

Chapter 4 The Current Juvenile Justice System

The goal of this chapter is to describe how the historical legacy of juvenile justice has been translated into the modern justice system practices that one encounters today. The approach is to describe the processing of cases through the modern juvenile court system, comparing and contrasting these practices with the adult criminal justice system. Keep in mind that there remains significant variation among states and localities. What is presented below is an attempt to capture the present reality in the largest number of juvenile court jurisdictions. The National Center for Juvenile Justice is the preeminent source of more current information on how legislative changes impact the structure and process of the juvenile justice system (Snyder & Sickmund, 1999).

The original scope or jurisdiction of the juvenile justice system is generally defined in each state by specific statutes. The first level of this definition process involves the age of the youth at the time of arrest or referral to the juvenile justice system. Most states set the threshold upper age of juvenile court jurisdiction at 17. The importance of this upper age is to define the presumptive age at which young people are tried in criminal courts as opposed to family or juvenile courts. New York and North Carolina have a much lower upper limit for adolescents in criminal courts at 15 years of age. Twelve other states employ age 16 as the upper limit of original juvenile court jurisdiction. However, several states permit the juvenile court to retain its jurisdiction of cases already in the system until age 21. Several states actually allow this continuing jurisdiction for some youths as old as 25 who are under the control of the state youth corrections authority (Sickmund & Puzzanchera, 2014). Currently, there is a serious reexamination of the traditional age boundaries of the juvenile court. These policy debates are influenced by emerging scientific evidence about the brain development of adolescents. Since 1975, five states have altered the juvenile court age boundaries. Alabama raised the upper age limit from 15 to 16, and then to 17 the next year. Wyoming lowered its upper age limit from 18 to 17, New Hampshire and Wisconsin lowered their limits to 16, and Connecticut enacted legislation that gradually raised the age of jurisdiction from 15 to 17 by 2012.

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There is also variability among states in the lower boundary of the juvenile court's authority—the age below which the child is deemed too young to be subject to juvenile court laws. There are sixteen states that define the youngest age at which children can be tried in juvenile courts. Eleven states set this lower age boundary at 10 years old, whereas another five states use boundaries of age 6 (North Carolina), age 7 (Maryland, Massachusetts, and New York), and age 8 (Arizona). Other jurisdictions have no statutorily mandated lower age threshold, although the usual practice is to recognize the tradition of the English Common Law standard of age 7 for the lowest age of criminal court jurisdiction (Snyder & Sickmund, 1999).

These general age limits are further refined by state laws specifying circumstances and legal mechanisms through which the original jurisdiction of the juvenile court may revert to the criminal court or be shared with the criminal court system. The overall trend in juvenile law in the past several decades has been to extend these exceptions and to extend the range of transfer procedures; however, most recently, a few states have sought to restrict the transfer of young offenders to criminal courts or make the standards for the transfers more stringent. For example, Illinois enacted tough laws that permitted prosecutors to automatically send very young adolescents to criminal processing, but a recent law proposed by the governor requires that all young people who were arrested before age 16 are entitled to a juvenile court hearing to determine the appropriateness of their transfer to adult criminal courts. Some would say that the most important development in contemporary juvenile court law has been the “**blurring of the line**” between the juvenile court and the criminal law system as well as newer efforts to redraw these historic lines. There are also suggestions to consider hybrid systems of “**blended sentencing**” in which a youngster can be simultaneously under the authority of the juvenile court and criminal laws of the state.

A further complication in understanding the juvenile justice system is the overlap, in many locales, between the criminal law system as applied to minors and the laws governing the protection of dependent, neglected, and abused children. It is common that children appearing before the juvenile court are still under the auspices of child welfare and protection laws. Judges sometimes use either legal structure or a combination of the two systems to fashion remedies in individual cases. Often, it is the same judge who hears cases in both systems. Moreover, many states have established special legal categories such as Children in Need of Supervision, Persons in Need of Supervision, or Minors in Need of Supervision that overlap the traditional categories of **dependent children** with behavior that might be considered criminal law violations in other states. Most often, these mixed categories are meant to be used in cases involving behaviors such as truancy, running away, curfew violations, underage drinking or smoking, or incorrigibility. Traditionally, many state laws prohibit the secure confinement of these nonoffenders or forbid their confinement with youngsters charged with criminal law violations. However, these finite legal categories often merge together in cases in which the youth is already under juvenile court control (e.g., under probation supervision or in some sort of diversion program). In the world of contemporary juvenile justice, nothing is simple and consistent.

Before discussing the various components of the juvenile justice process, it is worth considering how the modern juvenile and criminal justice systems differ and converge. [Table 4.1](#), prepared by the federal Office of Juvenile Justice and Delinquency Protection, provides a convenient summary of these common and differing aspects of the two justice systems (Snyder & Sickmund, 1999).

Although the juvenile and criminal justice systems are more alike in some jurisdictions than in others, generalizations can be made about the distinctions

