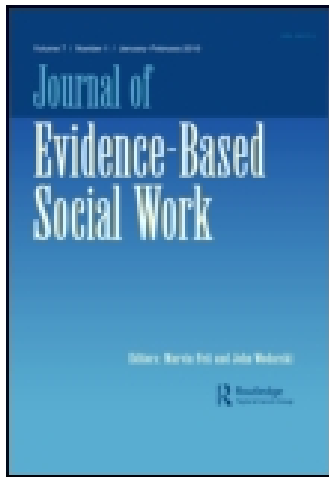


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Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Journal of Evidence-Based Social Work

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/webs20>

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Published online: 08 Aug 2014.



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To cite this article: Jeffrey J. Shook (2014) Looking Back and Thinking Forward: Examining the Consequences of Policies and Practices That Treat Juveniles as Adults, *Journal of Evidence-Based Social Work*, 11:4, 392-403, DOI: [10.1080/10911359.2014.897112](https://doi.org/10.1080/10911359.2014.897112)

To link to this article: <http://dx.doi.org/10.1080/10911359.2014.897112>

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Looking Back and Thinking Forward: Examining the Consequences of Policies and Practices That Treat Juveniles as Adults

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This article examines the consequences of legislative changes that eased the process of treating juveniles as adults. Overall, it finds evidence that there has been an increase in the number of juveniles sent to the criminal court and the majority either remain in the community or return to the community shortly after serving a jail or prison sentence. In light of geographic and racial/ethnic disparities in transfer, differences in the programs and services offered to youth in the juvenile and criminal justice systems, and higher rates of recidivism among transferred offenders, the article supports the contention of many scholars and advocates that there is a need for policy and practice reform.

Keywords: Juvenile justice, criminal justice, youth, punishment

INTRODUCTION

Between the 1970s and 1990s, every state in the United States enacted legislation to facilitate the process of treating juveniles as adults in the justice systems (Fagan, 2008; Griffin, Addie, Adams & Firestine, 2011). Following these changes, scholars have sought to understand their consequences. While some questions remain, existing research reveals that these legislative changes have resulted in a number of undesirable consequences for youths, society, and the justice systems. In addition, recent research on adolescent and brain development suggests that there are legitimate reasons to treat juveniles differently than adults in the justice systems. Consequently, advocates are increasingly arguing that policy and practice reforms are necessary to alleviate the harmful consequences of these legislative changes.

The goal of this article is to review the existing evidence on the consequences of treating juveniles as adults in the justice systems and to use this evidence to examine whether and how policy and practice should be reformed to enhance youth development and improve public safety. Further, the article seeks to place this discussion within the context of social work and suggests an increased role for the profession in debates regarding the punishment of young offenders. The article begins with a discussion of the legislative changes of the 1970s to 1990s, including a discussion of the pathways through which juveniles are treated as adults. It then moves to discuss the consequences of these legislative changes, with a particular focus on increases in the number

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of young people who enter the criminal justice system, the punishments that these young people experience in the criminal justice system, racial and geographic differences in the treatment of juveniles in the criminal justice system, the experiences of young people in the criminal justice system, and outcomes after they leave the system. After looking back at what we have learned over the last several decades, the article concludes that there is a need for policy and practice reform and argues for an increased role for social work in debates over the punishment of juvenile offenders.

HISTORICAL CONTEXT: THE BOUNDARY BETWEEN THE JUVENILE AND CRIMINAL COURT

Historically, juveniles have always been tried and punished in the criminal justice system (Tanenhaus, 2000). Prior to the creation and implementation of the juvenile court at the start of the twentieth century, common law held that young people age 14 and over were presumed to have the ability to form the requisite intent to be punished under the criminal law. Individuals between the ages of 7 and 14 years old were presumed not to have the capacity to be criminally liable, but this presumption could be rebutted. Although considerations of how young people accused of committing crimes were actually treated in the criminal justice system is well beyond the scope of this paper, the creation and implementation of the juvenile court significantly changed the way that young people could be treated under the law (Feld, 1999). As David Tanenhaus (2002) has argued, the juvenile court is not a monolithic institution but instead developed over time and developed differently across and within states. Yet, it can be argued that the implementation of the juvenile court throughout the United States legitimated evolving ideas that the “needs” and “capacities” of young people differed from those of adults and created a separate “space” to attend to these needs and capacities (Shook, 2005; Feld, 1999). Further, it extended these ideas to older youths, thereby broadening the population of individuals deemed to require protection from the harshness of the criminal justice system (Zimring, 2002).

