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Juvenile Waiver in Rhode Island

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Essays

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INTRODUCTION

A thirteen year old student at Nathaniel Greene Middle School allegedly slashes a fellow student in the face with a razor blade on the way to the school bus.

A seventeen year old male allegedly burns down a home with six people in it killing all over a dispute with a supposed occupant.

Two teenaged brothers are sentenced to thirty-three years in prison for raping, robbing, and trying to murder a city woman three years before. The younger brother was thirteen at the time of the crime.[1]

These events, which all happened within two days of each other in March 1996, are emblematic of the burgeoning juvenile crime problem.[2] Teenage arrest rates for violent crime now surpass those of young adults.[3] Murders committed by youths have

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1. Jonathan Saltzman, *Salve Regina University Professor on Youth Crime and Punishment*, Prov. J. Bull., Apr. 22, 1996, at C6, *available in* 1996 WL 9381041.

2. *Id.*

3. James Alan Fox, *The Calm Before the Juvenile Crime Storm?*, Population Today, Sept. 1996, at 4. Young adults were defined as between the ages of 18 and 24. *Id.*

increased three hundred percent since 1960,[4] and tripled this decade.[5] Juvenile violent crime is up fifty-seven percent overall.[6]

The rise of gun use by youngsters portends an even worse future.[7] Thirty-five thousand youngsters bring guns to school every day.[8] Juvenile offenders are now younger and more violent.[9] This age group, disproportionately predisposed to criminal activity,[10] will continue to grow.[11] Experts warn that we face a more pernicious wave of youth violence in the coming decade.[12]

The public is concerned about this trend. Both in Rhode Island and nationally, people fear the increase in violent crime.[13] Most people favor tougher measures to deal with juvenile crime[14] and believe that bold initiatives are needed to combat the problem.

This essay proposes that waiver is the only appropriate means for dealing with serious and habitual juvenile offenders. Waiver generally is the most common means of combating violent juvenile crime.[15] Because some juveniles are not amenable to the rehabili-

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4. *Id.* (measuring murders from 1965-1990).

5. *States Step Up Punishment of Young Offenders*, Prov. J. Bull., May 12, 1996, at A3, *available in* 1996 WL 10325820 [hereinafter *States Step Up Punishment*]. From 1990 to 1994, murders committed by 14 to 17 year old juveniles increased 22%. Fox, *supra* note 3, at 4.

6. Marcy Rasmussen Podkopacz & Barry C. Feld, *The End of the Line: An Empirical Study of Judicial Waiver*, 86 J. Crim. L. & Criminology 449, 458-59 (1996).

7. *Id.*

8. *Id.*

9. Linda Borg, *Crime Rate's Down, But Maybe Not for Long*, Prov. J. Bull., Dec. 6, 1995, at C1, *available in* 1995 WL 13243282.

10. Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 Minn. L. Rev. 965, 975 (1995). Although accounting for 8% of the population, males aged 14 to 24 commit 48% of all murders. Fox, *supra* note 3, at 4.

11. Between now and the year 2005, the teen population will grow 20%. Fox, *supra* note 3, at 4.

12. *Id.*; *States Step Up Punishment*, *supra* note 5, at A3.

13. Francis Barry McCarthy, *The Serious Offender and Juvenile Court Reform: The Case for Prosecutorial Waiver of Juvenile Court Jurisdiction*, 38 St. Louis U. L.J. 629, 629 (1994); Jody McPhillips, *Crime, Violence Top List of Voter's Concerns*, Prov. J. Bull., Oct. 1, 1996, at A1, *available in* 1996 WL 12467005.

14. McCarthy, *supra* note 13, at 629 (73% favor treating violent juveniles as adults).

15. Marcy Rasmussen Podkopacz & Barry C. Feld, *Judicial Waiver Policy and Practice: Persistence, Seriousness and Race*, 14 Law & Ineq. J. 73, 76 (1995) (Every state has some form of waiver.).

tative scheme offered in the juvenile system,[16] waiver permits courts to transfer these juveniles into the adult system.[17] Part I of this essay defines the three forms of waiver. Part II reviews the historical and philosophical underpinnings of the theory for waiver. Parts III and IV explore the modern trend of waiver, and its current use in Rhode Island and nationally. Finally, Part V illustrates the prosecutor's importance in implementing juvenile waiver.

I. WAIVER DEFINED

Waiver grants adult criminal courts the power to exercise jurisdiction over juveniles.[18] Waiver removes those juveniles who have proven by the severity and numerosity of their crimes that they are beyond the rehabilitative efforts of the juvenile system. Concomitantly, the removal of these dangerous juveniles aids in the rehabilitation of other youngsters in the system. The rationale is that these intractable youths stymie efforts to reach less severe youngsters.

Three types of waiver exist: judicial, legislative and prosecutorial. Although spawning the same result, each involves distinctive means.

Judicial waiver allows a judge to transfer a juvenile to adult criminal court. The waiver may be sought by the prosecutor, the juvenile or the judge.[19] Upon a motion requesting waiver, the judge holds a hearing at which both sides introduce evidence of the juvenile's background and prior record.[20] The judge weighs the juvenile's amenability to treatment and his threat to public safety to determine if waiver is proper.[21]

Legislative waiver automatically removes a juvenile to adult court jurisdiction.[22] This waiver, also known as exclusion,[23] is

16. Catherine R. Guttman, Note, *Listen to the Children: The Decision to Transfer Juveniles to Adult Court*, 30 Harv. C.R.-C.L. L. Rev. 507, 510 (1995).

17. *Id.* at 509.

18. Stacey Sabo, Note, *Rights of Passage: An Analysis of Waiver of Juvenile Court Jurisdiction*, 64 Fordham L. Rev. 2425, 2426 (1996).

19. *Id.* at 2437.

20. *Id.*

21. *Id.* at 2438-39; Podkopacz & Feld, *supra* note 15, at 76.

22. Eric Fritsch & Craig Hemmens, *Juvenile Waiver in the United States 1979-1995: A Comparison and Analysis of State Waiver Statutes*, 46 Juv. & Fam. Ct. J. 17, 29 (1995).

designed to ferret out serious and repeat offenders from the juvenile system. Age, prior record and seriousness of the present offense are the factors that combine to trigger the automatic waiver.[24]

Prosecutorial waiver[25] allows the prosecutor to decide whether to try a juvenile in juvenile court or adult criminal courts. The prosecutorial waiver statute grants concurrent jurisdiction to the juvenile court and the criminal court.[26] This concurrent jurisdiction allows the prosecutor to file directly with criminal court. The direct file circumvents any review of the prosecutor's decision.[27]

II. History of Waiver

The justice system has always had a mechanism to treat intractable youths as adults. Under ancient Saxon law, a person was criminally responsible at twelve years old.[28] At common law, a person fourteen years of age or older possessed the requisite culpability to be criminally liable,[29] and between the ages of seven and fourteen, there was a rebuttable presumption that the child was incapable of committing a crime.[30] This presumption could be rebutted by demonstrating that the child knew the wrongfulness of his actions,[31] but the presumption grew weaker as the child neared fourteen years of age.[32] Children under seven years old were deemed incapable of possessing criminal intent.[33]

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23. *See In re* Robert, 406 A.2d 266, 268 n.2 (R.I. 1979) (treating Rhode Island's legislative waiver statute as "exclusion," not waiver).

