedings is to protect the defendant against the state's power of taking away his or her liberty. The poor exercise of due process rights by youths in juvenile proceedings should alert professionals in the criminal justice system that the manifest incompetence of juveniles makes it inappropriate, and even unconstitutional under the *Dusky* standard, to transfer immature youths and try them as adults.

The unpredictable power of the state did not diminish after the Supreme Court decided to protect the constitutionality of the juvenile court. Since the Warren Court ended, the Supreme Court has moved incrementally in more conservative directions in criminal law and retrenched upon established doctrines. Although almost all the juvenile justice cases that reached Burger and Rehnquist Courts were decided in favor of protecting constitutional rights of the youth, the

Court was also fragmented and pulled in a conservative direction transforming the image of juvenile delinquents into small criminals (e.g., *Stanford v. Kentucky*, 1989). The legal struggle of redefining juvenile justice was influenced by the implementation of increasingly harsh punishments on juveniles, including the expansion of juvenile transfer and juvenile death penalty, which largely sidestepped many of the constitutional protections mandated by the Court.



Source: Juvenile Justice Geography, Policy, Practice & Statistics.



Arrest estimates for 1980-2014 developed by the Bureau of Justice Statistics

Getting Tough on Juveniles

Francis A. Allen (1981) asserted that rehabilitation can only survive if public confidence in the capacity of social institutions to change deviant human character and behavior endures. For Allen, it was the decline in social will during the cultural revolts of the 1960s, rather than empirical evidence of the failure of rehabilitation programs, that doomed the rehabilitative ideal and gave rise to the renaissance of old ideals such as retribution. Likewise, scholars who studied the backlash of the past welfare policies on the rise of the penal state argued that the broad conservative consensus in the 1970s led to both a contraction of the welfare state and an expansion of crime control as the ultimate state priority (Garland, 2001; Beckett, 1997). In "The Culture of Control," David Garland (2001) coined the term "penal-welfarism" to reflect the confidence in the state's capacity to reform social conditions and rehabilitate individual offenders. Penal-welfarists believed that law breakers do not freely choose their deviant behavior; rather, the deviance is partially caused, and the nature of these causes vary from case to case (Beckett, 1997, p. 45). Penal-welfarism used individualized correction, such as rehabilitation, and welfare policy to integrate the marginalized groups. But beginning in the 1960s, penal-welfarism was under both conservative and liberal's attack that rehabilitation could not deter crime and could be easily manipulated (Beckett, 1997; O'Malley, 1992). Political discourse by the end of 1990s framed welfare programs as important causes of crime and promoted social problems, such as homelessness, as the failure of individual responsibility and social security issues (Beckett, 1997, p. 47). The prevailing conception of law breakers was thus altered, the welfare and rehabilitative models were stifled, and the U.S. penal system has expanded dramatically since then.

The swift expansion of juvenile transfer was in accordance with the diminishing influence of penal-welfarism and the ascending narrative of personal responsibility amid the steady increase in juvenile offending. Since 1985 the national juvenile arrest rate had continued to increase, and the apex came in 1994, by which point the violent crime index arrest rate for juveniles had increased over 68 percent from its 1980 level.[13] The nationwide expansion of juvenile transfer mechanism started around the 1980s and was in part to address public concerns about community safety in the face of increasing reported instances of violent juvenile crimes, most of which occurred only in inner-city neighborhoods where drug dealers recruited juveniles to sell crack. Headlines of "youngsters" carrying inexpensive handguns and being involved in conflicts over drug dealing resulted in an unprecedented campaign of fear. A 1996 poll found that more than eighty percent of the public felt that youth violence was a "big problem" in most of the country, although only thirty-three percent believed that youth violence was a "big problem" in their own communities (Roper Center, 1997). Similar to the disillusionment with the juvenile system before the due process reform, the public thought the lenient juvenile correctional programs were largely ineffective and encouraged violent youths to offend again after sending them back to the streets (Cullen, 1983). A 1994 Gallup Poll indicates that sixty percent of the public favored the death penalty for "a teenager who has committed a murder and is found guilty by the jury" (Moore, 1994). The mantra that "adult time for adult crime" captured the sentiment of this period when some young offenders were no longer viewed different from their adult counterparts on the basis of their criminal responsibility and thus the justice system's response to their crimes.

[13] *OJJDP Statistical Briefing Book*. Online. Available: https://www.ojjdp.gov/ojstatbb/special_topics/qa11501.asp?qaDate=2019.

Public sentiment and rhetoric of juveniles conditioned lawmakers' choices, thereby triggering a wave of punitive reform to "get tough" on young offenders. Barry C. Feld (2019) reconstructed the emergence of "get-tough" movement in this era,

> "Conservatives promoted a stereotype of dangerous *superpredators* — cold-eyed young killers suffering from *moral poverty* — rather than traditional images of disadvantaged youths who needed help. Based on erroneous demographic projections, they predicted a bloodbath of youth crime, even as juvenile violence declined precipitously. A moral panic occurs when the public, politicians, and media react to a perceived social threat with fear and alarm and adopt a disproportionate punitive response." (p. 105-6, my emphases)

The term "superpredator" was invented and popularized by John J. DiIulio Jr., an influential academic who studied under James Q. Wilson at Harvard. Many media used the term he coined without questioning its validity, and the rest who contested the term were protested loudly by outraged readers. Though traditionally being a Republican issue, states governed by Republicans and Democrats all amended their juvenile codes from language of rehabilitation to clauses that endorse accountability and punishment, in response to salient incidents and public panic about the superpredators. For example, in 1978, then-Governor of New York, Hugh Carey, was called by his Republican opponent during reelection for being soft on juvenile crime, after the New York Daily News declaimed that fifteen-year-old Willie Bosket who killed three people on the subway had been sentenced at a juvenile facility for five years ("He's 15 and He Likes to Kill—Because It's Fun") (Hager, 2014). To reinstate his political authority, Carey called a special session of the legislature which later passed the Juvenile Offender Act of 1978, a sweeping legislation in response to a single extreme case which "punctuated" the state's progressive tradition of treating youths separately from adults (Pierson, 2000). Soon the message of waiving whole categories of youths to criminal court became mainstream nationwide.

Empirical evidence like above, which associates the timing of key events with their impact on the future trajectory of policy, shows that the fear of displeasing constituency pushed

state legislatures to dismantle a century's worth of protections for juveniles. The Marshall Project used primary sources to illustrate how mass media and some academics in the late twentieth century created a climate of moral panic and led the public to demand more accountability from public officials, which increased the motivation and actual capacity of the politicians to toughen the laws on juveniles, including sending them more readily into adult prisons (Bogert and Hancock, 2020). In addition, President Clinton's Juvenile Crime Control Act, signed in 1994, provided subnational lawmakers with financial incentives to champion hard-line juvenile justice laws (Gearan and Phillip, 2016). Half a century later, when the public rhetoric drastically shifted, presidential candidates were called out by the opposition for using the word "superpredator" to advocate for tough-on-crime policies (NBC, 2020).

Unlike the due process reform, where a handful Supreme Court decisions unified practices across states, the "get tough" movement occurred primarily on the state level, where each state legislature passed its own version of "get tough" policies. A good example is the change to the purpose of the juvenile court. The survival of the juvenile court as a separate justice entity suggests that lawmakers must have found a middle ground rather than promoting a pure punishment philosophy. They have done so indeed, though the intention of the legislature varies by jurisdiction. By 2016, twenty-six states incorporated the principle of "balanced and restorative justice" to the purpose clause of their juvenile courts.[14] This middle-ground model gained impetus in the 1970s and 1980s from the victims' movement and proposed to hold juveniles accountable to the victim and community they harmed as a way to protect the public

[14] Juvenile Justice Geography, Policy, Practice & Statistics. Online. Available: http://www.jjgps.org/juvenile-court#purpose-clauses?year=2016. Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

interest and restore justice.[15] Consistent with this shift in philosophy was also the criminalization of the juvenile court. For example, Illinois, the home state of the first juvenile court, removed the special protective language, adjudicatory hearing, from the juvenile court process and instead referred to the procedure as trial where the prosecutor and defense fought over the conviction. Some states altered their juvenile courts to openly reflect the punitive goal. For example, according to the Texas Family Code, the primary purpose of the juvenile justice system as "to provide for the protection of the public and public safety," and in consistent with this goal, the juvenile court is "to promote the concept of punishment for criminal acts," along with other treatment related purposes.[16] Only eight states have preserved the original juvenile court language, maintaining the accused juvenile delinquents not as criminals, but as "children in need."[17]

Another change that directly contributed to the erosion of boundary between the juvenile and adult courts, including the expansion of juvenile transfer, was to the jurisdiction of the juvenile courts. At the time of the *Kent* decision, the Supreme Court did not require states to maintain a separate system of juvenile justice. But the Court declared that if states did, every youth falling within the original juvenile court jurisdiction must be afforded a formal *discretionary waiver hearing* with a counsel present before the youth could be waived to adult court for criminal prosecution. The prosecutor needs to find a preponderance of evidence to prove the juvenile's case. Adhering with *Kent*, juvenile court judges make transfer decisions after

[15] The Pennsylvania's revised juvenile justice act (Act 33 of the 1995 Special Legislative Session on Crime) provides an example of this balanced approach: "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." (Bernard and Kurlychek, 2010, p. 145)

[16] *Texas Family Code*, Title 3, ch. 51.

[17] Delaware, Iowa, Massachusetts, Michigan, Missouri, Nevada, Rhode Island, South Dakota.

considering factors including the seriousness and type of the offense, the merits of the complaint, the need to try the entire case in one court, the juvenile's maturity and amenability to treatment, and the juvenile's history of previous delinquency. A legitimate transfer hearing ensures that an informed judicial determination is made regarding whether the juvenile defendant is beyond the reach of rehabilitative treatment offered in juvenile court.

The "get tough" movement, however, created a range of new mechanisms that removed the *Kent* criteria and by which youths under the age of juvenile court jurisdiction could end up in criminal court. The most lenient adoption was blended sentencing, which, as its name goes, combined elements of both juvenile and adult systems. Typically, if the juvenile court judge thinks it is appropriate to impose an adult sanction on the juvenile, the judge can order a sentence that continues far beyond the maximum age of the court jurisdiction. Serving under this contiguous sentence, the youth is placed in a juvenile residential facility until the eighteenth or twenty-first birthday and then is transferred to an adult facility to serve the remainder of the sentence.

Compared to blended sentencing, transfer laws, no matter discretionary or automatic, further reduce the juvenile court jurisdiction. Under traditional transfer laws in most states, judges have the discretion to exclude from juvenile court jurisdiction the occasional older youth who was charged with a serious felony and was deemed not amenable to treatment as a juvenile (Wagman, 2000). During the "get tough" period, several legislative strategies were used to substantially expand the category of transfer-eligible youth to include young adolescents (age fourteen and fifteen) and even children. Statutory exclusion, for example, excluded certain class of juveniles, based on a combination of age and offense or offense alone, from their original jurisdiction. Statutory exclusion laws considered that certain crimes were so heinous that only

someone with an adult mind and adult culpabilities could commit them. Youth who committed such category of offenses are thus excluded from the definition of delinquents and the original juvenile court jurisdiction, sometimes regardless of their age which should be considered by the *Kent* criteria. If statutory exclusion applies, the case instantly begins in the criminal court. A similar mechanism that begins in the juvenile court is mandatory waiver. With a mandatory waiver, the judge is given no discretion to assess the *Kent* criteria on an individual basis regarding the juvenile's responsibility and amenability, since a particular offense and the age of the defendant will automatically require a waiver to the criminal court. While the case itself begins in juvenile court, it is just a formality. The purpose of the *mandatory waiver hearing* is just to determine whether the statutory requirements for the waiver are met.

While state laws greatly limited the role of a judge in safeguarding the juvenile court jurisdiction, the role of the prosecutor was expanded to facilitate the prosecution and punishment of juveniles as adults. Because of the presence of defense counsel after *Gault*, prosecutors placed greater emphasis on representing the best interest of the state rather than that of the juvenile. While prosecutors were much more powerful in juvenile courts than they were in the pre-*Gault* time, they still had less power in juvenile than in criminal courts because of the placement of discretionary waiver hearing. Prosecutors had to persuade the juvenile court judge to transfer a juvenile to the criminal court, and the judge would not always agree (Dawson, 1992). From 1975 to 2000, fifteen states passed *concurrent jurisdiction* laws to provide both juvenile and criminal courts with the original jurisdiction over certain offenses (Steiner and Wright, 2006).[18]

[18] These fifteen states are Arizona, Arkansas, California, Colorado, Florida, Georgia, Louisiana, Massachusetts, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia, Wyoming. Massachusetts shortly abolished its prosecutorial discretion statute regarding waiving juveniles in 2000. California in 2016 used its public referendum system to repeal an old ballot measure that granted prosecutors the power to charge youths in criminal court.

Prosecutors in these states have assumed enormous authority in deciding where to file a juvenile's case, and this procedure is given various names, including prosecutor discretion, direct file, and prosecutorial waiver (compared to the standard judicial waiver). The shift from judicial discretionary or prosecutorial waiver resulted in more power and less work for juvenile court prosecutors. Between 1998 and 1999, prosecutors, rather than juvenile court judges, in eighteen of the largest jurisdictions made eighty-five percent of the decisions to try youth in adult court (Juszkiewicz, 2005). Compared to the guidelines of judicial waiver, "prosecutorial discretion laws are usually silent regarding standards, protocols, or appropriate considerations for decision-making" (Griffin et al., 2011). By 2014, no state statute requires a prosecutor to provide any evidentiary record that specifies the basis for a prosecutor's decision to proceed in criminal court.[19] As a result, prosecutorial discretion laws in some places may operate like statutory exclusion, sweeping whole categories into criminal court with little or no individualized consideration.

Like the due process reformers, the punitive reformers continued to challenge the rosy characterization of young offenders as innocent children. However, the due process reformers supported the idea that juveniles were different from adults and should receive different treatment in the justice system (Handler, 1965). As concerns about public safety heightened in response to salient juvenile crimes and political campaigns which followed, the punitive reformers discounted differences between juveniles and adults and instead emphasized the seriousness of charged crimes. Moreover, the due process reformers understood that the state's interest in responding to juvenile crimes was more complex than the architects of the juvenile institution and juvenile court had acknowledged (Handler, 1965). But by the time the "get tough"

[19] "Appendix: State-by-State Summary of Transfer Laws," March 19, 2014.

movement started, they had not resolved the tension of accommodating the competing interests inherent in juvenile proceedings. Hence, the presence of adversarial procedures, together with the new punitive statutes, destabilized the rehabilitative model that on the surface had provided a coherent rationale for the juvenile system for sixty years. The "get tough" movement returned the juvenile justice reform a full cycle to the beginning. When the jury found Kent guilty, they sentenced him to serve minimum thirty years in prison where he would be exposed to the possibility of a death sentence instead of treatment in a residential institution for a maximum of five years until he turned twenty-one. Two decades into the "get tough" movement, more than two thousand youths were serving life without the possibility of parole (LWOP) in prisons for crimes committed while they were under the age of eighteen (Human Rights Watch, 2005).