Even after the creation and implementation of the juvenile court, some juveniles continued to be treated similarly to adults (Tanenhaus, 2000). In part, this practice reflected the reality that boundaries between the juvenile and criminal justice systems were being negotiated and contested over time and space as the juvenile court gained increased credibility and legitimacy (Tanenhaus, 2000, 2002). Further, it reflected tensions inherent in keeping young people charged with very serious crimes in the juvenile justice system and affording them what were perceived as lenient punishments (Feld, 1999; Tanenhaus, 2000). It is important to note, however, that this practice decreased as these boundaries became more defined throughout the first half of the twentieth century, as policies and practices increasingly reflected the acceptance of modern ideals of childhood and adolescence (Feld, 1999; Shook, 2005; Tanenhaus, 2000). Despite evidence that standards for deciding whether to treat juveniles as adults were unclear and decisions were arbitrary (Dawson, 2000), by the beginning of the 1970s juvenile codes reflected a fairly strong boundary between the juvenile and criminal justice systems (Levin & Sarri, 1974).

The Shifting Boundary between the Juvenile and Criminal Courts

Starting in the 1970s and accelerating in the 1980s and 1990s, however, states began to question whether the boundary between the juvenile and criminal justice systems needed to be redrawn and started enacting legislative reforms to ease the process of treating juveniles as adults. The reasons for and extent of legislative change has been covered extensively elsewhere (Bishop, 2000; Fagan & Zimring, 2000; Feld, 1999, 2000; Shook, 2005; Torbet et al., 1996; Torbet &

Szymanski, 1998), and a full discussion of this issue is not possible in this article. It is important to note that these changes, as well as other juvenile code changes that increasingly “criminalized” the juvenile court, largely paralleled the punitive shift in the criminal justice system that led to substantial increases in the number of people incarcerated or otherwise under control of the criminal justice system. While justified by policy makers by increasing juvenile crime rates in the late 1980s and early 1990s and arguments about the increased dangerousness of young offenders (Bishop, 2000; Fagan, 2008; Fagan & Zimring, 2000; Feld, 1999; Shook, 2005), these changes are consistent with broader trends in crime and punishment that increasingly sought to punish and control marginalized and disenfranchised populations (Feld, 1999; Wacquant, 2009; Zimring, 1998). Understanding the reasons behind the enactment of these legislative changes, then, requires consideration of the broader context of crime and punishment in the United States during the late twentieth century.

Legislative Provisions That Allow Juveniles to be Treated as Adults

Before discussing the trends in legislative changes that states enacted over the last several decades, it is important to briefly describe the variety of pathways through which juveniles are treated as adults in the justice systems. One pathway is generally referred to as transfer or waiver, the process of moving specific offenders or groups of offenders from the juvenile to the criminal court. There are three basic types of transfer or waiver provisions. The first is typically referred to as “judicial discretion” and is considered to be the traditional mechanism through which juveniles were transferred to the criminal court. Judicial discretion involves a judge making the transfer decision after a hearing and upon consideration of enumerated criteria. The hearing is required to comport with due process safeguards, as held in the U.S. Supreme Court’s decision in *Kent v. United States* (383 U.S. 541, 1966), because the juvenile is initially considered within the jurisdiction of the juvenile court by statute. There are several additional variants of judicial discretion provisions—presumptive and mandatory judicial discretion—where the burden is shifted to the juvenile or the discretion of the judge is limited to the finding of specific facts. Some form of judicial discretion is used in forty-six states (Griffin et al., 2011).