24. Fritsch & Hemmens, *supra* note 22, at 18; Sabo, *supra* note 18, at 2443-44.

25. Prosecutorial waiver is also known as direct file, Robert E. Shepherd, Jr., *The Rush to Waive Children to Adult Court*, 10 Crim. Just. 39, 39 (1995), and concurrent jurisdiction, Podkopacz & Feld, *supra* note 15, at 77.

26. Podkopacz & Feld, *supra* note 15, at 77; Shepherd, *supra* note 25, at 40.

27. *See* Sabo, *supra* note 18, at 2426; Lisa A. Cintron, Comment, *Rehabilitating the Juvenile Court System: Limiting Juvenile Transfers to Adult Criminal Court*, 90 Nw. U. L. Rev. 1254, 1270 (1996) (noting that the prosecutor's decision is unreviewable).

28. State v. Berard, 401 A.2d 448, 450 (R.I. 1979).

29. Fritsch & Hemmens, *supra* note 22, at 19; Sabo, *supra* note 18, at 2429.

30. Wayne R. LaFave & Austin W. Scott, Jr., Criminal Law § 4.11, at 401 (2d ed. 1986).

31. *In re* Michael, 423 A.2d 1180, 1181 (R.I. 1981).

32. *Id.* at 1182.

33. This division of juveniles was entrenched as early as the reign of Edward III. *Berard*, 410 A.2d at 450; *see also* Guttman, *supra* note 16, at 511 n.18.

Rhode Island embraced the common law approach into the early 1900s.[34] Under this common law scheme, criminal youth received the same sentences and were incarcerated in the same facilities as their adult counterparts.[35] Capital offenders between the ages of seven and fourteen faced execution.[36] Some states began to segregate children from adult prisoners in 1825,[37] and in 1857,[38] Rhode Island provided a separate reform school for convicted youths. Admittance was left to the discretion of the trustees,[39] however, even those separated children had to serve the full adult term.[40]

The Progressive Era[41] marked the beginning of a wholly separate juvenile justice system from 1898 to 1914. Commentators almost unanimously recognize the Illinois Juvenile Court Act of 1899[42] as the first of these efforts to achieve a separate juvenile justice system.[43] The first juvenile court quickly followed in Chicago.[44]

Rhode Island almost contemporaneously mandated separate trials for juveniles under sixteen years of age within the existing court structure.[45] Later, district courts were given jurisdiction over all juvenile wayward and delinquent petitions.[46]

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34. *See* State v. Mariano, 91 A. 21 (R.I. 1914) (criminal incapacity ceases at age fourteen).

35. Fritsch & Hemmens, *supra* note 22, at 19.

36. 4 Blackstone, Commentaries *23-24.

37. The founding of the House of Refuge in New York marked the beginning of this trend. Robert M. Mennel, Thorns and Thistles: Juvenile Delinquency in the United States, 1825-1940 (1973). By 1899, 65 separate facilities held young offenders. James T. Sprowls, Discretion and Lawlessness: Compliance in the Juvenile Court (1980).

38. R.I. Rev. Stat. ch. 227 (1857).

39. *Id.*

40. Fritsch & Hemmens, *supra* note 22, at 19; *see also In re* Michael, 423 A.2d 1180, 1182 (R.I. 1981).

41. The Progressive Era lasted from 1898 to 1914. Thomas A. Bailey, The American Pageant, A History of the Republic 704 (5th ed. 1975).

42. Juvenile Court Act, Ill. Laws §§ 3, 131, 132 (1899).

43. *See* Holly Beatty, Comment, *Is the Trend to Expand Juvenile Transfer Statutes Just an Easy Answer to a Complex Problem?*, 26 U. Tol. L. Rev. 979, 980-84 (1995).

44. Deborah L. Mills, United States v. Johnson: *Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment*, 45 DePaul L. Rev. 903, 906 n.23 (1996).

45. 1899 R.I. Pub. Laws ch. 664.

46. 1915 R.I. Pub. Laws ch. 1185.

Positivism, which blames external circumstances rather than a person's volition, greatly influenced the Progressive approach to juvenile justice.[47] The doctrine of *parens patriae*, i.e., that the state should care for those who cannot care for themselves,[48] reinforced the philosophy to allow state action in this area. Because it was thought that criminals should be cured, the goal of the system was to rehabilitate rather than to punish.[49] To further rehabilitation, each child was accorded individualized treatment.[50] This need to individualize treatment led to the less formal approach juvenile courts take.[51]

Technological changes also influenced the Progressive approach. Industrialization swelled population in urban centers. As a result, city streets teemed with large numbers of youth. Juvenile delinquency became a problem as some of these children turned to crime.[52] The Progressives designed the juvenile justice system to control this increase in juvenile population.[53] Accordingly, Progressive reform still required youth discipline and accountability.[54]

The Progressives also retained a "safety valve" for the worst juvenile offenders.[55] Acknowledging that the worst juvenile offenders were beyond the juvenile system's rehabilative efforts, juvenile judges possessed the power to transfer select juveniles to the adult system.[56] Statutory provisions also closed the juvenile courts to certain juveniles due to the severity of their offense. For example, Rhode Island did not allow juveniles accused of murder or manslaughter access to juvenile courts.[57]

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47. This influence also led to probation and parole of adult offenders. Feld, *supra* note 10, at 969 n.5.

48. Allison Boyce, *Choosing the Forum: Prosecutorial Discretion and* Walker v. State, 46 Ark. L. Rev. 985, 986 (1994). Civil courts had expanded *parens patriae* in the 1800s to take custody of truants and waywards. The Progressives merely applied this doctrine in a different context. *See* Guttman, *supra* note 16, at 511.

