

# Juvenile Court Process: Pretrial, Trial, and Sentencing

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*The Actors in the Juvenile Courtroom*

### JUVENILE COURT PROCESS

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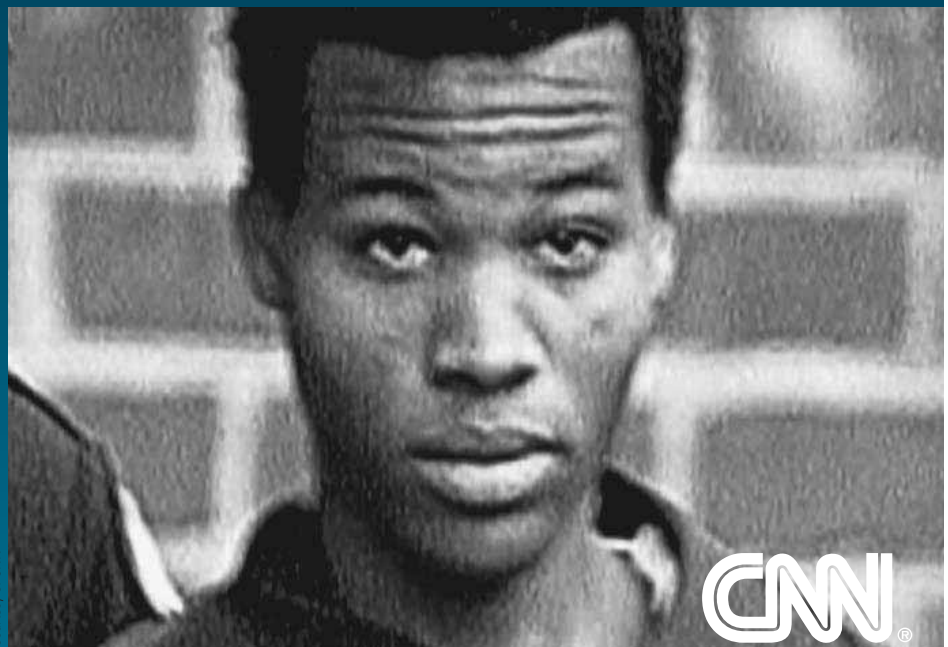
*Juvenile Sentencing Structures*

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*The Death Penalty for Juveniles*

*The Child's Right to Appeal*

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## CHAPTER OBJECTIVES

After reading this chapter you should:

1. Understand the roles and responsibilities of the main players in the juvenile court.
2. Be able to discuss key issues of the preadjudicatory stage of juvenile justice, including detention, intake, diversion, pretrial release, plea bargaining, and waiver.
3. Be able to argue the pros and cons of waiving youths to adult court.
4. Understand key issues of the trial stage of juvenile justice, including constitutional rights of youths and disposition.
5. Be familiar with major U.S. Supreme Court decisions that have influenced the handling of juveniles at the preadjudicatory and trial stages.
6. Know the most common dispositions for juvenile offenders.
7. Know the major arguments opposed to and in favor of the death penalty for juveniles.
8. Be able to argue the pros and cons of confidentiality in juvenile proceedings and privacy of juvenile records.

On December 23, 2003, a Virginia jury rejected the death penalty sentence for Lee Boyd Malvo, the teenage D.C.-area sniper who, one week earlier, had been convicted of terrorism, capital murder, and weapons charges by the same jury. The jury decided instead that Malvo should be sentenced to life in prison without possibility of parole. Although the case met both aggravating factors required to put

the offender to death—that his conduct was depraved and that he still presented a danger to society—the jurors exercised the other option available to them.

This case once again put the controversial issue of the death penalty for juveniles in the national spotlight, with many pundits believing that if there ever was a case for the juvenile death penalty it was this one. One month later, on Jan-

uary 26, 2004, the Supreme Court agreed to decide whether the death penalty for sixteen- and seventeen-year-olds violates the Constitution. In 1988, the Supreme Court struck down the death penalty for those age fifteen and younger.

**CNN** [VIEW THE CNN VIDEO CLIP OF THIS STORY AND ANSWER RELATED CRITICAL THINKING QUESTIONS ON YOUR JUVENILE DELINQUENCY: THE CORE 2E CD.](#)



## THE JUVENILE COURT AND ITS JURISDICTION

Today's juvenile delinquency cases are sometimes handled as part of a criminal trial court jurisdiction, or even within the probate court. Also called surrogate court in some states, probate court is a court of special jurisdiction that handles wills, administration of estates, and guardianship of minors and incompetents. However, in most jurisdictions they are treated in the structure of a family court or an independent juvenile court (fourteen states use more than one method to process juvenile cases).<sup>1</sup> The independent juvenile court is a specialized court for children, designed to promote rehabilitation of youth in a framework of procedural due process. It is concerned with acting both in the best interest of the child and in the best interest of public protection, two often incompatible goals. Family courts, in contrast, have broad jurisdiction over a wide range of personal and household problems, including delinquency, paternity, child support, and custody issues. The major advantages of such a system are that it can serve sparsely populated areas, permits judicial personnel and others to deal exclusively with children's matters, and can obtain legislative funding more readily than other court systems.

### Court Case Flow

Today, more than 1.6 million delinquency cases are adjudicated annually. Between 1990 and 1999 (the last data available), case flow increased 27 percent. The increasing numbers of cases were the product of a significant rise in the number of drug law violation cases (up 169 percent), public order offense cases (up 74 percent), and cases involving personal offenses (up 55 percent); property offense cases, in contrast, decreased 19 percent.<sup>2</sup>

There were distinct gender- and race-based differences in the juvenile court population. In 1999, 76 percent of delinquency cases involved a male and 24 percent involved a female. However, the number of females processed by juvenile courts has increased from 1990, when less than 20 percent of the cases involved females. Similarly, 28 percent of the juvenile court population was made up of African-American

Juvenile defense attorneys play an active and important part in virtually all stages of the juvenile court proceedings, ranging from representing youths in police custody to filing their final appeals.



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youth, although African Americans make up only about 15 percent of the general population.<sup>3</sup>

## The Actors in the Juvenile Courtroom

The key players in the juvenile court are the defense attorneys, prosecutors, and judges.

**The Defense Attorney** As the result of a series of Supreme Court decisions, the right of a delinquent youth to have counsel at state trials has become a fundamental part of the juvenile justice system.<sup>4</sup> Today, courts must provide counsel to indigent defendants who face the possibility of incarceration. Over the past three decades, the rules of juvenile justice administration have become extremely complex. Preparation of a case for juvenile court often involves detailed investigation of a crime, knowledge of court procedures, use of rules of evidence, and skills in trial advocacy. The right to counsel is essential if children are to have a fair chance of presenting their cases in court.

In many respects, the role of the **juvenile defense attorney** is similar to that in the criminal and civil areas. Defense attorneys representing children in the juvenile court play an active and important part in virtually all stages of the proceedings. For example, the defense attorney helps to clarify jurisdictional problems and to decide whether there is sufficient evidence to warrant filing a formal petition. The defense attorney helps outline the child's position regarding detention hearings and bail, and explores the opportunities for informal adjustment of the case. If no adjustment or diversion occurs, the defense attorney represents the child at adjudication, presenting evidence and cross-examining witnesses to see that the child's position is made clear to the court. Defense attorneys also play a critical role in the disposition hearing. They present evidence bearing on the treatment decision and help the court formulate alternative plans for the child's care. Finally, defense attorneys pursue any appeals from the trial, represent the child in probation revocation proceedings, and generally protect the child's right to treatment.

Important to these roles is the attorney-juvenile relationship and the competence of the attorney. Some studies report that many juvenile offenders do not trust their attorney,<sup>5</sup> but juvenile offenders represented by private attorneys are more trusting in their attorney than those represented by court-appointed attorneys.<sup>6</sup> One

**juvenile defense attorneys**  
Represent children in juvenile court and play an active role at all stages of the proceedings.

possible reason for this difference may be the belief among juveniles that because court-appointed attorneys work for the “system” they might share information with the judge, police, or others.<sup>7</sup> Another important dimension of the attorney-juvenile relationship is effective participation of the juvenile as a defendant, which “requires a personally relevant understanding of the lawyer’s advocacy role and the confidential nature of the attorney-client relationship.”<sup>8</sup> A recent study investigating effective participation among juvenile and adult defendants concluded that juveniles are in need of extra procedural safeguards, such as training for lawyers on how to be more effective counselors.<sup>9</sup> There may also be a need to improve the competency of juvenile defense attorneys, as well as to overcome some of the time constraints they face in case preparation. In a study of legal representation of juveniles charged with felonies in three juvenile courts in Missouri, it was found that they were more likely to receive an out-of-home placement disposition (instead of a less punitive disposition) if they had an attorney, even after controlling for other legal and individual factors.<sup>10</sup> (See the following section for other problems specific to public defenders.)

In some cases, a **guardian ad litem** may be appointed by the court.<sup>11</sup> The guardian *ad litem*—ordinarily seen in abuse, neglect, and dependency cases—may be appointed in delinquency cases when there is a question of a need for a particular treatment (for example, placement in a mental health center) and offenders and their attorneys resist placement. The guardian *ad litem* may advocate for the commitment on the ground that it is in the child’s best interests. The guardian *ad litem* fulfills many roles, ranging from legal advocate to concerned individual who works with parents and human service professionals in developing a proper treatment plan that best serves the interests of the minor child.<sup>12</sup>

**http:** Volunteer Court-Appointed Special Advocates (CASA) are people who are appointed by judges to advocate for the best interests of abused and neglected children. To read more about the CASA program, click on Web Links under the Chapter Resources at [http://cj.wadsworth.com/siegel\\_jdcore2e](http://cj.wadsworth.com/siegel_jdcore2e).

**Court-Appointed Special Advocates (CASA)** Court-Appointed Special Advocates (CASA) are volunteers who advise the juvenile court about child placement. The CASA programs (*casa* is Spanish for “home”) have demonstrated that volunteers can investigate the needs of children and provide a vital link between the judge, the attorneys, and the child in protecting the juvenile’s right to a safe placement.<sup>13</sup>

**Public Defender Services for Children** To satisfy the requirement that indigent children be provided with counsel, the federal government and the states have expanded **public defender** services. Three alternatives exist for providing children with legal counsel: (1) an all-public defender program; (2) an appointed private-counsel system; and (3) a combination system of public defenders and appointed private attorneys.

The public defender program is a statewide program established by legislation and funded by the state government to provide counsel to children at public expense. This program allows access to the expertise of lawyers who spend a considerable amount of time representing juvenile offenders every day. Defender programs generally provide separate office space for juvenile court personnel, as well as support staff and training programs for new lawyers.

In many rural areas where individual public defender programs are not available, defense services are offered through appointed private counsel. Private lawyers are assigned to individual juvenile court cases and receive compensation for the time and services they provide. When private attorneys are used in large urban areas, they are generally selected from a list established by the court, and they often operate in conjunction with a public defender program. The weaknesses of a system of assigned private counsel include assignment to cases for which the lawyers are unqualified, inadequate compensation, and lack of support or supervisory services.

Though efforts have been made to supply juveniles with adequate legal representation, many juveniles still go to court unrepresented, or with an overworked lawyer who provides inadequate representation. Many juvenile court defense lawyers work on more than five hundred cases per year, and more than half leave their jobs in under

**guardian ad litem**

A court-appointed attorney who protects the interests of the child in cases involving the child’s welfare.

**public defender**

An attorney who works in a public agency or under private contractual agreement as defense counsel to indigent defendants.

two years.<sup>14</sup> Other problems facing juvenile public defenders include lack of resources for independent evaluations, expert witnesses, and investigatory support; lack of computers, telephones, files, and adequate office space; inexperience, lack of training, low morale, and salaries lower than those of their counterparts who defend adults or serve as prosecutors; and inability to keep up with rapidly changing juvenile codes.<sup>15</sup> In a six-state study of access to counsel and quality of legal representation for indigent juveniles, the American Bar Association found these and many other problems,<sup>16</sup> as shown in Exhibit 13.1. With juvenile offenders facing the prospect of much longer sentences, mandatory minimum sentences, and time in adult prisons, the need for quality defense attorneys for juveniles has never been greater.

**The Prosecutor** The **juvenile prosecutor** is the attorney responsible for bringing the state's case against the accused juvenile. Depending on the level of government and the jurisdiction, the prosecutor can be called a *district attorney*, *county attorney*, *state attorney*, or *United States attorney*. Prosecutors are members of the bar selected for their positions by political appointment or popular election.

For the first sixty years of its existence, the juvenile court did not include a prosecutor, because the concept of an adversary process was seen as inconsistent with the philosophy of treatment. The court followed a social-service helping model, and informal proceedings were believed to be in the best interests of the child. Today, in a more legalistic juvenile court, almost all jurisdictions require by law that a prosecutor be present in the juvenile court.

A number of states have passed legislation giving prosecutors control over intake and waiver decisions. Some have passed concurrent-jurisdiction laws that allow prosecutors to decide in which court to bring serious juvenile cases. In some jurisdictions, it is the prosecutor and not the juvenile court judge who is entrusted with the decision of whether to waive a case to adult court.

The prosecutor has the power either to initiate or to discontinue delinquency or status-offense allegations. Like police officers, prosecutors have broad discretion in the exercise of their duties. Because due process rights have been extended to juveniles, the prosecutor's role in the juvenile court has in some ways become similar to the prosecutor's role in the adult court.

