

# Juvenile Waivers To Adult Courts



*New Issues,  
Growing Concerns,  
and Potential Solutions*

**View From the Trenches:**

**A Practitioner's Perspective**



# View From the Trenches.

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## A Practitioner's Perspective

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# Panel Presentation Website:

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## Juvenile Waiver to Adult Court: New Issues, Growing Concerns and Potential Solutions

 

# 7

days until  
NCJFCJ Presentation

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## Home

This site is intended for the review and consideration of conference attendees and others who may be interested in learning more about the topic of juveniles, that is youth younger than 18, who face adult criminal prosecution.

Our panel members will also use this web site for posting of materials, resumes, articles and anything else pertinent to the presentation on Juvenile Waivers to be given at the National Council of Juvenile and Family Court Judges, 36th Annual Conference in Orlando, FL on March 13, 2009.

This site is intended to facilitate the flow of ideas and information among the panelists who will be presenting together in Orlando and act as a place where panel members may easily upload material, exchange messages and learn of relevant news during the period leading up to the presentation itself.

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# Lawyer Critic = Muckraker:

- American definition: Person who investigates and exposes instances of current affairs that violate widely held values.
  - British definition: Sensationalist scandal-monger, not driven by any social principles!
- 
- **Oppose Waiver of > 200,000 Teens Annually Prosecuted in U.S.**
    - *As practitioner, I speak for teens facing government prosecution.*
    - *As practitioner, I see juvenile court increasingly marginalized by the over use and systemic abuse of juvenile waivers .*
    - *As practitioner, I see juvenile waivers punish youth on multiple levels and far beyond the terms envisioned by their adult sentence.*

# Explosion of Juvenile Waiver Law

- Statehouses now scrambling to undo the harm
- Harsh juvenile waiver laws reactionary & misguided
- Harmful effects to youth irrefutable
  - Increased suicides, sexual assault and victimization, recidivism, rates soar, educational and employment/earnings potential destroyed; criminal acculturation inevitable
- Every credible body in U.S. calls for reform

# Explosion of Juvenile Waiver Law

- Study after study documents abuse, misuse
  - “Unintended consequences” arising from ill considered laws; often poorly understood effects to youth
    - Devastation to teens far beyond the terms of their sentence
- Juvenile Courts harmed
  - Profound assault on policy & intent
  - Lawyers, not judges, prevail

# View of a Practitioner:

- Rehabilitation should trump punishment except in rare instances
  - Prosecutors unfettered and arbitrary discretion unhelpful
  - Criminal courts ill-equipped to decide
  - Development – brain, body & personality
  - Teen rehabilitation potential & amenability
  - Crucial distinction: age vs. maturity

# How Practitioners Should Use Research Data in Waiver Cases

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- Is my client competent? Can my client assist? Can my client be brought to trial and understand?
  - Studies prove most juveniles <16 are not competent
  - Juvenile maturity, competence judgment and perception as compared to adult population; common thread in all waivers
  - Recent research on brain developmental delay must be brought to bear in waiver hearings, not simply competency review



# How Practitioners View the Law in Waiver Cases

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- Nationally, practitioners must juggle legal and policy inconsistencies within state counties and between states
- No real consistent guidelines on criteria prosecution should use in determining which children are to be waived to adult court.
  - In PA, the burden of proof is on the child.
  - In MD the burden of proof is on the prosecution to prove by a preponderance.

# How Practitioners View the Law in Waiver Cases

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- In many jurisdictions, judges have no primary criteria to consider in determining which children are to be waived to adult court
- In MD statutory law, judges must consider 5 factors
- MD statutes are silent regarding most important factor judges must consider when waiving juveniles to adult court
- MD case law, judges must consider:
  - above all other factors is whether the juvenile is amenable to treatment
  - whether it is more probable than not that the juvenile is unfit for rehabilitation

*Not all MD courts are aware of this case law.*

# How Practitioners Use the Law in Waiver Cases

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- Focus of defense case is on amenability to treatment and personality judgment maturity capacity
  - Practitioner must have enough evidence to challenge the prosecution's argument that the juvenile cannot be rehabilitated
- Practitioners consider the seriousness of the crime or the effects on the victim in the context of a juvenile client's rehabilitation

# Practitioner Suggestions

- Courts, prosecutors and juvenile system personnel must take seriously brain studies and development issues when determining whether to waive a juvenile
- Courts, prosecutors and juvenile system personnel should not waive juveniles without extensive examination of whether the juvenile is capable and whether they are amenable to rehabilitation.
- Courts, prosecutors and juvenile system personnel should not waive cases except in very rare and specific circumstances.

# Practitioners Suggestions

- If legislatures create punitive delinquency laws, courts still have powers through case law to establish set guidelines in determining who should not be waived:
  - First offenders
  - Nonviolent offenders, such as drug users and offenders
  - Juveniles who never had rehabilitative options in the past
  - Juveniles who demonstrate incompetency via psychological tests and medical studies
  - Juveniles who demonstrate potential for rehabilitation

# Assessment and Evaluation

- How can we in the field deal with legislative inconsistency?
  - Rely upon facts, science and understanding of child development
  - Utilize older, good case law coming from juvenile court reform eras

*Thankfully trend is swinging back, courts and legislatures are taking look at issue of waivers*

# What's Working?

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## Increasing age of juvenile jurisdiction

- Increase time period for rehabilitation
  - 16 vs. 24 = 8 years of additional reform time
  - Akin to drinking age revision per U.S. Deans
  - Acknowledges real-world youth time span

*Evidence is clear – juveniles require many more years of development before becoming adults*

# What's Working?

- *Blended outcomes: Adult sentencing and optional juvenile dispositions*
  - Satisfies all stakeholders
  - Politically attractive in community
  - Provides return to juvenile court
  - Utilization of youthful offender services
  - Returns decision-making to youth professionals
    - Juvenile judges, juvenile social workers, lawyers trained in juvenile law, therapists, educators, counselors.



# Conclusion and Questions

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***First Juvenile Court, Chicago 1899***

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