

INTERNATIONAL PERSPECTIVES ON FORENSIC MENTAL HEALTH

Kirk Heilbrun,
David DeMatteo,
Christopher King,
and Sarah Filone

Evaluating Juvenile Transfer and Disposition

Law, Science, and Practice



EVALUATING JUVENILE TRANSFER AND DISPOSITION

Focusing on juvenile transfer and disposition evaluations, this volume provides an up-to-date integration of current law, science, and practice with respect to juvenile risk assessment, treatment needs/amenability, and sophistication-maturity. Included are perspectives relating to international practices, the use of specialized assessment tools, and a separate chapter on resentencing following US Supreme Court decisions on juveniles sentenced to mandatory life without parole. This text will be a useful and comprehensive reference for forensic psychologists and other mental health professionals engaged in juvenile evaluation, as well as legal professionals, juvenile and criminal justice professionals, and others involved with juvenile assessment, decision-making, and rehabilitation.

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EVALUATING JUVENILE TRANSFER AND DISPOSITION

LAW, SCIENCE, AND PRACTICE

**Kirk Heilbrun, David DeMatteo,
Christopher King, and Sarah Filone**



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To the many dedicated legal and mental health professionals who
work with justice-involved youth

KH, DD

To Sarah, and our families and mentors

CK

To my mother-in-law, Susan, for all her work with justice-involved youth.
And to my husband, for his ever-present support.

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FOREWORD

The International Association of Forensic Mental Health Services (IAFMHS) is an interdisciplinary professional society representing forensic professionals engaged in research and practice in forensic mental health. Its membership includes psychologists, psychiatrists, social workers, nurses, and lawyers representing over 22 countries worldwide. Its goals are to promote education, training, and research in forensic mental health and to enhance the standards of forensic mental health services in the international community. The IAFMHS holds an annual conference, and publishes a journal (*International Journal of Forensic Mental Health*) and a book series (International Perspectives on Forensic Mental Health).

The goal of the book series is to improve the quality of healthcare services in forensic settings by providing a forum for discussing issues related to policy, administration, clinical practice, and research. The series covers topics such as mental health law; the organization and administration of forensic services for people with mental disorder; the development, implementation and evaluation of treatment programs for mental disorder in civil and criminal justice settings; the assessment and management of violence risk, including risk for sexual violence and family violence; and staff selection, training, and development in forensic mental health systems.

I am delighted to add *Evaluating Juvenile Transfer and Disposition: Law, Science, and Practice* to the list of books in this series. Kirk Heilbrun, David DeMatteo, Chris King, and Sarah Filone have produced an outstanding book that provides a comprehensive analysis of forensic assessments of juveniles in the context of juvenile transfer and disposition. Transfer

of juvenile offenders to adult court has been an important focus of a considerable amount of literature in the last 25 years or so. The use of transfer, including the automatic transfer of 16- and 17-years-olds charged with violent offenses, saw a dramatic increase in the 1990s. This continued into the early part of the century but notably, the use of transfers has been on the decline in many jurisdictions across the US. This is due in part to research showing that transfers are counterproductive in the long term due to the research findings that recidivism rates may actually be higher for those youth incarcerated as adults. As well, there is evidence of increased risk of sexual and physical abuse in prison for these youth.

Attitudes toward transfer of youth to adult court, and indeed the treatment of young offenders generally, has been influenced by a series of US Supreme Court cases (*Roper v. Simmons*, *Graham v. Florida*, *Miller v. Alabama*, *Montgomery v. Louisiana*) that referred heavily to the growing body of developmental research showing that juveniles are immature, impulsive, irresponsible, and highly susceptible to peer influences compared to adults. Importantly, the Supreme Court also recognized that juveniles are more amenable to change. The Supreme Court's opinions in these cases supported the view that adolescents should be considered less culpable than adults and also reinforced the perspective that the juvenile justice system should move away from the punitive approach of the last few decades to the more rehabilitation focus that was the rationale for the juvenile justice system when it was created well over 100 years ago.

Forensic psychologists provide assessments of youth being considered for transfer to adult court. Many states make this transfer automatic for 16- or 17-year-old youth charged with violent offenses so no hearing or evaluation takes place. However, a reverse transfer is possible and an evaluation would be conducted if this were considered. For youth not subject to automatic transfer, a hearing is always held, and forensic psychologists can contribute evaluations that may assist the court in reaching a decision about whether to retain a youth in the juvenile system or order a transfer to adult jurisdiction. Another Supreme Court case, *Kent v. United States*, provides the court with criteria to consider in these cases. There are eight Kent

criteria that can guide the court in its decision, three of which are relevant to the expertise of forensic psychologists: risk and protection of the public, sophistication and maturity, and the likelihood of reasonable rehabilitation of the juvenile (if the youth is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the Juvenile Court. Heilbrun and his colleagues present a model to conduct these evaluations, with a particular focus on how an assessment of risk, treatment needs and amenability can be used to evaluate rehabilitation potential. Following a thorough review of the developmental research and its implications for the evaluation of juvenile transfer and disposition, separate chapters provide a framework for the assessment of risk, treatment needs and amenability, and sophistication-maturity. These chapters provide a clear roadmap for evaluators who conduct these assessments.

