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Annie Keller

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A Look at the Inception and Evolution of the Juvenile Legal System in Illinois

Annie Keller

Before 1899, across the country children accused of criminal offenses could be prosecuted and punished alongside adults. This meant that children were incarcerated in the same facilities as adults. In the late 1890s, a group of women in Chicago began pushing for children to be treated differently.¹ They advocated for social reforms including compulsory schooling for children as well as restrictions on children's labor, and they sought the creation of a separate juvenile justice system.² Two women in particular, Julia Lathrop and Lucy Flower, a social worker and a philanthropist respectively, advocated for the creation of a new juvenile legal system.³ In 1899, Illinois made history as the first state to pass a statute establishing a separate juvenile legal system.⁴

However, the statute authorizing the creation of a separate juvenile court left a lot of logistical questions unanswered. In fact, no courtroom or building was set aside to be the location of the juvenile court in Cook County.⁵ The Juvenile Court Committee ("JCC"), of which Julia Lathrop was the first president, established its first location on West Adams Street.⁶ The JCC was also responsible for procuring funding to pay the salaries of juvenile probation officers since funding for the juvenile court was not clearly spelled out in the statute.⁷ In 1905, a bill drafted by the JCC was passed by the Illinois General Assembly, which required the juvenile court system to be publicly funded.⁸

The juvenile legal system was created as a separate entity in recognition of the fact that children are different than adults. They are not fully developed

¹ Quinn Myers, *How Chicago Women Created the World's First Juvenile Justice System*, NAT'L PUB. RADIO (May 13, 2019), <https://www.npr.org/local/309/2019/05/13/722351881/how-chicago-women-created-the-world-s-first-juvenile-justice-system>.

² *Id.*

³ *An Illinois History of Juvenile Court*, WBEZ CHI. (June 16, 2010, 2:00 P.M.), <https://www.wbez.org/stories/an-illinois-history-of-juvenile-court/68cc998f-033a-45f2-9087-5030bbf342cb>.

⁴ David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction*, in *A CENTURY OF JUV. JUST.* 42, 42 (Margaret K. Rosenheim et al. eds., 2002).

⁵ *Id.* at 51.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 54.

either in brain or in character. Because of their immaturity, they are more likely to make poor, short-sighted decisions and to be influenced by peers. The juvenile system, at its inception, prioritized rehabilitation.⁹ The goal was for adults to interfere with this delinquent behavior without overly stigmatizing the child or preventing a normal transition to adulthood.¹⁰

The early iterations of the juvenile system leaned towards extreme informality. Instead of markedly adversarial proceedings in criminal court, with complex procedures, the juvenile legal system was meant to include families and parties sitting around a table, and the judge was expected to consider the best interest of the child.¹¹ Notably, the juvenile did not have a right to counsel or to cross-examine witnesses.

The informality of the juvenile legal system significantly changed after the Supreme Court decision, *In re Gault*, issued in 1967. In its decision, the Supreme Court held that juveniles do retain some due process rights. The Court maintained that while juveniles are not entitled to *all* the same due process rights that adults are afforded in criminal court, they do have the right to (1) notice of charges against them with particularity, (2) counsel, (3) confront and cross examine the witnesses against them, (4) be advised of their privilege against self-incrimination, (5) trial transcripts, (5) and appellate review.¹²

The juvenile system was created in large part to separate children from adult criminals and in recognition of how children are categorically different than adults. Still, there are some exceptions to the policy of separately processing and incarcerating children and adults. In the United States, in some cases, juveniles that have committed criminal offenses can be “transferred” to criminal court, to be prosecuted as an adult. There are three types of transfer laws that a state can enact. The first is judicial discretion, where a judge rules on an individualized motion to transfer the case to criminal court based on a list of factors enumerated in the state statute. Second, states can authorize prosecutorial transfer, where the prosecution has the discretion to decide where to file the case, either in juvenile or criminal court. Finally, there is automatic transfer, where certain offenses are automatically outside the jurisdiction of the juvenile system and can only be heard in criminal court.¹³

⁹ *Id.*

¹⁰ Donna M. Bishop, *Juvenile Offenders in the Adult Criminal System*, 27 CRIME & JUST. 81, 83 (2000).

