

Should Teens Who Commit Serious Crimes Be Tried and Sentenced as Children or Adults?

Four kids, four crimes. Two were sent to adult court, two treated as juveniles.
Read their stories. How would you decide?

MANNY



" . . . I am only 18 years old. I plan to live until I am 50, I'm not perfect. I don't know, I don't think I'm going to make it, you know? I don't think I'm going to stay out for good."

-MANNY

In the fall of 1999, when he was 17, Manny and two other gang members attacked a family in his neighborhood. One of the victims was six months pregnant. The prosecution says she was hit repeatedly in the stomach with a baseball bat. Four men were assaulted, two of them stabbed. Manny was arrested and brought to court on four counts of attempted murder.

Manny comes from one of San Jose's roughest neighborhoods, and is a member of the Hispanic Norteño gang. His childhood was difficult; he grew up without his father and started running the streets and fighting in fourth grade. He has adopted the ethos of the streets, and believes that violence is sometimes necessary to achieve the respect of his peers. He says, "If someone hits you, you got to defend yourself . . . By just sitting there and turning the other cheek , you don't stick up for yourself, you just get rolled on, you don't have no self-pride for yourself."

The 1999 attack was his second violent felony; at 14 he pled guilty to rape in juvenile court. Given this history, the District Attorney believed that he had all the hallmarks of a kid who belongs in the adult system, and petitioned the court to try him

as an adult. In criminal court, Manny could receive more than 20 years in prison if convicted as charged. Under California law, there are five criteria the juvenile court must consider when determining whether to certify a child up to the adult system: the level of the offender's criminal sophistication, whether he can be rehabilitated within the time the juvenile court has to work with the minor, previous delinquent history, the success of prior attempts at rehabilitation, and, finally, the seriousness and gravity of the crime.

A Santa Clara County probation officer, working independently of the prosecution and defense, prepared a fitness report for the court based on the five criteria. He found Manny to be fit for the juvenile system on the first four counts. He believed that the system could have done a better job of rehabilitating Manny after the rape incident. He served only 56 days at the Juvenile Ranch because of good behavior, and did not receive any sexual offender counseling while serving his sentence or when he returned home. Given this, the probation officer found Manny fit under the criteria of previous attempts to rehabilitate him. He did find him unfit on the criterion regarding the seriousness of the crime, however.

Ultimately, the court agreed. Despite evidence that Manny had not been the one to hit the pregnant woman, Judge LaDoris Cordell found him unfit on the final criterion, the seriousness of the crime. In her ruling, she said, "There is no evidence of any circumstances that would tend to mitigate the gravity of

the offense. It was clearly under any kind of reading a vicious attack." Under California law, since Manny was 17, he must be sent to adult court if found unfit on any of the five criteria. His one reprieve was being allowed to stay in Juvenile Hall pending the outcome of his adult trial.

In the summer of 2000, Manny pled guilty to seven counts of assault with a deadly weapon. He now has two adult violent felony convictions or "strikes." If he commits another felony--violent or nonviolent -- he could be sentenced to life in prison under California's "three strikes" law. He is not hopeful about his chances of remaining out of prison for life. He says, "It might as well be a done deal. Two strikes. . . . I am only 18 years old. I plan to live until I am 50, I'm not perfect. I don't know, I don't think I'm going to make it, you know? I don't think I'm going to stay out for good." On January 22, 2001, Manny was sentenced to nine years at state prison.

SHAWN

On Christmas night 1998, in the affluent neighborhood of Los Altos, California, 16 year-old Shawn attacked his sleeping father, stabbing him repeatedly in the arms, head and neck with a knife. The reason for the attack remains unclear. Though there had been tension in the family over Shawn's marijuana use and expulsion from school, his family says that his relationship with his father had not been a violent one.

Shawn himself claims to have no memory of stabbing his father. His mother describes waking up to her husband screaming; his father remembers being unable to identify his attacker at first, then realizing it was his son and eventually tackling him to the ground. Police and medical help arrived, and both were taken to the hospital. Shawn didn't realize what had happened, he says, until a police officer approached him at the hospital: "The cop . . . said, 'You're gonna get charged with attempted murder, and if he dies, you're gonna get charged with first degree murder.' I said, 'If who dies?' He said, 'Your dad.' And it was then that I knew."

Shawn was charged with attempted murder. Prosecutors filed fitness papers to try Shawn in adult criminal court rather than in the juvenile system. If convicted in adult court of attempted murder, Shawn would have faced a mandatory sentence of 15 years to life.

After much discussion with his parents, Shawn decided to plead guilty to the charges and receive his punishment from the juvenile system, rather than risk the substantial prison sentence. By staying in the juvenile system, he avoided an adult criminal record, and would get a shorter sentence since the juvenile system could only hold him until he was 25.

Prior to this incident, there had been signs that Shawn was troubled. He had been arrested and charged with strong-arm robbery when he and a friend stole money from a smaller boy. Shawn says his drinking had escalated into serious marijuana use, and he was asked to leave two schools. At the juvenile court dispositional hearing which would determine his sentence, it became clear that there were serious problems in the household which had contributed to Shawn's drug use and troubled behavior. His mother had a drinking problem. Shawn told FRONTLINE that it was she who had introduced him to drinking at an early age. His father was often away on business trips, leaving Shawn and his mother alone.

In an effort to understand Shawn's behavior, the court ordered a psychological evaluation. The report found no significant psychiatric disturbances, but instead it proposed that the attack stemmed from "an

altered state of consciousness" coming from "a disturbance of sleep." Based on this report, Shawn's public defender Bridgett Jones prepared a stunning new argument in his defense: he was sleep walking when he attacked his father, and therefore did not intend to do it.

At the hearing, attorneys for each side presented sleep research experts. Dr. Rafael Pelayo, of Stanford University's sleep clinic, agreed that "parasomnia" was a plausible explanation for Shawn's behavior. In his interview with FRONTLINE, he noted that family dysfunction often plays a role in parasomnia in children. The prosecution's expert disagreed, saying that parasomnia was not a likely explanation for the attack

Since Shawn's case was so unusual and the testimony in such conflict, Judge Thomas Edwards postponed his determination of Shawn's sentence and sent him for a 90-day evaluation at the California Youth Authority, the state's most restrictive juvenile detention facility. During his first week there, Shawn says he was pressured by a white gang member to force his cellmate to perform oral sex. He says he didn't want to do it, but complied because he was frightened for his own safety.

When Shawn returned, Judge Edwards handed down a sentence that surprised some people in court. After the incident with his cellmate, it seemed likely that Shawn would receive at least some time in the California Youth Authority. However, Judge Edwards ruled that Shawn remain in the Santa Clara County's Juvenile Hall until he turns 19. In addition, Shawn would be allowed to leave the facility during the day to attend community college classes, private counseling sessions, and Narcotics Anonymous meetings. Eventually he was even allowed to go home for meals with his family.