49. Boyce, *supra* note 48, at 986; Mills, *supra* note 44, at 905-06.

50. Feld, *supra* note 10, at 970.

51. Sabo, *supra* note 18, at 2431.

52. Theodore N. Ferdinand, *History Overtakes the Juvenile Justice System*, 37 Crime & Delinq. 204, 206-07 (1991).

53. *Id.*

54. *Id.*

55. Shepherd, *supra* note 25, at 39; Beatty, *supra* note 43, at 997.

56. Eric L. Jensen, *The Waiver of Juveniles to Criminal Court: Policy Goals, Empirical Realities, and Suggestions for Change*, 31 Idaho L. Rev. 173, 174 (1994).

57. 1915 R.I. Pub. Laws ch. 1185.

The Progressive philosophy gained widespread support throughout the first two-thirds of the twentieth century.[58] The Rhode Island legislature formed a separate juvenile court in 1944,[59] and this jurisdiction was later shifted to the current family court.[60] By 1945, every state had a juvenile court.[61] Three thousand juvenile courts and one thousand juvenile correctional facilities were operational in the United States by 1987.[62]

III. The Modern Trend

Two themes emerged in the last half of the twentieth century which fundamentally altered the juvenile justice system: (1) the extension of due process guarantees to juveniles, and (2) waning confidence in the effectiveness of rehabilitation.

The first fundamental reworking of the system was the extension of due process protections to juveniles. The epochal case in this transformation is *Kent v. United States*.[63] *Kent* represents a rejection of the informal, individualized character of the juvenile system.[64] The court recognized that a juvenile had the right to a hearing before being judicially waived, a formal explanation from the judge explaining the reasons for the exercise of waiver and access to the records which the court used to reach its conclusion.[65] The court also addressed factors to consider when deciding the appropriateness of judicial waiver.[66] Thirty-seven states have codified the *Kent* criteria.[67] Rhode Island courts have held that *Kent* mandates the "minimal essentials which must be observed by the

58. Feld, *supra* note 10, at 997; Shepherd, *supra* note 25, at 39.

59. 1944 R.I. Pub. Laws ch. 1441.

60. 1961 R.I. Pub. Laws ch. 73.

61. Fritsch & Hemmens, *supra* note 22, at 20; Sabo, *supra* note 18, at 2430.

62. Cintron, *supra* note 27, at 1257 n.23.

63. 383 U.S. 541 (1966).

64. *See id.* at 552-53.

65. *Id.* at 561-63.

66. *Kent* lists eight determinative factors: (1) the seriousness of the offense including whether the offense was violent, (2) whether the offense was committed against a person or property, (3) the existence of probable cause, (4) the desirability of trying the entire case in one forum (when co-defendants are adults), (5) the juvenile's personal circumstances, (6) the juvenile's prior record, (7) concerns for public safety and (8) the juvenile's amenability to treatment. *Id.* at 566-67.

67. Fritsch & Hemmens, *supra* note 22, at 21.

family court" to comply with Rhode Island's judicial waiver statute.[68]

The United States Supreme Court followed *Kent* with a string of cases further strengthening juveniles' due process protections. These cases recognized a juvenile's right to notice of charges,[69] counsel,[70] cross-examination of witnesses,[71] protection against self-incrimination[72] and double jeopardy,[73] and having charges proven beyond a reasonable doubt.[74] Rhode Island has further extended due process protections by granting juveniles the right to counsel at pre-trial line-ups.[75]

Coinciding with due process extensions was an increasingly negative perception of the criminal justice system. Crime was on the rise[76] and the system was seen as a failure.[77] As a result, a new approach was needed.

One solution was set forth by the President's Commission on Law Enforcement and Administration of Justice in 1967.[78] The commission reported that delinquency was a widespread prob-

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68. Knott v. Langlois, 231 A.2d 767, 769 (R.I. 1967). The court in *Knott* explained that *Kent*:

> [R]equires, as a precedent to waiver: that the juvenile court afford the minor an opportunity for a hearing on the "critically important" decision of whether or not to waive; that in order to permit a child's counsel to function effectively it allow him access to his client's social service records; and that the decision of the court include a statement of relevant facts as well as of the reasons or considerations motivating the determination.

Id. at 769; *see also* Paquette v. Langlois, 219 A.2d 569, 570 (R.I. 1966).

69. *In re* Gault, 387 U.S. 1, 33-34 (1966).

70. *Id.* at 36.

71. *Id.* at 56.

72. *Id.* at 55.

73. Breed v. Jones, 421 U.S. 519, 541 (1975) (The same charges may not be adjudicated by both juvenile and criminal courts.).

74. *In re* Winship, 397 U.S. 358, 368 (1970).

75. *In re* Holley, 268 A.2d 723, 728 (R.I. 1970).

76. Crime rose nearly 250% between 1960 and 1980. Fritsch & Hemmens, *supra* note 22, at 21.

77. Commentators agree that this shift occurred, but they cannot pinpoint when. Guttman, *supra* note 16, at 515 (Disfavor with rehabilitation began in the 1970s.); Jensen, *supra* note 56, at 175 (Perceptions changed in the late 1960s or early 1970s.); Sabo, *supra* note 18, at 2434-35 (Confidence in the system waned in the 1950s and 1960s.).

78. President Johnson formed the commission in 1965 to formulate solutions to the growing crime rate. Jensen, *supra* note 56, at 179.

lem.[79] While admitting that the juvenile justice system had failed, the report concluded that social agencies should divert less serious offenders from the system and treat them separately.[80] Central to this conclusion was the belief that contact with the system only worsened juvenile criminality.[81] This report led to the siphoning of small time juvenile offenders to these state agencies, while leaving only the "tough cases" behind.[82]

The extension of due process guarantees and diversion programs resulted in a juvenile system which closely resembled the one in existence for adult treatment.[83] Diversion programs meant the courts had to deal with a disproportionate number of hardened juvenile offenders less amenable to rehabilitation.[84] Additionally, by departing from the less formal approach of its Progressive progenitor, the juvenile system involved fewer cases of individualized treatment and rehabilitation, and involved more about determinations of guilt or innocence.[85] Rhode Island courts recognized this reality and made two allowances: (1) time served at the training school prior to adjudication qualified as time served toward the sentence,[86] and (2) delinquency adjudication acted as a conviction to satisfy statutory requisites.[87] These changes compelled the juvenile justice system to perform tasks that it was, and is, ill-equipped to handle.[88]

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79. President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* 55 (1967).

80. *Id.* at 83.

81. *Id.* at 80.

82. Jensen, *supra* note 56, at 180.

83. *See* Cintron, *supra* note 27, at 1260.

