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WHEN ARE CHILDREN ADULTS? JUVENILES ON TRIAL AS ADULTS: ADULTS ON TRIAL AS JUVENILES

Suzanne M. Knight

As we enter the 21st century violence committed by children, boys and girls under the age of eighteen in the United States is on the rise. At what age does a child stop being considered a juvenile? "Though 18 is the age most commonly used to define adulthood in America, there is no single clear cut age of majority. Instead, a welter of federal, state and local laws set widely varying thresholds for young people' rights and responsibilities."1 Individual states have responded by transferring juvenile cases to adult criminal court. "In the last decade, however, nearly every state has passed laws making it easier for minors to stand trial in adult courts."2

The laws have the support of the community, the legislation and prosecutors groups. "Across America, prosecutors and legislators are pushing to make more juveniles stand trial as adults."3

There is continuing speculation as to the ultimate punitive goal of treating juveniles as adults in the criminal justice system. The National District Attorneys Association suggests "a new breed of juvenile delinquent-the serious, violent and habitual juvenile offender. Kids are more prone, with less inhibition, to act violently in more extreme ways then ever in the past, said the co-chairmen of the association's juvenile-justice committee, District Attorney James Backstrom of Dakota County, Minn."4

Other governmental agencies have also tracked the type and frequency of violence committed by juveniles. "According to the Federal Bureau of Investigation (FBI), juveniles accounted for 19% of all arrests and 17% of all

2 Id.
3 Id.
4 Id.
violent crime arrests in 1997.\textsuperscript{5}

The crimes that juveniles are committing include murder, forcible rape, robbery, aggravated assault and burglary.

Juvenile courts were originally set up and established to fulfill two major societal goals. There were two original goals of the juvenile justice system. The first goal was to protect society from the danger of juveniles. The second goal was to protect young juveniles from the punitive objective of the adult criminal law system. "In the orthodox interpretation, the founders of juvenile courts were first and foremost searching for a way to save children from the scourges of criminal law and prison discipline."\textsuperscript{6}

The juvenile courts have a long and tumultuous and complex history in the United States. The juvenile courts were established in the late part of the nineteenth century.

\textsuperscript{5} ROBERT MNOOKIN, CHILD, FAMILY, AND STATE: PROBLEMS AND MATERIALS ON CHILDREN AND THE LAW 1218 (4th ed. 2000).

\textsuperscript{6} Id. at 1228.

Juvenile courts have been a fixture in this country since 1899, when the first such court was created in Chicago. Because the courts are established under laws passed in different state legislatures, the form of the juvenile court varies somewhat from state to state. But despite these differences, the basic idea behind the courts is the same: most children may be rehabilitated and should not receive the same sort of punishment as adults. Thus, minors who violate the law may be charged with delinquency. If a minor is found delinquent, the state may step in and assume the role of parent. A delinquent minor may be confined in a state institution or placed in a treatment program, among other options.\textsuperscript{7}

In the past children who committed criminal offenses would be separated from adult perpetrators. "Traditionally, lawbreakers younger than 18 were dealt with by juvenile courts."\textsuperscript{8}

Juvenile courts were first


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\textsuperscript{8} Crary, supra note 1.
established as an alternative to the punishment imposed in adult courts. "The juvenile court movement sought to ensure that children were not incarcerated with adults in order to protect children from being physically brutalized or taught criminal habits by hardened adult offenders." 9

One of the main objectives of the juvenile system was to enable the juvenile to be processed through the rehabilitative juvenile court system instead of the harsher punishment of the adult criminal court system. Unlike adult courts, the goal of this protective juvenile system was rehabilitation and not punishment. "The goal of the juvenile court is not to punish, but to transform troubles youths into productive adults." 10 The adult criminal justice system and the juvenile justice system are supposed to be different in scope and purpose. "The difference reflects the approaches of the two courts. In deciding what to do with a young offender, juvenile courts usually emphasize rehabilitation rather than punishment. Juvenile courts tend to examine the individual characteristics of the delinquent youth; adult criminal courts usually look first to the seriousness of the crime." 11

There is a formal provision that was enacted to deal with the issue of the transfer of a juvenile from the juvenile system to the adult criminal system. The Federal Juvenile Delinquency Act that provides for the transfer of a juvenile delinquent from juvenile court jurisdiction to adult criminal court.

One exception to the requirement for proceeding against a juvenile under the Federal Juvenile Delinquency Act arises when the alleged juvenile delinquent has requested in writing upon the advice of counsel to be proceeded against as an adult, except that with respect to a juvenile fifteen years or older alleged to have committed an act after his

10 Dan Horn, 'Adult Juvenile' Poses Dilemma; Court to Weigh Designation for Teen Suspect, now 52, CINCINNATI ENQUIRER, June 8, 2000.

