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## The “Once an Adult, Always an Adult” Doctrine: More Harm Than Good

Note by Kaitlin Pegg\*

### INTRODUCTION

Consider this scenario: on the same day, two sixteen-year-olds are apprehended after shoplifting DVDs from the same local superstore. One child’s case is processed by the juvenile court, and he or she receives an extremely lenient disposition consisting of a verbal warning from the judge accompanied by no mark on his or her criminal record. However, the other child’s case is transferred to the adult criminal court system. This child faces the possibility of much harsher punishment and an additional mark on his or her criminal record that will hinder his or her ability to successfully apply to school programs and jobs. How can such disparate treatment occur? The second youth had been previously transferred to adult court for a minor charge two years prior, at the whim of a prosecutor who chose to directly file the case in adult court. In light of the widely enacted “once an adult, always an adult” doctrine that requires transfer of all previously transferred juveniles to adult court for subsequent crimes, a scenario similar to the one described above can occur in over half of the states, regardless of the severity of the crime.<sup>1</sup>

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\* Indiana University Maurer School of Law, J.D. expected 2015; University of Kentucky, B.A. 2012. I would first like to thank Professor Roger J.R. Levesque of Indiana University for teaching an interesting course regarding the relationship between children and the law, which peaked my interest in this topic. Additionally, I’d like to extend a big thank you to my friends and family for their patience and support as I explained my research and bounced potential ideas off of them. Of course I owe much thanks to every member of the *Indiana Journal of Law and Social Equality* who spent time reading and editing my work through various stages. They helped me develop the very best version of my Note, and I’m very grateful.

1. G. LARRY MAYS & RICK RUDDALL, DO THE CRIME, DO THE TIME: JUVENILE CRIMINALS AND ADULT JUSTICE IN THE AMERICAN COURT SYSTEM 10 (2012).

This Note argues that the “once an adult, always an adult” doctrine does more harm than good for a myriad of reasons. In particular, the doctrine is at odds with the biological and social realities of youth, results in many transfers of nonviolent offenders, and exposes youth to disproportionate harm in adult jails. This doctrine is not a suitable way to adequately and fairly address the problem of juvenile crime when viewed in light of developmental understandings and studies concerning recidivism prevention, and reforms in this area are sorely needed.

Part I of this Note discusses the history and background of the juvenile justice system, transfers of youth to adult court, and the role of the “once an adult, always an adult” doctrine in the process. In Part II of this Note, social science understandings illuminate why youth are more susceptible to risk-taking and criminal behavior, and thus why the “once an adult, always an adult” doctrine impacts a great number of children. Legal responses are analyzed in Part III of this Note, which discusses how the “once an adult, always an adult” doctrine works, along with legal reasoning behind enactment of the doctrine. Part IV analyzes the negative effects of the doctrine, including unduly harsh punishments and the doctrine’s disparate impact on minorities and youth who are housed with adult inmates in jails. Part V discusses reform proposals that would better correspond with the realities of youth and that would likely lower the recidivism rate. This Note concludes that legal reforms are necessary because the “once an adult, always an adult” doctrine does little to curb the juvenile crime rate, while simultaneously negatively impacting the lives of a significant number of children.

## I. THE JUVENILE JUSTICE SYSTEM AND TRANSFERS TO ADULT COURTS

### A. *Development and Nature of the Juvenile Justice System*

The concept of a separate court system for juvenile offenders has long been a staple of the American legal system.<sup>2</sup> The industrial revolution, an influx of immigrants in the late 1800s, and the Progressive Movement’s emphasis on “child saving” resulted in an environment that sought to diminish the legal system’s harsh treatment of juveniles.<sup>3</sup> The first juvenile court was established in Illinois in 1899.<sup>4</sup> The idea of a separate juvenile court system flourished, and all states had established separate juvenile court systems by the 1940s.<sup>5</sup> The differences between the juvenile justice system and traditional court system were vast—the juvenile court system abandoned the formal and adversarial nature of the traditional system and instead based operations on the concepts of informality and individual assessment, in

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2. *Id.* at 30–31.

3. *Id.* at 31–32.

4. *Id.* at 24.

5. C. Antoinette Clarke, *The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform*, 53 U. KAN. L. REV. 659, 667 (2005).

order to work towards the goal of rehabilitating young delinquents into productive members of society.<sup>6</sup> Judges assumed more discretionary roles when determining what punishments or resources children needed to be rehabilitated, and juvenile hearings were confidential and closed to the public.<sup>7</sup>

Despite the benevolent goals of the juvenile justice system, the informal and individualized approach did not mesh well with the sheer amount of juveniles flowing into the system in the 1960s.<sup>8</sup> Because the juvenile court systems were overwhelmed and in-depth individual assessments were no longer feasible, juveniles were perfunctorily reprimanded by a judge or sent to an institution.<sup>9</sup> As punishments for juveniles became more similar to punishments for adult criminals, the U.S. Supreme Court was confronted with the glaring lack of due process safeguards accorded to youth in juvenile justice proceedings.<sup>10</sup> In response, the Court awarded juveniles many of the same due process rights inherent in the traditional court system.<sup>11</sup> As a result of seminal U.S. Supreme Court cases, juveniles now enjoy the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right to be notified of charges, and the right to have the charges against them proven beyond a reasonable doubt.<sup>12</sup>

The introduction of these procedural safeguards into the juvenile justice system wrought much change. Presence of counsel and heightened proof requirements, in particular, fostered a more adversarial atmosphere.<sup>13</sup> There was also an increased focus on the elements of the crime charged, rather than the particular nature of the offender.<sup>14</sup> Over time, a system established upon the concepts of informality, individual assessment, and rehabilitation, has in some ways evolved into a parallel system to the traditional adult courts.<sup>15</sup> As a result, many juvenile courts are meting out harsher and more punitive sanctions to juvenile lawbreakers, especially children charged with serious or violent crimes.<sup>16</sup> However, juvenile justice punishments are still generally less harsh than the sentences young men and women would receive if prosecuted in adult courtrooms.<sup>17</sup> Especially for juveniles charged with minor offenses, punishment in the juvenile justice system often consists of community-based treatment programs, rather than incarceration.<sup>18</sup>

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6. MAYS & RUDELL, *supra* note 1, at 32–33.