A second provision through which juveniles are transferred to the criminal court is referred to as “statutory exclusion.” Statutory exclusion simply means that specific juveniles are excluded from the jurisdiction of the juvenile court by statute and these mechanisms are currently used in twenty-nine states (Bishop, 2000; Fagan, 2008; Feld, 2000; Griffin et al., 2011). The most common basis of exclusion involves age and offense characteristics, meaning that if a juvenile is of a certain age and charged with a specific offense, he or she is automatically within the jurisdiction of the criminal, not the juvenile, court. Some statutes include other criteria such as type of weapon used or whether the youth was previously adjudicated for a specific offense.

The third provision through which juveniles are transferred or waived to the criminal court is referred to as “prosecutorial discretion” or “direct file.” These provisions generally give the criminal and juvenile court concurrent jurisdiction over a juvenile who meets the criteria in the statute and allow the prosecutor to determine where to file the case. Fifteen states currently have prosecutorial discretion or direct file provisions (Bishop, 2000; Fagan, 2008; Griffin et al., 2011). Some states require the prosecutor to follow specific criteria, typically similar to the criteria contained in the judicial discretion provision, but the prosecutor has substantial discretion under these mechanisms to decide where to file the case. It is important to note that 24 states with statutory exclusion and/or prosecutorial discretion provisions have some form of a reverse transfer or decertification process, whereby a juvenile can motion to be sent to the juvenile court for certain offenses (Griffin et al., 2011). In these states, a hearing is typically held upon the filing of the motion, and a criminal court judge will decide based on criteria generally similar to those used in judicial discretion provisions.

A second pathway through which juveniles are treated as adults involves setting the maximum age of juvenile court jurisdiction below age 17. This is similar to statutory exclusion provisions in some respects but is much broader because it generally excludes an entire age group from the jurisdiction of the juvenile court instead of a narrower class of juvenile offenders. Twelve states now set the maximum age of juvenile court jurisdiction at either 15 or 16 (Griffin et al., 2011). This number has decreased in recent years, as Connecticut raised its maximum age of juvenile court jurisdiction from 15 to 17 years. In addition, Illinois recently enacted legislation allowing 17-year-olds charged with misdemeanors to be included within the jurisdiction of the juvenile court (Griffin et al., 2011). Important here, however, is the fact that in these states, an entire age group is not considered within the jurisdiction of the juvenile court and, instead, these young people directly enter the criminal court when charged with a criminal offense. Because age 18 is considered the age of majority in the United States and most states include anyone under the age of 18 within the jurisdiction of the juvenile court, scholars and advocates have raised concerns about these policies (Arya, 2011; Bishop, 2000; Fagan, 2008; Juskiewicz, 2007).

The final pathway through which juveniles are treated as adults occurs in states that provide the juvenile court with some authority to impose adult sentences. In some cases, this occurs through what are referred to as blended sentencing laws, where a youth will receive a juvenile and adult sentence with the adult sentence being stayed until the completion of the juvenile sentence and a determination of whether the youth has been rehabilitated. In other states, the juvenile court has some authority to sentence the youth as an adult in specific instances (Shook, 2011a). Fourteen states provide the juvenile court with the authority to impose a blended or some type of adult sentence (Griffin et al., 2011).

Legislative Changes

Although states vary considerably with regard to the type and extent of change enacted, every state enacted legislation that facilitated the process of treating juveniles as adults in the justice systems in the 1970s, 1980s, and 1990s, and many enacted several legislative reforms (Bishop, 2000; Fagan, 2008; Griffin et al., 2011; Torbet & Syzmanski, 1998; Torbet et al., 1996). Based on the degree and nature of change across the states, several key conclusions can be drawn about these legislative changes. First, the population of juveniles eligible to be treated as adults increased because of this legislation. This occurred through a variety of changes including lowering of minimum changes for transfer eligibility, adding new offenses to transfer provisions, changing transfer or waiver criteria to focus on offense-based characteristics, enacting statutory exclusion and prosecutorial discretion provisions, and implementing new mechanisms to treat juveniles as adults such as the blended sentence (Bishop, 2000; Fagan, 2008; Griffin et al., 2011; Torbet & Syzmanski, 1998; Torbet et al., 1996). This is important because it subjects a substantially broader population of juveniles to adult sanctions and, given the consequences discussed subsequently, raises many questions regarding the fairness and effectiveness of treating juveniles as adults.