Most of these "get tough" reforms were the responses of public officials to what they perceived as the public's attitudes toward juvenile crimes. As Reagan described the crime problem in 1981, "The war on crime will only be won when an attitude of mind and a change of heart take place in America—when certain truths hold again and plant their roots deep into our national consciousness."[20] When the public viewed youth violence as a dominant issue, it mandated and solidified a change in legal response. Every legislative enactment designed to lower the threshold for juvenile transfer, whether through reducing the minimum age, expanding the charges for waiver, or by changing the burden of proof for judicial decision to waive, thus incrementally bolstered adult adjudication and punishment for juveniles to be an "objective" societal attitude on dealing youth violence. This consequent impression, as shown in the later Supreme Court's opinions, also created a second-wave, far-reaching influence in the legal field, as the court relies on the "evolving standards of decency" test to determine whether a sentence,

[20] Remarks at the Annual Meeting of the International Association of Chiefs of Police in New Orleans, Louisiana

based on the objective indicia, violates the Eighth Amendment's prohibition against cruel and unusual punishment (*Trop v. Dulles*, 1958; *Gregg v. Georgia*, 1976). The Supreme Court expressed in two opinions (one dissent and one plurality) in the "get tough" period that the evolved societal standard of decency discernible in legislation, which lowers the juvenile's eligibility for adult culpability and sanction, allows capital punishment to be imposed on young adolescents (*Thompson v. Oklahoma*, 1988; *Stanford v. Kentucky*, 1989). Since the Supreme Court continued to stay fragmented in this period, its role in checking the momentum of the "get tough" movement was not as powerful as the Warren Court during the era of due process reform. Nevertheless, one case after another, Justices continued to voice their opposition to the brutal human rights violation against juveniles.

In *Thompson v. Oklahoma* (1988), the Court ruled that the execution of a person who committed an alleged offense at the age under sixteen violated the Eighth Amendment's prohibition against cruel and unusual punishment. The most important reason in support of the ruling was that no state at the time set the maximum age for juvenile court jurisdiction at lower than sixteen.[21] Based the evaluation on the "evolving standards of decency that mark the progress of a maturing society," the plurality considered imposing the most severe punishment on a youth under sixteen, who is unanimously treated as a minor for all kinds of purpose across the country, to be an unfitting social response.[22] The plurality also held that executing such relatively young offenders would have no general deterrence effect that would increase public safety, because youths under sixteen only accounted for two percent of cases of murder.[23]

[21] See 487 U.S. 824.

[22] See 487 U.S. 821.

[23] See 487 U.S. 816.

Indeed, the Court was divided on the issue of categorically declaring the death penalty for young offenders as cruel and unusual punishment. Justice Scalia wrote the dissent that no child under sixteen should be automatically presumed to be fully responsible for his or her crime, but neither should individualized consideration be removed from the realm of capital punishment.[24] He emphasized that despite his young age, a judge and jury had carefully considered Thompson's circumstances and concluded that Thompson was fully culpable for his crime and thus should be sentenced to death.[25] Justice Scalia also criticized the plurality for ignoring the nineteen states that placed no minimum age for capital punishment, as well as the national (the Comprehensive Crime Control Act of 1984) and subnational trend of lowering the age of juvenile criminal culpability for being tried and punished as an adult.[26] By appealing to the pertinent legislations enacted in the ongoing "get tough" movement as evidence of societal skepticism, the dissenting minority chose to disregard the national consensus favored by the plurality.

One year later, in another five-four decision, *Stanford v. Kentucky* (1989) determined that the execution of a person for a crime committed at the ages of sixteen or seventeen did not violate the constitutional protection against cruel and unusual punishment. Again, the plurality and minority chose to use different sets of evidence to support their positions. Justice Scalia, who wrote for the plurality this time, used the same argument for his dissent in *Thompson* that because there was a lack of national consensus (based on state laws and jury determinations) on the minimum age of capital punishment, there was no objective evidence of societal consensus against executing seventeen- or sixteen-year-olds.[27] Justice Brennan, who wrote the dissent, cited

[24] See 487 U.S. 859.

[25] See 487 U.S. 863.

[26] See 487 U.S. 865.

[27] See 492 U. S. 362.

thirty states whose statutes at the time either capped capital punishment at eighteen or seventeen, or did not authorize capital punishment at all.[28] He also went beyond state laws and pointed to the rarity of executing juveniles in the world,[29] as well as the respected views of professional organizations,[30] to reflect the contemporary standards regarding juvenile death penalty, thereby the unconstitutionality of the sentence.

Importantly, both sides expressed the unavailability of science for the Court to judge the sufficiency of maturity and culpability of juveniles in the face of such serious retribution.[31] Justice Scalia even emphatically refused the Court to use its "'own informed judgment'" to decide the acceptability of the sentence for juveniles, and its decision should instead be informed by the societal will expressed in laws written by elected legislatures.[32] At the time when the mantle of judicial philosophy had already become interwoven with politics, the *Stanford* Court, particularly the dissenting minority, foregrounded the independent scrutinization of the criminal culpability

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[28] See 492 U. S. 385.

[29] See 492 U. S. 389.

[30] See 492 U. S. 404.

[31] See 492 U.S. 383. Justice Brennan wrote, "In my view, that inquiry must in this case go beyond age-based statutory classifications relating to matters other than capital punishment, and must also encompass what JUSTICE SCALIA calls, with evident but misplaced disdain, 'ethicoscientific' evidence. Only then can we be in a position to judge, as our cases require, whether a punishment is unconstitutionally excessive, either because it is disproportionate, given the culpability of the offender, or because it serves no legitimate penal goal."

See *supra* 492 U.S. 378. Justice Scalia wrote, "… it is not demonstrable that no 16-year-old is 'adequately responsible' or significantly deterred. It is rational, even if mistaken, to think the contrary. The battle must be fought, then, on the field of the Eighth Amendment; and, in that struggle, socioscientific, ethicoscientific, or even purely scientific evidence is not an available weapon."

[32] See 492 U. S. 378. Justice Scalia wrote, "The punishment is either 'cruel *and* unusual' (*i.e.,* society has set its face against it) or it is not. The audience for these arguments, in other words, is not this Court, but the citizenry of the United States. … For, as we stated earlier, our job is to *identify* the 'evolving standards of decency'; to determine, not what they *should* be, but what they *are.* We have no power under the Eighth Amendment to substitute our belief in the scientific evidence for the society's apparent skepticism."

of young offenders. If the science suggests that certain class of juveniles are mentally mature and morally responsible for the alleged crimes, such demonstrated criminal responsibility will warrant the transfer of juveniles to the jurisdiction of criminal court. If the science proves the opposite, particularly for all young people, it will be extraordinarily meaningful in terms of reevaluating the "get tough" juvenile justice policies, including the various waiver statutes, adopted in the last generation.

Indeed, adjudication competence and criminal culpability are two analytically different issues. Although some of the incapacities that excuse or mitigate criminal culpability may also render a defendant incompetent, the two issues focus on the defendant's mental state at two different points in time, the time of crime and the time of court proceeding; and they are subject to two different constitutional amendments, the Eighth and the Fourteenth. However, the developmental analysis, which examines the extent to which the impact of adolescent immaturity on adjudicative competence and criminal culpability, serves a broad basis for both legal inquiries. In fact, the Supreme Court's opinions on juvenile death penalty and life without parole are later cited by the California Supreme Court to rule against the prosecutorial transfer (*O.G. v. Superior Court*, 2021). Therefore, it is reasonable to predict that the revelation of developmental incompetence of juvenile defendants will not only raise serious questions against harsh adult sanctions but also reduce the role of transfer in the jurisprudence of juvenile justice.

Reform Window for Juvenile Transfer

Despite having no access to neuroscience or behavioral research, the original child savers were correct that juvenile delinquents are immature children and amenable to treatment. But relying upon the *parens patriae* doctrine, they saw no need to mandate procedural protections for youths facing transfer. With the 1966 *Kent* decision, the Supreme Court offered broad reasons that juvenile delinquents were fundamentally similar to criminal defendants at the adjudication stage for procedural protections but fundamentally different at the disposition stage to receive appropriate treatment. The Court did not specifically address the basis on which a juvenile should be transferred yet recognized its tremendous consequences.[33] The Court did not hear another case about waiver by the time of the "get tough" movement. The number of juveniles waived into criminal courts also spiked in the 1980s and 1990s, when the idea of juvenile delinquents was transformed into small criminals who deserved adult punishment. At the turn of the century, a body of developmental studies showing clear differences between adolescents and adults called for a different response from the justice system (Grisso and Schwartz, 2000; Grisso et al., 2003). They attempted to fill the conceptual void of articulating a clear rationale for maintaining a separate justice system for young offenders. The underlying premise of the original juvenile court, that young offenders are different from adult criminals and need different treatment from the justice system, seems to be reemerging.

The Supreme Court once again led the way and adapted its decision to these newly affirmed facts that highlight distinct characteristics of the juveniles. In *Roper v. Simmons* (2005),

[33] See 383 U.S. 557. "…, considering particularly that decision as to waiver of jurisdiction and transfer of the matter to the District Court was potentially as important to petitioner as the difference between five years' confinement and a death sentence, we conclude that, as a condition to a valid waiver order, petitioner as entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision."

the Court reconsidered the *Stanford* decision and decided to extend the *Thompson* decision, which applies to juvenile offenders under sixteen, to all juvenile offenders under eighteen. Departing from the *Stanford* Court's conservative judging, the *Roper* Court executed an independent judgment in reaching its final decision.[34] The Supreme Court generally insists on some special considerations when overruling its precedent.[35] Justice Kennedy, who wrote for the plurality, referenced several psychological and sociological studies to demonstrate that executing juveniles under eighteen violates the Eighth Amendment which reserves capital punishment for only "a narrow category" of offenders whose crimes are the most serious and whose culpabilities are extreme. Specifically, he pointed to three scientifically proven differences between youths and adults. First, it is more often to find a lack of maturity and an underdeveloped sense of responsibility in youths than in adults, and these qualities lead youths to make "impulsive and ill-considered actions and decisions" (Arnett, 1992). Second, juveniles are more vulnerable or susceptible to negative influences and peer pressure (Steinberg and Scott, 2003). Third, the character of a juvenile is more transitory than that of an adult (Erikson, 1968). Collectively, these three characteristics suggest that a crime committed by a youth is less reprehensible because the youth did not fully understand the ramifications, nor was he or she fully culpable for the crime in

[34] See *Atkins v. Virginia*, 536 U.S. 304 (2002). The Court used two criteria to support its ruling that under the Eighth Amendment, the death penalty is cruel and unusual punishment for the entire category of intellectually disabled offenders. The first is the objective indicia of a national consensus. The Court held that standards of decency have evolved since *Penry v. Lynaugh,* 492 U.S. 302 (1989), in which the Court ruled that the Eighth Amendment generally allows death sentences for the intellectually disabled, and now demonstrate the death penalty is a disproportionate punishment for this group. The second is the Court's own determination through its independent judgment. The Court independently concluded that the imposition of death penalty on the intellectually disabled is not acceptable, since mental impairment diminishes the culpability of the offender, thereby making the death penalty as retribution for a past crime less proportional and its deterrent effect less likely.

[35] See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 854 (1992). "[W]hen this Court reexamines a prior holding, its judgement is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case."

the way that an adult offender would be. But because the youth is still growing, he or she should not be assumed to be irredeemable. Therefore, death penalty is a disproportionate punishment for juveniles under eighteen who, by definition, are not the worst offenders subject to the sentence.

After *Roper*, the Court followed the precedents and issued another two opinions holding that the imposition of life without parole for young nonhomicide offenders is problematic.[36,37] The reasonings were exactly the manifest insufficient culpability of juveniles to receive some of the harshest punishments for their acts. Consequently, this primary line of reasoning used in the series of cases should have a much broader implication for juvenile justice reform than the specific issue of capital punishment and life without parole. Primed by developmental research, this analysis challenges the core assumption which drove the "adult time for adult crime" rationale in the wake of the "get tough" movement that facilitated the expansion of the transfer mechanism. Therefore, the powerful signal sent by the nation's highest court should have a direct impact on juvenile transfer that all young offenders must be processed differently by the justice system.

So far, the Supreme Court has not extended the command to transfer, the mechanism which makes these adult punishments possible in the first place for juveniles.[38] Nevertheless, the differences between youth and adults have become more salient in the post-*Roper* era, and in some states, the adjudication of juveniles in adult court has lost some of its appeal. For example,

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[36] *Graham v. Florida,* 560 U.S. 48 (2010). The Court held that the Eighth Amendment prohibits life without parole for offenders who were under eighteen and committed non-homicide offenses.

[37] *Miller v. Alabama*, 567 U.S. 460 (2012). The Court held that the Eighth Amendment prohibits a mandatory life-without-parole sentence for a juvenile homicide offender under eighteen, but the sentencer has the discretion to impose the life-without-parole sentence after considering the offender's youth and characteristics.

[38] In *Thompson*, *Graham*, and *Miller*, the Court all chose not to address the state transfer statutes and only focus on the sentencing in question, reasoning that transfer statutes do not justify the intent of state legislatures regarding the punishment for young offenders (567 U.S. 460).

Connecticut raised the age of adult criminal responsibility from sixteen to eighteen in 2007, following the improved understanding of brain development in adolescents (CJJPIC, 2007). The Connecticut legislature later raised the age for prosecutorial direct files as well for certain felonies in 2015 (Kirby, 2021). In February 2021, the California Supreme Court unanimously upheld a state law passed in 2018 barring children under sixteen from being charged as adults. The high court echoed the previous Supreme Court cases and scientific research on adolescent brain development, maintaining that "children are different from adults in ways that are critical to identifying age-appropriate sentences" (*O.G. v. Superior Court*, 2021, p. 3). A few states also expanded procedural protection for juveniles in criminal court, recognizing the incompetency of young offenders to stand trial due to their developmental immaturity.[39] Like how the conservative political landscape and cultural discourses dismantled the welfare state, the renewed emphasis on rehabilitation and the new developmental approach should provide stability to the advocacy of returning more juveniles to their original jurisdiction.

The juvenile crime and violence trends that occasioned the original expansion of transfer have also long reversed themselves. Since 1996, the national juvenile arrest rate and violent crime index arrest rate for juveniles both had decreased: by 2007, the national juvenile arrest rate had decreased 42 percent from the 1996 peak; the violent crime index arrest rate for juveniles had decreased 77 percent from the 1994 peak.[40] As youth violence was down significantly from its peak, no "superpredator" fiasco dominated the news headlines (The Associated Press, 2007). Even the person who coined the term showed remorse for his characterization of young offenders and withdrew his prediction about the threat of juvenile crimes (Becker, 2001). The media, a key

[39] https://www.ncsl.org/research/civil-and-criminal-justice/states-with-juvenile-competency-laws.aspx

[40] OJJDP Statistical Briefing Book. Online. Available: http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05218&selOffenses=35. November 16, 2020.

influencer in stirring public sentiment against young offenders and in generating support for tough laws, now plays an important role in rallying support for rehabilitation- and accountability-driven juvenile policies. Local newspapers often described young offenders as youths whose criminal activities are the product of their developmental immaturity and who deserve more help from the juvenile and school systems (Wallis, 2004; Hartford Courant, 2006; Tuhus, 2007). Reports of high-profile juvenile incarceration stories also helped rally support for immediate legal changes. The Connecticut Juvenile Justice Alliance responded to the suicide of a seventeen-year-old inmate, who had been tried and incarcerate as an adult, by joining a policy panel led by state legislature to develop a plan for raising the minimum age of criminal court jurisdiction (Hartford Courant, 2006; Connecticut Juvenile Justice Alliance, 2006). The law it helped create eventually passed in 2007 and was enacted in 2012, keeping the sixteen- and seventeen-year-olds in the juvenile justice system.