The prosecutor was surprised, and troubled, by the outcome. He said, "At the end, I think everyone in that courtroom was ready to fall out of their chairs. And I think that it was a tremendous injustice that was done in this case. Not just the fact that we didn't treat this individual the way that he should have been treated - in my opinion - but that we have created the perception in the community that certain people are going to be treated differently in the system, because of where they come from."



shawn on the outside

He is not the only one. Many of the kids serving time in Juvenile Hall think Shawn got a break, and that had he not been white and from an affluent neighborhood, he would have received a much harsher sentence. Even his attorney Bridgett Jones says that this case reminds her: "There is inequity in the juvenile justice system . . . There is inequity in terms of race, there is inequity in terms of socioeconomic status. . . You know it and you see it, but to actually have a case like this, it really brings it to the forefront."

Whether Shawn will take advantage of the break he has been given remains to be seen. At the end of October he got into trouble again--he smoked pot. When he thought his probation officer knew and had proof, he took off. When he was arrested four hours away in another town, he was high and belligerent, and officers had to use force to restrain him. In February Judge Edwards is due to sentence him for the probation violation. He can send him to the California Youth Authority, or sentence him to additional time in a local facility.

MARQUESE



"It's a very profound thing when you have such a young man not really seeing anything in either his immediate family or his community that he can become invested in. . . Unfortunately, the most stable environments he ever had were in institutions."

-DEFENSE ATTORNEY GILDA VALEROS

Seventeen year old Marquese is what members of the juvenile justice system call a "frequent flyer." He has been in and out of the system for years, and has seven juvenile felony convictions, all theft-related. He has been on probation and spent time in juvenile hall, at the juvenile camp, and at the California Youth Authority. He was most recently charged with auto theft and residential burglary.

Because of his repetitive criminal behavior, the fact that he was less than two months short of being 18, and the fact that he re-offended while on parole from the California Youth Authority, prosecutors sought to have Marquese tried in adult court for his latest offenses. At his fitness hearing, one of his probation officers described him as a "career criminal," who despite receiving multiple rehabilitative services over the years continues to break the law as soon as he is released from detention. Defense Attorney Gilda Valeros disagrees. She sees him as exactly the sort of kid that the juvenile system could help, primarily because of his personality. He is still very young emotionally, she says, and very dependent on adults for guidance and approval. He is very bright, and has does well when he is in an institutional setting: he does not cause trouble, does his school work, and does not participate in gang activities. He reoffends when he is released, she believes, because he is not

given adequate support and supervision. She speculated that, in fact, he may unconsciously be trying to get caught in order to be brought back into the system, which is the safest place he has known. She said, "It's a very profound thing when you have such a young man not really seeing anything in either his immediate family or his community that he can become invested in, legitimately and productively and legally. . . . Unfortunately, the most stable environments he ever had were in institutions."

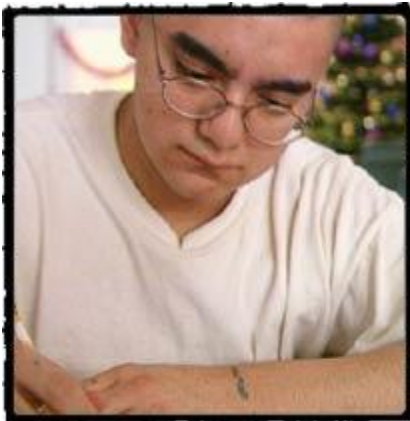
Marquese's mother has serious substance abuse problems, and some of Marquese's younger siblings had been temporarily removed from her care by the state. (By the time this happened, Marquese was already in the juvenile justice system, serving time in facilities.) She was in and out of jail during his childhood, and says that she taught Marquese to steal when he was young. She told FRONTLINE that her drugs of choice were heroin and crack cocaine. At the fitness hearing, a probation officer described their home as "a crack house." Despite all this, Marquese loves his mother very much and is very protective of her.

At one point, Marquese was paroled from CYA to the custody of his aunt. She was a young woman in her twenties and had also served time in the CYA - for murder. At the fitness hearing, Valeros argued that this and other placements were indicative of how the system had failed Marquese over and over. Because he did so well and was so cooperative with authorities while institutionalized, she believes he repeatedly fell through the cracks and did not receive the assistance he needed to reenter society in a productive way.

Prosecutors disagreed vehemently with her characterization of Marquese, claiming that his repeat offending indicated that he was obviously not going to be rehabilitated by yet another stint in the juvenile system. His fitness hearing dragged on over a span of one month, one of the longest running fitness hearings that anyone involved could remember.

Judge Nancy Hoffman eventually determined that Marquese should get one more chance at rehabilitation in the juvenile system. Since he was charged with a nonviolent felony, in order to be transferred to the adult system, Judge Hoffman could not find him unfit based on just one criterion. She could only send him to adult court if she found him unfit overall, weighing all the criteria set out by California law: the level of the offender's criminal sophistication, whether the minor can be rehabilitated within the time the juvenile system has jurisdiction over him or her, previous delinquent history, the success of prior attempts at rehabilitation, and, finally, the seriousness of the crime. Hoffman found that he was unfit under the first criterion of criminal sophistication, since he had planned the burglary. She also found him unfit in terms of his prior record of rehabilitation within the juvenile system, since he had reoffended so often after treatment. However, she found him fit under the remaining three criteria. In terms of his prior history she found that his criminal history was mitigated by his "horrendous childhood" during which he received "little or no guidance," and was therefore fit under that criterion. On the fifth criteria, the gravity of the offense, she found him fit. Therefore, Judge Hoffman ruled that he was still amenable to treatment within the juvenile system. Marquese was returned to the California Youth Authority and will be up for parole in the fall of 2001.

JOSE



"We looked at what was the level of participation in the assault, how criminal was he, how culpable was he. And in José's case . . . we saw that his involvement wasn't that high."

-PROSECUTOR DAVID SOARES

Fifteen year-old José's childhood was difficult: his father, a heroin addict, disappeared shortly after José was born, and his mother had problems of her own and eventually disappeared as well. And eventually, Jose became involved with a local gang. He also became a serious addict, hooked on both drugs and alcohol. In the fall of 1998 José participated in a deadly brawl. He and four other teenagers -- two of them recent immigrants from Mexico - had been hanging out in an alley, drinking. The teenagers started roughhousing and this escalated into serious fight, with the two immigrants becoming targets of the others. The skull of one of them was crushed, after being beaten repeatedly. The other escaped by scaling a fence, breaking his ankle in the process. José and his friends fled the scene as the neighbors awoke to the commotion.

José was arrested and charged with murder. Prosecutors asked for a fitness hearing to determine if he could be tried in adult court, because of the seriousness of the crime. As prosecutor Kurt Kumli explained, "He had been in the system since he was twelve years old, and he committed a crime of such violence, of such callousness, that it really begged under the statutory

scheme set out for fitness to be certified up"

Upon investigation, however, more facts began to emerge about José's case. After fleeing the scene of the assault, José and his friend had found the second victim struggling to walk with a broken ankle, and

they helped the victim to get home and clean up. It was also discovered that while José had participated in the beating, he appeared to have played a lesser role in the attack. These factors, combined with his youth and severe intoxication on the night of the incident, led prosecutors to offer José a deal. Prosecutor David Soares said, "We looked at what was the level of participation in the assault, how criminal was he, how culpable was he. And in José's case . . . we saw that his involvement wasn't that high." So José was offered a deal: he was to move to adult court and plead guilty, but to a lesser charge of involuntary manslaughter. After his plea, José was sent for a psychological evaluation at the California Youth Authority. He received a favorable evaluation in which the psychologist found that he was not likely to be a threat to public safety as long as he was sober.

