
Treating Juveniles as Adult Criminals

An Iatrogenic Violence Prevention Strategy if Ever There Was One

Michael Tonry, LLB

The Task Force on Community Preventive Services presents recommendations in this supplement to the *American Journal of Preventive Medicine* relating to the transfer of juveniles to the adult criminal justice system.^{1,2} The questions the Task Force considered are whether transfers reduce or prevent violent crimes by people younger than 18 by means either of individual deterrence (reducing future violence by the individuals transferred) or general deterrence (reducing juvenile violence generally). The Task Force concludes that transfer has iatrogenic effects for individuals transferred: their levels of future violence increase relative to those of comparable young offenders not transferred, and that insufficient evidence exists on which to reach conclusions about general deterrence. Overall, transferred juveniles were 33.7% more likely to be re-arrested for a violent or other crime. The commission recommended “against policies facilitating the transfer of juveniles from juvenile to adult courts for the purpose of reducing violence.”

The Task Force’s findings are illustrative of a more general pattern of findings concerning undesirable and unwanted consequences of harsh juvenile and criminal justice policies adopted in the United States between 1975 and 2000. In the 1970s and earlier, most informed observers would have predicted what the Task Force found: transferring juveniles to adult courts does harm to them, which diminishes their life chances, thereby increasing their likelihood of committing crimes in the future. That is why the Joint Commission on Juvenile Justice Standards of the American Bar Association and the Institute for Judicial Administration³ generally opposed transfer and recommended the creation of strong legal presumptions against its use.

Before 1980, the notions were widely shared that juveniles are qualitatively different from adults—emotionally and intellectually immature, less responsible, more malleable—and accordingly that their crimes should be handled differently. The juvenile justice system was seen as a mechanism for responding responsibly but constructively to serious juvenile mis-

conduct in hopes of enhancing young peoples’ social capital and life chances and thereby preventing future crime.

Since then, though, as a by-product of the politicization of criminal and juvenile justice policy, many states have changed their laws to deny juvenile court handling to many juveniles. Some, New York for example, reduced the age of adult court jurisdiction across the board from 18 to 16 or 17, thereby eliminating juvenile court jurisdiction over the affected young people. Some, New York again is an example, removed the juvenile court’s jurisdiction over people accused of serious violent crimes, whatever their ages, thereby automatically transferring to the adult court juveniles as young as 13. Finally, some gave prosecutors authority previously held by judges to decide case by case to transfer cases to the adult courts, and some changed the established transfer criteria to make transfer easier and more common.

A variety of justifications can be offered for those changes. The first two—individual and general deterrence—were the Task Force’s prime focus. Incapacitation is a third; the available evidence is inconclusive. No one has suggested that rehabilitation of young offenders was a reason for changed transfer policies.

A primary justification was political, or expressive. Politicians believed that citizens had become more punitive toward criminals generally and wanted to gain electoral advantage by adopting policies that expressed greater punitiveness and vindictiveness. One striking characteristic of recent American juvenile justice policy is that both laws and practices became much more punitive. A law reducing the age of adult court jurisdiction from 18 to 16 or 17 exposes hundreds or thousands of young people (depending on a state’s population) to adult courts.

In other countries faced with rising crime rates and increasing public punitiveness in the late twentieth century, laws became slightly more punitive, mostly by easing restrictive standards for case-by-case transfer (no downward shifts in the adult court’s age jurisdiction or automatic transfer laws were enacted). However, laws making transfer easier did not result in more punitive practices. In Canada⁴ and the Netherlands,⁵ for example, laws making transfers easier were followed by declines in the already tiny numbers of young offenders actually transferred.

Institute on Crime and Public Policy, University of Minnesota, and Netherlands Institute for the Study of Crime and Law Enforcement, Leiden

Address correspondence and reprint requests to: Michael H. Tonry, LLB, 312 Mondale Hall, 229-19th Avenue South, Minneapolis MN 55455. E-mail: tonry001@umn.edu.

