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Review

Juvenile Waivers as a Mechanism in the Erosion of the Juvenile Justice System

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Abstract: This paper discusses how juvenile waiver policies may be leading to a reduction in the rehabilitative nature of the juvenile justice system. The first section discusses the value of the juvenile justice system. Here, the beginning of the juvenile justice system and why the juvenile justice system is important will be summarized. The second section explains the movement that is being made toward a more punitive approach in regard to juvenile delinquents and how this could lead to the erosion of the juvenile justice system. Next is a discussion of how waivers play a part in the erosion and how their continued use could prove very dangerous for the juvenile justice system. The next section will look at the implications of the erosion and what could potentially happen if we lost the juvenile system. Last, there will be a glance at possibilities for the future, along with suggestions on how to improve the use of waivers. Overall, this paper will show that the use of juvenile waivers may be leading the United States away from a rehabilitative system for juveniles to a smaller version of an adult criminal court.

Keywords: juvenile waivers; juvenile justice; juvenile delinquency; certification

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1. Introduction

The juvenile justice system has been part of our larger criminal justice system for over 100 years. In that time, many changes have been made to the system and how it runs, not all of which are for the better. The juvenile justice system was originally created to be a rehabilitative force in the lives of neglected children and children who broke the law, were abused or neglected, or were just acting like children. Recent events, however, have led to a more punitive approach in the juvenile justice system and away from the traditional parens patriae philosophy. Parens patriae means "father of his country" in Latin and is the doctrine that the government becomes the guardian of a child and looks out for the child's best interests (Hill and Hill 2008). One trend of particular concern is the increased number of juveniles who are being tried as adults in criminal courts. This process is known as a juvenile waiver. These waivers may be playing an important part in the erosion of the juvenile justice system as we know it.

2. The Value of the Juvenile Justice System

Children were not always thought of as innocent and in need of protection. Before the juvenile justice system was created, children were viewed as property until the age of 5 or 6. After that, they were considered people with all of the rights of adults (Brink 2004). The attitude the American public holds today is very different. Eventually, these views began to change in the mid-1800s with the growth of industry and charitable organizations. People began to see children as needing help and guidance to grow into healthy, productive adults, especially those who were neglected or delinquent (Brink 2004). These children were unable to make proper decisions and care for themselves. To the public, this meant

that they would grow up to become a burden, so the main focus was on poor children, who people thought would grow up to be paupers or criminals (Bernard 1992).

In Chicago, Illinois, in 1899, juveniles were taken out of criminal court for the first time and placed in a new juvenile court (Bernard 1992). This was carried out to keep juveniles from being punished in adult court by placing them in a more rehabilitative setting. By placing juveniles in a different system, it followed the parens patriae attitude by doing what was best for the offender (the juvenile), and this paternalistic view of children in the beginning led to a more informal system than the adult criminal court (Brink 2004). The idea was that juveniles should not and could not be treated the same way as adults. Juveniles were seen as unable to care for themselves, and when a parent or guardian was not available, the juvenile system could step in. To show this difference between juveniles and adults, the age of criminal liability was raised from 7 to 16, so juveniles would fall into the juvenile system, not the adult system (Bernard 1992).

The juvenile justice system was not originally created to punish but to help two types of children: those that needed to be taken care of by the state and those that had committed felonies and could not be sent to reform school (Bernard 1992). The whole philosophy behind the creation of the juvenile justice system was that juveniles needed to be treated differently and needed help.

There is, however, no question that juveniles between the ages of 12 and 18 are still developing significantly (Brink 2004). Any psychiatrist or psychologist would be glad to talk about the differences between juveniles and adults, both physically and emotionally. Juveniles lack "normative competence", which means that they do not know the right and wrong of their actions and cannot act accordingly (Brink 2004). This obviously sets them apart from adults. It is also important to note that there is a growing body of literature that focuses on adolescent brain development, including research finding that the human brain is not fully developed until the age of about 25 (Arain et al. 2013; Blakemore 2012; Casey et al. 2008; Dumontheil 2016; Foulkes and Blakemore 2018; Johnson et al. 2009). Of note is that the human brain develops from back to front; the prefrontal cortex (responsible for decision-making, among other functions) is the last part of the brain to develop (Caballero et al. 2016). Adolescents, no matter how mature in other areas of life, simply do not have the capacity to have a complete understanding of the consequences of their actions and long-term planning.