If these changes in tone were indicative of greater public sentiment, more state-level reforms should follow into the twenty-first century. Surveys found that the public in the early 2000s were more willing to pay for rehabilitative programs than pure incarceration (Scott and Steinberg, 2008, 278). A society less willing to incarcerate youths will probably advocate for the transfers of youths very rarely. To some extent, this change in the public attitude toward young offenders might be largely attributed to the sympathetic representation of juveniles in media and the access to scientific knowledge about adolescence. Noticeably, child saving was not entirely dead during the "get tough" period. While the "get tough" proposals with the juvenile justice system received wide support, the public also drew sharp distinction between violent and non-violent offenders and between first offenders and recidivists when making judgments about deserved punishment (Cullen et al., 2000; Roberts, 2004). Surveys found that the public

supported early intervention of high-risk youth and provision of community-based programs for non-violent offenders (Flanagan, 1997; Cullen et al., 1990); support for alternatives to adult processing remains steadfastly strong throughout the 1980s and 1990s (Moon et al., 2000; Roberts, 2004); and the public were more opposed to transferring juveniles convicted of serious crimes to criminal court when the age of the juvenile decreases (Feiler and Sheley, 1999). In other words, the broad support for harsher punishment was only restricted to a small category of juveniles who committed violent crimes and were near the upper age limit of the juvenile system. Yet, the majority of the transferred juveniles in the 1990s did not commit the worst offenses that the public assumed, and the general age of criminal courts across the country was lowered by state legislatures to include young adolescents who committed some of the more serious crimes (Butts, 1996).

The appearing disconnection between the public position and the reality of juvenile transfer points to the complex and nuanced attitude public had on dealing juvenile delinquency. Yet, the public's tolerance to the enactment of harsher juvenile transfer policies could be filtered through media reports of notorious cases and their level of knowledge about the juvenile justice policies (Roberts, 2004). A study conducted in Toronto, Canada found that the public routinely focused on the seriousness of the offense covered in the newspaper and knew little about the characteristics of the offender and the dispositions available to the court (Sprotts, 1996). The asymmetric information received by the public led them to draw general inferences about youths based on media reports of salient, high-profile crimes, as well as to think that the youth court was too lenient in transferring cases to adult court. Though similar study was not done in the U.S. during its "get tough" period, there is little doubt among scholars that rampant media coverage of juvenile crimes in the 1990s, regardless of the actual decrease in juvenile crime rates after 1996,

consolidated the negative discourse surrounding juvenile justice (Dorfman and Schiraldi, 2001). While the American public tended to prefer treating juveniles and adults alike only when the juvenile is old enough (around fifteen), they were also less patient with violent offenders and believed that the criminal court imposes more certain consequence for these youths than the lenient juvenile court (Soler, 2001). Therefore, their offense-based view of salient juvenile coverage and distrust of the juvenile system would lead them to support policymakers passing laws that mandate more frequent transfers of younger offenders, thereby leaving a less distinct border between the juvenile and criminal justice systems in the 1990s.

Since the "get tough" period, changes in the protection of juvenile's rights have been the outcome of the interaction among policymakers and the general public. The public was alarmed about the burgeoning juvenile crime rates and politicians reacted to these fears by initiating sweeping legislative changes. Governor Carey was elected in a bellwether liberal state but was pressured by his political opponent to start a conservative trend of juvenile crime control. President Clinton even alienated much of his conservative base in his 1992 campaign but also passed a draconian federal law in his first term, which helped him mute difference with his 1996 Republican opponent, Senator Bob Dole, on crime issue (CQ Almanac, 1996; L.A. Times, 1996). Certainly, history suggests the need to assess the role of institution in the emergence of tough juvenile laws.

Institution structures the choices available to political actors and shapes how these actors view political opportunities and risks (Thelen, 1999). Indeed, the structure of American institutions could leave elected officials vulnerable to public sentiment and constituent demands for crime control. In developing theories to explain the divergent criminal punishment trends in the Federal Republic of Germany and the United States, Joachim J. Savelsberg (1994)

hypothesized that unlike the German bureaucrats, since American elected officials are personally accountable to their constituency, their knowledge and decision-making about criminal punishment are more likely to hinge on the volatile public knowledge about crimes (p. 932-3). This knowledge-generating process causes legislators to quickly incorporate new unsubstantiated knowledge into their decision-making. American lawmakers are beholden to the pluralistic interests that have converged around a certain issue. Therefore, their accountability to their constituency makes their policy decision-making process subject to substantive bias.

In the context of juvenile justice policymaking, scaling up crime control used to be a means of gaining political authority. The volume of juvenile crime coverage remained high despite the reversed actual crime trends started in 1996; while attitudes about youth crime were more nuanced than policymakers seemed to recognize, juvenile crime and violence rates in the public view still maintained distortedly high in the late 1990s (Soler, 2001); and the share of the population who believed that juvenile courts were too lenient remained consistently high through the 1980s and 1990s (Roberts, 2004). Once the scale of penalty increased and the commitment to penalty was solidified, lawmakers could propose even harsher policies, whether in response to a perceived problem or in an attempt to set themselves apart from their political opponents.

Importantly, the function of an institution is not a result of a deliberate choice from the past. The American institutions were never designed to work against the interests of the children; if nothing else, the period of due process reform and the Supreme Court's opinions on juvenile sentencing in the 1980s should at least show the opposite that the institution was functioning to deliver justice to the children. Those landmark juvenile justice cases served as critical junctures strengthening the procedural protection in juvenile courts, and future responses to juvenile cases are constrained by the trajectories set by those past cases. Not to mention that the original

intentions of the juvenile justice system were to address the unique needs of young offenders and to ensure that a separate system exists to provide appropriate services for these youths. Policy guidelines adopted by the National Council on Juvenile and Family Court Judges recommend that the "waiver and transfer of juveniles to adult court should be rare and only after a very thoroughly considered process."

Still, if the values and agenda of certain actors fit well with the realities of a given society at a specific time, such convergence can invite these new players to force policy changes, which was shown in both the expansion of transfer statutes and localized roll-back on these statutes. The public chose to support a harsher stance toward juvenile punishment in periods when youth violence was more salient in their eye and then switch to more lenient stance when youth violence was less salient. The general public interests are represented by both elected officials and professional interest groups who helped insert power in shaping criminal justice policies. The relationship between interest groups and governments are considered crucial to the policymaking process. For example, the Connecticut Juvenile Justice Alliance played a key role in pushing the reform of raising the general age of the juvenile court jurisdiction by winning over judges and leaders in the state legislature and inserting itself in the policy development process. In California, state legislatures heard testimony from a panel of professional organizations in 2016, after serious questions had been raised about the growing disparate impact of direct file transfer on minority youths since 2003. These youth advocacy groups cited their publication findings to support Proposition 57, a new ballot measure which would abolish the direct filing power given to prosecutors through the pass of Proposition 21 (Ridolfi, 2015).

Clearly, youth advocacy organizations have been important catalysts of juvenile transfer policy reform by focusing political attention on evidence about the negative consequences of

transfer. Meanwhile, the opponents of these reform efforts were also equally loud, and they were represented by interest groups that traditionally have the most influence on criminal justice policy — the district attorney association. The district attorney association represents prosecutors and allied professionals who are directly involved in the operation of the criminal justice system. As active members of the "policy community subgovernment," interest groups like the district attorney association represent professions with institutionalized stakes in the operation of the criminal justice system (Fairchild, 1981). It is this closed and privileged access to the policy development process that often distinguishes the influence of the district attorney association from other professional interest groups in the criminal justice policy community (Ismaili, 2006).

Prosecutor is arguably the least checked public position in American institutions, except by the voters who hold those who are derelict in their duty accountable. In the past few decades, the culture of law and order created a perfect storm for prosecutors to maximize prosecutions. Prosecutor scholarships observe that criminal justice reform usually happened in jurisdictions where voters are entirely or mostly urban (e.g., Brooklyn, Manhattan, Philadelphia, Suffolk County) (Shugerman, 2021). In other jurisdictions which are composed of many suburban voters, prosecutors cannot stay in power if they advocate for policies that might lose the suburban district. Prosecutor elections in most states reflect highly democratically accountable view of prosecution and judging, but they are not the engines that drive this democratic impulse (Ellis, 2012). Research studying prosecutor elections during the years 2012 to 2017 found that prosecutors usually run unopposed or face a weak challenger (The Prosecutors and Politics Project, 2020). The uncontested nature of prosecutor elections suggests that prosecutors often participate conventionally in a highly institutionalized electoral process that does not require one to take action. To note that, in the course of institutionalization, one takes action only when

departing from the institution (Jepperson, 2021, p. 147). In other words, prosecutors become actors of change when they overcome the institutional challenge brought about by a strong challenger. For example, Philadelphia elected a progressive D.A., Larry Krasner, in 2017 as a response to the mass incarceration resulted from the past problematic use of prosecutorial discretion. Krasner beat his Republican opponent, Beth Grossman, a longtime prosecutor who was endorsed by the city police union and the Philadelphia Inquirer, both of which often back Democrats, by more than forty percentage points (Otterbein, 2017). Krasner later appointed a progressive chief of the juvenile unit, Robert Listenbee, who later spearheaded numerous policies moving more than a hundred cases directly filed in adult court to juvenile court (Slaughter, 2021).

Overall, the lawmaking battles over juvenile justice reform have been largely fought in the court of public opinion since the late twentieth century. Public attitudes toward juveniles and popular conception of criminal justice changed from time to time, creating different incentives on policymakers to do something. The greater political involvement of youth advocacy groups and the emergence of progressive prosecutors, who explicitly run on the platform counter to doing little more than locking up young offenders, suggest that the political incentives that many public officials face today are different than those in the 1980s and 1990s who largely benefited from being tough on criminals. These developments are certainly reasons to be hopeful that reforms of juvenile transfer statutes will continue to come in the near future.

Moreover, the fact that high courts started using both objective indicia of societal standards, expressed in those democratically passed legislations, and independent judgement, based on developmental knowledge about adolescence, indicates a bright future of steadfast judicial reforms of juvenile transfer. As discussed in the *Thompson* and *Stanford* episodes, public

opinion has consistently played a significant role in the legal reasoning regarding punishment. Its relevance originates from *Trop v. Dulles* (1958) where the Supreme Court added a doctrine of "'evolving standards of decency'" to understand the claims of the Eighth Amendment, since the "words of the [Eighth] Amendment are not precise and that their scope is not static."[41] In *Gregg v. Georgia* (1976), Justice Stewart further clarified the application of the "evolving standards of decency" doctrine as "an assessment of contemporary values concerning the infliction of a challenged sanction."[42] By the "assessment of contemporary values," Justice Stewart did not mean "a subjective judgment" by the Justices themselves but rather to find an "objective indicia that reflect the public attitude toward a given sanction."[43] He continued to explain that, "Courts are not representative bodies" and that their best informed judgment are "within narrow limits," but the judgement of a democratically elected legislature "weighs heavily in ascertaining such [contemporary] standards" and thus is presumed to be valid.[44] This "objective indicia" doctrine was not only core to the opinions of Justices who then could not rely on science to determine the acceptability of harsh punishments on juveniles, but Justices who ruled in *Roper* and after also solidly abided by this doctrine. For example, the *Roper* court opined that since *Stanford*, a national consensus has developed against the execution of juvenile offenders younger than eighteen, reflecting in the rejection of the juvenile death penalty in a majority of states;[45] the

[41] See 356 U.S. 100, 101.

[42] See 428 U.S. 173.

[43] Ibid.

[44] See 428 U.S. 175.

[45] See 543 U.S. 560. By the time of the decision, "30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach." See also 543 U.S. 563. When considering the petitioner's rejection of the national consensus against executing juveniles, Justice Kennedy cited, "Congress considered the issue when enacting the Federal Death Penalty Act in 1994, and determined that the death penalty should not extend to juveniles."

infrequency of its use even when the sentence remains on the books;[46] and the consistency in the trend toward abolition of the practice.[47] Likewise, the same use of this doctrine reappeared in *Graham v. Florida* (2010).[48]

Admittedly, the constitutionality of juvenile transfer is relevant to the due process protection under the Fourteenth Amendment, and there is no value-driven analysis of this clause based on objective indicia of societal standards yet. Therefore, the role of public opinion in determining the legitimacy of non-judicial transfer statutes will weigh more in the legislative battle, where policymakers make judgements in the light of public sentiment about juvenile justice, than in the judicial battle. Nevertheless, substantial legal reforms based on the clear recognition of the juvenile's incompetence can occur in court, as did the 2021 California Supreme Court decision barring transfer for juveniles under sixteen. Policies supported by such developmental approach are stable because of their firm theoretical grounding, even during times when political pressures from "deep-state" interest groups, such as the district attorney association, to deal punitively with young offenders are intense. Hence, one would expect to see more frequent usage of the developmental approach by more states in support of a separate juvenile justice system.

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[46] See 543 U.S. 560. From 1995 to 2005, only three states have executed prisoners for crimes committed as juveniles: Oklahoma, Texas, and Virginia.

[47] See 543 U.S. 562. "Since Stanford, no State that previously prohibited capital punishment for juveniles has reinstated it."

[48] In *Miller*, the Court chose not to rely on legislative enactments as national consensus in the same way as *Simons* and *Graham* for several reasons. First, the Court did not categorically bar a penalty, but rather required only that a sentencer follow a certain process. Second, fewer states imposed mandatory life-without-parole sentences on juvenile homicide offenders than those which authorized life-without-parole for juvenile nonhomicide offenders scrutinized in *Graham*. Moreover, the Court explained that as shown in previous cases, simply counting legislative enactments can present a distorted view. It was also impossible to determine whether a legislature had endorsed a given penalty for children when allowing transfer to criminal court (or would do so if presented with the choice).

Should youth advocates give up their effort to push for sweeping reform of juvenile transfer, because the Supreme Court has not acted on the *Dusky* protection over juvenile transfer, is a pressing problem. Notably, one should pay attention to whether the court's application of principle to reaffirm or overrule the precedent was consistent or was determined by the bias of an individual. The *stare decisis* doctrine provides for fairness, predictability, and integrity of the American judicial system. Without any specific justification, the Court is discouraged to departure from its precedent. The mantra that youths are mentally and constitutionally different than adults has been loud and clear in recent judicial opinions. But sometimes, even well-reasoned judicial opinions are also subject to different (or insufficient) interpretations. For example, writing for the dissenting opinion in *Jones v. Mississippi* (2021), Justice Sotomayor seriously accused Justice Kavanaugh of his "low respect for *stare decisis*" that he *unduly* rewrote a substantive holding in *Miller*,[49] mandating a categorical ban of life without parole on all but the rarest juvenile offenders whose crimes reflect permanent incorrigibility (as required in *Graham*), into a procedural holding that it requires nothing beyond a discretionary sentencing procedure (i.e., a hearing) where the imposition of a lesser sentence is contingent upon the consideration of the defendant's transient immaturity. Although both the plurality and the dissent agreed that "youth matters in sentencing,"[50] the two held different interpretations of how youth matters. The plurality believed that the precedent, *Miller*, requires no on-the-record finding of the defendant's transient immaturity or permanent incorrigibility,[51] while the dissent argued that it is a necessary procedure not only mandated by *Miller* but also derived from *Graham* to make life without

[49] See 593 U.S., at 16 (Sotomayor, J., dissenting)

[50] See 593 U.S., at 10 (Opinion of the Court); also see 593 U.S., at 9 (Sotomayor, J., dissenting).

[51] See 593 U.S., at 15-8 (Opinion of the Court).

parole a truly rare sentence for juveniles.[52] The dispute over the procedure to show youth as a mitigating factor undergoes in *Jones* should remind future litigators that although the defendant's youth is a consideration in arguing against the logic of "adult time for adult crime," the way to use this factor is still not definite enough to effectively shield juveniles from excessive infringement of their liberty.