84. Jensen, *supra* note 56, at 180.

85. Beatty, *supra* note 43, at 992. *But see* Schall v. Martin, 467 U.S. 253, 281 (1984) (allowing preventative detention for juveniles); McKiever v. Pennsylvania, 403 U.S. 528, 545 (1971); Morris v. D'Amario 416 A.2d 137, 139 (1980); Warwick v. Robalewski, 385 A.2d 669, 671 (R.I. 1978) (Juveniles do not enjoy the right to bail.); *In re* McCloud, 293 A.2d 512, 516 (R.I. 1972) (Juveniles do not have a constitutional right to a jury trial.).

86. State v. DeFonseca, 286 A.2d 592, 594 (R.I. 1972).

87. *In re* Bernard, 557 A.2d 864, 869 (R.I. 1989) (holding that a juvenile adjudication counts as a conviction for determining whether someone had violated Rhode Island General Laws section 11-47-5, possession of a handgun by a person previously convicted of a violent crime).

88. Jensen, *supra* note 56, at 174; *see* Sen. Carol Mosley-Braun, *Should 13-Year-Olds Who Commit Crimes with Firearms Be Tried as Adults? Yes: Send a Message to Young Criminals*, 80 A.B.A. J. 46 (1994) ("Our juvenile justice system was not created to deal with large numbers of youths committing 'adult' crimes.").

Others also opined that the juvenile system was not working, but recommended a different solution. The "Martinson report" criticized the effectiveness of the juvenile courts.[89] The report concluded that "rehabilitative efforts . . . have had no appreciable effect on recidivism."[90] Martinson and others concluded that the juvenile justice system should embrace a punitive and retributive model.[91]

In the context of a juvenile system filled with more severe offenders and adult-like procedural safeguards, states partially accepted the Martinson invitation. However, instead of importing adult punitive measures into the juvenile court, states increased the exportation of juveniles into the adult system. Waiver became the mechanism to achieve this goal. By 1970, every state had some form of waiver.[92] From 1971 to 1987, transfers rose from one to five percent of juvenile offenders.[93] Since 1987, use of waiver has increased twenty-nine percent.[94]

The courts have fortified the ability of states to waive minors. For example, in Rhode Island, automatic waiver is permissible with limited judicial review.[95] Other jurisdictions have reached similar conclusions with respect to prosecutorial waiver, but Rhode Island has failed to do so.[96]

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89. Robert Martinson was commissioned by the State of New York to study the criminal justice system. Martinson and his colleagues "reviewed 231 methodologically sound studies of rehabilitation programs conducted from 1945 to 1967." Jensen, *supra* note 56, at 180.

90. Robert Martinson, *What works?—Questions and Answers About Prison Reform*, 35 Pub. Interest 22, 25 (1974).

91. Jensen, *supra* note 56, at 180.

92. Fritsch & Hemmens, *supra* note 22, at 23.

93. *Id.*

94. Shepherd, *supra* note 25, at 40.

95. The Rhode Island Supreme Court has held consistently that the legislature can dictate which juveniles may be automatically waived. The court reasons that because family court and its jurisdiction are creations of the legislature, the legislature may remove jurisdiction conditionally when the assembly can do so absolutely. *In re* Correia, 243 A.2d 759, 761 (R.I. 1968); *see also* State v. Mastracchio, 546 A.2d 165, 169 (R.I. 1988) (Juveniles do not have a right to avoid the adult penal system.); State v. Berard, 401 A.2d 448, 452 (R.I. 1979) (Courts will defer to rational legislative classification of which juveniles should be waived.).

96. *See* Cox v. United States, 473 F.2d 334, 335-36 (4th Cir. 1973) ("Such decisions . . . [a]re left for determination by the prosecutor without a hearing and without extension of any of the other due process protections to the person whose exposure and degree of exposure to prosecution the prosecutor determines."); United States v. Bland, 472 F.2d 1329, 1336 (D.C. Cir. 1972) (Prosecutorial discretion does not violate due process or equal protection of the law.).

IV. WAIVER TODAY

In an effort to further expedite the transfer of juveniles, states are using different types of waiver, lowering the age, and expanding the type and number of prior adjudications and current offenses which subject a minor to waiver. Since 1979, eighteen states have broadened their judicial waiver statutes.[97] Eight states added legislative waiver, and three others have expanded it.[98]

Judicial waiver is the most commonly used form.[99] Forty-seven states and the District of Columbia have judicial waiver, and while some states limit the instances when waiver may be exercised, others do not.[100]

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97. Fritsch & Hemmens, *supra* note 22, at 28.

98. *Id.* at 31.

99. Podkopacz & Feld, *supra* note 6, at 450.

100. *See* Ala. Code § 12-15-34 (1995) (youth 14 and older charged with any felony or previous commission as a delinquent which would constitute a crime if committed as an adult); Alaska Stat. § 47.12.100 (Michie 1996) (youth of any age charged with any offense); Ariz. R. Juv. P. 12, 14 (1996) (youth 16 and older charged with murder, aggravated assault, sexual assault or a class 1, 2, 3 or 4 felony); Ark. Code Ann. § 9-27-318 (Michie 1993 & Supp. 1995) (youth 14 and older charged with capital murder, first or second degree murder, kidnaping, aggravated robbery, assault, rape, first degree battery or possession of a handgun on school property, and youth 16 and older charged with any felony offense); Cal. Welf. & Inst. Code § 707 (West 1984 & Supp. 1996) (youth 16 and older charged with murder, arson, armed robbery, sodomy, kidnaping, assault, crimes against the elderly or handicapped, drug offense, or sale of ammunition or prohibited firearms); Colo. Rev. Stat. § 19-2-806 (Supp. 1996) (youth 14 and older charged with any felony); Conn. Gen. Stat. Ann. § 46b-127(b) (West 1995) (youth 14 and older charged with a class C or D felony or an unclassified felony if previously found a delinquent for a serious juvenile offense); Del. Code Ann. tit. 10, § 1010(b)-(c) (Supp. 1994) (youth 16 and older charged with any offense) (1998 amendment will lower age to 15); D.C. Code Ann. § 16-2307(a) (1989 & Supp. 1996) (youth of any age charged with possession of a firearm in school, and youth 15 and older charged with any felony, and youth 16 and older charged with any offense if previously committed as a delinquent); Fla. Stat. Ann. § 39.052(2)(a)-(b), (3)-(5)(a)-(b) (West Supp. 1996) (youth any age charged with any offense punishable by death or life imprisonment, and youth 14 and older charged with arson, sexual battery, robbery, kidnaping, assault, stalking, murder, manslaughter, battery, carrying or using a weapon or grand theft); Ga. Code Ann. § 15-11-39 (1994) (youth 13 and older charged with any offense punishable by death or life imprisonment, and youth 15 and older charged with any offense); Haw. Rev. Stat. Ann. § 571-22(a)-(c) (Michie 1993) (youth 16 and older charged with any felony); Idaho Code § 20-508 (Supp. 1996) (youth 14 and older charged with any offense); 705 Ill. Comp. Stat. Ann. 405/5-4 (West Supp. 1996) (youth 13 and older charged with any offense); Ind. Code Ann. § 31-6-2-4 (West 1987 & Supp. 1996) (youth 14 and older charged with any offense); Iowa Code Ann. § 232.45 (West 1994 & Supp. 1996) (same); Kan. Stat. Ann.

