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# Juvenile Offenders

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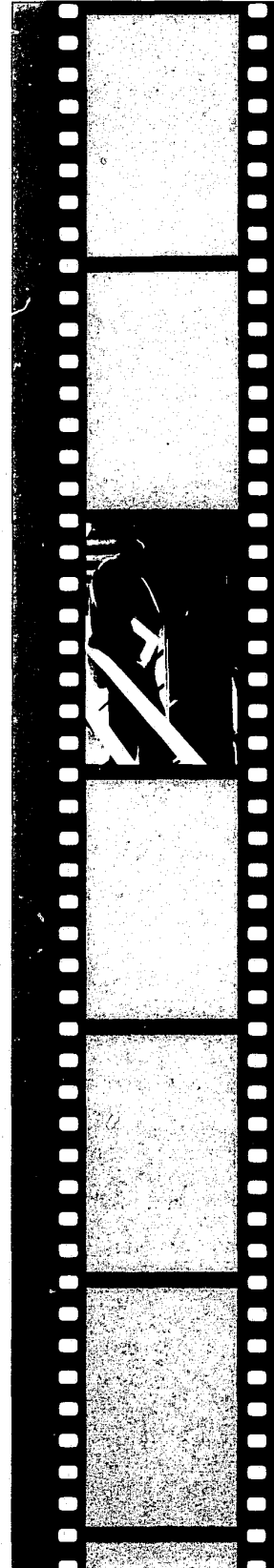
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**Moderator: James Q. Wilson, Professor of Government,  
Harvard University**

**Guests: Barry Feld, University of Minnesota Law School  
Peter Greenwood, Rand Corporation  
Gladys Kessler, Judge, D.C. Superior Court**

Your discussion will be assisted by information outlining the major differences between the juvenile and adult systems, summarizing major recent criticisms of the juvenile system, examining the proposed reforms for handling juveniles more like adults, and reviewing relevant empirical evidence.



## Evolution of the Juvenile Court

The movement toward treating juvenile offenders, particularly serious or chronic ones, more like adult criminals is part of a broad attack on the traditional juvenile justice system. The juvenile court was founded at the turn of the century as a specialized institution for dealing with dependent, neglected, and delinquent minors. In its brief history it has received both acclaim and scorn.

The first juvenile court was founded in Chicago in 1899. Within a decade juvenile courts had been established in most States. The new court represented one aspect of a broad, progressive movement to accommodate urban institutions to an increasingly industrial and immigrant population, and to incorporate recent discoveries in the behavioral, social, and medical sciences into the rearing of children. The juvenile court was also part of another philosophical movement that has been termed "the revolt against formalism"—a movement reflecting the ultimate pragmatic philosophy: "It's all right if it works."

In juvenile court, children were not to be charged with specific crimes. The central language of the criminal law—accusation, proof, guilt, punishment—was replaced by terms from the social worker's vocabulary—needs, treatment, protection, guidance, supervision. It did not matter whether a child came into the court because of neglect or an act of delinquency; almost any behavior not reflected in the utopian models of childhood could be labeled delinquent. The court's intervention, guidance, and supervision were presumed to be required and supposed to be benevolent.

The roots of the juvenile court sprang from concepts of civil rather than of criminal justice, specifically from the medieval English doctrine of *parens patriae*, which permitted the Crown to interrupt or supplant natural family relations whenever a child's welfare was threatened. The new theory underlying the juvenile court, which has remained dominant for most of this century, rested on three premises:

1. Childhood is a period of dependency and risk in which supervision is essential for survival.
2. The family is of primary importance in the supervision and training of children, but the state should play a primary role in the education of children and intervene whenever the family setting fails to provide adequate nurture, moral training, or supervision.
3. When a child is at risk, a public official is the appropriate authority to decide what action is in the child's best interest.