If a juvenile commits a crime, it is likely that they do not understand that they have committed a crime or that they could be severely punished for their actions. Juveniles may also not understand that their actions hurt other people. They know that they hurt when something bad happens to them, but they may not be able to make the connection that those same actions hurt others. Juveniles should be punished for their actions, but they should be punished based on their diminished capacity and responsibility. It is troubling that one study found that people see younger offenders as less competent and mentally developed, but they also see them as criminals in the making (Ghetti and Redlich 2001). It was these perceptions of juvenile offenders that made respondents willing to give harsher punishments to younger offenders (Ghetti and Redlich 2001). This means that people understand the differences between juveniles and adults but are willing to overlook them in certain cases.

Because of these differences between juveniles and adults, there are valid reasons for keeping a separate system and safeguards for the juveniles who do end up in the juvenile justice system. A separate system keeps juveniles safer and gives them a better chance for rehabilitation. The first reason is that juvenile proceedings are civil proceedings, so juveniles do not have criminal records (Champion and Mays 1991). This keeps a juvenile from being labeled as a criminal and does not hinder their future since juvenile records are sealed (Lemert 1951). This definitely helps a juvenile who may have only committed a petty offense or a first-time offense. These juveniles will be given a chance to change and will not have a record following them into adulthood.

The next reason is that juveniles are less likely to be sentenced to detention in the juvenile justice system (Champion and Mays 1991). Detention can have a negative impact on juveniles as they are pulled out of school and away from their families. Both education and family are important protective factors that insulate juveniles from crime. Juveniles are able to continue with a semi-normal life when in the community and can also be taught valuable lessons through community service. If a juvenile is sentenced to detention, they have more access to educational, vocational training, and treatment in juvenile facilities than if they were waived and sent to an adult prison (Krisberg 2005). Juveniles are still given a chance to stay educated and even learn a trade or skill that will benefit them when they are released. This sets them up for success, not failure.

Research has also found other detrimental consequences for juveniles who are detained instead of being offered diversion or other community-based programs. For example, a report by the Justice Policy Institute (Holman and Ziedenberg 2016) explains how juveniles that are detained are more likely to recidivate and that detention may disrupt the natural aging out process that many juveniles go through (Holman and Ziedenberg 2016). Also, detention has a negative impact on youth mental health and educational achievement, and they have a harder time finding a job (Holman and Ziedenberg 2016).

Another reason for the separation of juveniles and adults is public perception. The public tends to be more sympathetic to juveniles that are adjudicated in juvenile court than those convicted in adult court (Champion and Mays 1991). Once a juvenile is waived out of the juvenile system, the public could be more likely to see these juveniles as hardened criminals or chronic offenders. The public may be less willing to give them a second chance and less forgiving of future criminal acts (Champion and Mays 1991).

We now know that the get-tough era and subsequent harsher treatment of juvenile offenders came with great consequence, particularly in the large number of juvenile offenders who were removed from the juvenile system and processed in the adult criminal justice system (Briggs 2020; Deitch et al. 2012; Loeffler and Grunwald 2015). Scholars have since noted that juvenile offenders who are handled in the adult criminal justice system are more likely to experience developmental and mental health issues, as well as being more likely to reoffend (Bishop et al. 1996; Fagan 1996; Lanza-Kaduce et al. 2005; Myers 2003).

3. Movement toward a More Punitive Approach and the Erosion of the Juvenile Justice System

The juvenile justice system has been criticized by both the public and policymakers for being too lenient on juvenile offenders (Cooper and Urban 2012). Created under the philosophy of doing what is in the best interest of the child, the juvenile justice system has always had a more rehabilitative and individualized focus when handling juvenile offenders and crime. It was believed that juvenile offenders were "malleable creatures, highly susceptible to both corrupting and pro-social influences", and that as a group or population, these youths were less "culpable and responsible" than adult offenders (Shook 2005, p. 463). The treatment-oriented philosophy remained prominent in juvenile justice processing until the late 1970s (Gillespie and Norman 1984; Houghtalin and Mays 1991). However, a growing public outcry against the perceived leniency of the juvenile justice system brought about a shift in the philosophy and focus of juvenile court actors and policymakers. This resulted in a more punitive approach to dealing with juvenile delinquency and crime (Houghtalin and Mays 1991; Kurlychek and Johnson 2004; Myers 2003; Salekin et al. 2001). This shift was fueled and subsequently firmly established during the mid-1980s and early 1990s amid an increase in juvenile crime, public perceptions that the juvenile court was not punitive enough, and a media-induced moral panic and fear of youthful offenders as 'super-predators' (Shook 2005).