The evaluation framework alone makes this a valuable book for forensic evaluators. But there is much more. Some youth who had been transferred to adult court over the past several decades were convicted and automatically sentenced to life without parole. The series of Supreme Court cases noted earlier in this Foreword has ruled that these automatic sentences are unconstitutional and thus nullified all prior mandatory life without parole sentences. These offenders, some of whom have already spent decades in prison, are now eligible for either a parole hearing or a resentencing hearing. It is estimated that more than 2,000 offenders nationally are affected by this decision. Heilbrun and colleagues present a framework for how these evaluations can be conducted, with a particular focus on the five factors that *Miller v. Alabama* identified that can be considered in deciding the sentence of an individual convicted of a violent offense as a juvenile. These include the juvenile's age and maturity at the time of the offense; the circumstances of familial dependency and vulnerability that are a part of adolescence, as well as the susceptibility to peer influences and environmental pressures; the circumstances of the offense, with special attention to the youth's role in the offense; the youth's capacity to waive arrest rights or competence to stand trial; and the potential for rehabilitation. The authors review forensic assessment

instruments and other psychological tests that can be helpful in evaluating these five factors.

A welcome feature of this book, particularly since it is published in the International Perspectives on Forensic Mental Health book series, is its chapter on international juvenile justice models and trends. This chapter applies the developmental research and assessment model to the evaluation of disposition and transfer in other countries, with a particular focus on Canada, Europe, Australia, and New Zealand.

This is the first book to focus solely on the transfer of youth to adult court. It provides a framework for best practices in assessing youth charged with serious offenses that comprehensively integrates relevant law and policy, developmental and other relevant research, forensic assessment instruments, and practice guidelines. As such, it will be a valuable resource for forensic evaluators, researchers, legal scholars, and students.

RONALD ROESCH

International Perspectives on
Forensic Mental Health Series Editor

PREFACE

We decided to write this book because it fills an important gap in the literature. The forensic evaluation of justice-involved youth for the purposes of assisting the court in the decisions of transfer, reverse transfer, and disposition is important and complex. There have been very significant developments over the last two decades in areas such as US Supreme Court decisions, research in human development, the emergence of specialized risk-need measures, and the clarification that many adults sentenced to life without parole for crimes committed as juveniles would need resentencing. Yet there was no book available that sought to integrate relevant law and policy, research, and practice considerations at the time we began this project.

That has changed for the better. But our goals for this book—the review of a large but uneven literature; the distillation of the important components of these evaluations; the discussion of relevant law, science, ethics, and practice standards; the integration of this material toward meaningful “next steps” in law, policy, practice, and research; and the provision of international comparisons of juvenile justice—make it an unusual and helpful contribution, to the extent that we have succeeded.

We are grateful for the congenial environment provided by Drexel University, particularly the Department of Psychology and the Thomas R. Kline School of Law, that allowed the four of us to collaborate. We

PREFACE

are equally grateful for the many contributions to this area provided by researchers, scholars, legal and forensic practitioners, and policy advocates.

KIRK HEILBRUN AND DAVID DEMATTO, PHILADELPHIA, PA
CHRISTOPHER KING, MONTCLAIR, NJ
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CHAPTER ONE

The Juvenile Justice System in The United States: History Relevant to Disposition, Transfer, and Reverse Transfer

Our society has an important interest in juvenile justice. If the juvenile justice system is to meet its primary goals of rehabilitating youth who commit crimes and protecting the public, then legal decision-making about juveniles must be well informed. This means that judges and attorneys must receive juvenile forensic evaluations that are relevant, understandable, practical, based on scientific data, and guided by best practice. It also means that policy-makers and clinical administrators must insist on making such information available to the courts, and the forensic mental health professionals who provide them must be sufficiently informed and thorough to offer such evaluations to legal decision-makers. One of our goals in writing this book is to provide detailed, balanced, and relevant information on the questions of juvenile disposition, transfer, and reverse transfer. We also discuss the resentencing of adolescents who originally received mandatory life sentences as adults—such resentencing is now required under recent United States Supreme Court decisions. We review evidence suggesting that there is considerable room for improvement in the evaluations now being provided to courts making decisions about juveniles, despite important advances in our capacities to assess and rehabilitate justice-involved youth. We hope that by assembling, critically reviewing, and distilling the relevant evidence, we can provide a resource to improve the clinical forensic evaluation of juveniles—and enhance the information available to courts and attorneys who request them.

DEFINING DISPOSITION, TRANSFER, AND REVERSE TRANSFER

When a juvenile judge considers the question of where, how long, and under what conditions a youth adjudicated as delinquent should be placed, that is a question of *disposition*. It is the juvenile equivalent of sentencing in the adult system. The decision has also been called *commitment* or *placement*. In other cases, there is a question of whether a youth should be moved from juvenile court to adult criminal court. This is a decision regarding *transfer*. It has also been called *certification*,

waiver, remand, or bindover. Finally, a youth who has been initially placed in criminal court because of relevant statutes or prosecutorial discretion has, in some states, the right to petition the criminal court for a return to juvenile court. This is a question of *reverse transfer*. These are the three juvenile forensic issues addressed in this book.

There are other legal questions facing juvenile court judges regarding justice-involved youth, of course. Indeed, there are numerous points along the juvenile justice continuum where assessments conducted by different professionals, both informally and formally, affect how youths are subsequently treated. These points have been described as follows: pre-arrest diversion, arrest procedures, filing of criminal charges, pretrial detention, transfer to and from adult court, competency to stand trial, adjudication, disposition, sentencing, rehabilitation intervention planning, and supervision planning (Hoge, 2012). The issues of competence to proceed, and the defendant's capacity to waive *Miranda* rights prior to making an inculpatory statement while in police custody, have been discussed in detail elsewhere (Goldstein, Kelley *et al.*, 2016; Kruh & Grisso, 2009). There are also juvenile placement and rehabilitation-planning evaluations, as well as progress and outcome evaluations (Grisso, 2013). But we focus on disposition because there has been surprisingly little book-length attention centered on this frequent decision by juvenile courts, and on transfer and reverse transfer because of their relevance to whether youth will be rehabilitated in the juvenile or adult system.