The judge gave José a very big break -- sentencing him to only 208 days in Juvenile Hall. While he was there, José worked hard at school, graduating shortly before his release. He became a favorite of the staff; as teacher Joe Mangelli explained, "He did a lot of it on his own. The raw material was there. He didn't have to start from ground zero. He had a great personality and intelligence and openness, and I think the staff around here filled in the gaps for him and helped him to succeed, hopefully forever." Released from juvenile hall at 17, José now carries an adult record. As conditions of his probation, he had to cut all ties with his gang life, submit to drug tests and either find a job or go to school full time. After five months of rejections, and with the assistance of a nurse from the juvenile hall, José obtained a job with a local parks department. He enrolled in community college after the staff from juvenile hall helped him get books and a bicycle to get to class.

In late January 2001, Jose was arrested for a probation violation.



FROM BOTH SIDES OF THE BENCH

Judges and lawyers talk about some major issues confronting the U.S. juvenile justice system.

ADULT TIME FOR ADULT CRIMES

• JUDGE LaDORIS CORDELL

Until recently she served on the Superior Court of Santa Clara County, where she heard both juvenile and adult cases. A state court trial judge since 1982, she presided over Manny's fitness case.

Do you think any kid ever belongs in adult court?

Yes. . . . I have come across some young people who are so sophisticated and who have committed such heinous crimes that the adult system is the place for them to be. I haven't come across a lot, but there have been some. . . . It can happen, and it does happen. . . .



• KURT KUMLI

The supervising deputy district attorney for the Juvenile Division of the Santa Clara County's District Attorney's office, he's practiced exclusively in juvenile court for the past six years. He was the prosecutor for Manny's fitness hearing.

If we could take every kid and surround the kid with full-time staffs of psychologists and child advocates and drug and alcohol counselors, then perhaps no kid should be in adult court. But the fact is, there are only a limited number of resources in the juvenile justice system, and they can only perform a limited number of functions. To optimize those services for the kids that can benefit the greatest amount from them, you have to make the hard call, sometimes, as to whether or not the high-end offenders--and again, we are only talking about the one or two percent of kids who ever come into the system--whether those kids really are the just recipients of the resources that the juvenile justice system has available to it. . . .

• JUDGE THOMAS EDWARDS

Until recently he was the presiding judge of the Juvenile Court of Santa Clara County, a division of the California Superior Court and presided over Shawn's case. He heard between 300 and 350 cases a month.



Are there kids that don't belong in juvenile court?

Oh, sure. Yes.. I've had sociopaths in court here. I've had only a few of them, and I've been doing this for a long time. I can only really count maybe a half a dozen, and only two in particular that I would be very frightened to see on the street. But I see them from time to time.

Some people believe that no kid belongs in adult court. For one reason, they can't be tried by a jury of their peers, because people of their age are not allowed to serve. And some people would argue that, just by definition, they cannot receive a fair hearing in adult court because of that. What do you think?
They may be right.

Knowing what you know about the lack of services if a child is convicted in adult court, knowing that there aren't going to be the kinds of counseling and therapeutic and educational services available, do you feel, in essence, that you're writing somebody off when you send them off?

Oh, absolutely. Yes. It's not a good feeling. It hurts.

When you have a kid who has committed a serious offense, someone who's caused harm--most likely a crime of violence--what makes you keep them in the juvenile system?

I'll keep them if I think I can make a difference. And the difference may not manifest itself for many, many years. But if I think there is a good likelihood that we can get this kid off the path he's on and onto a better path, then it's worth the time and the effort. Even if it's a long shot, I'm willing to take



• BRIDGETT JONES

Former supervisor of the juvenile division of the Santa Clara County Public Defender's Office, she represented Shawn at his disposition.

Does any kid belong in the adult criminal system?

That's a hard question, and the reason it's a hard question is because systemically, my belief is we could do it all better. . . . I don't think a lot of adults belong in adult detention, quite frankly. I think we could do a better job with that. If you look at recidivism rates throughout the country, this punitive system is not working. It doesn't work. From one standpoint, if you lock people up for life and they never get out, I guess you could say that works in terms of public safety as to that person, but it certainly has not proven to have any impact on recidivism So we have this incredibly ineffective adult system, and now we want to take kids, and put them into what we already know is ineffective. . . . Why? Why? That makes no sense to me. We want to replicate what we're doing for adults, which we know doesn't work, for kids, when we have an opportunity to possibly impact their lives.

Now, another way of getting at that same question is that I do feel that there are people that are so damaged that they are damaged beyond repair, that there's not a good intervention that you can do to salvage them. Whatever their internal stuff is that enables them to connect in a meaningful way, it's broken. But I think that's a very small, I mean extremely small, percentage of people that I've run across, especially in the juvenile system.

WHAT WORKS?



• KURT KUMLI

The supervising deputy district attorney for the Juvenile Division of the Santa Clara County's District Attorney's office, he's practiced exclusively in juvenile court for the past six years. He was the prosecutor for Manny's fitness hearing.

...Having [been a prosecutor] now for nearly 12 years, I have seen time and time and time again kids who were lost causes turn their lives around. And 80 percent of the kids that come before us one time never come back. . . .

... Based on your experience, what works with serious juvenile offenders and what doesn't work?

There is no one answer with respect to rehabilitation for anyone. Juvenile rehabilitation is an art and not a science. What works for one kid may not work for another. And so what you try to do is to do as many things as possible, hoping that something works. Juvenile rehabilitation might be a lot like taking swings at a piñata. And the more swings you take, the better the chance is that you will hit it right and something will come out. I do think that if you take a look at the thousands of kids that I've dealt with over a decade or more, the idea is to do something that is significant early on. If you reach a kid early, chances are they won't re-offend. But with each additional entry into the system our success, our potential for rehabilitation gets slimmer and slimmer. . . .

When you talk about doing something significant early on, what tools do you have in your kit bag other than serious punishment?

Oh, there are a number of things, depending upon the age of the offender. You can modify behavior with respect to association, with respect to school attendance, with respect to alcohol and drug counseling. You can monitor behavior with respect to gang affiliation, search and seizure. You can help parents become better parents, if you are creative. You can enlist the court to set up programs that, frankly, in the past were more the province of schools and afterschool programs and churches and other community safety nets. Unfortunately, they don't seem to have the same role in society that they used to have. There are a whole of things that you can do in juvenile court that, frankly, adult court just doesn't do. . . .

We talked to some kids . . . who are locked up right now for certain acts. We talked about some of the behavior that they think led up to that. A lot of it had to do with feeling like nobody else cared about them, or feeling disrespected by everybody else unless they belonged to something bigger than themselves, and the only thing bigger than themselves that they knew about was the gang. What responses are available now that really speaks to that need?

What works is different for every kid, but the one rule that I think is applicable, after years of seeing this, is "the sooner, the better." We need to reach these kids with alternatives, with opportunities, before they start to feel that way. If we took half of the money that we spend on incarceration and put it in front-end programs to give these kids alternatives, then we wouldn't have as many back-end kids that we needed to incarcerate. And I think that is the immediate answer.

Why don't we?

