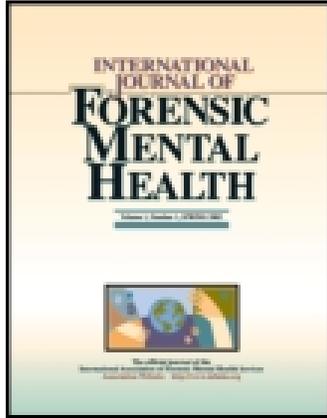


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The Transfer of Juveniles to Adult Court in Canada and the United States: Confused Agendas and Compromised Assessment Procedures

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The Transfer of Juveniles to Adult Court in Canada and the United States: Confused Agendas and Compromised Assessment Procedures

Stephanie R. Penney and Marlene M. Moretti

This article traces the evolution of the youth justice system in Canada and the United States and examines the practice of transferring juveniles to criminal court. Experts disagree about whether the goals of rehabilitation and retribution can be satisfactorily reconciled within the bounds of the juvenile system, and whether juvenile transfer significantly deters youth crime. Equally controversial is the appropriateness of exposing youth – who are in the midst of development – to the criminal system and to the possibility of receiving a lengthy adult sanction. We argue that it is neither efficacious nor ethical to transfer youth to adult court and deny them the protections afforded by the juvenile system. Concepts from developmental psychology, risk assessment, and juvenile psychopathy are integrated into this argument. Recommendations for policy and future research are noted, including a need to develop systematic guidelines that bridge legal and psychosocial constructs in the assessment of risk, amenability to treatment, and maturity of character in youth.

Juvenile offenders are criminals who happen to be young, not children who happen to be criminal. (Regnery, 1985, p. 65)

America is now home to thickening ranks of juvenile “super-predators”—radically impulsive, brutally remorseless youngsters, including ever more preteenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders. They do not fear the stigma of arrest, the pains of imprisonment, or the pangs of consciousness. (Bennett, DiIulio, & Walters, 1996, p. 27)

As the above quotes emphasize, there is an alarmist and “get tough” quality to current policy making, research, and public sentiment towards violent crime among juveniles (Allard, 2000; Halikias, 2000; National Council on Crime and Delinquency, 1991; Sprott, 2001; Wu, 2000). The media’s selective focus on incidences of extreme violence committed by young persons has likely distorted the public’s perception of youth crime and

fuelled a punitive attitude towards it. In contrast to the media’s sensational—and often inaccurate—portrayal of youth violence, recent statistics concerning juvenile crime present a more balanced picture. In Canada, for instance, serious youth violence has been consistent for the past three decades (Bromwich, 2002; Sprott, 2001). Ironically, those offenses—homicide, aggravated, and sexual assaults, for example—that cause the most public anxiety and outrage are precisely the ones that evidence the most stability. From an American perspective, societal concerns about youth violence may be more justified. A 50% increase in total juvenile arrests for violent crimes occurred between 1988 and 1994 in the United States, coupled with a 5% increase in the proportion of violent crimes cleared (Howell, Krisberg, & Jones, 1995; Snyder, Sickmund, & Poe-Yamagata, 1996). Furthermore, the U.S. witnessed a dramatic increase in the number of people under the age of 18 arrested for murder: 158% between 1985 and 1994 (Children’s Defense Fund, 1997). More recently, however, juvenile arrests for violent crimes in the U.S. have been noted to be at their lowest level since 1988. In 2000, law enforcement agencies in the U.S. made an estimated

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2.4 million arrests of persons younger than 18, a 15% drop from 1996. For violent offending in particular, between 1996 and 2000 juvenile arrests for Violent Crime Index offenses (including murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault) dropped 23%, while adult arrests for these offenses dropped 9%. During this period, juvenile arrests declined 55% for murder, 28% for weapons law violations, and 38% for robbery (Snyder, 2003). Despite these decreases, the rate of violent offending among American youth continues to be substantially higher than the corresponding rate in Canada. Moreover, the American public continues to rate juvenile crime as one of its most pressing social concerns (Walker, 1998; Wu, 2000).

The fact that children are more likely to be the victims of violence than they are to be arrested for a violent crime should be used to temper sensationalist media depictions of youth violence. For instance, by the time an American youth reaches 17 years of age, he or she has a 1 in 9 chance of suffering from posttraumatic stress disorder as the result of witnessing or experiencing violent episodes in their past (Osofsky, 2001). Youth are also more likely to die by their own hand than at the hand of another young person (Children's Defense Fund, 1997; Halikias, 2000). Yet there continues to be an overwhelming opinion among citizens and politicians alike that "youth violence is one of the most serious problems confronting American society today" (Thornberry, Huizinga, & Loeber, 1995, p. 213). Accordingly, public sympathy for young delinquents has waned considerably over the past decade. Tragedies such as the ones in Littleton, Colorado and Taber, Alberta have simultaneously amplified public fear of its young while toughening its attitude towards youth violence.

The change in public sentiment is echoed in various legislative reforms that have modified juvenile law over the past 30 years in North America. During the last three decades, laws have been passed in Canada and the U.S. reflecting the public's desire to "get tough" on juvenile crime and hold young offenders accountable for their behavior. Perhaps the most salient of these reforms are those surrounding the process of juvenile transfer. As Ruddell, Mays, and Giever (1998) have noted, "the transfer of youths to adult court—also defined as waiver, certification,

or remand—represents the cornerstone of a contemporary get-tough movement directed at juvenile offenders" (p. 2). Particularly true of the American juvenile system, it is now easier, quicker, and cheaper to have juveniles waived to adult criminal court than ever before (Dawson, 2000; Mulford, Reppucci, Mulvey, Woolard, & Portwood, 2004; Redding, 2003; Ullman, 2000). The legislative surge toward limiting the jurisdiction of the juvenile system reflects the strong public perception of the inadequacy and disproportionality of the penal sanctions available to juvenile courts. However, what has been lost in these legislative reforms is a concept of proportionality that gives due weight to developmental factors such as intellectual or emotional immaturity—factors that are directly relevant to the culpability and blameworthiness of a young offender. Developmental considerations are often glossed over when the focus is on retribution and the losses of life and limb sustained by the victims of juvenile violence (Fagan & Zimring, 2000; Scott, 2002).

This article sketches a historical timeline of the juvenile justice system in both Canada and the U.S. to highlight the move that both countries have made towards increasingly punitive youth justice policies. Transfer laws and practices essentially embody a punitive and utilitarian approach to youth justice; accordingly, the mechanisms through which youth may be transferred to adult court are critically examined in terms of their efficacy in reducing juvenile offending as well as their ethicality from a developmental perspective. Criteria and methods employed in conducting transfer assessments are outlined to underscore the tension that exists between what information forensic psychologists can reliably offer the courts concerning individual youth, and what the law requires from these evaluators on a regular basis. Finally, the concept of juvenile psychopathy is used as a specific example to illuminate the difficulties involved in juvenile transfer evaluations, and to highlight the problems that are incurred when assumptions taken from adult measures of psychopathology are extended to youth. From a legal perspective, the construct of juvenile psychopathy runs the risk of being misused, particularly in the domain of transfer hearings, because of the information it purports to offer regarding a youth's level of dangerousness, amenability to rehabilitation, and criminal sophisti-

cation. Finally, recommendations and suggestions for future research are outlined in light of these issues.