An aspect of this paradigm shift, into what is known as the get-tough era, was an increased push by legislators to make it easier to transfer juvenile offenders into the adult criminal court system (Gillespie and Norman 1984; Kurlychek and Johnson 2004; Shook 2005). Even though there were always mechanisms in place for the transfer of

juveniles to the adult system (Kurlychek and Johnson 2004), prior to the ideological shift from treatment to punishment, juvenile transfer was a rarity, and the process of transferring juvenile offenders was much more difficult (Bortner 1986; Fox 1970). Congress is supporting the idea of a more punitive juvenile system by giving states money to change their laws to make waiving juveniles easier (American Bar Association 2007).

The movement toward a more punitive approach to the juvenile justice system began in the 1970s and 1980s. Conservatives felt that rehabilitation for juveniles did not work and did not have a deterrent effect (Steiner and Wright 2006). Because of this, legislation was formed that increased the severity of penalties for juvenile offenders. At the same time, the public perceived that juvenile crime was on the rise (Harris 1993). The public began to call for and support more punitive legislation for juveniles. Doubts arose about the rehabilitative nature of the juvenile justice system. This supported what conservatives were saying about rehabilitation not working. Once the mission of the juvenile justice system was questioned, a more punitive approach began to emerge (Manfredi 1998). In response to the public outcry, "get tough" policies for juveniles began to pass through legislatures with almost no problems (Harris 1993). From 1992 to 1995, 41 states passed legislation to make juvenile waivers to adult court easier to obtain (Myers 2001). This was the beginning of the trend toward treating juveniles like adults.

All of this would have been a very smart strategic move, except for one small problem. The public outcry was misguided. From 1978 to 1988, juvenile crime went down by 19%, but the number of juveniles locked up went up by 50% (Harris 1993). Because the public was incorrect in their views of juvenile offenders, the policies and legislation that were created during this time were doing more harm than good. Juveniles were being punished more harshly for what people thought they were doing, not what they were actually doing. This was a very dangerous move. Our overall criminal justice system is not designed to punish crimes of the future, and that is exactly what was happening to juveniles.

Another important development during this time was the increase in the rights extended to juveniles in the juvenile justice system and those who were waived. There were several Supreme Court cases that extended more rights to juveniles. This was intended to help juveniles, but it may have actually made things worse. Once juveniles received these rights, they began to be treated more like adults.

The first case was *Kent v. United States* (1966) and it gave juveniles due process rights when a juvenile case is waived to adult court. The appendix of this case laid out eight criteria that needed to be considered before a juvenile was waived to adult court. They include: seriousness of offense; whether the offense was committed in an aggressive, violent, premeditated, or willful manner; whether the offense is a property or violent crime; whether or not the evidence has a good chance of returning a grand jury indictment; whether the juvenile has accomplices that are being tried in adult court; the maturity level of the juvenile; previous criminal history; and whether the juvenile needs rehabilitation or punishment (protection of the community) (Siegel and Tracy 2006). These were established to keep juveniles from being waived without proper reason or cause. The problem is that individual states do not follow these exactly as written and may not lay out their own criteria for when a juvenile can or should be waived.

Kent v. United States was followed by Fain v. Duff (1973). The ruling in this case gave juveniles the right to file writs of habeas corpus. *United States ex rel. Bombacino v. Bensinger* (1974) stated that juvenile judges do not have to give a statement as to the reasons for a transfer, and a transfer hearing does not have to require a presentation of evidence. This decision gave judges the ability to waive juveniles for no reason (Hemmens et al. 2004). With more due process rights, the proceedings for juveniles began to become more like adult proceedings. This is a problem because juveniles should be treated differently, as has been shown before. With all of their newly afforded rights, juveniles began to become little adults in the eyes of the law.

The next part of the movement toward a more punitive juvenile system began in the 1990s and continues to the present. In the early 90s the term "superpredator" was used to

describe young offenders and took hold in the media (DiIulio 1996). The media's use of this term instilled fear in the public about violent and chronic juvenile offenders. Obviously, this increased public fear of juvenile crime, and it was probably good for television ratings. Once again, the public began to perceive an increase in juvenile crime, and once again, it was not always justified.

