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Violent Juvenile Crime: Its Victims and their Rights

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VIOLENT JUVENILE CRIME:

ITS VICTIMS AND THEIR RIGHTS

An Honors Thesis

by

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To have a responsible view on criminal justice issues . . . it is not necessary that you be for or against the death penalty. It is necessary, however, that you have ***at least as much*** *compassion for the needs of the innocent and of society as a whole as you have for the defendants and for the criminals.*

--Patrick McGuigan

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Abstract

With the great increase in the number of violent crimes committed by juveniles, the rights of their victims are greatly overlooked by a judicial system which does not meet the changing needs of society. Violent juvenile crime has transformed completely over the years in frequency, in the types of acts committed, and in the profiles of the perpetrators. Great changes in federal and state laws concerning the treatment of such violent youths are taking place; however, nothing is currently being done to ensure the rights of the victims of juveniles. These aspects of the judicial system are explored.

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Introduction

According to the July 31, 1989, *US News & World Report*, every five seconds a violent crime is committed (Gest et al. 16). Reporting it is yet another matter. For example, in 1993, almost two million violent crimes were documented, although it has been estimated that approximately six and one-half million actually occurred (Gest et al. 26). And of those, seventeen percent were perpetrated by juveniles (Kantrowitz 43). Indeed, youths are creating a violent new trend in this nation, for they are committing brutally cold crimes in greater numbers. Unfortunately, these teens often respond with little or no remorse, seemingly placing no value on human life (Minerbrook 33). Because of the severe increase in the number of violent crimes executed by youths, the juvenile justice system is experiencing great change. The public masses have become so enraged with a system that no longer seems to work that states have begun to pass a spate of tough sentencing laws which mandatorily waive certain violent juvenile crimes to adult criminal court.

Victims, though, are often overlooked. With federal and state laws being written to reform the juvenile justice system, almost nothing is being done to aid the youths' victims. And even though the victims' rights movement has made great strides in legislative and judicial reform, legislatures have virtually ignored the rights of victims of *juvenile* offenders. Initially, the juvenile justice system was designed to protect and to rehabilitate youths, but now these legalistic safeguards have thwarted the rights of victims.

Juvenile Offenders

While juveniles have always committed a fair proportion of crime, it is only in recent years that the acts have persistently increased in violence. Violent crime perpetrated by the young was a rarity in a not-so-distant past American society. It most certainly was not a daily occurrence. Yet, in 1991 teens committed 17 percent of all violent crimes (Kantrowitz 43), with the murder statistics rising 85 percent from 1987 to 1991 (Kantrowitz 43). Youths also perpetrated 20 percent of single-offender rapes and 62 percent of gang rapes (Gelman et al. 47). And since 1965, the rate for aggravated assault has increased four times (Kiernan 5).

In the past, youth violence could be explained by a dramatic increase in the teen population. However, the population of youths has remained steady or declined since 1985 while violent crime committed by this group has exploded (Gest et al. 26). In fact, Janet Reno has said that youth violence is "the greatest single crime problem in America today" (Kantrowitz 43). It has been estimated that the numbers of teenagers between the ages of fifteen and nineteen will increase 23 percent by the year 2005 (Gest et al. 26). If something is not done now, America could be overridden by teen violence. Paul McNulty, a former Bush administration official, predicts that youths will generate a "reign of violent crime unprecedented in U.S. history" (Edmonds and Meddis 2A).

While these numbers are staggering, the profile of the violent juvenile offender is more shocking. Once, a violent youth would most often be a male

between the ages of fifteen and seventeen. The crimes committed were usually property crimes, robbery, and assault. Today the tendency is an increase in the youthfulness of the offender. It is no longer unusual for twelve and thirteen-year-olds to rob, rape, and murder. In 1982, there were 390 youths arrested for murder who were between the ages of thirteen and fifteen; a mere decade later the number had almost doubled to 740 (Gest et al. 26). Sex crimes also have more youthful perpetrators, with some being as young as eight years old. The arrest rate for thirteen to fourteen-year-olds who have raped more than doubled from 1976 to 1986 (Gelman et al. 49).