HISTORY OF THE JUVENILE JUSTICE SYSTEM IN THE UNITED STATES AND CANADA

The juvenile justice system in the United States recently celebrated its 100th anniversary. The first special system of justice for juveniles in the U.S. was established in Cook County, Illinois in 1899; within 30 years almost all of the other states had created their own system for juveniles based on this original model. Although a separate system for juveniles has been in place in the U.S. for over a century, the nature, goals, and purposes of this system have changed radically since its inception. Similarly, the Canadian juvenile justice system has undergone major reforms in the past century that have had significant repercussions on the way juvenile offenders are dealt with and processed through the system. Before providing a more detailed description, however, of the various phases through which the juvenile justice system has passed since its inception, a broader statement might be useful here. Moving away from rehabilitative and treatment-oriented objectives, punishment, retribution, and public safety have increasingly come to define the goals of the Canadian and American juvenile justice systems. The reasons for such a shift in focus will be elaborated below, but for now it will suffice to say that the juvenile justice system of today bears few resemblances to the original model created in Cook County over 100 years ago.

Phase I of the Juvenile Justice System

In the early 19th century, before a separate system of justice for youth was created, juvenile delinquents were treated no different from adult criminals (Trepanier, 1999; Ullman, 2000). In Canada, young offenders were subject to the same laws and penal treatments as adults until 1857, after which Parliament enacted legislation which recognized the unique status of juveniles under the law (Trepanier, 1999). Prior to this, youths deemed to be “wayward” were incarcerated along with adult criminals and exposed to harsh prison conditions. This state of affairs was quickly discovered to be

untenable, as delinquent youths would become educated in the “art” of organized crime by the adult convicts to whom they were exposed. Moreover, adult inmates would frequently abuse and exploit youths that entered the institution. These youths would often leave adult prisons more hardened and entrenched in criminality than when they entered. An indirect consequence of treating adolescent offenders as adults, therefore, was that juvenile crime continued to rise (Ullman, 2000).

Phase II: Progressivism & *Parens Patriae*

The latter portion of the 19th century witnessed both large-scale societal changes as well as a surge in psychological empiricism that led to a completely novel conceptualization of the juvenile delinquent (Grisso, 2003; Ullman, 2000). The Progressive movement in the U.S., which emerged in response to the deleterious effects that rapid industrialization and urbanization were having on the country, challenged the classic assumption that criminal behavior was the product of a person’s free will and therefore represented something deviant within the individual. The central tenet behind the Progressive movement, namely that “antecedent causal variables produce crime and deviance” (Feld, 1987, p. 475), set the stage for delinquent children to be viewed as products of a corrupt environment rather than as having an innate proclivity to crime and criminality. The separation of adult and adolescent offenders was deemed essential, since, according to the Progressive view, exposing youths to the exploitative and corrupt nature of the adult corrections system would only serve to exacerbate their condition.

Knowledge coming from the field of child and adolescent psychology helped bolster the claims that were being made by the Progressives at this time. Developmental scientists advanced the notion that children and adolescents were fundamentally different from adult offenders and deserved disparate treatment under the law (Steinberg & Cauffman, 2000). Developmental psychology, although still in its infancy at this time, started to defend the position that, due to factors such as intellectual and emotional immaturity, juvenile offenders could not be considered responsible for their acts in the same way as were adult criminals. Additionally, the study of child development introduced the concept of

malleability, and stated that young offenders were to be regarded as substantially more impressionable and amenable to intervention than were their adult counterparts (Grisso, 2003; Halikias, 2000; Steinberg & Cauffman, 2000). Because adolescents were still in the process of developing, society was seen as having a responsibility to affect that developmental process in positive and constructive ways (Platt, 1977). It was acknowledged that juveniles needed to be placed in rehabilitative settings where they would not be exposed to the kind of environmental destabilizers that would promote a lifelong career of criminal offending. The Progressive era thus prompted the creation of a distinct system of justice designed to treat and rehabilitate young offenders (Tanenhaus, 2002; Ullman, 2000).

The development of a Canadian system of juvenile justice emulated many trends that were emerging in the U.S. Beginning in the later half of the 19th century, many Canadian cities began creating rehabilitative and reform institutions designed specifically for delinquent, abused, and neglected children. Policy recommendations were put forth regarding delinquent youth, many of which would later become formalized in the 1908 Juvenile Delinquents Act (JDA, 1908). Canadian legislators urged for the separation of adult and young offenders, and separate detention facilities were eventually created for juveniles, as were special courthouses where young offenders could remain sheltered from the public eye. This early Canadian model of juvenile justice was progressive in that treatment objectives and societal protection were not presented as mutually exclusive or conflicting goals. In contrast to current models of juvenile justice, the treatment of juvenile delinquents was expressly regarded as a means of achieving greater societal protection (Trepanier, 1999).

The Juvenile Delinquents Act of 1970 continued to be largely paternalistic and treatment-oriented in nature. Similar in flavor to the Progressive era in the U.S., the JDA was dedicated to understanding the causes of delinquency and tailoring treatment programs to the needs of the youth (Bala, 1989). Under the JDA, it was relatively uncommon for young offenders to receive lengthy custodial dispositions, and waiver to adult court was strictly reserved for those youth who committed the most violent or serious offenses. The wording of the

transfer “test” used by the courts during this time is reflective of the priorities set out in the Act. When deciding whether to transfer a youth, the JDA placed a premium on “the good of the child” and had as a secondary objective “the interests of the community.” Of note, these priorities were reversed in 1984 when the JDA was repealed and the Young Offenders Act (YOA, 1985) came into existence. In contrast to the JDA, the YOA had as its primary criteria for transfer “the interests of society” and second, “having regard to the needs of the young person” (YOA, 1985, s. 16; Bala, 1989).

Treatment objectives took precedence over questions of guilt, retribution, and culpability in this emerging system of juvenile justice. In the U.S., the Progressive movement gave way to the legal doctrine of *parens patriae*, which is literally translated to mean “father of the country.” Under this doctrine, the state is viewed as the guardian of its delinquent youth, and youth court judges were instructed to discipline these youths in much the same way as they would their own children (Tanenhaus, 2002; Ullman, 2000). Similarly, Canadian policy acknowledged that the legal doctrines of proportionality and accountability did not have much relevancy as the goal was not to punish young offenders; rather, the system aimed to treat young offenders in order to prevent future delinquency (Trepanier, 1999). Juvenile proceedings were distinguished from adult trials in that youths were not “sentenced” according to the severity of their offenses but rather “adjudicated” based solely on their unique developmental needs.

A major consequence of these new priorities was that juvenile court judges were given broad flexibility and discretion in addressing delinquent behavior. Youth appearing in these courtrooms were often deprived of the typical due process protections afforded to adult defendants (Siegel & Sienna, 1981; Trepanier, 1999; Ullman, 2000). Perhaps inevitably, it was not long before critics of the juvenile system emerged, noting how the non-adversarial nature of juvenile proceedings violated the constitutional rights of these youth (Yekel, 1997). The concept of *parens patriae* was eventually rejected by the juvenile courts as “murky and of dubious historical relevance” (Snyder & Sickmund, 1999, p. 90), and it was increasingly acknowledged that juveniles needed to be provided with the same due process rights in court as were adult defendants. The growing

dissatisfaction with the system, coupled with an increasing crime rate among juveniles, set the stage for the next phase juvenile justice to take shape.