The philosophy and policies created during the get-tough movement were, and continue to be, more punitive to minority juveniles. For example, in a report published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in 2023, the percentage of youth waived to adult court for various offenses was graphed over time (2006–2020) (Hockenberry 2023). For crimes against persons, property crimes, and drug crimes, Black youth were more likely to have their case petitioned for waiver to adult court than Hispanic or White youth. For public order offenses, the majority of cases waived fluctuate between White and Black youth, with Black youth edging out White youth in 2020 (Hockenberry 2023). It is also disturbing to note that between 2015 and 2020, the likelihood of a juvenile having their case waived to adult court increased for all racial/ethnic groups, with the largest increase applying to Black youth (Hockenberry 2023).

Once the public perceived an increase in juvenile crime, juvenile waivers began to become more popular and used more frequently. The legislation that began to be passed involving waivers was to make them easier to use. Between 1992 and 1997, 45 states passed laws to make juvenile waivers easier, 31 states created laws for expanded sentencing options, and 47 states removed or modified confidentiality provisions for juvenile proceedings (Flowers 2002). This legislation was not just happening in states but at the federal level as well (Schindler and Arditti 2001). With all of this happening, juvenile waivers began being used as an easy solution.

The public does not respond well to juvenile crime. This reaction may be because of the high emotions generated by the media in the way they portray juvenile crime, especially violent juvenile crime (Scott et al. 2006). The media portrays certain types of juvenile delinquents as people who deserve to be punished (Scott et al. 2006). This goes back to the idea of the "superpredator" from the early 1990s. This idea has never completely gone away and will continue to influence public opinion.

This cycle of public perceptions of high juvenile crime has happened before and is sure to happen again. This is when "get tough" juvenile policies begin to appear. In New York in 1825 and in Illinois in 1899 juvenile crime began to rise (Bernard 1992). Politicians and officials were faced with two options due to public pressure: get tough or do nothing. In Illinois in 1899, the juvenile justice system was created as the government's response. As has been shown, the United States is facing this same decision today, and changes will have to be made (Bernard 1992). The greatest concern is what changes will be made. If the public perceives an increase in juvenile crime, the juvenile justice system may be in jeopardy. If we continue to get tougher on juveniles, more may be sent to adult court as we become less tolerant of juvenile crime.

The erosion of the system may have already started. Now that juveniles have rights based on the above-mentioned Supreme Court decisions, they are beginning to be treated more like adults and less like juveniles (Feld 1993). Juveniles now have the right to counsel at juvenile proceedings, they have due process rights, and they can file writs of habeas corpus. These rights were originally meant for juveniles in the adult system. But if the right to counsel is examined, juveniles are appointed a public defender if they cannot afford one. This is exactly what happens in adult court and was something that was supposed to be different for juveniles.

There are several other recent changes that may also lead to future problems. First, juvenile records are becoming less confidential, and juvenile proceedings are being opened to the public (Feld 1993). This gives information to the public that could have huge social implications. Labeling theory comes into play here, as juvenile records would become the source of a "juvenile offender" label (Lemert 1951). The purpose of having sealed records is to make sure that juveniles do not become labeled and are given the opportunity to fix

their behavior. If juveniles are labeled as criminals and internalize that label, all we have succeeded in doing is creating more criminals, not rehabilitating juveniles.

Another problem is that determinate sentencing and mandatory minimums are starting to be used in the juvenile system, just like in the adult system (Brink 2004). Due to this change, it begins to make the juvenile justice system more like a smaller version of the adult criminal system. The problem here is that discretion is being taken away from the judges, who are charged with doing what is best for the juvenile. This brings up another trend that is taking hold. More recent and current legislation is based on doing what is best for the victim in the juvenile justice system instead of what is best for the juvenile (Brink 2004). The focus of the system is punishment, not rehabilitation. If the focus is no longer on the juvenile, how do we justify a separate system for them, and what are the implications if we cannot?

