

Colorado Sex Offender Management Board
Educational Paper Regarding Juveniles Tried in Adult Court
June 19th, 2020 Board Meeting

Introduction:

In 2018, a request was made to the board for research regarding the physical, psychological, and emotional effects of being in the adult system as a juvenile. This request came from a concern regarding the effect transfers have on juveniles, specifically juveniles who have committed sex offenses. Based on the review of the research produced by this search a decision was made to put together this paper as a comprehensive review of the research on this topic. This paper is not intended to make statements regarding the process or frequency of juvenile transfers in the state of Colorado; however, it is a review of the national research pertinent to issue at hand. This paper is intended to serve as a resource for stakeholders, a resource which provides research on outcomes correlated with placement of juveniles in the adult system.

Background:

Until late in the 19th century criminal courts were responsible for trying both youth and adults; however, in 1899 the first juvenile court was established in Cook County, Illinois and became the catalyst for the birth of the juvenile justice system (“Juvenile Justice History,” n.d.). When the juvenile justice system was founded, its primary purpose was to serve as an entity for rehabilitation of youth who committed delinquent acts. Beginning in the 1950s and 1960s concern began to grow regarding the effectiveness of this system due to questions surrounding the discretion afforded to the judges and the informal nature of the court hearings (“Juvenile Justice History,” n.d.). In the mid-20th century, two important decisions were made by the U.S. Supreme Court, *Kent vs U.S.* (1966) and *In re Gault* (1967), which established and expanded rights of due to process to juveniles in the justice system.

The national trend over the past three decades has seen it become increasingly common for juveniles who were prosecuted in the adult court system. There are a variety of ways in which a juvenile can be transferred to the adult court to include: statutory exclusion, prosecutorial discretion, and judicially controlled transfers (Teigan, 2019). Statutory exclusion refers to the fact that certain state laws exclude specific offenses that involve juvenile offenders from the juvenile court (i.e., murder and violent felony cases), thereby giving the adult court exclusive jurisdiction. Prosecutorial discretion allows the prosecutor the ability to file in either juvenile or adult court if the category of the case has both juvenile and criminal jurisdiction. Finally, judicially controlled transfers occur when that state’s laws dictate that all cases against juveniles begin in the juvenile court and a waiver by the judicial court must occur in order for the case to be transferred to the adult system.

In addition, certain states also operate transfers in an extended method known as “once an adult, always an adult” policies (Teigan, 2019). This type of policy refers to a process that occurs if a juvenile is transferred to the adult system at one point and comes back into contact with the court again before reaching the legal age of adulthood. Under this policy, once a juvenile has been transferred to the adult system any further offenses are automatically waived to the adult court, thereby enforcing the policy of once a juvenile is transferred to the adult system, the juvenile is always considered an adult.

As more research has become available regarding these policies, processes, and outcomes, questions surrounding these policies and the implications of the research have come to the forefront. The resulting debate regarding transferring juveniles to adult court has become a topic of conversation within criminal justice policy and research. Cases are being made for both the perceived benefits and consequences of juveniles continuing to be transferred to adult court. This topic impacts every step in the criminal justice system and as such, is an issue of continuing debate.

Summary of Literature and Research:

A search for pertinent research regarding the subject was conducted and a review of the available literature is presented below. The search was performed using Google scholar, the ATSA journal database, Research Gate, and Academic Search Complete. The research focused on juveniles, included non-delinquent juveniles, juveniles in adult court, and juveniles in juvenile court. Research with small sample sizes were excluded, unless denoted as containing pertinent information or discussion. Overall, research suggests that the consequences of juveniles being transferred to adult court outweigh any perceived benefits. In particular, the research highlights the differences in intellectual maturity (i.e., decision-making, impulsivity, susceptibility to peer influence, etc.) due to the fact that the adolescent brain is roughly 80% developed and that this growth continues into an individual’s mid-20s (Jensen & Nutt, 2015). As a result, juveniles in the adult system can have more frequent prison misconduct reports, which can be attributed to the individual’s age at incarceration, as well as the interaction between their developmental stage and the realities faced in the adult prison environment (Kolivoski & Shook, 2016). There was a substantial amount of research regarding the negative effects that transfers of juvenile to the adult system can have, including the following:

- Juveniles are 7.7 times more likely to commit suicide when incarcerated in an adult facility, 5 times more likely to be victims of sexual assault, twice as likely to be physically assaulted by staff, and 50% more likely to be assaulted with a weapon (Allard & Young, 2002)
- 40% of inmates reported physical and/or sexual abuse over a 6-month period with an increasing likelihood as age decreases (Lambie & Randell, 2013)
- Youth housed in adult facilities report higher rates of mental health symptoms as opposed to those housed in juvenile facilities (Murrie et al., 2009).

- Youth housed in adult facilities were 37 times more likely to be depressed than severe youth offenders (youth who were labeled as “severe” due to the aggravated or severe nature of their offenses) who were housed in youth facilities (Ng et al., 2011).
- Transfer of juveniles to the adult system does not have a deterrent effect on future recidivism, and may actually increase future recidivism (Zane et al., 2016).
- Youth may be given longer sentences due to the perceived heightened level of risk following a transfer to the adult system (Kurlychek & Johnson, 2010).

Additionally, research was reviewed that dealt with juveniles who commit sex offenses and are transferred to the adult system. Research specific to this population was relatively limited compared with juveniles who commit non-sexual crimes, but is still important in light of the findings related to the latter population. When compared to adult populations, juveniles are less likely to recidivate in general and those who commit sex offenses are less likely to recidivate for sexual offenses, (Letourneau, 2009; Przybylski, 2015). Juveniles who commit sex offenses and are transferred to the adult system are more likely to be convicted for new crime against a person, which has, in part, been attributed to the negative perceptions that come from a history of adult charges (Rinehart, Armstrong, Shields, & Letourneau, 2016). What this means is that juveniles who have a series of adult convictions often experience unintended consequences. Juveniles who commit sexual offenses are already at risk for excess harm when transferred into the adult system, which combined with the low rate of sexual offense recidivism, suggests that decisions related to juvenile transfer to adult court should be carefully considered.

Summary and Conclusions:

The research indicates that the potential for physical and mental harm from transferring juveniles to the adult system outweighs any perceived benefits. Additionally, the research suggests that there is not reduction in recidivism when juveniles are placed in the adult system. Regarding juveniles who commit sex offenses, this research in conjunction with the overall low base rate for sexual reoffending suggests decisions related to transfer to adult court should be carefully considered.

Given the research on transferring juveniles to adult court, early intervention strategies for juveniles who are involved in illegal behavior should be developed and supported in an attempt to keep juveniles from progressing to more serious crimes that could result in such a transfer. The research suggests that once a juvenile reaches the point of transfer to adult court, the likelihood of reducing negative outcomes is negligible. As such, the expansion of diversionary programs for youth who are deemed to be of a low to moderate risk can have a positive impact on the likelihood of future recidivism but keep youth out of the juvenile and criminal justice system. This intervention may help deter youth being placed in juvenile detention facilities, and provide them with an opportunity to receive positive rehabilitative programming in the community setting. For youth who are deemed to be at the highest risk levels it must be evaluated what the best placement for them is, and then place them accordingly. By maximizing these resources for youth most at risk, the level and intensity of services can be matched to the

risk and need of the youth. The matching of these services for youth can be done through the utilization of the Risk, Needs, Responsivity (RNR) model (Andrews & Bonta, 2006). Given the similarity of experience for any juveniles, including those who have committed sexual offenses, these conclusions would also appear to be relevant for this specific population.

References

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