Adjudicatory and Dispositional Decision Making in Juvenile Justice

Richard E. Redding

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Juvenile court judges and others working in the juvenile justice system have a wide variety of dispositional and sentencing options available for the juvenile offenders under their jurisdiction. For serious, violent, or chronic offenders, these options increasingly involve transferring juveniles from juvenile court for trial and sentencing in the criminal court or blended juvenile and adult sentences. This chapter provides an overview of the adjudicatory and dispositional options available for handling juvenile offenders in the juvenile and criminal justice systems. The limited research on adjudicatory and dispositional decision making is also reviewed, and directions for future law and policy development are proposed.

Juvenile Court Adjudications and Dispositions

A juvenile may be brought to the juvenile court by parents, other adults, or police (who handle about 25% of cases informally simply by warning and releasing the juvenile; Federal Bureau of Investigations, 1997). When a juvenile is brought to the juvenile court, court intake workers (also called juvenile probation officers) conduct an initial intake screening to determine, usually in consultation with the local prosecutor, whether to file a petition against the juvenile in juvenile court, resulting in an adjudicatory hearing before the judge. State statutes define the types of cases in which juvenile court intake workers have such discretion. Typically, they are required to file a petition (provided there is sufficient evidence) when the alleged offense is a serious one. In some states, however, intake workers have no such discretion and must refer all criminal offenses to the local prosecutor, who then decides whether to file charges (Binder, Geis, & Bruce, 2001). Juvenile court intake units and prosecutors differ on how they make their charging decisions. Some largely comply with the wishes of the victim, while others conduct a needs assessment to determine the level of risk and
the juvenile’s need for services (Rubin, 2003). Theft, assault, and drug violations are the most common offenses resulting in court referral (Stahl, 1999). National data indicate that a court petition is filed in about 57% of cases, while 43% are handled through informal probation (in which the juvenile agrees to probation in lieu of court adjudication), case dismissal, or diversion (Puzzanchera, 2000).

Roughly 60% of cases referred to the juvenile court for adjudication result in a finding of delinquency by the judge (Stahl, 1999), thus giving the court jurisdiction to intervene and make dispositional decisions (Elrod & Ryder, 1999). The juvenile then moves to the sentencing phase, called the dispositional hearing. Dispositional hearings can be complex, as they are designed to promote an individualized disposition best suited to the child’s needs while considering available resources and programs and the need to ensure community protection. “[I]t is an adversarial proceedings with a mixture of recommendations by probation and social workers; reports of social and academic histories; and interactions within the court among the legal participants, the offender and his or her family, probation staff, and, perhaps, psychologists and social workers” (Binder et al., 2001, p. 286). Dispositional plans are often tailored to the individual. This usually includes consideration of a detailed social history report prepared by the court intake staff. There is little research on the role that these social histories play in dispositional decision making, although they appear to substantially influence judges’ decisions.

Elrod and Ryder (1999) list the 10 dispositional alternatives commonly available to juvenile courts: (a) probation in the juvenile’s own home; (b) probation with placement in the home of a relative or a foster home; (c) probation with restitution to victims and/or the community; (d) house arrest or other intensive probation; (e) detention followed by probation; (f) placement in a private institution; (g) placement in a boot camp for about 30 to 300 days; see Zaehringer, 1998; (h) placement in a state facility under commitment laws; (i) placement in a private correctional facility; and (j) some combination of these alternatives. Probation, which is the disposition in 54% of juvenile cases, is the most common sanction (Snyder & Sickmund, 1999). But residential placements (e.g., juvenile correctional facility, boot camp, drug treatment facility, group home) are becoming more common, increasing 51% between 1987 and 1996. The cases most likely to result in residential placement are those involving serious person offenses, such as homicide, rape, robbery, or aggravated assault (Snyder & Sickmund, 1999).

Diversion programs (see Chapin & Griffin, ch. 8 in this volume) that promote alternatives to court referral for juvenile offenders are another popular alternative. Diversion has a variety of forms, such as informal case handling by law enforcement or court referral to outside programs. Diversionary programs have been developed all over the country, though they are not found in all jurisdictions, often due to lack of resources. Many offer specialized treatment and rehabilitation services for specific populations, such as family crisis intervention programs, individual and family counseling programs combined with educational, employment, and recreational services, and programs involving restitution and community service.
Research on the efficacy of diversion programs has been decidedly mixed (see Chapin & Griffin, ch. 8). Reviewing a number of diversion studies, Elrod and Ryder (1999) concluded that “although some evaluation studies indicate that diversion programs can reduce recidivism or are at least as effective as formal processing at reducing recidivism, other studies have found that some diversion programs are associated with higher levels of subsequent offending” (p. 173). Ironically, some diversion programs may have a net-widening effect, since they target youth that otherwise may have been “left alone” entirely by the justice and social services systems (Elrod & Ryder, 1999).

Judges have wide discretion when determining the disposition and are not bound by recommendations made by caseworkers, probation officers, or social workers (Senna & Siegel, 1992). Research shows that the severity of offense, prior record, and age of the offender are among the strongest factors influencing the severity of the disposition imposed (Campbell & Schmidt, 2000; Elrod & Ryder, 1999; Hoge, Andrews, & Leschied, 1995). Other important factors considered by court probation officers and judges include whether the parents will supervise the juvenile and participate in his rehabilitation, the level of family dysfunction, and whether the juvenile is attending school (Campbell & Schmidt, 2000; Horwitz & Wasserman, 1980; Sanborn, 1996). Several studies have found substantial agreement rates between probation or social worker recommendations and judges’ dispositions (see Campbell & Schmidt, 2000), although the very limited available research on this point suggests caution in accepting it. In addition, judges’ dispositional decision making is likely influenced by judicial philosophies toward juvenile offenders and the availability of local resources. This is illustrated by Mulvey and Reppucci’s (1988) study, which found that mental health and juvenile court workers’ judgments about juvenile offenders’ amenability to treatment and the likely effectiveness of those treatments varied according to the level of resources locally available. Indeed, financial resources and program availabilities often affect judges’ dispositional decisions. A juvenile may be more likely to avoid incarceration if there is facility overcrowding, for example (Brummer, 2002).