I don't know. I think too often we get caught up in believing that we are in an either-or society. You either have to be in favor of programs or incarceration that they are somehow mutually exclusive, that you either have to have back-end "lock them up" money or front-end prevention money, and that somehow the two of them can't be coalesced into some sort of a master plan. And I think it's largely political. It plays upon public fears. . . .

• JUDGE NANCY HOFFMAN

Judge Hoffman served on the Superior Court of Santa Clara County, where she handled both juvenile and adult cases. Marquese's fitness case was her last case before retirement.



What does [the juvenile justice system] do well?

I think that it does well in cases that it is originally designed to deal with. The original idea was, when a kid gets in trouble and is brought into court, the judge sits down, is a friendly mentor and has a talk. The family is involved and things get better. But that's not the way the juvenile court now operates. It's very big, it's very precise. Crimes are charged: the kid didn't hit another kid, he committed an assault or an assault with a deadly weapon or a battery. All of the sudden, the minor's there in court with an attorney telling him not to acknowledge that he did a wrong, because punishment's going to be terrible. And I'm not saying the kid shouldn't have an attorney, but that's what happens when we made this system like a mini-adult system.

What would you change about the juvenile system if you were in charge?

If I were in charge, I would like to have more intervention very early on without charging crimes. Bring kids and families into court when kids are splitting from school, or not doing well. I would like to see groups within individual communities working with troubled families and youth, before they get to middle school, and before they get to high school. And if they have to come to court eventually, I would like to have had caring social workers--as much as possible, the same culture and/or the same race as the minor--out there to work with the family, to correct whatever is going on. Something is causing the minor to do things like not go to school, stay out till three o'clock in the morning, not get up for school and so on. There'd be much more intervening in the family. We intervene with a minor, but there's very little done with the family, and we're sending the minor right back in that situation.



• JUDGE THOMAS EDWARDS

Until recently he was the presiding judge of the Juvenile Court of Santa Clara County, a division of the California Superior Court and presided over Shawn's case. He heard between 300 and 350 cases a month.

If we have a failing as a society, from my very narrow, very unique perspective as a juvenile court judge in my community, we fail families. We should be helping to provide them with whatever services they need when the children are very, very young. Now, that's easy to say, and I don't mean to indict the community. We have wonderful resources, and we've got lots of money, at least in this county and in this state. But we should be front-loading those services and spending that money at the front end. And we should not be waiting for problems to become so big and so nasty that we can't do much about them at the back end. That's where we, as a society, have really made a big, big mistake. Because when we start to deal with problems when they're very small and help people become better parents in this case and families stronger and healthier, we solve all kinds of messy stuff at the back end. It just never happens. . . .

You have said that one reason you believe in rehabilitation is that you really think kids can turn around, you've seen successes. And if you see it and you hear it every day, why do you think the public doesn't see it?

Confidentiality. We operate behind a cloak of secrecy in the juvenile court system and that's set by law; it's not my decision. I have to simply obey the law the way it's written. That's another problem that we have. I think we ought to get rid of this shield of confidentiality that keeps the public scrutiny and the public presence out of the courtroom. We've got nothing to hide here. We have our successes; I'm damn proud of them.

But we also need something more important. We need the involvement of the community in what we do with their kids. All we're doing in here is trying to deal with the problems facing our community's children, and I need their help. I need their experience, I need their concern, I need their love, I need their talent, and I can't do it with the door locked. So I would like to throw the locks away and open the door and bring the sunshine of the community into my courtroom. That's what I would like.

• BRIDGETT JONES

Former supervisor of the juvenile division of the Santa Clara County Public Defender's Office, she represented Shawn at his disposition.



One of the frustrations that I truly have with the juvenile justice system is the fact that we have so many opportunities to intervene before we get to the point where someone's taking someone out, shooting them, beating them up. There's generally a track record that leads up to that, especially in gang cases. They start off doing graffiti, or they might start off doing a little hand-to-hand. They don't doesn't stick a gun in somebody's hand and say, "Go shoot them," right off the bat, at least not in my community.

So we've had opportunities to intervene and help provide some structure and help figure out what's going on with this kid or his family or her family before we get to the point where they're doing drive-bys. And that's extremely frustrating for me. When we're talking about serious offenders, who I know you're talking about in this piece, we have seen most of these young people before. They didn't just show up with a serious offense. . . . Many of these kids have grown up in detention facilities, when we could have done something with them as a community. And therein is my frustration. . . .

What's your vision of society? Is the state supposed to be everybody's parent?

No. My vision of society is that we have a community that gets involved. And the juvenile justice system can certainly help the community get involved in a better way than we have done. . . . If we could get the community engaged the way it was when I was a kid, where you did some dirt on the next street, and before you got home, Mom knew about it, because the community was engaged, they knew you. They knew who you were, and they were willing to say, "Hey, stop, maybe there's a better way to do that," or "What's going on?" To me, that's the solution. . . . The juvenile justice system is a very poor parent. A very poor parent. And yet they are tasked with the responsibility of rehabilitating children. . . .

...If you could fix it, if you could make it be the way you wanted it to be, what would you do differently?

I would focus a lot on early intervention. I would put a lot more resource on those kids that hit the system the first time coming through. I would spend more time and energy to figure out who they are and why they're there, and then provide resources. I would try to figure out what their strengths are and build upon those. I would spend a lot of time doing a lot of PR work in terms of the community, trying to connect the community and kids. There's a lot that I would do on that front end to make sure that kids don't escalate through our systems. They shouldn't be escalating. This should not be a revolving door type of system until we just get sick of it and decide, "Throw them away, it's not worth it." We have a chance to intervene.



• JUDGE LaDORIS CORDELL

Until recently she served on the Superior Court of Santa Clara County, where she heard both juvenile and adult cases. A state court trial judge since 1982, she presided over Manny's fitness case.

Do you feel that the juvenile justice system does rehabilitate youngsters?

It can. There are numbers of success stories. And there are some juveniles who don't get [rehabilitated], for a lot of reasons, and then come back into the system and at some point the system does give up. That's where we say, "You're not fit any longer to be in the juvenile system; we're going to have to move you to the adult system."

... I have had these young people come into my court charged with committing some violent acts as serious as murder, but they had not gone into the adult system, because it was a decision I made as a result of a fitness hearing that this person indeed was amenable to treatment. And in some cases--not all, but in some cases--I have been proved right. So I know that this can happen. Lives can be turned around.

...

The beauty of the juvenile justice system is that it can be applied and modified to deal with the needs of the particular juvenile. That's what the system is all about. And these kids ought to have an opportunity, if the law says they can, to be a part of that system so we save them, so they become productive. That's how society benefits. If not, fine; let's go spend a ton of money every year and let's just lock these kids up. They're going to get out one day, and they're going to be back here in our faces again, and we're going to be spending more money than ever. So it just makes sense. Let's just stop the buck here if we can, because we'll benefit, not only financially, but just in terms of having individuals in society who do well.

... What would you do differently if you were in charge? What would you change?

I'd put more money into the system, so that we would have more resources available to work with kids. . . . That's number one. Number two is that we have a system in which there are tremendous racial disparities in how kids are treated. One of the main primary ways of changing that is to change the complexion of the bench. There have to be more judges who look like the young people who come in. And that means more judges of color, more women. . . . And then it's going to take being very upfront with people in the system that this problem exists in terms of the racial disparities and getting people to deal with it. That means we have to put it on the front burner, and that means leadership. . . .