7. *Id.*

8. Clarke, *supra* note 5, at 669.

9. *Id.*

10. *Id.* at 670–73.

11. *See id.* at 669–70.

12. *In re Winship*, 397 U.S. 358 (1970); *In re Gault*, 387 U.S. 1 (1967).

13. Clarke, *supra* note 5, at 672–73.

14. *Id.* at 672.

15. *See id.* at 672–73.

16. MAYS & RUDELL, *supra* note 1, at 46–47.

17. *Id.*

18. *Id.*

*B. The Practice of Transferring Juveniles to Adult Courts*

Despite the more formal and adversarial nature that has developed in juvenile courtrooms, the juvenile justice system still takes into account the lower maturity level of juvenile offenders. Young women and men sentenced in juvenile courts tend to receive less punitive punishments than they would if they were to have been prosecuted in adult court.<sup>19</sup> Although individuals under the age of eighteen cannot be sentenced to death,<sup>20</sup> juveniles appearing in adult court can receive severe and lengthy punishments, including a sentence of life imprisonment without the possibility of parole.<sup>21</sup> Additionally, juvenile jurisdiction ends at a specified age, typically twenty-one, and youth incarcerated in juvenile detention centers are released upon reaching that age, while juveniles sentenced in adult court are not.<sup>22</sup> Conviction in adult court can also result in a permanent criminal record that may stigmatize and dampen possibilities for advancement for juveniles down the road, such as admission to schools or job offers.<sup>23</sup>

The practice of transferring juveniles to adult court was championed by the media and policy makers as a result of increasing juvenile crime rates between the 1960s and 1990s, along with sensationalized crimes committed by juveniles, such as the Columbine school shooting tragedy.<sup>24</sup> After a tragic school shooting in Red Lion, Pennsylvania, a barrage of sensationalized newspaper articles were immediately penned about the incident.<sup>25</sup> This excessive coverage resulted in public fear and panic, and pressed Pennsylvanians to support legislation that made it even easier to prosecute juveniles in traditional adult courts.<sup>26</sup> In order to implement severe penalties against violent juvenile criminals or repeat offenders, almost every state has enacted laws enabling juveniles to easily be transferred to adult court jurisdiction.<sup>27</sup>

Currently, forty-four states and the District of Columbia allow for juveniles to be transferred to adult courts via judicial or discretionary waiver.<sup>28</sup> Although the juvenile crime rate has been decreasing since 1994, public perception regarding

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19. *Id.* at 46, 160–61.

20. *Roper v. Simmons*, 543 U.S. 551 (2005).

21. MAYS & RUDELL, *supra* note 1, at 2.

22. *Id.* at 159.

23. *See id.* at 160–61; Devah Pager, *Double Jeopardy: Race, Crime, and Getting a Job*, 2005 WIS. L. REV. 617, 620–21 (2005) (discussing the negative impact of a criminal record upon individuals seeking employment, a residence, or wishing to purchase items with credit).

24. Clarke, *supra* note 5, at 674–76.

25. Anthony R. Holtzman, Comment, *Juvenile Justice? The Increased Propensity for Juvenile Transfer to the Criminal Court System in Pennsylvania and the Need for a Revised Approach to Juvenile Offenders*, 109 PENN. ST. L. REV. 657–58 (2004).

26. *Id.* at 657–59.

27. Clarke, *supra* note 5, at 677 (“Between 1992 and 1997, legislatures in forty-four states and the District of Columbia enacted provisions to facilitate the transfer of juvenile offenders to the criminal courts.”).

28. MAYS & RUDELL, *supra* note 1, at 82–86 & tbl.4.1.

juvenile crime remains pessimistic, and a large majority of the public supports the practice of transferring youth to adult courts.<sup>29</sup> Although transfers to adult courts are relatively rare,<sup>30</sup> the practice remains quite concerning because many youth face the possibility of transfer and the implications when juveniles are prosecuted in adult court can be extremely detrimental and long lasting.<sup>31</sup>

There are multiple mechanisms that can transfer juveniles to adult court. Judicial waiver statutes allow judges to decide whether a juvenile will appear in the juvenile or adult court system.<sup>32</sup> In some states, prosecutors can simply file juvenile cases directly in adult court.<sup>33</sup> Unlike the judicial waiver practice, a juvenile whose case is filed directly in adult court by a prosecutor does not possess the right to a transfer hearing before a judge.<sup>34</sup> Although most states with direct file provisions allow juveniles transferred via prosecutorial discretion to argue before a judge for a “reverse waiver” back to juvenile court, four jurisdictions with direct file provisions do not allow this.<sup>35</sup> Additionally, some states exclude specific offenses—often serious or violent crimes—from juvenile court jurisdiction and, therefore, juveniles charged with such crimes automatically appear in adult court.<sup>36</sup> Juveniles can also be transferred via blended sentencing laws. A blended sentencing law is a model that imposes traditional adult sanctions on the convicted juvenile only if and when he or she does not meet certain conditions imposed by the juvenile court.<sup>37</sup> Additionally, some states set the upper age limit for juvenile court jurisdiction lower than eighteen years of age. In these jurisdictions, children sixteen or seventeen years of age automatically appear in adult court.<sup>38</sup> Lastly, the “once an adult, always an adult” doctrine automatically considers previously transferred juveniles as adults for all subsequent crimes they are charged with, regardless of severity.<sup>39</sup>

29. *Id.* at 146–47 & tbl.6.2 (explaining that 72.8% of respondents, out of fourteen studies, supported transfers of juveniles to adult courts).