§ 38-1636 (1993) (youth 14 and older charged with any Class A or B felony or capital offense, and youth 16 and older charged with any offense); Ky. Rev. Stat. Ann. §§ 635.020, 640.010 (Michie 1990 & Supp. 1996) (youth any age charged with a capital offense or Class A felony, and youth 14 or older charged with Class B felony or any felony with a prior felony adjudication or conviction, and youth 16 and older charged with a Class C or D felony with two prior delinquency adjudications for felonies); La. Code Juv. Proc. Ann. art. 857 (West 1995) (youth 14 and older charged with murder, aggravated kidnaping, aggravated sexual assault, aggravated assault, armed robbery, or any offense after adjudication for listed offenses); Me. Rev. Stat. Ann. tit. 15, § 3101(4) (West 1980 & Supp. 1996) (youth any age charged with murder, or a Class A, B or C offense); Md. Code Ann., Cts. & Jud. Proc. § 3-817 (1995) (youth any age charged with any offense punishable by death or life imprisonment, and youth 15 and older charged with any offense); Mass. Ann. Laws ch. 119, § 61 (Law. Co-op. 1993) (youth 14 or older charged with any violent offense or felony offense with prior delinquency commitment); Mich. Comp. Laws Ann. § 712A.4 (West 1993) (youth 15 and older charged with any felony); Minn. Stat. Ann. § 260.125 (West 1992 & Supp. 1997) (youth 14 and older charged with any offense); Miss. Code Ann. § 43-21-157 (1993 & Supp. 1996) (youth 13 and older charged with any offense); Mo. Ann. Stat. § 211.071 (West 1996) (youth 12 and older charged with any felony); Mont. Code Ann. § 41-5-206 (1995) (youth 12 and older charged with homicide or sexual assault, and youth 16 and older charged with arson, negligent homicide, aggravated assault, robbery, burglary, aggravated kidnaping, sale or manufacture of drugs, or possession of explosives); Nev. Rev. Stat. Ann. § 62.080 (Michie 1996) (youth 14 and older charged with any felony); N.H. Rev. Stat. Ann. § 169-B:24 (1994 & Supp. 1995) (youth any age charged with any felony); N.J. Stat. Ann. § 2A:4A-26 (West 1987 & Supp. 1996) (youth 14 and older charged with homicide, robbery, sexual assault, assault, kidnaping, aggravated arson, unlawful possession of a firearm, vehicular homicide while under the influence of intoxicating liquor or narcotics, or distribution of narcotics within 1000 feet of a school); N.M. Stat. Ann. § 32A-2-3, -20 (Michie 1996) (youth 14 and older charged with murder, assault, kidnaping, aggravated battery, sexual assault, robbery, aggravated arson, or any felony if three prior felony adjudication's in last two years, and youth 16 and older charged with any felony); N.Y. Penal Law § 30.00(2) (McKinney 1987) (youth 13 and older charged with first or second degree murder, and youth 14 and older charged with first degree kidnaping, first or second degree arson, first degree manslaughter, first degree rape, sodomy, aggravated sexual abuse, burglary or robbery); N.C. Gen. Stat. § 7A-608 (1996) (youth 13 and older charged with any felony); N.D. Cent. Code § 27-20-34 (1991 & Supp. 1995) (youth 14 and older charged with any violent felony, and youth 16 and older charged with any offense); Ohio Rev. Code Ann. § 2151.26 (Banks-Baldwin 1993 & Supp. 1996) (youth 15 and older charged with any felony); Okla. Stat. Ann. tit. 10, § 1104.2(A) (West Supp. 1996) (youth any age charged with any felony); Or. Rev. Stat. Ann. § 419C.349, C.352 (1995 & Supp. 1996) (youth any age charged with murder, first degree manslaughter, first degree sexual assault, first degree assault or first degree robbery, and youth 15 and older charged with a Class A, B or selected C felony, and youth 16 and older charged with any offense); 42 Pa. Cons. Stat. Ann. § 6355 (West 1982 & Supp. 1996) (youth 14 and older charged with any felony); Tenn. Code Ann. § 37-1-134 (1996) (youth 16 and older charged with murder, manslaughter, aggravated sexual assault, aggravated robbery, or aggravated kidnaping); Tex. Fam. Code Ann. § 54.02 (West 1986 & Supp. 1996) (youth 14 and older charged with a capital felony, controlled substance felony or first degree felony,

In Rhode Island, two categories of youth may be waived by the judiciary. First, courts may waive anyone sixteen years of age or older for any felony offense or drug offense with a prior drug-related conviction.[101] Additionally, courts may waive any juvenile for any offense punishable by life imprisonment.[102] Both waiver mechanisms require a hearing to determine if waiver is proper.[103] The judge's findings at this hearing are granted great deference, bordering on unreviewability.[104]

Thirty-four states and the District of Columbia now employ legislative waiver.[105] Rhode Island's statutory classification for

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and youth 15 and older charged with any second or third degree felony); Utah Code Ann. § 78-3a-603 (1996) (youth 16 and older charged with any murder or any second offense felony); Vt. Stat. Ann. tit. 33, § 5506 (1991) (youth from age 10 to 13 charged with murder, manslaughter, aggravated assault, armed robbery, kidnaping, aggravated sexual assault, or aggravated burglary); Va. Code Ann. § 16.1-269.1 (Michie 1996) (youth 14 and older charged with any felony); Wash. Rev. Code Ann. § 13.40.110 (West 1993) (youth 15 and older charged with the attempt or commission of a Class A felony, and youth 17 and older charged with second degree assault, first degree extortion, second degree sexual assault, second degree robbery, or indecent liberties); W. Va. Code § 49-5-10 (1996) (youth 14 and older charged with treason, murder, armed robbery, kidnaping, first degree arson, first degree sexual assault, violent felony if prior violent felony adjudication, or felony offense with two prior felony adjudications, and youth 16 and older charged with a violent felony offense, or felony offense with prior felony adjudication); Wis. Stat. Ann. § 48.18 (West Supp. 1996) (youth 16 and older charged with any offense); Wyo. Stat. Ann. § 14-6-237 (Michie 1994 & Supp. 1996) (youth any age charged with any offense).

