

At an adjudicatory hearing, the court hears both evidence and testimony. Because there are no juries in the juvenile justice system, the judge decides whether the juvenile should be adjudicated. If the hearing results in a failure to adjudicate, which is akin to an acquittal in an adult case, the petition may be dismissed and the case closed. Alternatively, if the case is not adjudicated, it could be continued in contemplation of dismissal. If this occurs, the juvenile may be ordered to fulfill some obligation prior to dismissal of the charges, which could include paying restitution or attending drug counseling. The case would not be complete until the juvenile completed the obligation.

Cases that result in adjudication (akin to a finding of guilty in adult court) are then sent forward to a disposition hearing. In the interim, probation staff, a social service worker, or other authorized personnel usually prepare a **disposition plan**, a document that includes recommendations concerning the juvenile's education, training, counseling, and support services needs. The state of Vermont describes the use of the disposition report in this way:

The Plan focuses on the family and/or child, and what they need to do to remedy the problems that brought them to court. All parties, including the court, should receive a copy of the Plan before the hearing. At the hearing, everyone gives their opinion about the report. The judge will either accept or reject the Plan in the Disposition Report and will make a decision about custody of the child at this time.⁶²

Note that the disposition report is less of a sentencing recommendation than it is a services recommendation. The intent of the juvenile justice process is to ensure that the needs of delinquent juveniles are met such that they will be dissuaded from breaking the law in the future. This is in contrast to the adult approach, which focuses more on the immediate ends of punishment rather than long-term rehabilitation.

Judicial Disposition The juvenile justice system has at its core a set of **graduated sanctions**, meaning that low-level offenses committed by first-time offenders are generally treated leniently with probation or some other form of community treatment.

If a juvenile is adjudicated delinquent, an appropriate treatment program will be based on his or her "needs and deeds" and may include paying a fine, paying restitution, participating in community service, participating in drug treatment, or serving a term on probation.

Figure 5-4 shows trends in juvenile adjudications over the years by offense type. The adjudications reported in Figure 5-4 were for out-of-home placement, including detention. Note how the lines in the figure peaked in the mid-1990s and either declined or leveled off thereafter.

The following "Courts in the News" feature illustrates the sanctioning process in a well-known juvenile court case.

disposition plan

A document that includes recommendations concerning the juvenile's education, training, counseling, and support services needs.

Library Extra

5-2 Juvenile Justice in California: Facts and Issues

Web Extra

5-9 American Bar Association's Juvenile Justice Committee

graduated sanctions

Sanctions imposed by the juvenile justice system such that first-time offenders who commit relatively minor offenses are treated leniently (with probation or some other form of community treatment). This system may also result in harsher sanctions for those who commit ensuing or repeat offenses or for offenders who commit severe offenses.

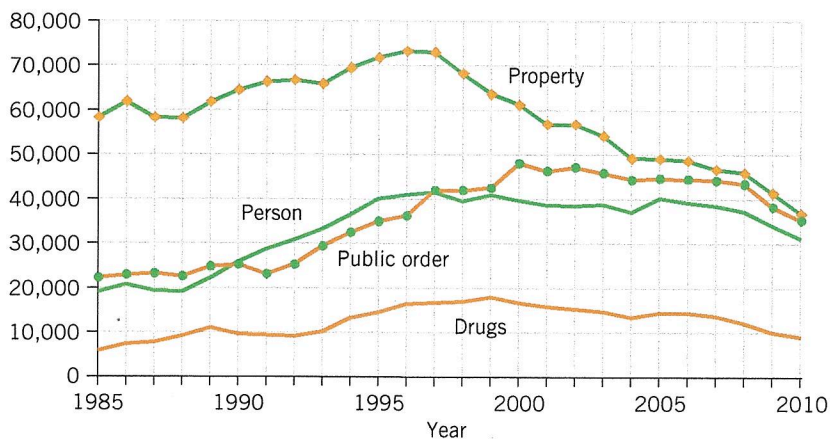
Media

Review: Transfer to Adult Court

FIGURE 5-4

Cases Adjudicated Delinquent, Resulting in Out-of-Home Placement

Source: Charles Puzzanchera, Benjamin Adams, and Sarah Hockenberry, *Juvenile Court Statistics 2010* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, National Center for Juvenile Justice, 2013), p. 46.