<i>Juvenile Justice System</i>	<i>Common Ground</i>	<i>Criminal Justice System</i>
Operating Assumptions		
- Youth behavior is malleable. - Rehabilitation is usually a viable goal. - Youths are in families and not independent.	- Community protection is a primary goal. Law violators must be held accountable. - Constitutional rights apply.	- Sanctions should be proportional to the offense. - General deterrence works. Rehabilitation is not a primary goal.
Prevention		
- Many specific delinquency prevention activities (e.g., school, church, recreation) are used. - Prevention is intended to change individual behavior and is often focused on reducing risk factors and increasing protective factors in the individual, family, and community.	Educational approaches are taken to specific behaviors (drunk driving, drug use).	Prevention activities are generalized and are aimed at deterrence (e.g., Crime Watch).
Law Enforcement		
- Specialized “juvenile” units are used. - Some additional behaviors are prohibited (truancy, running away, curfew violations). - Some limitations are placed on public access to information. - A significant number of youth are diverted away from the juvenile justice system, often into alternative programs.	- Jurisdiction involves the full range of criminal behavior. - Constitutional and procedural safeguards exist. - Both reactive and proactive approaches (targeted at offense types, neighborhoods, etc.) are used. - Community policing strategies are employed.	- Open public access to all information is required. - Law enforcement exercises discretion to divert offenders out of the criminal justice system.
Intake—Prosecution		
- In many instances, juvenile court intake, not the prosecutor, decides what cases to file. - The decision to file a petition for court action is based on both social and legal factors. - A significant portion of cases are diverted from formal case processing. - Intake or the prosecutor diverts cases from formal processing to services operated by the juvenile court, prosecutor’s office, or outside agencies.	- Probable cause must be established. - The prosecutor acts on behalf of the state.	- Plea bargaining is common. - The prosecution decision is based largely on legal facts. - Prosecution is valuable in building history for subsequent offenses. - Prosecution exercises discretion to withhold charges or divert offenders out of the criminal justice system.
Detention—Jail/Lockup		
- Juveniles may be detained for their own protection or the community’s protection. - Juveniles may not be confined with adults unless there is sight-and-sound separation.	- Accused offenders may be held in custody to ensure their appearance in court. - Detention alternatives of home or electronic detention are used.	Accused individuals have the right to apply for bond/bail release.
Adjudication—Conviction		
- Juvenile court proceedings are quasi-civil (not criminal) and may be confidential. - If guilt is established, the youth is adjudicated delinquent regardless of offense.	- Standard of proof beyond a reasonable doubt is required. - Rights to be represented by an attorney, to confront witnesses, and to remain	- Defendants have a constitutional right to a jury trial. - Guilt must be established on individual offenses charged for conviction.

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At the most basic level, the two systems differ in their core assumptions. For example, the juvenile justice system assumes that young people are capable of positive change. Rehabilitation is considered a possible and desirable goal. Juvenile justice interventions assume that youths are part of families, and attempts are made to involve parents in the various programs of the system. By contrast, the current criminal justice system does not place much emphasis on rehabilitation as a goal, although many criminal law systems did value rehabilitation in the past. The contemporary criminal justice system assumes that general deterrence is an effective crime control strategy (Zimring & Hawkins, 1973). This means that the criminal law assumes that others will be discouraged from law breaking by knowledge of the severity and certainty of punishments meted out to apprehended offenders. Inherent in the concept of deterrence is the assumption that humans operate principally through a process of rational calculations of the benefits of committing crimes compared to the costs of apprehension and punishment (Wilson, 1983). The juvenile justice system assumes that in addition to cost-benefit calculations, young offenders are motivated by a range of rational and irrational forces. The reader will recall that this latter assumption is directly related to the early scientific work supporting the creation of the juvenile court (Healy, 1915).

Both the juvenile and the criminal justice systems recognize protection of the public as a major goal. In each system there is value placed on holding offenders accountable for their specific actions. Most important, since the late 1960s, the juvenile justice system has mirrored the adult court system in its attention to the protection of the constitutional rights of the accused. Both systems are increasingly interested in advancing the rights of victims in various aspects of its legal processes. Legislation establishing the rights of victims in the juvenile court has trailed behind the criminal court system, but the 1990s was a period in which many lawmakers sought to extend rights to victims within the juvenile justice system.

The two systems also differ markedly in their approaches to crime prevention. As noted earlier, the criminal justice system depends on general and specific deterrence to prevent future crimes. Prevention strategies often entail increasing the capacity and willingness of citizens to report crimes to the police. This type of public participation is reflected in programs such as Crime Watch or Crime Stoppers. Crime Watch programs often involve organizing neighborhood residents to conduct informal patrols, pass along information about recent local crimes, or hold meetings with police to learn how to better protect one's person or property. Crime Stoppers is a national program that pays cash rewards for information leading to the arrest of criminals. Juvenile crime prevention programs tend to rely more on educational efforts (an example is the Drug Abuse Resistance Education program, in which police officers enter schools and teach children about the dangers of drug use) and the delivery of services including recreational, vocational, and counseling efforts. The Office of Juvenile Justice and Delinquency Prevention funds prevention programs through a number of grants to states and localities. Units of state and local governments typically devote some funding each year to service-oriented prevention efforts. These services are designed to reduce certain risk factors that researchers have linked to the onset of delinquent behavior in individuals, families, schools, and communities (Hawkins & Catalano, 1992). Prevention programs also seek to increase protective or buffering factors that insulate youngsters from risk factors. We discuss these approaches to delinquency prevention in [Chapter 7](#). There are some more limited educational prevention efforts in the criminal justice system such as classes for drunk drivers, educational programs for domestic violence offenders, or courses on traffic safety. Participation in these adult prevention programs is often a condition of diverting the case from formal court processing or of reducing penalties.

Law enforcement policies and practices differ between the two justice systems. Police agencies often assign special units to handle juvenile offenders, and there is an expectation that public access to information about juvenile offenders will be more limited than for adults. The overall philosophy of enforcing laws with minors is to divert a significant number of these cases away

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from the justice system. In policy, and often in practice, the ideal is to handle cases informally, allowing parents or other community agencies to take the lead. The ethos of juvenile justice is to exercise extreme constraint when intervening in the lives of children. [Chapter 3](#) explains why and how these ideas became part of the modern juvenile justice system, and it is true that this noninterventionist paradigm is regularly questioned and reexamined.