African American youth are overrepresented throughout all stages of the juvenile justice process and comprise a disproportionately high percentage of the juvenile offenders (about 40%) arrested each year (Redding & Arrigo, in press). Race (or factors correlating with race, such as socioeconomic status) may play a significant role in choice of disposition. Research findings are conflicting on whether juveniles’ race influences decision making in the juvenile justice system (Bortner, Zatz, & Hawkins, 2000; Redding & Arrigo, in press), but the scholarly consensus is that there may be small effects of race throughout the process that have a cumulative impact on adjudicatory and dispositional outcomes, with the greatest effects likely occurring at the early states of justice system processing (arrest, juvenile court intake, and detention) (Redding & Arrigo, in press). There also appears to be emerging a scholarly consensus that the overrepresentation of minority youth in the juvenile justice system is so substantial (compared to any possible discriminatory effects) that it must in part reflect a real difference in offending patterns and rates for violent offenses among White
versus African American youth (Redding & Arrigo, in press; Rutter, Giller, & Hagell, 1998). In turn, these differences in offending rates are linked to socio-economic disadvantage and a constellation of interrelated family, peer, and neighborhood risk factors for delinquency more commonly found in African American communities (Redding & Arrigo, in press).

Moreover, prosecutorial and judicial decision making may exacerbate racial disparities through practices that focus on such risk factors as a way of identifying those youth who are less amenable to treatment. A Florida study, for example, found that harsher punishments were given to juveniles who came from single-parent homes lacking the support for parents to be actively involved in the child’s court proceedings and rehabilitation (Bishop & Frazier, 1996). White and upper-class youth may be underrepresented in the juvenile justice system (relative to their rates of offending) because of their greater access to private mental health services and placements that divert them away from the justice system or correctional placements (Redding & Arrigo, in press). Minority youth are also more likely to be placed in secure detention facilities, while White youth tend to be housed in private facilities or diverted away from the juvenile justice system entirely (Snyder & Sickmund, 1999).

Graduated Sanctions

Juvenile justice systems have begun adopting integrated and standardized policies for determining dispositions, including largely age- and offense-based determinate and mandatory sentencing guidelines (Feld, 2003). Another important development is the U.S. Justice Department’s Office of Juvenile Justice and Delinquency Prevention’s (OJJDP) Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Wilson & Howell, 1995), which proposes a continuum of sanctions and services based on a juvenile’s offense severity and offending history (see Wilson & Howell, 1995). The comprehensive strategy promotes the use of multiple interventions to address the multiple risk factors present across settings for a given youth. A needs assessment determines the presence and severity of problems in a particular juvenile’s life. Risk and placement assessments are used to identify public safety and rehabilitation considerations. Consideration is always given to the important areas of substance abuse, family relationships, mental health needs, school problems, and peer relationships (Howell, 1997). The integrated assessment of these problem areas is necessary to ensure the proper treatment and level of restrictiveness tailored for the specific offender.

The goal of the comprehensive strategy is to improve the “juvenile justice response to delinquent offenders through a system of graduated sanctions and a continuum of treatment alternatives that includes immediate intervention, intermediate sanctions, and community-based corrections sanctions, incorporating restitution and community service when appropriate” (Wilson & Howell, 1995, p. 37). The program targets serious, violent, and chronic juvenile offenders, so that as offenses become more severe or repetitive, treatment and accountability sanctions become more progressively structured and intensive (Howell, 1997).
However, the comprehensive strategy also emphasizes early intervention for first-time offenders. First-time and nonserious repeat offenders receive immediate sanctions such as diversion, restitution, informal probation, or community service. But if the youth’s first offense is serious or violent, intermediate sanctions may be warranted, including intensive supervision, substance abuse treatment, electronic monitoring, day treatment, community-based residential treatment, and brief stays in confinement. Implicitly, the strategy focuses on controlling the 4% of juvenile offenders who are the serious, violent, and chronic offenders, the 15% who are chronic offenders committing most of the serious juvenile offenses (Snyder, 1998), and those most likely to continue their offending in adulthood (see Moffitt, 1993). These offenders are often placed in secure confinement, although some community-based facilities may provide the intensive services needed.

In addition to providing continuum of service plans for individual offenders, the comprehensive strategy calls on communities to conduct a detailed assessment of the juvenile crime risk and protective factors present in their community, in order to determine needed prevention and intervention strategies. In 1996, OJJDP developed three pilot sites (Lee and Duval counties, FL; San Diego, CA) to implement and evaluate the comprehensive strategy (Coolbaugh & Hansel, 2000). The results demonstrated that implementation “enhanced community-wide understanding of prevention services and sanction options” and “expanded networking capacity and (resulted in) better coordination among agencies and service providers” (Coolbaugh & Hansel, 2000). The early success of these pilot programs has initiated additional studies in other states. A jurisdiction using this strategy will “examine its capacity to address the identified community risks and ensure that the right resources are available to each youth (and family) at the right time” (Coolbaugh & Hansel, 2000).

Transfer to Criminal Court: Adjudicating and Sentencing Juveniles as Adults

Statutes known as “transfer laws” (also called “waiver” or “certification” laws), which transfer juveniles from the juvenile court for trial and sentencing in adult criminal court, are found in every state and the District of Columbia (Heilbrun, Leheny, Thomas, & Huneycutt, 1997). The age at which juveniles can be transferred to the adult system varies across states, though most states will transfer those aged 14 and older (Beresford, 2000), and four states (Florida, Nevada, New York, and Pennsylvania) automatically transfer juveniles of any age who commit certain (usually violent) offenses. State laws usually fall into four broad categories of offenses for which juveniles of a certain age may be transferred: (a) any crime, (b) capital crimes and murder, (c) certain violent felonies, and (d) certain crimes committed by juveniles with prior records (Snyder & Sickmund, 1999). (For recent comprehensive lists of states’ recent transfer statutes, listing statutory requirements, see Feld, 2000; Snyder & Sickmund, 1999; Steiner & Hemmens, 2003.)

There are three types of transfer laws: legislative transfer (“automatic trans-
fer”), judicial-discretionary (“judicial transfer”), and prosecutorial-discretionary (“prosecutorial transfer”). Most states have two or three coexisting types of transfer laws. For example, 40 states and the District of Columbia have judicial as well as prosecutorial transfer statutes (with the prosecutorial statutes often applicable only to older and/or more serious offenders) (Sanborn, 2003).

