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Juvenile Transfer Laws: An Effective Deterrent to Delinquency?

Richard E. Redding

Beginning in the 1980s, many States passed legal reforms designed to get tough on juvenile crime. One important reform was the revision of transfer (also called waiver or certification) laws (Griffin, 2003) to expand the types of offenses and offenders eligible for transfer from the juvenile court for trial and sentencing in the adult criminal court.[1] These reforms lowered the minimum age for transfer, increased the number of transfer-eligible offenses, or expanded prosecutorial discretion and reduced judicial discretion in transfer decisionmaking (Fagan and Zimring, 2000; Redding, 2003, 2005). In 1979, for example, 14 States had automatic transfer statutes requiring that certain juvenile offenders be tried as adults; by 1995, 21 States had such laws, and by 2003, 31 States (Steiner and Hemmens, 2003). In addition, the age at which juvenile court jurisdiction ends was lowered to 15 or 16 years in 13 States (see Snyder and Sickmund, 2006), although very recently, some States have reduced the scope of transfer laws (Bishop, 2004), and one State has raised the age at which juvenile court jurisdiction ends from 16 to 18.

In the wake of these legislative changes, the number of youth convicted of felonies in criminal courts and incarcerated in adult correctional facilities has increased (Redding, 2003), reaching a peak in the mid-1990s and then declining somewhat (Snyder and Sickmund, 2006) due, in part, to the decrease in juvenile crime. An estimated 4,100 youth were committed to State adult prisons in 1999, representing 1 percent of new prison commitments (Snyder and Sickmund, 2006). Sixty-one percent of these youth were incarcerated for person offenses, 23 percent for property offenses, 9 percent for drug offenses, and 5 percent for public order offenses (e.g., weapons possession) (Snyder and Sickmund, 2006). Transferred juveniles, particularly those convicted of violent offenses, typically receive longer sentences than those sentenced in the juvenile court for similar crimes (Bishop, 2000; Kupchik, Fagan, and Liberman, 2003; Myers, 2005; Virginia Department of Criminal Justice Services, 1996). But, they may be released on bail for a considerable period of time while they await trial in the criminal court (Myers, 2005), and many youth incarcerated in adult facilities serve no longer than the maximum time they would have served in a juvenile facility (Bishop, 2000; Fritsch, Caeti, and Hemmens, 1996; Myers, 2001). Seventy-eight percent were released from prison before their 21st birthday, and 95 percent were released before their

A Message From OJJDP

In an effort to strengthen the sanctions for serious juvenile crimes, a number of States have enacted laws increasing the types of offenders and offenses eligible for transfer from the juvenile court to the adult criminal court for trial and potential sentencing.

These laws have lowered the minimum transfer age, increased the number of offenses eligible for transfer, and limited judicial discretion, while expanding prosecutorial discretion for transfers.

Among the principal goals of such transfer laws are the deterrence of juvenile crime and a reduction in the rate of recidivism, but what does the research indicate about their effectiveness in addressing these ends?

Several studies have found higher recidivism rates for juveniles convicted in criminal court than for similar offenders adjudicated in juvenile courts. The research is less clear, however, in regard to whether transfer laws deter potential juvenile offenders.

This Bulletin provides an overview of research on the deterrent effects of transferring youth from juvenile to criminal courts, focusing on large-scale comprehensive OJJDP-funded studies on the effect of transfer laws on recidivism.

It is our hope that the information provided in this Bulletin will help inform public discussion and policy decisions on the transfer of juvenile offenders to adult criminal courts.

Types of Transfer Laws

While the age at which juveniles can be transferred to the adult system varies across States, most States will transfer youth ages 14 and older who have committed a serious violent offense. Typically, there are four categories of offenses for which juveniles of a certain age may be transferred: (a) any crime, (b) capital crimes and murder, (c) certain violent felonies, and (d) certain crimes committed by juveniles with prior records (Snyder and Sickmund, 2006). (See Griffin, 2003, and Snyder and Sickmund, 2006, for recent comprehensive lists of States, recent transfer statutes, and statutory requirements.)

There are three types of transfer laws, all of which are referred to in this Bulletin: legislative (automatic transfer), judicial-discretionary (judicial transfer), and prosecutorial-discretionary (prosecutorial direct-file). Each type defines the kind of juvenile offender eligible for transfer under the statute, typically specifying certain offenses and minimum age criteria. Most States have two or three coexisting types of transfer laws (Redding and Mrozoski, 2005). For example, 40 States and the District of Columbia have judicial and prosecutorial transfer statutes, with the prosecutorial statutes often applicable only to older and more serious offenders (Sanborn, 2003).

Automatic transfer laws, currently in effect in 29 States (Snyder and Sickmund, 2006), require transfer of a juvenile if statutory criteria are met (for example, alleged commission of a violent felony by juveniles 14 years of age and older). Under these laws, the case either originates in criminal court, or originates in juvenile court and is then transferred to criminal court. Judicial transfer laws, currently in 45 States and the District of Columbia (Snyder and Sickmund, 2006), vest discretion with the juvenile court judge to decide whether a juvenile should be transferred after the prosecution files a transfer motion. Prosecutorial direct-file laws, currently in 14 States and the District of Columbia (Snyder and Sickmund, 2006), vest the discretion with prosecutors, allowing them to decide whether to file charges in the juvenile or criminal court. Twenty-five States also have reverse waiver laws (Snyder and Sickmund, 2006). In a reverse waiver jurisdiction, the criminal court judge has the discretion to transfer the defendant back to the juvenile court (or to treat the defendant as a juvenile for sentencing purposes).