Current legislation also reflects a just deserts attitude toward juveniles (Champion and Mays 1991). This shows a more punitive attitude toward juveniles. For example, legislation was considered in 2003 to make it acceptable to hold juveniles in adult facilities for a longer period of time, up to 48 h, before the initial court appearance (CRS Report for Congress 2003). This means it is alright for juveniles to be held in adult facilities. If juveniles are punished instead of rehabilitated, it may cause the breakdown of the juvenile justice system. The core of the juvenile justice system is rehabilitation, and if it is challenged in favor of more punitive actions, we are asking for trouble. Changing the core of a system changes the whole system.

4. How Juvenile Waivers Play a Part in the Erosion

The increased use of juvenile waivers is an indication of the "get tough" movement (Champion and Mays 1991). As has been shown, the United States is in the middle of a "get tough" movement. By 1979, every state had some form of juvenile waiver (Steiner and Wright 2006). From 1992 to 1995, 41 states passed legislation to make juvenile waivers to adult court easier to obtain (Myers 2001), and from 1988 to 1994, the number of cases waived by judicial waiver went from 7000 to 12,300, which is a 75% increase (Myers 2001). These statistics show that juvenile waivers are on the rise, and because of a public call for harsher penalties, the use of waivers may increase sharply in the future. However, it has been shown that the use of waivers is nothing but a "quick fix to the juvenile crime problem that does not sever the needs of society or the juvenile population (Hannan 2008, p. 194). Hannan (2008) notes that while the streets may be safer for a short while (i.e., while the juvenile is incarcerated), upon release from a non-rehabilitative prison system, the amendable juvenile may now be a hardened criminal (Hannan 2008). Furthermore, Rose (2002) argued in reference to the automatic waiver that it "strips" the discretion of the juvenile court judges and undermines the "rehabilitative backbone" of the juvenile system by "broadly sweeping" them into the adult criminal justice system (p. 978).

While juvenile crime and the use of juvenile waivers have decreased since the 1990s, there is a trend that is beginning to emerge that is potentially concerning. A preliminary survey of Missouri juvenile justice stakeholders examined their perceptions of the raise the age legislation prior to its implementation in the state (Collins et al. 2021). The results indicated that Missouri stakeholders were concerned with many potential issues, including the possible influx of cases that would be sent to the juvenile court and subsequently increase probation caseloads and/or residential placements (Collins et al. 2021). One comment made often by these stakeholders included the sentiment that even if caseloads increased or the 17-year-old offenders became a burden, they could always be waived to adult court (Collins et al. 2021). Early information about the use of waivers in Missouri shows that may be the case, as there was an increase in the number of waivers from 31 in 2020 (the year prior to the implementation of the legislation) to 47 in 2022 (the first year after the implementation) (Missouri Courts 2021, 2023). While this needs more exploration in future years, it is possible that this increase could continue.

The scarce use of waivers in the past was based on the utilitarian assumption that juveniles could not weigh the benefits and consequences due to their immaturity and lack of cognitive and emotional development (Bishop 2000). It is assumed that juveniles who were able to calculate their actions were the ones committing horrible crimes, and they deserved to be in the adult system; if a juvenile thinks like an adult, they should be treated like an adult. Because of this belief, waivers were only used for juveniles who had exhausted all of their options in the juvenile system and were seen to be unchanged by the rehabilitative efforts of the system (Siegel and Tracy 2006). This aligns with the research related to adolescent development discussed above.

In the past, prosecutors had to convince a judge to waive a juvenile to adult court. Now the trend is that the juvenile needs to prove that the case should stay in the juvenile system (Krisberg 2005). Statutory exclusion has also begun to appear, which means that certain offenses or juveniles of a certain age are automatically sent to adult courts (Flowers 2002). This leaves little room for rehabilitation. This is very important because all of these things show more juveniles ending up within the adult system and fighting their way back from it. This is not a way to keep juveniles from committing crime. Waivers, in general, signal a more punitive approach because they send juveniles to a system that is designed more for punishment than rehabilitation.

The age of waiver to adult court began to change from 16, 17, and 18 when a jurisdiction considered a juvenile an adult to anywhere from 10 to 15 (Frontline 2008). This began in the late 80s and early 90s, during a perceived threat of juvenile crime (Myers 2001). We are getting very close to the age of 7, which was used as the lower limit for criminal responsibility in the 1700s and 1800s. There is also a wholesale approach to juvenile waivers that involves lowering the age of any juvenile being waived instead of waiving those who committed certain crimes (Bishop 2000). Some people argue that lowering the age for juveniles to be waived is more cost-effective because it leads to harsher penalties through legislation (Sexton et al. 1993). Using this legal approach means that no money is being spent on juvenile detention centers since juveniles who receive harsher penalties are sent to adult prisons. Once again, this shows a punishment rather than a rehabilitative attitude toward juvenile offenders. In addition, the arbitrary nature of waiver systems not only leaves room for disparities in outcomes but also may lessen any deterrent effects of such legislative changes (Jacobs 2012).