Each type of transfer law defines the kind of juvenile offender eligible for transfer under the statute, specifying certain offenses and often minimum age criteria. Legislative transfer laws (currently in 31 states, see Steiner & Hemmens, 2003) require automatic transfer of a juvenile if statutory requirements are met. Generally, violent felonies such as murder, rape, kidnapping, and crimes committed with a firearm are automatically transferred to criminal court. The offender’s age and previous offenses are also often determinative (Beresford, 2000). Judicial transfer laws vest discretion in juvenile court judges to decide, after the prosecution files a transfer motion, whether a juvenile should be transferred. Prosecutors file transfer motions in fewer than 5–10% of eligible cases (Dawson, 2000; Feld, 2000), and perhaps because of this selectivity, prosecutor’s motions for transfer often are successful (Dawson, 2000). Prosecutorial transfer laws (currently available in 14 states and the District of Columbia; see Steiner & Hemmens, 2003) vest the discretion with prosecutors, allowing them to decide whether to file charges in juvenile or criminal court. Often, the same prosecutor who decides which charges to file also decides the court in which to file (DeFrances & Strom, 1997), and the prosecutor’s decision is generally not subject to judicial review (Beresford, 2000).

Finally, some states also have a “reverse waiver,” which can ameliorate overinclusive juvenile transfer laws. In a reverse waiver jurisdiction, the judge overseeing the case in criminal court, upon a motion of the defendant and after a hearing, has the discretion to issue an order to transfer the defendant back to the juvenile court (or to juvenile status for sentencing purposes) (Kole, 2001). The defendant, however, bears the burden of persuasion that the case should be transferred to juvenile court (Dawson, 2000).

As Sanborn (2003) points out, there is an inherent discretionary element in all transfer statutes, even “automatic” transfer statutes, since the prosecutor has the initial charging discretion as to whether to charge a greater or less serious offense (or not to charge at all). But considerably greater discretion, of course, is to be found in the judicial and prosecutorial transfer laws. In the 1966 case of Kent v. United States, the U.S. Supreme Court listed the eight discretionary criteria present in the District of Columbia’s judicial transfer statute.1 These criteria

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1. The criteria were:

(a) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver

(b) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner

(c) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted
have subsequently been adopted and modified by many states in their discretionary transfer statutes, particularly in judicial transfer statutes (Redding, 1997). Judicial transfer statutes often require the judge to consider the (a) offender’s treatment needs and amenability, (b) risk assessment of the likelihood of future offending, (c) offender’s sophistication-maturity, (d) presence of mental retardation or mental illness, and (e) offense characteristics (Heilbrun et al., 1997). States vary on the extent to which they articulate such factors, but all states require consideration of the seriousness of the offense (and thus the need to protect the community); most consider the child’s characteristics and the system’s rehabilitative capacities as well. The juveniles’ sophistication-maturity and amenability to treatment are not always required nowadays. Some statutes allow judges to consider such factors as they see fit, while others require that greater weight be given to certain factors. Many statutes include rebuttable presumptions of transfer for certain offense/juvenile age combinations that guide and constrain judicial discretion (Dawson, 2000).

In response to public and legislator demands to “get tough” on juvenile crime (see Heilbrun, Sevin Goldstein, & Redding, ch. 1 in this volume), states have revised their transfer laws or passed new laws that have reduced the minimum age for transfer, expanded the number of offenses for which a juvenile can be transferred, expanded prosecutorial power, and reduced or eliminated judicial discretion (see Redding, 1997; Steiner & Hemmens, 2003). In 1979, only 14 states had automatic transfer statutes, but by 1995 twenty-one states had such statutes, with 31 states having these laws by 2003 (Steiner & Hemmens, 2003). In addition to transfer statutes, 13 states have lowered the age at which juvenile court jurisdiction ends, to age 15 or 16 (Sanborn, 2003). In these states, everyone aged 15–16 or above is an adult for purposes of criminal prosecution.

Trying a juvenile in criminal court carries serious implications. In State v. RGD (1987), the Supreme Court of New Jersey observed, “Waiver to the adult court is the single most serious act the juvenile court can perform . . . the child loses all protective and rehabilitative possibilities available” (p. 835). Al-

(d) The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment . . .

e) The desirability of trial and disposition of the entire offense in one court when the juvenile’s associate’s in the alleged offense are adults who will be charged with a crime . . .

(f) The sophistication and maturity of the juvenile as determined by a consideration of his home, environmental situation, emotional attitude, and pattern of living

(g) The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts, and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions

(h) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the Juvenile Court
though in some states criminal courts can impose juvenile sentences, transferred juveniles are at risk of receiving criminal convictions and sentences, including lengthy incarceration in adult prisons. A felony conviction usually results in the loss of a number of civil rights and privileges (see Redding, 2003). Moreover, in 30 states, once convicted in criminal court, a juvenile will automatically be tried as an adult for any subsequent offenses (Sanborn, 2003). Due to the potentially onerous consequences for the juvenile, it is not surprising that transfer hearings often are time-consuming and hard fought (Dawson, 2000).

Studies have consistently found that the juvenile’s age, the seriousness of the offense, the prior record, and the number of prior property offenses are the most significant predictors of transfer (Dawson, 1992; Fagan, Forst, & Vivona, 1987; Poulos & Orchowski, 1994). Other common factors influencing transfer decision making include the treatment and rehabilitation prognoses, the facilities available for rehabilitation, and the community’s attitude toward the offense (Strasburger, 1988). While some other studies have found substantial racial effects in the transfer process, even when controlling for prior record and offense seriousness, others have failed to find such racial effects (Bortner et al., 2000).

Fewer studies have examined decision making by the personnel who make transfer recommendations, such as prosecutors, probation officers, and mental health professionals. Some research indicates that juvenile court workers perceive the juvenile’s family functioning, criminal record, current offense, school record, and prior case dispositions as the most significant factors that should be, and often are, considered when sentencing juveniles. Other factors include the juvenile’s character, capacity for rehabilitation, mental health issues and treatment needs, and prior drug abuse (Sanborn, 1996). Grisso, Tomkins, and Casey (1988) presented 1,423 prosecutors, defense attorneys, mental health professionals, and juvenile court probation officers with hypothetical cases to examine the factors influencing their transfer recommendations. Juveniles’ psychosocial makeup and family functioning were related to the recommendations made, but the seriousness of the offense and person variables such as age, gender, and race were not. The child’s willingness to accept intervention, behavioral compliance, prior juvenile justice system contacts, and academic or work functioning were the strongest predictors.

**Effects of Transfer Laws**

Many feel that the juvenile system, created with the goal of rehabilitation, has failed. In turn, they support transferring juveniles to the adult system with the belief that harsher sentences and lower recidivism will follow (see Taylor, 2002). Yet research strongly suggests that transfer laws have little or no deterrent effect on juvenile crime and that transferring juveniles to criminal court exacerbates recidivism.