25th birthday, with an average of 2 years, 8 months of time served on their sentences (Snyder and Sickmund, 2006).

General and Specific Deterrence

The nationwide policy shift toward transferring juvenile offenders to the criminal court is based largely on the assumption that more punitive, adult criminal sanctions will act as a deterrent to juvenile crime. In terms of specific deterrence—in other words, whether trying and sentencing juvenile offenders as adults decreases the likelihood that they will reoffend—six large-scale studies have found higher recidivism rates among juveniles convicted for violent offenses in criminal court when compared with similar offenders tried in juvenile court. With respect to general deterrence—whether transfer laws deter any would-be juvenile offenders—the picture is less clear. The studies on this issue have produced somewhat conflicting findings; however, the bulk of the empirical evidence suggests that transfer laws have little or no general deterrent effect.

This Bulletin reviews all of the extant research on the general and specific deterrent effects of transferring juveniles to adult criminal court (Redding, 2005), focusing in particular on recent large-scale studies on specific deterrence funded by the Office of Juvenile Justice and Delinquency Prevention (Fagan, Kupchik, and Liberman, 2003; Lane et al., 2002; Lanza-Kaduce et al., 2005). It also identifies gaps in the field's knowledge base, notes challenges for further research, and discusses whether effective deterrence may be achieved through transfer.

General Deterrence: Do Transfer Laws Prevent Juvenile Crime?

Two studies conducted in the 1980s found that transfer laws did not lower juvenile crime rates. Jensen and Metsger's (1994) time-series analysis for the years 1976 to 1986 found a 13-percent increase in arrest rates for violent crime committed by 14- to 18-year-olds in Idaho after the State implemented its transfer law in 1981. In comparison, between 1982 and 1986, the arrest rates for similarly aged juveniles decreased in the neighboring States of Montana and Wyoming (which retained transfer procedures similar to those Idaho had before 1981). In a similar time-series analysis comparing juvenile arrest rates between 1974 and 1984 in New York and Philadelphia, Singer and McDowall (1988) found that a 1978 New York State law that automatically sent violent juvenile offenders to criminal court (by lowering the ages for criminal court jurisdiction to 13 for murder and 14 for assault, arson, burglary, kidnapping, and rape) had no deterrent effect on violent juvenile crime. The law was applied widely and publicized extensively in the media.[2] Although limited, evidence available at the time suggested that juvenile offenders in New York were aware of the law (Singer and McDowall, 1988).

On the other hand, the results of a multistate analysis for the years 1978 to 1993 suggest that adult sanctions, under certain conditions, may have moderate deterrent effects on juvenile crime (Levitt, 1998). Controlling for demographic and economic variables, the researchers compared the juvenile arrest rates for violent crime across States as a function of each State's minimum age for criminal court jurisdiction to the relative punitiveness of its juvenile and criminal justice systems. Punitiveness is defined as the ratio of the number of incarcerated offenders to the number of total offenders in each State system for different age groups. Researchers found relative decreases in youth crime as youth reached the age of criminal responsibility, but only in those States in which juvenile and criminal justice systems differed significantly in severity of punishment. This suggests that significantly more punitive punishments meted out by criminal courts may deter youth from offending once they reach the age of criminal responsibility.

Two multistate studies reached a different conclusion. Examining data on all felony arrests in the State of Florida between 1989 and 2002, including each offender's age and arrest history, Lee and McCrary (2005) evaluated the effect of turning age 18 on criminal offending. This study found that young people did not lower their offending rates upon turning age 18, suggesting that the prospect of adult sanctions was not a deterrent.

Steiner and Wright (2006) examined the effects of prosecutorial transfer laws in the 14 States that had such laws as of 2003.[3] These States enacted their laws at different times (between 1975 and 2000), thereby providing data over different historical time periods. Using time-series analyses, researchers compared monthly juvenile arrest rates for violent index crime (homicide, rape, robbery, and aggravated assault) for each month in the 5 years before and the 5 years after each State enacted its prosecutorial transfer law. In addition, 2 States were selected as controls for each of the 14 target States. The control States resembled the target States in size, location, and juvenile arrest rates, but implemented no transfer law during or near the relevant time period. The study found that transfer laws had no general deterrent effect. Only in Michigan did juvenile crime decrease after the State enacted its prosecutorial transfer law; in the other 13 States, juvenile crime either remained constant or increased after the enactment of the law (see also Risler, Sweatman, and Nackerud, 1998).

A few researchers have interviewed juvenile offenders about the effects of transfer. Before the widespread expansion of transfer laws, Glassner and colleagues (1983) reported the results of interviews with a small number of juvenile offenders in New York, who said they had decided to stop offending once they reached the age at which they knew they could be tried as adults.