IS THE SYSTEM RACIALLY BIASED?

• JUDGE LaDORIS CORDELL

Until recently she served on the Superior Court of Santa Clara County, where she heard both juvenile and adult cases. A state court trial judge since 1982, she presided over Manny's fitness case.

A number of recent surveys have shown that there are profound racial disparities in the juvenile justice system, that African-American and Hispanic youth are more likely to be tried as adults. They are more likely to receive longer sentences, they're more likely to be in locked facilities, and on and on and on, even when charged with the same offense as whites. Do you think that that's true?

... I believe, absolutely, that what you have described exists in the system. The statistics prove it--they're there. What is hard is that if you go up to your average juvenile court judge, and that judge is the one who sends these kids off--we're the ones ultimately responsible for these statistics--that judge will look you dead in the eye and say, "I'm not unfair, I'm not racist, I'm not prejudiced. I do the best I can." And that judge is telling you the truth. . . .

But what is at play here in most cases? I'm not saying there aren't those judges who are so prejudiced and so racist; there are those. But I think, in the main, most are not. But I think what happens is that stereotypes are so embedded in the psyche of human beings that those stereotypes come to play. So that when a young black kid comes into court before a white male judge, who perhaps doesn't have any experience dealing with young black males, and this black male has on baggy pants, has an attitude, may have a tattoo, immediately a picture, a mindset comes up in that judge's head. We make assumptions; that's what stereotypes are. Assumptions get made. . . . I think, in the main, that's what happens, and I think that's what accounts for those statistics. . . .

Now, how do we solve it? How do we remedy it? One way is to increase the number of judges on the bench who are judges who look like the people who come before them. So, if I have judges who are African-American, who are Latino or Latina, who are from the Asian-American communities, they are less likely to engage in that kind of stereotyping when some young kid who is of the same background or same ethnic background comes before that judge. . . . The other is, there are judges who are white, black, whatever, who have those biases. The idea is to address those biases, to get them to address it, which means judicial training. . . . where we say, "We've got to talk about this, we've got to put it on the table and talk about stereotypes and your biases, so that when you go back to work, we change the system that we have." The numbers are astounding, shocking, and they are indeed a reflection of what's going on in the system. . . .



• JUDGE THOMAS EDWARDS

Until recently he was the presiding judge of the Juvenile Court of Santa Clara County, a division of the California Superior Court and presided over Shawn's case. He heard between 300 and 350 cases a month.

Many of the kids we've interviewed believe that white middle-class kids get a break--that they are more likely to be kept at home, they are less likely to get the stiff sentences, they are more likely to be given opportunities to continue their education. Do you think that's true?

Well, all the studies and the statistics say it is true. I know we talk about that a lot in our judges' educational workshops and conferences. I have yet to hear anybody who has a definitive answer, and I sure as heck don't. I don't know of anybody who has a solution to it, other than to simply raise the consciousness of the judges the best we are capable of doing and to try to apply the resources that we have at our disposal . . . in a fair and equal way. . . .

Some people might argue that if you have the social advantages of being white and middle class, then you deserve even less of a break. So why . . . does the system seem to be so inclined to tolerate these disparities?

It all depends on what perspective you're giving it. Probably most judges who would disagree with that statement, who would want to be defensive about it and argue with you, would say pretty much something like this: they would say that kids who come from inner cities, kids who come from economically deprived areas, are more likely to come from an ethnic group, a minority group, in our culture. They also come from areas that don't have strong neighborhood resources. Their parents do not have enough money to provide the type of supervision through a public school or a mentoring or after-school activities that a kid from an affluent white neighborhood would. So why should the system then

put the white affluent kids in custody, when the parents can do as good or a better job, spending their own money doing it?

The kids who don't have those resources, if we just turn them loose to let them go home, they'll be back on the streets running with the gangs again, getting into more trouble, and perhaps even hurting themselves the next time around. So why don't we do what we can for them in the system? And that means detaining them. A white kid goes home to an affluent neighborhood. But what the story doesn't tell you is that that a set of parents is putting out big bucks in order to do what we do through the taxpayers' dollars in the system. So there's your statistic.

So you hear all these different arguments, but you still can't lie about the figures. We have to deal with them. There is a disproportionate minority population in our custody facilities, and there shouldn't be. My solution is to front-end the whole thing and to make our communities healthier and stronger, which means that you work with the people who live in those communities, such as in our restorative justice programs that are starting to really take hold around the country. Starting to work with community based organizations and the faith community. . . .

• BRIDGETT JONES

Former supervisor of the juvenile division of the Santa Clara County Public Defender's Office, she represented Shawn at his disposition.



The system is not fair. Institutional racism is alive and well in the juvenile justice system, as it is in the criminal justice system. It's easier to identify with people that are more like yourself, so if you have judges that are predominantly from that same community, they can identify. . . . The same thing happens with people who have money versus people who don't have money--if they can demonstrate a support system that can act as a safety net or think they can act as a safety net for them on the outside, judges are more prone to buy into that.



• KURT KUMLI

The supervising deputy district attorney for the Juvenile Division of the Santa Clara County's District Attorney's office, he's practiced exclusively in juvenile court for the past six years. He was the prosecutor for Manny's fitness hearing.

You can't go into any courtroom in this state and take a look at the kids that are in custody and the kids that are out of custody and deny that there is racial disparity in the juvenile justice system.

...I think there are a number of reasons why there are racial disparities in the system. The law is skewed with respect to the social factors that are considered, in terms of making a determination of who gets locked up and who doesn't. And since it is skewed in such a way as to essentially favor more affluent kids or to punish kids that are less affluent, that has racial and ethnic consequences.

A perfect example is if a kid comes from a wealthy family where mom doesn't have to work, and another kid comes from a single-parent family. Those two kids come to court in a detention hearing. And the affluent mom says, "Your Honor, I can stay at home. I can watch my child, we can provide for all of these

services. He will never be outside of adult supervision, we will have him go to a private counselor, we will do this, we will do that, because we can afford it." And the judge says, "Sounds good to me. I will take advantage of these resources. It won't be a drain on the system. You're out of custody." You take another kid who does not come from that privileged background, who may be from a single-parent family who can't afford time off, who doesn't have extended family to watch over him. And it doesn't mean that there is no less love in that family. It's just that the circumstances can't provide for this privatization of vigilance that can be provided in a more affluent family. I think it's there.

Is it a good thing or a bad thing that this happens?

. . . I don't think that it is necessarily a bad thing for that white kid, but the problem is that it's a bad thing for that kid of color who doesn't have that access. And it's a bad thing for the system as a whole, because it creates the racial disparity. There's more to [the racial disparity] than that. We talked earlier about trying not to react with your gut . . . and I had mentioned that I try as best I can not to be subjective in my criteria. . . . Subjectivity in prosecution, defense, and the courts, and frankly even out on the street with law enforcement, is another reason that there is racial inequity in our system.

