

TRANSFER OF JUVENILE OFFENDERS TO ADULT COURT IN DELAWARE

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Historical Background on Juvenile Justice and Trying Youth as Adults

The juvenile justice system began in the 19th century as part of a larger social reform movement. The juvenile justice system was created to take kids out of the adult criminal justice system. Creation of a separate system of justice was based on the belief that children are less culpable for their criminal acts and that they are more amenable to change and rehabilitation than adult offenders.

The original goals of the juvenile court were to investigate, diagnose, and prescribe treatment for offenders, not to adjudicate guilt or fix blame. Proceedings were informal and a juvenile court judge had an enormous amount of discretion in the disposition of juvenile cases, much like the discretion afforded judges in adult criminal settings until the 1970s. The focus was on rehabilitation of young people, not on punishment.

But from the beginning there were exceptions, juveniles that were transferred, waived, or as in Delaware's jargon, found to be not amenable to the rehabilitative processes of the juvenile justice system. Historically this has been a decision made by a juvenile court judge.

The 1980s marked a transitional period for the juvenile justice system. Although rehabilitation of juvenile offenders was still an important goal, juvenile justice policy began to emphasize punishment and public safety. A number of events contributed to this shift, including the increase in juvenile arrests for violent crime, especially very young juveniles; loss of faith in the rehabilitative model and in the juvenile courts' ability to fix what seemed to be caused by social ills; media attention; and the general trend toward a more conservative political ideology. As a result of this shift, in the 1980s and 1990s, many states began to enact legislation targeted toward holding juvenile offenders, especially those deemed violent, serious, or chronic offenders, more accountable for their actions. Legislation that made it easier for certain juveniles to be tried as adults began to find favor. Some states narrowed the age range of those classified as juveniles. While dispositions tailored to the individual offender still existed, previous offenses were much more often considered in sentencing a juvenile. Some states, including Delaware, have enacted mandatory minimum sentences for certain juvenile offenders. Over the last ten years almost every state has changed its laws to make it easier to transfer a juvenile to the adult criminal justice system.

History of Transfer in Delaware

Delaware law has always included a provision for juveniles to be treated as adults in the criminal justice system. Traditionally there have been two ways juveniles got to Superior Court to be tried and sentenced as adults.

- a. For a small number of very serious offenses the Superior Court had original jurisdiction.
- b. For kids who were at least 16 years old the Family Court could hold an Amenability Hearing to determine which court, Family or Superior, would have jurisdiction. Some of these hearings were automatically triggered by the nature of the offense but in most cases upon petition of the Attorney General's Office.

In determining the question of amenability the Family Court judge was and still is required to take into consideration six questions (10 Del. Code, Sec. 1010, (c) (1)). These questions focus on the seriousness of the pending offense, the juvenile's prior record, and the rehabilitation services that have previously been attempted:

- Whether, in view of the age and other personal characteristics of the child, the people of Delaware may best be protected and the child may best be made a useful member of society by some form of correctional treatment which the Family Court lacks power to assign; or
- Whether it is alleged death or serious personal injury was inflicted by the child upon anyone in the course of commission of the offense or in immediate flight therefrom; or
- Whether the child has been convicted of any prior criminal offense; or
- Whether the child has previously been subjected to any form of correctional treatment by the Family Court; or
- Whether it is alleged a dangerous instrument was used by the child; or
- Whether other participants in the same offense are being tried as adult offenders.

The idea was that only the most serious offenses would automatically go to Superior Court, such as murder, rape and kidnapping. Then Family Court judges could consider the transfer of other juvenile offenders when there was reason to believe that they would not benefit from the rehabilitative programs available in the juvenile justice system. This decision took into consideration the juvenile's age, nature of the offense, prior record, response to previous rehabilitative efforts and nature and degree of the harm done to the victim. Juveniles transferred were generally those who had already received services but continued to pose a threat to community safety as demonstrated by their serious new offenses.

Recent Changes to Delaware Law

Over the last few years, Delaware, like almost every other state, changed its laws regarding transfer of juveniles to the adult criminal justice system.