101. R.I. Gen. Laws § 14-1-7.4 (1994).

102. *Id.* § 14-1-7(a).

103. *Id.* § 14-1-7.1.

104. A juvenile does not have an automatic right to appeal a decision by the juvenile court to waive jurisdiction. The only avenue available to a juvenile is to petition the state supreme court for certiorari. *In re* Joseph T., 575 A.2d 985, 987 (1990).

105. *See* Ala. Code § 12-15-34.1(a) (1995 & Supp. 1996) (youth 16 or older charged with a capital offense, a Class A felony, felony with a deadly weapon, felony causing death or serious bodily injury, felony with the use of a dangerous instrument against certain officials or trafficking drugs); Alaska Stat. § 47.12.100 (Michie 1996) (youth any age charged with an unclassified or Class A felony against a person); Conn. Gen. Stat. Ann. § 46b-127(a) (West 1958) (youth 14 or older charged with a capital felony or a Class A felony with a Class A adjudication, or a Class B felony with two prior Class A or B felony adjudications); Del. Code Ann. tit. 10, § 921(2)(a) (1974 & Supp. 1996) (youth any age charged with first or second degree murder, sexual assault or kidnaping); D.C. Code Ann. § 16-2307(h) (1989 & Supp. 1996) (youth 16 or older charged with murder, sexual assault, first degree burglary or armed robbery); Fla. Stat. Ann. § 39.02(3)(a), (4)(a)-(d) (West Supp. 1997) (youth any age charged with an offense punishable by death or life imprisonment, and any other felonies or misdemeanors based on the same offense);

Ga. Code Ann. § 15-11-5(b)(2)(A) (1994) (youth 13 or older charged with murder, aggravated sexual assault or armed robbery, and youth 15 or older charged with burglary with three prior burglary adjudications); Haw. Rev. Stat. § 571-22(c)-(d) (1993) (youth 16 or older charged with murder, attempted murder, or a Class A felony with one prior violent felony adjudication or any two prior adjudications within two years); Idaho Code § 20-509(1)-(2) (Supp. 1996) (youth 14 or older charged with murder, attempted murder, sexual assault, robbery, mayhem or illegal possession of drugs/firearms near a school or a school event); Ill. Comp. Stat. Ann. ch. 705, ¶ 405/5-4(3.1)-(3.2), (6)(a), (7)(a), (8)(a) (West 1992 & Supp. 1996) (youth 15 or older charged with first degree murder, aggravated sexual assault, armed robbery, possession or sale of drugs at school or a school event, forcible felony in furtherance of organized gang activity with a prior felony adjudication or felony in furtherance of organized gang activity with a prior forcible felony adjudication); Ind. Code Ann. § 31-6-2-1.1(b), (d) (Michie Supp. 1995) (youth 16 or older charged with murder, sexual assault, kidnaping, armed robbery, car jacking, criminal gang activity, possession of a firearm, drug dealing, or any misdemeanor or felony with a prior felony or misdemeanor conviction); Iowa Code Ann § 232.8(1)(b) (West 1994 & Supp. 1996) (youth 14 or older charged with murder or a second offense concerning alcohol or drugs); Kan. Stat. Ann. §§ 21-3611(a), (c), 38-1636(h) (1995) (youth 16 or older charged with a felony with a prior felony adjudication); Ky. Rev. Stat. Ann. § 635.020(4) (Michie Supp. 1994) (youth 14 or older charged with a capital offense, a Class A or B felony, or a Class C or D felony with two prior felony convictions); La. Code Juv. Proc. Ann. art. 305(A) (West 1995) (youth 15 or older charged with first or second degree murder, manslaughter or aggravated sexual assault, and youth 16 or older charged with armed robbery, aggravated burglary or aggravated kidnaping); Me. Rev. Stat. Ann. tit. 15, § 3101(4) (West 1980 & Supp. 1996) (youth any age charged with murder, or a Class A, B or C felony); Md. Code Ann., Cts. & Jud. Proc. § 3-804(e)(1)-(4) (1995 & Supp. 1997) (youth 14 or older charged with murder, manslaughter, kidnaping, rape, aggravated assault or mayhem, and youth 16 or older charged with armed robbery or assault with intent to murder, rape or rob); Minn. Stat. Ann. § 260.015(5)(b), .125(3)(a) (West Supp. 1997) (youth 14 or older charged with any offense with a prior felony conviction, and youth 16 or older charged with murder); Miss. Code Ann. § 43-21-151(1)(a)-(b), (2) (1993 & Supp. 1996), § 43-21-157(9) (Supp. 1995) (youth 13 or older charged with any offense punishable by death or life imprisonment, or any offense committed with the use of a deadly weapon); Mo. Rev. Code Ann. § 211.071(9) (Smith Supp. 1996) (youth any age charged with any crime upon petition to court); Mont. Code Ann. § 41-5-206(3) (1995) (youth 12 or older charged with sexual intercourse without consent, deliberate homicide or attempted deliberate homicide); Nev. Rev. Stat. Ann. § 62.040(1)(b)(1), .080(3) (Michie 1996) (youth any age charged with murder or attempted murder); N.H. Rev. Stat. Ann. § 169-B:24 (1994 & Supp. 1996) (youth any age charged with a felony); N.M. Stat. Ann. § 32A-2-3(H) (Michie 1995 & Supp. 1996) (youth 15 or older charged with first degree murder); N.Y. Penal Law § 30.00(2) (McKinney 1987) (youth 13 or older charged with first or second degree murder, and youth 14 or older charged with first degree kidnaping, first or second degree arson, first degree manslaughter, first degree rape, first degree sodomy, aggravated sexual abuse, first or second degree burglary, or first or second degree robbery); N.C. Gen. Stat. § 7A-608 (1995) (youth 13 or older charged with a Class A felony); Ohio Rev. Code Ann. § 2151.011(B)(1), .26(B) (Anderson Supp. 1995) (youth any age charged with murder or a first or second degree felony with a prior murder adjudication); Okla. Stat. Ann. tit. 10, §§ 7001-1.3(2), 7306-

automatic waiver encompasses juveniles sixteen and older accused of a felony who have two prior felony adjudications, or accused of a drug offense if previously adjudicated for a drug offense.[106]

Ten states and the District of Columbia currently employ prosecutorial waiver; the statutes granting prosecutors this discretion create both age and offense thresholds.[107] In two states, prosecutorial waiver statutes also adduce factors for the prosecutor to consider when deciding where to file a case.[108] Rhode Island currently does not have a provision for prosecutorial waiver. Nevertheless, this mechanism is consistent with the goals of the juvenile justice system. Waiver allows individualized treatment and removes the worst offenders whose presence in the juvenile system has deleterious effects on the system's rehabilitative goal.