The Steubenville Rape Case

In 2012, two members of a champion football team, Trent Mays, 17, and Malik Richmond, 16, were found to be delinquent because they raped a 16-year-old girl after a night of partying and drinking. Both Mays and Richmond claimed that the sexual acts were consensual. As the facts unfolded, there was no doubt that the girl was "substantially impaired." She did remember drinking at the first big party of the night and then holding Mays' hand as she left with him, Richmond, and others. The next thing she remembers, she told the court, is waking up in the morning naked on a couch in an unfamiliar house. She covered herself with a blanket while she looked for her clothes. She testified that she could not find her underwear, earrings, or cell phone. The defense claimed that the sex was consensual and employed expert witnesses who testified that even when drunk people can engage in consensual acts, such as having sex. On March 17, 2013, Judge Thomas Lipps found Mays and Richmond, who were tried as juveniles, and were found guilty of rape.

REUTERS/Keith Sokol/Pool



Trent Mays, and Malik Richmond, shown here, were found guilty of rape in the notorious Steubenville sexual assault case.

for threatening bodily harm. Prosecutors said that they would convene a grand jury to determine if further charges should be filed against witnesses who failed to report the rape and against adults who might have been aware of the rape but covered it up. Of particular interest is what Steubenville High School football coach Reno Saccoccia and other school officials knew about the crime. By law, they are required to report a suspected crime involving children in their care. Text messages from Mays' phone were offered as evidence and indicated that he had told the coach about the encounters and been assured that the coach would protect him from prosecution. "I got Reno. He took care of it and she—ain't gonna happen, even if they did take it to court," Mays said. The Steubenville case shows that courts are now taking a stand against sexual assaults and are willing to hand out harsh sentences in order to protect victims. ■

DISCUSSION QUESTIONS

1. Should these youths have been tried as adults and been sent to an adult prison? Would that have served justice better?
2. Is covering up this crime equally serious as its commission? Would you recommend a prison sentence for any school official who knew about the crime?

Sources: Tina Susman, "Teens Arrested for T writer Threats against Steubenville Rape Victim," *Los Angeles Times*, March 19, 2013, <http://www.latimes.com/news/nation/nationnow/la-na-stubenville-rape-case-writer-threats-20130319,0,3670608,story.html> (accessed May 30, 2013); *Plain Dealer* staff, "Steubenville Rape Case: Defense Expert Says Teen Girl Could Have Made Decisions Even after Heavy Drinking," *Cleveland Plain Dealer*, March 16, 2013, <http://www.cleveland.com/steubenville-rape-case/index.ssf/2013/03/steubenville-rape-case-defense.html> (accessed May 30, 2013); Diana Reese, "Football Wins? Steubenville Coach's Contract Extended despite Allegations in Rape Case," *Washington Post*, April 23, 2013, <http://www.washingtonpost.com/blogs/she-the-people/wp/2013/04/23/football-wins-steubenville-coachs-contract-extended-despite-allegations-in-rape-case> (accessed May 30, 2013).

happened and therefore could not testify clearly about what happened, prosecutors used this fact to prove that she was incapacitated and incapable of consenting to sex. How did they prove their case? By showing videos posted on the Internet of the young woman being mocked by kids who were at the party and e-mails from people who knew what was going on but did nothing to stop the attack. The prosecution was also aided by the investigations of blogger Alexandra Goddard, who sent captured screen shots and other evidence to the police, including one showing two boys carrying the naked victim. Text messages, pictures, and videos found on the Internet indicated that the girl was barely conscious much of the time the attacks occurred. Texts also showed that Mays had attempted to cover up his actions after police became aware of the attack. But that was not all: Two teenage girls from Steubenville, Ohio, were arrested after the verdict and charged with sending online threats to the 16-year-old rape victim. One was charged with a misdemeanor count of aggravated menacing for threatening the victim's life; the younger girl was charged with a misdemeanor count of menacing

Learning Objective 3

Explain the different ways that transfers to adult court take place and the issues surrounding transfers.