According to two well-designed studies, automatic transfer laws have no deterrent effect on juvenile crime. Jensen and Metsger’s (1994) time-series analysis found a 13% increase in arrest rates for violent juvenile crime in Idaho after the State implemented its automatic transfer law. In a similar analysis, Singer and
McDowall (1988) found that a state law that automatically sent violent juvenile offenders to criminal court (by lowering the age for criminal court jurisdiction) had no deterrent effect, even though the law was widely used and publicized.

On the other hand, the results of a recent multistate analysis do suggest some deterrent effects for juvenile offenders (Levitt, 1998). In this study, an age-associated decrease (when states lowered the jurisdictional age for criminal court from 18 to 17) in juvenile crime rates was found of 25% for violent crime and 10–15% for property crime across states. The greatest decreases were found in those states with a greater disparity in the severity of punishment between its criminal and juvenile courts, suggesting the deterrent effect of transfer laws. Anecdotal reports and data collected in some communities also suggest that transfer laws have deterrent effects. In Jacksonville, Florida, for example, the juvenile arrest rate decreased 30% and the juvenile violent crime rate decreased 44% in just 1 year (between 1993 and 1994) after the local prosecutor instituted aggressive policies to prosecute and incarcerate serious juvenile offenders as if they were adults (Bennett, Dilulio, & Walters, 1996). According to Glassner, Ksander, Berg, and Johnson (1983), some juvenile offenders decided to stop or reduce their offending when they reached age 16 because they knew they could be tried as if they were adults on reaching that age.

It is difficult to reconcile previous studies showing that transfer laws have no deterrent effect with Levitt’s (1998) study and with anecdotal reports that transfer laws deter crime. Some have argued that the recent decline in the crime rate is attributable to get tough policies (see Bennett et al., 1996; Scheidegger & Rushford, 1999) and that zero tolerance policies have worked in some juvenile justice contexts (see Kennedy, 1997). Recent reviews of the research on deterrence (Nagin, 1998; Von Hirsch, Bottoms, Burney, & Wikstrom, 1999) conclude that criminal sanctions are effective deterrents, at least for adult offenders. The research on adult deterrence, however, does not necessarily translate to youth, who may not weigh the severity or swiftness of punishment in the same way as adults. The psychosocial immaturity of youth (see Scott, Reppucci, & Woolard, 1995) could make rational choice models of deterrence, which assume that perceived consequences influence decisions about committing crime, less applicable (see Schneider & Ervin, 1990).

In addition to the questionable deterrent effects of transfer laws, recent large-scale studies indicate that youth tried in criminal court have greater recidivism rates after release than those tried in juvenile court, particularly youth convicted of person offenses. Fagan (1996) examined the recidivism rates of 800 randomly selected juvenile offenders aged 15 and 16 who were charged with robbery or burglary. Controlling for eight variables (prior offenses, offense severity, race, gender, age at first offense, case length, sentence length, and court), this natural experiment compared offenders charged in New Jersey’s juvenile courts with offenders charged in New York’s criminal courts under the state’s automatic transfer law. Both geographical areas shared similar demographic, socioeconomic, sociolegal, and crime indicator characteristics. Thus, the study allows comparison of recidivism rates as a function of whether cases are processed in juvenile or criminal court, without as many of the sample selection problems
inherent in studies comparing cases within a single jurisdiction wherein prose-
cutors or judges decide which cases to transfer. Youth who had committed rob-
bery and were sentenced in criminal court had a higher postrelease recidivism
rate than those who were tried in juvenile court, but the recidivism rates for bur-
glary offenders tried in criminal and juvenile courts were similar. The findings
on robbery offenders suggest that criminal court processing, irrespective of
whether youth are incarcerated in juvenile or adult facilities, produces a higher
recidivism rate. In addition, youth sentenced to probation in criminal court had
a substantially higher recidivism rate than those receiving a term of incarcera-
tion in the juvenile justice system.

Bishop, Frazier, Lanza-Kaduce, and Winner (1996) compared the 1-year re-
cidivism rate of 2,738 juvenile offenders transferred to criminal court in Florida
with a matched sample of 2,738 juvenile offenders who had not been transferred.
The study, which controlled for seven variables (race, gender, age, most serious
prior offense, number of referrals to juvenile court, number of charges, and most
serious charge), revealed that the rearrest rates were higher (30 vs. 19%) and the
period before reoffending was shorter (135 vs. 227 days) for the transferred youth
across seven offense types (ranging from violent felonies to minor misde-
meanors). Following the same Florida offenders 6 years after the initial study,
Winner, Lanza-Kaduce, Bishop, and Frazier (1997) found higher recidivism
rates among those transferred to criminal courts, with the exception of property
felons. Florida relies almost exclusively on transfer by prosecutors, who typically
make their transfer decisions very soon after arrest, before gaining access to infor-
mation about the youth’s background. Therefore it is less likely that the youth
who were not transferred had lower recidivism rates due to selection factors
(Bishop, 2000).

A similar study (Myers, 2001), controlling for offense-related and demo-
graphic variables (e.g., age of onset of offending, prior offenses, use of a firearm),
examined the recidivism rates of 557 violent juvenile offenders in Pennsylvania.
Youth who were judicially transferred to criminal court were rearrested more
quickly upon their return to the community than youth who were retained in
juvenile justice system during the same period. Moreover, transferred youth who
were incarcerated for longer periods had a lower recidivism rate upon release
than those incarcerated for shorter periods. Finally, Podkopacz and Feld (1996)
compared transferred with nontransferred juvenile offenders in Minnesota and
found higher recidivism rates among those transferred.

These five studies involving all three types of transfer laws (automatic, judi-
cial, prosecutorial) used fairly large sample sizes (557 to 5,476), different method-
ologies (natural experiment, matched groups) and were conducted in different
jurisdictions (Florida, New Jersey, New York, Minnesota, Pennsylvania). But
they each had significant methodological limitations, primarily in not being able
to control completely for possible differential selection effects (vis-à-vis juven-
iles’ amenability to treatment, for example) between those cases retained in the
juvenile court versus those that were transferred.