There have been a number of chapters and articles on disposition and transfer, however. According to Chen & Salekin (2012), there have been a variety of important contributions in this area over the last 30 years (see Brannen, Salekin *et al.*, 2006; Ewing, 1990; Grisso, 2000, 2013; Kalogerakis, 1992; Kruh & Brodsky, 1997; Melton, Petrila *et al.*, 2007; Salekin, 2004a; Salekin & Grimes, 2008; Salekin, Rogers *et al.*, 2001; Salekin, Yff *et al.*, 2002; Schetky & Benedek, 2002; Weiner & Hess, 2006; and Witt, 2003). Further recommendations for guidance on juvenile transfer evaluations (Grisso, 2013) include Barnum (1987, 1990), Grisso (2010–11), Loving & Patapis (2007), Penney & Moretti (2005), Salekin (2002b), and Witt & Dyer (1997).

All provide valuable perspectives on this topic. To date, however, there has been only one book on juvenile disposition and transfer (see Salekin, 2015a). Finally, a number of chapters and texts have addressed the role of forensic professionals in delinquency matters in general, often as evaluators of different risks and needs (e.g. Borum, 2006; Conroy, 2012; Conroy & Murrie, 2007; Grisso, 2013; Heilbrun *et al.*, 2005; Hoge & Andrews, 2010a).

As we discuss in detail throughout this book, the question of “juvenile versus adult system” is important for the individuals involved, and for society and public policy more broadly. We focus on disposition, transfer, and reverse transfer in part because several of the criteria for these decisions across most jurisdictions—public safety, treatment needs and amenability, and sophistication-maturity—are similar.

Mental health professionals in the early twentieth century served newly-developed juvenile courts by offering holistic and multidisciplinary evaluations of youths that were consistent with the era’s broad and exclusive focus on rehabilitation. As times and legal policies changed, evaluators began to incorporate information relevant to public safety, juveniles’ rights, and mental health and trauma-related needs (Grisso, 2013). The primary areas addressed in contemporary juvenile evaluations have been described as mental health, maturity, risk for violence and offending, adjudicative competence, and treatment effectiveness (Otto & Douglas, 2010).

Models including risk, and needs that are relevant to both criminality and behavioral health, have been usefully applied to the core questions in disposition and transfer. There are, of course, other juvenile justice questions beyond disposition and transfer that can be informed by such models. Risk and risk–need assessment are useful for pre-adjudication decision-making to help determine: (1) the appropriateness of early-stage diversion; (2) whether secure detention is warranted at intake and leading up to the adjudication hearing; (3) whether a juvenile is likely to harm other youths while in custody; and (4) what services may be necessary to manage acute needs or crises. Risk assessment services are also useful at various steps following the disposition decision. First, these services help inform juvenile corrections about initial placement, and whether

less secure placements are appropriate based on risk and need. Second, in some jurisdictions, risk assessment services help to inform decisions about whether to extend juvenile jurisdiction past the usual maximum age for an individual who presents an ongoing high risk. Advances in rehabilitation-oriented evaluations for justice-involved youth—addressing domains such as re-offense risk, physical and mental health, family and social support, schooling and work, finances and housing, recreation, and spirituality, and monitoring response to interventions—are important in delivering rehabilitative services (Grisso, 2013). Although such post-disposition rehabilitative evaluations are beyond the scope of this book, it is important to note that risk and need assessment—and interventions provided in accordance with such assessment—may provide valuable information for rehabilitation planning and implementation.

There is an important question that will recur throughout this book. Certainly the evaluation of justice-involved youth includes both clinical/behavioral domains and legal domains (Otto & Douglas, 2010). But the questions of public safety, treatment needs and amenability, risk, and risk reduction raise several important considerations. Risk of what? Are youth receiving interventions to improve their clinical functioning and behavioral effectiveness? Should the interventions primarily target risk factors for offending, with the goal of making re-offending less likely? Can interventions do both? In an era of limited resources for such interventions, it is important to ask such questions, and make decisions according to the best evidence available.

The decision-making criteria are similar across the issues of disposition and transfer, but the outcomes can be quite different. The rehabilitative goals of juvenile disposition can be implemented through options ranging from home-based community intervention and probation to intermediate security residential placements to higher security, more remote facilities. In the criminal system, which handles youth who are transferred, there is more exposure to inmates who are 18 or older—and a criminal conviction that is part of that individual's record permanently (Elrod & Ryder, 2011). These are potentially very important differences. Review of the empirical

evidence on the outcomes associated with the juvenile and criminal systems (in [Chapter 8](#), this volume) will clarify how important.

JUVENILE JUSTICE, DISPOSITION, AND TRANSFER: RELEVANT HISTORY

In this section, we focus on the aspects of juvenile justice history providing the most important context for juvenile disposition and transfer evaluations. We summarize (1) how the juvenile system developed as a separate entity from the criminal justice system and how its major goals have shifted over time, and (2) where the system now stands on disposition, transfer, and reverse transfer. We provide this history to contextualize the law that is described in [Chapter 2](#) (this volume), and the forensic questions that form the basis for evaluations of transfer and disposition.