It is also worth noting that police respond to behaviors by juveniles that would not engage their attention if committed by adults. For example, police enforce truancy laws but do not arrest adults who fail to attend their classes. Except in times of emergency, adults do not have to adhere to curfews, whereas minors may be restricted in the hours when they can be in public places. Youth curfews may require that the child be accompanied by responsible caretakers. Adults are free to purchase and use highly toxic and addictive substances such as tobacco and alcohol, but these commodities are forbidden for juveniles. Minors can be incarcerated for running away from their homes, whereas adults are free to change their living situation without criminal penalty.

Police divert adult offenders from further criminal justice processing, although the rationale is rarely that there are better places from which to get services. Diversion of adult offenders is often based on police obtaining information from them that can be used to arrest others. The exercise of police discretion in adult cases has led to serious criticism of law enforcement agencies who are alleged to employ racial, gender, or social class factors in making their decisions. For example, police handling of domestic violence incidents has moved toward mandatory arrest policies in lieu of allowing the street officers to decide the appropriate resolution of individual cases. While these mandatory arrest policies have been promoted based on research findings (Sherman et al., 1997), the evidence supporting the efficacy of these approaches is less than totally convincing.

More recently, police practices for adults and juveniles have converged in the theory of problem-solving law enforcement in which informal dispute resolution and mediation strategies are encouraged in lieu of making arrests. For both juveniles and adults, police are governed by common constitutional requirements pertaining to the limitations on powers to stop individuals, rules pertaining to search and seizure, and safeguards against self-incrimination. However, the law has been evolving on how strictly law enforcement must adhere to constitutional protections. As noted earlier, the courts in cases such as *J.B.D v. North Carolina* (2011) are expanding the legal protections for detained youth. The legal rights of juveniles who are detained and questioned in school settings is still a subject of intense debate. One major issue remains that the violations of rights for adult defendants may lead to the exclusion of crucial evidence; for juveniles, they may be processed by the juvenile court and confined for "their own protection" without definite evidence of criminal wrongdoing.

As one moves further along in the process, the juvenile and adult systems begin to diverge. In the adult system, it is the prosecutor who decides if a person who is arrested by the police is brought into the criminal justice system. Typically, there is a preliminary hearing in which the prosecutor presents the charges to a judge, the defendant enters a plea of guilty or not guilty, and either bail is set or the defendant is remanded to jail. Later in the process, usually after a variety of evidentiary motions are considered (such as the inclusion of evidence, the face validity of the charges, or other procedural matters), the prosecutor decides either to bring the case forward or to drop it. In many jurisdictions, a panel of citizens known as a grand jury will hear the prosecutor's preliminary evidence and will decide if the criminal case should be brought forward. Prosecutors have the discretion to either drop the case or defer prosecution, usually in situations in

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which the defendant agrees to enter some treatment or counseling program. Failure to complete this agreement often results in the original charges being filed.

The juvenile justice system usually employs an intake unit to evaluate whether a case should be brought forward. Although it is increasingly common for prosecutors to participate in the intake process, it is most often accomplished by staff of the juvenile probation department. The sufficiency of legal evidence is a strong consideration, but the primary emphasis of the juvenile intake process is problem solving—how best to rectify the youth's misconduct with a minimum of court intervention. The juvenile court almost always is governed by the principle of utilizing the least restrictive alternative consistent with protecting public safety. The intake process is also guided by a search for ways to protect the child from adverse community, family, or peer influences. It is sometimes the case that the child welfare or mental health systems may provide more appropriate responses to the child's behavior than the juvenile justice system.

In the juvenile court, the decision is made whether to file a petition to declare the child a ward of the court. This decision is guided by both legal and social service considerations. The child and his or her attorney may contest the petition, but they do not typically enter a plea of guilt or innocence. In most locales, a juvenile court judge will decide whether it is in society's or the child's best interests to proceed with a formal hearing on the petition. In smaller jurisdictions, this hearing is conducted by a lower court judge or magistrate. Unlike the criminal justice system, there is no automatic right to bail for juveniles. Youths who are not released to their guardians are confined in juvenile detention facilities. The juvenile court is permitted broad latitude to detain youngsters for society's protection (similar to the adult system) or for the protection of the child. Whereas there are very strict constitutional limitations on preventive pretrial detention for adults, the U.S. Supreme Court has approved a much wider set of detention criteria for minors (*Schall v. Martin*, 1984).

It is at the adjudication stage that the two justice systems are most different. Juvenile court hearings are not viewed as criminal law proceedings; they are quasi-civil hearings. If the facts of an alleged petition are sustained by the court, the petition is sustained and the youth is declared to be a ward of the juvenile court. In the criminal law system, the offender is found guilty of a very specific set of criminal offenses; in the juvenile court, the petition relates to a general pattern of behavior or family circumstances. Criminal court hearings must be open to the public, whereas juvenile courts operate primarily on a confidential basis. Adults charged with criminal offenses are entitled to a jury of their peers, but there is no legally recognized right to jury trials in the juvenile court system. There has been a trend toward opening up juvenile court hearings to the public. As of 2010, there were 18 states permitting public attendance in hearings, with some rare exceptions for protection of the child. There are another 20 states that permit public access for a limited set of cases. For example, the proceedings might be open in felony cases involving older youth and those with prior court involvement (Sickmund & Puzzanchera, 2014). There also is variation among the states on whether juveniles can be fingerprinted, whether criminal records are sealed from public view, or if schools must be notified of a student's involvement with law enforcement or the courts. In the 1990s, many states moved to reduce the privacy and confidentiality of juvenile court records and proceedings. In the past several years, there have been discussions to roll back some of these “get tough laws” and to give court-processed young people a second chance.

Both the criminal and juvenile justice systems require a standard of proof beyond a reasonable doubt, and persons in each court have rights to be represented by attorneys, to confront their accusers, and to not testify against themselves. The right to appeal is available in both systems.