Because children are committing more serious crimes today and because the courts have granted juveniles constitutional safeguards, the prosecutor is likely to play an increasingly significant role in the juvenile court system. According to authors James Shine and Dwight Price, the prosecutor's involvement will promote a due process model that should result in a fairer, more just system for all parties. But they also point out that, to meet current and future challenges, prosecutors need more information on such issues as how to identify repeat offenders, how to determine which programs are most effective, how early-childhood experiences relate to delinquency, and what measures can be used in place of secure placements without reducing public safety.<sup>17</sup>

Today, prosecutors are addressing the problems associated with juvenile crime. A balanced approach has been recommended—one that emphasizes enforcement, prosecution, and detention of serious offenders and the use of proven prevention and intervention programs.<sup>18</sup>

#### juvenile prosecutor

Government attorney responsible for representing the interests of the state and bringing the case against the accused juvenile.

#### juvenile court judge

A judge elected or appointed to preside over juvenile cases whose decisions can only be reviewed by a judge of a higher court.

**The Juvenile Court Judge** Even with the elevation of the prosecutor's role, the **juvenile court judge** is still the central character in a court of juvenile or family law. The responsibilities of this judge have become far more extensive and complex in recent years. Juvenile or family court judges perform the functions listed in Exhibit 13.2.

In addition, judges often have extensive influence over other agencies of the court: probation, the court clerk, the law enforcement officer, and the office of the juvenile prosecutor. Juvenile court judges exercise considerable leadership in developing solutions to juvenile justice problems. In this role they must respond to the pressures the community places on juvenile court resources. According to the *parens*


**Exhibit 13.1 Selected Problems in Public Defender Services for Indigent Juveniles in Six States**

<p><b>Maine</b></p> <ul style="list-style-type: none"><li>• Juvenile defenders are paid \$50 per hour, with a cap of \$315; therefore, defenders are expected to spend only a little over six hours on each case.</li><li>• In 2002, only two hours of juvenile-justice-related training were available to defenders.</li></ul>	<p><b>North Carolina</b></p> <ul style="list-style-type: none"><li>• Some 44 percent of juvenile defense attorneys surveyed reported that they rarely or never see the police report or other investigative material prior to their first meeting with a client.</li><li>• Some 44 percent also said they had no or inadequate access to investigators.</li></ul>
<p><b>Maryland</b></p> <ul style="list-style-type: none"><li>• In one jurisdiction, juvenile public defenders handle about 360 cases each year; this is almost double the ABA standard's recommended maximum of 200.</li><li>• In ten of the jurisdictions studied, more than a third of juveniles waived their right to counsel.</li></ul>	<p><b>Pennsylvania</b></p> <ul style="list-style-type: none"><li>• About 94 percent of juvenile defense attorneys do not have access to independent investigators or social workers.</li><li>• Of the forty public defender offices that confirmed representing youth at dispositional reviews, only 9 percent usually interview the youth before hearings.</li></ul>
<p><b>Montana</b></p> <ul style="list-style-type: none"><li>• Nearly all the interviewed youth revealed that their attorneys had done no investigation into their cases.</li><li>• There are no minimum requirements for attorneys seeking appointment to defend children and youth in the justice system.</li></ul>	<p><b>Washington</b></p> <ul style="list-style-type: none"><li>• In some counties, up to 30 percent of children appear without counsel.</li><li>• Juvenile defenders working full-time reported that they are assigned an average of close to four hundred cases annually.</li></ul>

Sources: *Statistics: Juvenile Indigent Defense Reports by the Numbers* (Chicago: Juvenile Justice Center, 2003); *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (Chicago: American Bar Association, 2003), p. 5.

**Exhibit 13.2 Duties of the Juvenile Court Judge**

<ul style="list-style-type: none"><li>• Rule on pretrial motions involving such legal issues as arrest, search and seizure, interrogation, and lineup identification.</li><li>• Make decisions about the continued detention of children prior to trial.</li><li>• Make decisions about plea-bargaining agreements and the informal adjustment of juvenile cases.</li><li>• Handle trials, rule on the appropriateness of conduct, settle questions of evidence</li></ul>	<ul style="list-style-type: none"><li>and procedure, and guide the questioning of witnesses.</li><li>• Assume responsibility for holding disposition hearings and deciding on the treatment accorded the child.</li><li>• Handle waiver proceedings.</li><li>• Handle appeals where allowed by statute.</li></ul>
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 **The American Judicature Society** is a nonpartisan organization with a membership of judges, lawyers, and nonlegally trained citizens interested in the administration of justice. Visit this organization's Web site by clicking on Web Links under the Chapter Resources at [http://cj.wadsworth.com/siegel\\_jdcore2e](http://cj.wadsworth.com/siegel_jdcore2e)

*patriae* philosophy, the juvenile judge must ensure that the necessary community resources are available so that the children and families who come before the court can receive the proper care and help.<sup>19</sup> This may be the most untraditional role for the juvenile court judge, but it may also be the most important.

In some jurisdictions, juvenile court judges handle family-related cases exclusively. In others they preside over criminal and civil cases as well. Traditionally, juvenile court judges have been relegated to a lower status than other judges. Judges assigned to juvenile courts have not ordinarily been chosen from the highest levels of

## Checkpoints

- ✓ *In most jurisdictions, kids are adjudicated within the structure of either a family court or an independent juvenile court.*
- ✓ *More than 1.6 million delinquency cases are adjudicated annually.*
- ✓ *All juveniles must be provided with legal counsel if they face the possibility of incarceration.*
- ✓ *A guardian ad litem is an attorney who represents the child during special legal proceedings, including abuse, neglect, and dependency cases.*
- ✓ *Court-Appointed Special Advocates (CASA) are volunteers who advise the juvenile court about child placement.*
- ✓ *The juvenile prosecutor is the attorney responsible for bringing the state's case against the accused juvenile.*
- ✓ *The juvenile judge must ensure that the children and families who come before the court can receive the proper care and help.*



To quiz yourself on this material, go to questions 13.1–13.10 on the Juvenile Delinquency: The Core 2e Web site.

the legal profession. Such groups as the American Judicature Society have noted that the field of juvenile justice has often been shortchanged by the appointment of unqualified judges. In some jurisdictions, particularly major urban areas, juvenile court judges may be of the highest caliber, but many courts continue to function with mediocre judges. ✓ Checkpoints

## JUVENILE COURT PROCESS

Now that we have briefly described the setting of the juvenile court and the major players who control its operations, we turn to a discussion of the procedures that shape the contours of juvenile justice: the pretrial process and the juvenile trial and disposition. Many critical decisions are made at this stage of the juvenile justice system: whether to detain or release the youth to the community; whether to waive youths to the adult court or retain them in the juvenile justice system; whether to treat them in the community or send them to a secure treatment center. Each of these can have a profound influence on the child, with effects lasting throughout the life course. What are these critical stages, and how are decisions made within them?

### Release or Detain?

After a child has been taken into custody and a decision is made to treat the case formally (that is, with a juvenile court hearing), a decision must be made either to release the child into the custody of parents or to detain the child in the temporary care of the state, in physically restrictive facilities pending court disposition or transfer to another agency.<sup>20</sup> Nationally, about 70 percent of all states have detention centers administered at the county level, about 34 percent have state-level facilities, 16 percent have court-administered facilities, and 11 percent contracted with private vendors to operate facilities.<sup>21</sup>

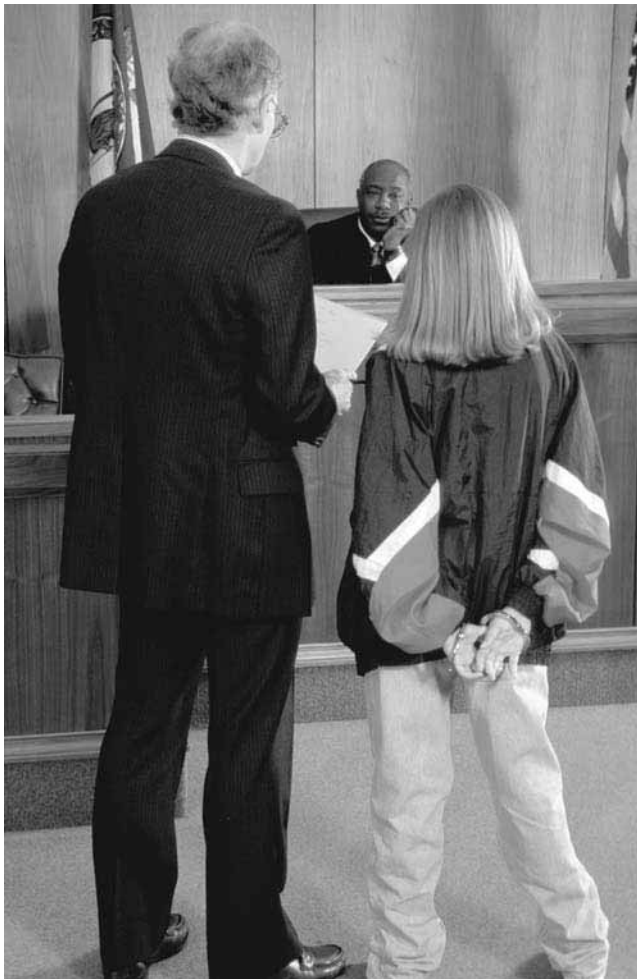
Detention can be a traumatic experience because many facilities are prison-like, with locked doors and barred windows. Consequently, most experts in juvenile justice advocate that detention be limited to alleged offenders who require secure custody for the protection of themselves and others. However, children who are neglected and dependent, runaways, or homeless may under some circumstances be placed in secure detention facilities along with violent and dangerous youth until more suitable placements can be found.<sup>22</sup> Others have had a trial but have not been sentenced, or are awaiting the imposition of their sentence. Some may have violated probation and are awaiting a hearing while being kept alongside a severely mentally ill adolescent for whom no appropriate placement can be found. Another group are adjudicated delinquents awaiting admittance to a correctional training school.<sup>23</sup> Consequently, it is possible for nonviolent status offenders to be housed in the same facility with delinquents who have committed felony-type offenses.

To remedy this situation, an ongoing effort has been made to remove status offenders and neglected or abused children from detention facilities that also house juvenile delinquents. In addition, alternatives to detention centers—temporary foster homes, detention boarding homes, and programs of neighborhood supervision—have been developed. These alternatives, referred to as **shelter care**, enable youths to live in a more homelike setting while the courts dispose of their cases.

**National Detention Trends** Despite an ongoing effort to limit detention, juveniles are still being detained in 20 percent of all delinquency cases, with some variation across the major offense categories: violent (23 percent), property (16 percent), drugs (23 percent), and public order (23 percent). Although the detention rate for delinquency cases is down from 23 percent in 1990, over the ten-year period of 1990 to 1999, the total number of juveniles held in short-term detention facilities increased 11 percent, from 302,800 to 336,200.<sup>24</sup>

#### shelter care

A place for temporary care of children in physically unrestricting facilities.



© John Neubauer/PhotoEdit

The juvenile court judge is the central character in a court of juvenile or family law. The duties of the juvenile court judge are wide-ranging. The most important of these duties may be the need to ensure that the necessary community resources are available so that the children and families that come before the court can receive the proper care and help.

The typical delinquent detainee is male, over fifteen years of age, and charged with a violent crime,<sup>25</sup> whereas the typical status offense detainee is female, under sixteen years of age, and a runaway.<sup>26</sup> Racial minorities are heavily overrepresented in detention, especially those who are indigent and whose families may be receiving public assistance. Minority overrepresentation is particularly vexing, considering that detention may increase the risk of a youth's being adjudicated and eventually confined.<sup>27</sup>

**The Decision to Detain** Most children taken into custody by the police are released to their parents or guardians. Some are held overnight until their parents can be notified. Police officers normally take a child to a place of detention only after other alternatives have been exhausted. Many juvenile courts in urban areas have staff members, such as intake probation officers, on duty twenty-four hours a day to screen detention admissions.

Ordinarily, delinquent children are detained if the police believe they are inclined to run away while awaiting trial, or if they are likely to commit an offense dangerous to the parent. There is evidence that some decision makers are more likely to detain minority youth, especially if they dwell in dangerous lower-class areas.<sup>28</sup>

Generally, children should not be held in a detention facility or shelter-care unit for more than twenty-four hours without a formal petition (a written request to the court) being filed to extend the detention period. To detain a juvenile, there must be clear evidence of probable cause that the child has committed the offense and will flee if not detained. Although the requirements for detention hearings vary, most jurisdictions require that they occur almost immediately after the child's admission to a detention facility and provide the youth with notice and counsel.

**http:** To find out more about the needs of detention, go to the *Juvenile Detention Training Needs Assessment Research Report*, by David W. Roush. You can find it by clicking on Web Links under the Chapter Resources at [http://cj.wadsworth.com/siegel\\_jdcore2e](http://cj.wadsworth.com/siegel_jdcore2e).