Researchers in another small-scale study (Redding and Fuller, 2004) interviewed 37 juvenile offenders who had been charged with murder or armed robbery and automatically tried as adults in Georgia. The study examined their knowledge and perceptions of transfer laws and criminal sanctions. Georgia had undertaken a public awareness campaign to inform juveniles about the State's new automatic transfer law. Nevertheless, juvenile offenders reported being unaware of the law; only 8 of the 37 youth knew that juveniles who committed serious crimes could be tried as adults. Even among those who knew about the law, none expected that it would be enforced against them for the serious crime they had committed. Many thought they would only get light sentences (e.g., a sanction of probation, boot camp, or a several-month stay in a juvenile detention facility) from the juvenile court. These results are consistent with those from a Canadian study (Peterson-Badali, Ruck, and Koegl, 2001) finding that only 22 of the 53 juvenile offenders interviewed thought that they would receive a serious punishment if caught.

Seventy-five percent of the transferred juveniles interviewed by Redding and Fuller (2004) felt that their experiences in the adult criminal justice system had taught them the serious consequences of committing crimes. As one juvenile explained, "[Being tried as an adult] showed me it's not a game anymore. Before, I thought that since I'm a juvenile I could do just about anything and just get 6 months if I got caught" (Redding and Fuller, 2004:39). Seventy-five percent of the juvenile offenders said that if they had known they could be tried and sentenced as adults, they may not have committed the crime (Redding and Fuller, 2004).

In sum, the limited empirical research on the general deterrent effect of juvenile transfer is somewhat inconsistent and does not permit strong conclusions. The bulk of the evidence suggests that transfer laws, at least as currently implemented and publicized, have little or no general deterrent effect in preventing serious juvenile crime. Substantial further research is needed to examine whether transfer laws have—or, under the appropriate conditions, could have—a general deterrent effect. In particular, it is important to examine the following questions:

- Are juveniles aware of transfer laws?
- Do they believe the laws will be enforced against them?
- Does this awareness and belief deter criminal behavior?

In conjunction with such research, there is a need to implement and evaluate well-targeted public awareness campaigns on the State and local levels designed to apprise juveniles of the legal consequences of committing serious crimes (Redding and Fuller, 2004). Public awareness campaigns have proved effective in reducing adult crime in some contexts (e.g., Elder et al., 2004; Johnson and Bowers, 2003).

Potential Deterrence

It is possible that transfer laws resulting in significant adult sentences might have general deterrent effects if would-be juvenile offenders were made aware of such laws and if the laws were widely implemented. With respect to adult offenders, studies "plainly suggest that when potential offenders are made aware of substantial risks of being punished, many of them are induced to desist" (Von Hirsch et al., 1999:47). However, research with adults suggests that the severity of punishment appears to have little or no effect on crime rates (Pratt and Cullen, 2005; Robinson and Darley, 2004), perhaps because potential offenders typically have much more information about the likelihood of being arrested than they do about likely sentences (Von Hirsch et al., 1999). Studies show that the general public knows little about potential sentences and tends to underestimate their severity (Robinson and Darley, 2004; Von Hirsch et al., 1999). In addition, offenders tend to discount punishment as an uncertain future event, whereas the short-term rewards of crime are more powerful pull factors (Wilson and Herrnstein, 1985). "[F]uture contingent costs may be discounted less, if their magnitude is sufficiently great *and* their likelihood of being incurred increases. Severe sentencing policies thus might possibly have an impact if coupled with much higher probabilities of conviction" (Von Hirsch et al., 1999:48).

Although studies of juvenile offenders are few in number, they suggest that arrests and sanctions have deterrent effects. For example, Mocan and Rees (2005) examined self-reported delinquency data (for drug selling, assault, robbery, burglary, and theft) for 14,942 adolescents from the 1995 National Longitudinal Study of Adolescent Health. They compared county-level arrests (of adults and juveniles) for violent crime reported in 1993 with county-level juvenile crime rates in 1995, thus providing a measure of the deterrent effects of arrest rates on subsequent juvenile crime rates. They found that the arrest rate had a general deterrent effect on the crimes of drug dealing and assault; for each additional arrest, there was a 3.6-percent decrease in the likelihood that juveniles would sell drugs and a 6.6-percent decrease in the likelihood that they would commit an assault. According to Mocan and Rees (2005:344), "this pattern of results runs counter to claims that at-risk young Americans are so present-oriented that they do not respond to incentives and sanctions."

Similarly, Smith and Gartin (1989) found that being arrested reduced recidivism among youthful male offenders, particularly first-time offenders. A 2003 study of serious juvenile offenders incarcerated in a maximum security facility found a negative

relationship between their sentence severity and self-reported intent to reoffend and a positive correlation between their self-reported intent and the number of offenses they actually committed after their release. Researchers found evidence that these offenders made "some explicit calculations about the advantages and disadvantages of committing future crimes" (Corrado et al., 2003:197).

Criminal sanctions will only have deterrent effects if potential offenders: (1) believe there is a significant likelihood of getting caught, (2) believe there is a significant likelihood of receiving a substantial sentence, and (3) consider the risk of the penalty when deciding whether to offend (see Von Hirsch et al., 1999). It is useful to consider, however, each of the necessary preconditions for successful deterrence in the context of juvenile offending. A law can act as a deterrent only if the targeted population is aware that the law exists and believes that it will be enforced.