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Both court systems are beginning to introduce specialized sections of their courts that focus on particular offenses such as drug courts, gun courts, and **reentry** courts.

During the dispositional phase of juvenile court hearings, there is great weight placed on in-depth social, psychological, and individual factors. Dispositions are, by design, to be *individualized*. Juvenile courts may even direct their dispositional orders to other individuals such as the youth's guardians. Juvenile courts employ a broad range of dispositional options—orders to make **restitution** or to perform community service, as well as a wide range of residential placements. Juvenile courts often impose curfews or require regular attendance in school. Parents and youths may be ordered to attend counseling sessions. There are more creative dispositions sometimes utilized in criminal courts but on a far more limited basis.

Sentencing in criminal courts generally relies more on a limited set of legal factors such as the gravity of the current offense and the prior record of the offender. Criminal court sentences are very often rigidly determined by state laws, whereas juvenile court dispositions are far more open ended—the youth is declared under the juvenile court's supervision based on regular reviews of his or her progress up to the statutory age maximum jurisdiction of the court. Neither the criminal nor juvenile court system may impose sanctions that are deemed cruel or unusual.

Virtually every state has laws that define the circumstances in which youth may be processed in criminal courts and eligible for adult court sanctions. There are various legal means by which this can happen. Most states define a court-supervised process that permits juvenile court judges to waive their jurisdiction and transfer a child to the criminal court. This process is often referred to as a “certification,” “fitness,” or “remand.” Some states even permit a “reverse **waiver**,” allowing the criminal courts to return a defendant to the juvenile court. Other states have specific laws that define the ages and offenses that create the presumption that a young person will be tried in a criminal or juvenile judicial venue. These state laws are frequently changed as elected officials express their sense of public outrage over well-publicized crime committed by young people. Other jurisdictions permit prosecutors to “direct file” youthful defendants to criminal courts without the requirement for judicial review. Many states require that young people who have ever been tried as adults must always be sent to criminal courts. There are also hybrid systems in which either adult or juvenile courts may sentence young people as both adults and juveniles. This practice is known as *blended sentencing*. These hybrid systems offer the benefits of the child protection aspects of the juvenile court laws but can impose harsher criminal penalties if the young person commits a new offense or violates the requirements of the less severe sanction. At present, there is no consistent data or easily available statistics across states on the utilization of these widely varying approaches to juvenile lawbreaking. For example, it has been observed that young people of color are far more likely to be more harshly punished in both the juvenile and adult justice systems, but it is currently impossible to adjudicate this claim at an aggregate level of states or local jurisdictions.

The vast majority of transfers are the result of mandatory statutes and not judicial waiver hearings. Laws governing the upper age of the juvenile court may be responsible for as many as 137,000 youth processed in criminal courts (Sickmund & Puzzanchera, 2014).

The hysteria over the superpredator myth led to a significant expansion of the mandatory laws and other methods of trying more youngsters as if they were adults. These new approaches rarely considered the mental and emotional condition of the youth but were usually determined by the chronological age of the child and the perceived gravity of the alleged offense. As noted earlier, the jurisprudence about age of maturity and criminal responsibility is being actively reviewed and reconsidered by many state legislatures and courts (Zimring, 2005).

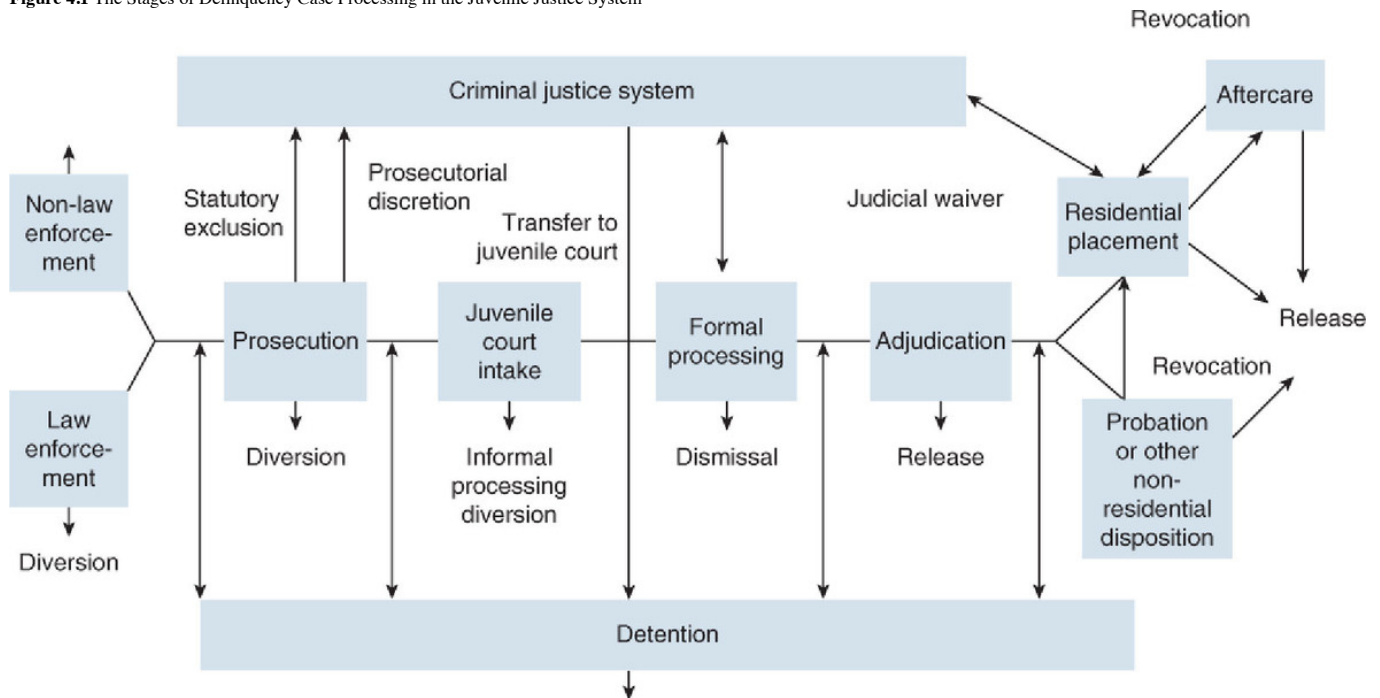
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The borderline between the adult and juvenile justice systems is even more complex. Most offenses are resolved via **plea bargains** or discretionary decisions made by police, prosecutors, or probation staff. These deliberations are not made in public settings. In fact, we do not really know how many young people are punished via the criminal justice system without a fully transparent legal process.

