

# CRS Report for Congress

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## Juveniles in the Adult Criminal Justice System: An Overview

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### Summary

Both state and federal legislators have enacted provisions to relax the criteria governing the transfer of juvenile offenders to adult courts. Presently, all 50 states make some provision for these transfers, and a 1994 crime act approved by Congress (P.L. 103-322) requires the prosecution of youths 13 years of age and above as adults for gun-related violent crimes.

Criminal justice professionals and the media have noted the rise of juvenile crime rates nationwide and a growing surge in youth violence. This in turn has highlighted the debate over juvenile transfers to adult courts. Proponents of treating violent juvenile offenders as adults argue that juvenile offenders should be held accountable and receive punishment that is appropriate to the seriousness of their offenses and that society must be protected by their removal from law abiding communities. They urge that young offenders must be held accountable for both lesser and more serious crimes, especially when the former offenses, if unpunished, may lead offenders to commit the latter. Opponents of treating violent juvenile offenders as adults argue that harsh punishment of juvenile offenders is counterproductive, creating recidivism. Trying youths in juvenile courts rather than adult courts, they contend, is more effective in most cases. Some opponents argue that the media and legislators have overreacted to the threat posed by juvenile violence to society.

### Background

Researchers identify three phases of reform within the juvenile justice system at the state level: (1) an initial phase, originating in the 19th century and lasting until the early 1960s, that provided for the creation of separate courts for juveniles, with the objective of rehabilitating youthful offenders; (2) a second phase, beginning in the 1960s and 1970s, that sought to adapt the juvenile justice system to address new problems and correct the

abuses of the earlier system; and (3) the current phase, starting in the 1980s, that reacts to the public demand for stricter responses to serious juvenile crimes.

Although state and local governments have the primary responsibility for crime control, the federal government has assisted them by providing financial and technical aid. Federal initiatives to combat juvenile delinquency began around 1953, culminating in the passage of the Juvenile Justice and Delinquency Act of 1974. Most recently, the 105th Congress provided \$250 million in FY1998 for a new Juvenile Accountability Incentive Block Grant program. The federal criminal justice system maintains no institutions for the incarceration of juveniles, and has no separate juvenile court system.

In response to the rising juvenile crime rate in the mid-1980s, most states began enacting legislation to permit the transfer of violent juvenile offenders into the adult criminal justice system. Presently, all 50 states make some provision for transfers of juveniles to adult criminal courts, and most states provide multiple transfer mechanisms. These may involve the use of one or more of the following: waiving of jurisdiction over a case by juvenile court judges; the statutory exclusion of juvenile offenders from the juvenile system; and prosecutorial discretion resulting in a similar transfer.<sup>1</sup>

Although judicially waived cases make up fewer than 2% of all formally processed delinquency cases, this reflects a 71% increase nationwide from 1985 through 1994. Since the end of 1995, 13 state legislatures have lowered from 17 to 16 or 15 the upper age of juvenile court jurisdiction.<sup>2</sup> Under the Commerce, Justice, and State Appropriations Act, 1998 (P.L. 105-119), recipients of Juvenile Accountability Incentive Grant funds must certify to the Attorney General that they are considering or will consider adopting new procedures, including those that would permit the prosecution of violent juvenile offenders as adults.

With respect to federal jurisdictions, the 103rd Congress passed the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), containing a provision (Sec. 140001) that requires the prosecution in federal courts of juveniles 13 years of age and older as adults if they possessed a firearm while committing a violent crime.

## Statistics on Juvenile Violence

Over the last few years, criminal justice professionals and the media have not only noted rising rates of juvenile crime nationwide, but also warned of a coming surge in youth violence. For example, John J. DiIulio, Jr., a Princeton University professor of politics and public affairs, not only foresees a teenage crime wave, but also describes some youngsters as “superpredators,” lacking in moral values and more violent than previous generations.<sup>3</sup> James Fyfe, a member of the faculty of Temple University and a former homicide

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<sup>1</sup> U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 1997 Update on Violence*, by Melissa Sickmund, Howard N. Snyder, and Eileen Poe-Yamagata (Washington: 1997), pp. 29-30. Hereafter referred to as *1997 Update on Violence*.

<sup>2</sup> *Ibid.*, pp. 30-31.

<sup>3</sup> Quoted in Richard Lacayo, “Law and Order,” *Time*, vol. 147, Jan. 15, 1996, p. 52.

detective, predicts an increase in violent crime by juveniles within the next 15 years, due to a numerical increase in this age group and school overcrowding.<sup>4</sup>

Recent data released by the FBI's Uniform Crime Reports provides evidence of a continuing increase in juvenile violence:

(1) The total reported number of those under the age of 18 arrested for murder and non-negligent manslaughter ballooned from 1,355 in 1987 to 2,039 in 1996, an increase of 50.5% in 10 years.