This trend can be demonstrated in a highly publicized case which horrified America and the world. Eric Smith, a thirteen-year-old sixth-grader from a small town in New York, lured Derrick Robie, a four-year-old, into the woods. It was here that Smith choked him by sticking a plastic bag down his throat, sodomized the child with a stick, and then crushed the youngster's head with a twenty-six pound rock (*Time* 90). Eric Smith would later tell psychiatrists that he had "slept like a baby" that night (*Time* 90).

Unfortunately, this is all too common. Eric Smith is not the first or the only youth aged thirteen to kill in cold blood. Craig Price began murdering when he was thirteen years old. By the time that he turned fifteen, Craig had killed four people. Eight and ten-year-old children were among these four victims (Edmonds 10A). Price was released from a Rhode Island prison in October of 1994.

Females are also becoming more involved in violent crime, even in gangs.

In 1987, female juveniles accounted for 15 percent of crime, while in 1991 that number had reached 38 percent (Leslie et al. 44). In 1993, a thirteen-year-old girl in San Antonio, Texas, was convicted of beating and restraining another female while a group of boys sexually assaulted her; in New York City, females are whirlpooling, which is surrounding people in public swimming pools and molesting them (Leslie et al. 44). In a Ft. Lauderdale case, Lisa Marie Connelly, an eighteen-year-old, organized a group of five friends to kill her ex-boyfriend, Bobby Kent. Bobby's body was later found stabbed, and his head had been pulverized by a baseball bat (Kantrowitz 46).

In 1992, Shanda Sharer, a twelve-year-old from Madison, Indiana, was tortured for many hours before she was finally killed. Melinda Loveless initiated and planned the attack because she feared that Shanda was getting too close to her lesbian lover. Loveless and three companions (all aged seventeen to eighteen) bound and gagged Shanda, throwing her into the trunk of a car after initially beating her. There she remained for many hours, trying to make enough noise so that she could be rescued. However, no one reported her cries. Shanda was driven to a desolate field where she was again severely beaten and was sodomized with a tire iron. Then Loveless and her companions poured gasoline onto Shanda, burning her alive (Minerbrook 37).

Social researchers have termed this generation "a new and dangerous breed" of criminals (Kantrowitz 46) because of the cold, unfeeling remarks and attitudes of the young killers. Many of the youths respond with a smirk, a shrug, a cold-

blooded comment. For example, when Raul Omar Villareal (a seventeen-year-old at the time of the crime) discovered that he was being charged in the rape and strangulation of two young girls, he stated: "Hey great! We've hit the big time!" (Kantrowitz 43). Jeffrey Farina explained that he had had "a boring day" as the reason for shooting three people and stabbing one in a fast-food restaurant; he is now the youngest inmate on Florida's death row (Minerbrook 33).

In West Memphis, Arkansas, in March 1994, three teenage boys (seventeen-year-olds) were found guilty of murdering three eight-year-olds. These children were playing in the woods not far from their homes when Jesse Misskelly, Jr., Charles Jason Baldwin, and Damien Echols caught up with them. The youths were tortured and abused for hours. The children were beaten, stripped, sodomized, and one child was castrated. The teens also ate some of the boys' internal organs (Kantrowitz 47). Throughout their trial, none of the youths admitted to the crime, apologized for it, or demonstrated any emotion whatsoever.

Charles Conrad was fifty-five years old when he was brutally killed by teenage boys. At the time, these youths were ages fourteen, fifteen, and seventeen. Mr. Conrad's multiple schlerosis necessitated that he use a walker or wheelchair to move around; essentially, he had no chance of escaping. Conrad was stabbed repeatedly, strangled, and hit on the head. The boys did pause long enough to eat dinner. Despite the torture, Conrad survived and begged the youths to shoot him, making his death quick. Instead, they beat him, stopping only to pour salt in his wounds. It was not until dawn the next day that Mr. Conrad ceased breathing

when again struck on the head (Kantrowitz 40). It is this merciless violence that continues to haunt America.