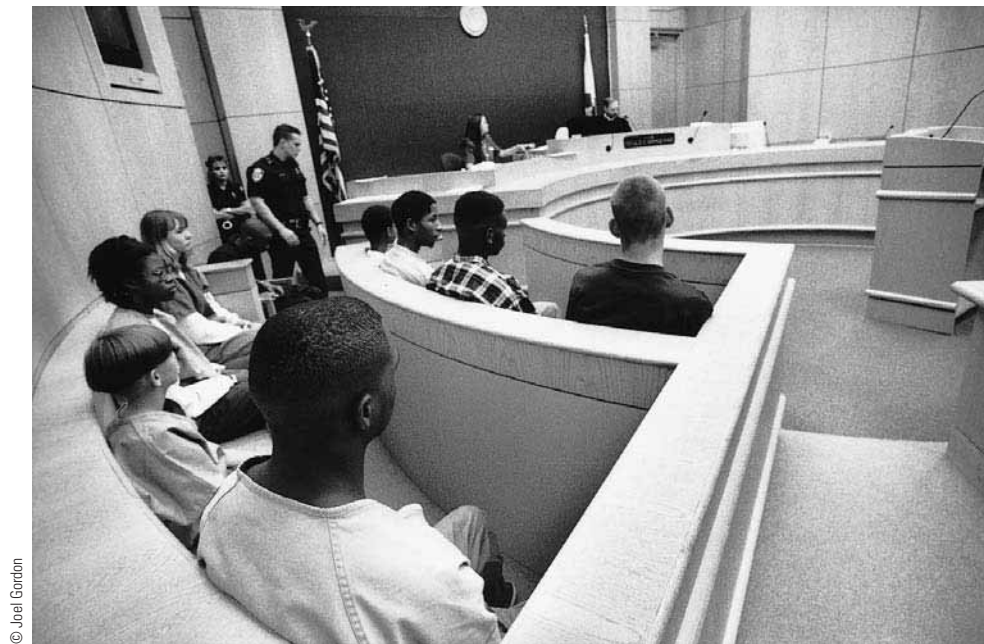
**New Approaches to Detention** Efforts have been ongoing to improve the process and conditions of detention. Experts maintain that detention facilities should provide youth with education, visitation, private communications, counseling, continuous supervision, medical and health care, nutrition, recreation, and reading. Detention should also include, or provide, a system for clinical observation and diagnosis that complements the wide range of helpful services.<sup>29</sup>

The consensus today is that juvenile detention centers should be reserved for youths who present a clear threat to the community. In some states, nonsecure facilities are being used to service juveniles for a limited period. Alternatives to secure detention include in-home monitoring, home detention, day-center electronic monitoring, high-intensity community supervision, and comprehensive case management programs. The successful Detention Diversion Advocacy Program (DDAP) relies on a case management strategy. Because this is an important development, it is covered in more detail in the accompanying Preventing and Treating Delinquency feature.

Undoubtedly, juveniles pose special detention problems, but some efforts are being made to improve programs and to reduce pretrial detention use, especially in secure settings. Of all the problems associated with detention, however, none is as critical as the issue of placing youths in adult jails.



Many critical decisions are made before the juvenile trial begins: whether to detain youths or release them to the community; whether to waive them to the adult court or retain them in the juvenile justice system; whether to treat them in the community or send them to a secure treatment center. These teens are waiting during the intake process in the juvenile court in Orlando, Florida. The intake process refers to the screening of cases by the juvenile court system. Intake officers, who are often probation staff members, determine whether the services of the juvenile court are needed.



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**Restricting Detention in Adult Jails** A significant problem in juvenile justice is placing youths in adult jails. This is usually done in rural areas where no other facility exists. Almost all experts agree that placing children under the age of eighteen in any type of jail facility should be prohibited because youngsters can easily be victimized by other inmates and staff, be forced to live in squalid conditions, and be subject to physical and sexual abuse.

Until a few years ago, placing juveniles in adult facilities was common, but efforts have been made to change this situation. In 1989, the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974 was amended to require that states remove all juveniles from adult jails and lockups. According to federal guidelines, all juveniles in state custody must be separated from adult offenders or the state could lose federal juvenile justice funds. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) defines separation as the condition in which juvenile detainees have either totally independent facilities or shared facilities that are designed so that juveniles and adults neither have contact nor share programs or staff.<sup>30</sup>

Much debate has arisen over whether the initiative to remove juveniles from adult jails has succeeded. Most indications are that the number of youths being held in adult facilities has declined significantly from the almost five hundred thousand a year recorded in 1979.<sup>31</sup> Today, fewer than one hundred thousand juveniles are detained annually in adult jails. These figures may be misleading, however, because they do not include youths held in urban jails for under six hours, or in rural ones for under twenty-four hours; youths transferred to adult courts; or youths in states that consider anyone over sixteen or seventeen to be an adult.

With federal help, some progress appears to have been made in removing juveniles from adult facilities, but thousands each year continue to be held in close contact with adults, and thousands more are held in facilities that, although physically separate, put them in close proximity to adults. To the youths held within their walls, there may appear to be little difference between the juvenile detention facilities and the adult jail.

**Removing Status Offenders** Along with removing all juveniles from adult jails, the OJJDP has made deinstitutionalization of status offenders a cornerstone of its policy. The Juvenile Justice and Delinquency Prevention Act of 1974 prohibits the placement of status offenders in secure detention facilities.

## Preventing and Treating Delinquency

### The Detention Diversion Advocacy Program

The Detention Diversion Advocacy Program (DDAP) employs the efforts of a staff of laypersons or nonlegal experts to advocate for youthful offenders at disposition hearings. It relies on a case-management strategy coordinating human services, opportunities, or benefits. Case-management efforts are designed to integrate services across a cluster of organizations, to ensure continuity of care, and to facilitate development of client skills (for example, job interviewing, or reading and writing skills) by involving a variety of social networks and service providers (social agencies that provide specific services to youth, like drug counseling and crisis intervention).

Detention advocacy involves identifying youths likely to be detained pending their adjudication. DDAP clients are identified primarily through referrals from the public defender's office, the probation department, community agencies, and parents. Admission to DDAP is restricted to youth currently held, or likely to be held, in secure detention. Once a potential client is identified, DDAP case managers present a release plan to the judge that includes a list of appropriate community services (tutoring, drug counseling, family counseling) that will be made available on the youth's behalf. The plan also includes specified objectives (improved grades, victim restitution, drug-free status) as a means of evaluating the youth's progress in the program. Emphasis is placed on allowing the youth to live at home while going through the program. If this is not a viable option, program staff will identify and secure a suitable alternative. If the judge deems the release plan acceptable, the youth is released to DDAP supervision.

The DDAP case-management model provides frequent and consistent support and supervision to the children and their families. Case managers link youths to community-based services and closely monitor their progress. The DDAP program requires the case manager to have daily contact with the youth, the family, and significant others, including a minimum

of three in-person meetings with the youth each week. The youth's family members, particularly parents and guardians, are provided with additional services that usually include assistance in securing employment, day care, drug treatment services, and income support (for example, food stamps).

Evaluations of the DDAP program indicated that it is very successful:

- The overall recidivism rate of the DDAP group was 34 percent, compared with 60 percent for the comparison group.
- Only 14 percent of the DDAP group had two or more subsequent referrals, compared with 50 percent of the comparison group.
- Only 9 percent of the DDAP group returned to court on a violent crime charge, compared with 25 percent of the comparison group.
- Only 5 percent of the DDAP group had two or more subsequent petitions, compared with 22 percent of the comparison group.

#### CRITICAL THINKING

1. Should adolescents be detained for nonviolent offenses such as substance abuse or theft?
2. Do you believe that the decision to detain children should be based on an evaluation of their behavior or their parents' behavior and ability to provide care and supervision? If the latter, is that a violation of due process? In other words, why should children be punished for their parents' shortcomings?



#### INFOTRAC COLLEGE EDITION RESEARCH

To learn more about the concept of *juvenile detention*, use the term as a subject guide on InfoTrac College Edition.

Source: Randall G. Shelden, "Detention Diversion Advocacy: An Evaluation," *Juvenile Justice Bulletin* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1999).

#### bail

Amount of money that must be paid as a condition of pretrial release to ensure that the accused will return for subsequent proceedings; bail is normally set by the judge at the initial appearance, and if unable to make bail the accused is detained in jail.

Removing status offenders from secure facilities serves two purposes: it reduces interaction with serious offenders, and it insulates status offenders from the stigma associated with being a detainee in a locked facility. Efforts appear to be working, and the number of status offenders being held in some sort of secure confinement has been on a two-decade decline. Nonetheless, the debate over the most effective way to handle juvenile status offenders continues, and some critics have argued that if the juvenile court is unable to take effective action in status offender cases it should be stripped of jurisdiction over these youths. Most judges would prefer to retain jurisdiction so they can help children and families resolve problems that cause run-aways, truancy, and other status offense behaviors.<sup>32</sup>

**Bail for Children** One critical detention issue is whether juveniles can be released on **bail**. Adults retain the right, via the Eighth Amendment to the Constitution, to reasonable bail in noncapital cases. Most states, however, refuse juveniles the

right to bail. They argue that juvenile proceedings are civil, not criminal, and that detention is rehabilitative, not punitive. In addition, they argue that juveniles do not need a constitutional right to bail because statutory provisions allow children to be released into parental custody.

State juvenile bail statutes fall into three categories: those guaranteeing the right to bail, those that grant the court discretion to give bail, and those that deny a juvenile the right to bail.<sup>33</sup> This disparity may be a function of the lack of legal guidance on the matter. The U.S. Supreme Court has never decided the issue of juvenile bail. Some courts have stated that bail provisions do not apply to juveniles. Others rely on the Eighth Amendment against cruel and unusual punishment, or on state constitutional provisions or statutes, and conclude that juveniles do have a right to bail.

**Preventive Detention** Although the U.S. Supreme Court has not yet decided whether juveniles have a right to traditional money bail, it has concluded that the state has a right to detain dangerous youth until their trial, a practice called **preventive detention**. On June 4, 1984, the U.S. Supreme Court dealt with this issue in *Schall v. Martin*, when it upheld the state of New York's preventive detention statute.<sup>34</sup> Because this is a key case in juvenile justice, it is the subject of the accompanying Juvenile Law in Review feature. Today, most states allow "dangerous" youths to be held indefinitely before trial. Because preventive detention may attach a stigma of guilt to a child presumed innocent, the practice remains a highly controversial one, and the efficacy of such laws remains unknown.<sup>35</sup>

## The Intake Process

The term *intake* refers to the screening of cases by the juvenile court system. The child and the child's family are screened by intake officers to determine whether the services of the juvenile court are needed. Intake officers may send the youth home with no further action, divert the youth to a social agency, petition the youth to the juvenile court, or file a petition and hold the youth in detention. The intake process reduces demands on court resources, screens out cases that are not in the court's jurisdiction, and enables assistance to be obtained from community agencies without court intervention. Juvenile court intake is provided for by statute in almost all the states.

About 17 percent (279,100) of all delinquency cases in 1999 were dismissed at intake, often because they were not legally sufficient. Another 26 percent (432,000) were processed informally, with the juvenile voluntarily agreeing to the recommended disposition (for example, voluntary treatment).<sup>36</sup> Intake screening allows juvenile courts to enter into consent decrees with juveniles without filing petitions and without formal adjudication. The *consent decree* is a court order authorizing disposition of the case without a formal label of delinquency. It is based on an agreement between the intake department of the court and the juvenile who is the subject of the complaint.

But intake also suffers from some problems. Although almost all state juvenile court systems provide intake and diversion programs, there are few formal criteria for selecting children for such alternatives. There are also legal problems associated with the intake process. Among them are whether the child has a right to counsel, whether the child is protected against self-incrimination, and to what degree the child needs to consent to nonjudicial disposition as recommended by the intake officer. Finally, intake dispositions are often determined by the prior record rather than by the seriousness of the offense or the social background of the child. This practice departs from the philosophy of *parens patriae*.<sup>37</sup>

## Diversion

One of the most important alternatives chosen at intake is *nonjudicial disposition*, or as it is variously called, *nonjudicial adjustment*, *handling or processing*, *informal disposition*, *adjustment*, or (most commonly) **diversion**. Juvenile diversion is the process

### preventive detention

Keeping the accused in custody prior to trial because the accused is suspected of being a danger to the community.

### intake

Process during which a juvenile referral is received and a decision made to file a petition in juvenile court to release the juvenile, to place the juvenile under supervision, or to refer the juvenile elsewhere.

### diversion

Officially halting or suspending a formal criminal or juvenile justice proceeding at any legally prescribed processing point after a recorded justice system entry, and referral of that person to a treatment or care program or a recommendation that the person be released.

## Juvenile Law in Review

### **Schall v. Martin**

#### **Facts**

Gregory Martin was arrested in New York City on December 13, 1977, on charges of robbery, assault, and criminal possession of a weapon. Because he was arrested at 11:30 P.M. and lied about his residence, Martin was kept overnight in detention and brought to juvenile court the next day for an “initial appearance” accompanied by his grandmother. The family court judge, citing possession of a loaded weapon, the false address given to police, and the fact that Martin was left unsupervised late in the evening, ordered him detained before trial under section 320.5(3)(6) of the New York State code, which authorizes pretrial detention of an accused juvenile delinquent if “there is a substantial probability that he will not appear in court on the return date or there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime.” Later, at trial, Martin was found to be a delinquent and sentenced to two years’ probation.