V. LET THE PUNISHMENT FIT THE CRIME

Advocating juvenile waiver initiated by the prosecutor is not a difficult task when one looks at the state of today's juvenile justice system. It is apparent that many of the problems with the juvenile justice system center around the magnitude of the crimes some

1.1(A)-(B) (West Supp. 1997) (youth 16 or older charged with first degree murder); 42 Pa. Cons. Stat. Ann. § 6322(a) (West 1982 & Supp. 1996), § 6355(e) (1982) (youth any age charged with murder); Tenn. Code Ann. § 37-1-134(a)(1) (1996) (youth any age charged with first or second degree murder, rape, aggravated or especially aggravated robbery, kidnaping or the attempt to commit any of the listed offenses); Vt. Stat. Ann. tit. 33, § 5505(b) (1991) (youth 14 or older charged with murder, manslaughter, aggravated assault, armed robbery, kidnaping, aggravated sexual assault or aggravated burglary); Va. Code Ann. § 16.1-269.6(c) (Michie 1996) (youth 14 or older charged with a felony); Wash. Rev. Code Ann. § 13.04.030(1)(e)(iv), .40.020(14) (West Supp. 1997) (youth 16 or older charged with a violent felony with one or more prior serious violent felonies, two or more prior violent felonies or three or more of any combination of any Class A or B felony, vehicular assault or second degree manslaughter); Wis. Stat. Ann. § 938.18 (West Supp. 1996) (youth 14 or older charged with kidnaping, vehicular homicide, second degree reckless homicide, first degree sexual assault, taking hostages, stalking, or the manufacture, distribution or delivery of a controlled substance).

106. R.I. Gen. Laws § 14-1-7.1 (1994 & Supp. 1996).

107. Ark. Code Ann. § 9-27-318(b) (Michie 1993 & Supp. 1995); Colo. Rev. Stat. § 19-2-805(1) (Supp. 1996); D.C. Code Ann. § 16-2301(3)(A) (1989 & Supp. 1996); Fla. Stat. Ann. § 39.052(3)(a)(4)(a), (3)(a)(5)(a)-(b)(I) (West Supp. 1997); Ga. Code Ann. § 15-11-5(b)(1) (1994); La. Code Juv. Proc. Ann. art. 3, § 305(B)(3) (West 1995); Mich. Comp. Laws Ann. § 600.606 (West Supp. 1996); Neb. Rev. Stat. § 43-247 (1993 & Supp. 1996); Vt. Stat. Ann. tit. 33, § 5505(c) (1991); Wyo. Stat. Ann. § 14-6-203(c), (e)-(f) (Michie 1986 & Supp. 1996).

108. Neb. Rev. Stat. § 43-276 (1993); Wyo. Stat. Ann. §§ 14-6-203(f)(iii), -237(b) (Michie 1986 & Supp. 1995).

juveniles commit, and the treatments and sentences they ultimately receive.

A. *Current Policy*

The policy of this office thus far has been to ask for waiver only when juveniles commit crimes that are extraordinarily heinous or premeditated, and/or when the juveniles are habitual offenders.[109] Rhode Island's current policy places the decision regarding whether to waive juveniles into adult court in the hands of the judiciary.[110] The Attorney General's office is involved by filing the motion for waiver and by making recommendations to the juvenile court regarding a particular defendant. Allowing the prosecutor to place certain offenders into the adult system is fundamental in establishing a system that will equate adult offenses with adult punishment because it ensures that the punishment is proportional to the crime.[111] The discretion to waive, however, ultimately lies with the judge.

This office evaluates the crime as well as the individual on a case-by-case basis, and yet, waiver provisions in Rhode Island do not grant the prosecutor independent or sole discretion.[112] The

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109. The following cases are unreported, but press releases supplied by the Attorney General's office are on file with the *Roger Williams University Law Review*. Rhode Island v. Steven Parkhurst (1995) (16 year old youth shot another youth execution style in the back of the head); Rhode Island v. Ryan Wright (1995) (the accomplice youth in *Parkhurst* pled no contest to a second degree murder charge); Rhode Island v. Kyle Campbell (1995) (17 year old youth stabbed, strangled and bludgeoned a female during an argument concerning drugs); Rhode Island v. Jose Tapia (1995) (17 year old youth, in an act of misguided revenge, poured and ignited gasoline from the third floor of a Providence, three-family home down to the first floor, thereby igniting the house and killing six members of the Chang family); Rhode Island v. Jesse L. Robertson (1995) (16 year old youth stabbed two victims as a result of the theft of a gold chain); Rhode Island v. Eugenio Vazquez (1996) (16 year old youth shot the victim, at point-blank range, in the upper chest during a dispute concerning a car); Rhode Island v. Joshua Rivera and Rhode Island v. Luis Rivera (1996) (Two brothers, Joshua, 13 years old, and Luis Rivera, 16 years old, raped a 33 year old woman in her home at knifepoint, slashed her breast, wrist and knee, and slashed her throat while counting to eight.). All of these cases exhibit the need for prosecutorial waiver. Prosecutorial waiver would provide the discretion needed to waive these juveniles directly from the juvenile system into adult court. This waiver would send the message to youth that the state is serious about violent crime committed by teens.

110. R.I. Gen. Laws § 14-1-7 (1994).

111. *See id.*

112. *Id.*

case of the *Rivera Brothers*[113] is an example of this office petitioning the court for waiver from the family court system into superior court based primarily on the crimes committed. In 1993, Joshua Rivera (thirteen years old at the time) and Luis Rivera (sixteen years old at the time) brutally raped and stabbed a thirty-three year old woman in her home in Providence, Rhode Island. Because of the heinousness of the crime, waiver was appropriate. In the *Rivera* case, it is clear the two teens committed offenses which are adult in nature: sexual assault, and assault and battery using a deadly weapon.[114] Moreover, experts testified in the case that the chances of rehabilitation of the defendants was slim and that community safety was more important.

However, the type of crime is not the only factor considered when contemplating waiver. In determining whether a juvenile is ripe for waiver, the Rhode Island Family Court must consider, on advisement from the prosecutor: (1) past history of offenses, (2) past history of treatment and (3) the heinous or premeditated nature of the offense balanced against the interest of society and/or the protection of the general public.[115] Therefore, this office exercises substantial deliberation in considering whether to waive a juvenile out of family court.[116]

Some prosecutors may argue that judicial waiver constitutes an obstacle to effective prosecution of serious juvenile crime. If the judiciary is not responsive to the prosecutor's approach to waiver, even youths who commit particularly heinous crimes may remain in the juvenile system. Judicial waiver also expends valuable resources because of the time involved in filing the waiver petition

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113. Saltzman, *supra* note 1, at C3.