However, armed with two very recent large-scale studies that better control
for possible selection effects, the research now permits us to conclude with a fair
degree of confidence that transfer generally does increase recidivism, though remaining methodological limitations do not allow for definitive conclusions. Fagan, Kupchik, and Liberman’s (2003) recent finding of greater recidivism for transferred juveniles (charged with robbery, burglary, or assault) replicates Fagan’s (1996) previous study but with a larger data set (2,400 juveniles) and methodology that better controls for important variables relating to possible selection effects. As in the previous study, by controlling for sentence lengths, the study showed that criminal court processing per se (rather than differential sentences between the juvenile and criminal courts) increased recidivism. Similarly, Lanza-Kaduce, Frazier, Lane, and Bishop’s (2000) recent follow-up study to the Bishop et al. (1996) Florida recidivism study also replicated their previous findings of higher recidivism rates for transferred juveniles as a function of criminal court processing per se (rather than differential sentences), using better matching techniques to control for possible selection effects, more extensive recidivism data, and data drawn from six Florida judicial circuits in rural and urban jurisdictions.

Several factors may contribute to the generally higher recidivism rates for youth tried in criminal court. These factors include the rehabilitative services provided by the juvenile justice system versus the counter-rehabilitative effects of processing and incarceration in the criminal justice system. In particular, the negative effects of labeling juveniles as convicted adult felons, the decreased focus on family support in the adult system, the stigmatization that often results, and the learning of criminal mores and behavior from adults have been singled out as possible reasons for the increase in recidivism rates among this population (see Bazemore & Umbreit, 1995; Hirschi, 1969; Thomas & Bishop, 1984).

Significantly, Forst, Fagan, and Vivona (1989) found a relative lack of programming and services for youth in adult facilities. Staffs in juvenile facilities were more likely to be in, and rewarded for, helping and counseling residents and counseling in juvenile facilities was provided by line staff as part of their regular duties. In addition, youth in juvenile facilities gave higher marks than youth in adult facilities to the available treatment and case management services, which youth in detention described as helpful in providing counseling, obtaining needed services, encouraging participation in programs, teaching the consequences of rule breaking, and deepening their understanding of their problems.

A recent study captures well the differences between juvenile and criminal courts and detention facilities and correctional institutions. Bishop and Frazier (2000) conducted interviews with serious and chronic juvenile offenders in Florida who were transferred to the criminal justice system and incarcerated in correctional facilities. Many of these offenders had experience with the juvenile justice system, which they perceived positively. In comparison, the transferred youth perceived the criminal court quite negatively; they saw the lawyers and judges as having little interest in them and the court procedures as too adversarial. They also were angry and resentful at what they viewed to be unfair sentences. Despite the punitive rhetoric of juvenile justice in Florida, Bishop and Frazier (2000, p. 255) found that the juvenile institutions “were clearly treatment
oriented,” and juvenile offenders felt that staff members cared about them and taught them appropriate behaviors. These findings contrasted with the clearly custodial nature of Florida prisons, where youth spent much of their time learning criminal behavior from adult inmates, to whom they had to prove their toughness through aggression and defiance of authority. According to Bishop and Frazier (2000, p. 265), “Compared to the criminal justice system, the juvenile system seems to be more reintegrative in practice and effect.”

Blended Sentencing: The Convergence of Juvenile and Criminal Sentencing

Many states have turned to “blended sentencing,” which increases the sentencing options available in the juvenile court through a limited blending of juvenile and adult sentences. Blended sentencing has become an appealing option for many states, because it allows them to retain serious and violent juvenile offenders under juvenile court jurisdiction, while demanding greater accountability through the possibility of a criminal sentence. The possible consequence of an adult sentence if the juvenile commits a new offense, violates probation, or fails to respond to rehabilitation is designed to hold juveniles accountable (Torbet et al., 1996). It offers offenders a “last chance” at rehabilitation within the juvenile system and an incentive to respond to treatment in order to avoid the consequences of an adult sentence (Clarke, 1996).

Roughly half of the states have adopted one of three blended sentencing options for their juvenile courts, allowing the court to (a) impose either a juvenile or an adult sentence, (b) impose both a juvenile and an adult sentence, or (c) impose a sentence exceeding the normal time limit of juvenile court jurisdiction and conduct a hearing when the juvenile reaches age 17 to 21 (depending on the jurisdiction) to determine if an adult sentence should then be imposed. But blended sentencing in juvenile court does not always mean a more lenient sentence than if the case were transferred to criminal court. In Massachusetts, Rhode Island, and Texas, for example, the juvenile court may impose the maximum adult sentence, with the option to suspend the balance of that sentence once juvenile jurisdiction ends. In other states, the blended sentencing option is exercised not in the juvenile court, but in the criminal court, allowing the criminal court to impose a juvenile sentence or both a juvenile and (typically suspended) adult sentence. (Only a few states have blended sentencing available in both juvenile and criminal courts. This comes closest to bridging the gap between the juvenile and criminal courts, by allowing juvenile courts to impose adult sentences or extend their jurisdiction and by also allowing criminal courts to impose juvenile sentences.)

Most blended sentencing statutes target juveniles who otherwise meet the criteria for transfer to criminal court under the state transfer law. Rhode Island, for example, requires the court first to find that the juvenile is eligible for transfer before blended sentencing may be considered. Statutes usually require the prosecution to prove that blended sentencing (as opposed to regular juvenile court jurisdiction) is warranted in the instant case. While the standard of proof
for determining whether a case is eligible for blended sentencing varies across states, most adhere to the intermediate standard of clear and convincing evidence. (The standard of proof for ultimate adjudication, however, still requires proof beyond a reasonable doubt.) There usually is not a right to a jury trial in juvenile court delinquency proceedings, since they can only result in a juvenile disposition. But under blended sentencing jurisdiction, all states but Connecticut provide the right to a jury trial, since a criminal conviction and sentence is a possible eventual outcome (Redding & Howell, 2000).

Once the prosecution files a petition requesting blended sentencing, the juvenile court judge uses her discretion in determining whether to proceed under this authority, guided by the statutory criteria. The statutory factors are very similar to those found in discretionary transfer statutes and include (a) the seriousness of the offense, (b) the amount of violence involved, (c) whether the alleged offense was against a person, (d) the sophistication and maturity of the juvenile as determined by considering his home, environmental situation, emotional attitude, and pattern of living, (e) the previous criminal record of the juvenile, and (f) the likelihood of rehabilitation (Redding & Howell, 2000).

Some states also have transfer/adult sentencing hearings that review similar criteria shortly before a juvenile, previously sentenced under blended sentencing, “ages out” of the juvenile justice system (at age 17.5 to 21, depending on the state). The purpose of this later hearing is to determine whether the adult sentence that was stayed until the completion of the juvenile disposition should be imposed or if the juvenile should be released from court jurisdiction. If the juvenile violates the terms of the juvenile disposition or commits another offense, the judge will often impose the adult sentence at this second hearing or at the time of the violation (Brummer, 2002).

Effects of Blended Sentencing: Net Narrowing or Net Widening?