The Task Force's key finding—that transfer of juvenile offenders to adult courts is harmful as a matter of public health because it increases rather than decreases levels of criminal violence—is not surprising. Research on adult sentencing has long shown that offenders receiving harsher and more punitive dispositions have higher recidivism rates than comparable offenders receiving other dispositions. Reports from the Home Office of England and Wales consistently demonstrate that, all else being equal, offenders sentenced to prison return to prison at higher rates following convictions for new crimes than do comparable offenders sentenced to community punishments.⁶

This result should not be surprising. People receiving harsher handling generally and prison sentences particularly can be expected to be damaged in multiple respects, which foreseeably reduce their life chances in ways associated with higher prospects of future criminality. These include stigmatization, increased self-identification as deviant, socialization into deviant values from exposure to other offenders, and disruption of normal features of prosocial developmental trajectories (such as work and family relationships). These foreseeable harms to offenders (and future law-abidingness) suggest that harsh treatment should be held to an essential minimum generally and particularly in relation to young people.

The implications for juvenile justice policy of the Task Force report and recommendations are straightforward. States that now set adult court jurisdiction at age 18 should keep it there and other states should change their laws to restrict jurisdiction to people 18 and older. All laws providing for automatic jurisdiction in the adult courts for young people under age 18 charged with designated serious crimes should be repealed. Laws permitting case-by-case transfers by prosecutors or judges should be re-examined to make sure that they permit transfers only in cases that are clearly not amenable to juvenile court handling.

The report's core finding that transfer increases future violence rates is unlikely to apply only to people under age 18. The transition to adulthood is a developmental phenomenon that varies widely between individuals. People mature at different rates and times in respect of different capacities. One-size-fits-all policies

inevitably produce anomalies, injustices, and unwanted side effects (including increased violent re-offending). Systems need to be put in place to accommodate transitions into adulthood. New York for many years had special policies, programs, and institutions that permitted individualized treatment of young offenders aged 19 to 25. Some states have “blended” overlapping jurisdiction between juvenile and adult courts. German law allows judges to sentence those aged 18 to 20 years as if they were juveniles under age 18 (almost all are sentenced that way).⁷

“Back to the past” is the most important lesson to be drawn from the Task Force report. Transfer of juveniles to adult courts does harm to them, through reduction in their life chances, and to society generally, through elevated rates of future violence. Edwin Schur's *Radical Nonintervention*⁸ set out the prevailing views before the recent politicization of juvenile justice policy: intervention of the juvenile justice system into young people's lives generally does more harm than good through the stigma it attaches to them in others' eyes and through the enhancement of deviant self-conceptions. In this, as in so many other realms of public policy, less is more.

No financial conflict of interest was reported by the author of this paper.

References

1. McGowan A, Hahn R, Liberman A, et al. Effects on violence of laws and policies facilitating the transfer of juveniles from the juvenile justice system to the adult justice system: a systematic review. *Am J Prev Med* 2007;32: S7-S28.
2. Task Force on Community Preventive Services. Recommendation against policies facilitating the transfer of juveniles from juvenile to adult justice systems for the purpose of reducing violence. *Am J Prev Med* 2007;32:S5-S6.
3. Tonry M, ed. Standards relating to transfer between courts. a report of the American Bar Association—Institute for Judicial Administration Joint Commission on Juvenile Justice Standards. Cambridge MA: Ballinger; 1977.
4. Doob A, Spratt J. Youth justice in Canada. In: Tonry M, Doob T, eds. Youth crime and youth justice. Doob. Chicago: University of Chicago Press; 2004.
5. Junger-Tas J. Youth justice in the Netherlands. In: Tonry M, Doob A, eds. Youth crime and youth justice. Chicago: University of Chicago Press; 2004.
6. Home Office. Justice for all. London: Home Office; 2001.
7. Albrecht H. Youth justice in Germany. In: Tonry M, Doob A, eds. Youth crime and youth justice. Chicago: University of Chicago Press; 2004.
8. Schur EM. *Radical nonintervention: rethinking the delinquency problem*. Englewood Cliffs, NJ: Prentice-Hall; 1973.