The Flow of Cases Through the Juvenile Justice System

Figure 4.1: The Stages of Delinquency Case Processing in the Juvenile Justice System (Snyder and Sickmund, 1999, p. 98) shows a typical flow of cases through the juvenile justice system.

Figure 4.1 The Stages of Delinquency Case Processing in the Juvenile Justice System



SOURCE: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

It cannot be repeated often enough that there are many state variations that alter how this process operates across the nation. Let's examine this case flow using data from the National Center for Juvenile Justice (Snyder & Sickmund, 1999).

Law enforcement agencies are the primary source of referrals into the juvenile justice system. Approximately 86% of cases come from police agencies; the remaining 14% are referred by schools, social service agencies, or parents. In the case of minor assaults, there are a larger number of referrals coming from schools, probably a reflection of campus fights among students.

Police agencies have a range of policies on handling juvenile arrests. Some departments operate their own special programs that are designed to divert youngsters from further court processing. There are police agencies that work diligently to return back to their parents those juveniles that are stopped for minor offenses. Other law enforcement agencies take virtually every youth into custody, relying on the probation department to sort out the next steps. A recent development in police handling of juveniles is community/juvenile assessment centers —places at which the police drop off youngsters in instances in which an arrest

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is not mandatory. An assessment center consists of staff who are multidisciplinary and knowledgeable about community-based treatment options. The primary goal of an assessment center is to perform a treatment assessment for the youth and to quickly move that youngster into more appropriate community services. Police appreciate the assessment center concept because they can drop off the youngsters with responsible adults, it saves them paperwork, and the patrol officers can more quickly return to service.

Because police decisions to arrest or release juveniles are not subject to a great deal of external scrutiny, it is difficult to accurately describe how these decisions are actually made. There is much speculation that race and social class factors unfairly bias law enforcement decisions. Statistics are very hard to collect on such low-visibility decision making. Anecdotal evidence suggests that police are more likely to return youths to their homes if their parents are at home (or reachable by telephone) and if the parents are regarded as reputable by the officers. It is easy to see how class and racial considerations might impact the judgment of a law enforcement officer, particularly one who does not know much about the youngster or his or her community. One of the goals of community policing is to better connect police officers with the residents of the areas that they patrol, setting up the possibility of better decision making as to whether a young person should be arrested.

Researchers have suggested that the demeanor of the youth may play a large factor in whether a formal arrest will be made (Piliavin & Briar, 1964). A belligerent and verbally abusive youth is far more likely to be taken into custody. Moreover, some have observed that teenagers who simply assert their constitutional rights are more likely to be treated in a more formal and harsh manner. The factor of demeanor is sometimes used as a rationale for why it appears that minority youths seem to be arrested in higher proportions than their white counterparts (Piliavin & Briar, 1964). But it should be considered that race differences are pivotal in the way in which different people interpret the behavior of others. A youth who averts his or her eyes from the arresting officer may be showing deferential behavior, although this might be interpreted as a sign of disrespect. Because demeanor is so subjective and situational in its interpretation, it is difficult to comprehend how ethnic, racial, gender, or class differences could not influence this communication process.

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There has also been a rising trend in the past 10 years for more youth to be referred to the juvenile justice system by schools. School suspensions and expulsions have more than doubled since the 1970s. Many of these young people are also under probation supervision and so the school actions may trigger additional sanctions that will be imposed by the juvenile court. Some youth advocates have expressed concern that school policies are creating a "school to jail pipeline" (Nelson & Lind, 2015). The rise in expulsions and suspensions followed the popularity of "zero tolerance" policies that dictate swift and very negative responses to youth who violate school rules. These zero tolerance policies were marketed as an effective method to keep drugs and guns off of educational campuses. However, there is growing evidence that mandatory suspensions and expulsions are being utilized against students who appear to challenge the authority of teachers. The research is growing that youth of color are vastly disproportionate among those who are harshly punished by school officials. Youth with learning disabilities are more likely to be sanctioned for school behavior. The impacted students are not necessarily accorded protection of their rights, nor are their parents even notified in advance of actions that kick these youth out of schools. Students who are expelled or suspended lose school credits and have a higher likelihood of not graduating (Nelson & Lind, 2015). There are even temporary detentions in schools for some allegedly disruptive young people. The frequency, duration, and nature of these school detentions are rarely subject to public accountability and oversight.

Equally alarming has been the large growth in police who are stationed in schools. From 1997 to 2007, there was an increase of School Resource Officers (SROs) by one third. These officers might be municipal or county law enforcement personnel, employees of the school district, or even private security guards. The qualifications and training of SROs is not standardized or consistent. Almost 92,000 students were arrested in schools during the 2011 to 2012 academic year (Nelson & Lind, 2015).