Originally, four basic characteristics distinguished the juvenile court system from the criminal courts: informality in procedures and decorum; a separate detention center for juveniles; contributory delinquency statutes that encouraged the judge to punish adults, primarily parents, who actively contributed to the delinquency of juveniles; and the use of probation.

## Changes in the Juvenile System

Today these distinguishing features are considerably blurred. The informality is largely gone. Juveniles sit with their lawyers like adult defendants. Juvenile hearings or

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trials proceed along the same lines as criminal trials. The rules of evidence and rights of the parties are about the same, except that juveniles still do not have the right to a jury trial or to bail.

The separate detention centers remain. Separateness, in fact, is now the principal distinguishing characteristic of the juvenile system: separate detention, separate records, separate probation officers, separate judges, even separate funding agencies for research.

And finally, probation is now a standard feature of the adult courts. The distinguishing feature of probation in the juvenile court is its role in screening arrests made by the police. Originally, the prosecutor had no role in a juvenile hearing; a delinquency case was entirely handled by a probation officer. Eventually, as the appellate courts became more demanding about due process in juvenile proceedings, the involvement of the prosecutors increased. However, in most States probation officers still screen juvenile arrests and decide when the prosecutor should file a petition. Several States have now eliminated this function and many prosecutors would like to see it discarded completely.

The principal features that distinguish current juvenile delinquency proceedings from adult criminal proceedings can be summarized as follows:

1. **Absence of legal guilt.** Legally, juveniles are not found guilty of crimes but are "found to be delinquent." Juveniles are not held legally responsible for their acts. Juvenile status, like insanity, is a defense against criminal responsibility. It is not, however, an absolute defense because of the possibility of waiver to criminal court.

2. **Treatment rather than punishment.** Whatever action the court takes following a finding of delinquency is done in the name of treatment or community protection, not punishment, as is the case for adult felony offenders.

3. **Absence of public scrutiny.** Juvenile proceedings and records are generally closed to the public. What goes on in court is presumed to be the business only of juveniles and their families. This position clearly has its roots in the early child-saving mission of the court. Hearings for serious juvenile offenders are now being opened to the public.

4. **Importance of a juvenile's background.** Juveniles' needs and amenability to treatment can, it is widely presumed, be deduced from their social history, prior behavior, and clinical diagnosis. This presumption is used to justify the wide discretionary powers granted to probation officers in screening petitions, to the court in deciding fitness and making dispositions, and to youth correction agencies in deciding when a ward should be released.

5. **No long-term incarceration.** Terms of confinement for juveniles are considerably shorter than those for adults.

6. **Separateness.** The juvenile system is kept separate from the adult criminal justice system at every point, from detention at arrest to the identities of the officials who handle the case in court, and in subsequent placements as well.

7. **Speed and flexibility.** Delinquency cases are disposed of more quickly than comparable adult criminal cases, and the juvenile court judge has a broader range of disposition alternatives.

## Current Dissatisfaction With the Juvenile System

The juvenile system does not lack critics. Conservative critics, focusing on public safety, fault the system for giving serious offenders too many chances on diversion or probation and for imposing terms of confinement that are too short. These critics often characterize juvenile facilities as country clubs and argue that some juveniles should be confined in more punitive settings.

Liberal critics, concerned with the problems of juveniles and anxious to protect them from unwarranted State intrusions, fault the system for being too tough. Where conservative critics use the evidence of "no rehabilitative effect" to argue for more explicitly punitive sanctions, liberals use the same evidence to argue for less State involvement altogether. Liberals generally support the view that subjecting juveniles to confinement only further criminalizes them, no matter how benign the treatment.

Another liberal group, heavily represented by defense attorneys and other youth advocates, deplores the lack of adequate procedural protections for juveniles. This group argues that many young people are "railroaded" through a system that offers no adequate protection of their rights.

Among practitioners, criticisms and suggestions for reform tend to reflect individual agency biases. In general, police and prosecutors want tougher sentencing. Probation officials want to preserve some group of juveniles over whom they can employ their traditional authority to focus on the "needs" of the child, perhaps through a special court set up to handle the less serious delinquents. Corrections officials, interested in controlling the behavior of juveniles in their charge, want to play a greater role in deciding whom they must accept and how long they are to be kept.