Redding and Fuller (2004) found that few violent juvenile offenders knew that they could be tried as adults, none thought it would happen to them, and few thought they would face serious punishment. Moreover, few reported thinking about the possibility of getting caught when they committed the offense. Indeed, it seems that offenders generally underestimate the risk of arrest (Robinson and Darley, 2004). Juveniles' psychosocial immaturity, including their tendency to focus on the short-term benefits of their choices (Beckman, 2004; Scott, Reppucci, and Woolard, 1995; Steinberg and Cauffman, 1996), may reduce the likelihood that they will perceive the substantial risk of being arrested or punished as an adult (Schneider and Ervin, 1990).

Specific Deterrence

To date, six published studies have been conducted to examine the specific deterrence effects of transfer. These large-scale studies indicate that youth tried in adult criminal court generally have greater recidivism rates after release than those tried in juvenile court. It is unclear, however, whether transfer affects recidivism for nonviolent property or drug offenders.

Fagan (1996) examined the recidivism rates of 800 randomly selected 15- and 16-year-old juvenile offenders charged with robbery or burglary during 1981–82. Controlling for eight variables (race, gender, age at first offense, prior offenses, offense severity, case length, sentence length, and court), as well as for time residing in the community, researchers compared offenders charged in New Jersey's juvenile courts with offenders charged in New York's criminal courts under that State's automatic transfer law (under which 16 is the age of full criminal responsibility). Both areas shared similar demographic, socioeconomic, and crime-indicator characteristics. Thus, the study provides a comparison of recidivism rates as a function of whether cases were processed in the juvenile or criminal court, without the sample selection problems inherent in studies comparing cases within a single jurisdiction where prosecutors or judges decide which cases to transfer.

A higher percentage of youth who were tried for robbery in criminal court were rearrested (91 percent) than those tried for robbery in juvenile court (73 percent). Of youth who were rearrested, those tried in the criminal court also were rearrested sooner and more often. However, there were no differences in recidivism rates (in terms of the percent rearrested, rearrest rate, and time to rearrest) for burglary offenders tried in the criminal court versus those tried in juvenile court. The findings on robbery offenders suggest that criminal court processing alone, irrespective of whether youth are incarcerated in juvenile or adult facilities, produces a higher recidivism rate. This finding is emphasized by the parallel finding that even those youth sentenced to probation in criminal court had a substantially higher recidivism rate than those incarcerated in the juvenile justice system (see also Mason and Chang, 2001).

Juveniles with the highest recidivism rates were those who were incarcerated after being tried in the criminal court. The study indicated that, overall, youth adjudicated in juvenile court had a 29-percent lower risk of rearrest than those tried in criminal court. Drug offenses were the one exception. Criminal court adjudication substantially reduced the risk of rearrest in those cases.

Bishop and colleagues (1996) compared the 1-year recidivism rate of 2,738 juvenile offenders transferred to criminal court in Florida in 1987 with a matched sample of 2,738 juvenile offenders who had not been transferred. Florida relies almost exclusively on prosecutorial transfer. These transfer decisions are largely offense-driven and made soon after arrest, before the prosecutor has much information about the youth's background. Therefore, it is less likely that the youth retained in the juvenile justice system had lower recidivism rates due to variables other than those controlled for in the analysis, such as the youth's mental health status or amenability to treatment (Bishop and Frazier, 2000). The study controlled for seven variables (race, gender, age, number of referrals to juvenile court, most serious prior offense, number of charges, and most serious charge). Researchers found that the rearrest rates were higher (0.54 versus 0.32 offenses per person, per year of time living in the community) among transferred youth. Also, the average time to reoffending was shorter (135 versus 227 days) for the transferred youth across seven offense types (including violent felonies, property offenses, and minor misdemeanors).

Following the same Florida offenders 7 years after the initial study by Bishop et al. (1996), Winner et al. (1997) compared transferred versus nontransferred offenders matched for gender, age, race, and offending history. They found that the rearrest rates were higher and the time to reoffending shorter (adjusting for time residing in the community following release from incarceration) among those who had been transferred to criminal court. The exception was transferred property felons who had lower recidivism rates than similar offenders who remained under juvenile court jurisdiction.

Myers (2001, 2003) examined the 18-month recidivism rates of 494 juvenile offenders charged with robbery or aggravated assault in Pennsylvania in 1994, using a statistical model to control for the possibility that the transferred juveniles were the more serious offenders in the first place (and therefore more likely to recidivate) or those less amenable to treatment in the juvenile system. The study controlled for age at referral, race, geographical location, school and family status, various indices of prior offending history, use of a weapon, and various case-processing variables. Youth who were judicially transferred to criminal court were twice as likely to be rearrested, and were rearrested more quickly (and often for more serious offenses) upon their return to the community, than youth who were retained in the juvenile justice system during the same period.