Though much of this discussion focuses on the 1990s, there are current examples of how waivers are impacting the juvenile justice system. The first example is Wisconsin. In Wisconsin, juveniles can be waived to adult court as young as the age of 10 (Wis. Stat. § 938.183). There is currently a case with a 12-year-old defendant (who was 10 years old at the time of the crime) that was waived to adult court, and prosecutors, as early as April 2024, are trying to keep the case in adult court (La Roche 2024). This is despite evidence that the juvenile has mental health concerns and a history of head injury (a concussion) that could have influenced his behavior, along with his young age (La Roche 2024). There is enough concern that this case will stay in adult court that several organizations, including Kids Forward, the Wisconsin Raise the Age Coalition, and the National Youth Justice Network, have made public statements in support of returning this case to juvenile justice system jurisdiction (National Youth Justice Network 2024).

5. Implications of the Possible Erosion of the Juvenile Justice System

There are already arguments to eliminate the juvenile justice system (Myers 2001). It is worrisome that the idea has already been considered. This, of course, is the most serious implication of erosion in the juvenile justice system. In this section, this implication, along with others, will be discussed.

Obviously, the greatest implication is that more juveniles will end up in adult prisons, which can cause a lot of harm to juveniles. Juveniles are 8 times more likely to commit suicide, 5 times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon in adult prisons, even when separated by

sight and sound from adult inmates as required by law (Schindler and Arditti 2001). These statistics are problematic, and any one of these situations could cause serious physical and emotional harm to a juvenile. Of course, all of this will occur much more frequently if the juvenile justice system is abolished. If that were to happen, all juveniles would end up in the adult system, and all would be subject to this kind of abuse.

Juveniles also have less access to education and treatment programs that are beneficial in adult prisons (Brink 2004). Job training and educational programs can be hard to come by in adult prisons, and juveniles may not be aware that they even exist. These programs may also have waiting lists or age limits that juveniles do not qualify for. The curriculum of programs available may also not be age-appropriate for juveniles. Even if they are able to enroll in a program, they may not understand the activities and discussions.

Judges will have less discretion about whether juveniles are waived. Legislators and prosecutors are already starting to have more discretion than judges due to recent waiver strategies (Bishop 2000). The discretion of judges in the juvenile justice system has been and continues to be questioned (Manfredi 1998). Judges in the juvenile justice system have a very tough job and a lot of important decisions to make. Not only are they responsible for the same duties as a criminal court judge, but they are also making decisions that could make or break a juvenile. There should be no question that the discretion of juvenile judges is valuable. Their job is to decide based on the information at hand, and if they are not given accurate information, how can they be expected to make good decisions?

Judges that decide on waivers are given access to much more information about the juvenile than prosecutors. This is what makes it possible for a judge to form an informed and unbiased opinion (Kupchik 2004). This information is very important because it allows a judge to form an opinion based on the juvenile, not on the crime they committed. It is important to take that into consideration, but it should not be the sole basis for waiving a juvenile. Judges are given access to the information to make decisions based on the criteria laid out in *Kent v. United States*. If we take this away from judges and do not give it to prosecutors, no one will have access to this very important information. Neither judges nor prosecutors are making as effective opinions as judges can at present. This is already starting to happen. Legislatures have decided that certain offenses, if committed by a juvenile, are grounds to automatically waive a juvenile to adult court. This is known as statutory exclusion, and it was the most popular form of juvenile waiver with 41.6% of the total number of waivers (it is worth noting that the authors were unable to find any updates to the cited report at the time of this writing; tracking cases that are waived is difficult, as not all states completely re-port nor are they required to report) (United States Department of Justice 2003). This takes discretion completely away from the judge.