Media

Video: Trying Juveniles as Adults

legislative exclusion

A type of juvenile waiver whereby legislative action prohibits trying a juvenile as a juvenile for commission of a specific type of crime^x; also called *statutory exclusion*.

juvenile waiver

A juvenile judicial action that waives jurisdiction over a juvenile charged with committing a particularly harsh crime to adult court.

discretionary waiver

A type of juvenile waiver that “give[s] juvenile court judges discretion to waive jurisdiction in individual cases involving minors, so as to allow prosecution in adult criminal courts.”^{xi}

presumptive waiver

A type of juvenile waiver that involves statutory designation of a category of cases in which waiver to criminal court is presumed to be appropriate but that may be rebutted by the defense.^{xii}

mandatory waiver

A type of juvenile waiver that requires a case to meet certain age, offense, or other criteria to be waived to adult court. A mandatory waiver differs from legislative exclusion because the case begins in a juvenile court (which is not the case with statutory exclusion).

reverse waiver

A legislative mandate that certain cases initiated in an adult court be sent to a juvenile court for an adjudicatory hearing.^{xiii}

TREATMENT OF JUVENILES AS ADULTS

Juvenile courts have always had mechanisms in place for transferring, or waiving, juveniles to adult court. Whether a juvenile can be transferred to adult court varies by state. There are three main mechanisms for treating juveniles as adults: legislative exclusion, waivers, and concurrent jurisdiction. See Figure 5–5 for an overview.

Legislative Exclusion

Legislative exclusion (also called statutory exclusion) refers to the fact that a statute excludes, or bars, a juvenile from being tried as a juvenile. In other words, legislative exclusion requires that certain juveniles be treated as adults; for example, Mississippi excludes all felonies committed by 17-year-olds,⁶³ whereas Arizona excludes any felony committed by a juvenile as young as 15 years old.⁶⁴

Waivers

The term **juvenile waiver** refers to trying juveniles as adults, or waiving them to adult court. Waivers have been around for some time, and they have been used on occasion when a juvenile commits a particularly harsh crime and there is a desire to charge him or her in the adult justice system. Recent changes have made it easier to try juveniles as adult offenders, a significant departure from the original intent of having a separate juvenile justice system. There are three main types of waivers used with juveniles:

1. *Discretionary waiver*. A **discretionary waiver**, as defined by several states, “gives juvenile court judges discretion to waive jurisdiction in individual cases involving minors, so as to allow prosecution in adult criminal courts. Terminology varies from State to State—some call the process a ‘certification,’ ‘bind-over,’ or ‘remand’ for criminal prosecution, for example, or a ‘transfer’ or ‘decline’ rather than a waiver proceeding—but all transfer mechanisms in this category have the effect of authorizing but not requiring juvenile courts to designate appropriate cases for adult prosecution.”⁶⁵
2. *Presumptive waiver*. Several state statutes designate a category of cases called **presumptive waiver**, in which waiver to criminal court is presumed to be appropriate. “In such cases, the juvenile rather than the State bears the burden of proof in the waiver hearing; if a juvenile meeting age, offense, or other statutory criteria triggering the presumption fails to make an adequate argument against transfer, the juvenile court must send the case to criminal court.”⁶⁶
3. *Mandatory waiver*. Several states use a **mandatory waiver** “in cases that meet certain age, offense, or other criteria. In these States, proceedings against the juvenile are initiated in juvenile court. However, the juvenile court has no role other than to confirm that the statutory requirements for mandatory waiver are met. Once it has done so, the juvenile court must send the case to a court of criminal jurisdiction.”⁶⁷

In a twist on these approaches to waiver, some states have **reverse waiver**, which requires that certain cases initiated in adult court be sent to the juvenile court for an adjudicatory hearing.⁶⁸ In yet another twist, some state waiver laws have “once an adult, always an adult” provisions, requiring that once a juvenile is waived to adult court, all other offenses he or she commits are to be tried in adult court.⁶⁹

concurrent jurisdiction

The legislative authority to try juvenile cases in either juvenile or adult court, with the prosecutor deciding where the case should be tried.