30. *Id.* at 59 (indicating that in a 2008 study, of 1.653 million referrals to juvenile court, 8,898 (or 0.5% of all cases) resulted in transfers to adult court).

31. See Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 CRIME & JUST. 81, 114 (2000).

32. MAYS & RUDDALL, *supra* note 1, at 8.

33. *Id.* at 8–9.

34. *Id.* at 9.

35. *Id.* at 87 (explaining that Florida, Louisiana, Michigan, and Washington D.C. do not allow juveniles to argue for “reverse waiver” in front of a judge).

36. *Id.*

37. *Id.* at 10.

38. *Id.* Mays & Ruddell point out that two states set the upper age limit of juvenile court jurisdiction at age sixteen, and thus all individuals aged sixteen and older appear in adult courts. Ten states provide for individuals aged seventeen and older to automatically appear in adult courts. The juvenile court systems in the remaining states have adopted the traditional upper age limit of eighteen. *Id.*

39. *Id.*

## II. WHY DO JUVENILES BREAK THE LAW?

Although the juvenile crime rate peaked in the mid-1990s and has remained stable or in decline ever since,<sup>40</sup> there is no denying that juvenile crime is a problem. According to the Office of Juvenile Justice and Delinquency Prevention, there were 4,367 arrests for every 100,000 youth aged ten through seventeen in 2011.<sup>41</sup> That statistic does not even encompass the vast amount of juvenile criminal activity that does not result in an arrest or formal charge.<sup>42</sup> Studies have shown that, categorically, juveniles are more likely to engage in risky decision making during this stage of life than they will after they become adults.<sup>43</sup> Kathleen Kemp's analysis of "developmental immaturity"<sup>44</sup> and Elizabeth Cauffman and Laurence Steinberg's research regarding immature judgment in adolescents<sup>45</sup> are prime examples of current studies that discuss the elevated risk-taking propensity of juveniles.

Many young women and men end up in the court system because they are biologically more vulnerable during this developmental stage than similarly situated adults.<sup>46</sup> The U.S. Supreme Court has accepted as fact that juveniles possess lower levels of maturity and responsibility, and are thus acutely susceptible to negative influences.<sup>47</sup> Laurence Steinberg, in his social science assessment of the relation between brain development and behavior in adolescence, discusses studies

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40. *Statistical Briefing Book*, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION (Dec. 9, 2012), [http://www.ojjdp.gov/ojstatbb/crime/JAR\\_Display.asp?ID=qa05200](http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05200) [hereinafter *Statistical Briefing Book*]. Similarly, the crime rate in the general population has decreased over time as well. *Table 1: Crime in the United States (1993–2012)*, FBI, [http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/1tabledatacoverviewpdf/table\\_1\\_crime\\_in\\_the\\_united\\_states\\_by\\_volume\\_and\\_rate\\_per\\_100000\\_inhabitants\\_1993-2012.xls](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/1tabledatacoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1993-2012.xls) (Jan. 30, 2015).

41. *Statistical Briefing Book*, *supra* note 40.

42. *See id.*

43. Laurence Steinberg, *Cognitive and Affective Development Trends in Adolescence*, 9 TRENDS COGNITIVE SCI. 69, 71 (2005).

44. Kathleen Kemp & Naomi Goldstein, *Characteristics of Developmental Immaturity: A Cross-Disciplinary Survey of Psychologists* (Aug. 2010) (unpublished Ph.D. dissertation, Drexel University), [https://idea.library.drexel.edu/islandora/object/idea%3A3490/datastream/OBJ/download/Characteristics\\_of\\_developmental\\_immaturity\\_a\\_cross-disciplinary\\_survey\\_of\\_psychologists](https://idea.library.drexel.edu/islandora/object/idea%3A3490/datastream/OBJ/download/Characteristics_of_developmental_immaturity_a_cross-disciplinary_survey_of_psychologists) (outlining research findings that juveniles are cognitively different from adults, and have heightened risk-taking behaviors that tend to decrease as they enter adulthood).

45. Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741 (2000). Cauffman & Steinberg studied maturity of judgment in over 1,000 participants, ranging in age from twelve to forty-eight. The studies concluded that "socially responsible decision making" was more common among older participants, and maturity of judgment seems to stabilize after the adolescent stage is completed. *Id.* at 756.

46. *See* Clarke, *supra* note 5, at 687.

47. *Graham v. Florida*, 560 U.S. 48, 68 (2010).



comparing juvenile decision making in hypothetical moral dilemmas to decision making in "real life" dilemmas.<sup>48</sup> These studies indicate that adolescents are able to make rational and logical decisions when confronted with hypothetical dilemmas, but not when confronted with dilemmas in their actual lives.<sup>49</sup> Although when analyzed in a vacuum, a youth may be able to reason as logically and rationally as an adult, risk-taking behavior of youth is likely influenced by "hot cognitions," or decision making based on emotion and passion, that is a hallmark of this volatile developmental period.<sup>50</sup>

Steinberg's analysis discusses both cognitive and affective, or emotional, developments and explains how affective developments occur at a much slower rate than cognitive developments.<sup>51</sup> This developmental mismatch helps to establish why youth are able to rationally assess hypothetical problems, yet still tend to participate in impulsive and dangerous activities.<sup>52</sup> Juveniles experience a "maturity gap" and do not yet possess the full biological capacity to understand or control attraction to risky or irresponsible behaviors.<sup>53</sup> Legal line drawing, such as a minimum age requirement to drink alcohol or operate a vehicle, is an example of lawmakers bearing in mind the impulsivity of juveniles and attempting to protect youth from their own risky behaviors.<sup>54</sup> Studies have indicated that socially responsible decision making tends to stabilize at around the age of nineteen, after a gradual development occurring around ages sixteen to nineteen.<sup>55</sup>

Peer pressure and social surroundings also play a large role in the propensity of juveniles to engage in criminal behavior. During adolescent development and exploration, many young men and women look to peers they encounter at school or in their neighborhood for guidance and acceptance.<sup>56</sup> Adolescents often engage in risky behavior to fit in with classmates or neighborhood peers who are participating in antisocial behavior.<sup>57</sup> The problem of risk taking to gain acceptance or approval is exacerbated for juveniles because, unlike adults, adolescents are often powerless to leave their school or parents' home, and are thus essentially stuck in the same social setting.<sup>58</sup> Peer pressure and inability to escape social settings, along with the

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48. Steinberg, *supra* note 43, at 71–73.