¹¹ *Id.*

¹² *Application of Gault*, 387 U.S. 1, 31–58 (1967).

¹³ Patrick Griffin et. al, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, JUV. OFFENDERS & VICTIMS: NAT’L REP. SERIES BULL. 2 (Sept. 2011).

The increase in crime during the 1980s contributed to a surge in “get tough on crime” policies enacted in the late 20th century. Between 1992 and 1997, 44 state legislatures passed “transfer” or “waiver” statutes, which are laws that authorize the transfer of children under the age of 18 from the juvenile system to criminal court for prosecution.¹⁴ Many of these statutes expanded the eligibility criteria for automatic transfer or lowered the maximum age of the juvenile system’s jurisdiction, such that younger juveniles can be considered adults.¹⁵ In Illinois, for example, the State legislature enacted an automatic transfer statute, requiring that juveniles 15 years old or older charged with first-degree murder, aggravated sexual assault, or robbery with a firearm be tried in adult criminal court.¹⁶ In other words, automatic transfer was limited to older juveniles who were charged with committing very violent offenses. By 1995, the law had already gone through several expansions to include drug and weapon charges and gang-related felonies; it also lowered the age of transfer to 13 years old for those accused of murder and sexual assault.¹⁷ Thus, the age and severity of offense threshold were both significantly lowered by 1995.

In 2015, the Illinois legislature passed a statute which ended automatic transfer for juveniles. However, if a prosecutor files a case in criminal court, Illinois State law creates a rebuttable presumption that the juvenile system is not fit to handle a juvenile if 1) the alleged offender is over 15 years old, 2) the alleged offender has previously been convicted of a felony or adjudicated delinquent for the equivalent of a felony, and 3) the alleged offense was committed in furtherance of criminal or gang activity.¹⁸ Therefore, the Illinois law dictates that if these factors are met, the case should be transferred.¹⁹ In essence, depending on the age of the individual and the type of offense, the prosecution is authorized to file charges and proceed in criminal court against the juvenile. Additionally, this statute authorizes transfer of juveniles to criminal court, subject to discretionary transfer. That is, the prosecution can file a motion to transfer. According to the statute, the judge would hear arguments on this motion and consider a set of enumerated factors before ruling on the motion.²⁰ According to Illinois’ Transfer of Jurisdiction Statute, the judge must

¹⁴ Bishop, *supra* note 10, at 84.

¹⁵ *Id.*

¹⁶ *Id.* at 89.

¹⁷ *Id.* at 89–92.

¹⁸ 705 ILCS 405/5-805(2)(a).

¹⁹ *Id.*

²⁰ *Id.*

consider a lengthy list of factors including the juvenile's age, history of other criminal charges, history of abuse, their mental and physical health, and the seriousness of the crime.²¹ While the judge must consider all of the enumerated factors, the statute instructs the judge to give the most weight to the seriousness of the alleged offense and to the juvenile's prior record of delinquency.²²

Unsurprisingly, transfer laws disproportionately affect non-white young men, and this discrepancy increased during the "tough on crime" era of reform.²³ In 1978, 39 percent of judicially transferred juveniles were non-white. By 1988, this percentage increased to 54 percent.²⁴ The result of transfer is commonly incarceration for adults, either because of conviction or pending trial.²⁵ For example, a single-day snapshot in 2009 reported, in the United States, that there were 7,220 people incarcerated in adult prisons who were under the age of 18.²⁶ This snapshot, however, likely underrepresents the total population of minors in adult prisons, since it does not capture data from states whose criminal jurisdiction starts at 16 or 17 years of age.²⁷ In any case, this number represents thousands of children who, against the original vision for the juvenile legal system, are incarcerated right alongside adult criminals. The expansion of transfer laws recreates many of the same disparities seen elsewhere in the adult criminal system, including the disproportionate impact of mass incarceration on communities of color.