Sociologists and society itself are clamoring for explanations. A growing list of possible factors has been compiled: an increase in child abuse, the glamorization of violence by the entertainment industry, the great availability of crack cocaine, the rise of single-parent households, the loss of urban factory jobs, and the availability of guns on the streets (Minerbrook 33; Kantrowitz 42). While it seems reasonable that a culmination of these factors would have an influence on the prevalence of violent juvenile crime, it is difficult to isolate such components. This makes it next to impossible to directly test individual factors. Without the necessary empirical evidence, a testable working theory has yet to be established. While violence among the young has exploded, the overall violent crime rate has dropped gradually (Gest et al. 26). This exemplifies that the risk factors have had a definite impact upon juvenile crime. However, societal faults do not excuse such violent behavior, and unfortunately the juvenile justice system has not recognized this fact.

Juvenile Justice System

The juvenile justice system was created to protect and to rehabilitate the youth, providing special treatment for those who are presumably not hardened criminals (Gest et al. 18). The first juvenile court began in 1899 in Chicago in

order to aid youths who were dependent, neglected, or delinquent (Greenwood 1). Founded upon the belief that the state sometimes had to act the parent, a concept entitled *parens patriae*, the juvenile courts were designed to be more informal than regular criminal courts so as not to stigmatize youths (Greenwood 1). Historically,

> Juveniles were "delinquent," not guilty; they received treatment, not punishment; juvenile proceedings took place in a closed court to protect the offender and his or her family; there were wide discretionary powers for probation officers, the court and correction agencies . . . long-term incarceration was rarer; and cases were disposed of quickly with a broad range of disposition alternatives. (Landes et al. 63)

Once a juvenile has been arrested for a crime, he is charged with the offense(s). The case is then processed, but there is no uniform procedure for this in the juvenile courts. First, cases are screened by an intake department, which can be the prosecutor's office, the court, or a social services department. It is at this point that it can be decided whether the case is to be dismissed, a fine is to be imposed, probation is to be allowed, or an adjudicatory hearing is to be arranged (Landes et al. 57). At an adjudication hearing, charges can be dismissed or a sentence imposed. It is also at this time that the juvenile can be waived to an adult criminal court. When a waiver occurs, juveniles are treated as adults and their victims are afforded the same rights as those received by victims of adult criminals (Dempsey).

It was the landmark decision of *Kent v. United States* which found that a youth cannot arbitrarily be waived to adult court. Certain procedures must be followed:

consideration of the seriousness of the offense, consideration of whether the act was committed against a person or property, consideration of whether the act was premeditated or willful (Kfoury 77). *Pollard v. Riddle* reaffirmed that the judge must provide a statement of reason for a waiver to occur.

Recently courts have imposed greater punishment with an emphasis on culpability for violent youths. Since 1978, many states have passed laws which make it mandatory for the waiver of juveniles accused of committing serious violent crimes to adult criminal court. Forty-six states now have such legislation (Jensen and Metsger 97). Between 1985 and 1989, the number of youths transferred to adult court rose 78 percent (Edmonds and Meddis 2A). The state of Illinois requires that teens aged fifteen or more be waived if they have been charged with "murder, criminal sexual assault or armed robbery with a firearm" (Kiernan 4). This state also allows judges to decide whether to waive any youths thirteen years or older if they have been cited with an offense that is considered criminal if it had been executed by an adult (Kiernan 4).

Many states have followed suit. Montana automatically waives juveniles as young as twelve who have been accused of perpetrating serious crimes; Vermont has set the age limit at ten (Kiernan 4). New York has the toughest juvenile laws, passing the Juvenile Justice Reform Act of 1976 (Jensen and Metsger 99). It is here that youths must be tried as adults at thirteen for the charge of murder and age fourteen for other violent crimes (Edmonds 10A). For certain crimes committed by juveniles, original jurisdiction is placed with the adult criminal courts (Jensen and Metsger 98). Despite the fact that teenagers are being prosecuted in adult criminal courts, they often receive lesser sentences than adults (Edmonds 10A).

The juvenile justice system differs greatly from the adult criminal court. Statutory limitations exist on one's access to juvenile court records, with most states providing for some method of expunging or sealing them. Hearings regarding a youth accused of a crime are kept private in order to avoid public stigma; this occurs despite the guarantee of a public trial in the sixth amendment to the Constitution (Horowitz 509). Juveniles are often given parole or probation, although 70 percent of these teens continue to commit crimes (Edmonds and Meddis 1A). Approximately $20 billion is spent annually to meet the needs of juvenile crime (Edmonds and Meddis 1A).