A second conclusion is that states increasingly shifted power from judges to prosecutors by enacting statutory exclusion and blended sentencing mechanisms. Prior to the 1970s, only eight states had statutory exclusion or prosecutorial discretion provisions, whereas 36 states now have statutory exclusion and/or prosecutorial discretion provisions (Griffin et al., 2011). Most of these states still have judicial discretion provisions but use statutory exclusion or prosecutorial discretion provisions for a group of more serious person and property offenses and generally use judicial discretion for other offenses. The purpose of these changes, at least in large part, was to remove juvenile court judges, who were seen by some as impediments to transfer, from the process and increase the number of juveniles charged with violent and serious offenses being subject to adult punishment (Bishop, 2000; Feld, 1999; Shook, 2005, 2011a). Critics contend that statutory exclusion and prosecutorial discretion provisions are overbroad, are ripe for arbitrary decisions,

lack essential due process safeguards, and focus more on offense-based characteristics than on the needs of the offender (Bishop, 2000; Bishop, Frazier, & Henretta, 1989; Fagan, 2008; Feld, 2000; Shook, 2005, 2009, 2011a; Zimring, 1998). The existence of reverse waiver provisions provides a safeguard in many states, and there is some evidence that these provisions do operate to filter out cases that should remain in the juvenile court (Fagan, 2008; Singer, 1996). Yet, many questions and concerns remain about the use of statutory exclusion and prosecutorial discretion provisions and the process of substituting the discretion of a juvenile court judge with the discretion of the prosecutor's office.

The third conclusion that can be drawn is that the array of pathways and provisions that exist to treat juveniles as adults, as well as the variety of sentencing options that exist once a juvenile is labeled as an adult, create a complex maze of policies and practices that can lead to substantial confusion and seemingly arbitrary consequences. Thus, it can often be difficult to understand the process and to fully understand how decisions are made, limiting understandings of the fairness and effectiveness of the process. While scholars and advocates have challenged the rationale behind many of these policy changes, the existing maze of policies and practices that exist across and within states also has the potential to lead to unintended consequences that can frustrate the goals of these policy changes.

CONSEQUENCES OF TREATING JUVENILES AS ADULTS

In light of these changes, scholars over the last several decades have sought to examine their consequences. This research has provided a number of valuable insights that can serve as a guide for evaluating the effectiveness and fairness of current policies and practices that treat juveniles as adults. This section briefly discusses a number of these insights.

Number of Youths Treated as Adults

A key question following the enactment of these legislative changes was whether and to what degree they increased the number of juveniles being treated as adults. Unfortunately, this is a difficult question, given substantial data limitations and the challenges of isolating policy effects from other changes such as increases or decreases in the crime rate. In a volume celebrating the first 100 years of the juvenile court that she co-edited, Margaret Rosenheim (2002) concluded that these legislative changes did not lead to a major shift in caseload from the juvenile to the criminal court. Yet, there is some evidence that the number of youths transferred to the criminal court did increase. In an often-cited article, Bishop (2000) estimated that between 30,000 and 40,000 juveniles were transferred each year during the late 1990s and another 180,000 to 220,000 youths were sent to the criminal court in states that set the maximum age of juvenile court jurisdiction lower than 17 years. Importantly, this means that between 210,000 and 260,000 juveniles were being sent to the criminal court each year.

Other scholars, analysts, and advocates have also sought to identify the number of juveniles sent to the criminal court each year. The Campaign for Youth Justice (2007) estimated that approximately 250,000 juveniles enter the criminal court each year. Griffin and colleagues (2011) reviewed various data sources and found that approximately 14,000 transfers could be accounted for in 2007 but that the number of transferred youths of most states was missing from this total. In addition, they estimated that as many as 175,000 juveniles might be sent to the criminal court in states that set the maximum age of juvenile court jurisdiction below 17 years. In his review of the data, Fagan (2008) argued that "the commonly cited estimate that 210,000 juveniles a year are transferred to criminal court might be an upper bound" (pp. 95–96) but indicated that it was unclear what the lower bound estimate might be.