49. *Id.* at 71–72.

50. *See id.* at 72–73.

51. *Id.* (explaining how affective developments are more closely associated with pubertal maturity, while cognitive development is more closely associated with age).

52. *Id.* at 71.

53. *See* Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 110–11 (2009).

54. *See* Barry C. Feld, *Competence, Culpability, and Punishment: Implications of Atkins for Executing and Sentencing Adolescents*, 32 HOFSTRA L. REV. 463, 480 (2003).

55. Cauffman & Steinberg, *supra* note 45, at 756.

56. Clarke, *supra* note 5, at 707–08.

57. *See id.* at 705

58. *Id.* at 708.



aforementioned biological factors,<sup>59</sup> help explain why young individuals commit crimes, often more than once, and are thus subject to the possibility of transfer to adult court.

### III. LEGAL RESPONSE: THE “ONCE AN ADULT, ALWAYS AN ADULT” DOCTRINE

The “once an adult, always an adult” doctrine is one mechanism that can work to transfer juveniles to adult court. Although there are slight variations among jurisdictions, the doctrine essentially holds that a juvenile who was previously transferred to adult court via any transfer mechanism will be transferred to adult court for subsequent offenses, regardless of whether he or she would have been transferred based upon commission of the current offense alone.<sup>60</sup> Currently, thirty-four states have enacted some type of “once an adult, always an adult” doctrine, making it the second most widely enacted of the available transfer mechanisms.<sup>61</sup>

The widespread use of the doctrine, as well as the concept of juvenile transfers in general, are largely a result of public perception of juvenile crime and subsequent responses.<sup>62</sup> The media’s focus on severe and violent crimes committed by youth has resulted in a tough-on-juvenile-criminals sentiment in the general public.<sup>63</sup> Although the juvenile crime rate has decreased in recent years, polls reveal that the public feels that it is actually increasing.<sup>64</sup> As a result, political players and policy makers have adopted “tough-on-crime” policies—including support for juvenile transfers—in an effort to gain the support of constituents who are fearful of young criminals.<sup>65</sup> Additionally, courts have refused to hold that juveniles possess constitutional or fundamental rights to have their cases handled by juvenile, rather than adult, courts.<sup>66</sup> Therefore, state legislatures may transfer youth to adult court via the “once an adult, always an adult” doctrine without infringing upon inherent rights of juveniles.<sup>67</sup>

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59. See *supra* text accompanying notes 44–46, 48–53.

60. See PATRICK GRIFFIN, PATRICIA TORBET & LINDA SZYMANSKI, NAT’L CTR. FOR JUVENILE JUSTICE, TRYING JUVENILES AS ADULTS IN CRIMINAL COURT: AN ANALYSIS OF STATE TRANSFER PROVISIONS (1998), <https://www.ncjrs.gov/pdffiles/172836.pdf>.

61. PATRICK GRIFFIN, SEAN ADDIE, BENJAMIN ADAMS & KATHY FIRESTINE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 3 (2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>.

62. MAYS & RUDELL, *supra* note 1, at 156–57.

63. *Id.*

64. *Id.* at 157.

65. *Id.* at 156–57.

66. See, e.g., Linda A. Szymanski, National Center for Juvenile Justice, *Once a Juvenile is Transferred to Criminal Court Must They Be Tried As Adults for All Future Offenses?*, NCJJ SNAPSHOT, June 2010, at 1, [http://www.ncjj.org/PDF/Snapshots/2010/vol15\\_no6\\_onceanadult.pdf](http://www.ncjj.org/PDF/Snapshots/2010/vol15_no6_onceanadult.pdf).

67. *Id.*

One positive aspect of the widespread enactment of the “once an adult, always an adult” doctrine concerns the protection of non-transferred youth housed in the juvenile justice system from the influence of those juveniles who have been housed in adult jails. As a result of previous transfers, some youth may have been housed with violent adult criminals for significant periods of time.<sup>68</sup> Studies have shown that juveniles who are housed with adult inmates often attempt to gain acceptance by cultivating identities that embrace violence.<sup>69</sup> By treating all previously transferred youth as adults for subsequent charges, the doctrine effectively prevents juveniles who have been incarcerated with adult criminals from bringing criminal habits and values they “learned” to juvenile detention centers.<sup>70</sup>

Another benefit of the “once an adult, always an adult” doctrine is that it allows juveniles to gain more due process rights.<sup>71</sup> Although multiple U.S. Supreme Court decisions have awarded juveniles many traditional due process rights,<sup>72</sup> youth in the juvenile court system still do not possess every right that adults do.<sup>73</sup> For example, in some jurisdictions transcripts are not promulgated during juvenile proceedings, and juveniles generally have no right to bail or to a trial by jury.<sup>74</sup> Once transferred to adult court for a crime that may carry a sentence of six months of incarceration or more, juveniles gain the right to a trial by jury, rather than being subjected to the discretion of a presiding judge.<sup>75</sup> By automatically transferring juveniles who have appeared in adult court in the past, the doctrine equips these individuals with more due process rights than they would be entitled to in the juvenile court system.