The public is outraged now. Public opinion has indicated that people are tired of the nonpunishing judicial system. In a *USA Today*/CNN/Gallup poll, 83 percent of those questioned believe that juveniles should be punished as adults if convicted of a second or third crime (Edmonds 11A). Before changes in state laws, the sentence of youths rarely extended beyond the age of seventeen because the juveniles were minors. At the age of eighteen or twenty-one, the records of youthful offenders were expunged or wiped clean. The records of past offenses of juveniles were sealed, making it difficult to punish one as a repeat offender. Teenagers could murder, rape, and assault with few legal consequences.

The people in Rhode Island exemplify the outrage felt by many Americans. When Craig Price had killed four people by the time that he was fifteen years of age, the law allowed him only to be tried as a juvenile. He could be restrained just until his twenty-first birthday. Price's record would also be expunged; in other words, he no longer had a criminal record. On October 11, 1994, Craig Price was released from prison, much to the chagrin of the people of Rhode Island (Edmonds 10A). What followed was a move for stricter sentencing and treatment of juveniles. The state law now allows for juveniles to

be waived to adult criminal court.

A case which illustrates the faults with the juvenile justice system is that of Anthony Knighton. Knighton, a seventeen-year-old, shot a pregnant thirteen-year-old neighbor in the stomach because she would not loan him a nickel to buy cigarettes. Fortunately, she survived, but her baby did not. Anthony Knighton was tried as an adult and found guilty of third-degree murder. He was sentenced to four years in a correctional institution but was released after serving only two. While these facts are horrific, something which is just as frustrating is that Knighton had been previously arrested nineteen times with the charges ranging from aggravated assault to robbery (Traver 55).

This case is typical in that only half of the sentence was served. Also, the juvenile's previous record was not fully taken into account. Thus, the punishment rendered did not fit that of a repeat offender. Circumstances like these are what enrage the public.

Victims' Rights

Victims' rights is a grassroots movement which has concerned itself with bringing about the equal treatment of victims by the justice system. Often, the accused has been given preferential treatment in the mind of the public. For example, the American Psychological Association found in 1984 that "billions have been spent to apprehend, prosecute, incarcerate, rehabilitate, and study criminals, but almost nothing to compensate, rehabilitate and study victims" (Miller and Miller 137). Victims' rights has attempted to balance the scale. It is interested in reforming the judicial system. Mostly, this has been accomplished through legislation.

In 1982 under the guidance of President Ronald Reagan, Congress passed the Omnibus Victim and Witness Protection Act. This federal law was the first victims' rights legislation to pass Congress, and it has served as a model for states (Heinz 147). The Victim and Witness Protection Act provides for the use of victim impact statements, which are explanations to the judge of the victim's accounts of the emotional, mental, physical, and economic injuries administered by the criminal.

There are numerous arguments opposing the use of victim impact statements. First, it has been maintained that such emotional statements do not allow the courtroom to remain impersonal and fair. Hiller B. Zobel, an associate justice of the Massachusetts Superior Court, has stated: "When we let the victim's personal feelings affect the judge's sentence, we are reverting to a government not of laws, but of men" (142). To counter this, the accused is permitted to make a statement before sentencing. This assertion is often a plea for leniency and mercy. It seems that this exchange aids in maintaining a balance.

It should be noted that in both 1987 and 1989 the Rehnquist court rejected the use of victim impact statements in the case of deciding death penalties. The court ruled that "neither the life of the victim nor the suffering of his survivors could be a factor in any state or federal case punishable by death" (Shapiro 61). However, in the 1991 term, the Supreme Court approved the use of evidence about the character of a murder victim and his family to secure a death penalty in the case of *Payne v. Tennessee* in which a three-year-old boy had witnessed his mother and baby sister stabbed to death (Levy 1028).

The Victim and Witness Protection Act also includes the usage of restitution, the monetary repayment of losses which the victim experiences through medical treatment or

stolen/damaged property (Heinz 148). This federal law also provides for the victim to be kept informed of the progression of the case.

Many states have consequently added new laws and services to help victims. Forty-seven states allow some form of victim impact statements (Shapiro 61); thirty-eight states have instituted the use of restitution and Victim Assistance Units (Moore 410); and twenty-one states have laws protecting the privacy of crime victims (Carlson et al. 29). By 1991, all fifty states provided for crime victim compensation (Parent et al. 1).

