Juveniles in the Criminal Justice System

• By the late 1800s the creation of the juvenile justice system was in response to the belief that juveniles lacked the maturity and culpability that was a requirement for incarceration in the adult criminal justice system.

• Juveniles were treated as less blameworthy and considered to be more amenable to treatment.
Waiver to Adult Court

• The process through which the juvenile system relinquishes jurisdiction over the offender.

• Juveniles that are waived to adult court generally receive not exceptional or special treatment.

• Other terms for waiver include
  – Certification
  – Transfer
  – Remand
  – Binding over
• Waivers are relatively rare (N=7500) or less than 1 percent of the total number of juvenile cases handled formally.
  – 34% (n=2500) involved violent offenses
  – 40% (n=3000) property crimes
  – 16% (n=1200) drug offenses
  – 11% (800) public order

• Waiver was not axiomatic
  – In the 1920s only 10 states allowed for it.
Purpose

• Three basic reasons:
  – Heinous and violent offenders
  – Chronic offenders
  – Impose longer sentences than what is available in the juvenile system

• Limitations – jurisdictional age limit
  – A primary limitation is substantive
    • Prevented by law
    • Examine the Jonesboro, Arkansas case
      – Page 283
      – Both shooters were under the age of 14.
      – State law prohibited the waiver due to the ages of the shooters – one boy was 13 and the other was 11.
• Terms of sentence
  – Many juvenile offenders are sentenced to juvenile facilities and must be released by a certain age regardless of the offense committed.
  – Age limits usually between 19 – 21
    • The majority of states set 21 as the upper age limit
Types of Waiver

• Judicial
  – The most common and the longest history
  – Originally, the only means of waiver
  – Involves the use of judicial discretion
  – Three types:
    • Discretionary
    • Mandatory
    • Presumptive
Discretionary waivers

- The most frequently used
- Waiver laws vary by state
- Generally based on two factors:
  - Offenses considered
  - Minimum age
Waiver Hearing

• Prosecution presents evidence regarding reasons for waiver
• Defense will similarly argue against
• Standard criteria per *Kent*
  – Seriousness of offense
  – Aggressiveness, premeditation, or willful
  – Crimes against persons or property
  – Merit of the complaint
  – If accomplices were adults
  – Sophistication and maturity of offender
  – Previous record
  – Likelihood of rehabilitation as a juvenile
Mandatory Judicial Waiver

• Unlike the *Kent* criteria in discretionary waivers, this waiver focuses on the probable cause that links the juvenile to the offense.

• Under this waiver, if PC exists for arrest then the judge **must** waive the case to adult court.

• Only 15 states allow for this type of waiver.

• **Certain limitations:**
  – Capital crimes (death penalty)
  – Minimum age (17 in most jurisdictions)
Presumptive Waiver

- Certain cases are designated where the waiver is presumed to be appropriate.
- Under this model the defense bears the burden of proof and must argue why the case should not be waived.
- Statutory criteria that triggers presumptive waiver fails into three categories:
  - Offense-based
  - Age-based
  - Record-based
Legislative Waiver

- Legislative or statutory (**automatic**) waiver introduces the juvenile into the adult criminal justice system at the point of arrest and bypasses the juvenile court altogether.
- Removes the personal element inherent in judicial waivers.
- Considered to be
  - Rational
  - Nondiscretionary
  - Easily administered
What is excluded?

• Usually violent crime
  – Murder
  – Sexual offenses
  – Aggravated robbery
• Example:
  – New Mexico – a 15 year old who commits 1st Degree murder is automatically treated as an adult.

• Juveniles previously waived to adult court and continue to commit crime.
  – Referred to as “once an adult always an adult” laws.
Prosecutorial Waivers

- Occurs when there is a concurrent jurisdiction in the adult and juvenile courts and the prosecutor has the option to file charges in either jurisdiction.

- Controversial due to the level of prosecutorial discretion

- Prosecutors are interested in securing convictions
  - Rehabilitation is not a primary concern
Trends

- Perceived as a way to get tough with juvenile offenders.
- Recently, states have passed laws making it easier to waiver juveniles to adult court.
  - There has been a lowering of the minimum age limits
  - Expanding the number of offenses considered
  - Enacting or modifying legislative waivers
Effectiveness

- What is the purpose of waiver?
- Some argue that it
  - Imposes more severe sanctions
  - Longer sentences
  - Reserved for serious and violent offenders
- Effectiveness of waivers is based on
  - Are most offenders who are waived violent offenders?
  - Do waived cases result in more punitive measures.
- Punishment gap – involves 1st time juvenile waivers usually given leniency.
Public attitudes

- A majority of people polled support waivers for serious, violent offenders (86%)
  - Close to 70% support waiver for selling drugs
  - 62% for serious property crimes.
Blended Sentencing

• The imposition of juvenile and/or adult correctional sanctions for serious and violent offenders.

• A recent trend in juvenile sanctions
  – There is a blurring of the traditional dividing line between adult and juvenile systems.

• There are five types of blended sentence:
  – Juvenile-exclusive
  – Juvenile-inclusive
  – Juvenile-contiguous
  – Criminal-exclusive
  – Criminal-inclusive
Juvenile-exclusive

- The case is processed in juvenile court.
- If adjudicated a delinquent the judge may sanction one term or another
  - Juvenile term
  - Adult term
    - The exclusiveness is due to deciding one term or another, not both.
Juvenile-inclusive

- The case is processed in juvenile court.
- In this case the judge can simultaneously impose a juvenile and adult correctional sanction.
  
  - What differs from other types of sentences is that the adult correctional sanction is suspended if the juvenile satisfactorily completes the juvenile term without further offending.
Juvenile-contiguous

- The case is processed in juvenile court.
- The sentence can exceed the jurisdictional age limit of the juvenile correctional system.
- The juvenile is moved from the juvenile facility to an adult facility prior to completing the juvenile portion of the sentence.
  - Most frequently by age 21.
Criminal-exclusive

• The case is processed in the adult criminal system.
• The judge may impose a juvenile or adult sanction, but not both.

Criminal-inclusive

• The case is processed in adult court.
• After conviction the judge imposes both a juvenile and adult sanction.
• Follows the juvenile-inclusive for good behavior.
Juveniles in adult prisons

- Straight adult incarceration – when the juvenile is entered directly into the adult population.
  - Represent less than 1% of the total adult prison population.

- Segregated incarceration – when juveniles, often between the ages of 18-25, are placed in separate faculties.
The Death Penalty for Juveniles

- *Roper v. Simmons* (1975) – the US Supreme Court ruled that the imposition of the death penalty on juvenile offenders is unconstitutional.
  - Eighth Amendment
    - Cruel and unusual punishment
  - Fourteenth Amendment
    - Applies the Eighth Amendment to the states.
Prior to *Roper*

- There have been 366 documented juvenile executions in the United States.
- Represent 2% of the total number of executions.
- The practice has a long history.
  - Under common law a 7 year old received the same punishment as an adult.
  - 1642 – first documented case of a 16-year old executed for bestiality.
- Juveniles as young as 10 have been executed in the United States.
The *Simmons* case

- Christopher Simmons was 17 when he committed murder.
  - Could be categorized as a “thrill murder”
  - Simmons was sure he could get away with it.
  - Simmons was overheard bragging about the murder after it was committed.
  - He was tried as an adult.
  - He was convicted.
  - An appeal under *Atkins v. Virginia* (mentally retarded defendant).
    - Reasoning was that *Atkins* addressed age.