Phase III: Punishment & Retribution

Legal commentators writing in the 1980s and 90s, reacting primarily to the public's growing fear of juvenile violence, reflected on the failure of the rehabilitative system set up by the Progressives some 50 years earlier. In fact, the suspicion that the rehabilitative system was floundering could be seen as early as the 1960s. Critics of the system began to point out that youths were not being successfully treated within the system. Furthermore, it was noted that adjudicating delinquents often resulted in outcomes that resembled criminal sentences and entailed significant intrusion into the lives and liberties of affected youth (Grisso, 2000; Melton, Petrila, Poythress, & Slobogin, 1997). This is perhaps what led Justice Fortas, writing for the Court in *Kent v. United States* (1966), to conclude, "juveniles may be receiving the worst of both worlds ... neither the protections accorded to adults nor the care and treatment postulated for children" (p. 556). It was formally acknowledged in *Kent* that the non-adversarial nature of the juvenile system violated the constitutional rights of young defendants. Consequently, in 1966 the Supreme Court held for the first time that juvenile defendants were entitled to due process and representation by counsel. Another significant outcome of the *Kent* decision was that it instituted explicit criteria to be considered in waiver hearings. Although juvenile courts often exercise broad discretion in making transfer decisions, in most jurisdictions judges draw upon some combination of the original criteria set out in *Kent* (Ewing, 1990). To date, these factors (i.e., dangerousness, amenability to rehabilitation, sophistication and maturity) continue to be weighted heavily in transfer decisions (Ewing, 1990). Other aspects such as the youth's age, his or her prior record, and the degree of violence and premeditation of the offense are often given consideration as well.

In 1967, one year after *Kent*, the Supreme Court's decision in *In re Gault* reaffirmed the application of due process requirements to juvenile proceedings (Ullman, 2000). The Court held that because a juvenile proceeding has the potential to

result in loss of liberty and is, in fact, comparable in nature to an adult felony proceeding, a youth should benefit from the expertise of counsel. The *Gault* decision also served to shift judicial attention towards a determination of guilt, thereby introducing punishment-oriented remedies into the juvenile system. Effectively, together with the *Kent* case, the Supreme Court's decision in *In re Gault* (1967) transformed the structure and processes of the juvenile court, and substantially diminished its rehabilitative outlook by implementing due process requirements designed to protect the constitutional rights of minor defendants (Ullman, 2000). Although this was not the express intent of these reforms, juvenile proceedings now began to resemble traditional adversarial adult felony proceedings, and punishment-oriented strategies progressively replaced original treatment objectives (Grisso, 2003).

In the *Kent* and *Gault* decisions of the mid-1960s, we see the seeds of what eventually became a significant shift in focus onto punitive measures in the juvenile courts. In the U.S., when the rate of adolescents' violent offenses sharply increased in the late 1980s and early 1990s (Snyder et al., 1996), this merely served to reinforce the suspicion that was voiced 20 years earlier; namely, that a rehabilitative system of justice for juveniles was not viable, and that a more punitive system was necessary. In response to this surge of juvenile violence, virtually all U.S. states changed their statutes as to de-emphasize rehabilitative responses and increase the likelihood and severity of punishment (Grisso, 2003). In Canada, a similar shift could be witnessed with the enactment of the YOA in 1984. Specifically, the exclusive focus on treatment and rehabilitation that had characterized the JDA was replaced with the "Declaration of Principle" in section 3 of the YOA which demanded, among other things, that attention be paid to criminal responsibility, protection of society, and the legal rights and freedoms of minor defendants (Stuart, 1989). Mirroring the transition that was taking place within the American system, the YOA focused on public safety, culpability, and demonstrated an increased awareness of the legal rights to which young defendants were entitled. Bill C-58, which was passed in December of 1989 as an amendment to the YOA, further reinforced the premium put on protecting the public from young offenders. Specifically, the bill stipulated that "the

protection of the public shall be paramount” in guiding transfer decisions (Bala, 1990).

At the same time, however, Bill C-58 increased the maximum disposition that the youth court could impose for murder, signaling Parliament’s desire that not all murder cases be automatically transferred to criminal court. By allowing the juvenile system to retain custody over some violent offenders, this was an attempt to simultaneously meet the treatment needs of these youth while ensuring the protection of society (Bala, 1990). This, in fact, was a recognition that some youths—even those who commit acts of extreme violence—could be rehabilitated if they had longer periods of time within the youth system (Bala, 1990). Nevertheless, if the objectives of public protection and rehabilitation could not be reconciled within the bounds of the juvenile system, public safety would prevail.

The most recent phase of Canadian juvenile justice came into effect in April of 2003 with the enactment of the Youth Criminal Justice Act (YCJA). Under this new act, protection of society and retribution override treatment needs if these two competing objectives cannot be reconciled. Comparable to the goals of the U.S. system, the YCJA has as its sentencing purpose “to hold a young person accountable for an offense through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public” (s. 38 [1]). Although this statement attempts to weave together competing demands of punishment, rehabilitation, and public safety, it also implies that culpability and societal protection will take precedence over a youth’s treatment needs. The YCJA’s punitive flavor is also evident in the concept it employs for transfer decisions; in contrast to both the JDA and YOA, under the YCJA the transfer decision is framed entirely in terms of criminal responsibility and protecting the community. The Act essentially seeks to determine whether a juvenile sanction could sufficiently hold a youth “accountable” for his or her offense (Bromwich, 2002). Interestingly, however, portions of YCJA remain similar to Bill C-58 in that they allow for “intensive rehabilitative custody” orders to be made in cases where a youth has committed a violent offense (i.e., murder, attempted murder, manslaughter, or

aggravated sexual assault), but is suffering from a “mental illness or disorder, a psychological disorder, or an emotional disturbance” (s. 42 [7][b]). Therefore, despite the “get tough” quality of the YCJA, rehabilitation continues to occupy a place in the Act.

Presently, public safety has effectively come to replace rehabilitation as the juvenile court’s top priority, and transfer proceedings reflect these changing priorities. In direct contrast to the criteria guiding adjudication during the rehabilitative phase of juvenile justice, large numbers of delinquent youth are currently transferred “wholesale” and sentenced on the basis of their offenses and prior record, rather than according to their unique developmental needs (Feld, 2000). Mulford and colleagues (2004) note that modifications and expansions to statutory exclusion provisions in the U.S. (i.e., where youths can be waived automatically based on their age and/or offense committed) represent “the fastest growing mechanisms for transferring youth out of the juvenile system” (p. 10). Overall, the increase in mechanisms available for transfer, coupled with the socio-political climate in which these reforms have been taking place, have served to substantially boost the rates of juvenile cases transferred to adult court over the past two decades (Butts, 1997; Grisso, 1998; Salekin, 2002b).

TRANSFER MECHANISMS: HOW YOUNG OFFENDERS GET TO ADULT COURT

As the above discussion illustrates, the juvenile justice system has had the unenviable task of reconciling the opposing demands of punishment and rehabilitation for much of its history. The practical result of these conflicting factions on the juvenile system is embodied in waiver proceedings (Ullman, 2000); the transfer of juveniles to criminal court essentially emerged as a “safety valve” designed to deal with the competing demands of punishment and rehabilitation that were increasingly being faced by the juvenile system. Although juvenile transfers have since become exceedingly complex legal procedures, arguably, transfers still fundamentally represent a punitive response to young offenders who are deemed “inappropriate” for the juvenile justice system (Feld, 2000).