It is unclear whether blended sentencing keeps more juveniles from entering the criminal system (net narrowing) or whether it only subject more juveniles to adult sentences (net widening). Initial data from three states (New Mexico, Minnesota, and Texas) that have enacted blended sentencing laws suggest that both net narrowing and net widening may be occurring.

Indeed, in Texas, the blended sentencing law was intended to have both net-narrowing and net-widening effects. The purpose of Texas’s blended sentencing law (Texas Family Code, 1999) was twofold: (a) to serve as an alternative to the transfer of 15- and 16-year-old juveniles, for whom the length of confinement available in the juvenile system was insufficient, and (b) to respond to violent offenses committed by adolescents as young as 10 years old, who were below the state’s minimum transfer age of 15. The law enables juvenile courts to impose sentences of up to 40 years in prison on children as young as 10 years of age who commit violent offenses. Dawson (1990) found that 47% of the Texas blended sentencing cases were not transfer-eligible, thus enabling the juvenile court to impose adult sentences that would otherwise not have been available. In addi-
tion, 60% of the juveniles that prosecutors referred for blended sentencing had no prior offenses, thus subjecting many first-time offenders to the possibility of criminal sanctions. But 53% of the cases were transfer-eligible, and the blended sentencing option may have kept those juveniles out of the adult system.

Prior to 1995, Minnesota had a typical judicial transfer law that authorized a juvenile court judge to transfer jurisdiction based on the juvenile’s suitability for treatment and public safety concerns (Podkopacz & Feld, 2001). The 1995 legislative changes focused the transfer criteria primarily on public safety and gave “extended juvenile jurisdiction” authority to juvenile courts, allowing them to impose a juvenile sentence along with a suspended adult sentence. A study of the dispositions of youth before and after the legislative changes was conducted to determine the effects of the blended sentencing legislation (Podkopacz & Feld, 2001). Under the new blended sentencing and transfer law, prosecutors more than doubled the average number of transfer (“certification”) motions made per year, from 47 to 108, and filed motions for blended sentencing jurisdiction against 36% of all eligible juvenile offenders (Podkopacz & Feld, 2001). Many juveniles sentenced under blended sentencing subsequently had their juvenile probation revoked and an adult sentence imposed, demonstrating the reality of the net-widening effect in Minnesota. Judges revoked probation in 35% of these cases, most of the time (76%) for probation violations rather than the commission of a new offense, sending 49% of these juveniles to prison and 51% to the workhouse. In addition, the juveniles under blended sentencing authority typically were younger and had less extensive prior records than the transferred youth. Their technical probation violations, which often resulted in the automatic imposition of the stayed adult sentence, were not offenses that would have resulted in transfer in the first place (Podkopacz & Feld, 2001).

Thus, blended sentencing in Minnesota “apparently had widened-the-net and created a ‘back door’ to prison for youth who likely would never have been transferred” . . . It appears that the blended sentencing law which the legislature hoped would give juveniles ‘one last chance’ for treatment has instead become their ‘first and last chance’ for treatment, widened the net of criminal social control, and moved larger numbers of younger and less serious or chronic youth into the adult correctional system indirectly through the ‘back door’ of probation revocation proceedings rather than through [transfer] hearings” (Podkopacz & Feld, 2001, pp. 1062, 1070).

New Mexico’s new blended sentencing law (which resulted in the state’s abolishing transfer except in homicide cases) apparently has produced a change in prosecutorial charging or case selection practices. Previously, only 63% of transfer-referred juveniles were charged with a violent felony. But with the new blended sentencing law emphasizing public safety, 83% of transfer-referred juveniles are now charged with crimes against persons (Podkopacz & Feld, 2001). Prosecutors also now charge 67% of these youth with use of a weapon compared to only 48% previously, a significant change that suggests prosecutors are tailoring their blended sentencing motions to focus on youth committing violent offenses (Podkopacz & Feld, 2001). Although the number of transfer motions by prosecutors has more than doubled (27 vs. 108 per year) under the blended sen-
tencing law, judges have responded by transferring less than one third of the eligible juveniles compared to two thirds previously under the old law.

Adjudicating and Sentencing Juvenile Offenders: Future Directions for Law and Policy

The newest legal development in sentencing law for juvenile offenders—blended sentencing—offers a compromise between rehabilitative and get tough ideals that retains juvenile court authority over serious offenders while increasing and extending the accountability sanctions available. Blended sentencing laws have been increasing nationwide, becoming a standard option for juvenile court systems. Importantly, they provide an alternative to transfer for juveniles whose serious offenses require periods of incarceration or court supervision exceeding the traditional age jurisdiction of the juvenile court. Some blended sentencing regimes, however, widen the net of adult sanctions over juveniles by including less serious or younger offenders who otherwise would not be subject to adult sanctions. Moreover, adult sanctions often are imposed under blended sentencing for minor probation violations, and blended sentencing may only “supplement rather than supplant” transfer laws when prosecutors file transfer motions and then plea-bargain down to blended sentencing (Tanenhaus & Drizin, 2002, p. 696.) Blended sentencing will not be an effective alternative to transfer unless it is not linked to the availability of evidence-based juvenile offender rehabilitation programs in the juvenile justice system. At the end of the day, “whether or not blended sentences give juvenile offenders a real chance at earning their way out of adult sanctions depends on the quality of programming the juvenile system offers” (Tanenhaus & Drizin, 2002, p. 697).

But the extant research, conducted in only a few states, is far from conclusive on the effects of blended sentencing, particularly given the apparent variability in prosecutorial practices. (Dawson [1990] noted, for example, that the practices of local prosecutors varied widely across the state of Texas, referring anywhere from 0 to 87% of the eligible cases for blended sentencing.) Substantial research is needed to determine the cases prosecutors and judges select for blended sentencing and the factors relevant in their decision making, how blended sentencing narrows or widens the net of adult sanctions over juvenile offenders, the nature and quality of judicial decision making on the revocation of juvenile sentences and the imposition of adult sentences, case outcomes under various blended sentencing regimes, and the general and specific deterrence effects of blended sentencing (Redding & Howell, 2000). Similarly, a jurisprudence of blended sentencing must be developed and implementation issues addressed. For example, what kinds of cases are ideal for blended sentencing and how should these cases differ from those targeted for transfer, how will blended jurisdiction affect juvenile court resources, and are juvenile courts equipped for jury trials (Brummer, 2002)?