## Proposals for Reform

The movement toward treating juvenile offenders more like adults began with the "due process" reforms in the late 1960's and included, in the 1970's, the Federal effort to deinstitutionalize status offenders, juveniles who had not committed crimes but were "beyond the control of their parents" or otherwise in apparent need of supervision. The current trend toward sentencing serious and chronic juvenile offenders like adults is a reflection of the same movement.

The first major attack on the body of juvenile court law, which had developed without much controversy during the first half of the 20th century, was aimed at the lack of procedural protection. Supreme Court decisions in the cases of *In re Gault* and *In re Winship* struck down the juvenile court's reliance on informal factfinding. They provided juveniles charged with crimes all the procedural protections held by adults, except the rights to bail and jury trial. For instance, juveniles were provided notice of charges, right to counsel and to cross-examination of witnesses, and protection against self-incrimination and unlawful searches.

The next major wave of reform, reflecting the liberal agenda of the 1967 President's Commission on Law Enforcement and the Administration of Justice, involved efforts to keep status offenders out of juvenile justice institutions. Prior to this movement, many detention centers and juvenile training schools contained a substantial proportion of youths whose only "crimes" were their inability to get along with their parents. The movement to deinstitutionalize status offenders in a sense granted adolescents the same rights to leave home or to ignore their parents' wishes as adults have; it helped further the notion that children should be treated legally as if they were adults.

The removal of status offenders and minor delinquents from juvenile institutions resulted in dramatic shifts in the perceived role of the institutions and in the characteristics of the people within them. No longer concerned with "out of control" youths whose most offensive behavior was talking back to adults or disobeying their orders, juvenile institutions became increasingly filled with hardcore, chronic offenders for whom rehabilitation and community readjustment were seen as highly optimistic goals. These perceptions about the futility of treatment were given added emphasis by a number of critical reviews of the "treatment" evaluation literature purporting to show that most treatment programs had negligible effects on recidivism rates; and by a line of research, started by Wolfgang, Figlio, and Sellin in their Philadelphia Cohort Study, showing that a small nucleus of chronic offenders (18 percent of all those arrested as juveniles) accounted for a disproportionate share of all juvenile arrests (52 percent).

## Why Do Many Critics Think Juveniles Should Be Treated More Like Adults?

There are several reasons:

1. Juveniles as a group account for a large fraction of the crime rate—40 percent of all felonies in 1980, at least as measured by arrests.
2. Some juveniles continue to commit serious or frequent crimes in spite of extensive efforts to rehabilitate them.
3. The juvenile justice system is limited in its capacity to punish and to incapacitate.
4. Officials in the adult criminal justice system are more visibly accountable to the public for their action than those in the juvenile justice system.

## What Kinds of Reforms Have Been Proposed?

Proposals range from instituting more adult-like procedures in the juvenile system, such as removing confidentiality restrictions on media accounts of juvenile proceedings, to removing whole categories of offenders from the system and treating them as adults.

The maximum age jurisdiction of juvenile courts is set by State laws and varies from the 16th to the 19th birthdate, with the 18th the standard. Although many suggest lowering these age limits in States where they are the highest, there is little serious movement in this direction.

The more typical method for moving juvenile offenders to criminal courts is through "waiver" or "removal" procedures. For some categories of offenses, if certain conditions are met, jurisdiction over juvenile offenders can or must be waived to criminal courts. Typically, in States where the maximum age jurisdiction of the juvenile court ends at the 18th birthdate, jurisdiction can be waived only over juveniles who have passed their 16th birthdate. The types of offenses eligible for waiver include homicide, rape, aggravated assault, arson, and robbery with a firearm. If waiver is not mandatory, most waiver statutes require the court to consider whether the youth is "amenable to treatment" within the juvenile system and whether the system will have jurisdiction over the juvenile for long enough for treatment to be practicable. The recent trend in many States is to increase the list of offenses subject to waiver, to decrease the age limit for cases in which waiver can be applied, and to make the waiver decision presumptive or mandatory.