While he was in pretrial detention, Martin’s attorneys filed a class action on behalf of all youths subject to preventive detention in New York, charging that this form of detention was a denial of due process rights under the Fifth and Fourteenth Amendments. The New York appellate courts upheld Martin’s claim on the ground that because, at adjudication, most delinquents are released or placed on probation it was unfair to incarcerate them before trial. The prosecution brought the case to the U.S. Supreme Court for final judgment.

#### **Decision**

The U.S. Supreme Court upheld the state’s right to place juveniles in preventive detention, holding that the practice serves the legitimate objective of protecting both the juvenile and society from pretrial crime. Pretrial detention need not be considered punishment merely because the juvenile is eventually released or put on probation. In addition, there are procedural safeguards, such as notice and a hearing, and

a statement of facts that must be given to juveniles before they are placed in detention. The Court also found that detention based on prediction of future behavior was not a violation of due process. Many decisions are made in the justice system, such as the decision to sentence or grant parole, that are based in part on a prediction of future behavior, and these have all been accepted by the courts as legitimate exercises of state power.

#### **Significance of the Case**

*Schall v. Martin* established the right of juvenile court judges to deny youths pretrial release if they perceive them to be dangerous. However, the case also established a due process standard for detention hearings that includes notice and a statement of substantial reasons for the detention. Despite these measures, opponents hold that preventive detention deprives offenders of their freedom because guilt has not been proven. It is also unfair, they claim, to punish people for what judicial authorities believe they may do in the future, because it is impossible to predict who will be a danger to the community. Moreover, because judges are able to use discretion in their detention decisions, an offender could unfairly be deprived of freedom without legal recourse.

#### **CRITICAL THINKING**

1. Is the use of pretrial detention warranted for all juveniles charged with violent crimes? Explain
2. Should judicial discretion be limited in decisions on pretrial release or detention?



#### **INFOTRAC COLLEGE EDITION RESEARCH**

To learn about innovations in pretrial detention for juveniles, read Amanda Paulson, “Chicago’s Alternative to Locking Up Youth,” *Christian Science Monitor*, January 21, 2004, p. 1.

Source: *Schall v. Martin*, 104 S.Ct. 2403 (1984).

of placing youths suspected of law-violating behavior into treatment programs prior to formal trial and disposition to minimize their penetration into the justice system and thereby avoid stigma and labeling.

Diversion implies more than simply screening out cases for which no additional treatment is needed. Screening involves abandoning efforts to apply coercive measures to a defendant. In contrast, diversion encourages an individual to participate in some specific program or activity to avoid further prosecution.

Most court-based diversion programs employ a particular formula for choosing youths. Criteria such as being a first offender, a nonviolent offender, or a status offender, or being drug- or alcohol-dependent, are used to select clients. In some programs, youths will be asked to partake of services voluntarily in lieu of a court appearance. In other programs, prosecutors will agree to defer, and then dismiss, a case once a youth has completed a treatment program. Finally, some programs can be initiated by the juvenile court judge after an initial hearing. Concept Summary 13.1 lists the factors considered in diversion decisions.

The intake process involves the screening of cases by the juvenile justice system, which can produce a number of results, from releasing the youth to placing the youth under supervision. Here, juvenile offenders begin the intake process by being searched by a correctional officer at the Department of Youth Services Detention Center in Rathbone, Ohio.



© 2002 AP/Wide World Photos

In sum, diversion programs have been created to remove nonserious offenders from the justice system, provide them with nonpunitive treatment services, and help them avoid the stigma of a delinquent label.

**Issues in Diversion: Widening the Net** Diversion has been viewed as a promising alternative to official procedures, but over the years its basic premises have been questioned.<sup>38</sup> The most damaging criticism has been that diversion programs are involving children in the juvenile justice system who previously would have been released without official notice. This is referred to as **widening the net**. Various studies indicate that police and court personnel are likely to use diversion programs for youths who ordinarily would have been turned loose at the intake or arrest stage.<sup>39</sup> Why does this “net widening” occur? One explanation is that police and prosecutors find diversion a more attractive alternative than either official processing or outright release—diversion helps them resolve the conflict between doing too much and doing too little.

Diversion has also been criticized as ineffective; that is, youths being diverted make no better adjustment in the community than those who go through official channels. However, not all experts are critical of diversion. Some challenge the net-widening concept as naive: How do we know that diverted youths would have had less interface with the justice system if diversion didn't exist?<sup>40</sup> Even if juveniles escaped official labels for their current offense, might they not eventually fall into the hands of the police? The rehabilitative potential of diversion should not be overlooked.<sup>41</sup> Juvenile diversion programs represent one alternative to the traditional process.

## The Petition

A **complaint** is the report made by the police or some other agency to the court to initiate the intake process. Once the agency makes a decision that judicial disposition is required, a petition is filed. The petition is the formal complaint that initiates judicial action against a juvenile charged with delinquency or a status offense. The petition includes basic information such as the name, age, and residence of the child; the parents' names; and the facts alleging the child's delinquency. The police officer, a family member, or a social service agency can file a petition.

If after being given the right to counsel, the child admits the allegation in the petition, an initial hearing is scheduled for the child to make the admission before the court and information is gathered to develop a treatment plan. If the child does not

### widening the net

Phenomenon that occurs when programs created to divert youths from the justice system actually involve them more deeply in the official process.

### complaint

Report made by the police or some other agency to the court that initiates the intake process.

Concept Summary


13.1

Who Gets Diversion?

Factors Considered	Criteria for Eligibility
Past criminal record	It is the juvenile's first offense.
Type of offense	It is a nonviolent or status offense.
Other circumstances	The juvenile abuses drugs or alcohol.

Checkpoints

- ✓ *Detention is the temporary care of children by the state in physically restrictive facilities pending court disposition or transfer to another agency.*
- ✓ *The federal government has encouraged the removal of status offenders from detention facilities that also house juvenile delinquents; it has encouraged the removal of delinquents from adult jails.*
- ✓ *Racial minorities are over-represented in detention.*
- ✓ *Experts maintain that detention facilities should provide youth with treatment, such as education, counseling, and health care.*
- ✓ *Intake refers to the screening of cases by the juvenile court system to determine whether the services of the juvenile court are needed.*
- ✓ *One of the most important alternatives chosen at intake is nonjudicial disposition, or as it is most commonly called, diversion.*
- ✓ *The petition is the formal complaint that initiates judicial action against a juvenile charged with delinquency or a status offense.*

 To quiz yourself on this material, go to questions 13.11–13.15 on the Juvenile Delinquency: The Core 2e Web site.

admit to any of the facts in the petition, a date is set for a hearing on the petition. This hearing, whose purpose is to determine the merits of the petition, is similar to the adult trial. Once a hearing date has been set, the probation department is normally asked to prepare a social study report. This predisposition report contains relevant information about the child, along with recommendations for treatment and service.

When a date has been set for the hearing on the petition, parents or guardians and other persons associated with the petition (witnesses, the arresting police officer, and victims) are notified. On occasion, the court may issue a summons—a court order requiring the juvenile or others involved in the case to appear for the hearing. The statutes in a given jurisdiction govern the contents of the petition. Some jurisdictions, for instance, allow for a petition to be filed based on the information of the complainant alone. Others require that the petition be filed under oath or that an affidavit accompany the petition. Some jurisdictions authorize only one official, such as a probation officer or prosecutor, to file the petition. Others allow numerous officials, including family and social service agencies, to set forth facts in the petition.

✓ Checkpoints

The Plea and Plea Bargaining

In the adult criminal justice system, the defendant normally enters a plea of guilty or not guilty. More than 90 percent of all adult defendants plead guilty. A large proportion of those pleas involve **plea bargaining**, the exchange of prosecutorial and judicial concessions for guilty pleas.<sup>42</sup> Plea bargaining permits a defendant to plead guilty to a less-serious charge in exchange for an agreement by the prosecutor to recommend a reduced sentence to the court. It involves a discussion between the child's attorney and the prosecutor by which the child agrees to plead guilty to obtain a reduced charge or a lenient sentence.

Few juvenile codes require a guilty or not-guilty plea when a petition is filed against a child. In most jurisdictions an initial hearing is held at which the child either submits to a finding of the facts or denies the petition.<sup>43</sup> If the child admits to the facts, the court determines an appropriate disposition. If the child denies the allegations, the case normally proceeds to trial. When a child enters no plea, the court ordinarily imposes a denial of the charges. This may occur when a juvenile doesn't understand the nature of the complaint or isn't represented by an attorney.

A high percentage of juvenile offenders enter guilty pleas—that is, they admit to the facts of the petition. How many of these pleas involve plea bargaining is unknown. In the past it was believed that plea bargaining was unnecessary in the juvenile justice system because there was little incentive to bargain in a system that does not have jury trials or long sentences. In addition, because the court must dispose of cases in the best interests of the child, plea negotiation seemed unnecessary. Consequently, there has long been a debate over the appropriateness of plea bargaining in juvenile justice. The arguments in favor of plea bargaining include lower court costs and efficiency. Counterarguments hold that plea bargaining with juveniles is an unregulated and unethical process. When used, experts believe the process requires the highest standards of good faith by the prosecutor.<sup>44</sup>

plea bargaining

The exchange of prosecutorial and judicial concessions for a guilty plea by the accused; plea bargaining usually results in a reduced charge or a more lenient sentence.

Growing concern about violent juvenile crime has spurred attorneys increasingly to seek to negotiate a plea rather than accept the so-called good interests of the court judgment—a judgment that might result in harsher sanctions.

Plea bargaining negotiations generally involve one or more of the following: reduction of a charge, change in the proceedings from that of delinquency to a status offense, elimination of possible waiver to the criminal court, and agreements regarding dispositional programs for the child. In states where youths are subject to long mandatory sentences, reduction of the charges may have a significant impact on the outcome of the case. In states where youths may be waived to the adult court for committing certain serious crimes, a plea reduction may result in the juvenile court's maintaining jurisdiction.

There is little clear evidence on how much plea bargaining occurs in the juvenile justice system, but it is apparent that such negotiations do take place and seem to be increasing. Joseph Sanborn found that about 20 percent of the cases processed in Philadelphia resulted in a negotiated plea. Most were for reduced sentences, typically probation in lieu of incarceration. Sanborn found that plea bargaining was a complex process, depending in large measure on the philosophy of the judge and the court staff. In general, he found it to have greater benefit for the defendants than for the court.<sup>45</sup>

In summary, the majority of juvenile cases that are not adjudicated seem to be the result of admissions to the facts rather than actual plea bargaining. Plea bargaining is less common in juvenile courts than in adult courts because incentives such as dropping multiple charges or substituting a misdemeanor for a felony are unlikely. Nonetheless, plea bargaining is firmly entrenched in the juvenile process. Any plea bargain, however, must be entered into voluntarily and knowingly; otherwise, the conviction may be overturned on appeal.

## TRANSFER TO THE ADULT COURT

One of the most significant actions that can occur in the early court processing of a juvenile offender is the **transfer process**. Otherwise known as *waiver*, *bindover*, or *removal*, this process involves transferring a juvenile from the juvenile court to the criminal court. Virtually all state statutes allow for this kind of transfer.

The number of delinquency cases judicially waived to criminal court peaked in 1994 at 12,100 cases, an increase of almost 50 percent over the number of cases waived in 1990 (8,300). From 1994 to 1999 (the latest data available), however, the number of cases waived to criminal court has actually declined 38 percent to 7,500 cases, representing less than 1 percent of the formally processed delinquency caseload.<sup>46</sup> A 2003 federal study of juveniles waived to criminal court in the nation's forty largest counties found that 7,100 juvenile felony defendants were adjudicated in adult criminal court.<sup>47</sup> Figure 13.1 shows numbers of delinquency cases waived to criminal court during the 1990s.

### Waiver Procedures

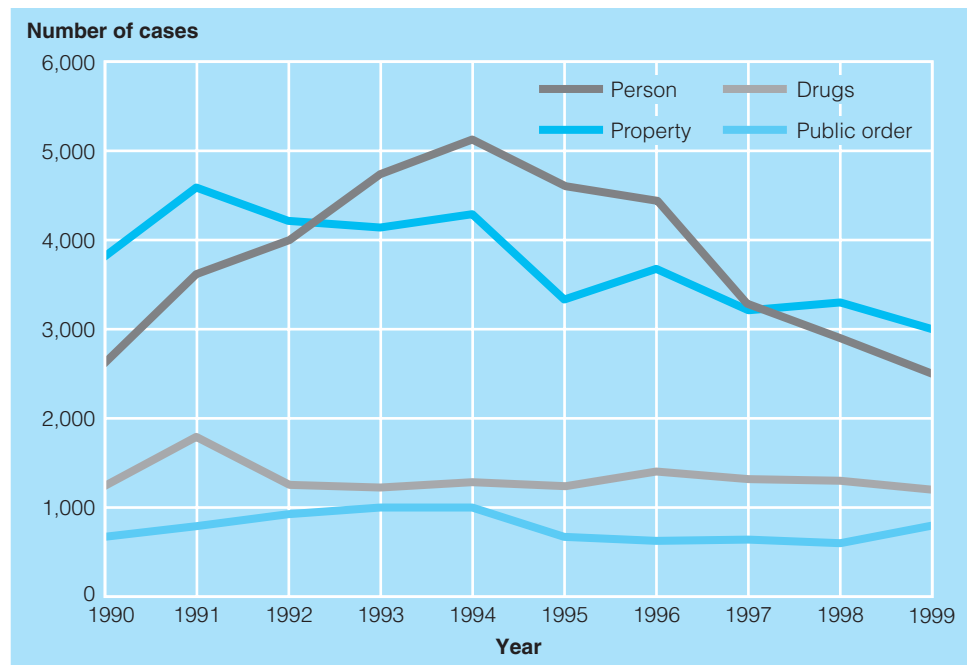
Today, all states allow juveniles to be tried as adults in criminal courts in one of three ways:

1. *Concurrent jurisdiction*. In about fifteen states, the prosecutor has the discretion of filing charges for certain offenses in either juvenile or criminal court.
2. *Statutory exclusion policies*. In about twenty-nine states, certain offenses are automatically excluded from juvenile court. These offenses can be minor, such as traffic violations, or serious, such as murder or rape. Statutory exclusion accounts for the largest number of juveniles tried as adults.
3. *Judicial waiver*. In the waiver (or bindover or removal) of juvenile cases to criminal court, a hearing is held before a juvenile court judge, who then decides whether jurisdiction should be waived and the case transferred to criminal

#### transfer process

Transferring a juvenile offender from the jurisdiction of juvenile court to adult criminal court.