#### IV. NEGATIVE RAMIFICATIONS OF THE “ONCE AN ADULT, ALWAYS AN ADULT” DOCTRINE

The “once an adult, always an adult” doctrine has been criticized on many grounds.<sup>76</sup> The doctrine requires an automatic transfer to adult court without consideration of mitigating factors.<sup>77</sup> While judicial or prosecutorial waivers allow judges or prosecutors to consider factors (such as age, psychological development,

68. See NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA (2007), [http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf).

“[A]n average of 7,500 youth are incarcerated in adult jails each day in America.” *Id.* at 16.

69. *E.g., id.* at 8.

70. See MAYS & RUDELL, *supra* note 1, at 87.

71. *Cf. id.* at 166 (“Another major criticism of these [juvenile] courts is that juveniles do not enjoy the full range of constitutional rights that apply in criminal courts.”).

72. *Graham v. Florida*, 560 U.S. 48, 68 (2010); *In re Winship*, 397 U.S. 358 (1970); *In re Gault*, 387 U.S. 1 (1967).

73. MAYS & RUDELL, *supra* note 1, at 166.

74. *Id.* at 166, 169.

75. *Id.* at 169.

76. See, e.g., Szymanski, *supra* note 66.

77. *Id.*

and culpability) when deciding whether a transfer is warranted, the “once an adult, always an adult” doctrine is automatic and provides no inquiry into those relevant factors.<sup>78</sup> Although those considerations may have been assessed previously if a juvenile’s first transfer was initiated by a prosecutor or judge, transfer mechanisms such as statutory exclusion of certain crimes provide no assessment of mitigating factors, so juveniles may have been initially transferred without any consideration of culpability or psychological development.<sup>79</sup> Additionally, one technical aspect of the doctrine indicates cause for alarm: Although most jurisdictions require that a previous transfer result in conviction for the “once an adult, always an adult” doctrine to apply, this is not always the case.<sup>80</sup> In two states—California and Delaware—if a juvenile was assigned to adult court previously, even absent a conviction, he or she is automatically transferred to an adult court for all subsequent crimes.<sup>81</sup> In these states, juveniles who have been found not guilty in the eyes of the law are still automatically transferred to adult courts for subsequent charges.

The “once an adult, always an adult” doctrine undermines the concept of rehabilitation, one of the foundational precepts of the juvenile justice court system.<sup>82</sup> Automatic transfers fail to account for the fact that a juvenile may have been rehabilitated since commission of the initial crime, either as a result of court-ordered sanctions or actions of his or her own,<sup>83</sup> and is now being charged with a less-serious or nonviolent crime. Studies have shown that juveniles, more so than adults, are developmentally amenable to rehabilitation.<sup>84</sup> Even when juveniles commit the same crimes as adults, studies have revealed that juveniles are amenable to reform and are likely to discontinue committing crimes as their brains mature.<sup>85</sup> Most juvenile offenders will become productive citizens, rather than career offenders, if the negative ramifications of adult sanctions do not drastically limit their chances for success, such as job and school opportunities.<sup>86</sup> Juveniles tried in adult court are more likely to commit another crime than comparable juveniles tried in juvenile courts.<sup>87</sup> The “once an adult, always an adult” doctrine, as well as the concept of transfers in general, are at odds with these findings regarding the ability of juveniles to be rehabilitated if allowed to participate in juvenile, rather than adult court.

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78. See MAYS & RUDELL, *supra* note 1, at 8–10.

79. See *id.* at 9.

80. GRIFFIN ET AL., *supra* note 61, at 10–11.

81. *Id.*

82. Alan J. Tomkins, Andrew J. Slain, Marianne N. Hallinan & Cynthia E. Willis, *Subtle Discrimination in Juvenile Justice Decisionmaking: Social Scientific Perspectives and Explanations*, 29 CREIGHTON L. REV. 1619, 1622 (1996) (“The fundamental goal of the new juvenile system was to aid juveniles through rehabilitation, rather than punishment.”).

83. See MAYS & RUDELL, *supra* note 1, at 10.

84. See, e.g., Ellis Cose, *Rehabilitation Beats Punishments for Juveniles*, NEWSWEEK (Mar. 13, 2010), <http://www.newsweek.com/rehabilitation-beats-punishment-juveniles-71201>.

85. See Maroney, *supra* note 53, at 113–15.

86. See Clarke, *supra* note 5, at 718.

87. *Id.*

Additionally, the U.S. Supreme Court, in prohibiting the imposition of harsh sentences on juvenile offenders, has considered the ability of young men and women to be rehabilitated. In *Graham v. Florida*, the Court held that imposition of a life sentence without possibility of parole on a juvenile who committed a crime other than homicide was unconstitutional.<sup>88</sup> The Court cited rehabilitation as a key goal of the juvenile justice system and stated that an imposition of life without parole was at odds with the fact that juvenile offenders “are most in need of and receptive to rehabilitation.”<sup>89</sup> By automatically exposing repeat juvenile offenders to adult sanctions rather than rehabilitative juvenile justice solutions, the “once an adult, always an adult” doctrine is at odds with the U.S. Supreme Court’s findings regarding the unique amenability of juveniles to rehabilitative efforts.

Juveniles charged with nonviolent or minor crimes, such as drug or property offenses, experience especially egregious ramifications of the “once an adult, always an adult” doctrine.<sup>90</sup> Although support for transfers is largely predicated on sending violent career offenders to adult court, in reality more than half of transfers affect juveniles who have committed nonviolent property, drug, or public order offenses.<sup>91</sup> The “once an adult, always an adult” doctrine works to transfer juveniles who have committed minor offenses back to adult court for a second time—opening the door to the possibility of more severe sanctions, incarceration for a longer period of time, and an additional mark on his or her criminal record.