These changes have included:

- a. An expansion of the list of offenses for which the Superior Court has original jurisdiction regardless of age.**
- b. Lowering the age to 14 for which amenability hearings can be held.**
- c. House Bill 210, which was signed on June 30, 2003, transferred original jurisdiction, regardless of the offender's age, from Family Court to the Superior Court for juveniles who were charged with Robbery 1st degree or Assault 1st degree.**

Justification for Waiver to Adult Criminal Justice System

The basic justification for putting juveniles into the adult criminal justice system is public safety. The argument is that some juveniles, because of the seriousness and/or chronicity of their offenses need to be incapacitated for a significant period of time. The adult corrections system is more likely to be able to incapacitate these offenders than the juvenile system. In addition to the public safety argument there are other justifications for transfer to the adult system:

- a. Scarce resources in the juvenile justice system should not be wasted on chronic offenders who already have had the benefit of juvenile justice services.**
- b. The most serious and chronic juvenile offenders should not be allowed to influence or taint younger, less serious and more impressionable juveniles.**
- c. The presence of serious offenders can disrupt a rehabilitative program in a juvenile facility.**

According to an October 2003 report from the Office of Juvenile Justice and Delinquency Prevention all states have some method to transfer juveniles to the adult system:

- d. 46 states have judicial waiver**
- e. 15 states have direct files, where prosecutors decide where to file**
- f. 29 states have statutory exclusions**
- g. 15 states have juvenile blended sentencing that empower juvenile courts to impose adult sanctions**
- h. 17 states have criminal blended sentencing that empower adult courts to impose juvenile sanctions.**

A total of 31 states made substantive changes to their laws governing the criminal prosecution and sentencing of juveniles during the five year period from 1998 to 2002. During the five year period from 1992 to 1997 nearly every state took significant steps to toughen up their laws (Griffin, 2003).

Reasons to Reconsider

The recent direction of public policy relating to the transfer of juveniles to adult courts is clear. Delaware has joined with almost every other state in significantly increasing the number of juveniles subject to adult criminal sanctions. However,

this policy shift has occurred with an absence of impartial consideration of empirical data or scientific research. Such a consideration would cause an impartial observer to reconsider the recent policy changes. There is an ever increasing body of scientific knowledge that suggests this reconsideration.

For example, there is important, new research on brain development which is relevant to this discussion. The very existence of a separate juvenile justice system is based upon a belief that young people are less culpable for their behavior. This does not suggest less maturity relieves young offenders of responsibility for their behavior. However, new research on brain development suggests that the founders of the juvenile justice system were correct in postulating that young offenders are intrinsically different from adult offenders. We now know that most important development during adolescence occurs in regions of the brain that effect long term planning, regulation of emotion, impulse control and evaluation of risk and reward. Also, patterns of development in the prefrontal cortex, which is active during the performance of complicated tasks involving long term planning and judgment and decision making, suggest that these higher order cognitive capacities may be immature well into late adolescence (Spear, 2000) (Geidd et al., 1999, Sowell, Thompson, Holmes, Jernigan and Toga, 1999). These research findings support the notion that juvenile offenders should be considered less culpable than adults. The findings also suggest that we can expect significant improvements in the behavior of juveniles as their brains reach maturation. This scientific finding simply confirms what parents of teenagers have observed for centuries.

An even more compelling argument for reconsideration has to do with public safety. As much as many practitioners in the juvenile justice system are motivated by a desire to help youth the real reason the system exists is to protect the community. Each policy decision and every decision in each individual case needs to be weighted in light of what makes the community safe.

According to “Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners” published by the Sentencing Project in 2002, “Adult punishment for juvenile offenders adversely impacts public safety. A rational often given for transferring juveniles to the criminal justice system is that more severe punishment and less concern with rehabilitation will result in reduced crime and greater public safety. However, studies comparing groups of similar juvenile offenders in the adult and juvenile systems have consistently shown that transfer has the opposite effect. Although youths transferred to the adult criminal justice system are more likely to be convicted and incarcerated, they are more likely to re-offend, re-offend earlier, and to commit more serious subsequent offenses than those who remain in the juvenile system”. (Allard and Young, 2002)

A 1996 study in Florida found that youth transferred to adult prisons reoffended approximately 30% more frequently than youth who stayed in the juvenile system. (Bishop, et al., 1996) A 2001 Florida study looked at recidivism data for youth sentenced in adult court and those sanctioned as juveniles. Even after controlling

for the nature of the instant offense, prior record, and offenders age, researchers found that youth sanctioned as juveniles had significantly lower recidivism rates than those sanctioned as adults. They found that Dade County youth receiving adult sanctions- including those in jail and prison – were 81% more likely to have a technical violation or a new case against them than were youth receiving a juvenile sanction. (Mason and Chang, 2001)