THE JUVENILE SYSTEM: ORIGINAL DEVELOPMENT AND PHILOSOPHY

Youth are considered differently than adults in many areas of the law (McPherson, 2012). Prior to the end of the nineteenth century, juveniles were considered and adjudicated within the criminal law. There were distinctions between young children and other defendants, however. For instance, in the tenth century, Anglo-Saxon and English law exempted children under the age of 15 who committed robbery from death sentences—and even from imprisonment—if their families assured the authorities that their children would desist from illicit conduct (Dattilio & Fromm, 2011). Under common law, infancy was a defense against criminal charges until a certain age (which varied between seven and ten, depending on the jurisdiction). Children up to the age of 14 were presumed incapable of forming criminal intent, although this could be rebutted by a showing of maturity (see Melton, Petrila *et al.*, 2007).

In the late nineteenth century, the common law tradition of full application of the law to relatively young children began to be replaced by a new system of segregating youth (Melton, Petrila *et al.*, 2007). The newly-defined period of “adolescence” allowed an extended period for socializing youth. This lengthier period of socialization was intended to buffer them from baser instincts and undesirable “lower”/working/immigrant-class influences, and prepare them for more complex industrial-age jobs. More detailed coverage of the social construction of childhood and adolescence, the social welfare model, their foundational role in the history of the early juvenile court, and the tension between the social welfare model and criminal social model is beyond the scope of this book, but available elsewhere (Feld, 2006; Jensen, 2006). The creation of the juvenile court was one of numerous legal changes of the early twentieth century, developed in response to changing conceptions of childhood and adolescence. It was established in the larger context of other social structures and practices, and continues to interact with them (Bartol & Bartol, 2009; Chen & Salekin, 2012; Dattilio & Fromm, 2011; Dupée, 2002; Elrod & Ryder, 2011; Gardner, 2014; Guerra, Hoge *et al.*, 2008; Heilbrun *et al.*, 2005; Salekin, 2015; Weithorn, 2006). These related institutions and mandates include child labor laws (Jensen & Arnett, 2012); schools and compulsory school attendance requirements (Dohrn, 2002; Jensen & Arnett, 2012); child welfare (Grossberg, 2002); institutional care for welfare, correctional, mental health, or substance abuse purposes (Lerman, 2002); and politics (Edelman, 2002). A summary of many of these developments is provided in [Table 1.1](#).

The early juvenile court philosophy emphasized that the interests of the state and the youth were reciprocal: the state was to act on behalf of the juvenile to ensure proper socialization, so the youth could overcome age-related uncivilized tendencies and problematic socio-cultural influences that had culminated in illegal behavior. The juvenile court ideal was rehabilitative. Legal protections and adversarial procedures were deemed unnecessary due to the absence of retributive goals, and the potential of such protections to impede treatment. Proceedings and records were

Table 1.1 The Juvenile Court and Related Social-contextual Institutions and Policies

Social institution or policy	Historical relevance to the juvenile court
Social control of children before the juvenile court	<ul style="list-style-type: none">• <i>Medieval view of childhood in developing Europe and the role of the family in the early social control of children</i> (e.g. harsh conditions for children and views of them as miniature adults and personal property started to change around 1300 to 1400 to emerging conceptions of childhood and adolescence, loving parent–child relations, etc.).• <i>Social control of children in Europe in the 1500s and 1600s and in early America</i> (e.g. state and local control; treating children like all other dependent persons; child labor, including binding out and apprenticeship systems; family responsibility and limiting public fundings; harsh parenting practices; religious morality; early youth welfare and correctional institutions, such as houses of refuge and facilities styled after English bridewells; public reprimands and warnings; fines; whippings; brandings; placements in stocks or pillories; banishment; capital punishment for a variety of infractions).• <i>Children and family in the 1800s</i> (e.g. developments in hybrid public and private agencies to provide assistance to different groups of children, including early juvenile welfare and correctional institutions, such as houses of refuge; non-institutional placements, called <i>placing out</i>; probation; and reform, industrial, and training school).
	<ul style="list-style-type: none">• <i>Antecedents/social context prompting the juvenile court movement</i> (e.g. prolongation of childhood and concerns about the moral socialization of young persons perceived to be in need; shift from an agricultural to an industrial economy, and from a rural to an increasingly urban society).
	<ul style="list-style-type: none">• <i>The parens patriae era from 1899 to 1965</i> (e.g. retrofitting developing juvenile courts with a complaint system, broad and exclusive jurisdiction up to at least the age of majority, chancery-style proceedings, confidential records and private hearings, detention, probation, and psychiatric clinic services; handling mothers' petitions from the 1910s to 1930).
Early juvenile court	

Social construction of childhood and adolescence, the government, and the politics concerning youths