In practice, the mechanisms through which a youth can be waived into the criminal system are elaborate and vary across different geographical regions. In the U.S., because criminal law is legislated at both the state and federal level, this has resulted in over 50 different legal codes for juveniles. In contrast, Canadian criminal justice systems are bound by national criminal code legislation, and therefore evidence more consistency across provinces (Ruddell et al., 1998). Most states have a variety of transfer provisions dictating the exact processes through which a youth can be transferred to adult court. In Arizona, Georgia, and Pennsylvania, for instance, a youth may be waived to adult court via three separate transfer mechanisms (i.e., judicial waiver, prosecutorial waiver, and statutory exclusion). The latter two provisions allow for a youth to be waived automatically on the basis of age or type of offense committed, while the former includes a traditional hearing and judgment. In Canada, there exist no provisions that allow a youth to be waived automatically into the adult system. At a minimum, an “application” for adult sentencing must be made and formally decided upon during a hearing (YCJA, 2003, s. 64[1], 71). Finally, 23 American states have the option of waiving a youth back to juvenile court for disposition and/or sentencing purposes—procedures referred to as “reverse waiver” and “blended sentencing” (Snyder & Sickmund, 1999). Although no parallel options exist under the YCJA, there is increased discretion surrounding the Crown’s ability to “renounce” an application for adult sentencing on the basis that a youth has committed a presumptive offense (i.e., first or second degree murder, attempted murder, manslaughter, aggravated sexual assault, or the third commission of a “serious violent offense” as defined in section 2 of the YCJA; Bromwich, 2002). Additionally, a youth is permitted to serve the first portion of an adult sentence in a juvenile facility (up until age 20) if “the young person is under the age of eighteen years at the time that he or she is sentenced” (YCJA, 2003, s. 76 [2][a]).

Perhaps the most salient of the regional differences that exist in American transfer provisions is the age at which a youth can be considered for transfer; in Kansas and Vermont, for example, a child as young as 10 years of age can be considered for judicial waiver. Other states do not indicate a minimum age, and instead specify different ages

depending on the type of offense committed, with more serious offenses typically having a lower minimum age for transfer (Snyder & Sickmund, 1999). In contrast, Canadian law stipulates that all youths aged 14 or older may be sentenced in criminal court if they have committed any presumptive offense, or any offense for which an adult would receive a sentence of two years or longer (YCJA, 2003, s. 62). Each province retains discretion, however, to set the exact age (above 14 but no more than 16 years of age) at which this presumption will apply (YCJA, 2003, s. 61). Once this age is reached, adult liability is presumed, and the onus is upon the accused to demonstrate why they should be sentenced as a juvenile.

EFFICACY AND ETHICS: DO TRANSFERS WORK?

Behind this deceptively simple question lie a myriad of issues and controversies. From a legal policy-making perspective, transfers are considered efficacious if they can be shown to reduce rates of youth crime. To date, the evidence has been equivocal in demonstrating that punitive reforms reduce crime rates or control violent delinquency among youth (Forst & Blomquist, 1991; Sheffer, 1995). For transfer laws in particular, there is evidence both to support and oppose the proposition that increasing transfer rates has had an appreciable effect on juvenile crime rates or perceptions of public safety. Bishop and colleagues (Bishop, Frazier, Lanza-Kaduce, & Winner, 1996; Winner, Lanza-Kaduce, Bishop, & Frazier, 1997) empirically examined the effects of transfer and found that youths who were waived to adult court typically re-offended at faster rates compared to matched controls in the juvenile system. Furthermore, while transfers were associated with diminished recidivism rates for property offenses, this decrease was offset by increased rates of violent re-offending (e.g., assault and robbery; Bishop et al., 1996). Similar findings showing faster recidivism rates among transferred youth have been reported by other researchers (e.g., Fagan, 1996; Myers, 2001; Podkopacz & Feld, 1996). Together, these results suggest that transfers are ineffective in reducing juvenile crime and isolating youths who pose the gravest threat to public safety.

Data from official juvenile justice agencies present a different perspective. Statistics tracing juvenile crime rates in the United States show a clear parallel between rising crime rates in the early 1990s and increases in the proportions of cases waived to adult court. Importantly, these data also show a corresponding drop in the number of cases transferred to criminal court when the rate of juvenile offending began to decrease after peaking in 1994. The actual number of cases judicially waived to criminal court in the U.S. peaked in 1994 at over 12,000 cases (Puzzanchera, Stahl, Finnegan, Tierney, & Snyder, 2003; Ruddell et al., 1998), representing a 45% increase from just four years earlier. Subsequently, there was a 38% decline in cases transferred to adult court between 1994 and 1998 (Puzzanchera et al., 2003), occurring simultaneously with a 47% decline in the juvenile arrest rate for Violent Crime Index offenses (Snyder, 2004). While these trends are not necessarily causally linked, it is possible that the substantial increase in transfer rates occurring in the mid-1990s served as a deterrent to juvenile crime which declined over the next eight years. However, it is equally possible that those youths who were transferred and went on to re-offend had crossed the age of majority, effectively excluding their new offenses from juvenile crime statistics.

In addition to questioning whether transfers serve as effective deterrents, researchers have debated whether transfers aid in protecting the public or increasing perceptions of public safety. Waivers are currently requested for all types of offenses and offenders, whereas they were once reserved for the most violent or recalcitrant delinquents. For instance, American youths charged with property offenses in 1999 comprised a greater share of the waived caseload than those charged with person or violent offenses (40% or 3,000 cases for property crimes compared to 34% or 2,500 cases for person offenses; Stahl, 2003). This was especially true for Caucasian youths charged with property offenses; these youth comprised the largest share (48%) of the waived caseload, compared to 31% charged with offenses against persons (Puzzanchera et al., 2003). Similarly, roughly equal numbers of Canadian youth were transferred to adult court for violent (56%) and non-violent (44%) offenses over a nine-year period spanning from 1986 to 1994 (Ruddell et al., 1998). Similar to the message conveyed by Bishop and

colleagues' research (1996, 1997), these data suggest that transfers may not be effective in identifying and isolating only those young offenders that threaten public safety.

From an ethical stance, the issue of "effectiveness" becomes more complex; reducing the level of crime among juveniles does not necessarily imply that transfers are ethically or morally acceptable to society. At a minimum, as a society we have an obligation to demonstrate that transfers incur no additional risks or excessive harm to a youth who may remain within the bounds of the juvenile system. Unfortunately, there is a paucity of research examining the long-term outcomes of transferred youth, and the consequences of differential placement (i.e., juvenile versus adult system; Weatherly, 1990). Some research suggests that there may be unintended negative consequences of waiving youths into the criminal system. For instance, juveniles who are transferred to adult status often receive harsher sentences than do adults charged for similar crimes in the same jurisdiction (Myers, 2003; Strom, Smith, & Snyder, 1998; Ullman, 2000). Criminal courts now also incarcerate youth at higher percentages than does the juvenile system (Podkopacz, 1996), although this was not always the case (Bortner, 1986; Hamparian et al., 1982). In the U.S., juvenile felony defendants in criminal court are more likely than adult defendants to be detained at pretrial, convicted, and sentenced to a state prison (Strom et al., 1998). In contrast, some juveniles—most notably those with lengthy youth records—tried in adult court obtain "first-time offender" status and consequently receive more lenient sanctions than they would have in the juvenile system (Jaffe, 1985; Kruh & Brodsky, 1997). Still, some evidence has found the opposite (e.g., Rudman, Harstone, Fagan, & Moore, 1986). Thus detrimental effects occur in some cases and preferential effects in others; however, one certain effect is that waiving a youth to adult court introduces the possibility of more serious legal sanctions, including the death penalty in 21 American states (Ruddell et al., 1998; Steinberg & Scott, 2003).