Florida has been the leader in the transfer of juveniles to the adult system since the 1970's. Most of the transfers in Florida occur as "direct files." The law allows the State's Attorney wide discretion in determining to file in juvenile court or adult court. In 1999 there were 4,211 kids transferred, but by 2001 that number had been reduced in half to 2,077. This was done by enhancing the quality and availability of rehabilitative programs for serious offenders in the juvenile justice system. In 2002 Gov. Bush of Florida released a research study which clearly indicated that recidivism was higher for youth transferred to the adult system, when like offenders were compared. (Bush and Bankhead, 2002) The State of Florida contracted for a recidivism study to determine if community safety was increased or decreased by the transfer of juveniles to the adult system. This study:

- Matched youth retained in the juvenile system to those who had been transferred.
- The first level of match was on the following:
 1. Gender
 2. Race
 3. Age
 4. Presenting offense
 5. Number of current charges
 6. Number of previous offenses
 7. Most serious prior offenses

They found 475 pairs of offenders, one handled as a juvenile and the other as an adult, that matched on these criteria. The researchers then did actual file reviews and used additional criteria to refine the matches;

- Weapon use
- Victim injury
- Property damage/loss
- Gang involvement
- Involvement of accomplices
- Complexity of the case (a single incident or part of a pattern)
- Legal complications (failure to appear, new arrests, escapes, VOP)
- Non-legal issues (school drop out, addiction, abuse history)

Using these additional criteria the researchers ended up with 315 pairs. They followed the pairs to determine whether either member of the pair committed a felony after reaching 18 years of age. Of the 315 pairs they found:

- 49% of the transferred youth recidivated compared to 37% of those handled as juveniles.

- Of the 98 pairs in which both recidivated, 36% of the pairs had new offenses of equally serious nature, in 40% of the pairs the transferred youth committed a more serious crime and in 24% of the cases the youth retained in the juvenile system committed a more serious crime.

The conclusion is that youth transferred to the adult system were more likely to recidivate and to commit more serious offenses when they do recidivate. There are other studies that reached the same conclusion:

- A 1995 study of youthful offenders charged with robbery and burglary in New Jersey and New York found that recidivism rates were higher for the adolescents handled in criminal courts. (Fagan, 1995)
- According to the National Center for Juvenile Justice, more than 75% of youth sentenced to an adult prison are expected to be released before their 22nd birthday. (Coalition for Juvenile Justice, 2004)

Local Data

We have no local recidivism data that compares similar offenders that were handled as adults and juveniles. But it seems to be a reasonable question: does what happens to juveniles transferred to the adult system make Delaware more safe? There is some data on what happens to at least some of the transferred kids.

Criminal Justice Council Report

The Criminal Justice Council gathered some data on juveniles that were impacted by HB 210. (Riblett, 2004) This study looked at how cases were processed for juveniles charged with Robbery 1 and Assault 1. This study only included youth who were less than 16 years old. The report first looked at 601 juvenile cases that had been filed in the New Castle County Superior Court in the last ten years. The outcomes were, as reported by CJC:

- 60% found guilty or plead in Superior Court
- 18% Nolle prossed
- 2.5 % Dismissed
- 17% Transferred Family Court
- 1% Transferred to other courts (traffic offenses)

Then the report looked at how juveniles less than 16 years old were handled when they were charged with Robbery 1 or Assault 1 after the implementation of HB 210. There were 19 of these juveniles in New Castle County Superior Court from July through December of 2003. There are two cautions to keep in mind when reviewing this data, the law was new at this time and the number of cases is small. Of the 19 cases:

- 4 or 21% were still pending at the time of the report
- 1 (5%) had been nolle prossed
- 1 (5%) had been sentenced in Superior Court
- 13 (68%) had been transferred back to Family Court

Other findings in the Criminal Justice Council report:

- Of the 13 transferred back to Family Court, 10 were by stipulation and 3 were the result of reverse amenability hearings.

- The average age at time of arrest for these 19 juveniles was 14.7 years old.
- Most of these juveniles spent very significant time in the New Castle County Detention Center. Average time from arrest to disposition in Superior Court was about 139 days, and, for the majority of cases transferred back to Family Court the average time from Superior Court disposition to Family Court disposition was 60 days. So the average time in detention for juveniles originally sent to Superior Court and then transferred back to Family Court is about 199 days, or over 6.5 months.