Although federal law prohibits juveniles from being held in adult jails, juveniles transferred to adult courts are exempt from this prohibition.<sup>92</sup> Implications of incarcerating youth with adult criminals must be assessed. Youth incarcerated with adult offenders face great obstacles: they are at a far greater risk of both physical and sexual assault at the hands of other inmates than their adult counterparts.<sup>93</sup> Although some jails attempt to alleviate this problem by separating juvenile and adult inmates, this practice often results in juveniles being placed in isolation.<sup>94</sup> This sequestered placement can result in anxiety and exacerbation of existing mental disorders.<sup>95</sup> Therefore, either option—housing juveniles with adult

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88. 560 U.S. 48 (2010).

89. *Id.* at 73–74.

90. See MAYS & RUDELL, *supra* note 1, at 59–60.

91. *Id.* (explaining that during a twenty-four year data period, 60.5% of transferred juveniles were involved in nonviolent offenses). Most of these nonviolent offenses were property crimes, followed by drug offenses and then public order offenses. *Id.* Some of this disparity may be explained by the use of statutory exclusion laws. *Id.*

92. ARYA, *supra* note 68, at 22.

93. *Id.* at 4 (“[A]ccording to U.S. Department of Justice Bureau of Justice Statistics (BJS) in 2005 and 2006, 21% and 13% respectively, of the victims of inmate-on-inmate sexual violence in jails were youth under the age of 18—a surprisingly high percentage of victims considering that only 1% of all jail inmates are juveniles.”).

94. *Id.*

95. *Id.*

inmates or isolating juveniles—increases the risk of physical or mental harm to young inmates.

Another unique circumstance that juveniles in adult jails face is that they are at a greater risk of committing suicide.<sup>96</sup> Juveniles incarcerated in adult jails are thirty-six times more likely to commit suicide than juveniles who are housed in juvenile detention facilities.<sup>97</sup> According to a Bureau of Justice Statistics study, juvenile inmates have the highest suicide rate among all inmates.<sup>98</sup> Not only are long-term juvenile inmates at an increased risk for suicidal behavior—the risk is elevated for young women and men who have spent just a week or less in adult jail.<sup>99</sup> Although this prevalence may be partly explained by the fact that youth in general are at a very high risk for suicide,<sup>100</sup> and that many incarcerated youth are predisposed to mental disorders and substance abuse, the lack of appropriate treatment in jails is also to blame.<sup>101</sup> The lack of effective mental health screenings for juveniles in adult jails, as well as the subpar quality of the treatment received, is quite alarming.<sup>102</sup>

The “once an adult, always an adult” doctrine may exacerbate the racially disproportionate impact of juvenile transfers in general.<sup>103</sup> In his article concerning subtle discrimination in juvenile justice decision making, Alan Tomkins points to the large amount of discretion in the juvenile justice system as a vehicle that allows subtle biases against minorities to seep in.<sup>104</sup> Although it is no longer socially acceptable for judges or prosecutors to expressly discriminate against minorities, the concept of “aversive racism” may explain why minorities are overrepresented in many stages of the juvenile justice system, including transfers to adult courts.<sup>105</sup>

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96. *Id.* at 10–11.

97. *Id.* at 11.

98. CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATS., U.S. DEP’T OF JUSTICE, SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS 5 (2005).

99. ARYA, *supra* note 68, at 10.

100. LINDSAY M. HAYES, NAT’L CTR. ON INST. & ALTS., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL STUDY 1 (2009), <https://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf> (“More teenagers die from suicide than from cancer, heart disease, AIDS, birth defects, stroke, pneumonia and influenza, and chronic lung disease combined.”).

101. ARYA, *supra* note 68, at 10–11.

102. *Id.* (“According to the U.S. Department of Justice (DOJ) investigation in Baltimore, a 15-year-old inmate was suicidal during his intake screening, was placed in protective custody without his medications, did not see a doctor for 25 days, and did not get his medications after the doctor’s visit despite his attorney’s attempted intervention.”).

103. Tomkins et al., *supra* note 82, at 1631–32, 1640 n.134.

104. *Id.* at 1631–36.

105. MAYS & RUDELL, *supra* note 1, at 5 (“One issue that is of increasing significance to juvenile justice systems is disproportionate minority contact (DMC). DMC refers to the fact that youth of color represent less than one-third of the national population but are overrepresented in all aspects of juvenile justice.”).

Aversive racism is at play when decision makers latch on to non-biased justifications for behaviors that may actually be motivated by racial bias.<sup>106</sup> Because of the wide latitude of discretion afforded to judges and prosecutors when deciding whether to transfer juveniles, decisions based on racial stereotypes of criminality can easily be explained away by pointing to other characteristics that are more socially acceptable, such as lack of school attendance or association with delinquent peers.<sup>107</sup> The automatic transfer mechanism thus exacerbates the problem by exposing those juveniles who were first transferred because of aversive racism to adult courts for a second time.

The “once an adult, always an adult” doctrine does more harm than good because it is incompatible with the biological and social realities of youth, and it negatively impacts the lives of many young men and women. Because of juveniles’ biological risk-taking propensity, many young lawbreakers will stop offending as they become more emotionally mature and are able to assess risk more rationally.<sup>108</sup> The automatic transfer presumption does not take this social science understanding into account. Among other negative ramifications, the “once an adult, always an adult” doctrine results in unduly harsh punishment for nonviolent juvenile offenders, and exposes young men and women to the possibility of incarceration in adult jail, where they are at a heightened risk for abuse and suicide.<sup>109</sup> Although there are some positive aspects of transfers,<sup>110</sup> the wide array of negative ramifications accompanying the “once an adult, always an adult” doctrine clearly outweigh any utilitarian value of the doctrine.