Finally, budgetary pressure also provided impetus for state-level juvenile transfer reforms. Several states have come to realize that trying juveniles as adults is simply not cost-effective and strained state budgets. Politicians and taxpayers regretted the enduring billions of cost of the last generation's punitive policies, a burden that became more onerous during the Great Recession and the period of anemic growth that has followed (Delgado and McCauley, 2017). In general, the public and pragmatic policymakers care about holding youth accountable for the harms they cause, but they also want to adopt effective measures that reduce crime at the lowest cost (Scott and Steinberg, 2008). For example, the Rhode Island legislature repealed a statute lowering the jurisdictional age from eighteen to seventeen only a few months after its passage, upon realizing its error in thinking that sending teenagers to prison would cut costs (Henry, 2007). This cost-driven argument received special attention in almost every state that has implemented transfer reform but also in the rest of the nation, such as Wisconsin, where legislation is yet to be introduced to shift thousands of youths out of adult prisons and into juvenile facilities (MacIver Institute, 2013).

[52] See 593 U.S., at 10 (Sotomayor, J., dissenting).

Theories and Hypotheses

The current literature pointed to four sources of juvenile transfer reform in states: media and public reactions to juvenile crimes, interest group lobbying, court opinions, and economic conditions. The central question is whether these putative forces impinge on the variation in juvenile transfer reform outcomes across states. Although scholars have presented important findings about the effectiveness and implications of juvenile transfer policies, there is a lack of theories about the influences of aforementioned factors upon the decision to reform juvenile transfer. It is unclear how the presence or absence of a specific influencing factor, identified by the scholarship, affects the passage or defeat of policies tackling juvenile transfer. For example, it could be that the delay of juvenile transfer reform in state A, compared to state B, is not entirely due to the pushback by prosecutors, since both states' prosecutors had lobbied against the bill, but is rather due to the lack of strong, pro-reform lobbying by other key criminal justice professionals, such as judges and correctional officers.

From 1995 to 2003, a number of states modified their waiver statutes, but most of them amended the statutes in ways that did not correlate with the goal of rehabilitation and the "best interests of the child" (Steiner and Hemmens, 2003). Some states lowered the age for judicial and/or legislative waiver, and a few others expanded the categories of offenses eligible for judicial or legislative waiver to the criminal court. Only Hawaii and Kansas repealed statutory exclusion provisions by 2003. As of 2016, forty-five states and the District of Columbia allow for discretionary waiver by juvenile court judges, thirteen states have mandatory waiver for cases meeting certain criteria, twenty-eight states provide statutory exclusion, and fourteen states allow prosecutors to indict defendants in either juvenile or criminal court. In terms of protective

procedure, twenty-eight states allow for reverse waiver in which the criminal court judge has the discretion to transfer young defendants back to the juvenile court.

The reality of juvenile transfer and its relationship with the American political system are complex and can only be understood in well designed, systematic studies. Each state has unique circumstances, and a larger sample of states and greater time dimension would probably reveal clearer patterns of influences in policymaking. This research, however, only focuses on discerning the general forces behind successful juvenile transfer reforms — that is, amending old state waiver statutes — since the 2000s and studying whether these forces may explain the variation in the status of juvenile transfer reform between states.

The present theory about policy community (Ismaili, 2006) and previous studies that contribute to understanding pivotal actors in criminal justice policymaking process motivate my first hypothesis:

Hypothesis 1: *Passage of reforms to juvenile transfer laws occurs when a relevant official or interest group with legal background initiates reform.*

Key governmental positions and principal criminal justice interest groups are usually considered as members of the elite community. The elite's dominance in criminal justice policymaking was first written by Heinz et. al. (1969) in their in-depth analysis of the influence behind the passage of six bills introduced in the 1967 session of the Illinois legislature. They found that lawyers, especially prosecutors, were the most influential interest group in building large consensus with a few relevant legislative actors in the decision-making process around criminal law, including agenda-setting and the drafting of the bills. Lawyers, both the prosecution and the defense, belong to principal criminal justice interest groups, or simply principal groups. Heinz et. al. (1969) defined principal groups as those permanent interest groups

"for which the criminal law is a principal and continuing area of concern" (p. 283). Principal groups include defense-oriented organization like the ACLU, civic organizations composed of business leaders, government agency, the state's attorney association, and other criminal justice professionals such as the police. For Heinz et. al., not all principal groups are considered as the elite which exert an exceptional level of influence; rather, the elite are mostly lawyers who, as a group, monopolize the policymaking around criminal law. Based on the foregoing, I narrow the language in the first hypothesis that not just principal criminal justice interest groups in general, but specifically those with legal background, play a significant role in shaping juvenile transfer policies.

The role of elite can be identified in the history of juvenile justice. For a long period, the "get tough on crime" mantra had been an important national and local political issue and had weighed in favor of extending criminal court jurisdiction to young offenders who were not fully mature. The media kept referring to these youths as superpredators, and the exposure of this vocabulary was high. The prevalence of the term was partially due to the identity of its creator, an academic elite. The "superpredator" epithet was first popularized in 1995 by John J. DiIulio Jr., an academic who warned the American public about the impending wave of teenage savagery (DiIulio, 1995).

Admittedly, policymaking process is a response to the broad policy environment, which is composed of both the attentive public, comprised of the media, interested members of the public, and interest groups, and the subgovernment, comprised of elected actors, government agencies, and professionals who are core to a certain policy community (Ismaili, 2006). Public opinion polls in the late 1990s attested frequently to the concern of citizens about the juvenile crime rate and showed strong support for transferring juveniles who committed violent offenses

to criminal court jurisdiction (Roberts, 2004; Wu, 2000; Mears, 2001). The public opinion about juvenile transfer is filtered through the media. The heightened media coverage of high-profile juvenile crimes not only feed the public a misrepresentation of the reality about juvenile crimes, but they also serve as an indication of public concern for policymakers who then react to this perceived public anxiety over juvenile crimes.

However, as discussed in the first chapter, public support for juvenile justice issues is always complex and is affected by the context, such as when considering the nature of crime and the age of offender. Not only is it difficult to assess the public mind on juvenile transfer, but systematic studies also found little importance of public opinion in affecting changes in criminal justice policies, compared to elites and interest groups. In their study of changes in the California Penal Code from 1955 to 1971, Berk et. al. (1977) concluded that although media opinion was correlated with legislative process, possibly through business elite influence, they found public opinion to be not important in affecting Penal Code changes because interest group lobbies by the law enforcement, mostly composed of prosecutors and police organizations, and civil liberties organizations, such as the ACLU, appeared to have a "gentleman's agreement" not to involve public agitation. Erika Fairchild (1981) explained that this exclusion of public involvement is due to the nature of the enforcement of criminal law, which requires a broad consensus of the stakeholders. Trade-offs often happen between ideologically opposing groups so that each side can get the policies that they want and avoid the need to stress public outreach (Fairchild, 1981). Moreover, the public care more about the fact of action, for example whether the legislature is going to raise the minimum age of criminal court jurisdiction, rather than the detailed substance of a particular law that must pass, for example over which offenses will the eligible age be raised (Fairchild, 1981).

In contrast, the state of knowledge about interest groups in criminal justice policymaking is more robust, and recent research provides a good starting point for exploring the role of interest groups in reforming juvenile transfer laws. In his 50-state study of determinants of deinstitutionalizing juvenile offenders, George Downs (1976) found that interest groups in general, such as the ACLU, state welfare and mental health agencies, and the American Bar Association, were important to remove obstacles to maintain a high level of public visibility and political interest around juvenile corrections. Importantly, there is a large degree of asymmetry between different kinds of interest groups' abilities to affect the policymaking process. Professional groups, which consist of judges, attorneys, and law enforcement personnel, are more influential than reform- and service-oriented interest groups, such as those that represent the offenders and victims (Fairchild, 1981). Within the professional interest groups, those that directly participate in the formulation and execution of criminal justice policies secure more power in influencing the eventual formation of the policies. Berk and Rossi (1977) found that in Florida, Illinois, and Washington, governors and legislative leaders of corrections committees had more influence over the decision-making around corrections policies than interest groups, and within those interest groups, elite professionals like the state bar association and the ACLU were perceived to be significantly more influential than ex-offenders organizations.

If the support for keeping youths in the juvenile justice system exists among the elite (i.e., officials who occupy key governmental positions and principal criminal justice interest groups with legal background), one should see lawmakers move to introduce or bring back bills that would reform how juveniles are tried as adults. The passage of the final bill depends on numerous factors. However, given the power of the elite in policymaking, they are able to clear the barrier for legislative reform if they choose to do so.

To note that, this hypothesis covers the potential force of the cost-driven argument favoring reforming juvenile transfer because it is one of the claims that actors use to persuade lawmakers to pass reform bills. Briefly mentioned at the end of the first chapter, evidence of the long-term economic cost to the government's substantial use of adult incarceration with juveniles was critical in bringing reform voices forward. But such argument can be limited, since for many policymakers, the alternative to adult incarceration is building more secure juvenile confinement facilities, which on average costs significantly more than housing juveniles with adult prisoners. This costly policy option, in addition to the price tag of expanding the services in the juvenile system, makes reforming juvenile transfer unappealing because policymakers are generally unwilling to release these youths directly to the hands of community-based services, another alternative that could release fiscal burdens of local governments.[53] Ultimately, it is the actors within the arena of interest who insert influence over the policymaking process, no matter what convincing arguments they make to justify their stance.

The opinions of recent landmark Supreme Court's rulings on juvenile sentencing lead to the second hypothesis:

Hypothesis 2: *If a state court rules in favor of curbing or abandoning the practice of prosecuting certain classes of young offenders as adults, the developmental argument will be core to the court's holding.*

The post-*Roper* Supreme Court solidified the idea that juveniles are different from adults and thus deserve to be treated differently by the justice system. Although the cases only focus on juvenile sentencing, one would expect to see what ripple effects they will generate for youths

[53] The juvenile system is run by counties, while the adult system is run by the state's corrections department.

tried as adults. Using the court to declare transfer statutes unconstitutional could create major and steady impact on state juvenile transfer laws because judges shape criminal justice policy through the application, review, and interpretation of laws.

Trying a youth in the criminal court is a jurisdictional question about adjudication and not necessarily a punishment question. The constitutionality of juvenile transfer is related to the adjudicative competence of young defendants and is subject to the scrutiny of the due process clause under the Fourteenth Amendment. Therefore, it may be difficult to use the "evolving standards of decency" test of the Eighth Amendment to categorically challenge juvenile transfer laws, for one that this value-driven analysis does not apply to the Fourteenth Amendment, but also that the rate and substance of state legislative changes regarding transfer laws differ, and state practices of trying youths as adults still widely exist. But also to recall that, as in *Roper*, judges can exercise independent judgment to find any constitutional violation. The increasing salience of developmental competence has invited inquiry into the youth's immaturity and its relevance to juvenile sentencing. The Supreme Court held repeatedly that youths are entitled to rehabilitation. In both *Roper* and *Graham*, Justice Kennedy stated that the severity of the offense should not automatically render a youth incorrigible.

The youth's right to rehabilitation may be violated in criminal court where the main purpose is to punish. It is unknown how post-*Roper* decisions will guide a court to use the status of diminished culpability of youth to immune a class of young offenders from adult prosecution and sentences that are significantly less than death penalty and life without parole. Prior to *Roper*, arguments about the unconstitutionality of non-discretionary (i.e., non-individualized) transfer had been made but all failed, as the courts deferred to the statutory scheme for juvenile transfer that the legislature intended to withdraw or limit the right of certain classes of young

offenders to juvenile treatment (*United States v. Bland*, D.C. Cir. 1972; *State v. Cain*, Fla. 1980; *State v. Mohi*, Utah 1995; *State v. Behl*, Minn. 1997). After *Roper*, the developmental argument also showed to be inadequate to challenge the legal doctrines that disfavor the mitigation of serious crimes committed by some juveniles (Maroney, 2009). Early scholarship concluded that the developmental argument is limited in influencing the criminal law (Maroney, 2009). State courts felt to be bound by laws created by state legislatures to treat youths as adults (*State v. Heinemann*, Conn. 2007; *State v. Alford*, Minn. Ct. App. 2008; *State v. Allen*, Conn. 2008).

In response to the scientific evidence about adolescence brain development, the courts could review the existing transfer statutes to ensure that youths who are incompetent as a result of immaturity are not tried in criminal court and receive procedural protections in juvenile courts. As the developmental argument gains more recognition, it has challenged state legislatures to move juvenile justice away from the "get tough" momentum of the last few decades. So far, twenty-two states require a judge in a transfer hearing to determine whether the juvenile is competent to stand a trial (National Conference of State Legislatures). Equally, we should expect adolescence brain development to be a salient source in state court decisions to limit or eliminate transfer of certain classes of juveniles.

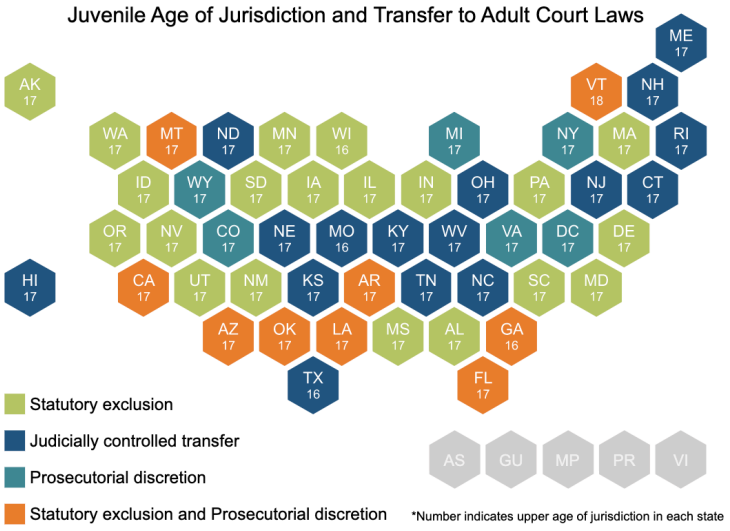
Methodology

In recent years, more than two dozen states have changed portions of their juvenile transfer laws. The analysis is going to involve exploring the determinants of policy transitions in the area of juvenile transfer in twenty states. The analysis draws on a combination of legislative reports, such as testimonies before committees, research publications by renowned juvenile justice organizations, and media accounts.

There are multiple criteria to determine whether there is a sign of rolling back some of the transfer mechanisms enacted during the "get tough" era. I choose to focus on two indicators considered by advocacy groups as reform efforts: 1) raising the upper age of juvenile court jurisdiction, and 2) banning automatic transfer of a certain list of charges. To note that, the implementation of *reverse waiver* mechanism, a process by which juveniles can petition the criminal court judge to remove their case back to the juvenile court, is also a putative safeguard to prevent youths from unwarranted criminal prosecution, as it increases judicial oversight of the transfer decision. Currently, half of the nation have reverse waiver statutes in place as a recourse of counter-transfer. In the reverse waiver proceeding, the criminal court judge uses the same kinds of broad standards as a juvenile court judge uses in a waiver hearing to consider whether criminal handling of an individual case is appropriate (Griffin, 2008). But critics argued that the mechanism still presumes that the criminal court may exercise jurisdiction over minors unless being affirmatively challenged (Pijon, 2021). Moreover, the considerable variation in the application of reverse waivers among states complicates the legislative trend analysis, thereby rendering it unsuitable for comparative studies.