It could be argued that this period of detention serves public safety by incapacitating these offenders who have been charged with very serious offenses. But remember that anyone in detention is still presumed to be innocent and the detention center is a holding place, it is not intended or equipped to provide significant rehabilitative programs.

Of note, in the ten years prior to the implementation of H.B. 210, 60% of the juvenile offenders transferred to the adult system were ultimately sentenced by Superior Court. However, for the young offenders transferred as the result of H.B. 210 only 5% were sentenced in Superior Court. It seems very unlikely this new law has enhanced public safety.

Data From New Castle County Detention Center

Staff at the New Castle County Detention Center have been tracking “HB210 Kids” since the law was implemented in July of 2003. (McGonigal, 2004) They include in this tracking juveniles who enter the detention center charged with Robbery 1 or Assault 1. They exclude from this tracking juvenile 16 or 17 years who also have a companion weapons charge since those offenders would have been in Superior Court before the implementation of HB 210. From July 1, 2003 through August 20, 2004 there have been 53 juveniles tracked by NCCDC staff. The 53 cases have been disposed in the following way:

- 9 (or 17%) still pending or bailed out with outcome unknown)
- 2 (3%) charges dismissed in Superior Court
- 4 (7%) guilty in Superior Court
- 38 (72%) transferred back to Family Court
- For the 4 cases guilty in Superior Court the sentences were;
 - 6 months home confinement, 18 months L3 adult probation
 - 3 years level 5
 - 18 months home confinement
 - level 5 (time unknown by NCCDC staff)
- In the 53 cases are:
 - One 14 year old who spent 5 months in detention before having her case resolved in Family Court
 - One 13 year old who spent 2 months in detention before having his case resolved in Family Court
 - One 12 year old who spent 5 months in detention before having his case resolved in Family Court

- **One 12 year old who spent 6 months in detention before having his case resolved in Family Court**

Conclusions and Recommendations

The information we have suggests the following:

- **If the goal is public safety and we want to measure each policy and each decision in terms of the impact on public safety we have to question sending more and more kids to the adult criminal justice system. There is no evidence that transferring large numbers of juvenile offenders to the adult criminal justice system makes the public more safe and it may make the public less safe. The research done in other states seems to show that recidivism is higher for juveniles sent to adult court than for those retained in juvenile court.**
- **In Delaware we enacted a law, HB. 210 that has moved a new group of youth into the jurisdiction of Superior Court, regardless of their age. But, according to data from both the CJC and DYRS, most of this new group is eventually transferred back to Family Court. The CJC data stated that over the last ten years, in more than 600 cases only about 17% were transferred back to Family Court. But within the group of youth that fall under the jurisdiction of HB. 210, according to DYRS data, more than 70% have been transferred back. Maybe that data is telling us those youth did not belong in Superior Court in the first place. Do we really need to have 12 year old first offenders appearing in Superior Court?**
- **HB. 210, and other measures to move more juveniles into the adult system removed some discretion from Family Court judges but did not eliminate discretion. In simply moved discretion to the prosecutors.**
- **Perhaps we need to go back to a system where youth are not transferred automatically but only after careful consideration by an unbiased Family Court judge. That decision should take place after an adversarial proceeding in which the facts can be presented and argued. We should be looking at the offenders prior record, the details of the instant offense, prior efforts at rehabilitation, and the likelihood of successful future rehabilitation efforts.**
- **However, if we want to handle serious and dangerous juvenile offenders in the juvenile justice system we must take a close look at the quality and availability of rehabilitation services for these young offenders. Florida was able to decrease the transfer of kids to the adult system by revamping and improving their deep end juvenile services. In the last decade Ferris School, the state's secure care rehabilitation facility, has been transformed from an embarrassment to a place the State can be proud of. That transition took a look time and required significant resources.**
- **But if public safety is the goal and the standard upon which we will measure our juvenile justice public policy we should take a look at all of the options for seriously delinquent youth. We have to look at the quality of programs, at lengths of stay in programs, and we should do real recidivism research**

that compares like populations not simply counts new arrests and convictions.

- **Lastly, we should make our policy decisions based on some empirical data. Public safety is the most important goal; we should make sure that our policy decisions enhance public safety.**

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