## V. POTENTIAL REFORM PROPOSALS

Given the widespread enactment of the “once an adult, always an adult” doctrine and the vast array of negative consequences that result, reforms are sorely needed. One reform proposal pertains to abolishing or limiting the practice of transfers to adult court in general. If this proposal were to be adopted, juveniles would almost always be prosecuted in a separate juvenile court system, absent extremely egregious circumstances. Although transfers to adult court may serve retributive purposes, they are generally counterproductive because they do not help decrease the juvenile recidivism rate or foster rehabilitation.<sup>111</sup> Transfers do not adequately prevent recidivism for a number of reasons, including the criminal habits juveniles pick up in adult jails and the negative effect of criminal records on juveniles’ life

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106. See Tomkins et al., *supra* note 82, at 1637.

107. See *id.* at 1642–44.

108. See Clarke, *supra* note 5, at 714.

109. See *supra* text accompanying notes 92–102.

110. See *supra* text accompanying notes 68–75.

111. Clarke, *supra* note 5, at 680–81 (“[T]ransfer is more likely to aggravate recidivism than to diminish it.”).



opportunities.<sup>112</sup> Although the juvenile justice system was founded upon the concept of rehabilitation, many young men and women in adult jails learn criminal behaviors from other inmates and proceed to become chronic criminal offenders.<sup>113</sup> Mays and Ruddell point to studies that show juvenile transfers to adult court actually result in lower rates of community success.<sup>114</sup> Additionally, the threat of transfers has not been proven to decrease the occurrence of target juvenile offenses, and thus does not have an adequate deterrent effect.<sup>115</sup>

Instead of transfers, rehabilitative juvenile justice solutions, such as probation and accompanying conditions,<sup>116</sup> may actually more adequately address the problem of juvenile crime, as well as result in less negative effects for juvenile offenders.<sup>117</sup> In addition to being more cost-effective than adult sanctions, studies have shown that rehabilitative efforts such as community service programs actually better prevent juvenile recidivism than incarceration or severe punitive punishments.<sup>118</sup> Transferred youth are actually thirty-four percent more likely to be re-arrested than children who are punished in the juvenile justice system.<sup>119</sup> The “caring” and “forgiving” aspects of rehabilitative efforts may help foster positive attitudes in juvenile offenders and thus reduce the likelihood of reoffending.<sup>120</sup> Structured rehabilitative programs that call for frequent contact have proven to be the most effective mechanism for reducing juvenile recidivism.<sup>121</sup> For example, long-term therapeutic programs with frequent staff-juvenile interaction seem to be much more effective than short-term or sporadic programs such as individual or group counseling.<sup>122</sup> Although scholars and advocates have long known that rehabilitative interventions better address the problem of juvenile crime, convincing the public and policy makers that the “tough on juvenile crime” stance is not effective has proven to be a challenge.<sup>123</sup>

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112. *Id.*

113. ARYA, *supra* note 68, at 7–8.

114. *See* MAYS & RUDDELL, *supra* note 1, at 179.

115. *See* Bishop, *supra* note 31, at 85.

116. Many juveniles receive probation as punishment. These dispositions generally require some form of supervision and are often accompanied by requirements such as completing community service, living in a group home, or receiving counseling treatment for substance abuse or other problems. MAYS & RUDDELL, *supra* note 1, at 43–44.

117. *See supra* text accompanying notes 90–102.

118. *See* Bishop, *supra* note 31, at 150; MAYS & RUDDELL, *supra* note 1, at 179.

119. NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS: LEGISLATIVE VICTORIES FROM 2005 TO 2010 REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM 17 (2010), [http://www.campaignforyouthjustice.org/documents/CFYJ\\_State\\_Trends\\_Report.pdf](http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf).

120. Bishop, *supra* note 31, at 150 (“Processing in juvenile court is associated with a lower probability of reoffending. One reason this may be so is that juvenile justice officials communicate messages of caring—that is, offers of attachment—to young people whose backgrounds are often replete with alienation from and rejection by conventional adults.”).

121. *Id.* at 150–52.

122. *Id.* at 151–52.

123. MAYS & RUDDELL, *supra* note 1, at 179.



Because the practice of transferring juveniles to adult courts certainly serves some legitimate retributive purposes, limiting the reach of transfers is a more suitable reform proposal than abolishing the doctrine altogether. Statutory exclusion laws ensure that all juveniles charged with certain violent and serious crimes are transferred.<sup>124</sup> Blended sentencing laws provide that adult sanctions will be imposed only if certain terms imposed by the juvenile court, such as completing community service or therapy programs, are not met.<sup>125</sup> Because these two mechanisms leave little room for prosecutorial or judicial bias, jurisdictions could begin to rely solely on these two forms of transfer. Limiting transfers in this way would ensure that only violent or noncompliant juveniles were subject to adult penalties, and would protect juveniles who have committed minor and nonviolent crimes against prosecutorial or judicial bias. However, states may need to reform their statutory exclusion schemes, as some nonviolent crimes, such as drug or property offenses, are often included in the enumerated crimes.<sup>126</sup>

Another reform proposal involves complete abolition of the “once an adult, always an adult” doctrine. Although support for the doctrine stems from society’s desire to adequately punish juvenile criminals and keep individuals safe, abolition of the doctrine does not mean that these ends could not be met or that violent criminals would not be punished or removed from society. Juveniles charged with serious or violent crimes could still be transferred via one of the other mechanisms, and thus could be prosecuted in adult court and subjected to severe or long-lasting adult sanctions when appropriate. If the “once an adult, always an adult” doctrine was abolished, juveniles who had been transferred in the past would no longer be automatically presumed fit to appear in adult court. Rather, the situation surrounding his or her current offense and level of culpability would be analyzed in order to make a more accurate transfer decision using one of the other available transfer mechanisms.