Finally, two recent large-scale studies funded by OJJDP are particularly informative:

Recent OJJDP-Funded Studies

Lanza-Kaduce and colleagues (2005) conducted a second Florida study that included 950 young adult offenders.[4] Half of the offenders had been prosecutorially transferred to the criminal court in 1995 or 1996 for offenses they had committed as juveniles; the other half had remained in the juvenile system. This resulted in a sample of 475 matched pairs of transferred and retained cases.

The cases were drawn from six urban and rural judicial circuits in Florida that differed considerably in their rates of transfer. The cases were matched within each judicial circuit (thus controlling for geographical effects in case processing and decisionmaking) along seven relevant demographic, criminal history, and offense variables: age, gender, race, number of previous juvenile referrals, most serious prior offense, offense, and number of charges. In addition, a subset of this group, consisting of 315 best matched pairs, were further matched according to an offense seriousness index created by examining local records to obtain data about 12 other case characteristics: prior juvenile referrals, multiple charges at arrest, multiple incidents involved in the case, charge consolidation, legal problems during case processing, gang involvement, codefendants or accomplices, property loss or damage, victim injury, use of weapons, felony charges, and the presence of mitigating and aggravating factors. The measure of recidivism was the number of offenses committed after youth turned age 18, and data analyses were conducted on the 475 matched pairs, as well as on the subset of 315 best matched pairs.

Transferred Juveniles More Likely To Offend

The Lanza-Kaduce study expands on the earlier Florida studies (i.e., Bishop et al., 1996; Winner et al., 1997). It includes reoffense types and a detailed matching on relevant case and offense characteristics (see Frazier et al., 1999). Its recidivism data draws on information from two different State databases. To reduce a potential lack of comparability in recidivism measures between transfers and juvenile court retainees due to differences in decisionmaking and recordkeeping between the two systems, it examines offending after age 18. "The focus on adult recidivism . . . captures the persistence of a criminal career into adulthood—a pivotal policy concern" (Lanza-Kaduce et al., 2005:64). Moreover, the data "include cases transferred in 1995 and 1996, after the 'get tough' idea was fully entrenched in the American culture and after prosecutorial transfer had been used in Florida for a long time" (Lanza-Kaduce et al., 2005:65).

Like the earlier Florida studies, this study found that transferred offenders, particularly violent offenders, were significantly more likely to reoffend.

- Overall, 49 percent of the transferred offenders reoffended, compared with 35 percent of the retained offenders.
- For violent offenses, 24 percent of the transferred offenders reoffended, compared with 16 percent of the retained offenders.
- For drug offenses, 11 percent of the transferred offenders reoffended, compared with 9 percent of the retained offenders.
- For property offenses, 14 percent of the transferred offenders reoffended, compared with 10 percent of the retained offenders.

The results were virtually identical for the subset of 315 best matched pairs. In addition, researchers conducted paired-comparison analyses in which each matched pair was the unit of analysis. This analysis classified each pair according to whether both offenders reoffended (21 percent of cases), only the transferred offender reoffended (29 percent of cases), only the retained offender reoffended (15 percent of cases), or neither reoffended (36 percent of cases).[5] Again, the results were virtually identical for the subgroup of best-matched pairs. However, the study failed to replicate the 1997 Florida study finding of lower recidivism rates among transferred property offenders (Winner et al., 1997).

In addition to the recidivism study, the Florida research group conducted detailed interviews with 144 serious male offenders between the ages of 17 and 20, half of whom had been transferred and the other half of whom were retained in the juvenile system (Bishop and Frazier, 2000; Lane et al., 2002). Eighty-three percent had more than one prior arrest, 60 percent began offending before the age of 14, and 47 percent had committed a violent offense as their most serious current offense. Interviews were conducted in four "deep-end" juvenile correctional institutions (i.e., 9–36 month placements in highly secure juvenile correctional facilities designed for high- and medium-risk offenders) and eight adult prisons in Florida (mostly youthful offender facilities designed to house young adults up to age 24), with youth at different stages in serving their sentence. Of the 71 youth who had been transferred to the adult system, 63 also had prior experience in the juvenile system. Fifty-eight percent of the youth rated the deep-end juvenile placements as beneficial, 33 percent rated the adult prison as beneficial, 20 percent rated the less restrictive juvenile dispositions (for example, probation, placement in low-restrictive residential programs) as beneficial, and 12 percent rated adult probation as beneficial.

The youth rated the deep-end juvenile programs the most beneficial largely because these programs provided intensive, long-term job skills training and treatment. In addition, the lengthier period of incarceration gave them more time to consider their futures and the consequences of reoffending, suggesting that the longer sanctions had an impact (Lane et al., 2002). But "[o]ften when adult sanctions were perceived as being beneficial, the benefit was not attributed to anything gained from the disposition. Rather, many youth indicated that they expected to remain crime-free because their experiences in the adult system had been so horrible. Youth who believed the adult sanctions would keep them from committing crimes primarily pointed to three reasons: pain and denigration, time spent in prison, and fear of future consequences, especially tougher sentences. Paradoxically, most of those who said the adult experience was negative also mentioned pain, denigration, and/or anger, but they gave these as reasons why the adult dispositions had made matters worse. Others attributed a negative impact to adult sanctions because they 'learned more crime while there'" (Lane et al., 2002:444). While a substantial minority of the youth said that prison had taught them a lesson—declaring that they would not reoffend because they did not want to endure the pain of imprisonment again—61 percent said that prison had either no impact or a negative impact on their behaviors (Lane et al., 2002:448). Overall, the "findings call into question the practice of [incarcerating juveniles in adult prison and] 'skipping' the deep-end juvenile programs when sentencing youth for serious crimes" (p. 452).

