

JUVENILE JUSTICE; Juveniles and Criminal Law

Part 2 of 5

A Selected Annotated Bibliography

Compiled by:
Colin Campbell
Research Assistant

The University of the State of New York
The State Education Department
The New York State Library
Legislative Research Service
Albany, New York 12234, April 1976

40609
c.1

For two months after the cover page date of this bibliography, the materials cited herein are restricted to the use of the Legislature and of State agency officials whose work station is in Albany.

10207
10207

JUVENILE JUSTICE

Table of Series

Part 1: The System

Part 2: Juveniles and Criminal Law

Part 3: Pins and Status Offenders

Part 4: Child Advocacy

Part 5: Community Corrections

JUVENILE JUSTICE; Juveniles and Criminal Law

Part 2 of 5

Item

- 1 Alers, Miriam S.
Transfer of Jurisdiction from Juvenile to Criminal Court, in Crime and Delinquency, 1973. vol. 19, 519-27.

S364.6 N111

A discussion of the due process issues involved in the transfer of a juvenile from the jurisdiction of the juvenile court to that of criminal court. The result of the transfer holds the juvenile to the same standard, process, sentence and punishment as an adult. Conclusion is that the defects in juvenile court transfer hearings contrast with the protective purposes for which the court was established.

- 2 American Bar Association.
American Bar Association Policy Regarding the Proposed Federal Criminal Code. Washington, 1975. 36c.

LEGIS REF

See recommendation, p. 8, (8), "as to immaturity", which would require that a person under 16 be tried as a juvenile delinquent unless the privilege is waived.

- 3 Boxer, Karen.
Juvenile Defendant in Federal System not Entitled to Counsel or Hearing at Time Determination is Made by the Attorney General to Proceed Against Him as an Adult, in Columbia Law Review, October 1973. vol. 73, 1331-41.

LAW LIB

Fourth Circuit Court based decision [Cox v. United States 473 F.2d 334 (477 Cir. 1973)] on the fact that because the Federal statute grants jurisdictional decision to an executive rather than a judicial officer, the due process protections of "Kent v. United States" are inapplicable. Author disagrees, shows that "the decision to prosecute a juvenile as an adult is 'a 'critically important' action determining vitally important statutory rights of the juvenile '" which should be protected.

4 Carr, James G.

Effect of Double Jeopardy Clause on Juvenile Proceedings, in University of Toledo Law Review, Fall 1974. vol. 6, 1-62.

LAW LIB

Consideration of double jeopardy issues such as re-prosecution as a delinquent after dismissal of a delinquency petition, appeal from a referee's recommendations, and transfer of proceedings from juvenile to adult court. The latter is treated thoroughly and at considerable length.

5 Chase, Edward.

Schemes and Visions: A Suggested Revision of Juvenile Sentencing, in Texas Law Review, April 1973. vol. 51, 673-706.

LAW LIB

A major problem confronting the juvenile justice system is the differential sentencing of juveniles and adults. Confinement of juveniles for longer periods than the maximum sentence allowed for the same offense in criminal court and the confinement of juveniles for non-criminal behavior are both dealt with. Contends that since rehabilitation has not been achieved by incarceration, the right to freedom should be paramount.

- 6 Eves, Mark W.

Due Process, Equal Protection and Nebraska's System Allowing the County Prosecutor to Determine Whether a Juvenile will be Tried as an Adult, in Creighton Law Review, Spring 1974. vol. 7, 223-48.

LAW LIB

According to Nebraska law, a juvenile may be tried in the adult court system at the discretion of the county prosecutor. The law gives no standards to aid the prosecutor and does not prescribe a hearing. Author addresses the question of whether the lack of a hearing and standards deprives the juvenile of due process and equal protection guarantees of the Fourteenth Amendment to the Federal constitution.

- 7 Goldstein, Jeffrey H.

Aggression and Crimes of Violence. New York, Oxford Press, 1975. 192 p.

ON ORDER

- 8 Haskins, Thomas F., Jr.

Juvenile Court and Direct Appeal from Waiver of Jurisdiction in Ohio, in Akron Law Review, Spring 1975. vol. 8, 499-518.