**Figure 13.1** Delinquency Cases Waived to Criminal Court, 1990–1999



Source: Charles Puzzanchera, Anne L. Stahl, Terrence A. Finnegan, Nancy Tierney, and Howard N. Snyder, *Juvenile Court Statistics 1999* (Pittsburgh, PA: National Center for Juvenile Justice, 2003).

court. All but four states (Massachusetts, Nebraska, New Mexico, and New York) offer provisions for juvenile waivers.<sup>48</sup>

## Due Process in Transfer Proceedings

The standards for transfer procedures are set by state statute. Some jurisdictions allow for transfer between the ages of fourteen and seventeen. Others restrict waiver proceedings to mature juveniles and specify particular offenses. In a few jurisdictions, any child can be sentenced to the criminal court system, regardless of age.

Those states that have amended their waiver policies with statutory exclusion policies now exclude certain serious offenses from juvenile court jurisdiction. For example, Indiana excludes cases involving sixteen- and seventeen-year-olds charged with kidnapping, rape, and robbery. In Illinois, youths ages fifteen and sixteen who are charged with murder, assault, or robbery with a firearm are automatically sent to criminal court; in Pennsylvania, any child accused of murder, regardless of age, is tried before the criminal court.<sup>49</sup> Other jurisdictions use exclusion to remove traffic offenses and public-ordinance violations.

The trend toward excluding serious violent offenses from juvenile court jurisdictions is growing in response to the current demand to get tough on crime. In addition, large numbers of youth under age eighteen are tried as adults in states where the upper age of juvenile court jurisdiction is fifteen or sixteen.

In a minority of states, statutes allow prosecutors to file particularly serious cases in either the juvenile court or the adult court.<sup>50</sup> Prosecutor discretion may occasionally be a more effective transfer mechanism than the waiver process, because the prosecutor can file a petition in criminal or juvenile court without judicial approval.

Since 1966, the U.S. Supreme Court and other federal and state courts have attempted to ensure fairness in the waiver process by handing down decisions that spell out the need for due process. Two Supreme Court decisions, *Kent v. United States* (1966) and *Breed v. Jones* (1975), are relevant.<sup>51</sup> The *Kent* case declared a District of



## Juvenile Law in Review

### ***Kent v. United States and Breed v. Jones***

#### ***Kent v. United States: Facts***

Morris Kent was arrested at age sixteen in connection with charges of housebreaking, robbery, and rape. As a juvenile, he was subject to the exclusive jurisdiction of the District of Columbia Juvenile Court. The District of Columbia statute declared that the court could transfer the petitioner “after full investigation” and remit him to trial in the U.S. District Court. Kent admitted his involvement in the offenses and was placed in a receiving home for children. Subsequently, his mother obtained counsel, and they discussed with the social service director the possibility that the juvenile court might waive its jurisdiction.

Kent was detained at the receiving home for almost a week. There was no arraignment, no hearing, and no hearing for petitioner’s apprehension. Kent’s counsel arranged for a psychiatric examination, and a motion requesting a hearing on the waiver was filed. The juvenile court judge did not rule on the motion and entered an order that stated: “After full investigation, the court waives its jurisdiction and directs that a trial be held under the regular proceedings of the criminal court.” The judge made no finding and gave no reasons for his waiver decision. It appeared that the judge denied motions for a hearing, recommendations for hospitalization for psychiatric observation, requests for access to the social service file, and offers to prove that the petitioner was a fit subject for rehabilitation under the juvenile court.

After the juvenile court waived its jurisdiction, Kent was indicted by the grand jury and was subsequently found guilty of housebreaking and robbery and not guilty by reason of insanity on the charge of rape. Kent was sentenced to serve a period of thirty to ninety years on his conviction.

#### **Decision**

The petitioner’s lawyer appealed the decision on the basis of the infirmity of the proceedings by which the juvenile court waived its jurisdiction. He further attacked the waiver on statutory and constitutional grounds, stating: “(1) no hearing occurred, (2) no findings were made, (3) no reasons were stated before the waiver, and (4) counsel was denied access to the social service file.” The U.S. Supreme Court found that the juvenile court order waiving jurisdiction and remitting the child to trial in the district court was invalid. Its arguments were based on the following criteria:

- The theory of the juvenile court act is rooted in social welfare procedures and treatments.
- The philosophy of the juvenile court, namely *parens patriae*, is not supposed to allow procedural unfairness.
- Waiver proceedings are critically important actions in the juvenile court.
- The juvenile court act requiring full investigation in the District of Columbia should be read in the context of constitutional principles relating to due process of law. These principles require at a minimum that the petitioner be entitled to a hearing, access to counsel, access by counsel to social service records, and a statement of the reason for the juvenile court decision.

#### **Significance of the Case**

This case examined for the first time the substantial degree of discretion associated with a transfer proceeding in the District of Columbia. Thus, the Supreme Court significantly limited its holding to the statute involved but justified its reference to constitutional principles relating to due process and the assistance of counsel. In addition, it said that the juvenile court waiver hearings need to measure up to the essentials of due process and fair treatment. Furthermore, in an appendix to its opinion, the Court set up criteria concerning waiver of the jurisdictions. These are:

Columbia transfer statute unconstitutional and attacked the subsequent conviction of the child by granting him the specific due process rights of having an attorney present at the hearing and access to the evidence that would be used in the case. In *Breed v. Jones*, the U.S. Supreme Court declared that the child was to be granted the protection of the double-jeopardy clause of the Fifth Amendment after he was tried as a delinquent in the juvenile court: once found to be a delinquent, the youth could no longer be tried as an adult. The accompanying Juvenile Law in Review feature discusses these two important cases in more detail.

Today, as a result of *Kent* and *Breed*, states that have transfer hearings provide a legitimate transfer hearing, sufficient notice to the child’s family and defense attorney, the right to counsel, and a statement of the reason for the court order regarding transfer. These procedures recognize that the transfer process is critical in determining the statutory rights of the juvenile offender.

- The seriousness of the alleged offense to the community
- Whether the alleged offense was committed in an aggressive, violent, or willful manner
- Whether the alleged offense was committed against persons or against property
- The prosecutive merit of the complaint
- The sophistication and maturity of the juvenile
- The record and previous history of the juvenile
- Prospects for adequate protection of the public and the likelihood of reasonable rehabilitation

### **Breed v. Jones: Facts**

In 1971, a petition in the juvenile court of California was filed against Jones, who was then seventeen, alleging that he had committed an offense that, if committed by an adult, would constitute robbery. The petitioner was detained pending a hearing. At the hearing the juvenile court took testimony, found that the allegations were true, and sustained the petition. The proceedings were continued for a disposition hearing, at which point Jones was found unfit for treatment in the juvenile court. It was ordered that he be prosecuted as an adult offender. At a subsequent preliminary hearing, the petitioner was held for criminal trial, an information was filed against him for robbery, and he was tried and found guilty. He was committed to the California Youth Authority over objections that he was being subjected to double jeopardy.

Petitioner Jones sought an appeal in the federal district court on the basis of the double-jeopardy argument that jeopardy attaches at the juvenile delinquency proceedings. The writ of habeas corpus was denied.

### **Decision**

The U.S. Supreme Court held that the prosecution of Jones as an adult in the California Superior Court, after an adjudicatory finding in the juvenile court that he had violated a criminal statute and a subsequent finding that he was unfit

for treatment as a juvenile, violated the double-jeopardy clause of the Fifth Amendment to the U.S. Constitution as applied to the states through the Fourteenth Amendment. Thus, Jones's trial in the California Superior Court for the same offense as that for which he was tried in the juvenile court violated the policy of the double-jeopardy clause, even if he never faced the risk of more than one punishment. *Double jeopardy* refers to the risk or potential risk of trial and conviction, not punishment.

### **Significance of the Case**

The *Breed* case provided answers on several important transfer issues: (1) it prohibits trying a child in an adult court when there has been a prior adjudicatory juvenile proceeding; (2) probable cause may exist at a transfer hearing, and this does not violate subsequent jeopardy if the child is transferred to the adult court; (3) because the same evidence is often used in both the transfer hearing and subsequent trial in either the juvenile or adult court, a different judge is often required for each hearing.

### **CRITICAL THINKING**

Do you believe that some cases should be automatically waived to the adult system, or should all juvenile offenders be evaluated for the possibility of treatment in the juvenile court before a waiver decision is made?

### **INFOTRAC COLLEGE EDITION RESEARCH**

Use "juvenile waiver" as a subject guide on InfoTrac College Edition to find out more about this issue.

Sources: *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966); *Breed v. Jones*, 421 U.S. 519, 95 S.Ct. 1779 (1975).

## **Should Youths Be Transferred to Adult Court?**

Most juvenile justice experts oppose waiver because it clashes with the rehabilitative ideal. Basing waiver decisions on type and seriousness of offense rather than on the rehabilitative needs of the child has advanced the *criminalization* of the juvenile court and interfered with its traditional mission of treatment and rehabilitation.<sup>52</sup> And despite this sacrifice, there is little evidence that strict waiver policies can lower crime rates.<sup>53</sup>

Waiver can also create long-term harm. Waived children may be stigmatized by a conviction in the criminal court. Labeling children as adult offenders early in life may seriously impair their future educational, employment, and other opportunities. Youthful offenders convicted in adult courts are more likely to be incarcerated and to receive longer sentences than if they remained in the juvenile court. And these children



Bucks County Courier Times © Jay Crawford

Some kids who commit the most serious crimes are routinely waived to adult court. Here, 14-year-old Kareem Watts is led from court in Doylestown, Pennsylvania, where he was tried as an adult for the murder of a neighbor, Darlyne Jules. A troubled young man, Watts started hearing voices in his head at age 8 and began to self-medicate by smoking pot and snorting household chemicals at age 11. When he stabbed his neighbor, Jules, he was high on pot laced with embalming fluid. After his conviction, Watts was sent to a special unit within the juvenile justice system that houses young convicted offenders who need special psychiatric care. He will be released on his 21st birthday, following an evaluation of his mental condition.

may be incarcerated under conditions so extreme, and in institutions where they may be physically and sexually exploited, that they will become permanently damaged.<sup>54</sup> In a small-scale study of female youths transferred to criminal court and subsequently placed in a prison for adult women, it was found that the prison was severely limited in its ability to care for and provide needed treatment services for these youths compared with the adults.<sup>55</sup>

Waivers don't always support the goal of increased public protection. Because juveniles may only serve a fraction of the prison sentence imposed by the criminal court, the actual treatment of delinquents in adult court is similar to what they might have received had they remained in the custody of juvenile authorities.<sup>56</sup> Also, transferred juveniles convicted of felonies are not more likely to be sentenced to prison than similarly charged felons who are under the age of eighteen but considered adults by the state.<sup>57</sup> Once they are released, waived juveniles have a higher recidivism rate than those kept in juvenile court.<sup>58</sup> This has prompted some critics to ask: Why bother transferring these children?

Sometimes waiver can add an undue burden to youthful offenders. Studies have found that, although transfer to criminal court was intended for the most serious juvenile offenders, many transferred juveniles were not violent offenders but repeat property offenders.<sup>59</sup> Cases involving waiver take significantly longer than comparable juvenile court cases, during which time the waived youth is more likely to be held in a detention center. This finding is vexing, considering that some research shows that many waived youths are no more dangerous than youths who remain in juvenile courts.<sup>60</sup>

Transfer decisions are not always carried out fairly or equitably and there is evidence that minorities are waived at a rate that is greater than their representation in the population.<sup>61</sup> Just over two-fifths (44 percent) of all waived youth are African Americans, even though they represent 28 percent of the juvenile court population.<sup>62</sup> The federal study of transfer in the nation's forty largest counties found that 62 percent of waived youth were African American.<sup>63</sup> However, between 1990 and 1999, the number of judicially waived cases involving African-American youth decreased 24 percent compared with a 9 percent increase for White youth.<sup>64</sup>

**In Support of Waiver** Not all experts challenge the waiver concept. Waiver is attractive to conservatives because it jibes with the get tough policy that is currently popular. Some have argued that the increased use of waiver can help get violent offenders off the streets and should be mandatory for juveniles committing serious violent crimes.<sup>65</sup> Others point to studies that show that, for the most part, transfer is reserved for the most serious cases and the most serious juvenile offenders. Kids are most likely to be transferred to criminal court if they have injured someone with a weapon or if they have a long juvenile court record.<sup>66</sup> The most recent federal study of waiver found that 27 percent of juveniles tried in criminal court were sent to prison. This outcome might be expected because those waived to criminal court were more likely (64 percent) than adults (24 percent) to be charged with a violent felony. These juvenile defendants were generally regarded as serious offenders, because 52 percent did not receive pretrial release, 63 percent were con-

victed of a felony, and 43 percent of those convicted received a prison sentence.<sup>67</sup> Clearly, many waived juveniles might be considered serious offenders.