- *Early twentieth century* (e.g. emergence of *youth* and *adolescence* as distinct periods; extending childhood through Progressive Movement focus on child labor laws, compulsory education, socialization organizations and moral legislation, and the juvenile court; the precursor to family–child welfare such as family foster care, and other solutions to large orphanages and other residential institutions for children).
- *Depression era* (e.g. first national youth policy in the form of the National Youth Administration and the de facto youth policy of World War I military mobilization).
- *Post-World War II era* (e.g. commitment to high-school graduation, steep decrease in job availability for those without a high school diploma; urbanization and job discrimination; suburbanization, deindustrialization, technological advancement, and globalization).
- *1960s and 1970s: liberalism era* (e.g. major youth participation in the civil rights movement, urban violence and militant race-based groups, Vietnam War, lowered voting age, delinquency prevention and the war on poverty, progressive and conservative Supreme Court decisions concerning children and youth in the 1960s and 1970s, respectively).
- *Late-twentieth century* (e.g. changes in economic, educational, family structure; violent crime increases in the 1970s and 1980s, particularly for minority youths of low socioeconomic status; public cry for tougher law enforcement and criminal justice, which disproportionately affected poor, minority youths; educational requirements for jobs continued to rise while the availability of good jobs decreased; increase in immigrant youths; restrictions on welfare benefits).
- *Looking forward* (e.g. policies for family socioeconomics, education and activities for the non-schooling hours, youths with psychosocial problems, and youths with involvement in crime).

(Continued)

Table 1.1 The Juvenile Court and Related Social-contextual Institutions and Policies (Continued)

Social institution or policy	Historical relevance to the juvenile court
Schools	<ul style="list-style-type: none">• <i>Historic overlap between school and juvenile court</i> (e.g. early juvenile court reformers also interested in reforming child labor and education; the juvenile court conceived of as a type of social instruction for parents and children, and operated as an educator to the public about wayward and needy children; school attendance was a primary performance metric for the juvenile court).• <i>Referrals from schools to the juvenile court</i> (e.g. truancy and parental schools; deinstitutionalization of truants and other status offenders; distinct treatment of girls, often due to sexual activity concerns or gender-specific offending; within-school offending and violence, traditional school discipline strategies, children with disabilities and the advent of special education and accommodations, increased school security, in-school policing, and zero tolerance policies; and abuse and neglect).• <i>Juvenile court programs concerning community schooling</i> (e.g. school attendance disposition conditions; probation, social work, and court clinic; and court-created community schools and later classes as an alternative disposition option).• <i>Schooling while detained</i> (e.g. early reform and training schools, education in juvenile correctional facilities and complications).• <i>Return to public schools following release from custody and related complications.</i>• <i>Child welfare</i> (e.g. home care situation prior to 1935; federal assistance program and deinstitutionalization from 1935 to 1962; reforms in federal policies and funding regarding home care from the 1960s to 1990s; types of placements, lengths of stays).• <i>Juvenile corrections</i> (e.g. deinstitutionalization situation and scientific treatment of delinquency from the 1900s to 1950s, situation concerning alternatives to training schools in the 1950s to 1970s, federal involvement in the 1970s to 2000s; census and length-of-stay data and facility counts over time; atmospheres of public versus private facilities; interstate variability versus a national vantage; gender and racial disparities).
Systems of institutional care for youths with psychosocial problems	

- *Mental health system* (e.g. increasing recognition of childhood mental disorders; general hospital mental health units; public and private psychiatric hospitals; residential treatment centers; hybrid inpatient/outpatient organizations; psychoactive drugs; diverse funding; differential service utilization by demographic factors).
- *Substance abuse system* (e.g. detoxification and residential treatment in hospitals and private settings; processing of juvenile drug offenders in the juvenile justice system versus the substance abuse system).
- *Myths: beliefs held without knowledge of or concern for accuracy* (e.g. severity of delinquency in the past relative to today's delinquency; juvenile violence epidemic of the late 1980s and early 1990s; juveniles as chiefly responsible for the increase in violence in the United States between the 1980s and 1990s; juvenile super-predators; juvenile crime as the leading crime problem facing the United States; juvenile possession and use of firearms, juvenile perpetrated school shootings as a more recent crime wave, increasing violence among younger juveniles, the juvenile justice system is a failure or cannot handle serious, violent, and chronic juvenile offenders; the juvenile justice system currently prioritizes punitive approaches over rehabilitative ones; juvenile correctional systems are a failure in terms of recidivism; juvenile transfer to adult court will reduce juvenile delinquency; public support has waned for juvenile offender rehabilitation; nothing works with juvenile offenders; community-based programs for juvenile offenders are ineffective)
- *Moral panic—exaggerated perception of a threat from a group or situation* (e.g. twentieth-century moral panics concerning juvenile delinquents in 1920s, 1932, 1946, 1954, 1977, late 1990s).
- *Harsh-lenient pendulum in juvenile justice.*

Public perceptions

Adapted chiefly from Elrod & Ryder (2011), Howell (2009), and Rosenheim, Zimring *et al.* (2002). See also Bartol & Bartol (2009), Chen & Salekin (2012), Dattilio & Fromm (2011), Gardner (2014), Grisso (2003a, 2013), Guerra, Hoge *et al.* (2008), Heilbrun, Goldstein *et al.* (2005), Howell, Lipsey *et al.* (2014), Jensen (2006), Otto, Borum *et al.* (2012), Salekin (2015a), and Weithorn (2006).

closed and sealed to avoid stigma; civil terminology and procedures were used to distinguish the juvenile system from the criminal justice system; dispositions were intended to be responsive to the offender rather than the offense; the category of “status offense” was created to expand the jurisdiction of the court; and the primary actors were to be clinicians and caseworkers rather than legal professionals.