Despite differences in estimates of the number of juveniles treated as adults, all of these scholars, analysts, and advocates conclude that a large number of young people are either transferred to the criminal court through the transfer provisions discussed previously or are sent to the criminal court in the states that set the maximum age of juvenile court jurisdiction below 17. There is also evidence that the policy changes of the last several decades have increased the number of youths being tried as adults, especially as the result of the increased use of statutory exclusion and prosecutorial discretion provisions. In particular, Bishop (2000) argues that more youths are now transferred through these mechanisms, respectively, than through judicial discretion, whereas in the 1970s the vast majority of youths were transferred through judicial discretion provisions. Similarly, other reports also suggest that these provisions have increased the number of juveniles being transferred to the criminal court (Bishop & Frazier, 2000; Juskiewicz, 2007; Griffin et al., 2011).

Shook and Sarri (2008) examined prison admissions of juveniles over a 20-year period in Michigan, a state that enacted and expanded a prosecutorial discretion provision during this period. Accounting for violent crime rates and prison commitments of 17-year-olds (17-year-olds are excluded from juvenile court jurisdiction in Michigan), they found that there had been an increase in the commitment of juveniles to adult prisons. Further, they found that this increase was not driven by cases that received long sentences. While juveniles convicted of homicide made up 29% of all commitments of juveniles to adult prisons in Michigan prior to the legislative changes, after the changes juvenile homicide offenders made up only 9% of juvenile prison commitments. Instead, the increase was actually driven by youths who had initially been sentenced to probation and were committed to prison for a probation violation or new offense or had received a prison sentence of less than 5 years.

In explaining this increase, they argued that there was evidence of the effects of policy changes on prison commitments and evidence of an increased willingness to treat juveniles as adults. This latter explanation is consistent with accounts that argue that the legislative changes of the last several decades were driven, at least in part, by a changing image of the juvenile offender. Terms such as “super predators” were routinely used in the 1990s to describe juvenile offenders, and proponents of legislative changes argued that young people had become increasingly “dangerous” and required more punishment than the juvenile court could provide (Bishop, 2000; Feld, 1999; Shook, 2005; Zimring, 1998). The notion that these ideas filtered down to legal actors, thereby altering existing prohibitions against treating juveniles as adults, is important and can help explain some of the increases in young people being transferred to the criminal court (Shook & Sarri, 2008). Consequently, and importantly, there is some evidence that these legislative changes did not only directly affect the movement of juveniles into the criminal court but that the discourse surrounding these changes also indirectly influenced decision making, leading to more juveniles being treated as adults.

Geographic Differences in Juveniles Treated as Adults

Another important insight from research on the treatment of juveniles as adults is that decisions regarding which juveniles should be treated as adults are fairly arbitrary and often reflect, at least in part, broader organizational, political, power and financial factors (Feld, 1998, 1999; Griffin et al., 2011; Shook, 2008, 2009, 2011a). Some of the variation in the treatment of juveniles as adults is the result of the substantial variation in juvenile legislation across states. At the same time, there is often significant variation within states. For example, Michigan counties pay half the cost of sending youths to adult placements. These costs can be very high and prohibitive to some counties and, as one prosecutor in Michigan stated, “There are a lot of factors that go into deciding whether to transfer juveniles and resources are a very important one” (Shook & Sarri, 2008; p. 1762). As this quote demonstrates, resources are one of many factors that that

can influence decision-making practices and lead to outcomes that differ considerably both across and within states, leading to what has been labeled “childhood by geography” (Shook, 2005, 2009). Shook (2011a, 2013) argues that this variation is because laws that govern the treatment of juveniles as adults are filtered through specific local contexts, or courtrooms, and the process of deciding whether and how to treat a juvenile as an adult is shaped by negotiations and contestations over power, values, norms, and resources that occur within those contexts (see also Singer, 1996). Thus, decision-making practices and outcomes are not necessarily related to the characteristics of young people and extensive determinations regarding whether a young person is redeemable or salvageable but, instead, reflect local customs and contingencies (Shook, 2009, 2011a, 2013).