• SOURCES

The Color of Justice

This study, released by the Justice Institute in February, 2000, found that in California, African American, Latino and Asian American youth are significantly more likely to be transferred to adult court and sentenced to incarceration than white youths who commit comparable crimes. Compared to white youths, minority youths are 2.8 times more likely to be arrested for a violent crime, 6.2 times more likely to wind up in adult court, and 7 times more likely to be sent to prison by adult court.

Youth Crime/Adult Time: Is Justice Served?

This study released on October 26, 2000 by Building Blocks for Youth, found that minority youth, particularly African American youth, were over-represented and received disparate treatment at several points in the process. In the 18 jurisdictions in the study, 82% of the cases that were filed in adult courts involved a minority.

And Justice for Some

This 2000 study was prepared by The National Council on Crime and Delinquency for the Building Blocks for Youth Initiative. It concludes that "African American juveniles are overrepresented with respect to their proportion in the population at every decision point" in the juvenile justice process.

THE REASONS FOR TREATING JUVENILES DIFFERENTLY



• JUDGE THOMAS EDWARDS

Until recently he was the presiding judge of the Juvenile Court of Santa Clara County, a division of the California Superior Court and presided over Shawn's case. He heard between 300 and 350 cases a month.

Why should we treat a 14 year old offender differently than a 24 year old offender?

It depends on many, many circumstances. But very generally, the 14-year-old does not have the level of maturity, thought process, decision-making, experience, or wisdom that a 24-year-old presumably has. Secondly, a 14-year-old is still growing, may not appreciate the consequences of that type of behavior, and is susceptible to change, at least to a higher degree than a 24-year-old is. . . . I think we have a real shot at trying to straighten out the 14-year-old, and even the people who are a little bit hard-nosed in the system, such as your average prosecutor, will sometimes grudgingly admit that, with a 14-year-old, given the proper level of accountability and the proper types of programs to change their behavior, we have a chance at salvaging these kids.

But with a 24-year-old, I think the whole consensus of opinion is, "You've had your chance, you're now an adult, you've made a bad decision, you've hurt somebody, you've done it. Now you pay the price."

• JUDGE LaDORIS CORDELL

Until recently she served on the Superior Court of Santa Clara County, where she heard both juvenile and adult cases. A state court trial judge since 1982, she presided over Manny's fitness case.



If the 14-year-old engages in criminal conduct, and it's the same kind of conduct that the 24-year-old engages in, I don't think the response of society . . . should be to look only at the fact that they engaged in the same behavior, so treat them both the same as adults. That does not make any sense on its face. They have different life experiences that got them to that point. If the 14-year-old who got to that point can still benefit from having some kind of services to treat this person, to help them better have a life because they're only 14, then we ought to do it. The problem is that we're taking 14-year-olds, 15-year-olds, 16-year-olds, and we're giving up on them. We're saying, "You've committed a crime, and we're just going to give up on you. You're out of here, society has no use for you." We're throwing away these kids. And I have found, in my own experience, that there are salvageable young people who have committed some very horrible kinds of crimes, who are able to get their lives together and be productive members of society. I think it is a mistake to just carte blanche give up on these young people just because of the nature of the conduct, when there is so much more that goes into why that person got there at that point in time so young in their lives. . . .

I have had these young people come into my court charged with committing some violent acts as serious as murder, but they had not gone into the adult system, because it was a decision I made as a result of a fitness hearing that this person indeed was amenable to treatment. And in some cases--not all, but in some cases--I have been proved right. So I know that this can happen. Lives can be turned around. . . .



• BRIDGETT JONES

Former supervisor of the juvenile division of the Santa Clara County Public Defender's Office, she represented Shawn at his disposition.

I think the community understands, or should understand, that the younger a person is, the more likely it is that they can change. And the best way I've heard it put is from a victim in a very serious case, in a shooting case where this person had been maimed for life. He had indicated to this young person that shot him or was alleged to have shot him that he would rather meet up with this person ten years down the road as a graduate from a college

versus a graduate from a penal institution. Because he had the wherewithal to understand that this person was eventually going to get back out and be in our community. They don't go away. They come back. And the younger they are, the more likely it is that they are going to come back into our community. So I guess as a community we have to decide what is it we're willing to get back in the long run. . . .

• SOURCES

For further discussion of whether a separate justice system for juvenile offenders is necessary, or feasible, see these two articles from the special juvenile justice issue of [Criminal Justice Magazine](#), published in Spring 2000 by the American Bar Association.

Can We Do Without Juvenile Justice? by Jeffrey Butts

Butts argues that the juvenile system as we know it is no longer necessary. He notes that modern day juvenile courts no longer deliver on the promise of rehabilitation and low stigma for those processed in the traditional juvenile justice system, and are largely indistinguishable from the adult system. He calls for the development of an integrated youth justice system.

What of the Future? Envisioning an Effective Juvenile Court by Judge Arthur Burnett, Sr.

Burnett believes that the ideals of the original juvenile court founders--personalized sentences geared towards rehabilitation rather than punishment of juvenile offenders--can still be realized. He calls for more resources to be dedicated to revamping the juvenile courts, while also developing better ways of determining which juveniles are not appropriate for treatment in the juvenile system.

WHAT DO THE STUDIES SHOW?

There's not been a lot of extensive research into the impact of laws making it easier to try kids as adults. But the studies that do exist indicate that the get tough approach has had little or no effect on the rate of juvenile crime. Moreover, these studies show that trying juveniles in adult criminal court may actually result in higher rates of reoffending.

CHILDE OR ADULT? A CENTURY LONG VIEW

The century old idea in the United States that children and adolescents are less culpable and more able to be rehabilitated than adults who commit crimes has been giving way to a harsher view in recent years. Here's an overview of the evolution of society's attitudes on dealing with juveniles who commit serious crimes.

In 18th century America, little distinction was made in the criminal culpability of children versus adults. Juveniles as young as age seven could be tried and sentenced in criminal courts. As psychologists and sociologists began to recognize the emerging notion of adolescence as a developmentally distinct period of life, reformers argued that children should be removed from adult prisons.

In 1825, the Society for the Prevention of Juvenile Delinquency founded the New York House of Refuge, the first institution designed to accommodate juvenile delinquents. Many cities and states soon followed

this example and set up similar institutions. Progressive era reformers wanted to attack what they believed were the roots of juvenile delinquency--a lack of moral education and standards--and advocated that juvenile institutions include a significant educational and rehabilitative component. For their efforts, the earliest juvenile justice reformers were known as "child savers."

The child savers' advocacy resulted in the establishment of the first juvenile court in Cook County, Illinois, in 1899. The court was established under the British legal doctrine of *parens patriae* -- "the State as parent" -- which was interpreted to mean that it was the state's duty not only to protect the public interest in juvenile offender cases, but also to intervene and serve as the guardian of the interests of the children involved. As opposed to the adversarial adult criminal system, where the state's role was to prosecute the offender, the juvenile court had a more benevolent mission: it was designed to be flexible, informal and to tailor to a juvenile's individual needs, with the ultimate goal of rehabilitation. The process was subject to strict confidentiality in order to avoid any unnecessary stigmatization of minors. Because its goal of rehabilitation was not considered to be punitive, the court had no due process protections, and had jurisdiction over both criminal and status offenders (a category which applies only to minors and includes offenses such as vagrancy and truancy.) Judges played a paternal role, and were afforded tremendous discretion in order to achieve the goal of individualized rehabilitative justice. By 1925, 48 states had established a juvenile court system, which operated quietly until mid-century.