Beginning around the early twentieth century, dependency courts began to extend their jurisdiction to include youths who committed crime, or non-criminal but unruly behavior (e.g. status offenses) (Weithorn, 2006). The underlying assumptions were that minors were (1) less responsible and blameworthy for their misconduct than were adult offenders due to lack of mature reasoning and self-control abilities, and (2) more amenable to intervention because they were still developing. These courts exercised substantial discretion over the remaining minor years for the children and adolescents who appeared before them, regardless of the initial grounds for jurisdiction. Their less adversarial approach and purportedly non-punitive means were used to justify their failure to provide adult-level procedural protections in the areas of due process, standards of proof, and participatory capacities (Weithorn, 2006).

The Illinois Juvenile Court Act of 1899 established the first juvenile court in the United States, in Cook County (Chicago), Illinois (Levick & Feirman, 2016). Among its designated purposes were enhancing the emphasis on rehabilitation, establishing a less formal setting for decision-making that was also separate from that used with adults, and limiting the consequences of juvenile misconduct (Zimring, 2005). The specialized juvenile court, and the larger juvenile justice system of which it was a part, expanded rapidly following the establishment of the first juvenile court. Nearly every state in the US had established a separate juvenile justice system by 1925 (Dattilio & Fromm, 2011; Snyder & Sickmund, 1999). Some of the differences in the newly-established juvenile courts were linguistic: crimes became “offenses,” trials were “proceedings,” youth were “adjudicated delinquent” rather than found guilty, and received “dispositions” rather than sentences (Shulman & Steinberg, 2016). Because the overwhelming priority of the juvenile system

was rehabilitative, these courts featured (1) fewer due process protections, (2) “individualized” decisions with disposition determined by the needs of the youth rather than the nature of the offense, and (3) jurisdiction over “status” offenses (e.g. incorrigibility, unruliness) that would not have been illegal but for the age of the youth (Melton, Petrila *et al.*, 2007).

Although the original rehabilitative goals of the juvenile court were admirable, the reality of the system’s operation over its first 65 years of existence was different for many justice-involved youth. They were subject to limited due process, lengthy detention, and inconsistent rehabilitation (Weithorn, 2006). These considerations played a prominent part in a series of United States Supreme Court decisions between 1966 and 1970, during what has been termed the rights reform or due process era (Grisso, 2003, 2013). Discussed in more detail in [Chapter 2](#) (this volume), these decisions enhanced the due process protections applicable in juvenile court (*Kent v. United States*, 1966), the more specific rights to counsel, notice of charges, protection from self-incrimination, and confrontation (*In re Gault*, 1967), and proof beyond a reasonable doubt (*In re Winship*, 1970).

There was a legal and policy shift from a primarily rehabilitative emphasis before 1966 to a greater focus on retribution following *Kent*, *Gault*, and *Winship* (Slobogin, 2016). The growing emphasis on public safety was seen in US Supreme Court decisions establishing no right to a jury trial for juveniles (*McKeiver v. Pennsylvania*, 1971), no expectation that asking to speak with a probation officer rather than an attorney would suffice to halt interrogation following the provision of *Miranda* rights (*Fare v. Michael C.*, 1979), and no bar to preventive detention of a juvenile charged but not yet adjudicated on the grounds of public safety and protecting the juvenile from committing further offenses (*Schall v. Martin*, 1984). The growing emphasis on retribution was accompanied by increased emphasis on public safety during a period featuring punishment reform and shrinkage of the juvenile court (Grisso, 2003, 2013).

The impact of these changes became clearer during the 1980s and 1990s, as many states responded to higher rates of offending by expanding the list of covered offenses to include those that were less serious (Griffin, 2008).

Prior to 1970, the overwhelming majority of juveniles in criminal court arrived via judicial waiver (Griffin *et al.*, 2011). But expanded prosecutorial discretion (allowing the prosecutor to choose whether charges would be filed in the criminal or juvenile court), and more frequent passage of statutes specifying “direct filing” in the criminal court for certain offenses, yielded an increase in the number of juveniles handled in the adult system. That number is now estimated at more than 200,000 annually in the United States (Griffin *et al.*, 2011). With the increase in automatic and prosecutorial discretion transfer laws, there has been an accompanying decrease in judicial waiver evaluations but an increase in reverse transfer evaluations (Grisso, 2013). In light of the *Miller v. Alabama* (2012) and *Montgomery v. Louisiana* (2016) decisions, there will be need for a new juvenile evaluation informing courts deciding whether adolescents who received mandatory life-without-parole sentences following criminal convictions should receive a different sentence. This is discussed in [Chapter 10](#) (this volume).

Because the emphasis in juvenile courts during the first half of the twentieth century was rehabilitative, the forensic evaluations conducted to assist in disposition decision-making were focused almost entirely on rehabilitative needs (Grisso, 2003). They were forensic evaluations in the sense that they were provided in a legal context; otherwise, they were essentially child-clinical/developmental evaluations that incorporated the limited knowledge base about delinquent youth. In contrast, requests for risk- and amenability-focused juvenile forensic evaluations began to increase gradually with the rights and punishment reforms within juvenile justice during the latter half of the twentieth century. Such referrals became more prominent in the 1980s, challenging the field to develop new psycho-legal constructs and corresponding assessment methods that would guide these evaluations in providing more relevant and empirically supported information to decision-makers (Grisso, 2003).

One noteworthy problem with the original juvenile court model: it was philosophically commendable but not empirically supported. The movement away from rehabilitation as the single goal of juvenile court

was facilitated by the reality that there was little scientific support for the effectiveness of such rehabilitative efforts (Melton, Petrila *et al.*, 2007). In addition, the limited availability of community-based services for juveniles meant that many youth were placed in remote settings for indeterminate periods of time (DeMatteo, Wolbranski *et al.*, 2016). This dearth of data and services characterized the “rehabilitative” period up to 1966 and much of the post-1966 “rights and retribution” period following *Kent*, *Gault*, and *Winship*.

