
Criminal Court Jurisdiction and Juveniles: Who Really Suffers the Punishment?

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With the passing of juvenile crime policies by legislators to help protect society from the juvenile super-predator, the key question that must be raised is, has it made a difference? Juvenile crime policies have a great deal of impact on more than just the juvenile committing the crime. Understanding criminal court jurisdiction for juveniles helps illuminate the impact these policies have on the juveniles and communities in terms of who really suffers the punishment.

Historical Background and Literature Review

Rehabilitation for Juvenile Offenders

The efforts to separate juveniles from the adult court system dates back to the late 1800s in which two prominent individuals, Lucy Flower and Julia Lathrop, worked tirelessly on behalf of incarcerated juveniles in Illinois (Tanenhaus, 2004). The efforts of these two individuals in concert with the American Bar Association as well as prominent attorneys and judges led to the establishment of the first juvenile court in 1899 in Chicago, Illinois (Tanenhaus). According to Small (1997), “the overriding rationale for the juvenile court was rehabilitation...” (p. 119).

From Rehabilitation to Punishment

From 1912 to current day, the established legislations surrounding the juvenile justice system are too numerous to list. However, some of the legislative establishments and court rulings that are well known for leading the juvenile justice system to its current standing are noted.

The major policies concerning the treatment of juveniles in relation to their crimes began to emerge around the 1960s with a series of Supreme Court decisions. Two decisions in particular, *Kent v. United States*, (1966) and *In re Gault*, (1967) affected the way in which juvenile courts handled court proceedings (Feld, 2004; Small, 1997). In addition, the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 was instrumental in ensuring the release of youth already in the adult system into a juvenile facility (Juvenile Justice FYI, 2001). These two court cases were instrumental in ensuring juvenile rights as intended by the establishment of the juvenile justice system and show a progression toward rehabilitation.

However, by 1980, the JJDP Act of 1974 was amended to specifically address issues concerning the authorization of each state to decide the age limit in which a juvenile could be tried in juvenile court as well as the sentencing age of juveniles convicted of serious crimes and/or those juveniles considered to be chronic offenders (Juvenile Justice FYI, 2001). After this amendment, Texas juvenile courts, along with nine other states chose to limit their jurisdiction of juveniles to those age 16 and younger (Juvenile Justice FYI). This newly amended Act in 1980 marks the beginning of a more penalizing approach toward juvenile crime (Brink, 2004). Since adult correctional systems are geared more toward punishment than rehabilitation, lowering the

age in which a juvenile is convicted as an adult allows the courts to impose punishment, effectively lessening the chance for rehabilitation of many juveniles.

In 1987, the state of Texas became one of the first states to enact two policies within the Texas Family Code, known as blended sentencing and determinant sentencing. Determinant sentencing for youths allowed the age in which a youth could be tried as an adult to be lowered. Blended sentencing “allow[ed] youth who receive a determinate sentence to serve the first portion of the sentence in TYC [Texas Youth Commission] with the possibility of being transferred to the adult system to complete the sentence” (Texas Youth Commission, 2003, Para 2). These age limits range from age 10 if the juvenile has committed a felony of the first degree and age 14 if the juvenile has committed a felony of the second or third degree (Texas Statutes Family Code, 1987). According to Brink (2004), the adoption of blended and determinant sentencing was another movement toward even greater penalties for juvenile crime. This is so because it allows juveniles to be sentenced as adults and sent to either adult prisons or a combination of juvenile corrections and adult prisons. Brink states “this is a more punitive trend because, in comparison with the juvenile forum, the adult forum makes juveniles liable for longer sentences in harsher environments and makes their convictions a matter of permanent public record” (p. 1563).

Current Status of Juvenile Justice System

Now, in 44 states and the District of Columbia, laws have been passed making it easier for juveniles to be tried in adult criminal courts with minimum transfer ages ranging anywhere from age seven in Oklahoma to age fifteen in New Mexico (Frontline, 2005). It is this current legislation that has effectively returned the juvenile justice system to its beginnings, ignoring the very foundations of rehabilitation and treatment services offered by the juvenile justice system. With the passing of juvenile crime policies by legislators to help protect society from the juvenile super-predator, the question must be raised, has it made a difference?

At first glance, it would be tempting to give a resounding yes to the effectiveness of these policies. Many researchers have reported that from 1994 to 2002, crime rates among juveniles have had a steady decline across the nation (Center on Juvenile and Criminal Justice, 1999; Frontline, 2005; Office of Juvenile Justice and Prevention, 2003; Snyder, 2003). While reported statistics appear to be encouraging in favor of immediate public safety, there are other issues that need to be examined to present a clearer picture of whether or not these stricter crime policies are really making a difference. Two issues to be examined, that have unintended consequences impacting the effectiveness of stricter crime policies, are recidivism rates and erroneous transfer of juvenile offenders.