Despite the panic that spurred the passage of many transfer laws, there is limited evidence to show that transfer or waiver laws have any deterrent effect on juvenile crime. Researchers have conducted multi-state meta-analyses of the expansion of transfer laws and the correlation with juvenile crime. At best, there can be a "moderate" deterrent effect, but the majority of studies have found little to no effect on dissuading juveniles from committing such of-

²¹ See 705 ILCS 405/5-805(3)(b) (requiring the the judge consider the juvenile's age, their history of other criminal or delinquency charges, their history of abuse or neglect, their mental health, physical health, education, the seriousness of the offense, whether the juvenile is charged with this offense through an accountability theory, whether there is evidence that the offense was premeditated, whether the offense caused serious bodily harm, whether there is evidence the juvenile possessed a deadly weapon, whether there are advantages to treatment in the juvenile system, whether public safety favors prosecution and sentencing under the criminal code).

²² *Id.*

²³ Bishop, *supra* note 10, at 102.

²⁴ *Id.*

²⁵ Griffin, *supra* note 13, at 23.

²⁶ *Id.*

²⁷ *Id.*

fenses.²⁸ This limited deterrent effect should not be too surprising, since we know juveniles rarely think about the “long-term” and very likely have not heard of waiver laws in their daily lives. Also, they very likely do not know the possible consequences of their actions. The goal, then, of these laws is not deterrence, but punishment and retribution.

Despite the juvenile system’s limited success in creating a deterrent effect, between 2005 and 2019, the number of cases handled by juvenile systems for all offenses decreased significantly.²⁹ The number of property cases decreased 65 percent, public order cases 59 percent, drug cases 47 percent, and person cases decreased 45 percent.³⁰ This is not because more cases were transferred from juvenile court, but because the number of arrests of people under the age of 18 also decreased during this time period.³¹ With no link to the juvenile system, the involvement of juveniles in crime simply decreased, so juvenile arrest and adjudication fell.

In juvenile court, if a juvenile is determined to have committed the offense with which they are charged, they are “adjudicated delinquent” and they can have sanctions, instead of sentences, imposed upon them. Sanctions can include confinement in a juvenile detention center. Under the Illinois Juvenile Court Act, other possible sanctions that a judge may impose include probation, conditional discharge, substance abuse treatment, suspension of a driver’s license, electronic monitoring, ordering the juvenile to make some restitution, and requiring removal of a gang-affiliated tattoo.³² The Illinois Department of Juvenile Justice runs five detention centers throughout the state.³³ There are 17 county-run juvenile detention centers in the state.³⁴ Across the country, the number of delinquency cases involving detention decreased 54 percent between 2005 and 2019.³⁵

Additionally, the juvenile legal system consistently interacts with juveniles who have mental health struggles. It is estimated that 70 percent of youths involved in the juvenile legal system have diagnosable mental health disor-

²⁸ *Id.*

²⁹ Sarah Hockenberry & Charles Puzanchera, *Juvenile Court Statistics 2019*, NAT’L CTR. FOR JUV. JUST. 6 (June 2021), <https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2019.pdf>.

³⁰ *Id.*

³¹ *Id.*

³² 705 ILCS 405/5-701.

³³ *IDJJ Youth Centers*, ILL. DEP’T. OF JUV. JUST., <https://www.illinois.gov/idjj/Pages/Facilities.aspx> (last visited Mar. 23, 2022).

³⁴ *Category: County Juvenile Detention Centers*, ILL. DEP’T. OF HUM. SERV., <https://www.dhs.state.il.us/page.aspx?item=52232> (last visited Mar. 23, 2022).