The victims' rights movement gained another victory with the passage of the Victims of Crime Act (VOCA) in 1984. VOCA distributes federal grants to states for funding of their victim compensation programs. This law has also been used for bringing about uniformity among states (Parent et al. 1). In order to receive grants, the states must provide certain services to victims of crimes. Some of these are compensation for "medical expenses, mental health counseling, and lost wages" (Parent et al. 2). VOCA has greatly enabled the states to offer services for victims of crime.

VOCA's Crime Victims Fund obtains its funding from federal offenders through bonds, fines, and penalty assessments. Seventy-five percent of the fund's revenue is attained from fines alone (Parent et al. 2). The federal and local governments allocate money for the other 25 percent although opponents argue that this is not the duty of the government. The victims' rights movement, however, believes that it is the responsibility of the government to protect its citizens. When government fails in this task, law-abiding citizens should be compensated for any losses incurred.

VOCA also dictates that any profits earned by capitalizing upon the crime will automatically be placed into the Crime Victims Fund after a waiting period of five years

so that the victim has time to file civil suit; this is part of a "Son of Sam" provision (Parent et al. 2).

The Victims of Crime Act requires that states must meet certain requirements in order to receive funding. The more standards with which the states comply, the greater the amount of their grants. Four VOCA amendments were added in 1988. States must compensate victims of domestic violence, victims of drunk drivers, and victims who are residents but were injured in another state. Plus, states must establish guidelines for what comprises "unjust enrichment," which is a solicitous claim made by victims (Parent et al. 3). Since forty-four states complied with these criteria in 1990, it is obvious that the requirements are not too stringent (Parent et al. 3).

The Victims of Crime Act allocates its annual funds to victim programs across the nation, with spending based on the following formula:

> Of the first $100 million deposited in the Fund, 49.5 percent is available for crime victim compensation grants; 45 percent, for crime victim assistance grants; 1 percent, for training and technical assistance services to victims of federal crimes; and 4.5 percent, for Children Justice Act grants. (Parent et al. 2)

While these laws have aided victims in their journey through the judicial system, victim and witness programs for the juvenile justice system have gone untouched for the most part. Victims of youths who are not waived have complained that it is difficult to participate in the judicial proceedings of juvenile court (*NIJ* 9). Because of the confidentiality factor that is the foundation of the juvenile system, victims are not as informed as one would be in the adult criminal court. As of 1989, only 13 states had

victims' rights legislation which included victims of juvenile crime (*NIJ* 11). Currently, victims of juveniles essentially have only three rights: to be notified of the juvenile's release, to be notified of the juvenile's parole consideration, and to be present before the parole board (Dempsey). Juvenile systems have been rated by their employees (judges, police, etc.) as "adequate to less than adequate"; thirty-five percent of respondents to a survey conducted by the US Department of Justice reported negligent involvement with victims of juvenile crime (*NIJ* 11). Thus, victims and their rights have largely been ignored.

Emotional Aspects of Victims

In order to understand the importance of victims' rights programs, one must first comprehend the experiences of a victim. One can lose her life, spend time in a hospital, suffer permanent or temporary injuries. While some physical scars heal and losses can possibly be regained, it is the psychological suffering that can be most traumatic. The emotions a victim experiences range from fear to anger to shame to helplessness to depression. A victim's sense of security has been violated, making it difficult for friends and family to relate. He may no longer feel safe in public areas, in the car, and even in his own home. The victim may lose complete trust in others, further isolating herself. She may relive the experience through dreams or flashbacks. All too often, the victim bears an immense emotional weight (Landes et al. 45).

However, the effects of a violent crime are not limited to just the victim. The victim's family and friends are greatly affected as well. Family members may have lost a

loved one or must witness the continued suffering. They may experience many of the same emotions that the victim undergoes (Miller and Miller 138). There is no time limit to the suffering. Also, the society itself suffers from crime. People do not feel as safe in an environment that was at one time secure. The common citizen is no longer sheltered. Patrick McGuigan stated it best:

> To have a responsible view on criminal justice issues . . . it is not necessary that you be for or against the death penalty. It is necessary, however, that you have *at least as much* compassion for the needs of the innocent and of society as a whole as you have for the defendants and for the criminals. (Miller and Miller 138)

Victims of juveniles suffer the same symptoms in addition to other difficulties. They must face such philosophical and religious inquiries as whether one can forgive a child who has done extensive damage to one's life. Victims often wonder if a youth should be held fully accountable for his actions since a child is not as capable as an adult of making decisions, distinguishing right from wrong.