This began to change around 1990, when a number of important scientific developments in juvenile rehabilitation began to emerge. The “rediscovery of psychology” as applied to correctional classification (Andrews, Bonta *et al.*, 1990) described the early Risk-Need-Responsivity (RNR) model, which currently has significant theoretical and empirical application to the assessment of juvenile disposition and transfer (Hoge, 2008, 2012, 2016; Hoge & Andrews, 2010a, 2010b; Vincent, Guy *et al.*, 2012a). Building on the growing awareness of the contributions of particular risk factors to offending risk, and the associated risk-reduction value of interventions targeting those risk factors, researchers have focused on domains such as substance abuse (Chassin, Mansion *et al.*, 2016), education (Cornell & Heilbrun, 2016; Daly, Hildebrand *et al.*, 2016), and family (Henggeler, Schoenwald *et al.*, 2009). Research in these and other areas was most valuable when characterized by careful attention to “what works?”

Gathering outcome data involving re-arrest and other justice involvement promoted the development of juvenile evaluations that could meaningfully address questions of risk and risk-relevant need on a more empirically-supported basis (Viljoen, Brodersen *et al.*, 2016).

Advances in forensic mental health assessment were also seen around this same time. Scholars (e.g. Grisso, 1986; Melton, Petrila *et al.*, 1987) advocated careful attention to the functional-legal capacities prescribed by law (what an individual must be able to do to satisfy the legal test), with implications for juvenile evaluations. Rather than assuming that youths should be evaluated for clinical treatment needs, there emerged a greater focus on the crime-related rehabilitation needs just described. These were

needs that, if improved, would reduce the likelihood of further offending. These advances continued into the 1990s, culminating in a description of model practices in evaluating adolescents (*Understanding Adolescents: A Juvenile Court Training Curriculum*, Youth Law Center, Juvenile Law Center, & American Bar Association, 2000) and FMHA foundational principles applicable to a wide range of mental health evaluations (Heilbrun, 2001). Each of these early-2000 efforts was revised later in the decade with the strong interest and continuing developments in best practices in evaluating juveniles (National Juvenile Defender Center & Juvenile Law Center, 2009) and foundational principles of forensic mental health assessment (Heilbrun, Grisso *et al.*, 2009) driving the push for updates.

While the emphasis on public safety continued at the turn of the century, there were signs of growing interest in accountability of both offenders *and* courts. The federal Omnibus Crime Control and Safe Streets Act 2002 provided graduated sanctions for juvenile offenders, and for improved tracking and provision of alternatives to standard prosecution within the juvenile justice system. The expanding influence of organizations such as the MacArthur Foundation (Models for Change), the Annie E. Casey Foundation (Juvenile Alternatives to Detention), and the Council of State Governments (Justice Project) served to counterbalance a growing emphasis on public safety at the cost of rehabilitation (see Koocher & Kinscherff, 2016).

These influences presaged a third shift in legal policy—toward considering juveniles less culpable—that was seen in a series of US Supreme Court decisions beginning in 2005 (*Roper v. Simmons*, 2005; *Graham v. Florida*, 2010; *J.D.B. v. North Carolina*, 2011; *Miller v. Alabama*, 2012). The roots of this shift appeared even earlier, however, with the American Bar Association's Juvenile Justice Standards (ABA, 1980; see also Feld, 1988; Scott & Steinberg, 2008). This shift coincided with the evolving research on adolescent development and brain science, clarifying important developmental differences (Steinberg & Scott, 2003) that were directly applied by the Supreme Court on the issue of culpability.

More relevant to re-offense risk was research on desistance (Mulvey, Steinberg *et al.*, 2004) suggesting that only a very small percentage of adolescent offenders (5–6 percent) persisted into adulthood in significant criminal misconduct. But although delinquent-to-criminal persistence appears infrequent, the proportion of youth with behavioral health disorders in the juvenile justice system seems high. This prevalence has consistently been estimated at levels as high as 65–75 percent during the last 15 years (Shufelt & Cocozza, 2006; Wasserman, McReynolds *et al.*, 2010), including high rates of cognitive and learning disabilities (Quinn, Rutherford *et al.*, 2005) and trauma-related disorders (National Child Traumatic Stress Network, 2008; Zelechowski, 2016).

This third shift in the late 1990s and 2000s has been referred to as the developmental era, reflecting a shift in juvenile forensic evaluation that adopted a neo-paternalistic developmental view (Grisso, 2003, 2013; Melton, Petrila *et al.*, 2007). This developmental era arose after the increase in rates of youth violence (particularly homicides involving firearms) observed in the 1980s and into the 1990s (Redding, Goldstein *et al.*, 2005; see Howell, 2009) subsided, leaving harsher juvenile laws from the 1990s that appeared extreme to some. (This perception is apparently not held by the majority of the general public in the United States, however. See Howell, 2009; Redding, Goldstein *et al.*, 2005; Zottoli, Daftary-Kapur *et al.*, 2015.)