Author Franklin Zimring argues that, despite its faults, waiver is superior to alternative methods for handling the most serious juvenile offenders.<sup>68</sup> Some cases involving serious offenses, he argues, require a minimum criminal penalty greater than that available to the juvenile court. It is also possible that some juveniles take advantage of decisions to transfer them to the adult court. Although the charge against a child may be considered serious in the juvenile court, the adult criminal court will not find it so; consequently, a child may have a better chance for dismissal of the charges, or acquittal, after a jury trial.

In sum, though the use of waiver has leveled off somewhat, it is still being used today as an important strategy for attacking serious youth crime.<sup>69</sup> Its continued use can be attributed to the get-tough attitude toward the serious juvenile offender.

## JUVENILE COURT TRIAL

If the case cannot be decided during the pretrial stage, it will be brought for trial in the juvenile court. An adjudication hearing is held to determine the merits of the petition claiming that a child is either a delinquent youth or in need of court supervision. The judge is required to make a finding based on the evidence and arrive at a judgment. The adjudication hearing is comparable to an adult trial. Rules of evidence in adult criminal proceedings are generally applicable in juvenile court, and the standard of proof used—*beyond a reasonable doubt*—is similar to that used in adult trials.

State juvenile codes vary with regard to the basic requirements of due process and fairness. Most juvenile courts have bifurcated hearings—that is, separate hearings for adjudication and disposition (sentencing). At disposition hearings, evidence can be submitted that reflects nonlegal factors, such as the child's home life.

Most state juvenile codes provide specific rules of procedure. These rules require that a written petition be submitted to the court, ensure the right of a child to have an attorney, provide that the adjudication proceedings be recorded, allow the petition to be amended, and provide that a child's plea be accepted. Where the child admits to the facts of the petition, the court generally seeks assurance that the plea is voluntary. If plea bargaining is used, prosecutors, defense counsel, and trial judges take steps to ensure the fairness of such negotiations.

At the end of the adjudication hearing, most juvenile court statutes require the judge to make a factual finding on the legal issues and evidence. In the criminal court, this finding is normally a prelude to reaching a verdict. In the juvenile court, however, the finding itself is the verdict—the case is resolved in one of three ways:

1. The juvenile court judge makes a finding of fact that the child or juvenile is not delinquent or in need of supervision.
2. The juvenile court judge makes a finding of fact that the juvenile is delinquent or in need of supervision.
3. The juvenile court judge dismisses the case because of insufficient or faulty evidence.

In some jurisdictions, informal alternatives are used, such as filing the case with no further consequences or continuing the case without a finding for a period of time such as six months. If the juvenile does not get into further difficulty during that time, the case is dismissed. These alternatives involve no determination of delinquency or noncriminal behavior. Because of the philosophy of the juvenile court that emphasizes rehabilitation over punishment, a delinquency finding is not the same thing as a criminal conviction. The disabilities associated with conviction, such as disqualifications for employment or being barred from military service, do not apply in an adjudication of delinquency.



To get information on juvenile courts, go to the Web site of the [National Center for State Courts](http://www.nccs.org) by clicking on Web Links under the Chapter Resources at [http://cj.wadsworth.com/siegel\\_jdcore2e](http://cj.wadsworth.com/siegel_jdcore2e).

The appeal of Gerald Gault (center) heralded in the due process revolution in juvenile justice.



© AP/Wide World Photos

There are other differences between adult and juvenile proceedings. For instance, while adults are entitled to public trials by a jury of their peers, these rights are not extended to juveniles.<sup>70</sup> Because juvenile courts are treating some defendants in a similar way as adult criminals, an argument can be made that the courts should extend to these youths the Sixth Amendment right to a public jury trial.<sup>71</sup> For the most part, however, state juvenile courts operate without recognizing a juvenile's constitutional right to a jury trial.



For a review of **due process issues in juvenile justice**, click on Web Links under the Chapter Resources at [http://cj.wadsworth.com/siegel\\_jdcore2e](http://cj.wadsworth.com/siegel_jdcore2e).

## Constitutional Rights at Trial

In addition to mandating state juvenile code requirements, the U.S. Supreme Court has mandated the application of constitutional due process standards to the juvenile trial. **Due process** is addressed in the Fifth and Fourteenth Amendments to the U.S. Constitution. It refers to the need for rules and procedures that protect individual rights. Having the right to due process means that no person can be deprived of life, liberty, or property without such protections as legal counsel, an open and fair hearing, and an opportunity to confront those making accusations against him or her.

For many years, children were deprived of their due process rights because the *parens patriae* philosophy governed their relationship to the juvenile justice system. Such rights as having counsel and confronting one's accusers were deemed unnecessary. After all, why should children need protection from the state when the state was seen as acting in their interest? As we have seen, this view changed in the 1960s, when the U.S. Supreme Court began to grant due process rights and procedures to minors. The key case was that of Gerald Gault; it articulated the basic requirements of due process that must be satisfied in juvenile court proceedings. Because *Gault* remains the key constitutional case in the juvenile justice system, it is discussed in depth in the accompanying Juvenile Law in Review feature.

The *Gault* decision reshaped the constitutional and philosophical nature of the juvenile court system, and with the addition of legal representation, made it more similar to the adult system.<sup>72</sup> Following the *Gault* case, the U.S. Supreme Court decided in *in re Winship* that the amount of proof required in juvenile delinquency

### due process

Basic constitutional principle based on the concept of the primacy of the individual and the complementary concept of limitation on governmental power; safeguards the individual from unfair state procedures in judicial or administrative proceedings; due process rights have been extended to juvenile trials.



To read more about [Gault](#) or to get the actual case transcript, click on Web Links under the Chapter Resources at [http://cj.wadsworth.com/siegel\\_jdcore2e](http://cj.wadsworth.com/siegel_jdcore2e).

adjudications is “beyond a reasonable doubt,” a level equal to the requirements in the adult system.<sup>73</sup>

Although the ways in which the juvenile court operates were altered by *Gault* and *Winship*, the trend toward increased rights for juveniles was somewhat curtailed by the U.S. Supreme Court’s decision in *McKeiver v. Pennsylvania* (1971), which held that trial by jury in a juvenile court’s adjudicative stage is not a constitutional requirement.<sup>74</sup> This decision does not prevent states from giving the juvenile a trial by jury, but in most states a child has no such right.

Once an adjudicatory hearing has been completed, the court is normally required to enter a judgment or finding against the child. This may take the form of declaring the child delinquent, adjudging the child to be a ward of the court, or possibly even suspending judgment so as to avoid the stigma of a juvenile record. After a judgment has been entered, the court can begin its determination of possible dispositions.

## Disposition

The sentencing step of the juvenile justice process is called *disposition*. At this point the court orders treatment for the juvenile.<sup>75</sup> According to prevailing juvenile justice philosophy, dispositions should be in the *best interest of the child*, which in this context means providing the help necessary to resolve or meet the adolescent’s personal needs, while at the same time meeting society’s needs for protection.

As already noted, in most jurisdictions, adjudication and disposition hearings are bifurcated, so that evidence that could not be entered during the juvenile trial can be considered at the dispositional hearing. At the hearing, the defense counsel represents the child, helps the parents understand the court’s decision, and influences the direction of the disposition. Others involved at the dispositional stage include representatives of social service agencies, psychologists, social workers, and probation personnel.

**The Predisposition Report** After the child has admitted to the allegations, or the allegations have been proved in a trial, the judge normally orders the probation department to complete a predisposition report. The predisposition report, which is similar to the presentence report of the adult justice system, has a number of purposes:

- It helps the judge decide which disposition is best for the child.
- It aids the juvenile probation officer in developing treatment programs where the child is in need of counseling or community supervision.
- It helps the court develop a body of knowledge about the child that can aid others in treating the child.<sup>76</sup>

Some state statutes make the predisposition report mandatory. Other jurisdictions require the report only when there is a probability that the child will be institutionalized. Some appellate courts have reversed orders institutionalizing children where the juvenile court did not use a predisposition report in reaching its decision. Access to predisposition reports is an important legal issue.

In the final section of the predisposition report, the probation department recommends a disposition to the presiding judge. This is a critical aspect of the report because it has been estimated that the court follows more than 90 percent of all probation-department recommendations.

**Juvenile Court Dispositions** Historically, the juvenile court has had broad discretionary power to make dispositional decisions. The major categories of dispositional choices are community release, out-of-home placement, fines or restitution, community service, and institutionalization. A more detailed list of the dispositions open to the juvenile court judge appears in Exhibit 13.3.<sup>77</sup>

Most state statutes allow the juvenile court judge to select whatever disposition seems best suited to the child’s needs, including institutionalization. In some states

## Juvenile Law in Review

### *In re Gault*

#### Facts

Gerald Gault, fifteen years of age, was taken into custody by the sheriff of Gila County, Arizona, because a woman complained that he and another boy had made an obscene telephone call to her. At the time, Gault was under a six-month probation disposition after being found delinquent for stealing a wallet. As a result of the woman's complaint, the boy was taken to a children's home. His parents were not informed that he was being taken into custody. His mother appeared in the evening and was told by the superintendent of detention that a hearing would be held in the juvenile court the following day. On the day in question, the police officer who had taken him into custody filed a petition alleging his delinquency. Gault, his mother, and the police officer appeared before the judge in his chambers. Mrs. Cook, the complainant, was not at the hearing. The boy was questioned about the telephone calls and sent back to the detention home and subsequently released a few days later.

On the day of his release, Mrs. Gault received a letter indicating that a hearing would be held on his delinquency a few days later. A hearing was held, and the complainant again was not present. There was no transcript or recording of the proceedings, and the juvenile officer stated that Gault had admitted making the lewd telephone calls. Neither the boy nor his parents were advised of any right to remain silent, right to be represented by counsel, or any other constitutional rights. At the conclusion of the hearing, the juvenile court committed Gault as a juvenile delinquent to the state industrial school for the period of his minority.

This meant that, at age fifteen, Gerald Gault was sentenced to remain in the state school until he reached the age of twenty-one, unless he was discharged sooner. An adult charged with the same crime would have received a maximum punishment of no more than a \$50 fine or two months in prison.

#### Decision

Gault's attorneys filed a writ of habeas corpus, which was denied by the Superior Court of the State of Arizona. That decision was subsequently affirmed by the Arizona Supreme Court. On appeal to the U.S. Supreme Court, Gault's counsel argued that the juvenile code of Arizona under which the boy was found delinquent was invalid because it was contrary to the due process clause of the Fourteenth Amendment. In addition, Gault was denied the following basic due process rights: (1) notice of the charges with respect to their timeliness and specificity, (2) right to counsel, (3) right to confrontation and cross-examination, (4) privilege against self-incrimination, (5) right to a transcript of the trial record, and (6) right to appellate review. In deciding the case, the

U.S. Supreme Court had to determine whether procedural due process of law in the context of fundamental fairness under the Fourteenth Amendment applied to juvenile delinquency proceedings in which a child is committed to a state industrial school.

The Court, in a far-reaching opinion, agreed that Gerald Gault's constitutional rights had been violated. Notice of charges was an essential ingredient of due process of law, as was the right to counsel, the right to cross-examine and to confront witnesses, and the privilege against self-incrimination. The questions of appellate review and a right to a transcript were not answered by the Court in this case.

#### Significance of the Case

The *Gault* case established that a child has the due process constitutional rights listed here in delinquency adjudication proceedings, where the consequences were that the child could be committed to a state institution. It was confined to rulings at the adjudication state of the juvenile process.

This decision was significant not only because of the procedural reforms it initiated but also because of its far-reaching impact throughout the entire juvenile justice system. *Gault* instilled in juvenile proceedings the development of due process standards at the pretrial, trial, and posttrial stages of the juvenile process. While recognizing the history and development of the juvenile court, it sought to accommodate the motives of rehabilitation and treatment with children's rights. It recognized the principle of fundamental fairness of the law for children as well as for adults. Judged in the context of today's juvenile justice system, *Gault* redefined the relationships between juveniles, their parents, and the state. It remains the single most significant constitutional case in the area of juvenile justice.

#### CRITICAL THINKING

The *Gault* case is hailed as a milestone for giving juveniles due process rights. Does the provision of those rights actually harm juveniles? In other words, would it have been advisable to keep attorneys and legal process out of the juvenile court? Is it too late to transform the system so that it reflects its original ideals?



#### INFOTRAC COLLEGE EDITION RESEARCH

How has the *Gault* case shaped the philosophy of the juvenile court? To find out, read Lise A. Young, "Suffer the Children: The Basic Principle of Juvenile Justice Is to Treat the Child, Not Punish the Offense," *America* 185(12):19 (October 22, 2001).