In terms of the behavioral and psychological ramifications of transfer, again, there is a lack of conclusive knowledge surrounding the short- and long-term effects of the criminal system on young offenders (Redding, 2003). The literature that does

exist highlights the inadequacies of the adult system in terms of rehabilitation and skill development in youth. In particular, the detrimental effects of exposing adolescents to “prison life” while they are in the process of learning social and cognitive skills are highlighted (Forst, Fagan, & Vivona, 1989). Rather than developing valuable skills and prosocial bonds to others, Forst and colleagues (1989) suggest that “these youth will know little else other than the institutional world ... the social rules and norms learned are those in the institution, including the reciprocal cycle of victimization and retaliation” (p. 11). Furthermore, adjusting “successfully” to prison life may produce added criminogenic effects, and paradoxically make it more difficult for these youth to re-integrate themselves into the community once they are released (Redding, 2003).

Taken as a whole, it is doubtful that the gains or benefits of juvenile transfer (e.g., in the form of reduced crime rates or increased perceptions of public safety) outweigh the harm or risks incurred by the process. But if as a society we wish to maintain the practice of juvenile transfers, we should at the very least demonstrate that the criteria used in waiver hearings possess adequate reliability and validity, and we should be clear about limitations. What evidence is there that important characteristics such as dangerousness, amenability to rehabilitation, and sophistication-maturity can be accurately assessed in youth? We turn to this issue in the next section of this paper.

DANGEROUSNESS, AMENABILITY, & SOPHISTICATION-MATURITY ASSESSMENTS IN THE JUVENILE COURT

Most transfer decisions are based on a youth court judge’s assessment of dangerousness, amenability to treatment, and the level of maturity exhibited by a youth (Grisso, 2000, 2003; Kruh & Brodsky, 1997; Salekin, 2002a). Except for those types of transfers where a youth is waived to adult court automatically based on his or her age and the type of offense committed (i.e., statutory/legislative offense exclusion and prosecutorial/“direct file” waivers), expertise from the fields of developmental, clinical, and forensic psychology is almost always relied upon to inform these evaluations (Ewing,

1990; Grisso, 2000, 2003; Kruh & Brodsky, 1997). As transfers are becoming increasingly streamlined into the juvenile justice system, it is no longer sufficient for a clinician to evaluate a youth’s rehabilitative needs. Rather, forensic evaluators now need to collect evidence reflecting a youth’s culpability and risk for future violence, and to directly address the “public safety” standard in waiver hearings (Grisso, 2003). Interestingly, the legal constructs of dangerousness, amenability to treatment, and sophistication-maturity remain the determinative factors in most transfer hearings despite the ambiguity and lack of systematic guidelines existing for their assessment (Salekin, 2002a).

What Factors Impede the Prediction of Dangerousness in Youth?

Youths typically cannot be waived to criminal court unless they pose a serious risk of harm to others. A clinician in this situation thus seeks to make an estimate of the likelihood that a particular youth will engage in violent behavior at some point in the future (Grisso, 2000). There are several problems with these evaluations, many of which are compounded by the fact that risk assessments are used to make consequential decisions in forensic contexts (Grisso, 1998; Salekin, Rogers, & Ustad, 2001). First, given the fact that estimating future violence in adult offenders is difficult and often unreliable, one might well anticipate that such a task would become prohibitively difficult in adolescents, who are in the period of rapid social, behavioral and emotional transition. In contrast to adults, whose characteristics tend to be more stable over time, adolescence is characterized by considerable developmental change. This implies that a clinician’s estimate of future behavior will be compromised by the fact that information about a youth’s current characteristics, collected at one point in time, quickly become dated as the youth continues to develop and mature (Grisso, 2000; Mash & Barkley, 1996).

A second factor impeding clinicians’ abilities to provide the courts with a reliable estimate of future violence is the fact that antisocial behavior increases during adolescence, even in normative populations, and this increase is typically transient (Moffitt, 1993). It is a well-validated finding that the majority of

youth desist from criminal activities once they reach 19 or 20 years of age (Gottfredson & Hirschi, 1990; Moffitt, 1993). This has also been demonstrated for youths who commit violent offenses (Elliott, Huizinga, & Morse, 1986). Although Moffitt (1993) posits that there exists a small group of young offenders whose criminality persists into adulthood (i.e., “life course persistent”), these youth are clearly the minority. The normative increase in antisocial behavior during adolescence makes it extremely difficult to isolate predictors that reliably distinguish those youth who will continue to engage in antisocial behavior from those who will not (Grisso, 1998). Although several well-validated risk factors have been identified in the literature with modest relationships to future violence (e.g., Borum, 2000; Loeber & Farrington, 1998), research has been slow to translate these findings into explicit guidelines for forensic clinicians (Grisso, 2000, 2003). To compound this dilemma, many risk assessment instruments have been criticized on the basis that they are not sufficiently sensitive to dynamic factors that change over time (Borum, 2000). Given that adolescence is a period characterized by change, this poses a significant challenge for these instruments’ ability to gauge the temporal stability (or instability) of risk in juveniles.

What about the prediction of more serious forms of offending? One might argue that antisocial behavior is difficult to predict over the long term because it increases in adolescence, but violent behavior is relatively rare and certainly more concerning in terms of public safety. While this is true, the problem in predicting violent behavior is that the base rate is so low. Legal decisions that are based on a judgment of “high risk” for violence presume that clinicians and judges have the capacity to predict low base-rate, serious, and violent criminal behavior in a reliable fashion (Feld, 2000). In reality, however, the prediction of any low base-rate behavior, in any type of population, will produce a substantial false-positive error rate (Grisso, 1998, 2003; Monahan, 1981). In the context of waiver hearings, basing a decision to transfer a young person on an estimate of his or her propensity for future violence ignores the possibility that such estimates can be wrong just as often as they are right, and that this is especially true when worded in dichotomous language (i.e., that a youth will or will not be violent

in the future; Ewing, 1985; Monahan, 1981). In particular, due to the number of false-positive errors that will arise when estimating future violence, to incarcerate a youth on the basis of what they may do in the future may not be justifiable (Zimring & Hawkins, 1995).

The developmental changes that occur during adolescence imply that risk predictions—particularly long-term estimates of future violence—may be unreliable to the point of being contraindicated in youth. In fact, long-range estimates of risk for violence (i.e., more than two or three years) are almost uniformly discouraged by the scientific literature (Melton et al., 1997; Monahan, 1981). Some might argue that the courts do not explicitly ask for long-term predictions; in practice, however, juvenile waiver hearings typically require clinicians to supply an opinion about a youth’s state when they are released from the juvenile system (Grisso, 1998). As such, the temporal range of these opinions will depend on the age of the youth at the time of the hearing, with younger offenders usually requiring longer-range estimates. Ironically, it is these younger offenders for whom long-range predictions will be most problematic. It could also be argued that some information is better than none, and that court personnel can understand and use clinical assessment information to the benefit of youth. This is true: information on the youth’s cognitive functioning, social and family background and history of violent behavior can be extremely useful in court. However, long-term estimates of risk for future dangerousness are another matter because these go far beyond this data and their accuracy is not substantiated.