Because the “once an adult, always an adult” doctrine is so widely enacted and entrenched,<sup>127</sup> complete abolition of the doctrine in the near future seems unlikely. However, limiting the reach and severity of the doctrine may be a useful way to reduce negative ramifications and ensure that the automatic transfer applies only to juveniles who commit severe and violent offenses. Some states have already imposed such restrictions.<sup>128</sup> In Maryland, Michigan, Minnesota, and Texas, only subsequent felonies committed by previously transferred juveniles are automatically filed in adult court.<sup>129</sup> Additionally, a few states only apply the doctrine to juveniles who were at least sixteen years of age when the subsequent

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124. See *supra* text accompanying notes 36–37.

125. See *supra* text accompanying note 37.

126. Clarke, *supra* note 5, at 678.

127. See *supra* text accompanying notes 61–62.

128. GRIFFIN ET AL., *supra* note 61, at 7.

129. *Id.*

offense was committed.<sup>130</sup> These limitations ensure that minor and nonviolent charges do not result in automatic transfer, and that only juveniles who have almost reached the age of legal adulthood are subject to automatic transfer to adult courts.

Indiana has taken steps in recent years to minimize the negative effects of the “once an adult, always an adult” doctrine.<sup>131</sup> The state’s prior code stated that the doctrine applied to any juvenile previously transferred, no matter whether the transfer was for a felony or a misdemeanor.<sup>132</sup> In 2008, House Bill 1122 limited the reach of the “once an adult, always an adult” doctrine to juveniles who were initially transferred for a felony and later charged with another felony.<sup>133</sup> Additionally, the Indiana bill limited the list of crimes for which prosecutors could directly file juvenile cases in adult court, and for which judges have case-by-case discretion.<sup>134</sup> Reform measures such as Indiana’s House Bill 1122 help protect juveniles and reduce the recidivism rate,<sup>135</sup> while still allowing for transfer to adult court for those juveniles charged with violent or serious crimes.

## CONCLUSION

The “once an adult, always an adult” doctrine has been enacted by many states, likely as a result of “tough on crime” movements and widespread fear of juvenile crime driven by media sensationalism.<sup>136</sup> Although the doctrine provides for automatic transfer of some violent offenders who have committed severe crimes, it is overbroad and it is not the best way to reduce juvenile recidivism. The automatic transfer mechanism fails to take into account the severity of the crime with which the juvenile is currently charged, as well as his or her culpability, and instead bases the transfer on a past act. The Federal Rules of Evidence generally prohibit jury members from hearing information about a putative criminal’s past convictions and offenses in adult court;<sup>137</sup> why then should prior convictions play such a significant role in juvenile proceedings? Many “once an adult, always an adult” transfers affect juveniles charged with nonviolent crimes, such as drug or property offenses.<sup>138</sup> Both social science research and U.S. Supreme Court opinions support the concept that juveniles are psychologically amenable to rehabilitation

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130. *Id.* (explaining that Iowa, California, and Oregon all require juveniles to be sixteen years or older for the “once an adult, always an adult” doctrine to be applicable).

131. MAYS & RUDELL, *supra* note 1, at 87.

132. *See* ARYA, *supra* note 119, at 36.

133. *Id.* (citing B. 1122, 115th Gen. Assemb., 2d Reg. Sess. (Ind. 2008)).

134. *Id.*

135. Because juvenile justice solutions result in fewer arrests than sending children to adult court, measures such as Indiana’s House Bill 1122 help lower recidivism rates. *See supra* text accompanying notes 118–19.

136. *See supra* text accompanying notes 62–66.

137. FED. R. EVID. 404(b).

138. *See supra* text accompanying notes 90–91.

and usually stop offending as they mature emotionally and become adults.<sup>139</sup> Studies have shown that juvenile rehabilitative efforts better reduce recidivism than adult sanctions.<sup>140</sup> Rather than attempting to rehabilitate juveniles, the “once an adult, always an adult” doctrine exposes juveniles to adult jails once again, where they often learn criminal behaviors and are saddled with marks on their permanent record that will constrain future life opportunities.<sup>141</sup> Juveniles incarcerated with adults are disproportionately victimized and are at a higher risk for suicide.<sup>142</sup> The doctrine may also exacerbate the problem of “aversive racism” because of the highly discretionary nature of some transfer mechanisms.<sup>143</sup>

Although elimination of transfers or the “once an adult, always an adult” doctrine seem unlikely, reforms could minimize negative impacts, while still ensuring that violent career offenders are duly punished. Regarding the practice of transfers in general, reliance on statutory exclusion laws would reduce much inherent discretion and ensure that only juveniles charged with certain violent or serious crimes are transferred, as long as the enumerated list of transferrable crimes is reasonable. An even better reform is to employ blended sentencing models, which impose adult sanctions only if and when a juvenile does not complete the terms of his or her juvenile punishment. Even if a jurisdiction were to rely solely on these two transfer mechanisms, limitations to the “once an adult, always an adult” doctrine are still needed. If the doctrine was limited to apply only to juveniles charged with subsequent felonies, nonviolent offenders who committed minor crimes would be protected from automatic transfer. Another reform involves setting an age limit, so that only juveniles who are almost legal adults are automatically subject to adult courts and sanctions. These reforms would enable more juveniles to receive rehabilitative sanctions, which have been shown to better reduce recidivism than punitive adult sanctions.<sup>144</sup>

There is hope for reform. More than five states have adopted at least one of the reform proposals outlined above limiting the doctrine of “once an adult, always an adult.”<sup>145</sup> Perhaps the efforts of these states, combined with greater public awareness of the negative effects of the “once an adult, always an adult” doctrine and the unique amenability of juveniles to rehabilitation, could result in a greater widespread movement to limit the reach of the doctrine.

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139. See *supra* text accompanying notes 82–89.

140. See *supra* text accompanying note 108.

141. See *supra* text accompanying notes 111–14.

142. See *supra* text accompanying notes 96–102.

143. See *supra* text accompanying notes 103–07.

144. See *supra* text accompanying notes 116–23.

145. See *supra* text accompanying notes 128–35.