Source: *In re Gault*, 387 U.S. 1; 87 S.Ct. 1248 (1967).

the court determines commitment to a specific institution; in other states the youth corrections agency determines where the child will be placed. In addition to the dispositions shown in Exhibit 13.3, some states grant the court the power to order parents into treatment or suspend a youth's driver's license.

**Exhibit 13.3 Common Juvenile Dispositions**

<b>Disposition</b>	<b>Action Taken</b>
Informal consent decree	In minor or first offenses, an informal hearing is held, and the judge will ask the youth and his or her guardian to agree to a treatment program, such as counseling. No formal trial or disposition hearing is held.
Probation	A youth is placed under the control of the county probation department and required to obey a set of probation rules and participate in a treatment program.
Home detention	A child is restricted to his or her home in lieu of a secure placement. Rules include regular school attendance, curfew observance, avoidance of alcohol and drugs, and notification of parents and the youth worker of the child's whereabouts.
Court-ordered school attendance	If truancy was the problem that brought the youth to court, a judge may order mandatory school attendance. Some courts have established court-operated day schools and court-based tutorial programs staffed by community volunteers.
Financial restitution	A judge can order the juvenile offender to make financial restitution to the victim. In most jurisdictions, restitution is part of probation (see chapter 14), but in a few states, such as Maryland, restitution can be a sole order.
Fines	Some states allow fines to be levied against juveniles age sixteen and over.
Community service	Courts in many jurisdictions require juveniles to spend time in the community working off their debt to society. Community service orders are usually reserved for victimless crimes, such as possession of drugs, or crimes against public order, such as vandalism of school property. Community service orders are usually carried out in schools, hospitals, or nursing homes.
Outpatient psychotherapy	Youths who are diagnosed with psychological disorders may be required to undergo therapy at a local mental health clinic.
Drug and alcohol treatment	Youths with drug- or alcohol-related problems may be allowed to remain in the community if they agree to undergo drug or alcohol therapy.
Commitment to secure treatment	In the most serious cases a judge may order an offender admitted to a long-term treatment center, such as a training school, camp, ranch, or group home. These may be either state-run or privately run institutions, and are usually located in remote regions. Training schools provide educational, vocational, and rehabilitation programs in a secure environment (see chapter 14).
Commitment to a residential community	Youths who commit crimes of a less serious nature but who still need to be removed from their homes can be placed in community-based group homes or halfway houses. They attend school or work during the day and live in a controlled, therapeutic environment at night.
Foster home placement	Foster homes are usually sought for dependent or neglected children and status offenders. Today judges are placing delinquents with insurmountable problems at home in state-licensed foster care homes.

Today it is common for juvenile court judges to employ a graduated sanction program for juveniles: immediate sanctions for nonviolent offenders, which consist of community-based diversion and day treatment imposed on first-time nonviolent offenders; intermediate sanctions, which target repeat minor offenders and first-time serious offenders; and secure care, which is reserved for repeat serious offenders and violent offenders.<sup>78</sup>



In 1999, juveniles were adjudicated delinquent in two-thirds (66 percent) of the 962,000 cases brought before a judge. Once adjudicated, the majority of these juveniles (62 percent or 398,200 cases) were placed on formal probation, one-quarter (24 percent or 155,200 cases) were placed in a residential facility, and 10 percent (or 64,000 cases) were given another disposition, such as referral to an outside agency, community service, or restitution.<sup>79</sup>

Although the juvenile court has been under pressure to get tough on youth crime, these figures show that probation is the disposition of choice, even in the most serious cases,<sup>80</sup> and its use has grown in recent years. Between 1990 and 1999, the number of cases in which the court ordered an adjudicated delinquent to be placed on formal probation increased 80 percent, while the number of cases involving placement in a residential facility increased 24 percent.<sup>81</sup>

## Juvenile Sentencing Structures

For most of the juvenile court's history, disposition was based on the presumed needs of the child. Although critics have challenged the motivations of early reformers in championing rehabilitation, there is little question that the rhetoric of the juvenile court has promoted that ideal.<sup>82</sup> For example, in their classic work *Beyond the Best Interest of the Child*, Joseph Goldstein, Anna Freud, and Albert Solnit said that placement of children should be based on the **least detrimental alternative** available in order to foster the child's development.<sup>83</sup> Most states have adopted this ideal in their sentencing efforts, and state courts usually insist that the purpose of disposition must be rehabilitation and not punishment.<sup>84</sup> Consequently, it is common for state courts to require judges to justify their sentencing decisions if it means that juveniles are to be incarcerated in a residential treatment center: they must set forth in writing the reasons for the placement, address the danger the child poses to society, and explain why a less restrictive alternative has not been used.<sup>85</sup>

Traditionally, states have used the **indeterminate sentence** in juvenile court. In about half the states, this means having the judge place the offender with the state department of juvenile corrections until correctional authorities consider the youth ready to return to society or until the youth reaches legal majority. A preponderance of states consider eighteen to be the age of release; others peg the termination age at nineteen; a few can retain minority status until the twenty-first birthday. In practice, few youths remain in custody for the entire statutory period, but juveniles are usually released if their rehabilitation has been judged to have progressed satisfactorily. This practice is referred to as the individualized treatment model.

Another form of the indeterminate sentence allows judges to specify a maximum term. Under this form of sentencing, youths may be released if the corrections department considers them to be rehabilitated or they reach the automatic age of termination (usually eighteen or twenty-one). In states that stipulate a maximum sentence, the court may extend the sentence, depending on the youth's progress in the institutional facility.

A number of states have changed from an indeterminate to a **determinate sentence**. This means sentencing juvenile offenders to a fixed term of incarceration that must be served in its entirety. Other states have passed laws creating **mandatory sentences** for serious juvenile offenders. Juveniles receiving mandatory sentences are usually institutionalized for the full sentence and are not eligible for early parole. The difference between mandatory and determinate sentences is that the mandatory sentence carries a statutory requirement that a certain penalty be set in all cases on conviction for a specified offense.

## Sentencing Reform

During the past decade there have been a number of attempts to create rational sentencing in juvenile justice. In some instances the goal has been to reduce judicial discretion, in others to toughen sentencing practices and create mandatory periods of

### least detrimental alternative

Choosing a program that will best foster a child's growth and development.

### indeterminate sentence

Does not specify the length of time the juvenile must be held; rather, correctional authorities decide when the juvenile is ready to return to society.

### determinate sentence

Specifies a fixed term of detention that must be served.

### mandatory sentences

Sentences are defined by a statutory requirement that states the penalty to be set for all cases of a specific offense.

When making disposition decisions, juvenile court judges may select programs that will enhance life skills and help youths form a positive bond with society. Here, juvenile offenders work with severely disabled kids at El Camino School as part of their jail time and rehabilitation.



incarceration for juveniles who commit serious crimes. However, not all statutory changes have had the desired effect. For instance, New York State has implemented a juvenile offender law requiring that juveniles accused of violent offenses be tried in criminal court as a get-tough-on-crime measure; evaluations found that many youths ended up receiving lighter sentences than they would have in the family court.<sup>86</sup>

Probably the best-known effort to reform sentencing in the juvenile court is the state of Washington's Juvenile Justice Reform Act of 1977. This act created a mandatory sentencing policy requiring juveniles ages eight to seventeen who are adjudicated delinquent to be confined to an institution for a minimum time.<sup>87</sup> The intent of the act was to make juveniles accountable for criminal behavior and to provide for punishment commensurate with the age, crime, and prior history of the offender. Washington's approach is based on the principle of *proportionality*. How much time a youth must spend in confinement is established by the Juvenile Dispositions Standards Commission, based on the three stated criteria. The introduction of such mandatory sentencing procedures reduces disparity in the length of sentences, according to advocates of a get-tough juvenile justice system.

**Blended Sentences** State sentencing trends indicate that punishment and accountability, in addition to rehabilitation, have become equally important in juvenile justice policy. As a result, many states have created blended sentencing structures for cases involving serious offenders. Blended sentencing allows the imposition of juvenile and adult sanctions for juvenile offenders adjudicated in juvenile court or convicted in criminal court. In other words, this expanded sentencing authority allows criminal and juvenile courts to impose either a juvenile or an adult sentence, or both, in cases involving juvenile offenders. When both sentences are imposed simultaneously, the court suspends the adult sanction. If the youth follows the conditions of the juvenile sentence and commits no further violation, the adult sentence is revoked. This type of statute has become popular in recent years, with Connecticut, Kentucky, and Minnesota among the states adopting it since 1994.<sup>88</sup>

## The Death Penalty for Juveniles

Juveniles who have been waived to adult court can receive the death penalty. The execution of minor children has not been uncommon in our nation's history; at least 366 juvenile offenders have been executed since 1642.<sup>89</sup> This represents about 2 percent of the total of more than eighteen thousand executions carried out since colonial times.

During the past twenty years, 196 juvenile death sentences have been imposed (about 3 percent of the almost sixty-nine hundred total U.S. death sentences). Approximately two-thirds of these have been imposed on seventeen-year-olds and nearly one-third on fifteen- and sixteen-year-olds.<sup>90</sup> As of 2003, twenty-one states permitted the juvenile death penalty<sup>91</sup> and seventy-eight juvenile offenders were on death row. Since the death penalty was reinstated in 1976, twenty-two juvenile offenders have been executed in seven states, with Texas accounting for thirteen of these twenty-two executions (Table 13.1). All twenty-two of the executed juvenile offenders were male, twenty-one committed their crimes at age seventeen, and just over half (twelve of them) were minorities.<sup>92</sup>

**Legal Issues** In *Thompson v. Oklahoma* (1988), the U.S. Supreme Court prohibited the execution of persons *under age sixteen* but left open the age at which execution would be legally appropriate.<sup>93</sup> They then answered this question in two 1989 cases, *Wilkins v. Missouri* and *Stanford v. Kentucky*, in which they ruled that states were free to impose the death penalty for murderers who committed their crimes after they reached age sixteen or seventeen.<sup>94</sup> According to the majority opinion, society has not formed a consensus that the execution of such minors constitutes cruel and unusual punishment.

Those who oppose the death penalty for children find that it has little deterrent effect on youngsters who are impulsive and do not have a realistic view of the destructiveness of their misdeeds or their consequences. Victor Streib, the leading critic of the death penalty for children, argues that such a practice is cruel and unusual punishment for four primary reasons: the condemnation of children makes no measurable contribution to the legitimate goals of punishment; condemning any minor to death violates contemporary standards of decency; the capacity of the young for change, growth, and rehabilitation makes the death penalty particularly harsh and inappropriate; and both legislative attitudes and public opinion reject juvenile executions.<sup>95</sup> Those who oppose the death penalty for children also refer to a growing body of research that shows that the brain continues to develop through the late teen years, in addition to important mental functions, such as planning, judgment, and emotional control.<sup>96</sup> Supporters of the death penalty hold that, regardless of their age, people can form criminal intent and therefore should be responsible for their actions. If the death penalty is legal for adults, they assert, then it can also be used for children who commit serious crimes.

The fact that the United States is not alone in executing criminals appears to support retention of the death penalty. However, the fact that many countries have abolished capital punishment encourages those who want it to be abandoned here.

### ✓ Checkpoints

### Checkpoints

- ✓ A high percentage of juvenile offenders enter guilty pleas; that is, they admit to the facts of the petition before a trial takes place.
- ✓ The waiver process involves transferring juveniles from juvenile to criminal court, where they are tried as adults.
- ✓ Most juvenile courts have bifurcated hearings—that is, separate hearings for adjudication and disposition (sentencing).
- ✓ Whereas adults are entitled to public trials by a jury of their peers, these rights are not extended to juveniles.
- ✓ In *re Gault* is the key legal case that set out the basic requirements of due process that must be satisfied in juvenile court proceedings.
- ✓ The major categories of dispositional choice in juvenile cases are community release, out-of-home placements, fines or restitution, community service, and institutionalization.
- ✓ Most states use the indeterminate sentence in juvenile court.
- ✓ States have passed laws creating mandatory sentences for serious juvenile offenders.
- ✓ The Supreme Court has ruled that states are free to impose the death penalty for murderers who committed their crimes after they reached age sixteen or seventeen.



To quiz yourself on this material, go to questions 13.16–13.19 on the Juvenile Delinquency: The Core 2e Web site.

#### final order

Order that ends litigation between two parties by determining all their rights and disposing of all the issues.

#### appellate process

Allows the juvenile an opportunity to have the case brought before a reviewing court after it has been heard in juvenile or family court.

## The Child's Right to Appeal

Regardless of the sentence imposed, juveniles may want to appeal the decision made by the juvenile court judge. Juvenile court statutes normally restrict appeals to cases where the juvenile seeks review of a **final order**, one that ends the litigation between two parties by determining all their rights and disposing of all the issues.<sup>97</sup> The **appellate process** gives the juvenile the opportunity to have the case brought before a reviewing court after it has been heard in the juvenile or family court. Today, the law does not recognize a federal constitutional right of appeal. In other words, the U.S. Constitution does not require any state to furnish an appeal to a juvenile charged and found to be delinquent in a juvenile or family court. Consequently, appellate

**Table 13.1** Juveniles Executed or Facing Execution, by State, 1976–2003

State	Juvenile Offenders on Death Row	Juvenile Offenders Executed
Alabama	13	0
Arizona	5	0
Arkansas	0	0
Delaware	0	0
Florida	2	0
Georgia	2	1
Idaho	0	0
Kentucky	1	0
Louisiana	7	1
Mississippi	5	0
Missouri*	2	1
Nevada	1	0
New Hampshire	0	0
North Carolina	5	0
Oklahoma	0	2
Pennsylvania	3	0
South Carolina	3	1
South Dakota	0	0
Texas	28	13
Utah	0	0
Virginia	1	3
Wyoming	0	0
Total	78	22

\*In August 2003, the Supreme Court of Missouri declared the death penalty to be unconstitutional for offenders under the age of eighteen. The state petitioned the U.S. Supreme Court to take up this matter.