Prosecutors often use the threat of transfer to criminal court as plea bargaining leverage against juveniles to persuade them to plead guilty and/or agree to a particular sentence under blended sentencing authority (Dawson, 1990; Pod-
Juveniles’ competence to enter into such agreements is questionable, particularly because lawyers’ tendency to encourage defendants to plead guilty or accept a plea agreement may compromise a juvenile’s rights (Mears, 1998). When juveniles face the possibility of an adult sentence (through either transfer or blended sentencing), a competency hearing should be conducted to determine whether the juvenile is competent to stand trial (Bonnie & Grisso, 2000). But while adult adjudicative competency standards are well defined, it is unclear, in both law and practice, the extent to which maturity factors ought to be evaluated and considered in determining a juvenile’s competence (see Redding & Frost, 2002). Additionally, juvenile plea agreements should be examined closely for evidence of coercion (see People v. Simpson, 2001). Some have argued that enhanced protections should be afforded to ensure that juvenile waivers are fully voluntary, knowing, and intelligent (Redding, 1997).

Under blended sentencing, the constitutionality and ethics of imposing lengthy criminal sentences on juvenile offenders, particularly life sentences without the possibility of parole, is also a serious concern. With most states currently permitting life sentences for juveniles, and only a few expressly limiting the option to those 16 years and older (Logan, 1998), some youth waived from the juvenile system will remain incarcerated for of a life term “without a chance of meaningful appellate review of their sentences,” unlike similarly situated peers retained in the juvenile system (Logan, 1998, p. 709). Very long sentences or sentences of life without parole may be disproportionate sentences for juveniles, as a matter of prudence, morality, or penal philosophy.

In older decisions, the Kentucky and Nevada State Supreme Courts struck down sentences of life without parole for young juvenile offenders on Eighth Amendment (cruel and unusual punishment grounds). In Naovarath v. Nevada (1989), the Nevada Supreme Court struck a life without parole sentence for a 13-year-old convicted of murder, stating, “When a child reaches twelve or thirteen, it may not be universally agreed that a life sentence without parole should never be imposed, but surely all agree that such a severe and hopeless sentence should be imposed on prepubescent children, if at all, only in the most exceptional of circumstances. Children are and should be judged by different standards from those imposed upon mature adults” (pp. 946–947).

Despite these court decisions, however, the current trend has been to allow harsh sentences for juveniles. If these sentencing options are here to stay, then efforts should be made to ensure that the criminal court judiciary is sensitive to the juvenile’s maturity level, social and mental health history, and culpability (Logan, 1998).

While blended sentencing is a new development in the landscape of juvenile justice, transfer laws have long existed. But their reach over juveniles has expanded considerably in recent years as states have revised their transfer laws to lower the minimum age for transfer, expand the number of transfer-eligible offenses, and reduce or eliminate judicial discretion by vesting discretion in prosecutors or making transfer automatic for certain crimes. Whether the appropriate locus for discretion lies with prosecutors or judges is highly debatable (see Feld, 2000; Sanborn, 2003). But among the legal and social science scholars of
transfer, there is a strong consensus that the expansion of automatic transfer laws is unwise (e.g., Feld, 2000; Redding, 1997; Zimring & Fagan, 2000).

Automatic transfer laws are overinclusive, failing to take into account the wide variability among juvenile offenders in cognitive and emotional maturity (and thus culpability) and rehabilitative potential (Steinberg & Cauffman, 2000). Their overinclusiveness is particularly troubling when considering the counterdeterrent effects of transfer. Minimizing the number of juvenile cases transferred to criminal court, especially first-time offenders, is an important policy goal suggested by the extant research showing higher recidivism rates for transferred youth (Redding, 1997). Yet minimizing the number of youth transferred to criminal court does not mean that transfer should be abolished. Transfer serves as a necessary safety valve vis-à-vis those serious juvenile offenders who cannot or should not be retained in the juvenile justice system. In some cases, rehabilitative options have been exhausted, the seriousness or heinousness of the offense demands “the punitive necessity of waiver” (Zimring, 2000b), or retention in the juvenile system will put other juveniles at risk. “It is interesting how those who fear placing chronic/violent juvenile offenders with adults voice no corresponding concern for the plight of less violent and criminal juveniles who are forced to cohabitate with youth who arguably should have been excluded from juvenile court” (Sanborn, 2002, p. 204). Although a solution to this problem is to offer separate programs for chronic or violent offenders, this often is not done in practice.

A related policy implication of recent research is that incarceration in adult facilities be reserved for only the most serious and chronic offenders (Redding, 2002). The use of graduated sanctions, determined by the juvenile’s offending history and offense seriousness, is one way to preserve long-term incarceration as a last resort for offenders who have not responded well to previous interventions. Recognizing and treating juveniles’ needs early in their offending careers may also aid in reducing the recidivism rates of juvenile offenders. Graduated sanctions programs have produced positive results: reduced costs, enhanced responsiveness to the treatment needs of juveniles, and increased accountability for juveniles as well as communities (Krisberg & Howell, 1998).

The result of transfer and blended sentencing is that some—perhaps many—juveniles lacking adult maturity and competence are being tried and sentenced as mature adults. Research has shown that compared to juvenile nonoffenders, juvenile delinquents have lower IQs (see Redding & Arrigo, in press), a higher prevalence of learning disabilities (Tulman, 2003) and mental illness, often have poor social problem-solving skills (Dodge & Frame, 1982), and may not fully understand their legal rights (Grisso & Schwartz, 2003). Indeed, a separate juvenile justice system was created out of the belief that children, because of their immaturity, do not bear the same culpability as adults for their crimes (Redding, 1997). Courts may accept diminished capacity claims by adults who can prove impaired cognitive functioning. Unfortunately, juveniles are not afforded a similar “diminished capacity” status as a means for avoiding transfer to the adult system.

Older juveniles often are transferred to the adult system so that incarcera-
tion can continue after the child reaches the age of majority (Bishop & Frazier, 1991), and for this reason, the child’s age is a key if not determining factor considered by judges when making discretionary transfer decisions (Redding, 1997). As the Alaska Court of Appeals stated, “even if a child’s best chance for rehabilitation would be in a juvenile institution, waiver must be ordered when the evidence shows a likelihood that the child cannot be rehabilitated before reaching twenty years of age” (DEP v. State, 1986). Thus, transfer laws often target first-time serious offenders, who research has shown are less likely to recidivate than those having prior contacts with the system. The number of contacts with the juvenile justice system has been found to be a better predictor of recidivism than the seriousness of the first offense (Feld, 1987), and many first-time offenders do not commit other violent acts (Redding, 1997). Replacing automatic transfer laws with statutory schemes that guide judicial discretion may more accurately identify those juveniles who will be best served in each system.