LAW LIB

Reviews Federal Supreme Court decisions dealing with due process for juveniles and then analyzes an Ohio Supreme Court decision denying direct appeal from a waiver order, in light of these Federal decisions.

- 9 Hogan, Christine.

Waiver of Juvenile Jurisdiction and the Hardcore Youth, in North Dakota Law Review, Spring 1975. vol. 51, 655-77.

LAW LIB

An analysis of the judicial, legislative, and prosecutorial methods by which the jurisdiction of the juvenile court is waived. Discusses the

rationale behind the move to expedite waiver of jurisdiction. Concludes that the movement to waive juvenile jurisdiction is antithetical to the aims of treatment and rehabilitation for even hard core youth.

- 10 Iredale, Nancy L. and Paul C. Joffe.

Between Juvenile and Adult Courts: A No Man's Land for the Youthful Offender, in Yale Review of Law and Social Action, Spring 1971. vol. 1, 49-54.

LAW LIB

A discussion of the status of 16- and 17-year-old offenders who commit adult crimes. Contains citations of the statutes of various states as an example of the vagueness and arbitrary manner with which juveniles in this age group are treated. Connecticut statutes are cited in detail and recommendations made to reduce the arbitrary nature of the transfer hearing process.

- 11 Juvenile Justice--Statutory Exclusion from the Juvenile Process of Certain Alleged Felons, in Boston University Law Review, January 1973. vol. 53, 212-25.

LAW LIB

An analysis of the constitutionality of Section 16 of the District of Columbia Court Reform and Criminal Procedure Act of 1970. Since waiver provisions are attempts to weed out children who cannot benefit from the rehabilitative effects of juvenile treatment, it makes more sense to base the waiver on the characteristics of the child rather than to exclude an entire class through use of the crime as the criterion for waiver.

- 12 [Juvenile Rights in the Judicial System], in Columbia Human Rights Law Review, Fall 1972. vol. 4, entire issue.

LAW LIB

Devoted to various aspects of juvenile law and the rights of juveniles within the judicial system. Two articles, "A Children and Youth Court: A Modest Proposal", and "The Child and the State: Adversaries in the Juvenile Justice System", focus on due process rights for juveniles in family court and adult court actions. "...Children and Youth Court..." gives model legislation for a youth act predicated on the rights and needs of children in civil and criminal actions.

- 13 Levin, Mark M. and Rosemary C. Sarri.
Juvenile Delinquency: A Study of Juvenile Codes in the United States. Ann Arbor, Mich., National Assessment of Juvenile Corrections, University of Michigan, 1974. 75 p.

SR345.7308 qL665 75-5816

Descriptive analysis of the statutes of the fifty states dealing with juvenile justice, corrections, and rehabilitation. Covers jurisdiction and jurisdictional conflict and overlap, interactions with the criminal justice system, detention, court structure, adjudication, disposition, and records.

- 14 Malmquist, Carl P.
Juvenile Detention: Right and Adequacy of Treatment Issues, in Law and Society Review, Winter 1972. vol. 7, 159-63.

LAW LIB

A preoccupation with the details of due process does not influence what subsequently happens when a juvenile has been judged delinquent, but only shifts the focus from treatment and rehabilitation, the primary reason for separate handling of juveniles.

- 15 Marino, Ralph J. and Jeremiah B. McKenna.
The New and Dangerous Juvenile Delinquent (and the Inadequacy of the Juvenile Justice System in New York City), in New York Affairs, Spring 1975. vol. 2, 3-11.

S309.17471 N545

Brief assessment of the growth in felonious and violent juvenile crime. Investigation of the background of juveniles involved in such behavior showed that most had become violators at a very early age, were repeat offenders, and had been diagnosed by psychiatrists as mentally disturbed and in need of treatment in closed facilities. Recommends the treatment of juveniles with a history of violent crime in secure correctional facilities via the adult system, and early intervention at 9, 10, and 11 years of age for those showing signs of heading toward violence.

- 16 Morgan, Ted.
They Think, "I Can Kill Because I'm 14", in New York Times Magazine, January 19, 1975. 9-11+.