Learning Objective 4

Summarize recent trends and developments in the juvenile justice system.

Web Extra

5-10 National Center for Juvenile Justice (NCJJ)

Library Extra

5-3 Models for Change in Juvenile Justice

offense-based sentencing

The practice of sentencing a juvenile based on the severity of his or her crime rather than following the traditional practice of sentencing the juvenile based on his or her need for treatment and rehabilitation.

blended sentence

A form of offense-based sentencing that requires the juvenile to serve both a term of probation and time in an adult correctional facility.^{xiv}

extended jurisdiction

The legislative authority for juvenile court judges to commit a juvenile to a correctional facility beyond the age of 18.^{xv}

Concurrent Jurisdiction

Concurrent jurisdiction means that certain cases can be tried in both juvenile and adult court, and the prosecutor makes a decision as to where the case should be tried. Concurrent jurisdiction sometimes occurs outside of the juvenile justice context as well. For example, if both a federal and a state court could try the same offense, it is said that each has concurrent jurisdiction.

In addition to the jurisdiction issue, the question of a connection between juvenile violence and use of violent video games has been raised in many juvenile court cases. See the “Courts in the News” feature for more details.

CHANGING LANDSCAPE OF JUVENILE JUSTICE

Juvenile justice continues to change in ways that make it look more like the adult criminal justice system. Concern over juvenile violence, gang activity, school shootings, and the like has convinced policy makers that the juvenile justice system coddles dangerous young offenders; as a result, there has been a movement to toughen juvenile justice standards and to shift the juvenile court away from its traditional *parens patriae* philosophy as well as an increase in sanctions for juveniles, greater offender accountability, and restrictions in terms of the privacy that juveniles have historically enjoyed.

Increased Sanctions

Juvenile sentences have also changed over time and now are more punitive than ever before. For example, many states have allowed juvenile court judges to engage in **offense-based sentencing**, where the sentence reflects the seriousness of the offense. This is in contrast to the traditional practice of sentencing juveniles based not on the offense they committed but on their need for treatment and rehabilitation. Remember, the juvenile justice system was created for the purpose of “correcting” the behavior of wayward youth, not indiscriminately punishing them.

Offense-based sentencing can include the use of **blended sentences**, which require juveniles not only to serve a term of probation but also to spend time in an adult correctional facility.⁷⁰ Sentencing guidelines, providing fixed sentences based on offense seriousness and the offender’s prior record, are also used some of the time. Further, some states permit **extended jurisdiction**, allowing juvenile court judges to commit a juvenile to a correctional facility beyond the age of 18.⁷¹ With extended jurisdiction, a juvenile could be sentenced to both a juvenile and an adult sentence. The adult sentence may then be “stayed” while the juvenile serves the juvenile sentence, but if he or she violates the terms of the juvenile sentence, the adult sentence will then start. The court’s extended jurisdiction would end when the juvenile finishes serving the adult term, perhaps when he or she is well beyond the age of 18 years.

More Accountability

In 2009, the most recent year for which data are available at this writing, about 19 percent of juvenile cases were dismissed at intake.⁷² Another 27 percent were handled informally. In more than half of the cases, however, authorities filed a petition and the case was handled formally. These numbers may not in themselves suggest that juveniles are being held more accountable than ever for their actions, but consider adjudication and disposition. In 2009, juveniles were adjudicated delinquent in 59 percent of the petitioned cases, a nearly 45 percent increase from 1985. These numbers signal a movement in the direction of increased accountability for juvenile offenders. Add to this continued use of the juvenile waiver, and it is clear that juvenile crime is being taken seriously.