While the presence of police in schools was justified as a way to protect students from violence, particularly in the aftermath of mass school shootings, most of the arrests were for low-level offenses. For example, the Justice Policy Institute found that arrests for "disorderly conduct" were 5 times more likely in schools with SROs, even when one controls for the students' poverty level (Justice Policy Institute, 2011).

Some observers assert that much of the behavior that creates a police response are activities that "make adults mad" but that are not especially dangerous. Moreover, the presence of police in schools may result in situations in which referral to the justice system is used in lieu of less severe conflict resolution at the school level. Put bluntly, the schools may call the cops rather than phone the offending student's parents. Teachers might rely on the SROs to maintain classroom order in lieu of more evidence-based educational interventions. This leads to official police records that are difficult or impossible to expunge. Officials from the juvenile courts have often opposed these in-school law enforcement efforts because they believe that it diverts limited resources away from more serious youthful lawbreaking. As with policies of pushing youth out of school, there is preliminary but substantial evidence that youth of color are more likely to be the targets of arrests by SROs (Justice Policy Institute, 2011).

There are growing demands that the school to jail pipeline be abandoned and that more appropriate disciplinary methods are substituted. Some school districts have completely eliminated zero tolerance policies and others are experimenting with **restorative justice** and peer mediation techniques to reduce school disruptions.

Of those youths who are brought by the police to the juvenile court intake process, slightly more than half of these cases result in the filing of a delinquency petition. About one fifth of the

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cases that are referred to intake are dismissed outright, and another one quarter receive some informal sanction that might include dismissal, restitution, community service, or a minimal level of probation supervision. For the cases that the intake unit sends forward to the court, about two thirds of these result in formal adjudications. The juvenile court relies on a range of informal sanctions to handle the rest of the cases. Only about 6 in 1,000 referrals to the juvenile court result in the transfer of the case to the criminal court. However, we noted earlier that in some jurisdictions there are statutory provisions permitting the waiver of a juvenile to criminal court without the agreement of the juvenile court (Snyder & Sickmund, 1999).

Since 2001, there has been a drop in the number of juveniles who are arrested by police agencies, especially for violent offenses; the overall number of cases referred to the juvenile court also declined but not as much as the decline in arrests. American juvenile courts handled 3 times as many cases in 2010 compared to 1960; however, this growth in the workload of juvenile courts has slowed since the mid-1990s. The juvenile court continues to process a very large number of young people for minor drug crimes and for violations of probation (Sickmund & Puzzanchera, 2014, pp. 152–153). Whereas the number of males in juvenile court has been going down over the past two decades, the number of females in juvenile court for various offenses has declined more slowly or even increased for both very serious and nonviolent offenses (Sickmund & Puzzanchera, 2014, p. 154).

Most youths who are adjudicated by the juvenile court and who have their petitions sustained by the court are placed on probation or receive lesser penalties. Of all youths that are referred to the juvenile court, about 9% of these cases result in some form of out-of-home placement (Snyder & Sickmund, 1999). These data illustrate how the philosophy of utilizing the least restrictive alternative remains a core principle of the juvenile court.

Because the decision to remove a child from his or her home is such a dramatic (and costly) step, it is worth examining the process by which such determinations are made. The very first placement decision made by the juvenile justice system involves whether a youth should be held in a juvenile detention facility. Approximately 600,000 juveniles are admitted to juvenile detention centers each year. Although many of these youths spend less than 24 hours in detention centers, the average length of stay for all detained youngsters is about 15 days (Krisberg, Noya, Jones, & Wallen, 2001). Federal law requires that the holding of juveniles in police lockups be of very short duration and that youth be moved to an appropriate juvenile facility. Further, this law requires strict “sight and sound” separation of juveniles from adult offenders. The number of cases detained by the juvenile court rose by 50% between 1985 and 1998 and then dropped by 26% between 1998 and 2010. The trend for girls was comparable, although the changes were larger—an increase in detentions of 104% from 1985 to 1998. There was a 43% decline in girls sent to detention centers from 1998 to 2010. Generally, boys were more likely to be detained than girls. Older adolescents were more likely to be detained than those under age 15, and youth of color, especially African American young people, were more likely to be detained than white youngsters (Sickmund & Puzzanchera, 2014, pp. 162–163). These disparities in the treatment of females and minority youngsters are discussed in more detail in later chapters.

Initial detention decisions are typically made by intake workers. While there are some states that define general criteria for detention, there is often very wide latitude given to the juvenile justice system. Unlike the adult court system, juveniles may be detained for their own protection, as well as to maintain public safety. Juveniles do not have the right to post bail in most jurisdictions. Many states bar the confinement of status offenders in secure detention facilities, although there are often statutory loopholes that allow for the incarceration of youngsters who have committed status offenses. These exceptions to the ban against confining status offenders can include youths who have violated a valid court order or a youngster who is already on probation.

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In recent years, several juvenile justice systems have employed structured **risk assessment** instruments (RAIs) to assist in making detention intake decisions. These RAIs employ a limited set of variables that have been demonstrated via research to determine the risk of committing another crime before the case is adjudicated or the risk of the youth failing to make scheduled court hearings. Similar instruments have been utilized in making pretrial confinement decisions in the criminal court system since the 1950s. The primary focus of the RAI is the protection of public safety. The intake worker scores a specific case and generally follows the presumptive custody or release decision that is suggested by the RAI. Intake workers can override the presumptive decision of the instrument, but many departments require that a supervisor review and approve this override.

The use of more structured and objective detention intake instruments has led to significant declines in admissions in a number of locations (Krisberg et al., 2001; Schwartz & Barton, 1994). Reducing detention admissions through the use of well-designed RAIs does not appear to endanger public safety, nor does it lead to increased failure-to-appear rates (Krisberg et al., 2001; Steinhart, 1994). Moreover, it appears that the use of RAIs can reduce the amount of racial, gender, and class bias that often enters into more subjective detention intake systems (Wiebush, Baird, Krisberg, & Onek, 1995).