Due to the limitations inherent in violence risk assessments, and particularly in juvenile assessments, such evaluations have been discouraged in the literature until quite recently (Barnum, 1987; Ewing, 1990). Currently, with the substantial advances that have been made in the field of violence risk prediction, clinicians appear to be better positioned in making more accurate estimates in a variety of populations (Salekin, 2002a). For instance, it is now acknowledged that risk for violence must be estimated along a continuum of probabilities to improve accuracy (Salekin, 2002a). In addition, research in the field suggests combining actuarial and clinical models of prediction in order to increase reliability in the face of low base-rate behaviors such

as violence (Monahan, 1982). Creating well-defined, proximal time lines for prediction has been shown to significantly increase the accuracy of violence risk estimates (Salekin, 2002a), as has specifying a precise environment in which violence is most likely to take place (Kruh & Brodsky, 1997). Lastly, psychologists performing risk evaluations with adolescents can aim to identify those factors that Moffitt (1993) and others have identified as signaling persistent offending (e.g., early onset of severe, varied, and frequent offending, maturity of character) to enhance the validity of their assessments. Overall, because the judgments supplied by psychologists regarding risk and dangerousness are often taken as “near ultimate” opinions, and because this information is frequently used in making placement and sentencing decisions, psychologists bear the responsibility to ensure that the information provided is of the highest validity and is not interpreted out of context.

Can we Assess Amenability to Intervention?

In order to deal with the challenges inherent in juvenile risk assessments, an evaluator’s judgment about future violence will typically reflect the degree to which he or she thinks rehabilitative efforts will be successful with a particular youth (Grisso, 1998). In addition to the “public safety” standard, youth may be waived to criminal court if they are found to be unamenable to rehabilitation within the resources available to the court and within the period of time the system has custody of the youth. When assessing amenability, an evaluator will often consider factors that have been shown to promote change in psychotherapy more generally: the capacity to form attachments to caregivers, the degree of psychological discomfort and/or motivation to change exhibited by the youth, as well as the chronicity of the condition that must be modified (Grisso, 1998, 2000). Youths who are deemed unamenable to treatment are, in effect, being deemed “prematurely mature” in the sense that the rehabilitative objectives of juvenile system can no longer be of use to them (Grisso, 1998).

As is true for risk assessments, rehabilitation evaluations are beset by limitations of which clinicians must be cognizant. First, the legal definition of amenability is considerably narrow. In

contrast to a developmental perspective, where amenability refers broadly to the extent to which a youth’s character has the potential to change, the legal system determines “amenability to treatment” by the type and quality of interventions that are available, as well as the amount of time that the youth can legally remain in the system. This being said, a clinician should be careful not to equate past treatment failures with a general inability to respond to intervention. Past failures may have been the result of poor quality interventions, or a poor match between the developmental needs of a particular youth and the interventions that were available at the time (Grisso, 2000).

A second factor that may limit the validity of an amenability assessment has to do with the functions of the juvenile court more generally. Historically, one of the major purposes of the youth court has been to provide treatment; consequently, a surefire way to have a juvenile considered for waiver would be to identify this youth as “untreatable.” As the meaning of the term “amenable” is ambiguous, it has become easier to apply a label of “nonamenable” whenever a certain result (e.g., waiver) must be attained. As Fagan and Zimring (2000) have pointed out, in contexts where there is strong societal pressure to have a youth tried and sentenced in criminal court, “everything can be grist for the theoretical mill of finding a youth not amenable to treatment...the motives that have produced the decision to transfer a youth [are made] well before the nonamenability label is pasted on the defendant” (pp. 5-6). In these contexts, a clinician must be especially mindful of bias resulting from strong public or political pressures.

What About Sophistication-Maturity Assessments?

In contrast to risk and amenability evaluations, where clinicians must be especially sensitive to various limitations and caveats, sophistication-maturity assessments can be conducted with a fair degree of confidence, and this is one domain where forensic clinicians potentially have the most valuable information for the courts (Ewing, 1990; Kruh & Brodsky, 1997). Clinical psychologists have many tools that enable them to reliably and validly assess cognitive and emotional development in adolescents.

For example, cognitive testing can be carried out with the Wechsler intelligence scales (WISC-IV, WAIS-III)—scales that are useful for assessing a range of factors such as perception, cognitive processing, attention, and judgment. Other types of intelligence such as Sternberg's (2000) triad (i.e., prosocial, asocial, and antisocial) are also important to assess in "street smart" youth that may score low on conventional measures of intelligence. Scholastic achievement tests exist that can assess for the presence of learning disabilities or neurological dysfunction (e.g., Wide Range Achievement Test), and socio-emotional maturity can be measured using semi-structured clinical interviews and self-report measures of personality functioning (e.g., Millon Adolescent Clinical Inventory, Minnesota Multiphasic Personality Inventory—Adolescent version). Experts in the area also recommend considering a youth's level of moral development, and whether or not this matches his or her behavior (Salekin, 2002b).

A crucial element in the legal notion of sophistication-maturity is competency; by way of cognitive and socio-emotional maturity, clinicians are essentially trying to determine a juvenile's ability to understand and appreciate the nature of his or her behavior, and to participate in legal proceedings (Kruh & Brodsky, 1997). Ewing (1990) elucidated the relationship between the psychological concept of maturity and the legal notion of accountability when he noted, "what lies behind such concern over maturity and sophistication is society's long-standing notion that adult penal sanctions should be reserved for those mature enough to be held fully responsible for their crimes" (p. 7). To this end, it has been suggested that clinicians borrow from the tools used in adult competency evaluations (e.g., assessments of Mental State at the Time of the Offense, Competence to Stand Trial), and attempt to identify any significant obstacles that may have prevented the youth from recognizing the wrongfulness of his or her behavior at the time of the offense (Kruh & Brodsky, 1997). While "obstacles" typically refer to major psychiatric illnesses in adult offenders, there is growing recognition that youths in criminal court may be incompetent or not criminally responsible because of developmental immaturity (Bonnie & Grisso, 2000; Mulford et al., 2004, Redding & Frost, 2002; Viljoen, Vincent, & Roesch, in press).

The importance of assessing sophistication-maturity in transfer hearings is underscored by the fact that more juveniles than adults would be found incompetent and/or not sufficiently mature to bear full criminal responsibility if these evaluations were conducted on a regular basis (Salekin, Yff, Neumann, Leistico, & Zalot, 2002). Empirical research speaking to this claim has demonstrated that young adolescents, when compared to either older adolescents or adults, exhibit significant differences in their ability to make decisions, consider the risks and benefits associated with a decision, evaluate consequences, and act autonomously (Cauffman & Steinberg, 2000; Halpern-Felsher & Cauffman, 2001). When adolescents can be shown to possess adult-level cognitive capacities, their decisions still differ from those of adults due to "psychosocial immaturity"—factors such as susceptibility to peer influence, perceptions of future risk, and the capacity for self-management that directly affect decision-making outcomes (Cauffman & Steinberg, 2000; Scott, Reppucci, & Woolard, 1995). With respect to those capacities directly relevant to legal proceedings, it has been shown that juveniles are often lacking in the abilities to competently stand trial (e.g., comprehension of courtroom procedures, recognition of information relevant to a legal defense, and the ability to process information for legal decision making; Grisso et al., 2003).