During the 1960s, civil libertarians began to raise concerns about the progressive era model of juvenile justice. They argued that despite rhetoric to the contrary, juveniles within the system were not actually being rehabilitated, but rather warehoused in institutions not much different from an adult prisons. If juveniles were going to be treated as adults in the sentencing phase, the advocates argued, they should also be accorded the due process protections afforded to adults in court. They also challenged the broad discretion given to juvenile court judges. In a series of rulings during the 1960s and 1970s, The U.S. Supreme Court agreed; "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children," wrote Justice Abe Fortas in Kent v. United States. In decisions such as Kent, In re Gault and In re Winship, the Supreme Court ruled that juveniles must be afforded due process protections including: formal hearings when facing waiver to criminal court; protection against self-incrimination; the rights to notice of charges, counsel, and cross-examination of witnesses; and adherence to the "proof beyond a reasonable doubt" judicial standard.

In the early 1970s, several class-action lawsuits attacked the conditions and policies of the juvenile institutions, alleging cruel and unusual punishment. Social critics advocated deinstitutionalization and argued for more preventative and community-based programs to assail the roots of juvenile delinquency, particularly in urban areas. In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act, which still governs the juvenile justice system today. The act required the separation of juvenile offenders from adult offenders, and the deinstitutionalization of status offenders. A 1980 amendment mandated that juveniles could not be placed in adult jails, with a few exceptions. The 1974 act also created the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) and offered grants to encourage states to develop community-based programs as alternatives to institutionalization. Law enforcement experimented with the introduction of community-based correctional facilities, such as group homes and halfway houses.

However, this preventative approach to the delinquency problem was short-lived. In the mid-1970s, as the media began to highlight rising violent crime rates, the American public demanded the conservative "get tough" approach to crime still widely endorsed today. State legislatures reacted to the public's demands for accountability by passing more punitive juvenile justice laws. The conservative trend continued in the 1990s: almost every state passed laws making it easier to try juveniles in adult criminal courts; 31 states passed laws expanding sentencing options; 47 states modified confidentiality provisions for juvenile courts; and 22 states passed laws increasing the victim's role in juvenile court processing. More than any time in recent history, the system is turning back toward treating juvenile offenders like adults.

BASIC STATISTICS

Juvenile violent crime is at its lowest level since 1987, and fell 30% between 1994 and 1998. .[1]
Fewer than half of serious violent crimes by juveniles are reported to law enforcement. This number has not changed significantly in 20 years.[2]
The rate at which juveniles committed serious violent crimes changed little between 1973 and 1989, peaked in 1993, and by 1997 declined to the lowest level since 1986.[3]
On average, juveniles were involved in one-quarter of all serious violent victimizations (not including murder) committed annually over the last 25 years.[4]

• JUVENILE ARRESTS

In 1999, law enforcement officers arrested an estimated 2.5 million juveniles. Approximately 104,000 of these arrests were for violent crimes. The most common offense was larceny-theft.[5]
Juveniles accounted for 16% percent of all violent crime arrests and 32% of all property crime arrests in 1999. They accounted for 54% of all arson arrests, 42% of vandalism arrests, 31% of larceny-theft arrests, and 33% of burglary arrests.[6]

Juvenile arrest rates for violent crimes are down: the percentage of all juveniles arrested for violent crimes fell to an 11 year low in 1999, to 339 for every 100,000 individuals ages 12-17. This represents a 36% drop from the peak year 1994.[7]

Juvenile arrest rates for property crimes remained relatively stable between 1980 and 1999. In 1998, for every 100,000 youth in the United States ages 10 through 17, there were 1,751 arrests of juveniles for property offenses.[8]

The nation's juvenile courts disposed of more than 1.7 million delinquency cases in 1997. ("Delinquency" offenses are those committed by a juvenile which would be crimes if committed by an adult). Two thousand of those were for criminal homicide, 6,500 for forcible rape, and 67,900 for aggravated assault. More than 180,000 were for drug related offenses.[9]

The overall delinquency caseload was 48% larger in 1997 than it was in 1988, and four times as large as it was in 1960.[10]

• JUVENILES IN ADULT COURT

Nationwide, it is becoming easier to try juveniles in adult criminal court. Between 1992 and 1997, 44 states and the District of Columbia passed laws making it facilitating the transfer of juveniles to the adult system...[11]

Two states -Vermont and Kansas--provide statutory provisions for trying children as young as 10 years old in adult criminal court.[12]

The number of juvenile cases waived into adult criminal court peaked in 1994 when 11,700 cases were transferred. By 1997, this number was down to 8400.[13]

In 1996, juvenile courts waived jurisdiction over 1% of all formally processed delinquency cases, sending the juvenile offenders involved to adult criminal court.[14]

• JUVENILES IN CORRECTIONAL FACILITIES

Black juveniles are held in residential custody in the United States at twice the rate for Hispanics and five times the rates for whites.[15]

On an average day in 1997, approximately 106,000 juvenile offenders under 21 were living in residential placement facilities.[16] Forty percent of the offenders were black and 37.5 percent were white. Eighteen and one-half percent were Hispanic.[17] The vast majority (86.5%) were male.[18]

The juvenile system does work: a 1996 Florida study found that youth transferred to adult prisons had approximately a 30% higher recidivism rate than youth who stayed in the juvenile system.[19]

For discussion of this and other studies on the effects of the trying juvenile offenders as adults, see "What the Studies Show."

• FOOTNOTES

[1] Office of Juvenile Justice and Delinquency Prevention, press release, November 1999.
<http://ojjdp.ncjrs.org/about/press/ojp991123.html>

[2] National Crime Victimization Survey, cited in Juvenile Offenders and Victims: 1999 National Report (OJJDP). <http://ojjdp.ncjrs.org/ojstatbb/qa135.html>

[3] <http://ojjdp.ncjrs.org/ojstatbb/qa135.html>

[4] <http://ojjdp.ncjrs.org/ojstatbb/qa136.html>

[5] <http://ojjdp.ncjrs.org/ojstatbb/qa250.html>

[6] <http://ojjdp.ncjrs.org/ojstatbb/qa251.html>

[7] <http://ojjdp.ncjrs.org/ojstatbb/qa256.html>

[8] <http://ojjdp.ncjrs.org/ojstatbb/qa261.html>

[9] <http://ojjdp.ncjrs.org/ojstatbb/qa179.html>

[10] <http://ojjdp.ncjrs.org/ojstatbb/qa182.html>

- [11] <http://ojjdp.ncjrs.org/ojstatbb/qa091.html>
- [12] in 1997, <http://ojjdp.ncjrs.org/ojstatbb/da089.html>
- [13] <http://ojjdp.ncjrs.org/ojstatbb/qa191.html>
- [14] OJJDP, *Juvenile Offenders and Victims, 1999 National Report* p. 99
- [15] OJJDP, *Juvenile Offenders and Victims, 1999 National Report* p. 192-7
- [16] Juvenile Offenders in Residential Facilities, 1997; OJJDP Fact Sheet #96, March 1999; <http://www.ncjrs.org/txtfiles1/fs9996.txt>
- [17] Juvenile Offenders in Residential Facilities, 1997; OJJDP Fact Sheet #96, March 1999; <http://www.ncjrs.org/txtfiles1/fs9996.txt>
- [18] Juvenile Offenders in Residential Facilities, 1997; OJJDP Fact Sheet #96, March 1999; <http://www.ncjrs.org/txtfiles1/fs9996.txt>
- [19] Donna Bishop, et al, The Transfer of Juveniles to Criminal Court, 42 *Crime and Delinquency* 171 (1996)

JUVENILE VS ADULT JUSTICE

Each state has its own distinct juvenile justice system with its own laws and practices. This chart outlines some of the broad underlying beliefs that distinguish the juvenile justice system from the criminal justice system. For further details about a particular state's juvenile court system, see the National Center for Juvenile Justice's "State Juvenile Justice Profiles"

JUVENILE JUSTICE SYSTEM

The underlying rationales of the juvenile court system are that youth are developmentally different from adults and that their behavior is malleable. Rehabilitation and treatment, in addition to community protection, are considered to be primary and viable goals.