Nationally, juvenile court jurisdiction varies by age. As a result, a youth may be tried and sentenced as an adult in one state, while another youth, for the exact same behavior, may be tried

and sentenced as a juvenile in a different state. Unlike adjudication in juvenile court, the collateral consequences of a criminal court conviction may include the loss of many rights and privileges, such as barring from juvenile proceedings for any future offense ("Once an Adult/Always and Adult"), disenfranchisement, and employment restrictions. The loss could be permanent depending on state law.



Source: National Conference of State Legislatures

This short section below provides some arguments behind raising the minimum age for transferring juveniles to criminal court, as well as the purported limit of such effort.

Age Boundary

"The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. … The logic of Thompson extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest."

— Justice Kennedy, plurality opinion in *Roper v. Simmons*.

In *Roper*, the Supreme Court raised the presumptive maximum age of juvenile death penalty from sixteen to eighteen. Later decisions also implicitly set the age boundary for

imposing life without parole on homicide cases at eighteen. As the Court may agree, although studies of brain development indicate that continued maturation takes place until at least age twenty-five, policymakers do not endorse and are not recommended treating individuals who offend in their early twenties as juveniles. Instead, some jurisdictions use blended sentencing to allow young offenders to serve their sentences in the juvenile system by their twenty-first birthday and complete the rest in the adult system.[54]

The boundary between the juvenile and criminal court jurisdictions is drawn to maintain the stability and legitimacy of both systems and to accommodate the society's interest in crime reduction. The transfer of juveniles to the criminal court jurisdiction is premised on two deterrence rationales. First, transfer serves as a specific deterrent by placing deemed *incorrigible* juveniles in the punishment-oriented adult system to prevent them from reoffending. Second, transfer serves as a general deterrent by treating all juveniles charged with certain violent offenses as adults to reduce overall juvenile crime. Therefore, the transfer mechanism is designed for youths with the most serious charges and most violent criminal record so that it can function as a safety valve for the juvenile system. It also means that the exercise of judicial and prosecutorial discretion over transfer should be restricted in ways that are not biased against a large class of young offenders or a broad range of offenses. Under the discovery of adolescent immaturity, transfer should be made only for the rarest juveniles whose crimes reflect corruption that is beyond the ability of the juvenile justice system.

[54] Most states extended age of delinquency through early twenties, so the juvenile court judge can extend age-appropriate sanctions and services. The extended age boundary is defined as the highest age the juvenile court can retain original jurisdiction over an individual who was involved with the juvenile court for delinquency before reaching the end of the upper age boundary. See Juvenile Justice Geography, Policy, Practice & Statistics. Online. Available: http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries?year=2018&ageGroup=1.

A clear age line between juvenile adjudication and adult prosecution should conform to the purpose of the original transfer laws and the constitutional requirement of adjudication competence in criminal court. *Dusky* does not provide a clear guidance about the minimum level of competence required for standing a trial. Courts applying the *Dusky* standard are only concerned with the capacity to carry out adjudicatory competence rather than actual exercise (Scott and Steinberg, 2008). Under *Dusky*, it is unclear that, for example, if a fourteen-year-old is competent enough to exercise due process rights by his or her own will or based on a brief instruction by a court official who expects the young defendant to learn in a short period of time.

Although a juvenile's competence to stand trial ultimately is a legal judgement, developmental science helps dictate a specific jurisdictional line ensuring that any incompetent adolescent does not have to stand a criminal trial. The relevant psychological capacities for standing trial and involving in criminal activity progress at different rates (Scott and Steinberg, 2008). A sixteen-year-old may have the logic reasoning abilities of an adult to stand trial but the impulse control or susceptibility to peer pressure of a teenager. The Supreme Court's rulings on juvenile death penalty and life without parole are thus supported by developmental science about youth's criminal culpability. Nevertheless, the age boundary that the Court drew in *Roper*, *Graham*, and *Miller* should not be misapplied in the realm of adjudicatory competence. Rather, the jurisdictional line between juvenile adjudication and adult prosecution needs to rely on scientific evidence showing that certain class of youths exhibit abilities no different than those of adults under the *Dusky* standard. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice conducted a large-scale empirical study to examine the relationship between developmental immaturity and the adjudicatory competence of young defendants (Grisso et al., 2003). The study found that the risk of incompetence under the *Dusky*

standard is higher in early and mid-adolescence (before age sixteen). On average, youths aged eleven to thirteen demonstrated significantly poorer understanding of charge matters, as well as poorer reasoning and recognition of the relevance of information for a legal defense, than did fourteen- and fifteen-year-olds, who in turn performed significantly more poorly than individuals aged sixteen and older. And there were no competence-related differences between the sixteen- and seventeen-year-olds and the young adults. Therefore, ages sixteen and seventeen seem a fair jurisdictional line for criminal court eligibility, as it shields youths who are likely to be both significantly less culpable than their adult counterparts to stand trial and substantially more vulnerable to the harsh context of adult prison from the criminal court jurisdiction.

Youths aged sixteen and seventeen are also known as mid-adolescence. By mid-adolescence, mitigation claims on the basis of immaturity become weaker and occasionally may be trumped by other priorities, such as concerns over public safety and holding juveniles accountable, but sometimes other objectives such as child welfare may also balance these negative concerns, thereby resisting the urge to lower the age for criminal responsibility (Scott and Steinberg, 2008). With the consideration of different factors, the cut-off at age sixteen or seventeen would include or exclude certain class of youths as juveniles, depending on the charges and criminal record, so that a sixteen-year-old who committed sexual assault will not be deprived of appropriate treatment, and a felony charge against a same-aged youth will not be dismissed. This age threshold for transfer is also not too low to exclude a bundle of fourteen- and fifteen-year-olds who collectively deserve mitigation on the basis of immaturity. Juvenile court presumably retains jurisdiction over this group, since it is more likely to provide setting and programs tailored to the developmental needs of these young adolescents.

Advocates for raising the age argue that there is no way to set a precise threshold for adult prosecution. In 2020, Vermont became the first state to consider eighteen- and nineteen-year-olds, who are considered mature enough to vote and join the military, as juveniles, without differentiating between the severity of the crimes they are charged with. Given the foregoing arguments about juvenile court jurisdiction, Vermont will not be used as a case study for examining the reform of juvenile transfer laws, but its progressiveness compared to other states should not be discounted.

Case Studies

Juvenile transfer is a general phenomenon in the United States. A full comparison of differences across the entire country is well beyond the scope of this paper and the focus of the current endeavor. The case studies, in turn, are suitable to explain the occurrence of reform in a single state and to test my hypotheses in each specific context.

A successful case study hinges on comparability and representativeness of the selected cases, and the breadth and boundness of inference from these cases in turn determines the study's utility (Gerring, 2004). I first qualitatively examined twelve states for their policy development in raising the upper age of juvenile court jurisdiction (indicator one). The second batch of case studies constitutes six states that expanded their juvenile jurisdictions to youths charged with specified offenses (indicator two). Finally, I studied the fates of the bills that would raise the upper age of juvenile jurisdiction in the last three states that have not yet accomplished so. Overall, a comparison of these case studies that have varying degree of reform success will help test the first hypothesis about the potential influence of elite members in the criminal justice policy community upon realizing or derailing reform efforts.

Indeed, the mere description of the reform history within each state adds value to the overall knowledge about how policies in the area of juvenile transfer reform are developed and what factors have the greatest influence over their creation. Nevertheless, a comparison of these case studies is unlikely to prove a causal relationship, given that it is impossible to gather all relevant facts and the precise timeline they happened for each case. In the ideal world, the development of causal relationships using case studies hinges on counterfactual assumption — that is, without, or with more or less, X cause, Y effect would be different (Gerring, 2004). For example, the district attorney association in state A did *not* lobby against a bill which would raise the upper age of juvenile court proceedings, while the district attorney association in state B did; and state A eventually raised the age for young defendants eligible for juvenile proceedings, while state B did not. Holding all other potential confounding factors constant, it is reasonable to conclude that having a district attorney body who are not openly against its state's juvenile transfer reform is *necessary* to the deliberation of such reform effort. Nevertheless, I try to find generalizations from all the cases I studied about the political phenomenon of elite influence on criminal justice policymaking and about the reasoning behind possible court rulings against juvenile transfer.

Findings

"Raise the Age"

Raise the Age (RTA) laws are an example of legislation that recognize the need to stop treating juveniles as adults because certain areas of an adolescent's brain, including areas that control judgment and impulse, are still developing. Since 2007, fourteen states have passed laws to raise the upper age of juvenile court jurisdiction to eighteen (Table 1). So far, only three states — Georgia, Wisconsin, and Texas — are still trying seventeen-year-olds in criminal court.

This section explores the processes twelve states took to raise the age of their juvenile court jurisdiction and identify critical factors underlying their accomplishments. I am unable to study the full extent of reform history in Mississippi and New Hampshire because the relevant records were unavailable. Due to lack of public record, I am unable to document the full reform history for the passage of a 2018 legislation to eliminate mandatory waiver of seventeen-year-olds in Rhode Island. Nevertheless, I provide the stance that Rhode Island Attorney General took on this legislation, included in the National Study of Prosecutor Lobbying by the UNC School of Law, to enrich the comparative analysis across states.

Table 1: Raise the Age State Reforms (Ordered by Timeline)

State	**Year of Legislation Passed**
Connecticut	2007
Rhode Island	2007
	2018 (mandatory waiver)
Illinois	2009 (misdemeanor) 2013 (felonies)
Mississippi	2010 (Senate Bill 2969)
Massachusetts	2013
New Hampshire	2014 (House Bill 1624)
Kansas	2016
Louisiana	2016
South Carolina	2016
New York	2017
North Carolina	2017
Arizona	2018
Missouri	2018
Michigan	2019

Connecticut

In 2007, Connecticut passed a historic legislation to raise the upper age of its juvenile court jurisdiction from sixteen to eighteen, sparing the prosecution of sixteen- and seventeen-year-olds in criminal court effective from 2012. The Connecticut Juvenile Justice Alliance played a key role in pushing the Raise the Age reform by first rolling out the "Raise the Age Connecticut" campaign in August 2005, a month after the suicide of a seventeen-year-old inmate imprisoned in the state adult prison (Mendel, 2013). By identifying key champions and bringing together the support of different stakeholders, from state legislators to judges, the CJJA's efforts culminated in the Connecticut's historic 2007 Raise the Age reform.

In 2005, two state legislators, Democratic Representative Toni Walker and Democratic Senator Toni Harp, provided timely leadership for the RTA campaign. As co-chairs of the Juvenile Jurisdiction Planning and Implementation Committee (JJPIC), Rep. Walker and Sen. Harp crafted the legislation's details in 2006 and worked with diverging perspectives, including police chiefs, children's advocates, lawyers, judges, and the departments of Children and Families and of Corrections, on the assumption that the legislation must be passed (Mendel, 2013). In addition, because both legislators served as co-chairs of the powerful Appropriations Committee, they were able to repel the efforts by law enforcement leaders to delay the RTA implementation and to ensure its continued adequate funding in the face of a state budget crisis (Mendel, 2013). Meanwhile, supportive Connecticut judges also demonstrated their influence over the reform process. For example, Judge Christine Keller, then-Chief Administrative Judge for Juvenile Matters, was described as a behind-the-scenes crusader for forging consensus on the Raise the Age legislation (Mendel, 2013). Furthermore, Judge William Lavery, then-Chief Court

Administrator, testified in March 2007 to address concerns over the legislation's funding and logistical challenges.[55]

The CJJA had also worked with parents and other grass-roots organizations to make them meet with legislators and put a human face on this public problem.[56] One of the biggest challenges in building legislative support for the Raise the Age reform was race (Mendel, 2013). Rep. Walker, who is African American, selected only White youths and families to testify at her Raise the Age hearings because she believed that, subconsciously, her predominantly White colleagues would better understand the reform's importance by hearing to the plights of White families.

Rhode Island

In 2007, Rhode Island lowered its upper age of juvenile court jurisdiction to sixteen as a cost-saving effort, in the face of a $450 million deficit in the state's current budget, but four months later, the state raised the age back to seventeen after learning that placing seventeen-year-olds in the criminal justice system would not actually save money (Zezima, 2007). The State Department of Children, Youth and Families, which proposed the original measure, assumed that seventeen-year-olds would be incarcerated with the general prison population,

[55] Another key advocate who was a top leader in the state was Christine Rapillo, Connecticut's Director of Juvenile Delinquency Defense. Rapillo also testified with Judge Lavery, reporting the JJPIC's findings that raising the jurisdictional age to eighteen was within Connecticut's state resources and would not compromise public safety. See "AN ACT CONCERNING THE AGE OF A CHILD FOR PURPOSES OF JURISDICTION IN DELINQUENCY MATTERS AND PROCEEDINGS." https://www.cga.ct.gov/2007/JFR/S/2007SB-01196-R00KID-JFR.htm

[56] One of the most compelling spokespeople was Diana Gonzalez, the mother of the seventeen-year-old boy, David Burgos, who committed suicide while incarcerated as an adult in a state prison. Speaking before the state legislature, Ms. Gonzalez issued a challenge that lingered in the ears and minds of many legislators: "What's it going to take for us to make the change? Why does someone like my son have to die before we make a change we know is right? Whose child is next? It could be my neighbor's child, it could be your neighbor's child, and it could be your child. Put yourselves in these shoes. What decision would you make for your child? How would you want your child treated? Make this change. Keep 16- and 17-year-olds in the juvenile justice system." See "Testimony by Diana Gonzalez in support of H.B. 5782, March 13, 2006" https://www.campaignforyouthjustice.org/images/Legislative_Advocacy_Guide_28updated_3211729.pdf

which costs $39,000 an inmate per year, sixty percent less than the $98,000 in the juvenile system. But the director of the State Department of Corrections later decided that seventeen-year-olds would instead be held in maximum security, where the annual per-inmate cost is $104,000, even more expensive than the juvenile system.

In 2018, the Rhode Island Legislature overwhelmingly passed House Bill 7503 and Senate Bill 2458 to eliminate mandatory waiver for all youths under age eighteen. Prior to this more recent reform, seventeen-year-olds were mandatorily waived by statutes to criminal court for a range of serious crimes, including murder, first-degree sexual assault, first-degree child molestation, and assault with the attempt to commit murder. The state Attorney General had opposed the House bill. In particular, the shadow of the Craig Price case, a teenage boy who was convicted of brutally murdering four neighbors, shaped the AG's punitive position on serious juvenile crimes:

> "...[T]hese statutes, the mandatory waiver and the discretionary waiver, were put on the books when the Craig Price incident happened, it was about a foreseeable defendant and a court system not having a way to deal with them...we think that repealing acts like this would just be waiting for the next horrific act to happen...we know the juvenile court is evolving...but that's not in the best interest of public safety." — Joee Lindbeck, Special Assistant Attorney General (UNC School of Law, 2021, p. 247)

Illinois

As the birthplace of the juvenile court, Illinois passed its first Raise the Age legislation (Public Act 95-1031) in 2009 for only misdemeanants, making it the first state in the nation to bifurcate youths of the same age (seventeen) to both juvenile and criminal courts, at the discretion of the local prosecutor's use of misdemeanor and felony indictments. In 2013, the state passed a second Raise the Age legislation (Public Act 96-1199) to include seventeen-year-olds

charged with felonies, after studying the operational effects of the first RTA law and the net benefits of raising the age for future felony arrests.