It is relevant to note that in all of the above mentioned studies, investigators failed to find significant differences between older adolescents and adults. Furthermore, research by Cauffman and colleagues (e.g., Cauffman & Steinberg, 2000; Halpern-Felsher & Cauffman, 2001) continues to stress the considerable individual differences that exist within defined age brackets, and the inconsistency of adult-adolescent differences in decision-making abilities. Therefore, it remains crucial to assess competency and maturity in young offenders on a case-by-case basis, and to be mindful of those factors that may mitigate a young person's legal competency and culpability. These findings also highlight the ethical obligation clinicians have to ensure that youths being considered for transfer are competent and sufficiently mature to enter into the adult criminal system. This responsibility becomes particularly important considering that no corresponding legal obligation exists to establish

competency in juveniles facing transfer (with the exception of statutes in Virginia and the District of Columbia; Redding & Frost, 2002).

JUVENILE PSYCHOPATHY AND TRANSFER CRITERIA

In both Canada and the U.S., psychopathy acts as an aggravating factor during sentencing in adult court. Psychopathy is of special interest to judges mainly because of its association with violent recidivism, in addition to the idea that psychopaths are notoriously difficult to treat. It is easy to appreciate, therefore, that when mental health professionals testify about the relationship between psychopathy, future violence, and failed treatment, this offers judges a hard-to-resist justification for imposing harsher dispositions on these offenders (Zinger & Forth, 1998). In Canada, psychopathy has been used on two occasions to help justify life sentences in adult cases (*R. v. Lyver*, 1983; *R. v. White*, 1986). The significant and detrimental weight that psychopathy assessments carry in the adult courtroom is evident, and it would be naïve to think that the burgeoning research on psychopathy in children and adolescents may not lead to similar outcomes in juvenile courts (Vincent & Hart, 2002).

Psychopathy has in fact been introduced in juvenile hearings on several occasions, and has been used by the courts, along with a diagnosis of Antisocial Personality Disorder, to justify the transfer of young persons to adult court (e.g., *R. v. G.J.M.*, 1992; *R. v. G.R.*, 1994). Because psychopathy is closely related to those criteria that typically need to be addressed in waiver hearings (i.e., dangerousness, amenability to treatment, and maturity of character), this is perhaps what led Seagrave and Grisso (2002) to opine that juvenile psychopathy measures would soon “become one of the most frequently used instruments in forensic assessments of delinquency cases of any kind” (p. 220). However, they also warned that “psychopathy assessment must achieve a high level of confidence before it is employed in the juvenile justice system” (p. 219) and remarked that this level of confidence has not yet been attained.

Potential for misusing psychopathy in juvenile proceedings stems from the fact that the literature on adolescent psychopathy does not currently

support its use in forensic decision-making contexts (Edens, Skeem, Cruise, & Cauffman, 2001; Frick, 2002; Odgers, Moretti, & Reppucci, 2005; Vincent & Hart, 2002). To date, there is insufficient evidence to elucidate whether the construct of psychopathy behaves comparably in youth as it does in adults; specifically, whether it predicts resistance to treatment and future violence in a similar manner as it does in adult populations (Vincent & Hart, 2002). In terms of amenability to rehabilitation, there is a growing recognition that the literature on the treatment of adult psychopaths is inconclusive at best (Andrews & Bonta, 1994; Meloy, 1995). It would be difficult to explain, therefore, why youths who are generally considered to be more malleable than adults would be any more difficult to rehabilitate.

Also lacking is any strong or direct evidence that measures of juvenile psychopathy are tapping the same construct as are their corresponding adult instruments, namely, a stable personality disorder that does not dissipate over time (Harpur & Hare, 1994; Vincent & Hart, 2002). It has been noted by some experts in the field (e.g., Edens et al., 2001; Seagrave & Grisso, 2002) that existing measures of psychopathic traits in children and adolescents (e.g., the Psychopathy Checklist, Youth Version; Forth, Kosson, & Hare, 2003, the Child Psychopathy Scale; Lynam, 1997, the Antisocial Process Screening Device; Frick & Hare, 2001) contain items that reflect normative fluctuations in emotional, psychosocial and behavioral development, and that are age-inappropriate markers for psychopathy among youth. Given that adolescence is a time of rapid development and maturational change, a demonstration of the predictive capacity and temporal stability of psychopathic traits in youth becomes especially crucial in evaluating the construct validity of “juvenile psychopathy” and justifying its use in forensic contexts (Edens et al., 2001). The use of psychopathy assessments for girls is particularly concerning (Odgers et al., 2005), given the lack of sound research assessing the concurrent or predictive relation of psychopathy to aggression among girls, and limited research on psychopathy in women.

In contrast to adult offenders, the robust relationship that exists between psychopathy and future violence has simply not been replicated in youth to the same degree (Edens et al., 2001;

Seagrave & Grisso, 2002). Those studies that appear to support the predictive validity of psychopathic traits in youth (e.g., Gretton, Hare, & Catchpole, 2004; Kosson, Cytterski, Steuerwald, Neumann, & Walker-Matthews, 2002) are limited by the fact that none examine the predictive relationships between psychopathy and future violence separately for the different factors purported to underpin the larger construct (i.e., the interpersonal, affective, and behavioral features of psychopathy). Virtually no prospective studies have tested the predictive utility of psychopathic personality traits that are believed to lie at the “core” of the adult syndrome (Blackburn, 1998; Cleckley, 1941) in child or adolescent samples (see Frick, Kimonis, Dandreaux, & Farell, 2003 for an exception). Consequently, it remains unclear whether there is anything about psychopathy per se, above and beyond the antisocial and criminal behaviors, that predicts *future* violence and offending. Of note, in a recent study by Corrado and colleagues (2004), it was shown that the bulk of predictive power of the PCL:YV stems from the impulsive and stimulation-seeking behavioral traits that are shared with most disruptive behavior disorders in youth. In light of current debates regarding the appropriateness of assessing psychopathic traits in adolescents, as well as the construct’s potential for diagnostic misuse, it may be the case that psychopathic personality traits offer little incremental value in terms of prediction, and that assessing common behavioral disorders (e.g., conduct disorder, oppositional defiant disorder) more directly forecasts short-term future violence.

Although research attesting to the stability of psychopathic traits in adolescents has proliferated in the past few years (e.g., Corrado, Vincent, Hart, & Cohen, 2004; Frick et al., 2003; Gretton, McBride, Hare, O’Shaughnessy, & Kumka, 2001), many of these studies continue to be beset by various limitations (e.g., short follow-up periods, basing psychopathy ratings on self- or parent-report, or on file information only). However, perhaps the most significant, and undoubtedly most pernicious, limitation with regards to research assessing the stability of juvenile psychopathy lies in the theory and measurement of the actual construct. Cleckley’s (1941) original theoretical vision of psychopathy

implied that it was a persistent and life-long “condition”; as such, the measures that have since been developed to assess psychopathy in various populations have assumed stability. A major consequence of this assumption is that the construct, in addition to our current instruments for assessing it, are largely insensitive to change. To be specific, it is next to impossible to extract an estimate of change when the assessment of psychopathy relies on making ratings based on lifetime behavior. It may, therefore, be both artificial and theoretically unsound to study the reliability of psychopathic traits at two points in time unless the assessment procedure is radically adjusted to provide independent estimates of psychopathy in within each interval. This dilemma must be borne in mind when evaluating recent research attesting to the “stability” (or “instability”) of psychopathic traits in youth. It is possible that these studies are simply assessing what is equivalent to inter-rater reliability because the data at each point of measurement is largely redundant.