Source: *Fact Sheet: The Juvenile Death Penalty* (Chicago: American Bar Association Juvenile Justice Center, 2003), p. 2.

review of a juvenile case is a matter of statutory right in each jurisdiction. However, the majority of states do provide juveniles with some method of statutory appeal.

The appeal process was not always part of the juvenile law system. In 1965, few states extended the right of appeal to juveniles.<sup>98</sup> Even in the *Gault* case in 1967, the U.S. Supreme Court refused to review the Arizona juvenile code, which provided no appellate review in juvenile matters. It further rejected the right of a juvenile to a transcript of the original trial record.<sup>99</sup> Today, however, most jurisdictions that provide a child with some form of appeal also provide for counsel and for securing a record and transcript, which are crucial to the success of any appeal.

Because juvenile appellate review is defined by individual statutes, each jurisdiction determines for itself what method of review will be used. There are two basic methods of appeal: the direct appeal and the collateral attack.

The *direct appeal* normally involves an appellate court review to determine whether, based on the evidence presented at the trial, the rulings of law and the judgment of the court were correct. The second major area of review involves the collateral attack of a case. The term *collateral* implies a secondary or indirect method of attacking a final judgment. Instead of appealing the juvenile trial because of errors, prejudice, or lack of evidence, *collateral review* uses extraordinary legal writs to challenge the lower-court position. One such procedural device is the writ of habeas corpus. Known as the *Great Writ*, the **writ of habeas corpus** refers to a procedure for

**writ of habeas corpus**

Judicial order requesting that a person detaining another produce the body of the prisoner and give reasons for his or her capture and detention.

determining the validity of a person's custody. In the context of the juvenile court, it is used to challenge the custody of a child in detention or in an institution. This writ is often the method by which the Supreme Court exercises its discretionary authority to hear cases involving constitutional issues. Even though there is no constitutional right to appeal a juvenile case and each jurisdiction provides for appeals differently, juveniles have a far greater opportunity for appellate review today than in years past.

## Confidentiality in Juvenile Proceedings

Along with the rights of juveniles at adjudication and disposition, the issue of **confidentiality** in juvenile proceedings has also received attention in recent years. The debate on confidentiality in the juvenile court deals with two areas: open versus closed hearings, and privacy of juvenile records. Confidentiality has become moot in some respects, because many legislatures have broadened access to juvenile records.

**Open Versus Closed Hearings** Generally, juvenile trials are closed to the public and the press, and the names of the offenders are kept secret. The U.S. Supreme Court has ruled on the issue of privacy in three important decisions. In *Davis v. Alaska*, the Court concluded that any injury resulting from the disclosure of a juvenile's record is outweighed by the right to completely cross-examine an adverse witness.<sup>100</sup> The *Davis* case involved an effort to obtain testimony from a juvenile probationer who was a witness in a criminal trial. After the prosecutor was granted a court order preventing the defense from making any reference to the juvenile's record, the Supreme Court reversed the state court, claiming that a juvenile's interest in confidentiality was secondary to the constitutional right to confront adverse witnesses.

The decisions in two subsequent cases, *Oklahoma Publishing Co. v. District Court* and *Smith v. Daily Mail Publishing Co.*, sought to balance juvenile privacy with freedom of the press. In the *Oklahoma* case, the Supreme Court ruled that a state court was not allowed to prohibit the publication of information obtained in an open juvenile proceeding.<sup>101</sup> The case involved an eleven-year-old boy suspected of homicide, who appeared at a detention hearing where photographs were taken and published in local newspapers. When the local district court prohibited further disclosure, the publishing company claimed that the court order was a restraint in violation of the First Amendment, and the Supreme Court agreed.

The *Smith* case involved the discovery and publication of the identity of a juvenile suspect in violation of a state statute prohibiting publication. The Supreme Court, however, declared the statute unconstitutional because it believed the state's interest in protecting the child's identity was not of such a magnitude as to justify the use of such a statute.<sup>102</sup> Therefore, if newspapers lawfully obtain pictures or names of juveniles, they may publish them. Based on these decisions, it appears that the Supreme Court favors the constitutional rights of the press over the right to privacy of the juvenile offender.

**Privacy of Juvenile Records** For most of the twentieth century, juvenile records were kept confidential.<sup>103</sup> Today, however, the record itself, or information contained in it, can be opened by court order in many jurisdictions on the basis of statutory exception. The following groups can ordinarily gain access to juvenile records: law enforcement personnel, the child's attorney, parents or guardians, military personnel, and public agencies such as schools, court-related organizations, and correctional institutions.

Today, most states recognize the importance of juvenile records in sentencing. Many first-time adult offenders committed numerous crimes as juveniles, and evidence of these crimes may not be available to sentencing for the adult offenses unless states pass statutes allowing access. Knowledge of a defendant's juvenile record may help prosecutors and judges determine appropriate sentencing for offenders ages eighteen to twenty-four, the age group most likely to be involved in violent crime.

According to experts such as Ira Schwartz, the need for confidentiality to protect juveniles is far less than the need to open up the courts to public scrutiny.<sup>104</sup> The

### confidentiality

Restricting information in juvenile court proceedings in the interest of protecting the privacy of the juvenile.

problem of maintaining confidentiality of juvenile records will become more acute in the future as electronic information storage makes these records both more durable and more accessible.

In conclusion, virtually every state provides prosecutors and judges with access to the juvenile records of adult offenders. There is great diversity, however, regarding provisions for the collection and retention of juvenile records.<sup>105</sup>

## SUMMARY

- Prosecutors, judges, and defense attorneys are the key players in the juvenile court. The juvenile prosecutor is the attorney responsible for bringing the state's case against the accused juvenile. The juvenile judge must ensure that the children and families who come before the court receive the proper help. Defense attorneys representing children in the juvenile court play an active part in virtually all stages of the proceedings.
- Many decisions about what happens to a child may occur prior to adjudication. Key issues include detention, intake, diversion, pretrial release, plea bargaining, and waiver. Because the juvenile justice system is not able to try every child accused of a crime or a status offense due to personnel limitations, diversion programs seem to hold greater hope for the control of delinquency. As a result, such subsystems as statutory intake proceedings, plea bargaining, and other informal adjustments are essential ingredients in the administration of the juvenile justice system.
- Each year, thousands of youths are transferred to adult courts because of the seriousness of their crimes. This process, known as *waiver*, is an effort to remove serious offenders from the juvenile process and into the more punitive adult system. Most juvenile experts oppose waiver because it clashes with the rehabilitative ideal. Supporters argue that its increased use can help get violent juvenile offenders off the street, and they point to studies that show that, for the most part, transfer is reserved for the most serious cases and the most serious juvenile offenders.
- Most jurisdictions have a bifurcated juvenile code system that separates the adjudication hearing from the dispositional hearing. Juveniles alleged to be delinquent have virtually all the rights given a criminal defendant at trial—except possibly the right to a trial by jury. In addition, juvenile proceedings are generally closed to the public.
- *In re Gault* is the key legal case that set out the basic requirements of due process that must be satisfied in juvenile court proceedings. In *Wilkins v. Missouri* and *Stanford v. Kentucky*, the U.S. Supreme Court ruled that states were free to impose the death penalty for murderers who committed their crimes after they reached age sixteen or seventeen.
- The major categories of dispositional choice in juvenile cases are community release, out-of-home placements, fines or restitution, community service, and institutionalization. Although the traditional notion of rehabilitation and treatment as the proper goals for disposition is being questioned, many juvenile codes do require that the court consider the *least restrictive alternative*.
- Juveniles who have been waived to adult court can receive the death penalty. Those who oppose the death penalty for juveniles find that it has little deterrent effect on youngsters who are impulsive and do not have a realistic view of the destructiveness of their misdeeds or their consequences. Supporters of the death penalty hold that people, regardless of their age, can form criminal intent and therefore should be responsible for their actions.
- Many state statutes require that juvenile hearings be closed and that the privacy of juvenile records be maintained to protect the child from public scrutiny and to provide a greater opportunity for rehabilitation. This approach may be inconsistent with the public's interest in taking a closer look at the juvenile justice system.

## KEY TERMS

juvenile defense attorney, p. 308  
guardian *ad litem*, p. 309  
public defender, p. 309  
juvenile prosecutor, p. 310  
juvenile court judge, p. 310  
shelter care, p. 312  
bail, p. 315  
preventive detention, p. 316

intake, p. 316  
diversion, p. 316  
widening the net, p. 318  
complaint, p. 318  
plea bargaining, p. 319  
transfer process, p. 320  
due process, p. 326  
least detrimental alternative, p. 330

indeterminate sentence, p. 330  
determinate sentence, p. 330  
mandatory sentences, p. 330  
final order, p. 332  
appellate process, p. 332  
writ of habeas corpus, p. 333  
confidentiality, p. 334

### QUESTIONS FOR DISCUSSION

1. Discuss and identify the major participants in the juvenile adjudication process. What are each person's role and responsibilities in the course of a juvenile trial?
2. The criminal justice system in the United States is based on the adversarial process. Does the same principle apply in the juvenile justice system?
3. Children have certain constitutional rights at adjudication, such as the right to an attorney and the right to confront and cross-examine witnesses. But they do not have the right to a trial by jury. Should juvenile offenders have a constitutional right to a jury trial? Should each state make that determination? Discuss the legal decision that addresses this issue.
4. What is the point of obtaining a predisposition report in the juvenile court? Is it of any value in cases where the child is released to the community? Does it have a significant value in serious juvenile crime cases?
5. The standard of proof in juvenile adjudication is to show that the child is guilty beyond a reasonable doubt. Explain the meaning of this standard of proof in the U.S. judicial system.
6. Should states adopt get-tough sentences in juvenile justice or adhere to the individualized treatment model?
7. What are blended sentences?
8. Do you agree with the principle of imposing the death penalty on juveniles found to have committed certain capital crimes?
9. Should individuals who committed murder while under age sixteen be legally executed?

### APPLYING WHAT YOU HAVE LEARNED

As an experienced family court judge, you are often faced with difficult decisions, but few are more difficult than the case of John M., arrested at age fourteen for robbery and rape. His victim, a young neighborhood girl, was badly injured in the attack and needed extensive hospitalization; she is now in counseling. Even though the charges are serious, because of his age John can still be subject to the jurisdiction of the juvenile division of the state family court. However, the prosecutor has filed a petition to waive jurisdiction to the adult court. Under existing state law, a hearing must be held to determine whether there is sufficient evidence that John cannot be successfully treated in the juvenile justice system and therefore warrants transfer to the adult system; the final decision on the matter is yours alone.

At the waiver hearing, you discover that John is the oldest of three siblings living in a single-parent home. He has had no contact with his father for more than ten years. His psychological evaluation showed hostility, anger toward females, and great feelings of frustration. His intelligence is below average, and his behavioral and academic records are poor. In addition, he seems to be involved with a local youth gang, although he denies any formal association with them. This is his first formal involvement with the juvenile court. Previous contact was limited to an informal com-

plaint for disorderly conduct at age thirteen, which was dismissed by the court's intake department. During the hearing, John verbalizes what you interpret to be superficial remorse for his offenses.

To the prosecutor, John seems to be a youth with poor controls who is likely to commit future crimes. The defense attorney argues that there are effective treatment opportunities within the juvenile justice system that can meet John's needs. Her views are supported by an evaluation of the case conducted by the court's probation staff, which concludes that the case can be dealt with in the confines of juvenile corrections.

If the case remains in the juvenile court, John can be kept in custody in a juvenile facility until age eighteen; if transferred to felony court, he could be sentenced to up to twenty years in a maximum-security prison. As judge, you recognize the seriousness of the crimes committed by John and realize that it is very difficult to predict or assess his future behavior and potential dangerousness.

- Would you authorize a waiver to adult court or keep the case in the juvenile justice system?
- Can fourteen-year-olds truly understand the seriousness of their behavior?
- Should a juvenile court judge consider the victim in making a disposition decision?

### DOING RESEARCH ON THE WEB

Before you answer these questions, research waivers to adult court by using "juveniles and waivers" in a key word search on InfoTrac College Edition. To get further information on this topic, click on Web Links under the Chapter Resources at [http://cj.wadsworth.com/siegel\\_jdcore2e](http://cj.wadsworth.com/siegel_jdcore2e) and go to the Web sites of the American Bar Association Juvenile Justice Center; OJJDP Statistical Briefing Book; American Youth Policy

Forum on Juvenile Justice; the Juvenile Justice Division of the Child Welfare League of America; and the National Council on Crime and Delinquency and Children's Research Center.

Pro/Con discussions and Viewpoint Essays on some of the topics in this chapter may be found at the Opposing Viewpoints Resource Center: [www.gale.com/OpposingViewpoints](http://www.gale.com/OpposingViewpoints).