114. Rhode Island v. Joshua Rivera (1996); Rhode Island v. Luis Rivera (1996). In the early morning hours of February 7, 1993, the respective defendants, two teenage brothers, broke into the Providence residence of a 33 year old woman and raped her at knifepoint. The defendants slashed the victim's throat, put the knife through her neck and counted slowly to eight as they removed the knife. Moreover, they slashed her breast, wrist and knee as she struggled to escape. The victim continues to suffer emotionally and physically from the attack. Rhode Island v. Joshua Rivera; Rhode Island v. Luis Rivera.

115. *See* R.I. Gen. Laws § 14-1-7.1 (1994 & Supp. 1996).

116. In fact, in 1995, 95% of juveniles voluntarily waived themselves out of the family court system. This statistic is indicative of the commitment to waive habitual offenders in addition to those who have committed crimes of a heinous or premeditated nature. It would be against the interests of the citizens of this state to allow the offender to remain in the juvenile system in these instances.

and presenting the evidence for the judge's review. These concerns may well have justified the introduction of prosecutorial waiver in some jurisdictions.

In Rhode Island, however, the juvenile system has avoided many of the concerns that have impelled other jurisdictions toward prosecutorial waiver. One critical element is the care with which this office decides whether to seek waiver in a particular case. By reserving waiver for those cases in which it is truly appropriate, the prosecutor enhances the credibility of the underlying recommendation. In addition, the Rhode Island Family Court has been highly responsive to the appropriateness of waiver in cases involving heinous acts or habitual offenders. Responsible recommendations by the prosecutor and responsive judicial decisions have allowed Rhode Island to preserve judicial discretion as a mechanism for assuring public confidence in the waiver process.

B. *Changing the Way We View Serious Juvenile Offenders*

Some may argue that juvenile waiver provisions in Rhode Island give the prosecutor too much discretion.[117] However, it is important to note that waiver as asserted by this office is a mechanism used sparingly. Unlike jurisdictions such as Florida,[118] where prosecutors will prosecute juveniles as adults for crimes that are not "shocking to the senses," Rhode Island implements juvenile waiver in a much different way. We only remand to the adult system juveniles whose prospects of rehabilitation are inordinately low because they have spent significant time in the juvenile system or have committed crimes of a heinous nature.

The juvenile court has played an increasing role in shaping the attitudes and beliefs among our citizenry. Social attitudes toward violent juvenile offenders have taken a turn toward strict enforcement and swift punishment.[119] The historical philosophy of the juvenile system to try to rehabilitate serious offenders has given way

117. Sabo, *supra* note 18, at 2446-51; Shepherd, *supra* note 25, at 40-41; Cintron, *supra* note 27, at 1270-71 (advocating a hybrid system without transfer from juvenile to adult court); Guttman, *supra* note 16, at 541.

118. Donna M. Bishop & Charles E. Frazier, *Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver*, 5 Notre Dame J.L. Ethics & Pub. Pol'y 281, 286-88 (1991).

119. Ralph A. Rossum, *Holding Juveniles Accountable: Reforming America's "Juvenile Injustice System,"* 22 Pepp. L. Rev. 907, 908 (1995); Guttman, *supra* note 16, at 508.

to the recognition that violent juvenile offenders need to be punished. It is the opinion of this office that habitual violent offenders forfeit participation in the rehabilitative scheme offered by juvenile proceedings because of the nature and propensity of the acts they commit.

What it has meant to be a child has significantly changed since the Progressive Era's vast undertaking of juvenile rehabilitation in the juvenile system.

> [T]he legal order is not merely a passive reflection of the social context in which it is embedded, but rather is in addition a dynamic part of that context. As has been noted, Juvenile Court would not have been created absent the Progressive Era's attitudes and beliefs about the nature of young people. But it is equally true that in its ideological articulation of purpose and in its practice, the Progressive juvenile court itself helped to change our shared social understanding of what it meant to be a child.[120]

Today, changing social views surrounding the treatment of some children have ignited the movement to waive children into adult court.[121] The juvenile court system fails to achieve reasonable goals with violent offenders because of the remnants of the simplistic Progressive philosophy which equated criminally responsible juveniles with the physical ailments associated with pediatric medicine.[122]

Indeed, caution and restraint must be employed when asserting juvenile waiver because regression to the time when all children were equated with adults is not a desirable goal.[123] Discretionary waiver should be used as a checking device against violent juveniles who continue to commit crimes that are beyond the scope of the juvenile rehabilitative system. At no time in our nation's great history has our citizenry been as threatened by the threat of violent juveniles.[124] In an effort to deal with these offenders, waiver is the most effective mechanism available to our state prosecutors. It embodies discretion, vigilance and a quest for justice for the victims of violent juveniles.

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120. Allison Boyce, *Choosing the Forum: Prosecutorial Discretion and* Walker v. State, 46 Ark. L. Rev. 985, 1133 (1994).

121. Rossum, *supra* note 119, at 908.

122. *Id.* at 910.

123. 1915 R.I. Pub. Laws ch. 1185.

124. Fox, *supra* note 3, at 4.

CONCLUSION

This Article has retraced the history of the juvenile system as well as recent juvenile crime trends. Waiver asserted by the Attorney General's office is appropriate for Rhode Island because of the benefits it presents for both the criminal justice system and victims. It also improves the quality of the justice system by allowing opportunity for rehabilitation only for those juveniles whom the courts decide merit that option.[125] In the years to come, if current trends hold, this country will experience escalating figures in the category of violent juvenile crime.[126] It is prosecutors who should set the trend for the treatment of these offenders.

From the Progressive Era forward, we have seen that age restrictions for the prosecution of violent crimes do not protect society and do not aid the reduction of further repeat offenders.[127] Rhode Island's waiver policy is not a broad sweeping mechanism to cast all juvenile offenders as adults. However, waiver must be seen as a device to increase the expediency and authority of justice to victims of violent crime and to those juveniles who have cut through the safety net of the juvenile system.[128]

In conclusion, prosecution of juvenile offenders as adults has been part of a legal evolution throughout our nation and Rhode Island's history. As the Rhode Island Attorney General, it is my duty and responsibility to continue to address national and local increases in juvenile crime through intervention in the classroom and aggressive prosecution, where appropriate, in the courtroom.

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125. Guttman, *supra* note 16, at 526.

126. Fox, *supra* note 3, at 4.

127. *Id.*

128. Please note the difference between falling through the proverbial safety net, where in fact the juvenile system is appropriate, and cutting one's way through it. *See* the *Rivera* cases cited *supra* note 114.