Recidivism Rates as an Indicator of Policy Effectiveness

When looking at the success of the stricter juvenile crime policies in terms of recidivism rates, a much different picture emerges in regards to the effectiveness of these policies. Previous studies by Fagan (1996), Podkopacz and Feld (1996) and Myers (1999), provide interesting results of juvenile recidivism rates. The study by Podkopacz and Feld (1996) found higher recidivism rates for juveniles who were transferred to criminal court as compared to non-transferred juveniles. Myers compared the recidivism rates of 557 violent juvenile offenders in the state of Pennsylvania and reports that juveniles who were judicially transferred to criminal

court were rearrested more quickly upon their return to the community when compared to those juveniles who remained in the juvenile system during the same time period. Lastly, a study completed by Fagan reports that, criminal court processing alone may produce higher recidivism rates, regardless of whether or not the juvenile is confined in a juvenile facility or an adult facility.

Additionally, in a report released by the United States Surgeon General in January 2001, it was confirmed that juveniles who are transferred to adult court are more likely to commit crimes when they are released, “juveniles transferred to adult criminal court have significantly higher rates of re-offending and a greater likelihood of committing subsequent felonies than youths who remain in the juvenile justice system” (United States Department of Health and Human Services, 2001, Para 13). This information points to the long-term ineffectiveness of stricter juvenile crime policies. Stricter juvenile crime policies may have an impact in terms of safer communities in the short-term but ultimately, these same juvenile crime policies will have a negative effect on the communities in terms of long-term public safety.

Erroneous Transfer of Juvenile Offenders as an Indicator of Policy Effectiveness

Another issue to reflect on when considering the effectiveness of stricter juvenile crime policies is the category of juvenile offender appearing in criminal court as compared to the intended category of juvenile offender. Interestingly, Juskiewicz (2000) completed a study for the Building Blocks for Youth initiative and found the following:

prosecution in adult court is expected to be reserved for youth charged with the most serious offenses. However, several of the findings in this report suggest that cases brought against youth prosecuted as adults were either not particularly serious or not very strong. ... The findings suggest that the adult criminal court is taking on numerous cases that should be prosecuted in the juvenile justice system (Para 20).

Statistics of Texas juvenile offenders show that there was a 52% increase from 2001 to 2002 in the number of juveniles certified to stand trial as an adult, transferring 141 juveniles in 2001 and 214 juveniles in 2002 (Texas Juvenile Probation Commission, 2003). Furthermore, this erroneous transfer of juvenile offenders to adult criminal courts has placed increasing numbers of juveniles at risk in that,

Youth tried in the adult criminal court face the same penalties as adults...[they also] will receive little or no education, mental health treatment, or rehabilitative programming; will obtain an adult criminal record which may significantly limit their future education and employment opportunities; and are at greater risk of rape, assault and death in adult jails and prisons with adult inmates (Building Blocks for Youth, n.d., Para 3).

Method

Policy Selection

The juvenile justice system in the United States is not a single justice system, but rather there are 51 separate juvenile systems (National Center for Juvenile Justice, 2003). Every state, and the District of Columbia, has its own regulations regarding juvenile delinquency. Because

juvenile justice laws in many states regarding transferring juveniles to adult courts are similar and because Texas is followed closely and reported on often in regards to its justice system in general, the Texas juvenile policy was chosen for analysis.

Procedure

This paper provides an analysis of the Texas Statutes Family Code, Title 3; Juvenile Justice Code, Section 54.02; Waiver of Jurisdiction and Discretionary Transfer to Criminal Court (1987). Selection of a policy analysis model for analyzing policy is contingent upon several factors. However, when taking a closer look at policy analysis models used for evaluating policies, there are obvious emphases within each model. When examining the Texas juvenile policy, the evident emphasis is on social welfare. For this reason, the policy analysis model applied is adapted from Segal and Brzuzy's (1997) social welfare policy model. This model encompasses the following seven parts in which to analyze this policy: (a) the social problem defined, (b) the goal of the policy, (c) the nature and supporters of the policy, (d) implementation of the policy and the results, (e) the population most affected by the policy, (f) the intended impact of the policy and (g) the *actual* impact of the policy.

Application of the Policy Analysis Model

The applied policy analysis model encompasses seven parts for analyzing social welfare policies as previously outlined. The following seven parts reveal the results of the policy analysis.