GEN REF

Uses a particularly heinous juvenile crime as a backdrop for a description of the workings of the juvenile justice system in New York City. Describes the growing frustration of the police, the victims, and the public concerning the quick release of juvenile criminals, regardless of the severity of the crime committed. Comments that a possible solution may be forthcoming if the state legislature decides to allow certain categories of juvenile crimes to be tried in criminal court.

- 17 New York (State). Governor's Panel on Juvenile Violence.
Report to the Governor from Kevin M. Cahill, M.D., Special Assistant to the Governor on Health Affairs. Albany, 1976. 194c.

LEGIS REF

Has a number of recommendations for legislative and executive action to improve the administration of juvenile justice in New York State. Includes the final reports of the four task forces making up the panel. Covers the nature and extent of juvenile violence; the adequacy of the current classification system; the effectiveness of current agencies, and the legislative and executive approaches to the problem in other states.

- 18 New York (State). Legislature. Assembly. Subcommittee on the Family Court.
The Resurgence of Youth Gangs in New York City. Albany, 1974. 60~~e~~.

LEGIS REF

Interviews with court intake workers relative to violent gang members apprehended for assault, murder or rape revealed the frustration with the juvenile justice process which frees such offenders hours after the crime. If these criminals are eventually remanded to custody, the average stay in an institution is only 3-6 months. Many of these youngsters flaunt their apparent freedom from legal redress. The workers recommended the appointment of Corporation Counsels to family court, who would have the legal experience and strength equal to the law guardian, to represent the interests of the public.

- 19 Peaslee, Maurice K.
The Unique Status of the Fifteen Year Old Under the Criminal Laws in New York, in Albany Law Review, 1975. vol. 39, 297-317.

LAW LIB

Analysis, from the standpoints of the state and Federal constitutions, of Section 758 of the New York Family Court Act. This section allows fifteen year olds, who have committed Class A or B felonies, to be sentenced for up to three years to adult correctional facilities without benefit of jury trial. Concludes that because the juvenile is, in effect, being treated as a Youthful Offender, he is entitled to due process protections and jury trial guaranteed to Youthful Offenders.

- 20 Reid, Brad.
Juvenile Waiver: The Inconsistent Standard, in American Journal of Criminal Law, Winter 1974. vol. 2, 331-47.

LAW LIB

A survey of the juvenile waiver statutes of various states, with an evaluation of their procedures and criteria for waiver. The criteria under examination are age, type of offense, and a random variety of socially unacceptable actions cited in the state statutes.

- 21 Review of Improper Juvenile Transfer Hearings,
in Virginia Law Review, May 1974. vol. 60, 818-39.

LAW LIB

An analysis of three remedies for improper transfer hearings. Remedies considered are: retrial in criminal court of a defendant who has reached majority; reconstruction of the transfer hearing, and unconditional release. Conclusion is that reconstruction of the hearing is the best option, but that states should provide for immediate review of all transfer hearings.

- 22 Senator Birch Bayh Introduces New Legislation to Suppress the Violent and Repeat Offender: The Violent Crime and Repeat Offender Control Act of 1975,
in Criminal Justice Digest, June 1975. vol. 3, 8-13.

LEGIS REF

Title VI of the proposed act, would prohibit offenders previously convicted of violent crimes to be sentenced under the special, more lenient, provisions of the Federal Youth Corrections Act. Under that act, Youthful Offenders under 22 years of age may be sentenced to the custody of the Attorney General for rehabilitation and treatment, rather than under adult criminal statutes.

23. Six, Fred N. and Kenneth W. Reeves.
Waiver of Juvenile Court Jurisdiction in Kansas, in
University of Kansas Law Review, Winter 1974. vol. 22,
1974. 193-216.

LAW LIB

A consideration of state and Federal cases dealing with the constitutional aspects of juvenile waiver procedures and standards, with a comparison to Kansas statutes. Includes the responses of Kansas juvenile judges to a questionnaire suggesting various changes in the Kansas statutes.

- 24 Sorg, H. Peter.

Due Process for Juveniles Facing Strict Security Confinement, in Syracuse Law Review, Summer 1975. vol. 26, 1017-49.