When the Raise the Age legislation was first proposed in 2005, it died in the House due to the resistance by county governments for the legislation's projected fiscal impact on them (Illinois Juvenile Justice Commission, 2013, p. 14, footnote 42). Later, this initial setback led to a compromise accommodating both sides in 2008, and the compromised legislation expanded the juvenile court jurisdiction to seventeen-year-olds charged with misdemeanors. Moreover, in July 2010, the legislature enacted the Senate Bill 3085 to create a task force, the Illinois Juvenile Justice Commission, to examine the feasibility of including seventeen-year-olds with felony charges in the juvenile system. The Commission was tasked to develop a timeline and propose a funding structure to accommodate the jurisdictional expansion to this new group of juveniles. The impact of fiscal costs is a revolving argument against Raise the Age reform, and lawmakers who must consider the legislation's figures are sometimes troubled by the different set of numbers they hear from different stakeholders (ibid., quote of Democratic Rep. Arthur Turner). By creating an independent legislative task force, Illinois lawmakers were able to study themselves the cost and benefits of the jurisdictional change.

The Commission met with numerous stakeholders across the state and listened to feedback and perspectives from judge, judicial administration, law enforcement, detention centers, prosecutors, public defenders, jailed youths, probation departments, and correctional officers. The Commission found that the first phase of jurisdictional change did not overwhelm the juvenile justice system due to a sharp decline in juvenile crime, and the implementation was less costly than anticipated. Furthermore, the continued expansion of juvenile jurisdiction was necessary in the view of the Commission because of the procedural difficulty associated with the

current Illinois criminal law over seventeen-year-olds and the new federal Prison Rape Elimination Act (PREA) guidelines began in 2013. PREA requires that all offenders under age eighteen, including those in the criminal system, should be housed separately from adults in all incarceration facilities. Noncompliance would result in a five percent penalty on several federal formula funds and block grants, which support state and local law enforcement agencies. The Commission noted that in the face of PREA guidelines, Illinois could not continue its status quo of housing felony-charged seventeen-year-olds with adult inmates without financial cost. The Commission thus recommended that the State PREA planning groups must take the Raise the Age proposal into consideration when calculating the number of criminal court youths subject to PREA limitations (2013, p. 59).

The Illinois Juvenile Justice Commission submitted its final report to the State General Assembly in 2013, concluding no barrier to raising the age of juvenile jurisdiction if appropriately resourced. The report received compliments from juvenile justice practitioners for being well-researched and well-substantiated (Swift, 2013). Based on this detailed recommendation, the state finally passed a second law in the same year to include all seventeen-year-olds in the juvenile court system. Being a national leader of juvenile justice, Illinois is among the few states considering raising the juvenile court jurisdiction to age twenty (HB 6308 and HB 6191).

Massachusetts

In 2013, the Massachusetts House and Senate unanimously passed the Raise the Age legislation (H1432 and S1841), bringing all seventeen-year-olds, except those charged with murder, into the juvenile system. The legislation also disallows a juvenile court judge to impose adult sentences on juveniles for some serious offenses, in compliance with the Prison Rape

Elimination Act (PREA) guidelines. The legislation was introduced in 2011 by Democratic Representative Kay Khan, who led the House Mental Health Caucus, and Democratic Senator Karen Spilka, who practiced law prior to becoming a legislator.

Citizens for Juvenile Justice, a statewide juvenile justice advocacy group, was a driving force behind the Raise the Age legislation. In 2010, Citizens for Juvenile Justice began conducting its own research to examine the impact of treating seventeen-year-olds in the criminal system and the potential consequences of shifting this population into the juvenile system. The organization also built widespread legislative support through media outreach and partnered with stakeholders, notably the Massachusetts Sheriff's Association who would be affected by the PREA requirements (Schein, September 2013; Amelinckx and Redmond, 2013). One sheriff who runs the Middlesex jails, Peter Koutoujian, said,

> "The most appropriate setting to deal with the vast majority of seventeen-year-olds is in the juvenile-justice system. That is where the expertise is to intervene with age-appropriate correctional, substance abuse and educational services. … For me, this is about ensuring we give youth caught up in the justice system the best opportunity possible to turn their lives around and become productive, taxpaying members of society." (Amelinckx and Redmond, 2013)

The Massachusetts Bar Association also supported raising the juvenile court age to eighteen (Schoenberg, 2017).

Naoka Carey, executive director of Citizens for Juvenile Justice, noted that the publicity around the new PREA guidelines were helpful in adding "a sense of urgency" to passing the legislation: "Having a policy that makes sense doesn't always get things moving in the legislature. There are six to seven thousand bills introduced every session, so it can be hard to get attention. So the PREA issue has been helpful in terms of getting things moving" (Schein, June 2013).

Early in February 2017, Massachusetts lawmakers started considering raising the general age of juvenile court above age twenty, and the idea had received support from sheriffs of the two large counties, Suffolk and Essex (Golden, 2017). While the Massachusetts Bar Association was sympathetic to the merit of this new Raise the Age proposal, the state's District Attorneys Association vehemently opposed the bill (S2371) that would raise the age of criminal responsibility to nineteen. In its letter to the State Senate, nine of the eleven district attorneys made their objection to the provision:

> "… science also shows conclusively that 18 and 19 year olds well understand the difference between right and wrong and can act on them. District Attorneys and judges take youth and other factors into consideration all the time when assessing cases. But adopting a law that enables anyone to declare that 'I am not responsible for my actions, my brain is!' is something no rational parent would accept, and creates a slippery slope." (Morrissey et. al., 2017, p. 2)

District Attorneys who supported raising the age did not sign the letter (Miller, 2017). Regardless of the objection, the Massachusetts Senate passed the Raise the Age provision included in its sweeping omnibus criminal justice legislation. The legislation was authored by Democratic Sen. William N. Brownsberger, a Harvard Law School graduate, and was supported by the American Civil Liberties Union of Massachusetts. Observer said that the passage of this criminal justice reform bill marked "the starkest example yet of the state chamber's decisive shift to the ideological left in recent years" (Miller, 2017).

Unfortunately, the Senate bill died in negotiations with the more conservative Democratic-controlled House. Instead, Governor Charlie Baker signed another bill, the Criminal Justice Reform Act, in 2018. The Act established the Criminal Justice Task Force on Juvenile Age and called on law enforcement officials, judges, advocates, defense lawyers, and district attorneys to study the feasibility of raising the upper age of juvenile court from seventeen to eighteen, and even perhaps one day to twenty. Suffolk District Attorney, Rachael Rollins, who

was elected in 2018 on a strong reform platform is among the three county prosecutors who support expanding the juvenile jurisdiction to eighteen. Rollins found it preferable to rehabilitate young people rather than sending them away for the rest of their lives:

> "95 percent of the people we send away come back more violent, more isolated, and worse — we aren't doing our jobs. So what I want is for people to get the treatment they need if they have mental-health issues, which is the overwhelming majority of women. We have opioid addiction and drug addiction, substance-use disorder … I am a proponent of raising the age. You can absolutely still hold people accountable. I want to see a little more data, but anything where we are getting people the help that they need is something that I would be supportive of rather than sending them away and throwing away the key." (Sweet, 2019)

But the task force has not yet reached a consensus on the maximum age of the juvenile system (Betancourt, 2020). One task force member, Hampden County District Attorney Anthony Gulluni, who previously signed the District Attorney letter opposing the Senate's bill, once again opposed raising the age of juvenile court. Instead, he proposed the development of young adult courts to target mid- to higher-level offenders aged eighteen to twenty-four and provide them with intensive probation supervision. Another key stakeholder in the task force group is the union representing correctional officers whose support for raising the age would depend on pay increases for officers serving in the juvenile system.

Kansas

In 2016, the Kansas Legislature raised the minimum age of adult prosecution from twelve to fourteen (Senate Bill 367) and extended jurisdiction juvenile prosecution for all but the most severe person felonies, such as aggravated rape and homicide. This bill also eliminates presumptive waiver of youth to adult court and requires the criminal court to offer a preliminary hearing to all youths transferred for prosecution. The Raise the Age provision was part of a package of juvenile justice reforms that would restrict the use of out-of-home placement, which

showed to be costly yet fail to reduce recidivism (The Pew Charitable Trusts, 2017). The bill was based on the recommendations of the Kansas Juvenile Justice Workgroup established by leadership from all three branches of the state's government in 2015 (Governor Sam Brownback, Chief Justice Lawton Nuss, and legislative leadership from both chambers). The bipartisan work group consisted of stakeholders from across the juvenile justice system, including the sheriffs' association, police chiefs, ACLU of Kansas, mental health centers' association, corrections association, defense lawyers, children's advocates, and other interest groups.

Louisiana

In June 2016, Louisiana overwhelmingly passed the Raise the Age Act to bring seventeen-year-olds under juvenile court jurisdiction. The implementation of the Raise the Age law took two stages: as of July 2018, the juvenile system started to absorb seventeen-year-olds charged with non-violent offenses (misdemeanors and felonies), and as of July 2020, seventeen-year-olds charged with certain statutorily defined violent offenses would also be included in the juvenile system. The legislation was authored by Democratic Senator JP Morrell, who was a public defender before becoming a state legislator, and was included in Governor John Bel Edwards' 2016 legislative agenda.[57]

The state legislature commissioned a study in 2015, which drew opinions from various system stakeholders, including advocacy group (Louisiana Center for Children's Rights), law enforcement commission, corrections department, district attorneys, district and juvenile court judges, public defenders, and the state Supreme Court. Once again, the compliance requirement of the Prison Rape Elimination Act was a rationale for supporting raising the age, cited by adult jail administrators in their meetings with the commission (Institute of Public Health and Justice,

[57] https://gov.louisiana.gov/news/gov-edwards-signs-raise-the-age-act-into-law

2015, p. 39). Most judges supported raising the age to include seventeen-year-olds because of their experiences with these young offenders who committed misdemeanors or their first offenses but plead to permanent criminal record (Institute of Public Health and Justice, 2015, p. 40). The final Raise the Age Act adopted the District Attorneys Association's request to keep their discretion to transfer youth even if the upper age of juvenile jurisdiction is raised (Institute of Public Health and Justice, 2015, p. 39).

South Carolina

In May 2016, the South Carolina state legislature unanimously passed legislation (S 916) to raise the general age of family court jurisdiction from seventeen to eighteen and raise the statutory exclusion age from sixteen to seventeen for youths charged with misdemeanor and most felony offenses. The legislation was spearheaded by Democratic Sen. Gerald Malloy who was a trial lawyer and public defender prior to his career in the state Senate.

The Raise the Age legislation came at a critical moment for the South Carolina Department of Juvenile Justice, an agency caught itself amid a mounting civil rights investigation of violent riots occurred in the state's main juvenile detention center, the Broad River Road Complex in Columbia (Hager, 2016). Many juveniles held at the Broad River Road facility were placed in solitary confinement and shackled for their movement outside the cells. Raising the family court age to eighteen means that more youths would arrive in the juvenile system, though most of them with low-level charges would not end up in the violent Broad River Road facility. The South Carolina legislature wanted to use this Raise the Age legislation as an opportunity to address this existing problem inside the juvenile system, funding more community-based alternatives to detention centers.

New York

On April 10, 2017, New York State passed the legislation to raise the age of criminal responsibility to eighteen.[58] By October 2019, New York fully stopped automatically prosecuting sixteen- and seventeen-year-olds as adults. Those who commit non-violent crimes would receive the intervention and evidence-based treatment. The Raise the Age legislation created a special classification, called Adolescent Offender (AO), for sixteen- or seventeen-years-olds with felony charges. The RTA legislation also created a new court, called the Youth Part of Criminal Court, to hear those AO cases. Finally, the legislation required that all Adolescent Offenders cannot be held with adults when being detained for their criminal cases.

Judge Jonathan Lippman (2017) reflected the unique role of the State Judiciary in sparking the torch of the Raise the Age reform in New York. According to Judge Lippman, the State Judiciary was uniquely poised to propose bold reform in criminal justice because it is relatively independent from political pressures than the other two governmental branches (2017, p. 258). In 2011, Judge Lippman requested the State Sentencing Commission, which he established in October 2010 and was co-chaired by a District Attorney and another Judge, to study the age of criminal responsibility for the Youth Court Act bill that the State Judiciary would introduce during the 2012 legislative session. The Youth Court Act bill proposed by the Judiciary initially strived to emphasize rehabilitation over punishment for *all* offenders under eighteen. But in the process of achieving the bill's balance, the Judiciary worked closely with the competing groups, including members of the state legislature from both parties, the Governor's office, the Chairs of the Codes Committees, the Office of Probation and Correctional Alternatives, and the Department of Corrections and Community Supervision, in attempt to

[58] https://ww2.nycourts.gov/ip/oji/raisetheage.shtml

obtain broad consensus to get the legislation passed without the block of any major concerns. For example, despite the dissatisfaction with the exclusion of youths accused of felonies in the amended bill, the coalition contended that, "Right now we think the best way to [develop a successful bill] is to address the issue of nonviolent offenses (David Bookstaver, spokesperson for the Officer of Court Administration)" (Lippman, 2017, p. 272).

From 2012 to 2016, Republicans and some Democrats in the State Senate had blocked the Youth Court Act and other similar Raise the Age legislations. Since 2014, Governor Cuomo has made Raise the Age a legislative priority, but the State Assembly Leader and the State Senate Majority Leader were not able to agree on the reform in 2015. The RTA legislation was stalled in a grid-lock State Senate which itself was entrenched in the battle largely divided along the familiar soft-on-crime versus tough-on-crime lines (Clark, 2015). Not surprisingly, the State's District Attorney Association opposed the RTA legislation, arguing that the legislation is "frightening" because it would allow adjudication of sixteen- and seventeen-year-olds who committed serious crimes in Family Court "over prosecutorial objection" (Lyons, 2015).

Nevertheless, the long-standing impact of the Judiciary's leadership in New York's Raise the Age reform was visible. Since 2012, the Judiciary had been engaging with multiple advocacy groups and communities to build up grass-roots momentum for the Raise the Age reform. The growing support around the reform ultimately led to the strong endorsement from Governor Andrew Cuomo who later used the early Youth Court Act bill as a bipartisan template for his 2015 Raise the Age proposal which went through two-year budget negotiations.[59] Finally, in 2017, the Senate passed the budget for the Raise the Age bill, owing to the Independent Democratic Conference, a group of Senate Democrats who collaborate with their Republican

[59] See 2017 State of the State, Proposal: Raise the Age of Criminal Responsibility for 16- and 17-Year Olds, p. 177 https://www.governor.ny.gov/sites/default/files/atoms/files/2017StateoftheStateBook.pdf

colleagues (Nicholas, April 2017). The newly passed Raise the Age law mirrored the 2012 Youth Court Act, creating the Youth Part of Criminal Court (also referred to as the Youth Court) as a result of a negotiated agreement between the Democratic-controlled State Assembly and the Senate Republicans (Nicholas, April 2017).

My theoretical argument for the first hypothesis suggests that the press and the public's voice have an albeit limited legislative impact on criminal justice reform. New York's process to pass the Raise the Age law corroborates this theory. In light of the appalling suicide of a young inmate in the state prison in 2015, ordinary citizens had been lobbying in Albany to increase political attention to the Raise the Age reform (Nicholas, January 2017). But the opposition from the State District Attorney's Association and the Correctional Officers union pressured the political inaction of the Raise the Age bill. However, in 2017, the State Correction Officers Association decided to not oppose the legislative effort to raise the age.