Developmental neuroscientific research of this era yielded new evidence on how the brains of adolescents are developing. It had earlier been believed that the structural and connectivity organization of the brain was mostly completed by around age 3, and adolescents were comparable to adults by about age 16. However, these views have been largely discarded. Data have demonstrated that there is a second important neurodevelopmental period, peaking around age 11 for girls and 12 for boys, in which the brain overproduces gray matter before undergoing a pruning process, which increases the brain's efficiency by strengthening neuronal connections while eliminating the lesser-used white matter tracts. Rather than relying on frontal lobe functioning, a portion of the brain that has strong associations with higher-level and more complex cognitions such as planning,

reasoning, judgment, and behavior control, adolescents are believed to rely more heavily on parts of the brain related to emotions rather than logic. The parts of the brain associated with future-oriented planning, anticipation of consequences, judgment, impulsivity, and other characteristics relevant to moral culpability continue to mature through the early 20s (see Howell, 2009, for a detailed summary).

These data supported the view that adolescents differ from adults in legally relevant ways, particularly in their impulse control and other executive cognitive functions. This in turn raised the issue of regarding adolescents as less culpable for developmental reasons. This was the one important aspect of amicus briefs filed by the American Psychological Association in the US Supreme Court *Roper* case, and continued to influence the majority in *Graham, J.D.B., and Miller*. In particular, the Court endorsed three rationales for categorically invalidating application of the most extreme punishments to juveniles (Howell, 2009). The first is the evidence-based but also common-sense understanding that juveniles are more immature and irresponsible than adults. States already treat juveniles differently with respect to a variety of rights, including voting, jury service, and marriage. Second is the reality that youths are particularly susceptible to the influence and pressure of their peers, and have less control over their social environments. The third is that youth identity and personality are less fixed than they are in adults. The high court decisions, in turn, slowed the long-term American trend toward a more punitive approach to justice-involved adolescents.

Additional arguments for reform have included that juveniles are experientially immature but cannot be fully accountable for that, as society affords them few opportunities for occupying positions of responsible decision-making, and they face assorted challenges to their full and meaningful participation in the legal process (Bishop, 2009; Melton, Petrila *et al.*, 2007). Research has also demonstrated the higher rates of behavioral health disorders in justice-involved youth, underscoring the important point that developmental research focusing on adolescents in general must be considered in light of additional challenges experienced by many

juveniles. Others argued for reform on more pragmatic grounds, including the high costs and effects of processing juveniles in the adult system.

Since 2000, there has been increasing attention to expanding the scope of juvenile forensic evaluations to include behavioral health and substance use needs as well as trauma and adversity history (Abbott & Barnett, 2015; Grisso, 2003). This attention has included several very detailed works (Grisso, Vincent *et al.*, 2005; Kessler & Kraus, 2007; see also Ribner, 2002). Not only was there a high rate of mental health disorders among justice-involved youths, but that rate also seemed to be rising (Grisso, 2003).

The Crossover Youth Practice Model (CYPM) (Abbott & Barnett, 2015) defines relationships among influences such as childhood poverty, maltreatment (abuse and neglect), trauma, mental health, substance use, and delinquent behavior. It specifies that any youth who experiences maltreatment and engages in delinquency is a *crossover youth*. These youths may have *dual involvement*—contact with both the child welfare and juvenile justice systems. Some youths’ involvement may be as a participant in formal court proceedings, termed *dual adjudication* within the model. From a systems perspective, crossover youths may experience involvement or adjudication within numerous systems, including behavioral health, juvenile justice, education, child welfare, and low-income social health care. The model recommends that systems collaborate and share information at all levels throughout case processing, assisted by the execution of consent forms, and that mental health and substance use professionals be involved in multidisciplinary team meetings to facilitate assessment, coordinated intervention planning, and evidence-based treatment interventions for youths’ mental health and substance use needs, including trauma-informed and gender-specific practices and services.

A fourth wave of legal policy and practice has been proposed. As part of what they call “preventive justice,” Slobogin & Fondacaro (2011) suggest that the next major priority for the juvenile justice system should involve reducing and managing public safety risk presented by juveniles. This proposal would drastically reduce or eliminate transfer, on the grounds

that retribution (the strongest justification for treating juvenile offenders as adults) does little to improve public safety, but that capitalizing on advances in risk assessment and improvements in empirical support for juvenile interventions to reduce offense risk does. This, they argue further, is best accomplished within the juvenile system and through enhancing the use of community-based interventions and providing rehabilitation that is narrowly focused on reducing criminogenic risk. This proposal is consistent with two contemporary trends in evidence. First, the advances in risk–need assessment with juveniles have been considerable; it can now be done with strong empirical support (DeMatteo, Wolbransky *et al.*, 2016). Second, there is a firmly-established body of evidence showing that rehabilitation of certain kinds (Multisystemic Therapy, Functional Family Therapy, and Multidimensional Treatment Foster Care) provided to juveniles in the community is effective in reducing re-offense risk, controlling costs, and providing less disruption in family and educational contexts (Henggeler, 2016).

This proposal for preventive justice is a valuable perspective that will inform the discussion in this book. If the frequency of transfer is reduced, it seems likely that public safety would be enhanced through more effective community-based interventions that reduce risk. But the areas of risk, treatment needs and amenability, and sophistication-maturity would be important even under a substantially altered juvenile system prioritizing preventive detention. Accordingly, we anticipate that much of the material presented in this book would remain relevant even if the juvenile system were operated differently.

THE CONTEMPORARY JUVENILE SYSTEM: SALIENT ISSUES

In this section, we provide an overview of important considerations in the contemporary juvenile system that will be incorporated into much of the discussion throughout this book.