

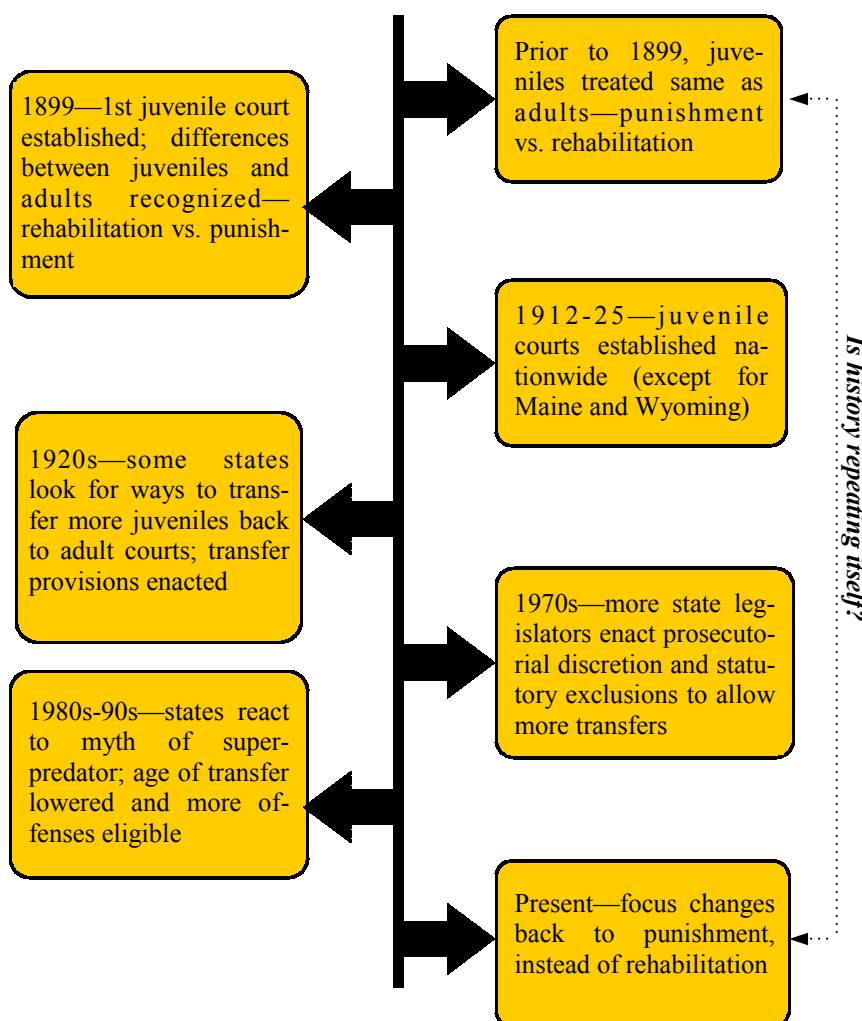
Louisiana Law on Juvenile Transfers

The Children's Code provides four mechanisms to transfer cases from the juvenile court to the adult court:

- 1 **Discretionary Waiver**—allows 14 year olds who have committed specified serious crimes against persons to be transferred on either the district attorney's or court's motion.
- 2 **Mandatory Waiver**—provides that 15 year olds who have committed specified serious crimes against persons, after probable cause is determined, can be transferred.
- 3 **Direct File**—gives the district attorney the option to obtain a grand jury indictment, bypassing the juvenile court, or filing criminal charges without an indictment. Applies to 15 year olds who have committed serious crimes against persons and certain drug offenses.
- 4 **Statutory Exclusion**—in the case of 15 year olds indicted for first or second degree murder, aggravated rape or aggravated kidnapping, the district attorney can bypass juvenile court, and no probable cause hearing needs to be held.

Reverting to an Older System of Justice

Prior to 1899 children were typically released back into the community with no services or treatment offered to avoid confining them in adult institutions. In 1899 when the first juvenile court was created, the intention was to recognize developmental differences between children and adults, and to offer an alternative to criminal court. Rehabilitation became a priority over punishment. Children were considered amenable to rehabilitation and the purpose of juvenile court was to gather information to determine appropriate treatment or placement for the child. As early as the 1920s some states had begun establishing provisions to transfer juveniles to adult court. Judges have always had the authority to decide if a youth coming before them was so violent or had a history of delinquent offenses that the jurisdiction of the juvenile court was waived and the juveniles were transferred to an adult court. Over time the legislatures have increased possible ways for transferring juveniles to adult courts, allowing more and younger juvenile transfers to occur. A shift has occurred, taking the focus away from rehabilitation and reverting to procedures of the 19th century—punishment. Many youth can be served effectively through community-based residential and non-residential programs that address accountability while they are learning to abide by the law.



Public Opinion Shapes Policy

During the 1970s, states changed their laws to provide for more juvenile offenders to be tried in adult criminal court, relying less on judicial waiver and more upon prosecutorial discretion and statutory exclusion. In the 1980s and 1990s the public perceived there to be an alarming trend developing of an increase of violent juvenile crime. The myth of the super predator was a common theme throughout the literature and was not debunked until the early 1990s. In fact, for 1998, juvenile arrests for serious, violent crime was about average for the preceding 25 years, while property crime arrests declined. One category of crime, murder, had increased. One reason for this has been attributed to the easy access to guns which some juveniles used for self defense after becoming involved in crack markets in the inner cities.

As a result of a growing concern over juvenile crime, many states passed legislation making it easier to try juveniles accused of various offenses as adults. State legislators, responding to their constituents who were fearful of juvenile offenders, enacted these new laws under the assumptions that the juveniles will receive harsher sentences in the adult court and that the threat of harsher sentences will act as a deterrence and result in lower juvenile crime rates. According to numerous studies, when states lowered the age at which juveniles can be transferred, numbers of transfers increase negating the deterrent effect.



Did you know?

- ⇒ Children in adult correctional facilities suffer higher rates of physical abuse, sexual abuse, and suicide.
- ⇒ Transfer policies may not have deterrent effect; transferred juveniles have more frequent arrests, more often, sooner and far more serious crimes than for juvenile court cases.
- ⇒ Minority males are more likely to be subject to the transfer provisions.
- ⇒ Mentally Retarded individuals are at greater risk of unjust incarceration.

Evaluate and Assess Before Transfer

Assessments can help all parties consider whether transfer is the best alternative to meet the needs of the juveniles, the victims, and the community. According to Dr. Marty Beyer, a clinical psychologist, developmental assessments are necessary to:

- Understand how the young person got into the situation surrounding the offense
- Clarify the young person's needs so a disposition or sentence can be designed that enables the young person to complete his or her development and recover from childhood trauma, while also protecting the community; and
- Examine whether the young person is incompetent because of immaturity, mental illness or low intelligence, important considerations during trial and sentencing in adult court.

Alternatives to Transfer

- Evaluate/assess juveniles to facilitate proper placement based on maturity and mental status
- Develop community-based treatment options, incorporating Restorative Justice Principles, balancing public safety and offender accountability with victim needs
- Provide adequate counsel for all juveniles
- Adopt the Comprehensive Strategy, including graduated sanctions; include Serious, Habitual Offender Community Action Program (SHOCAP) to identify and incapacitate the most serious juveniles.