However, transfer laws often lack concrete guidelines, resulting in considerable variability in outcomes across similarly situated cases (Redding, 1997). The discretionary decisions of prosecutors, court personnel, and judges often lack uniformity (Redding, 1997) and in some cases may reflect biases based on offender race or socioeconomic status or misconceptions about juvenile offenders. A recent empirical study of judicial transfer concluded that judges decided the cases of similarly situated offenders significantly differently (Podkapacz & Feld, 1996, p. 492). Thus, more explicit statutory guidance and decision-making criteria are needed for judges to make more informed and uniform transfer decisions (Redding, 1997). Research has consistently found that actuarial (i.e., statistically based) predictions are equal, and usually superior, to those based on clinical judgment. To improve decision-making accuracy and uniformity, transfer criteria should be predicated, in part, on actuarial models of the likelihood of recidivism as a function of various offender, offense, and offense history characteristics (Redding, 1997). Moreover, requiring prosecutors to issue written opinions detailing their reasons for a transfer decision may minimize the risk that juveniles who are amenable to rehabilitation will be transferred, because prosecutors will have to articulate compelling reasons justifying a transfer decision (Arteaga, 2002). It is also likely to reduce “the disparate treatment of similarly situated juveniles” by allowing the public to compare transfer decisions in different cases (Arteaga, 2002).

While the extant research on transfer permits the above policy recommendations, many of the effects of trying and sentencing juveniles as adults remain unclear. In particular, research is needed on the general deterrent effects of such laws, whether transfer laws offer a sufficiently certain threat of punishment, and the extent to which juveniles are aware of these laws and the deterrent effects of such awareness (Redding, 2003). Redding and Fuller’s (2004) interviews with serious juvenile offenders indicate that many are not aware of such laws, do not think they will be applied to them, and do not believe they will face serious punishment. With increasing numbers of juveniles being incarcerated in adult facilities, research is urgently needed on the comparative effects of adult and juvenile facilities on juveniles’ psychological and behavioral functioning (Red-
Perhaps the most important challenge for future research is to determine what features of criminal court processing increase recidivism, an important question for policy-making. For example, are there changes that could be made in the criminal court processing of juveniles to make it less detrimental? In what ways should the juvenile justice system be on guard against those features of the criminal justice system that serve to increase recidivism? How can blended sentencing systems incorporate the best features of both systems while avoiding the iatrogenic features of the criminal justice system?

Finally, effective legal advocacy is one of the most practical ways to improve the quality of justice and programming afforded to youth in the juvenile court. The quality of legal representation afforded juveniles in juvenile court adjudicatory and dispositional hearings, as well as in transfer and blended sentencing hearings, is abysmal (Redding, 2002). The poor quality of representation has been noted by numerous commentators and found in many studies of the juvenile court since the U.S. Supreme Court’s landmark In re Gault (1967) decision extending full due process rights to juvenile delinquency proceedings. A recent American Bar Association study concluded that “many young people in juvenile court are significantly compromised, and that many children are literally left defenseless” (American Bar Association, 1995, p. 7). Professor Ainsworth noted, after observing a number of juvenile trials, that “one gets the overall impression that defense counsel prepared minimally or not at all” (Ainsworth, 1991, p. 1128). Lack of attorney expertise and training is a key factor making it difficult for public defenders and court-appointed counsel to provide effective representation (American Bar Association, 1995).

Lawyers and juvenile justice professionals must be trained on the relevant juvenile mental health, forensic, and rehabilitative programming issues (see Rosado, ch. 14 in this volume). Meaningful representation is often completely lacking at the dispositional hearing, when lawyers frequently defer to the probation officer’s recommendation or argue nothing more than that the recommendation is too punitive, without proferring any alternatives to the court. As Roche (1987) points out, lawyers must be equipped to provide the court with specific and detailed recommendations for dispositional alternatives, either because probation officers often will fail to make well-informed recommendations or because their recommendations may be too punitive. Roche recommends imposing on juvenile court attorneys an ethical and legal duty of effective representation at dispositional hearings and creating rules of court that require counsel to file with the court a statement of dispositional recommendations. Juvenile court dispositional and transfer recommendations will be influenced by the decision-maker’s knowledge about the effectiveness and availability of treatment options (see Mulvey & Reppucci, 1988). The best emphasis for advocates should be whether the juvenile is amenable to rehabilitation, not whether and how the juvenile is amenable given locally available resources. “A finding of amenability places some pressure on the courts to provide adequate treatment to youth who are amenable to treatment” (Salekin, 2002, p. 67).

Additionally, there is evidence that programs aimed at educating judges and other juvenile justice professionals can have substantial positive effects in reduc-
ing the number of juveniles receiving adult sanctions. The Miami–Dade County Public Defender’s Office developed the Juvenile Sentencing Advocacy Project (JSAP), a highly effective program that has produced a 350% increase in the number of transferred cases receiving a juvenile (rather than an adult) sanction (Mason, 2000). A key component of JSAP was the development of training programs for judges and attorneys on adolescent development, effective treatment and rehabilitation programs for juvenile offenders, and sentencing options, along with the development of greater linkages to community resources.

Conclusion

The juvenile court system was created over 100 years ago “to save kids from the savagery of the criminal courts and prisons” by removing juveniles from the criminogenic influences of the criminal justice system while providing rehabilitative interventions (Zimring, 2000a, p. 2480). Significantly, “the protective impact of a diversionary juvenile court on sanctions for youth crime is largest when punitive policies are at their most dominant in criminal courts . . . in ages like the American present,” as shown by the fact that the discrepancy between the proportional number of young adults versus juveniles incarcerated is greater than ever in our history (Zimring, 1998, p. 2491). This explains the reason for the continued public and legislative pressure on the juvenile justice system to “get tough” despite declines in the rates of violent juvenile crime—“the political forces that had produced extraordinary expansion through the rest of the penal system had been stymied in juvenile courts” (Zimring, 1998, p. 2494).

In part, these forces have turned to transfer and blended sentencing as ways to increase the availability of adult sanctions for juvenile offenders. At the same time, however, research is mounting on the counter-rehabilitative effects on juveniles of adult sanctions while the effectiveness of evidence-based rehabilitative programs is clearly shown in rigorous recent studies (see Sheidow & Henggeler, ch. 12 in this volume). It remains to be seen whether the juvenile justice system will continue to resist the penal pressures of the adult criminal justice system.

References