## What Do You Accomplish by Treating Juveniles More Like Adults?

At a bare minimum, juveniles who are prosecuted in criminal courts can be sentenced to longer terms in more secure and punitive institutions. They have the right to a jury trial. And records of the proceeding are more open to public scrutiny.

Comparisons between the disposition patterns of juvenile and adult courts are often misleading because the two courts deal with such different types of individuals. Most juvenile cases, which involve first or second time offenders accused of minor offenses, are settled informally. Adult cases are usually more serious. Fewer than 20 percent of all juvenile arrests result in findings of delinquency, compared to a 50-percent conviction rate for adults, but these percentages can be misleading. Studies that take into account such things as age, prior record, and offense find that, for the more serious offenders, juvenile and adult courts have similar conviction and incarceration rates. The major difference between the two systems is in the length of the terms imposed: criminal courts occasionally impose very long terms. Theoretically, criminal courts should sentence more harshly than juvenile courts, but there are reasons to believe this may not happen in every case that could be waived. Juveniles who are subject to waiver are the most serious offenders that a juvenile court judge sees and therefore may receive the harshest available sentence. However, the same offenders appearing in a criminal court may look much less serious when compared to the older, more hardened offenders with whom a criminal court judge must typically deal.

Studies of the impact of recent waiver statutes have produced inconclusive results. Some juveniles whose cases are waived to criminal court are sentenced more leniently than they would have been in juvenile court. Since the criminal court prosecutor must make an independent evaluation of the strength of evidence, some cases are dropped after the decision has been made to waive them.

In many States, even when juveniles are tried in criminal court and convicted of the charges, they may still be sentenced to a juvenile or youthful offender institution rather than to an adult prison. The laws may allow them to be transferred to an adult prison when they have reached a certain age.

Aside from the waiver or age-jurisdiction issue, there is movement within the juvenile justice system to treat juveniles more like adults. Some of this activity is clearly in response to the pressures for waiver reforms, including a call for more frequent use of waiver. One of the steps is toward the use of sentencing guidelines in making placement and in determining time to be served. Sentencing guidelines, such as those developed by the State of Washington, constitute a move away from a focusing on the needs of the minor toward the more modern concept of just deserts—that the punishment should fit the crime. The introduction of punishment considerations into juvenile sentencing is an attempt to hold juveniles accountable in the same way adults are held accountable.

Records and confidentiality constitute another area in which traditional distinctions between juvenile and adult criminal proceedings are breaking down. Because of heightened interest in chronic offenders, better juvenile criminal history systems are being established. The information thus generated is increasingly being made available to criminal court officials when juveniles are charged as adults.

The trend to treat serious juvenile offenders more like adults is a natural reaction to some of the outmoded concepts of

the original juvenile courts and to the much higher levels of violence exhibited by some modern youth. Because juvenile and criminal court systems are both responding to some of the same new theories or concepts, the two systems are tending to become more closely aligned. Rehabilitation, the principal point of departure for the original juvenile system, now plays a far less critical role. Notions of deserved punishment, incapacitation of chronic offenders, and sentencing guidelines have become the common concerns of both systems.

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## Discussion Questions

1. One purpose of the juvenile courts is to provide assistance to the juvenile offender. Are they doing their job in this respect?
2. Should communities consider juvenile programs investments for the future?
3. Will adult criminal courts provide the kind of attention, care, and control juveniles really need?
4. Do you think the movement toward treating juvenile offenders more like adult offenders is desirable?
5. Should a 15-year-old who commits a serious crime like rape or armed robbery be dealt with any differently from a 22-year-old who commits an identical offense? If you need more information to be able to answer that question, what information do you need, and why do you think it important to know?

**END**