(2) The total reported number of those under the age of 18 arrested for violent crime rose from 58,071 in 1987 to 92,848 in 1996, an increase of 59.9%.<sup>5</sup>

These data subsume the fact that the juvenile violent crime rate decreased by 3% in 1995, the first decline in the rate in eight years. In addition, 1995 data reveal a decline in the violent crime arrests of juveniles aged 14 years and younger, suggesting a possible lessening in the rate when these juveniles reach the ages of 15 to 17.<sup>6</sup>

## **Arguments for and Against Treating Juvenile Offenders as Adults**

Proponents of change urge that young offenders must be held accountable for both lesser and more serious crimes, especially when the former offenses, if left unpunished, may lead offenders to commit the latter. In this assessment, chronic and violent offenders must receive punishment that is appropriate to the seriousness of the offense, and society must have the protection afforded by the removal of young violent criminals from the community.<sup>7</sup>

Senator Carol Moseley-Braun, author of the amendment to the 1994 Crime Act that requires the transfer of juveniles to adult court for crimes committed with guns, argued that this provision "sends a clear message to kids committing these crimes. If you murder someone, or commit a violent crime with a gun, you will go to jail. It is as simple as that."<sup>8</sup>

The juvenile justice system, others contend, is too lenient or it is incapable in its current form of coping with the rate and types of violent crime among youths today. Thus, proponents favor locking up dangerous kids so that they will not commit further crimes.

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<sup>4</sup> Timothy W. Maier and Michael Rust, "A Decline in Crime?" *Insight Magazine*, at [www.insightmag.com](http://www.insightmag.com), visited on April 9, 1998.

<sup>5</sup> U.S. Dept. of Justice, Federal Bureau of Investigation, "Crime in the United States," *1996 Uniform Crime Reports* (Washington: 1997), p. 218.

<sup>6</sup> *1997 Update on Violence*, p. 18.

<sup>7</sup> Paul J. McNulty, "Natural Born Killers?" *Policy Review*, winter 1995, pp. 86-87.

<sup>8</sup> "Should 13-Year-Olds Who Commit Crimes with Firearms Be Tried as Adults?" *ABA Journal*, vol. 30, Mar. 1994, p. 46. Hereafter referred to as *Should 13-Year-Olds Be Tried?*

They also note that violent youth offenders transferred to adult courts usually have a history of increasingly serious criminal behavior. Paul H. Robinson, a former member of the U.S. Sentencing Commission, comments: “Dealing with 14-year-olds in adult court is admitting what everybody knows) juvenile justice is ineffective in stopping teenage violence. There’s a classic pattern. Trivial thefts turn into more substantial robberies and those turn into more violent crimes.”<sup>9</sup>

Opponents of treating violent juvenile offenders as adults argue that harsh punishment of juvenile offenders is counterproductive. Trying youths in juvenile courts rather than adult courts, they contend, is more effective in most cases. Laura Murphy Lee, director of the ACLU’s Washington national office, finds that such treatment is inconsistent with present efforts to rehabilitate juvenile offenders and “is more likely to have the opposite effect by easing juveniles into the world of adult crime.”<sup>10</sup>

Moreover, some opponents argue that the threat of juvenile violence is less than suggested by the media and that recent state legislative initiatives may overreact. Larry Mays, a criminal justice professor at New Mexico State University, finds that states are “killing the fly with an elephant gun. They tend to be overly punitive because of cases that are off the scale.”<sup>11</sup>

Other opponents argue that the juvenile justice system is effective. Barry Krisberg, president of the National Council on Crime and Delinquency, a child advocacy organization, cites studies showing that violent youth offenders are more likely to be convicted in juvenile court and serve a longer sentence than those tried in adult court. According to Krisberg: “In juvenile court, you have bench rather than jury trials, lower rules of evidence and higher rates of pleas.”<sup>12</sup> According to one study, researchers found that:

juvenile cases transferred to adult court were far more likely to be pending and unresolved, as compared to the sample from the juvenile justice system. Furthermore, the results did not support the proposition that juveniles transferred to adult court would receive greater punishment than they could expect in juvenile court. Except for a small number of offenders, the prospect of transfer did not appear to provide a deterrent to crime.<sup>13</sup>

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<sup>9</sup> Penelope Lemov, “The Assault on Juvenile Justice,” *Governing*, vol. 8, Dec. 1994, p. 28. Hereafter referred to as *The Assault on Juvenile Justice*.

<sup>10</sup> *Should 13-Year-Olds Be Tried?* p. 47.

<sup>11</sup> *The Assault on Juvenile Justice*, p. 28.

<sup>12</sup> Robie Sherman, “Juvenile Judges Say: Time to Get Tough,” *National Law Journal*, vol. 16, Aug. 8, 1994, p. A24; *The Assault on Juvenile Justice*, pp. 28-29.

<sup>13</sup> Kristine Kinder, Carol Veneziano, Michael Ficter, and Henry Azuma, “A Comparison of the Dispositions of Juvenile Offenders Certified as Adults with Juvenile Offenders Not Certified,” *Juvenile and Family Court Journal*, vol. 46, summer 1995, p. 37.