In another OJJDP-sponsored study, Fagan and colleagues (2003) extended and largely replicated previous research (Fagan, 1996). This time, they examined the time-at-risk (i.e., residing in the community) recidivism rates for 2,382 15- and 16-year-old juveniles charged in 1992 or 1993 with robbery, burglary, or assault. The 2003 study used a larger sample drawn from more counties in each State as well as more detailed measures of important variables, such as offenders' prior juvenile record. The study compared those charged in selected counties in northern New Jersey, where such cases originate in the juvenile court, with those charged in matched counties in New York, where such cases originate in the criminal court. The New York and New Jersey counties are contiguous, and part of a large metropolitan area that shares common demographic, economic, and social characteristics as well as similar criminogenic influences and crime rate characteristics. Thus, the study design allows for comparison of recidivism rates as a function of whether cases are processed in juvenile court or criminal court, without the sample selection problems inherent in designs that compare cases retained in the juvenile court with those transferred in a single jurisdiction wherein decisionmakers decide which cases to transfer. All cases were followed for a 7-year period until 2000, by which time almost all of the offenders had served their sentences and had spent at least 2 years living in the community. The study statistically controlled for a variety of relevant demographics (age, gender, ethnicity), case and offense characteristics (for example, most serious charge, weapon use, whether detained, case length), criminal history variables (age at first arrest, number of prior arrests, previous incarcerations), and sentence length. It used statistical techniques that analyzed recidivism in different ways (first rearrest, severity of rearrest charges, time until rearrest, likelihood of subsequent incarceration).

Greater Likelihood of Rearrest

The study found a 100-percent greater likelihood of rearrest for a violent offense and a 47-percent greater likelihood of rearrest for a property offense, among the New York juveniles whose cases were processed in the criminal court than for the New Jersey juveniles. They also had a greater number of rearrests for such offenses and a 26-percent greater chance of being reincarcerated. The pattern of findings was even stronger for first-time offenders. For drug offense rearrests, however, the results were reversed, with the juveniles tried in juvenile court having a 31-percent greater likelihood of rearrest for drug offenses. Finally, the study found that the differences in recidivism were unrelated to periods of incarceration in adult versus juvenile facilities. Thus, incarceration in adult prisons "does not seem to be responsible for the criminogenic effect of adult court processing" (Fagan et al., 2003:66).

These findings fully replicate those of the earlier Fagan (1996) study, except with respect to property offenses. The 1996 study found no difference in recidivism rates for burglary, whereas the 2003 study found that criminal court processing increased the recidivism rates for property offenses.

Transfer Found To Increase Recidivism

In sum, to date, six large-scale studies have been conducted on the specific deterrent effects of transfer. These studies used large sample sizes (between 494 and 5,476 participants), different methodologies (natural experiment across two jurisdictions, matched groups within the same jurisdictions, or statistical controls), multiple measures of recidivism, and were conducted in five jurisdictions (Florida, New Jersey, New York, Minnesota, Pennsylvania) having different types of transfer laws (automatic, prosecutorial, or judicial). The strong consistency in results across the studies is all the more compelling given that they used different samples and methodologies, thereby providing a degree of convergent validity for the findings. All of the studies found higher recidivism rates among offenders who had been transferred to criminal court, compared with those who were retained in the juvenile system. This held true even for offenders who only received a sentence of probation from the criminal court. Thus, the extant research provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism. A recent review of the extant research on transfer conducted by the Centers for Disease Central arrived at the same conclusion (McGowan et al., 2007). Only two apparent exceptions challenge this pattern of findings. For nonviolent property offenders, the effects of transfer remain unclear, with one study finding that transfer had no effect on recidivism (Fagan, 1996) and another finding that transfer decreased recidivism (Winner et al., 1997), but with two studies (conducted in the same jurisdiction as the first two studies) finding that it increased recidivism (Fagan et al., 2003; Lanza-Kaduce et al., 2005). In addition, with respect to drug offenders, two studies (Fagan, 1996; Fagan et al., 2003) found decreased recidivism rates among those tried in the criminal court.

Challenges for Future Research

Important challenges for future research are to determine: (1) whether transfer differentially impacts recidivism as a function of offense type (violent offenses, property offenses, drug offenses), and (2) what features of the criminal justice system increase recidivism, an important question for policymaking. These challenges raise such questions as the following:

- Can changes be made in the criminal court processing and adult system sanctions of juveniles to make them less detrimental? What are they?
- In what ways should the juvenile justice system guard against those features of the criminal justice system that serve to increase recidivism?
- How can States' blended sentencing systems, which allow the juvenile courts to impose adult sentences in certain cases (see Redding and Howell, 2000), incorporate the best features of the juvenile and criminal justice systems, while avoiding the negative effects of criminal justice system processing?

Why Do Juveniles Tried as Adults Have Higher Recidivism Rates?