North Carolina

On May 17, 2017, the North Carolina General Assembly passed a Raise the Age bill, the Juvenile Justice Reinvestment Act, that would render all sixteen- and seventeen-year-olds with non-violent charges subject to the juvenile court jurisdiction, rather than trying them as adults. The measure later was passed in the State Senate (Senate Bill 257) where it had died in previous sessions.[60]

Observers and bill sponsors themselves all credited former State Supreme Court Chief Justice Mark Martin as a critical leader in helping pass the bill (Burns, 2017; Powell, 2017). In 2015, Justice Martin convened the North Carolina Commission on the Administration of Law and Justice (NCCALJ), bringing together a diverse group of stakeholders in law enforcement and

[60] https://www.nccourts.gov/media/raise-the-age-resources

criminal justice. These stakeholders, including judges, prosecutors, law enforcement officials, and juvenile justice advocates, identified "juvenile reinvestment" as a top priority for reforming the state's criminal justice system and hosted multiple public hearings and meetings in 2016 to address concerns about the Raise the Age legislation.[61] The basis of the Juvenile Reinvestment Act was the Criminal Investigation and Adjudication Committee's recommendations to Justice Martin in the NCCALJ's final report; in its recommendation for juvenile reinvestment, the Committee addressed concerns raised by prosecutors and law enforcement officials (Criminal Investigation and Adjudication Committee, 2017). Another pivotal champion of the bill was Democratic Rep. Marcia Morey, a former District Court judge, saying to the Assembly that teenagers are better served in the juvenile system (Burns, 2017).

State legislators had tried to raise the age as early as in 2014, and various groups had opposed efforts to pass the legislation. In contrast, the NCCALJ, held together by Justice Martin, generated a year-long collaborative process among different stakeholders to write the Raise the Age proposal. As a result, the 2017 Raise the Age bill received historic support from a broad coalition of groups, including law enforcement groups, like the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police, that in the past had problems with the legislation (Jones, 2014).

Arizona

In 2018, Arizona passed legislation (HB 2356) to allow young offenders to remain in the juvenile justice system up to age nineteen. Prior to the bill's passage, seventeen-year-olds were often prosecuted as adults because the county attorneys felt that there was not adequate time and resources to handle their cases in the juvenile system (Gordon, 2018).

[61] https://www.nccourts.gov/news/tag/general-news/nccalj-presents-final-report-to-chief-justice-martin

This time, public defenders, the Arizona Prosecuting Attorneys' Advisory Council, and the Children's Action Alliance, an advocacy organization comprised of policy experts in different fields, all spoke in favor of the bill (Jenkins, 2018). Rarely, prosecutors would support raising the age because the change would curb their prosecutorial discretion. But because the Arizonan bill allows the county attorney's office to adjudicate and supervise a juvenile in a juvenile court, this group spoke in favor of the change. For example, the Maricopa County Attorney's Office and the Pima County Attorney's Office spoke on behalf of the House bill: "The purpose of this legislation is to allow the court . . . to extend their probation supervision and services of adjudicated 17- year- olds up to the age of 19" (UNC School of Law, 2021, p. 27).

Missouri

In 2018, Missouri passed the legislation (SB 793 and HB 1255) to prevent seventeen-year-olds from automatically being tried as adults. The rollout of the new law was supposed to take effect in January 2021 but was delayed by fiscal problems. Prosecutors, defense lawyers, and judges in forty-one of the state's forty-six judicial circuits had taken the position that the juvenile court system should not take on the cases of seventeen-year-olds until the state legislature appropriated sufficient funds to pay for the expanded juvenile services (Rivas, 2021). Only two counties, St. Louis County and Jackson County, started to enforce the provision after the new law was passed. In 2021, Republican Governor Mike Parson put forward an eighteen-million budget request in front of state legislators to implement the RTA legislation. His request was ultimately approved, and the state's juvenile court system started absorbing seventeen-year-olds, effective in July 1, 2021 (Erickson, 2021).

The delay of the RTA implementation also led to litigation (*State v. R.J.G*, Mo. 2021; *State ex rel. T. J. v. Cundiff,* Mo. 2021). In both cases, the Missouri Supreme Court ruled that

because the 2018 Raise the Age legislation was not effective at the time the defendants committed the alleged offenses (January 2021), but until July 2021 when sufficient funds would be appropriated to enact the legislation, the juvenile division did not have the statutory authority to adjudicate the defendants.

Michigan

In 2019, a package of eighteen criminal justice reform bills finally passed the Michigan legislature, after three-year debate, raising the age threshold for automatic prosecution from seventeen to eighteen.

Since 2016, the state legislature has been debating the merit of increasing the age threshold for juvenile proceedings, but the bills were stalled in the Senate. Instead, lawmakers hired a research firm to study the proposal's financial impact (Riley, 2018). The study later informed the Michigan's Raise the Age Funding Workgroup, a body convened by state legislators and a judge who heads the Michigan Probate Judges Association, about how to fund local governments for transferring roughly two thousand seventeen-year-olds from criminal court to juvenile court. Although probate judges raised concerns about the study's accuracy, such concerns were resolved after meetings with the research firm's representative who agreed to refine the study's data collection.[62]

Other Amendments to State Transfer Laws

Importantly, jurisdictional age is not the sole means for juveniles to enter into criminal court. All states have some method of trying youths in criminal court. Under various jurisdictional provisions (judiciary discretion, statutory exclusion, and prosecutorial direct file),

[62] http://council.legislature.mi.gov/Content/Files/cjpc/Minutes.Final_CJPC_Oct%204%202017.pdf

states grant judges or prosecutors the ability to transfer cases with various degrees of offenses, with some trying misdemeanants in criminal court and others only removing youths charged with serious crimes from juvenile court. Since 2005, eight states have passed legislations to limit the types of offenses that mandated or allowed criminal court prosecution (Table 2). I am unable to study the reform history in Indiana and Colorado due to lack of public records.

Table 2: States Amended Transfer Laws (Ordered by Timeline)

State	**Year of Legislation Passed**
Delaware	2005
Indiana	2008 (House Bill 1122)
Nevada	2009
Colorado	2010 (House Bill 10-1413)
California	2016
Tennessee	2018
Oregon	2019
Florida	2019

Delaware

In 2005, the Delaware General Assembly unanimously passed Senate Bill 200, limiting automatic transfer of juveniles to criminal court for robbery charges under House Bill 210 passed in 2003. Under the old House bill, all youth charged with first-degree robbery were under the original jurisdiction of the Superior Court. The 2005 Senate bill amended the provision so that the Superior Court only has original jurisdiction over youth charged with first-degree robbery when the youth had a prior felony adjudication or when the robbery involved the display of a deadly weapon or a serious injury was inflicted as part of the crime.

The passage of the new law was a response to the finding of two-year data collection and analysis which concluded that most youth indicted in criminal court for robbery charges were eventually transferred back to family court, but only after spending long periods of time in detention (Ward, 2009). The success of this legislative effort also was owed to the leadership of Republican Rep. Robert Valihura, who served on the Delaware House Judiciary Committee.

Rep. Valihura assembled a task force group, bringing together advocacy community, the Family and Superior Courts, the prosecutors and public defenders offices, correctional officers, law enforcement, and other juvenile justice professionals in an effort to address the concerns raised about a large number of youths languishing in lengthy detention (Ward, 2009). As a result of this collaboration, contribution to data collection came from multiple parties, and this rigorous process ensured the validity of the results in front of all the stakeholders. Ultimately, with reliable, pertinent research in hand, Rep. Valihura was able to break through the traditional political rhetoric surrounding the issue and keep the discussion focused on the specific problem at hand (Ward, 2009).

Nevada

In 2009, Nevada raised the age at which a youth may be presumptively certified as an adult from fourteen to sixteen (Assembly Bill 237). Prior to the passage of this bill, unless the child proved that the crime was committed as a result of substance abuse or emotional or behavioral problems, or the child proved to be developmentally or mentally incompetent to understand or aid the attorney in the court proceedings, the juvenile court was required to certify for criminal court any juvenile aged fourteen or older who has a history of specified offenses.

This move by the Nevada Legislature was to codify the Nevada Supreme Court's ruling to eliminate this presumptive certification statute, finding that the statute violated youths' constitutional right against self-incrimination under the Fifth Amendment because it required the youth to admit to the crime in order to overcome the presumption of adult supervision (*In re William M.*, 2008). Although the statute in question deals with adjudication competency of a juvenile, the reasoning behind the Nevada Supreme Court's decision to allow the juvenile court to consider age as a mitigating factor was not about the developmental incompetence of

juveniles; instead, the Court wanted to address the question that Fifth Amendment guarantee self-incrimination applies to statements made in juvenile certification proceedings.

California

In 2016, California voters approved Proposition 57, a criminal and juvenile justice reform ballot measure that ended direct filing youths to criminal court, reversing the passage of the 2000 ballot measure (Proposition 21) which required prosecutor to directly charge an offender aged fourteen or older in criminal court for murder or specified sex offenses. The new law requires that every youth must have a hearing in the juvenile court before they could be transferred, and that prosecutors can only seek *transfer hearings* for youths committed certain significant crimes (such as murder, robbery, and certain sex offenses) at age fourteen or fifteen or committed a felony at age sixteen or seventeen.

In 2018, the state legislature amended Prop. 57 (passing SB 1391) and repealed the authority of a district attorney to make a motion to transfer fourteen- and fifteen-year-olds for charges that made them eligible for a transfer hearing indicated in Proposition 57. The new law, by narrowing the class of youths who are subject to the prosecutor's motion to transfer, further restrains the prosecutor's discretion to try youths as adults (Cohen, 2020). California's prosecutors opposed SB 1391 designed to reduce the use of adult court for juveniles. The president of the Association of Deputy District Attorneys, which lobbies on behalf of the Los Angeles County District Attorney's Office, commented on this bill, "This legislative action is clearly inconsistent with the intent of Prop 57...Voters recognized that some crimes required accountability in adult court" (UNC School of Law, 2021, p. 40). Families of victims of high-profile teen killings also vehemently opposed the bill (Salonga and Gartrell, 2021).

As a result, the state courts were flooded with cases brought by district attorneys challenging the constitutionality of SB 1391. The district attorneys argued that the bill is a legislative move to amend a voter initiative (i.e., Prop. 57) which authorized juvenile court judges to grant transfer hearings for fourteen- and fifteen-year-olds facing certain serious charges (Cohen, 2020). The opposing party argued that the bill was not at odds with voter intent because Prop. 57 was to curb prosecutorial discretion, rather to expand the authority of juvenile court judges (Cohen, 2020). In *O.G. v. Superior Court* (2021), the California Supreme Court rejected the district attorneys' assertion and upheld that SB 1391 is a permissible amendment to Prop. 57. The *O.G.* Court reminisced about the state's route from being tough on juveniles to rehabilitating them and acknowledged that these changes are all consistent with the developments in brain science research and critical Supreme Court's decisions. But the core issue it addressed is statutory— that is, it answered "whether the amendments in Senate Bill 1391 are 'consistent with and further the intent' of Proposition 57" (*O.G. v. Superior Court*, 2021, p. 6). The recognition of the juvenile's immaturity was not the reason for the Court's decision to uphold the amendment that the Senate Bill made to the public ballot Prop. 57.

Tennessee

In 2018, the Tennessee Legislature passed the Juvenile Justice Reform Act (the Senate Bill 2261 and its companion House Bill 2271) that would limit the transfer of juveniles under age fourteen for only homicide and attempted homicide cases. The bills also limited the types of offenses which a juvenile court judge could transfer a sixteen-year-old to criminal court from any criminal offense to certain violent, personal offenses such as murder or rape. For any juvenile aged seventeen or older at the time of the offense, the juvenile may be transferred on order of the court regardless of the offense. The state Senate Majority Leader Sen. Mark Norris (Republican)

led the initiative, and Republican Governor Bill Haslam also made it part of his legislative agenda.

The Juvenile Justice Reform Act was a comprehensive bipartisan legislation to correct the problematic state's juvenile system which failed to deliver meaningful due process protections and incarcerated, at sizable cost, too many children for committing minor offenses and for lengthy period of time. Experts and media observed that the Tennessee Council of Juvenile and Family Court Judges, with no public notice, input, or hearings, derailed the original reform package by demanding protection of their judicial discretion to indefinitely incarcerate status offenders who committed noncriminal offenses such as running away (Rivkin and McGee, 2018). "And all it takes is a phone call from one of those juvenile court judges to one member of the House and one member of the Senate, to say whatever they'll say," he complained to lawmakers shortly before they took a final vote, "and it has a chilling effect" (Sisk, 2018).

It was unknown whether the judges opposed to the original bill's language on juvenile transfer. But a few original provisions targeting juvenile transfer were amended such as the one regarding judicial transfer of seventeen-year-olds for any offense (the original bill describes that same as juveniles aged fourteen or older, only seventeen-year-olds charged with specified offenses could be transferred).[63]

Oregon

During the 2019 session, the Oregon Legislature passed the bill (SB 1008) that ended automatic transfer (statutory exclusion) of fifteen-, sixteen-, and seventeen-year-olds charged with certain serious offenses (sex offenses, murder, kidnapping, and arson) to criminal court, rolling back Measure 11, a ballot initiative voted in 1994. Under the new law, prosecutors must

[63] https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB2271&ga=110

request a transfer hearing for a juvenile court judge to determine whether juveniles facing Measure 11 charges should be moved to criminal court.

The bill had broad support from a wide array of justice organizations and agencies, including Governor Kate Brown, Attorney General Ellen Rosenblum, the adult Department of Corrections, the Oregon Youth Authority, the Board of Parole, Oregon Criminal Defense Lawyers Association, the ACLU of Oregon, the Oregon Justice Resource Center, other social groups, and over thirty retired Oregon Circuit Court and appellate judges who submitted a letter to the state legislature encouraging a yes vote.[64] In addition, many Oregon residents, including those who practice law and have worked with juveniles, advocated for the bill. Their reasons for supporting the bill's passage range from adolescence brain development, to saving taxpayers money, and to what they witnessed about juveniles in their professions.[65]

The Oregon District Attorneys Association opposed the bill, arguing that Measure 11 is critical in reducing crime rates, and especially sex offenses, and that voters should decide the changes as to whether violent offenders could have parole hearings.[66] The ODAA's argument and

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[64] "There can be few more important settings in which an *impartial* decision-maker is essential than the determination of whether to try and to sentence a 15, 16 or 17-year-old charged with a crime as an adult" (Testimony of Oregon Judges, my emphasis).
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/201303

[65] See Testimony by Mark McDonnell, retired deputy district attorney
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/194289
Testimony by Kimberly Mason, attorney, Portland
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/180925
Testimony by Joanne Sandhu, resident, Keizer
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/176631
Testimony by Roberta Palmer, resident
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/178533
Testimony by Lawrence E. Johnson, resident, Corvallis
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/178539

[66] Testimony by Norm Frink, a former chief deputy district attorney for Multnomah County
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/194189
Testimony by Beth Heckert, President, Oregon District Attorneys Association
https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/194090

evidence to protect Measure 11 drew criticism from criminal justice experts whose study of Measure 11's impact on Oregon youths exposed flaws of the ODAA's reasoning; the research found that about half of Measure 11 youth charges are robbery and not sex crimes suggested by the district attorneys (Stenvick, 2019).