In most locales, the alternatives to secure detention are fairly limited. Intake workers either decide to hold the youth pending a court review or they generally release the child to a legal guardian. More recently, a range of additional alternatives to detention have been attempted. For example, some jurisdictions have employed electronic monitoring devices that allow the probation department to determine if the minor is at home during specified hours. Other locales have funded day reporting programs, in which the youth lives at home but is expected to show up daily at a program, usually after school. Detention alternatives may also involve intensive home-based visits by probation staff or by a designated community-based agency. For youths who do not pose a threat to public safety but need a safe place to live temporarily, some juvenile courts have established nonsecure shelters where the youngster can stay until the court proceedings are completed. Research has demonstrated that properly implemented alternatives to detention are considerably less costly than secure confinement, and youths placed in alternatives make their court hearings and do not commit many new offenses while they are living at home (or in the community) awaiting the final disposition of their cases. In fact, well-designed alternatives can actually reduce failures to appear and pretrial crimes because youths in these programs are in greater contact with court personnel in the preadjudication period. Youths who are initially detained are often released before their court hearings are completed and may reoffend, even though they had been initially incarcerated (Krisberg et al., 2001; Schwartz & Barton, 1994).

Reducing the number of youngsters who are inappropriately incarcerated during the preadjudication period is desirable for a number of reasons. As noted earlier, the decision to detain is expensive and often creates crises within families trying to reconcile differences and reunite. Minors who are detained pretrial are more likely to be placed out of their homes after their cases are disposed (Schwartz & Barton, 1994). While this correlation may be a function of the severity of the offense or the past delinquent history of the child, there is some evidence that the initial decision to detain is a self-fulfilling prophesy in that court officials assume that detained youths must be more serious threats to public safety.

Too often, detention centers do not have effective custody **classification systems**, so that minor offenders may share the same living unit with more aggressive and criminally sophisticated youths. Many detention centers are dominated by gang conflicts and violence. Little in the

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way of treatment or education takes place in most secure detention centers. Youngsters in detention do “dead time.” There are few medical, behavioral, or mental health services available to children in detention. Youths with serious health issues often deteriorate in these stark settings (Hartney, Wordes, & Krisberg, 2002). Most progressive thinkers in the juvenile justice system view detention as a necessary evil to be limited as much as possible.

As problematic as the conditions in juvenile detention centers are, the practice of some jurisdictions of putting minors in adult jails is even more dangerous. Historically, minors placed in adult jails have experienced much higher rates of violence and sexual exploitation than youths placed in specialized youth facilities. The suicide rate for juveniles in jails is much higher than youths in juvenile detention centers.

The passage of the federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) was, in part, motivated by an effort to end the abuses suffered by children who were held in adult jails and police lockups. At the time of the enactment of the JJDPA, it was estimated that nearly 500,000 minors entered adult jails each year. There were 100,000 minors admitted to jails in California alone in the early 1980s. Initially, the JJDPA sought to impose strict separation between adult and juvenile inmates. Later amendments to the law called for the complete removal of children from adult facilities. Congress allowed each state to apply its own legal definition of a juvenile. A more conservative Congress voided the jail removal standard and returned to the goal of separating adult and juvenile jail inmates, but the overall trend has been to provide more loopholes for jurisdictions that wish to continue this practice.

The national reform to reduce the jailing of children met with substantial success. By the late 1980s, juvenile admissions to jails had declined to roughly 65,000 per year (Austin, Krisberg, & DeComo, 1995). The more conservative juvenile justice policies of the 1990s led to a 35% increase in children in jails between 1994 and 1997 (Snyder & Sickmund, 1999). In 1997, of the approximately 9,100 youth under age 18 who were jail inmates, three quarters were awaiting trials or were convicted in criminal courts (Snyder & Sickmund, 1999).

The jailing of children has historically been a problem for rural jurisdictions and those locales where large distances prevent law enforcement officials from quickly transporting youngsters to juvenile facilities. However, very punitive attitudes among some judges also contributed to the dangerous practice of holding minors in adult facilities. Reformers employed a range of tactics to reduce the jailing of children. Some jurisdictions built new juvenile facilities, while others provided funding for community-based shelter facilities. A major bipartisan legislative campaign in California made it illegal to jail minors for more than 6 hours and then only for the purpose of moving them to a more appropriate setting (Steinhart, 1988). The practice of jailing children in California virtually disappeared after the enactment of this law.

Sending minors to adult prisons was not part of the national jail reform campaign. There are no federal laws prohibiting states from placing very young adolescents in state prisons if they have been convicted in criminal courts. Indeed, this practice has become much more common over the past 10 years (Torbet et al., 1996).

As we have already observed, no one knows for sure how many juveniles are transferred to adult courts. Hamparian (1982) estimates that in 1978 there were more than 9,000 youths transferred to criminal courts by juvenile courts, another 2,000 cases moved to adult courts by prosecutors, and more than 1,300 minors prosecuted as adults due to statutes that excluded certain offenses from juvenile court jurisdiction. Later estimates from a variety of sources suggest that as many as 200,000 youths under age 18 are tried in adult courts (Krisberg, 1997).

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The National Correctional Reporting Program found that there were nearly 7,400 persons under age 18 who entered prisons in 1992 from the 37 states participating in that national data system (Strom, 2000). These minors represented about 1% of all prison admissions from these states. These youngsters were predominantly African American males (58%) and were typically 17 years old at the time of their prison admission. About 47% of these youths were convicted of violent crimes, and 53% were charged with drug offenses or property crimes (Krisberg, 1997). Youths under age 18 who enter prison receive longer sentences and actually serve 3 times as long in prison compared to adults convicted of similar offenses. Howell (1997) notes that juveniles in prisons are more likely to get involved in disciplinary problems that extend their prison stays, and they serve a very large proportion of their sentences in prison administrative segregation units.