Experts (see Bazemore and Umbreit, 1995; Myers, 2003; Thomas and Bishop, 1984; Winner et al., 1997) have identified several possible explanations for the higher recidivism rates of violent juvenile offenders tried in criminal court as compared to those adjudicated in juvenile court:

- The stigmatization and other negative effects of labeling juveniles as convicted felons.
- The sense of resentment and injustice juveniles feel about being tried and punished as adults.
- The learning of criminal mores and behavior while incarcerated with adult offenders.
- The decreased focus on rehabilitation and family support in the adult system.

A felony conviction also results in the loss of a number of civil rights and privileges (see Redding, 2003), further reducing the opportunities for employment and community reintegration.

Findings from several studies (Fagan, 1996; Fagan, Kupchik and Liberman, 2003) show that criminal court processing alone, even without the imposition of any criminal sentence, increases recidivism. Juveniles' sense of injustice at criminal court processing may cause them to react defiantly by reoffending, and it may further harden an emergent criminal self-concept (see Sherman, 1993; Thomas and Bishop, 1984; Winner et al., 1997). "The concept of fairness appears to be an important variable in an individual's perception of sentence severity and its subsequent relationship to future recidivism" (Corrado et al., 2003:183). Furthermore, it appears that many adolescents with conduct disorders already have a sense of having been dealt an unfair hand by authority figures (Chamberlain, 1998). Bishop and Frazier (2000) interviewed 95 serious and chronic juvenile offenders in Florida, roughly half of whom were transferred to the criminal court and were incarcerated in adult correctional facilities, and half of whom had been adjudicated in the juvenile court and were incarcerated in maximum-security juvenile facilities. According to the authors, many of the juveniles felt a strong sense of injustice about being tried as adults:

> *Many experience the court process not so much as a condemnation of their behavior as a condemnation of them. Unlike the juvenile court, the criminal court failed to communicate that young offenders retain some fundamental worth. What the youths generally heard was that they were being punished not only because their behavior was bad but also because they were personifications of their behavior. Far from viewing the criminal court and its officers as legitimate, the juvenile offenders we interviewed saw them more often as duplicitous and manipulative, malevolent in intent, and indifferent to their needs. It was common for them to experience a sense of injustice and, then, to condemn the condemners* (Bishop and Frazier, 2000:263).

These findings are consistent with those of Redding and Fuller (2004), who found that juveniles tried as adults clearly felt that transfer laws were unfair. Many felt that their juvenile status and immaturity dictated that they should be tried as juveniles, despite the serious crimes they had committed. They also did not understand why the legal system was trying them as adults, and they saw themselves as being treated differently from other similarly situated juveniles. Both perceptions contributed to their sense of unfairness, perhaps leading to greater cynicism about the legal system as a result of being incarcerated (see Piquero et al., 2005).

Some studies indicate that prison incarceration "does not seem to be responsible for the criminogenic effect of adult court processing" (Fagan, Kupchik, and Liberman, 2003:66). One reason for the increased recidivism of these offenders, however, might be the reduced opportunities for meaningful rehabilitation in adult prison. Forst, Fagan, and Vivona's 1989 study, for example, found that youth in juvenile facilities gave higher marks than youth in adult facilities to the available treatment and case management services. Youth in juvenile detention described these services as helpful in providing counseling, enabling them to obtain needed services, encouraging participation in programs, teaching the consequences of rule breaking, and deepening their understanding of their problems. Similarly, in a recent study comparing the experiences of youths in adult versus juvenile correctional facilities in a large Northeastern State, all of whom had been tried in adult criminal court, Kupchik (2007) found that youths in juvenile facilities reported far more positive, mentoring-style staff-inmate interactions than did the youths in adult facilities. However, youths in adult facilities reported having greater access to counseling and educational services, perhaps because of the larger size of the adult facilities.

Bishop and Frazier's recent Florida study (2000) vividly portrays the differences between juvenile and adult correctional facilities. They found that the juvenile correctional institutions were treatment-oriented and adhered to therapeutic models of rehabilitation (Bishop and Frazier, 2000:255). "Compared to the criminal justice system, the juvenile system seems to be more reintegrative in practice and effect" (Bishop and Frazier, 2000:265). Youths in juvenile facilities had positive feelings about the staff, who they felt cared about them and taught them appropriate behaviors. Most of the juveniles incarcerated in juvenile facilities felt confident that they would not reoffend, often crediting the staff with helping them make this positive change. Conversely, only a third of the juveniles in adult prisons said that they would not reoffend.

Juveniles in adult prison reported that much of their time was spent learning criminal behavior from the inmates and proving how tough they were. They also were much more fearful of being victimized than they had been when incarcerated in juvenile facilities, and more than 30 percent had been assaulted or had witnessed assaults by prison staff. Indeed, Beyer (1997) paints a bleak picture of life in adult prison for juveniles, who are at greater risk for suicide, as well as for physical and sexual abuse from older inmates. As compared with those in juvenile facilities, juveniles incarcerated in adult prison are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by inmates or beaten by staff (Beyer, 1997). Because juveniles in adult prisons are exposed to a criminal culture in which inmates commit crimes against each other, these institutions may socialize delinquent juveniles into true career criminals. In an older study about life in prison (Eisikovits and Baizerman, 1983), violent juvenile offenders reported that their daily survival required finding ways to fit into the inmate culture, dealing with difficult

and authoritarian relationships with adult inmates, and adjusting to the institution by accepting violence as a part of daily life and, thus, becoming even more violent.