Racial and Ethnic Variations

Similar to other aspects of the justice systems, there is substantial racial disproportionality in decisions to treat and incarcerate juveniles as adults. The level of disproportionality across studies varies based on the sample, but a common finding is that youths of color, particularly African American youth, are more likely than White youths to be transferred and incarcerated in adult prisons (Bishop, 2000; Bortner, Zatz, & Hawkins, 2000; Fagan, 2008). Scholars and analysts, however, differ in their opinions regarding the reasons for these differences. After reviewing a substantial body of research seeking to explain these differences, Fagan concluded that “disparities in transfer are the product of a cumulative process that involves the systematic and cascading application of discretion across the juvenile and criminal justice systems, as well as in structural components created both by policy and law” (p. 98). This explanation points to the multiple points in the decision-making process where race can influence decisions and how decisions at each point can influence subsequent decisions. For example, one study using a sample of youths eligible for transfer found that White youths from the suburbs were less likely to be detained than African American youths from the suburbs, White youths from the city, and African American youths from the city (Shook & Goodkind, 2009). This finding is relevant because the transfer decision-making process in this jurisdiction started when a youth was detained. Another study found that African American youths spend more time in adult prison, controlling for a variety of relevant characteristics, than White youth (Shook, 2011b). Thus, understanding racial disproportionality requires a broad examination of how race is considered across multiple decision-making points.

Punishment of Juveniles in the Criminal Court

Given the increases in the number of juveniles being sent to the criminal court, it is important to understand what actually happens to them in the criminal court. As indicated previously, the legislative changes of the last several decades were based on the idea of an increasingly dangerous juvenile offender in need of “adult” punishment. The idea, then, is that transferred juveniles are deserving of the most severe sentences, and transferring them to the criminal court will provide punishments that are both more severe than what is available in the juvenile court, and that, at least implicitly, extend into adulthood.

In reality, however, there is evidence that many juveniles do not receive punishments that are more severe than they could have received in the juvenile court and, even when they do, these punishments do not extend very far into adulthood. For example, just 54% of the 456 juveniles sentenced in the Pennsylvania criminal court in 2011 were sentenced to prison, and their average sentence was under 4 years (Pennsylvania Commission on Sentencing, 2012). The remaining 46% of juveniles sentenced in the criminal court received probation, jail, or an alternative community sentence, and these sentences were for a relatively short period of time. In Michigan, the average prison sentence given to a transferred juvenile is also approximately 4 years, and the trend has

been to increasingly commit juveniles with sentences of less than 5 years (Shook & Sarri, 2008). A separate analysis of the Michigan data showed that many juveniles who had been committed to adult prison were actually released prior to the age that juvenile court jurisdiction ended, even though they had served their minimum sentence (Shook, 2011b).

Studies comparing the sentences received by juveniles in the juvenile and criminal courts are mixed on the question of whether juveniles receive more severe sentences in the criminal court. Some of these studies indicate that juveniles are more likely to be incarcerated and receive longer sentences when they are sentenced in the criminal court, and others suggest that they are not more likely to receive longer sentences (see Redding, 2003 and Fagan, 2008 for a review of these studies). As Griffin and colleagues (2011) explained, it is quite likely that sentences are likely to be more similar in states or courts that transfer a broad range of juvenile offenders, compared to states or courts that transfer only the more serious offenders. Some suggest that this is because person offenses are more likely to receive a longer sentence in the criminal compared to the juvenile court, whereas property offenders are more likely to receive similar or shorter sentences in the criminal compared to the juvenile court (Fagan, 2008; Redding, 2003).