Limitations are placed on public access to juvenile records because of the belief that juvenile offenders can be successfully rehabilitated, and to avoid their unnecessary stigmatization. Court proceedings may be confidential to protect privacy.

The juvenile justice system follows a psychological casework approach, taking into account a detailed assessment of the youth's history in order to meet his or her specific needs. The juvenile offender

Rehabilitation is not considered a primary goal in the criminal justice system, which operates under the assumption that criminal sanctions should be proportional to the offense. Deterrence is seen as a successful outcome of punishment.

Open public access to criminal records is required, and all court proceedings are open to the public.

Defendants in the criminal justice system are put on trial, which is based largely on legal facts.

faces a hearing, rather than a trial, which incorporates his social history as well as legal factors.

Law enforcement has the option of preventative detention -- detaining a youth for his own protection or the community's protection.

Not all states afford juveniles the right to a jury trial.

A juvenile offender is judged "delinquent" rather than "guilty." Because of the individualized nature of the juvenile justice system, sentencing varies and may cover a wide range of community-based and residential options. The disposition is based on the individual's offense history and the severity of the offense, and includes a significant rehabilitation component. The disposition can be for an unspecified period of time; the court can send a youth to a certain facility or program until it is determined he is rehabilitated, or until he reaches the age of majority. The disposition may also include a restitution component and can be directed at people other than the offender, for example his parents.

Parole combines surveillance with activities to reintegrate the juvenile into the community.

Defendants have the right to apply for bond or bail.

All defendants have a constitutional right to a jury trial.

A defendant is found "innocent" or "guilty." The offender is sentenced to a specified period of time which is determined by the severity of the offense, as well as the defendant's criminal history.

Parole is primarily based on surveillance and monitoring of illicit behavior.

STATE LAWS

One of the first actions taken during the juvenile court process is determining whether a case should be processed in the criminal justice system rather than in juvenile court. All states have in place judicial mechanisms through which certain juvenile offenders may be tried as adults in the criminal system. These "transfer" provisions fall into three general categories, depending on where the responsibility for the decision lies.

• JUDICIAL WAIVER

In most States, cases referred to juvenile court that meet certain criteria may be transferred to criminal court upon the authorization of the juvenile court judge. This mechanism is known as "judicial waiver," since the judge is "waiving" the juvenile court's jurisdiction and giving the case over to the criminal system.

Almost every state has statutory judicial waiver provisions which grant juvenile judges the authority to transfer juvenile offenders out of the juvenile system. Depending on the state, this authority is granted with varying degrees of flexibility. In some cases, the decision to transfer is left entirely to the judge's discretion. In others, there is a presumption in favor of transfer which can be rebutted by the child's attorney. In some, transfer is mandatory once the judge determines that certain criteria have been met. The terminology for judicial waiver also varies from state to state; some call it "certification," "remand," or "bind over" for criminal prosecution. In any case, it is the most common statutory mechanism for trying juveniles in criminal court.

• STATUTORY EXCLUSION

Most states have more than one mechanism for trying juveniles to adult court. An increasing number exclude by statute certain serious or violent crimes from juvenile court jurisdiction, providing the offender meets a minimum age requirement. This effectively mandates the transfer of juveniles who commit those offences to adult criminal court. Many states also exclude repeat juvenile offenders from the juvenile system. In 1997, 28 states had such provisions.

• CONCURRENT JURISDICTION

In some states, a combination of the youth's age, offense, and prior record places certain juvenile offenders under the jurisdiction of both the juvenile and criminal courts. In these situations where the courts have concurrent jurisdiction, the prosecutor is given the authority to decide which court will initially handle the case. Transfer under these circumstances is known as "prosecutorial waiver."

• AGE RESTRICTIONS

In 1997, 22 states had provisions for transferring juveniles to criminal court which did not specify a minimum age. For those that did specify a minimum age, the most common (16 states) was age 14. Two states, Kansas and Vermont, set the minimum age as low as 10. In many states, once a juvenile is tried and convicted as an adult, he or she must be prosecuted in criminal court for any subsequent offenses.

In most States, no minimum age is specified in at least one judicial waiver, concurrent jurisdiction, or statutory exclusion provision for transferring juveniles to criminal court

Minimum transfer age indicated in section(s) of juvenile code specifying transfer provisions, 1997

NO MINIMUM AGE						
		12	13	15		
Alaska	Nevada*	Kansas	Colorado	Illinois	Alabama	New Mexico
Arizona	Oklahoma*	Vermont	Missouri	Mississippi	Arkansas	
Delaware	Oregon*		Montana	New Hampshire	California	
Dist. of Columbia	Pennsylvania			New York	Connecticut	
Florida	Rhode Island			North Carolina	Iowa	
Georgia*	South Carolina			Wyoming	Kentucky	
Hawaii	South Dakota				Louisiana	
Idaho*	Tennessee				Massachusetts	
Indiana	Washington*				Michigan	
Maine	West Virginia				Minnesota	
Maryland	Wisconsin				New Jersey	
Nebraska					North Dakota	
					Ohio	
					Texas	
					Utah	
					Virginia	

*Other sections of State statute specify an age below which children cannot be tried in criminal court. This minimum age for criminal responsibility is 14 in Idaho, 12 in Georgia, 8 in Nevada and Washington, and 7 in Oklahoma. In Washington, 8- to 12-year-olds are presumed to be in-capable of committing a crime. In Oklahoma, in cases involving 7- to 14-year-olds, the State must prove that at the time of the act, the child knew it was wrong.

Source: Authors' adaptation of Griffin et al.'s [Trying juveniles as adults in criminal court: An analysis of State transfer provisions.](#)

• TRENDS

Traditionally, discretionary judicial waiver was the most common means for juveniles to be transferred into the adult system. Each case was examined on an individual basis, with the judge taking into consideration such factors as the juvenile's likelihood of rehabilitation, his or her background, and the circumstances of the offense. Increasingly, however, state legislatures are removing this judicial discretion from the system by enacting mandatory waiver or exclusion statutes which eliminate the case-specific consideration of the discretionary waiver system.

The number of juvenile cases waived into adult criminal court peaked in 1994 when 11,700 cases were transferred. In 1997, this number was down to 8400.