Part I—Social Problem Defined

The social problem is one of public perception. Society was painted a picture of an inevitable juvenile superpredator emerging if juvenile crime policies were not toughened. The fear that juvenile criminal offenses were spiraling out of control was due, by and large, to a report published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the 1990s. Later, in February 2000, the OJJDP "acknowledged that the threat of juvenile violence and delinquency was grossly exaggerated" (Juvenile Justice FYI, 2001, Para 13). Unfortunately, the damage had been done and this report resulted in profound changes to the way in which the United States began restructuring its juvenile justice system.

Part II—Goal of the Policy

The general goal of this policy was to hold violent juveniles accountable for their criminal actions. However, as Brink (2004) suggests, this goal to revamp the structure of the juvenile justice system is due partly to the fact that "juvenile crime is perceived by many as more violent and serious than before, and more serious crime has seemed to many to call for more serious punishment (p. 1560). A subgoal of this policy was to make communities safer by removing the most violent, chronic juvenile offenders.

Part III—Nature of the Policy

By 1996, juveniles under the age of 15 accounted for 32% of all juvenile arrests (Bilchick, 1998). It is at this time that federal legislation was established to authorize states to lower the age in which juveniles could be deferred to criminal court (Juvenile Justice FYI, 2001). The portion of the policy under analysis allows juveniles age 10 and older to be tried as an adult, in Texas, if they have committed a felony in the first degree and age 14 and older to be tried as an adult if they have committed a felony in the second or third degree. The objective of this portion of the policy is to require violent juveniles at younger ages to take responsibility for their criminal actions.

Part IV—Implementation of the Policy and Results

The social program implemented as a result of this policy is the blended sentencing piece. This portion of the policy allows for juveniles who have been convicted of a crime as an adult to serve a portion of the sentence within the juvenile system and then be transferred to the adult prison system at the appropriated age. In trying juveniles as adults, the original purpose of the juvenile justice system, which is rehabilitation, has been ignored, thus, making the blended and determinate sentencing ineffective for the purposes of the established juvenile justice system.

Part V—Populations Most Affected by the Policy

By far the most affected population of this policy is the juvenile offender. One bad mistake could take the ability for rehabilitation away from the juvenile. Other populations that are affected by this policy are the communities in which these juveniles live and return to. A report released by the United States Surgeon General in January 2001, confirms that juveniles who are transferred to adult court are more likely to commit crimes when they are released than juveniles who are allowed to stay in the juvenile justice system (Pelley, 2001; United States Department of Health and Human Services, 2001, Para 13).

Part VI—Intended Impact of the Policy

The intended impact of this policy was to try violent, chronic juveniles as adults in an effort to get tough on juvenile offenders and hold them accountable for their criminal actions. In trying violent juveniles as adults, two social problems were supposed to have been changed: (a) public safety and (b) deterring juveniles from violent behavior.

Actual Impact of the Policy

As indicated previously, increasing public safety only happens in the short-term when juveniles are arrested and deferred to criminal court. However, the long-term effects of this policy show the actual impact is one of decreased community safety when these juveniles are released, as they are more likely to commit more crimes. Another result of this policy was supposed to be to deter juveniles from violent behavior by imposing tougher punishment. It is unlikely that juveniles will be deterred from criminal behavior by imposing tougher punishments simply because “juveniles tend to be less competent in discriminating right from wrong and in

being able to regulate successfully their actions in accord with these discriminations” (Brink, 2004, p. 1557).

Conclusion

Current juvenile crime policies simply do not work. These policies are ineffective in deterring juveniles from crime as they, in many instances, provide an environment for juveniles that seem to elicit re-offending once released from the adult justice system. While communities may experience an immediate increase in public safety by sending these juveniles to adult prisons, long-term public safety for communities has been compromised.

In changing juvenile crime policies to reflect more of a preventative system rather than an anecdotal one, social workers, community services centers and community programs could be employed in providing the needed services for juveniles. There is evidence to suggest rehabilitative interventions of young offenders; those younger than age 13, are more likely to be constructive in deflecting them from chronic delinquency (Flores, 2003). In addition, research studies have shown that some intervention programs within the juvenile justice system does reduce future delinquency and “that the use of the least restrictive sanctions, within the limits of public safety, and enhanced reentry assistance, monitoring and support may reduce future delinquency” (Thornberry, Huizinga & Loeber, 2004, p. 13). In reducing the number of juveniles allowed to remain in the juvenile justice systems by sending them to the adult justice system, social service workers and institutions are unable to work effectively in rehabilitating juvenile delinquents and many juvenile delinquents will go without the needed rehabilitative services.

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