The previous discussion indicates that the number of juveniles transferred to the criminal court has increased, and many of these young people do not receive long sentences and either remain in the community after being sentenced or will return to the community within a short period of time. At the same time, the increase in the number of juveniles being transferred to the criminal court has also led to an increase in the number of juveniles who face long sentences in the criminal justice system. For example, the number of juveniles who received life-without-parole sentences for crimes committed as juveniles increased substantially in the 1980s and 1990s, even accounting for increases in juvenile homicide rates (Visser & Shook, 2013). Thus, there is evidence that the increase in juveniles being transferred to the criminal court has not only broadened the population of juvenile facing criminal punishments but also led to more juveniles facing very severe sanctions in the criminal court.

Services and Programs for Juveniles Treated as Adults

Given that adolescence and early adulthood are key developmental periods and experiences during these periods are influential in shaping subsequent life trajectories and opportunities, it is important to consider the services and programs being offered to youths in the criminal justice system. Questions regarding programs and services are even more important in light of the reality that many youths in the justice systems have substantial substance use issues, mental health needs, and educational deficiencies that need to be addressed (Bishop, 2000). Unfortunately, existing evidence shows that youths in adult prisons or jails, as well as those serving probation sentences, are not receiving necessary and age-appropriate programs and services (Bishop, 2000; Bishop & Frazier, 2000; Ford et al., 2013; Forst, Fagan, & Vivonia, 1989; Ng, Sarri, Shook, & Stoffregen, 2012). One recent study found that incarcerating juveniles in adult prisons is a factor in higher levels of depression, highlighting one of the many consequences of incarcerating youth in adult prisons (Ng, Shen, Sarri, Stoffregen, & Shook, 2011). Other research shows that youths are subject to higher levels of victimization when incarcerated in adult prisons (Shiraldi & Zeidenberg, 1997; Forst, Fagan, & Vivonia, 1989). Further, there is a growing body of research demonstrating that youths do not “do time” well and receive more disciplinary infractions than adults, increasing the likelihood that they will be placed in solitary confinement and will serve more time in prison.

Other studies, however, have shown fewer differences in services and programs. Fagan (2008) points to evidence that the juvenile facility in a study that he conducted with colleagues was reported to actually be more chaotic (see also Kupchik, 2007) but that the youths in the adult facility reported feeling less safe and reported more symptoms of mental health problems and posttraumatic stress disorder. A recent study by the Justice Department (Beck et al., 2013) found

no differences in sexual victimization among juveniles and adults in adult prisons and jails. Despite these findings, there still remains significant evidence that the experiences of juveniles in adult prisons do not meet their developmental needs and have the potential to initiate “exposure to conditions that are likely to produce failure, a failure with perhaps lasting impacts on an adolescent’s social development and wellbeing far into the life course” (Fagan, 2008, p. 101).

Recidivism of Juveniles Treated as Adults

An obvious question regarding these legislative changes concerns their public safety effects. As already noted, many juveniles remain in the community or reenter the community at relatively young ages, and there is no clear evidence on the incapacitation effects of transferring adolescents to the criminal court (Mulvey & Schubert, 2012). The question, then, is whether transfer has specific or general deterrence effects. A number of studies have sought to examine the specific deterrence effects of these policies by examining the recidivism of a group of juveniles transferred to the criminal court and a group retained in the juvenile court. The Task Force on Community Preventive Services (2007) reviewed these studies and concluded:

The findings in this report indicate that transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.

In a review published by the Office of Juvenile Justice and Delinquency Prevention, Redding (2010) also concluded that transfer increases recidivism among transferred offenders. Fagan (2008) also examined this evidence in light of several critiques. In particular, he examined the evidence in response to critiques that matching transferred juveniles and those retained in the juvenile justice system is difficult and could result in selection bias. He concluded that these studies have sought to match youths on, or otherwise control for, characteristics that are related to subsequent criminal behavior and that the consistency of results across these studies points to the conclusion that transfer does increase recidivism. Mulvey and Schubert (2012) used data from the “Pathways to Desistance” project and matched cases on an extensive array of characteristics involving juveniles tried in the criminal and juvenile courts. Unlike other studies, they did not find a significant difference in recidivism between these groups but did find evidence of differential effects of transfer on recidivism within the group of transferred youths.