Also offering evidence of a desire to increase juvenile accountability are changes to state laws affecting how juvenile cases are screened. In 1977, Washington State ceased to rely on probation officers to screen juvenile cases, leaving filing decisions totally in the hands of prosecutors. According to the law, either sufficiently strong cases must be adjudicated in court or the juvenile should be diverted into any number of distinct treatment/rehabilitation programs. Diversion is a slightly less formal approach to handling juvenile crime, but youth still typically sign a contract and agree to abide by program terms; otherwise, they have to go before a judge in a formal hearing. Washington State's decision to elevate the role of prosecutors in juvenile cases signals not only a concern with accountability for young offenders but also a blurring of the lines between the adult and juvenile justice systems.

Less Privacy

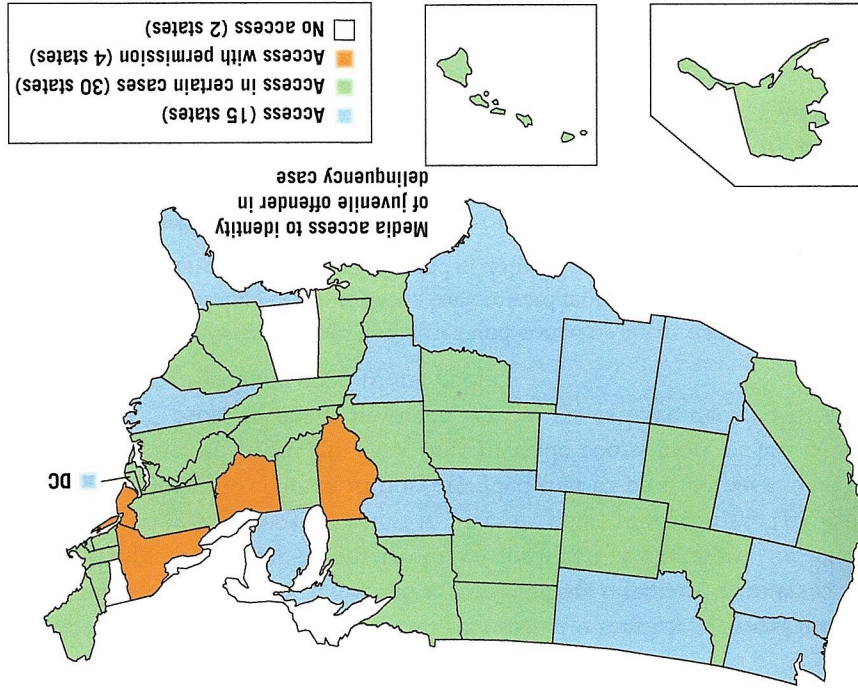
Library Extra
5-4 Recommendations for
Juvenile Justice Reform

Records of juvenile court proceedings have historically been off limits, and offenders' names, records, and personal information were also sealed from prying eyes. But some states have begun to relax their restrictions on access to juvenile records. For example, several states have enacted legislation to give the public and/or media access to the names and addresses of juveniles adjudicated for specific offenses (see Figure 5-6 for an overview). Court records

FIGURE 5-6

Media Access to Juvenile Identities by State

Source: H. N. Snyder and M. Sickmund, *Juvenile Offenders and Victims: 2006 National Report* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006), chap. 4, p. 109. Copyright © 2006 National Center for Juvenile Justice. Reprinted by permission.



- Access: In 14 of the 15 jurisdictions, media can obtain access to the juvenile offender's identity by attending delinquency hearings, which are open to the public. In the District of Columbia, the state allows the media to attend hearings (although hearings are not public) but prohibits the media from revealing the juvenile's identity.
- Access in certain cases: In 30 states, media can access the juvenile offender's identity for certain cases. Media access is tied to public access to hearings or records, which states limit by case characteristics such as the juvenile's age, offense, criminal history, or whether the case is transferred to criminal court.
- Access with permission: In 4 states, media access to delinquency hearings or records (and thus to juvenile offender identities) can only occur if the court gives permission or the media discover the information independently. In these states, states require that the court decide the issue on a case-by-case basis.
- No access: In 2 states, states prohibit release of the names of all juvenile offenders. In 3 states (Maryland, New Jersey, and Wisconsin), under certain circumstances, the media may be prohibited from revealing the juvenile's identity.