11 Weisselberg, supra note 7.
fifteenth birthday which, if committed by adult, would be a felony that is a crime of violence or a specified federal offense relating to controlled substances described in this Act, criminal prosecution on the basis of the alleged act may be begun by motion of transfer of the Attorney General in the appropriate court in the United States, if such court finds, after hearing, such transfer would be in the interest of justice.12

The transferring of the juvenile offender into the adult criminal court system has to meet certain mandatory criteria.

In assessing whether a transfer would be in the interest of justice, evidence of certain specified factors must be considered, and findings with regard to each factor must be made in the record. The factors to be considered are:

1. the age and social background of the juvenile;
2. the nature of the alleged offense;
3. the extent and nature of the juvenile's prior delinquency record;
4. the juvenile's present intellect or development and psychological maturity;
5. the nature of past treatment efforts and the juvenile's response to such efforts
6. the availability of programs designed to treat the juvenile's behavioral problems.13

The United States is in the minority on the issue of punishing juvenile offenders with the same severity as adults who commit the same crime. "The Justice Department, in a new report, says 17 men have been executed in the United States since 1973 for crimes committed as juveniles...Only the United States and Somalia, among all United Nations members, have not ratified a convention outlawing such executions, the report says."14

Another aspect of the juvenile justice system exposes a severe deficiency in the current juvenile justice system. One serious consequence of the juvenile system that was never contemplated when the

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14 Crary, supra note 1.
system was established is when juveniles commit a crime and are later apprehended when they are adults.

There are two modern day cases that are currently tackling this jurisdictional problem. Michael Skakel is accused of murdering Martha Moxley in Greenwich, Connecticut in 1975 when he was fifteen-years-old. "At issue here is whether Skakel should be tried under the more rehabilitation-focused laws of 1975, or under more recent, tougher laws regarding juvenile crime."15

The Skakel case has brought juvenile law policies into the spotlight. This "case raises one of the toughest questions in American justice how should courts handle adults who are accused of committing crimes as children."16 In addition to the Skakel case, "it is a question that will be asked more often in coming years as aggressive prosecutors and advances in DNA technology help track down suspects decades after the crime."17 In addition, "the Skakel case will test society's belief in the basic premise of the juvenile justice system."18 Society's belief is that juveniles can be rehabilitated into productive adult members of society.

As an example, the major difference between the adult court and the 1975 Connecticut juvenile statute is the process of labeling the case as a juvenile or adult court case. "Juvenile's in 1975 were often not charged with a specific crime but rather labeled as a juvenile delinquents who could be rehabilitated, rather than jailed, at the court's discretion. In addition, the statute of limitations for sentencing juvenile's in 1975 was five years, or until the child became an adult."19

In response to the increased number of juveniles committing crimes and severity of juvenile's crimes,

15 Skakel Case Marks Precedent: 25-Year-Old Murder Case Raises Perplexing Legal Questions, August 18, 2000, ABCNEWS.com.
16 Horn, supra note 10.
17 Id.
18 Weisbelberg, supra note 7.
19 Kellie A. Wagner; Transfer of Skakel Case Expected; Prosecutor contemplates dropping charges if case stays in Juvenile Court, CONNECTICUT LAW TRIBUNE, August 28, 2000.
Connecticut changed its juvenile court procedures in 1995. "In 1995, in response to public outcry over juvenile sentencing viewed as too lenient, Connecticut passed laws allowing 14-15 and 16-year-olds accused of certain violent offense, including murder, to automatically be prosecuted in adult court." 20

Connecticut recently changed the statute dealing with the transfer of juveniles to adult court. Connecticut law provides for a procedure to automatically transfer certain cases from juvenile to adult court. Today, a minor 14 or older charged with a capital offense or a serious felony offense is automatically transferred to adult court under Connecticut General Statutes Section 46b-127.

Unfortunately, the Michael Skakel juvenile/adult court case is not an isolated incident. The question of what to do with a juvenile offender when he is apprehended for his crime as an adult is becoming more prevalent. Michael Wehrung is charged with second-degree murder in the murder of Patty Rebholz in 1963.

The Wehrung case is similar to the Skakel case but does not have the notoriety of the high profile Kennedy cousin case. Wehrung has argued that he could not be tried as an adult for the murder of Patty Rebholz because at the time of the initial murder investigation he was in police custody. "That detail, whether Mr. Wehrung was ever in police custody, was critical, because state law requires that juveniles who commit crimes but are not caught until after age 21 be tried in adult court." 21 "The key to Mr. Allen's (Wehrung's attorney) case is a 1996 law that allows juvenile cases to go to adult court if the suspect was 'not apprehended or taken into custody' until adulthood." 22

The current criminal justice system is increasingly

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22 Horn, *supra* note 10.
punishing juveniles as adult perpetrators. The juvenile justice systems in individual states are increasingly failing to meet the original protective and rehabilitative goals that were the center of the juvenile justice system when it was established. The juvenile justice system needs to be modernized in order to maintain the original goals of protecting juveniles from the adult criminal system coupled with the safety of the community.