Overall, in the absence of firm longitudinal research attesting to the temporal stability and predictive utility of psychopathic traits in youth, reliance on psychopathy measures to make decisions regarding transfers or long-term placements for juveniles is contraindicated until there is clear and substantive data attesting to validity and reliability. These instruments will likely produce substantial false-positive error rates, and will not accurately identify that subgroup of antisocial youth who may continue to engage in violent behavior throughout the course of their lives (Edens et al., 2001; Forth & Burke, 1998). As Seagrave and Grisso (2002) have cautioned, it is ethically unacceptable to introduce instruments with significant false-positive rates into forensic contexts where weighty legal decisions are to be made. This is not to imply that research on the PCL:YV and other measures of psychopathy should not continue; indeed, there is much value in moving forward in our investigation of measures and the construct of psychopathy to better understand its developmental precursors and consequences. However, at this time, the literature offers little empirical foundation for the use of psychopathy in decision-making contexts to inform predictions of future violence or treatment amenability in youth.

CONCLUSIONS AND RECOMMENDATIONS

Juvenile courts continue to face a classic dilemma: that of balancing the care of youth with public demands for protection and retribution. Youth violent crime and aggressive behavior is a serious problem but transfers to adult court offer little in the way of an effective solution. Despite this, transfers have increasingly become an accepted method of dealing with serious young offenders, while treatment and rehabilitation efforts have faded as priorities within juvenile justice policy. How does our growing knowledge of child and adolescent development bear on recommendations for policy and practice related to transfer decisions?

First, and perhaps most importantly, we argue that transfer decisions should return to being made exclusively on an individualized, case-by-case basis. As the juvenile courts have moved towards offense-based sentencing and away from tailored, offender-based adjudication, disproportionate numbers of youth are transferred “wholesale” on the basis of their age, current offense, or prior record. We urge that this trend be slowed or halted altogether, particularly because failing to do so risks overshadowing unique developmental factors that could significantly impact the suitability of transfer for a given youth. For instance, factors such as psychosocial immaturity can substantially influence a youth’s level of competency and criminal responsibility; therefore, it is imperative that these factors be evaluated and brought to light before a decision to transfer is made. More generally, we argue for a return to individualized assessments as they will most likely encourage juvenile court judges to think critically about the needs of specific youths, and to determine the most appropriate combination of rehabilitative- and punitive-oriented dispositions on a case-by-case basis. Undoubtedly, transfers to criminal court will continue to represent a significant part of juvenile justice policy and law; we would, however, recommend that transfer decisions become more selective, and that they be reserved for the most serious, chronic, and violent offenders.

Second, in order to make psychological assessments most useful to the courts, we must increase the accuracy and reliability through which youths who stand to be waived into the adult system are evaluated. Currently, transfer provisions lack a

systematic guiding principle by which serious young offenders are identified and transferred to adult court. In particular, the legal constructs guiding transfer decisions (i.e., dangerousness, amenability to treatment, and sophistication) continue to be fairly ambiguous and difficult to assess in developing youth. It is of utmost importance that future research seek to clarify these constructs and offer clinicians explicit and systematic guidelines for their assessment in adolescent populations. Fortunately, a handful of instruments designed to evaluate young offenders have recently been developed (see the Risk, Sophistication-Maturity, and Treatment Amenability instrument for a noteworthy example; Leistico & Salekin, 2003; Salekin, 2004), although these tools still require more extensive validation and use in the system at this time. Hopefully, more research of this type will proliferate in the next few years, thus enabling clinicians to effectively interpret legal constructs such as “dangerousness”, “amenability”, and “sophistication” through a psychological lens and continue to offer the courts valuable information. Moving one step beyond this, it seems imperative that the juvenile courts develop a framework whereby information on a youth’s risk level, amenability to intervention, and maturity is integrated in a meaningful way. For instance, if an explicit standard were to exist whereby treatment needs were framed in terms of their risk reduction value, the courts could perhaps begin moving back towards a rehabilitation model while still giving due attention to factors such as public safety and protection.

Third, program evaluation research needs to be conducted with renewed vigor in order to help maintain, develop, and tailor intervention programs that strive to match a youth’s treatment and developmental needs. With a variety of high-quality treatment programs available, there is a greater likelihood that rates of demonstrated efficacy would increase, as larger proportions of youth could be matched to the most suitable intervention initiatives. This, in turn, would ultimately help minimize the number of “untreatable” youths being waived into the adult system because no programs existed at the juvenile level that could realistically meet their treatment needs. In light of the fact that, once in the adult system, virtually no rehabilitative or mental health services exist, it seems especially critical that

juvenile justice policy be informed about the necessity of determining the goodness of fit between juveniles and treatment options, in addition to the quality of programs available, before a decision about “unamenability” is made. In reality, however, as the juvenile courts have moved away from a treatment-oriented model, fewer resources are directed at developing and maintaining high quality intervention programs. Consequently, there is a lesser chance that these programs will demonstrate effectiveness in reducing risk levels when (a) they are poorly funded, and (b) there are few attempts made to produce an optimal fit between a particular program and a youth’s specific needs.

Finally, to address the ultimate question of whether juvenile transfers serve as effective deterrents to youth crime, and whether they represent an ethically or morally acceptable practice, it is necessary to initiate longitudinal research that will elucidate the long-term effects of juvenile transfer. With respect to being a deterrent for future crime, the literature has begun to highlight what seem like paradoxical effects of juvenile transfers (e.g., in the form of faster recidivism rates). Moreover, it has been suggested that a retributive, deterrent-based approach will generally be less effective with juveniles because of developmental factors that limit their capacity to weigh the pros and cons of a situation, and to anticipate consequences that are far into the future (such as a lengthy adult sentence). In contrast to the accumulating body of literature concerned with recidivism rates for youth tried in adult courts, almost no research has systematically investigated the psychological and behavioral ramifications of transferring a youth into the criminal system. In particular, due to the paucity of longitudinal research investigating the adult outcomes of transferred youth (e.g., in terms of mental and physical health, reintegration into the community), it is unclear how these youth are being affected by the process. Therefore, more research needs to be conducted in this area primarily to inform the juvenile courts on the outcomes and possible consequences of transfer.

In conclusion, it is essential that research in the domain of child and adolescent development continue to inform and situate itself within juvenile justice policy. In the current climate of “get tough” policy reforms and “just desserts” sentencing for young offenders, it will be a challenge not to lose

sight of the fact that there exist critical developmental differences between adults and adolescents. In particular, there is a greater tendency to discount developmental considerations when the offense committed is of a more severe or sadistic nature, as is reflected, for example, in the lowering of minimum ages for transfer for extremely violent offenses. These types of reforms are regressive, given the emerging evidence that rehabilitative efforts are more likely to be successful with younger children and that the detrimental effects imposed by the adult corrections system will likely be greater in very young and impressionable offenders. In order to strike a viable balance between seemingly contradictory solutions to youth crime, findings from the scientific literature must be routinely translated into explicit standards of practice within the juvenile system. For example, developing a legal framework that routinely addresses the possibility of diminished competency and culpability in young offenders seems warranted. Similarly, high-quality treatment outcome research can inform and improve upon current models of intervention, and may open up new avenues for formerly “untreatable” youth.

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