Although there are many studies of the process through which juvenile courts select cases to transfer to criminal courts, virtually nothing is known about how prosecutors choose cases to file directly in criminal courts or how laws restricting the jurisdiction of the juvenile court are actually enforced. Howell (2003) found 38 studies of judicial waiver that sought to account for the decision-making process. He found that legal factors such as severity of the crime and prior record influenced the waiver decision. Howell also found that race, the age of the offender, victim-offender relationships, and local juvenile court practices exerted strong effects on the decision to transfer youngsters to adult courts. For example, compared to white minors who were charged with the same offenses, African American youths had significantly higher rates of transfer for drug crimes and violent offenses (Snyder & Sickmund, 1999). Frazier (1991) finds clear evidence of racial differences in the use of prosecutorial discretion to file juvenile cases in adult courts in Florida. Eigen (1972) reports that African American teenagers who murdered white victims were much more likely to be tried as adults than as juveniles in Philadelphia. Singer and McDowall (1988) show how New York State's tough laws on trying juveniles as adults were selectively enforced in a number of different New York counties. Krisberg (2003) illustrates how racial bias and inadequate legal representation can propel minority youngsters into the adult criminal court system.

The decision to remove juvenile offenders from the juvenile justice system constitutes a very dramatic change in a young person's legal status. We noted earlier that juveniles in prisons are less likely to receive treatment services, they are more likely to be victimized by older inmates, and they spend large parts of their incarceration time in solitary confinement units (Forst, Fagan, & Vivona, 1989; Howell, 2003). Transfer decisions, however, have even more stark consequences for young offenders. For example, no juvenile court permits the imposition of capital punishment, but youths who are 16 and older and are tried in criminal courts may be put to death. In 1998, there were 76 death-row inmates who committed their crimes before the age of 18. Forty percent of these cases were in just two states—Texas and Florida. The United States is virtually alone among countries in the developed world that permitted juveniles to be put to death (Streib, 1987). In successive cases such as *Thompson v. Oklahoma* and *Roper v. Simmons*, the U.S. Supreme Court has effectively ended this discredited practice.

In the last few years, we have witnessed ever younger adolescents being tried as adults and sent to state prisons. The tender age of these prison-bound youths has shocked the conscience of some, but there are the beginnings of a national reform movement to stop this policy (Amnesty International, 1998; Daugherty, 2015). There has been some limited progress to end this practice, but federal and state laws continue to support the wider use of transfer procedures.

Case Study: The Current Juvenile Justice System

Gerald Gault was a 15-year-old who was confined in an Arizona juvenile corrections facility for nine years. It was alleged by the police that he was making an obscene phone call. Mr. Gault claimed that he was calling his mother. There was no direct witness to this alleged crime. There was no formal trial and no transcript of the hearing. The youth was sent by the juvenile court to a juvenile corrections facility where he stayed for almost a decade.

Gault challenged the constitutionality of his court hearing, but the State of Arizona claimed that the supposed benign and treatment-oriented philosophy of the juvenile justice system permitted states to use very informal and flexible procedures. The U.S. Supreme Court disagreed and pointed out the fact that this institution had guards and custodial staff and that Mr. Gault was housed with other young people who had committed far more serious crimes, and that he was at risk to be seriously assaulted.

Summary

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There is major variation among the states and even within states with regard to the structure and operation of the juvenile justice system. Previously, my colleagues and I referred to this situation as "justice by geography." Most states set the upper age boundary of original jurisdiction of the juvenile court at 18, but this age limit can be as low as 16 years old in some states and as high as 25 years old in others. Juvenile justice systems have become more like criminal justice systems over the past years, but there remain major differences between the two. Unlike the adult system, the juvenile justice system is guided by a philosophy of rehabilitation and child protection. Juvenile justice systems are more focused on preventive practices and actively try to divert young people from the formal court process. The criminal justice system has a lesser emphasis on diversion and principally pursues prevention through the notion that its penalties serve as a deterrent to potential offenders.

Most cases enter the juvenile justice system through police referrals, but schools, social agencies, and parents also bring cases to juvenile court. Most communities operate juvenile intake units that evaluate individual cases and attempt to find alternative methods of resolving the immediate issue. Of youths brought to intake units, slightly more than one half go on to formal court hearings. Discretionary decision making is a core part of how the juvenile justice system operates. Much of the research on juvenile justice has focused on the determinants of these decisions.

Increasingly, states have enacted more ways to transfer young people to the criminal courts. This is a very controversial trend, and there is a great deal of research suggesting that trying very young people in criminal courts is bad public policy. For example, no juvenile court can impose the death penalty, but juveniles transferred to adult courts can receive capital punishment.

Review Questions

1. Compare and contrast ways in which the criminal justice and juvenile justice systems work.
2. What are the main findings of research on how decisions are made in various stages of the juvenile justice process?
3. What are the presumed benefits and problems of transferring youths from the juvenile justice system to the adult system?

Internet Resources

The National Council of Juvenile and Family Court Judges is the preeminent source of information on the operation of the juvenile court.

<http://www.ncjfcj.org>

The Vera Institute of Justice is a leading resource on research and policy on the adult and juvenile justice system.

<http://www.vera.org>

The Annie E. Casey Foundation is the leading philanthropy that focuses on juvenile justice issues.

<http://www.aecf.org>

Sage Publications is the leading publisher of texts and journals on crime and delinquency.

<https://us.sagepub.com>