Finally, Redding and Fuller (2004) found that juveniles whose jail or prison experiences were worse than they had expected, and those who reported witnessing or experiencing violence while incarcerated, were less likely to say that their incarceration would deter them from committing crimes in the future. This finding raises the possibility that incarceration in adult facilities may have brutalizing effects on juveniles, which may partly account for their increased recidivism. (The term "brutalization effect" describes the finding that homicide rates in a State often increase after an execution (Bowers, 1998), perhaps because executions model and communicate that violence is an acceptable and psychologically cathartic alternative.) Likewise, juveniles' brutal experiences in adult prison may teach the wrong lessons about the acceptability and psychological benefits of criminal conduct, particularly violent crime, while also contributing to their sense of being treated unfairly, both of which may increase recidivism. Further research is needed on this issue.

Implications for Policymakers and Practitioners

The research findings on juvenile transfer have the potential to impact both policy and practice. In a recent study, Hensl and Redding (2005) found that juvenile court judges who were knowledgeable about the ineffectiveness of transfer in reducing recidivism were somewhat less likely to transfer juvenile offenders to the criminal court. This finding suggests that educating judges, prosecutors, court personnel, and legislators about the research on transfer may reduce the number of cases transferred to criminal court or the number of transferred cases that result in criminal sanctions. The Miami-Dade County Public Defender's Office developed the Juvenile Sentencing Advocacy Project, which produced a 350-percent increase in the number of transferred cases receiving a juvenile rather than an adult sanction from criminal court judges (Mason, 2000). In Florida, which has had some of the most aggressive transfer policies in the Nation, the number of juveniles prosecuted in the criminal court decreased by two-thirds between 1996 and 2003 (whereas the total number of juvenile court cases decreased by only 9 percent), apparently due, in part, to research disseminated showing the counter-deterrent effects of transfer (Bishop, 2004). Moreover, in the last several years, some States have reduced the scope of transfer laws to make fewer juvenile offenders eligible for prosecutorial or judicial transfer (Bishop, 2004; Griffin, 2003).

Yet in Florida, for example, the data show that the transferred cases were generally no more serious, and sometimes were less serious, than the cases retained in the juvenile justice system (Lanza-Kaduce, Frazier, and Bishop, 1999). Forty-three percent of the 1,100 juveniles incarcerated in adult prisons for offenses committed when they were 15 years old or younger had not previously been committed to a juvenile justice program (Annino, 2000). Thus, the juvenile justice system never had an opportunity to rehabilitate these youth before they were transferred to the adult system, despite the fact that serious juvenile offenders in Florida report that intensive juvenile placements are relatively more beneficial than either adult prison or mild juvenile sanctions (Lane et al., 2002).

But Florida is not unique in transferring first-time offenders to the criminal court. Transfer laws, particularly automatic transfer laws, often target first-time offenders, even though they do not pose the greatest recidivism risk or threat to community safety. The frequency of offending, instead of the seriousness of the first offense, best predicts overall recidivism and the risk for committing a subsequent violent offense (see Bishop, 2004; Piquero, 2000; Redding, 1997). To best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized. Moreover, those who are transferred should be the chronic repeat offenders—rather than first-time offenders—particularly in cases where the first-time offense is a violent offense.

Conclusion

Most practitioners would agree, consistent with the extant research, that it is important that the juvenile courts' response to juvenile offenders be calibrated to have sufficient effectiveness as a deterrent while not being overly punitive. The practice of transferring juveniles for trial and sentencing in adult criminal court has, however, produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby of promoting life-course criminality (Scott, 2000). But, if it was indeed true that transfer laws had a deterrent effect on juvenile crime, then some of these offenders would not have offended in the first place. Although the limited extant research falls far short of providing definitive conclusions, the bulk of the empirical evidence suggests that transfer laws, as currently implemented, probably have little general deterrent effect on would-be juvenile offenders.

Notes

1. Seventeen States currently have "blended sentencing" laws (see Redding and Howell, 2000) that permit the criminal court, after its adjudication of the youthful offender, to impose juvenile sentences in certain cases. Fifteen States permit the juvenile court to impose limited criminal sanctions (Snyder and Sickmund, 2006).

2. In addition, brochures were sent to public schools announcing the law and the legal risks juvenile offenders faced, and juvenile court judges warned youth about the risks of committing violent offenses (S. Singer, 2004, personal communication).

3. These States included Arizona, Arkansas, California, Colorado, Florida, Georgia, Louisiana, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia, and Wyoming.

4. This is the most recent in a series of studies conducted by the Florida research group. These studies, which have been funded by the Florida Department of Justice and OJJDP, are part of an ongoing research program, beginning in the mid-1980s, studying the effects of transfer in Florida. For an overview of the Florida research program, see Frazier et al., 1999.

5. The total does not equal 100 because of rounding.

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