Florida

Florida is the toughest in the nation in terms of trying young offenders as adults, and most of the state cases are direct file charges. For many years, versions of a bill (e.g., HB 783, SB 1082, SB 192) to limit the discretionary power of prosecutors have been introduced but failed, as state attorneys lobbied against such a measure that strips of their ability to decide when to prosecute young offenders in criminal court.[67] Even bills that were lobbied favorably by legal professionals and received unprecedented support from Florida media also died in the appropriations subcommittee (e.g., SB 936 and HB 509; SB 314 and HB 129).[68,69]

In 2019, the Florida Legislature finally approved the House Bill 7125, an important omnibus criminal justice reform bill which includes a provision barring any mandatory direct filing of youths under eighteen, though the new law does not deprive judges and prosecutors of the discretion to transfer fourteen-year-olds or older youths to criminal court. House Judiciary

[67] "I represent 20 state attorneys, 1,800 assistant state attorneys, and the juvenile prosecutors of Florida, and there are some dedicated people making a difference…The state attorneys do care about the young people… we don't want children's lives ruined and our people are dedicated in making that happen. But we have to protect the public as well. There is a balance here, we are not in favor of really any changes to the laws. This is a situation where we have worked hard to reduce the impact of direct filing on young people — and something has been working." — Buddy Jacobs, on behalf of the Florida Prosecuting Attorneys Association (UNC School of Law, 2021, p. 64)

[68] See Lobbyist Disclosure Information.
https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=60959
https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=60417

[69] See the list of media reports hyperlinked in this press release: https://campaignforyouthjustice.org/across-the-country/item/florida-unprecedented-media-support-for-bills-restricting-the-direct-file-system

Committee Chairman Paul Renner (Republican) introduced and shepherded this bill with focuses on addressing the needs of crime survivors, reducing recidivism, and preventing crime:

> "This bill does nothing to take away the tools that have been put in place to keep Florida safe. It also addresses the needs of crime victims in a significant way. It improves on the rule of law by eliminating arbitrary [juvenile] mandatory direct file requirements. It looks at proportionality and tries to get to just the right spot with respect to punishment." (Blankenship, 2019)

According to the available record, the Florida Prosecuting Attorneys Association did not lobby against the House bill to eliminate mandatory direct filing.[70]

States On the Move

Georgia, Texas, and Wisconsin are the last three states still trying seventeen-year-olds as adults, regardless of the severity of offense. Proposals to raise the age are moving through each of their legislatures, and their prospects are closely the same since the legislative debates surround them are all cost driven.

Wisconsin

The Wisconsin's Raise the Age movement has gained momentum over the past few years. In February 2010, Democratic Rep. Frederick Kessler introduced a bipartisan bill (Assembly Bill 732) to raise the age of juvenile court jurisdiction to include non-violent seventeen-year-olds without criminal record. His proposal was supported by the cost-effective, evidence-based alternative programming to adult prison that half of Wisconsin counties were already implementing for young offenders. Groups who endorsed the bill include the Wisconsin Council on Children and Families, the Wisconsin Juvenile Court Intake Association, the National Association of Social Workers, the Wisconsin Bar Association, the National Council on Crime

[70] See Lobbyist Disclosure Information. https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=66347&SessionId=87

and Delinquency, religious organizations, and parent advocates.[71] After the bill was failed in the State Senate, the Wisconsin Bar Association even released an official position that seventeen-year-olds should belong to the jurisdiction of the juvenile court (Walsh, 2014). Opposition to this bill was led by Attorney General and was based on protecting prosecutorial accountability and victims' rights.[72]

Although the bill did not pass the Senate, the cause is continuing to gain support from a wide range of stakeholders and other organizations. In 2015, the Wisconsin Legislature initiated the "Second Chance" proposal, composed of Senate Bill 308 and Assembly Bill 387, with large bipartisan support and the mission to return nonviolent, first-time seventeen-year-old offenders to the juvenile jurisdiction.[73] Both bills passed unanimously in their referred committees but were not scheduled for a floor vote in either chamber due to cost concerns.

In 2019, Governor Tony Evers indicated his will to raise the minimum age for transfer in his proposed budget. His proposal to raise the age includes funnelling $274 million into new juvenile confinement facilities, transferring $5 million per year from the state budget to county budgets, and indefinitely closing a state-run adult prison (Lincoln Hills) subject to multiple lawsuits (Marley, 2019). Despite its bipartisan support, his proposal faced hurdles with the Republican-controlled Legislature whose leader said that the Governor would assume responsibility for the safety of correctional officers and juveniles under his plan (Marley, 2019). In 2021, Governor Evers brought back his Raise the Age proposal again as part of a broader

[71] See public hearing records.
https://docs.legis.wisconsin.gov/2013/proposals/ab387

[72] See the letter from "State of Wisconsin Department of Justice."
https://docs.legis.wisconsin.gov/2013/related/public_hearing_records/ac_corrections/bills_resolutions/13hr_ac_co_ab0387_pt02.pdf

[73] http://kidsforward.net/assets/2nd-chance-press-release-1-15-14.pdf

package of changes to both the criminal and juvenile justice systems (SB 111). The bill if passed would eliminate automatic transfer of seventeen-year-olds and raise the age at which a juvenile charged with felony may be waived through a prosecutor's petition to criminal court from fourteen to sixteen.

Texas

The Texas' Raise the Age initiative started in Professor Michele Deitch's Juvenile Justice Policy class at the LBJ School of Public Affairs in 2011. Her research assessing the operational and fiscal impact of potentially raising the age of criminal responsibility indicated that raising the age was both a viable and sensible proposal (Deitch et. al., 2012). In 2013, Texas lawmakers took notice of Professor Deitch's research, and a team of her students from the LBJ School worked closely with the House Criminal Jurisprudence Committee on the issue of Raise the Age as part of a Policy Research Project. Professor Deitch herself was also asked to provide the lead testimony at the Raise the Age hearing which received a great deal of media attention[74] and ultimately the Committee's support for endorsing the proposal to raise the age in its juvenile justice interim report.

As the chairman of the juvenile justice committee, Democratic Rep. Harold Dutton has long championed raising the age of criminal responsibility (HB 122, 2017; HB 344, 2019; HB 967, 2021). Their prospects often lie with another Democrat across the hall, Sen. John Whitmire, who chairs the Criminal Justice Committee and controls the fate of the Raise the Age bill. Sen. Whitmire has consistently blocked the Raise the Age bill, citing his concerns about the cost and

[74] Watch Prof. Michele Deitch's testimony:
https://tlchouse.granicus.com/MediaPlayer.php?view_id=28&clip_id=8216
"Why are we trying kids as adults?" Michele Deitch's TEDx Talk (2014)
https://www.youtube.com/watch?v=5YHhz5MIKHM

the lingering safety issues at juvenile facilities that would be worsened by raising the age, which are concerns also shared by county juvenile department officials (Silver, 2017).

Georgia

In February 2021, the Georgia House of Representatives unanimously passed the House Bill 272 with years of push from House Juvenile Justice Committee Chairman Mandi Ballinger (Republican), and the bill if being passed in the Senate would treat seventeen-year-olds as juveniles, except for those charged with the most serious offenses (such as murder, rape, and armed robbery). The bill faced skepticism from the Georgia Sheriff's Association and the Association of Chiefs of Police whose spokespersons commented that half of the nearly five thousand seventeen-year-olds arrested in Georgia in a typical year are charged with felonies and might act as a bad influence on offenders in the juvenile facilities who got caught using tobacco (Amy, 2021; Evans, 2021).

The Senate Judiciary Committee has passed the House bill and sent it to the whole chamber for more debate. The Senate Judiciary Committee members amended the bill to delay its implementation year from 2022 to 2023, after law enforcement agencies and the Department of Juvenile Justice raised concerns about the costs created for counties in charge of juvenile detention facilities to absorb. "The raise-the-age desired outcome is rehabilitation," said Deputy Juvenile Justice Commissioner Margaret Cawood. "A delayed phased implementation with thoughtful planning, assuring resources ... could assure that that happens" (Associated Press, 2021).

In 2019, Rep. Ballinger had introduced another Raise the Age legislation (HB 440) with the same content as her later bill. Though not opposing raising the age in principle, several county juvenile court judges remained hesitant to support the measure because they worried that

the juvenile system may lack resources to handle the resulting higher caseload or services tailored to the transferred seventeen-year-olds. The Georgia Public Defenders Association estimated the need of $750,000 to hire and train nine new assistant public defenders to accommodate the change of law (Bunch, 2020). The Georgia Sheriffs' Association estimated the cost of more than $1.6 million on counties to transport seventeen-year-olds to juvenile detention centers and courts (Bunch, 2020). The Georgia Council of Juvenile Court Judges also estimated that two county circuits would need an additional $300,000 for six new employees (Bunch, 2020). "We don't need another unfunded mandate from the Legislature," said Greg Price, vice president of the Council of Juvenile Court Judges of Georgia. "Until you do it with the right services in place, you're not doing anything to reduce recidivism if you just change the location of the court" (Dunlap, 2020). Ultimately, the bill failed to pass in the House Juvenile Justice Committee a year after it was introduced.

Discussion and Conclusion

From conservative states to liberal states, the policy transitions in the area of juvenile transfer took place at different points. One of the major conclusions from the diverse findings above is that such momentum has largely been a bipartisan effort; this observation lies with the finding by Heinz et. al. (1969) in their study of the 1967 Illinois Legislature's six criminal justice bills that political parties are not important determinants of criminal justice policies, but other political phenomena, such as the political process of accommodating interest group demands, do shape criminal codes importantly (p. 280).

Consistent with previous findings about the elite's influences upon the formation of criminal justice policies (Heinz et. al., 1969; Fairchild, 1981), this research found that no juvenile transfer reform was likely to pass without at least tacit support from the judiciary. In the cases of Connecticut, Delaware, Illinois, Kansas, Michigan, New York, and North Carolina, the judiciary either took the leadership to bring factions together ahead of time to make needed compromises and forge lasting consensus, or they participated in the task force group commissioned by the Legislature or the Governor to directly contribute to the policymaking process that deals with a range of intricate interests and complex issues. In Nevada and California, the state Supreme Court simply made rulings that the state legislature had to codify. In contrast, states like Missouri, Tennessee, and Georgia faced the judiciary who voiced strong opposition to certain implications for their branch created by the legislative reform.

The research also upheld the traditional position prosecutors typically take in the state's criminal justice reform, which is to protect their prosecutorial discretion; when they spoke in favor of a legislative reform to expand juvenile jurisdiction, it was because their prosecutorial discretion would not be hurt by the passage of the new law (e.g., see cases of Louisiana and

Arizona). In general, prosecutors projected a great deal of influence on the passage or defeat of juvenile transfer reform. But they as a principal interest group in the criminal justice policy community were not always successful in fulfilling their demands. When the Oregon District Attorney Association wanted to uphold an old transfer statute passed during the "get tough" movement, they ultimately failed because of the resistance from the state judiciary and many others who also practice law.

Interestingly, a new discovery from the findings is the unique influence from the federal Prison Rape Elimination Act (PREA). Criminal justice reform has largely occurred at the state level, but the federal PREA actually "got things moving" in Illinois, Massachusetts, and Louisiana because failing to incorporate the legislative implication of this federal act would be a costly mistake in these states. This trivial generalization from the reform stories in these three states ask future researchers to pay more attention to the national context within which a state-level criminal justice reform is created.

This research covers the studies of twenty-one states and their routes to pass or try to pass juvenile transfer reform, specifically raising the upper age of juvenile court jurisdiction and limiting transfer of cases charged with specified offenses. Importantly, these are not all the legislative efforts that have been going on in the arena of juvenile transfer reform; other states, such as Washington,[75] also passed non-transfer related laws to keep more court-involved youths in the juvenile system. Future research that incorporates these diverse cases could help paint a more sophisticated picture of the abilities of different kinds of interest groups to affect the policymaking process. Given the limited scope of this research, I am unable to conclude the degree of asymmetry between interest groups' abilities to influence the juvenile transfer reform.

[75] https://medium.com/wagovernor/juvenile-justice-reform-taking-shape-in-washington-445382917acd

Previous studies suggest that professional groups, which consist of judges, attorneys, and law enforcement personnel, are more influential than reform- and service-oriented interest groups, such as those that represent the offenders and victims (Fairchild, 1981). This research echoes the significance of the criminal justice professionals in the sometimes, contentious policymaking process, as many of the examined cases point to the collaborative spirit required among different stakeholders, from judges to correctional officers, to formulate a consensus for how the state should change its ways of handling juveniles. Nevertheless, this research does not overlook the crucial leadership role of advocacy community representing the grass-roots voice. For example, the Connecticut Juvenile Justice Alliance engaged in collaborative conversations with important legislative champions, including key legislative members and the judiciary, to carry the Raise the Age campaign to its passage.

The successes in Illinois, Kansas, and Delaware show the importance of research in juvenile transfer reform movements. As states contemplated whether and how to proceed with legislative efforts to reform juvenile transfer, it was usual that the fiscal implications of changing an old transfer statute play a central role in the policy debate. Opponents often raised concerns over public safety (being tough or soft on crimes), staggering caseloads into the juvenile system, and overcrowding juvenile detention facilities. The successful reforms happened in these three states tell an exact tale that credible data determining the benefits and costs of enacting policy changes could repel such philosophical or bureaucratic differences to derail the reform progress. Moreover, the collaborative process to collect and verify these data from different sources who hold different views of the research findings also serve to invest key stakeholders in the process who expressed a reticence to proceed with the expansion of the juvenile jurisdiction before knowing the fiscal and operational feasibility of the policy change.

The prospects of the ongoing legislative efforts in Wisconsin, Texas, and Georgia to pass bills that address juvenile transfer reform are contingent upon resolving concerns about costs. Importantly, my conclusions drawing from the case studies of other eighteen states suggest the effective role of judicial activism and the need to accommodate the concerns from pivotal legislators about the costs created for absorbing a new cohort of youths into the juvenile system. The high level of interest that was already generated has provided visibility to the marginal policy area where substantial proportion of the state budget was not devoted to. If the ongoing political momentum in these states does not wane, the potential for significant reform should increase proportionally as the interest and activity of those principal interest groups (e.g., judges) in the area increase (Down, 1976).

This research cannot test the second hypothesis about the judicial salience of the developmental approach to juvenile transfer reform, partially due to the inadequate cases that are relevant to this hypothesized phenomenon. However, neither the Nevada nor the California Supreme Court ruled against the transfer provision based on the issue of juvenile's immaturity; the former focused on the youths' constitutional right against self-incrimination under the Fifth Amendment, whereas the latter addressed the issue of voter intent to allow amendment that permits further reform of the current juvenile transfer statutes. Future research to examine the second hypothesis should pay attention to incoming litigations on juvenile transfer and to find out whether the idea of juvenile incompetence to stand criminal trial due to developmental immaturity is consistently by the state court.

Unfortunately, passing legislations to change the age of criminal majority or to limit the criminal prosecution of low-level and sometimes, serious offenses does not guarantee that all minors will remain in the juvenile justice system. Besides the upper boundary of the juvenile

jurisdiction, there is a separate question about the minimum age at which juveniles can be tried as adults. Many states have passed laws that allow youths aged under fourteen to be treated as adults in criminal court.[76] From the findings, the type of legislation that Tennessee passed tackles the separate reform proposal to narrow the circumstances under which young children can be tried in criminal court. Reform like such in Tennessee meant that fewer children would be at risk of ending up with a criminal record which has a lasting impact on a young person's life. Depending on state laws, a one-time criminal conviction would rob a child the second chance that he or she could have had if being prosecuted as a juvenile. The continual push to raise the age, both minimum and maximum, of the juvenile court jurisdiction signifies an enduring effort to protect the rights of young people.

This research contributes to understanding the influences behind the policy changes concerning juvenile transfer reform through case study analysis of the reform processes that various states have taken. The elite's influence on this vulnerable population of young people is real and unsurprising, in part because only a relatively small number of persons ever possess sufficient information to affect the crucial, subtle choices. The elite, especially the judiciary, shows some of the most effective leadership, backed by the advocacy community and other stakeholders in the system, in rallying the legislative support behind juvenile transfer reform. This research provides commonsense lessons for those who seek to improve their juvenile and criminal justice systems: the reform success often comes from judicial activism and the commitment to a collaborative and inclusive approach by stakeholders to study the specific policy issue.

[76] https://eji.org/news/13-states-lack-minimum-age-for-trying-kids-as-adults/

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