Despite these latter findings, the weight of the evidence currently indicates that the goal of specific deterrence is not met through transfer and, in fact, transfer appears to lead to increased levels of recidivism. The question of whether transfer has a general deterrent effect is less clear. The Task Force on Community Preventive Services (McGowan et al., 2007) reviewed research on the question of transfer and general deterrence and indicated that despite some studies showing no general deterrent effect, the evidence was inconclusive. Similarly, Redding (2010) concludes that the evidence on general deterrence is too limited to draw conclusions. At the same time, he suggests that transfer laws appear to have little general deterrent effect.

CONCLUSION

The evidence reviewed in this article is consistent with the claims of many scholars and advocates that current policies and practices in the United States facilitating the treatment of juveniles as adults have significant negative consequences for youths and do not serve legitimate societal

interests. It is also clear that these policies and practices are not consistent with either the letter or spirit of recent U.S. Supreme Court decisions, as well as a number of international treaties, standards, and conventions (Visser & Shook, 2013). In particular, the Supreme Court has issued three decisions over the last 8 years regarding the punishment of juvenile offenders. These decisions have found that the death penalty, life without the opportunity for parole sentences for non-homicide offenses, and mandatory life without parole sentences all violate the Eighth Amendment's prohibition on cruel and unusual punishment when applied to juveniles (*Roper v. Simmons*, *Graham v. Florida*, *Miller v. Alabama*). Importantly, these decisions have been based, at least in large part, on social science and neuroscience research that has shown that juveniles differ from adults with regard to both their culpability and their potential for change (Visser & Shook, 2013). While the holdings in the cases are relatively narrow, the broader spirit of these decisions is clearly instructive when examining other policies and practices regarding the treatment of juveniles as adults in the justice systems.

Thus, as policy makers, politicians, judges, and other actors are increasingly rethinking the policy and practice changes of the 1970s to 1990s, there is a lot of work left to be done in ensuring that our treatment of young offenders in the justice systems is both fair and effective and a need for an increased role for social work in these efforts. Fagan (2008) discusses the need for a more principled debate that moves beyond the rhetoric of "toughness" and engages with the empirical knowledge base in seeking to address the difficult questions concerning how and how much to punish young offenders. Shook (2009) argues for a more principled debate that not only considers the empirical data and criminological dimensions of the punishment of youth but also considers questions of rights and entitlements. The field of social work is well positioned to engage in and influence this debate given its longstanding history of practice, advocacy, and research in both the development and administration of youths serving systems like the juvenile court. As the rhetoric of the "super predator" has dissipated and discourses regarding young people have returned, at least somewhat, to a renewed commitment to the idea that young people are different than adults, efforts are needed to implement this idea in policy and practice. Currently, several national advocacy campaigns and many state-based advocacy campaigns are engaged in working through the court systems and legislatures to reform policy and practice, and there remains a need for the field of social work to become more engaged in these efforts.

In particular, these efforts are focused on issues such as raising the maximum age of juvenile court jurisdiction to 17 years in states that set it lower, reducing the reach of juvenile transfer, seeking to move youths out of adult facilities, reforming sentencing laws in the criminal court, strengthening the juvenile system so it is perceived as a viable alternative to the criminal court for persistent or serious and violent offenders, and evaluating transfer policies and practices to identify the consequences of treating juveniles as adults. All of these efforts are important, are well supported by the weight of the evidence, and offer an opportunity for the field of social work to become involved in practice, advocacy, and research regarding the treatment of juveniles as adults. They are also important because they intersect with many other issues of concern to the field, including racial and ethnic disparities, questions of social justice, the broader well-being of children and youths, the effects of violence on communities, and the role of prevention and other child-serving systems in seeking to intervene in the lives of young people. In addition to broader engagement in policy and practice debates and efforts, there is also a need for social workers to be more involved in the regular decisions and determinations that legal actors make regarding the salvageability of young people. As Shook (2011, 2013) has shown, decisions regarding whether a young person is a juvenile or adult for justice system purposes are contested and negotiated on a regular basis across many different decision-making points, and engagement in this process can shape how courts assess the criminal responsibility of young people. The field of social work is well positioned to become more engaged in this process and, given the consequences, it is essential that it does.

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