LAW LIB

Discusses the history of juvenile confinement in adult penal institutions, the confinement of juveniles in non-juvenile institutions in New York State, strict security confinement in juvenile facilities in relationship to treatment, and judicial and legislative implications of a constitutional right to treatment for juveniles. Concludes that to identify strict security confinements as inconsistent with the treatment premise of the juvenile justice system does not compel a choice between releasing dangerous juveniles from custody and subjecting them to the harshness of the adult system. Rather, the transfer of non-treatable juveniles with due process safeguards is a reasonable alternative.

- 25 Toplin, Robert Brent.

Unchallenged Violence: An American Ordeal. Westport, Conn., Greenwood Press, 1975. 191 p.

ON ORDER

- 26 Tuke, Robert D.

Criminal Procedure--Federal Habeas Corpus--A Writ of Habeas Corpus may be Issued in Advance of Trial to Prevent Double Jeopardy When a Juvenile Has Been Previously Adjudicated a Delinquent, in Vanderbilt Law Review, November 1974. vol. 27, 1289-97.

LAW LIB

Analysis of a case [R.E.F. v. State, 265 So. 2d 701 (Fla. 1972)] in which a juvenile was adjudicated a delinquent, committed to a juvenile institution, and subsequently indicted by a grand jury for rape, for the same crime. Full details of the various appeals are given.

- 27 Use of a Juvenile's Confession While Under Exclusive Jurisdiction of the Juvenile Court in a Subsequent Criminal Proceeding,
in Marquette Law Review, no. 1, 1975. vol. 58, 183-91.

LAW LIB

A discussion of state court decisions in Minnesota, Arizona, Oregon, and Tennessee dealing with the admissability, in criminal court, of a confession made in juvenile court before transfer. Author believes the Arizona decision is preferred because it allows confession if juvenile is informed of right to counsel, privilege against self-incrimination, and of the possibility he may be remanded to be tried as an adult.

- 28 Walsh, James F.
The Prosecution of Juveniles Under the General Law in Jackson County, Missouri, in Journal of the Missouri Bar, April-May 1975. vol. 31, 210-22.

LAW LIB

Gives a brief history of the Missouri Criminal Code. Contains a description of procedures and provisions of law which allows a juvenile offender to be tried in adult criminal court. Includes standards which are used to help in the determination and describes due process and equal protection procedures extended to the juvenile during the determination process.

- 29 Wilson, James Q.
Thinking About Crime. New York, Basic Books, 1975.
231 p.

See especially Chapter 10, "Some Concluding Thoughts", in which the author espouses the incarceration of repeat offenders, including juveniles, as a means of reducing crime. Contends that certainty of punishment is a deterrent, and that placing habitual criminals behind bars stops their criminal behavior for at least that period of time. Also see Chapter 8, "Courts and Corrections".

- 30 Youthful Offenders and Adult Courts: Prosecutorial Discretion vs. Juvenile Rights,
in University of Pennsylvania Law Review, May 1973.
vol. 121, 1184-93.

LAW LIB

An analysis of U.S. Supreme Court decisions [Kent v. United States, 383 U.S. 541][In re Gault, 387 (U.S. 1)], [Cox v. United States 473 F. 2d 334 (4th Cir. 1973)], [Kempler v. Maryland 428 F. 2d 169 (4th Cir. 1970)], and [United States v. Bland 472 F. 2d 1329 (D.C. Cir. 1972)] dealing with due process for the juvenile offender who is to be tried in adult criminal court. Concludes that recent decisions in Cox v. United States and United States v. Bland allow due process to be overridden in favor of a doctrine developed for prosecutorial convenience.

- 31 Zekas, Joseph P.
Constitutional Law--Juvenile Waiver Statute--Delegation of Legislative Power to the Judiciary, in Wisconsin Law Review, no. 1, vol. 1973, 259-68.

LAW LIB

A consideration of the Michigan Case: People v. Fields. Fields contended that Michigan's juvenile waiver statute was unconstitutional because it did not enunciate substantive standards to guide the waiver decision. Michigan Supreme Court held the statute unconstitutional because the state legislature failed to establish suitable and ascertainable standards whereby juveniles are to be deemed adults and as such become subject to criminal law process.



END