One study (Varma 2006) found that when the public is given more information about a juvenile, they appear to be more lenient. This finding with the public could be important if the same holds true for judges. If more discretion is taken away from judges, then prosecutors should have access to the same information judges have. That way, a prosecutor will be able to make the same unbiased and informed decisions that judges can. The question then becomes whether or not prosecutors will be as interested in making decisions that are in the best interest of juveniles. Prosecutors may become more interested in making politically correct decision, and then everything will be right back where it started, with no one looking out for the juvenile.

Another implication is that waivers are not effective, so abolishing the system would likely be just as ineffective. If the juvenile justice system is abolished, all juveniles will end up in the adult system. This argument is twofold. First, there is not very much evidence to support the use of juvenile waivers to benefit the public as far as safety (Krisberg 2005). Juveniles waived to adult court have a higher recidivism rate than juveniles who stay in the juvenile system. Juvenile waivers have no deterrent effect and may actually speed up the criminalization process of juveniles (Krisberg 2005). For juveniles who are being waived, this shows that we are just making more criminals than helping juveniles. Second, the age-crime curve (one of the most important topics in the discussion of

juvenile delinquency) has repeatedly shown that most juveniles that engage in delinquent behavior will age out of their behavior by late adolescence, usually around 15–16 years of age (Glueck and Glueck 1968). There is no reason to send a youth to criminal court and potentially incarcerate them for an extended period of time when they would most likely age out the delinquent behavior on their own, with support from family, the community, or other resources.

6. Possibilities for the Future

There are three options besides abolishing the juvenile justice system that could be considered in the future: return to the original informal and rehabilitative system; give juveniles due process and implement punishment; and return to one system and have juveniles tried with adults in criminal court (Feld 1993).

Option #1: Return to the original juvenile justice system and its philosophy. Returning to the original system would be very difficult. We are no longer in a political environment that would support a rehabilitative system for juveniles the way it used to. This is definitely the ideal, but it is very unrealistic in today's "get tough" political environment. The public would probably not support a large-scale return to a rehabilitative system for juveniles. Since the public is pushing for and supporting the politicians in harsher penalties for juveniles, it would take a long time and a lot of convincing to get the public to back this. There is also no telling how long a rehabilitative system would last if it did come back. It is only a matter of time before we start to go through the cycle of public perception again.

An issue of concern in this area is that even if the public supports rehabilitation for juveniles, legislators are not creating policies to reflect what the public wants. As has been shown, legislators are passing laws and policies to punish juveniles harder. The real question is: how does the public really feel about juvenile rehabilitation? One study suggested that policymakers start pushing for rehabilitative efforts for juveniles (Nagin et al. 2006). This is a positive thing for juveniles, but if legislators are not following public opinion, there could be serious trouble in the future.

There would also be a lot of problems with the rights that juveniles have already been given. Going back to an informal system would mean we would have to take all of them away. That could become a huge media sensation and would definitely not help the idea of a rehabilitative system. It could also mean a lot of new Supreme Court cases and a whole new set of decisions. This would complicate things a great deal because it would mean a whole new set of rules to learn and abide by for the people who are involved in the system.

Giving juveniles due process and implementing punishment reaffirms that juveniles should be treated like adults. This could potentially turn the juvenile system into a mini criminal court. Then, there would be no differences between adults and juveniles, as far as the criminal justice system is concerned. If juveniles eventually achieve the same rights as adults, then it would not take long for the juvenile justice system to disappear. It could also lead to a decrease in funding for prevention programs for juveniles. If we do not recognize juveniles as separate from adults, then there is no reason to treat them any differently than adults before they commit crime. After-school and prevention programs would be very hard pressed to find money to keep their doors open.

Option #2: Return to one system that includes all delinquents/criminals regardless of age. Returning to one system could be disastrous. This is obviously the farthest from the ideal on all levels. There would be nothing to stop juveniles from being treated like adults. It could be possible to keep separate facilities for juveniles and adults, but in reality, that would probably not happen. Since society has spent so much money on prisons, it is doubtful they would be willing to pay the same for juvenile prisons. It would increase the risk of juveniles being abused and assaulted in adult prisons.

We need a separate system because juveniles are different from adults and should be treated as such. Ignoring this ignores all of the research that shows juveniles are not the same as adults. We would also be ignoring the assumptions that the juvenile justice system makes about juveniles that the adult system does not make. The juvenile system assumes

that juveniles' development is not complete, juveniles' character is still developing, and their judgment is not fully developed (Steinberg and Cauffman 1999). Ignoring these could be disastrous for the development of juveniles, who are treated the same as adults. It also ignores all of the psychiatric research that shows juveniles are not as developed as adults.