³⁵ *Juvenile Court Statistics 2019*, *supra* note 29, at 32.

ders.³⁶ This is over three times the rate at which the general population has diagnosable psychological disorders.³⁷ Despite the supposed rehabilitative focus of the juvenile legal system, interactions with the juvenile system do not guarantee access to mental health care.³⁸ A 2014 census conducted of juvenile residential facilities reported that only 58 percent of these facilities conduct mental health evaluations of the juveniles they work with for mental health problems.³⁹ Moreover, a study conducted by the Northwestern Juvenile Project in 2015 found that only 15 percent of juveniles with diagnosed psychiatric problems received treatment for their disorders while they were in a juvenile detention center.⁴⁰

Many youths find themselves caught in the juvenile system because they are struggling in other areas of their lives. In an interview, Amber Miller, a Supervisor in the Juvenile Justice Division of the Cook County Public Defender's Office and an attorney that worked in the Public Defender's Office for sixteen years, stated that the most difficult part of working with juveniles is "how many needs they have."⁴¹ She explained that many juveniles that she works with have compounded trauma, a history of adverse childhood experiences ("ACES"), or have dealt with larger, society-wide issues like limited access to healthcare or even symptoms of lead poisoning.⁴² Some of the work, Ms. Miller said, of the juvenile public defender is to help triage and coordinate care to address the child's needs.⁴³ The Public Defender's Office, therefore, employs case managers, social workers, an education law attorney, a mental health unit, and a mitigation unit.⁴⁴

The juvenile system has clearly gone through significant changes since its inception. The juvenile system still maintains its goal of rehabilitation, but in practice, Ms. Miller sees that another goal of punishment has been layered on top.⁴⁵ To better align with a goal of rehabilitation, and preparing juveniles for

³⁶ *Intersection Between Mental Health and the Juvenile Justice System*, OFF. OF JUV. JUST. & DELINQ. PREVENTION 1 (July 2017) [https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/intersection_between_mental_health_and\)the_juvenile_justice_system.pdf](https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/intersection_between_mental_health_and)the_juvenile_justice_system.pdf).

³⁷ *Id.* at 3.

³⁸ *Id.* at 4.

³⁹ *Id.*

⁴⁰ *Id.* at 5.

⁴¹ Virtual Interview with Amber Miller, Supervisor, Public Defender's Office, Juvenile Division (April 20, 2022).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

a healthy adult life, Ms. Miller hopes that stakeholders can work together to better identify children's needs and provide coordinated services to meet them well before the probation stage of a juvenile proceeding.⁴⁶ If there are opportunities to "divert, deflect, or defer prosecution" of juveniles, then we should pursue them.⁴⁷ Deflection and diversion involve practices of pointing a child towards supportive services and taking them home instead of arresting them.⁴⁸ Services might include drug treatment programs, counseling programs, or mentoring.⁴⁹ Ms. Miller and other juvenile justice stakeholders have been in conversations with the City of Chicago and its Juvenile Intervention and Support Center to provide recommendations about the development and implementation of such diversion and deflection policies in the Chicago community.⁵⁰ Some recommended practices include providing non-police transport home and minimizing the use of handcuffing juveniles.⁵¹ These practices would limit the lasting, traumatic, and stigmatizing impact of juveniles interacting with police.⁵² Other recommendations involve developing a screening process for juveniles that interact with law enforcement, to better assess their unique needs.⁵³

Ms. Miller believes that the juvenile system best serves youths and the public at large when it is geared towards its original goal of rehabilitation and treating juveniles as the unique population they are.⁵⁴ In terms of promoting public health and safety, Ms. Miller said clearly that "science supports the impact of rehabilitation."⁵⁵ Moreover, she said, "the goal of the juvenile system should not just be restorative justice, but *transformative* justice."⁵⁶ She explained that transformative justice means not rehabilitating children so that they reach their previous state, but actually helping them and making them better moving forward.⁵⁷ That, she says, should be the goal.⁵⁸

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*