What if the system is abolished? If the juvenile system goes away, it is impossible to know if it could come back. The political environment that we have now would not support the rehabilitative nature of the juvenile justice system. The rehabilitative nature of the system would probably never return if juveniles were put back into the adult system. If the juvenile system were abolished and brought back, it would most likely look nothing like the system that is in place now. It may not even be rehabilitative at all. There is also no way to know if the political environment will change back to being supportive in the future. If the system is abolished, it is possible that one of two things will happen. It will either not come back at all or something horrible will have to happen to a juvenile in the adult system for it to return. Either circumstance is not a good one and is not ideal for juveniles.

Option #3: Make improvements to the current system (and keep them). One suggestion for the future of the juvenile justice system is to put stricter criteria into place that only allow the most violent juveniles to be waived into adult court. Those juveniles are the ones who waivers were originally created for, and that is what they need to be used for. It needs to be decided what the criteria should be for a juvenile to be waived, and all states should follow those. Juveniles have started to be waived for first-time offenses and for less violent offenses. It is worrisome to see this happen because waivers were not intended to be used so freely. For example, in Florida, a 12-year-old with no prior criminal history was sentenced to life in prison after he accidentally killed his playmate (Goodnough 2004). Fortunately, he was released at 16, but he should not have even been tried as an adult.

Prevention programs should also be implemented. If juveniles never ended up in the juvenile system to begin with, then there would be no concern about waivers. Several programs that work include a curriculum that involves conflict resolution and violence prevention; peer counseling and peer mediation; after-school programs; parent training with family/marriage counseling; gang prevention; vocational training; and firearm intervention strategies (Flowers 2002). It has been shown that youth with good opportunities and better homes are less likely to be delinquent (Harris 1993). This information could also be used to develop better programs for juvenile delinquents.

Blended sentencing is another option that includes placing a juvenile on probation, but if they violate the probation, they are sent to the adult court. This has been shown to reduce the number of juveniles waived to adult court (Podkopacz and Feld 1996). This could be a beneficial option for juveniles who are looking at running out of chances in the juvenile system. This could also be used as an alternative to waivers and could reduce the likelihood of a juvenile ending up in the adult system when they do not need to be.

Getting more child advocates involved or other people willing to work with children in the juvenile justice system could help (Cottle 1977). It would make sure that juveniles receive fair proceedings without making the system more criminal. A good example of this is Court Appointed Special Advocates (CASA) for Children. This program appoints a volunteer from CASA as volunteer guardian ad litem to speak on behalf of the child and make decisions in the best interest of the child (CASA 2008). This program is nationwide and depends on volunteers. This kind of program is very beneficial to children, and more programs like it should be developed.

There has been progress made in the area of raising the maximum age of the jurisdictional boundaries of the juvenile justice system. As of 2021, 47 states handled youth aged 17 and younger within the juvenile justice system (meaning once an individual turned 18 years old, they would be handled by the adult criminal justice system) (Teigen 2021). Recently, however, several states, including Louisiana (Lowrey 2024) and North Carolina ('Raise the Age' 2024), have repealed their Raise the Age legislation, which is concerning. Progress is encouraging, but only when it is implemented for the long term.

7. Conclusions

As shown, the United States will be faced with a crucial decision to make about juveniles and juvenile justice. The public needs to become aware of the fact that their perceptions are influenced by the media and are not always correct. This would be a big step in finding out what chance rehabilitation has of making a comeback.

But if this does not happen and policymakers continue down the slippery slope they have started down, it could spell disaster for the juvenile justice system. People may not realize until it is too late that this is the wrong path to choose. It could mean abuse for juveniles and a real increase in juvenile crime, not just a media-created one.

There is hope out there, and we can work our way back from what has already happened. There will always be people willing to give of themselves to help juveniles in need. The only problem is that we need more of them. If every juvenile in the system knew they had someone fighting for them, it would be a much better system. If we do abolish the juvenile justice system, it should be to create a new and better one, not to send juveniles into the adult system and wish them the best of luck.

The United States is already known for having the largest percentage of its adult population behind bars. Do we want to be known for the same thing about our juveniles?

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