The Justice System: Re-victimization

Prior to the changes in the judicial system made by the victims' rights movement, victims felt as though they had been victimized twice--once by the judicial system (Miller and Miller 137). Unfortunately, these feelings continue today because their needs and rights are still often disregarded by members of the justice system. For example, victims are not allowed to discuss the case, although the accused may talk about it with whomever

he desires (Miller and Miller 135). A victim must keep quiet about the violent ordeal which she endured in order to protect her case. Also the prosecutor does not represent the victim. He represents the state. All crimes committed are acts performed against the state, even if a person has directly been injured. While the prosecutor is an elected official, the victim often feels that the prosecutor is a third party who has no stake in the matter. The prosecutor can plea bargain, drop the charges, or poorly pursue the case. The victim does not have to be consulted before any of this has been executed; all discretion is left to the prosecution.

The sixth amendment of the United States Constitution promises that "the accused shall enjoy the right to a speedy . . . trial." This seems not only to be a benefit for the accused but for the victim as well. However, with today's overloaded court docket and the overcrowding of prisons, justice is anything but swift and speedy. When a person stands accused of a crime, it may take more than one year for her to go on trial (Gest et al. 17). The average disposition period in Newark, New Jersey, is 308 days (Gest et al. 17).

When a victim is called to testify, he is forced to relive the painful experience, revealing brutal details to a roomful of total strangers. There is no guarantee that these people will be sympathetic or understanding of the horrific experiences. The court needs to fulfill its role as a neutral intermediary, but it should also provide some respect and compassion for the victim's ordeal. One of the most difficult portions of the trial is cross-examination. This is the period when the defense is allowed to question the victim's memory and perception. To the victim, it seems as though she is forced to defend herself; the victim is put on trial instead of the accused and is made to feel guilty.

Victims of Juveniles

Victims of violent juvenile crime must endure a grave injustice. While victims in adult criminal court are allowed marginal participation, the situation is worse in the juvenile justice system. Since the juvenile justice system was created to protect and to rehabilitate, there are specific legalistic safeguards designed to shield the youths from stigmatization. It is these protections which distinguish the juvenile justice system from the adult criminal court. The principle for the absence of legal guilt is that juveniles are "delinquent," not guilty. Like insanity, youth is a defense against any legal responsibility (Greenwood 2). The juvenile justice system places an emphasis upon treatment instead of punishment, attempting to rehabilitate the young. And juvenile court proceedings rest upon the principle of privacy. Any court action and the courts' records are closed to the general public, essentially allowing only the youth and her parents to participate (Greenwood 2).

One of the first safeguards is the closed court proceedings. Victims are permitted to attend this process, but they are allowed only limited participation. Whereas a victim in an adult criminal court can make victim impact statements, this is not guaranteed in the juvenile justice system. State law determines the amount of participation for a victim in juvenile court. Victims are often angered by this because they feel that the juvenile--the criminal--has been granted greater care. The needs of the victim--the wronged party--have gone unacknowledged.

Another precaution of the juvenile justice system is the sealed record of the youth's past offenses. It is impossible for certain individuals to gain access to the data chronicling

past crimes. This causes cries of outrage since it is difficult to try a juvenile as a repeat offender. The expunged criminal record of a juvenile also gives the youth a clean slate at the tender age of eighteen or twenty-one. It appears that the violent crime never happened. Once again, this creates the illusion of a first-time offense. It also invalidates the pain and suffering which the victim incurred.

Yet another facet of the juvenile court which angers victims is the seemingly lenient sentencing of the young. Public opinion largely favors get-tough policies. In a *USA Today*/CNN/Gallup poll, 60 percent of people felt that a youth who murders should receive the death penalty (Edmonds and Meddis 2A). Eighty-three percent of those polled felt that juveniles should be waived to adult criminal court if the youths are not first-time offenders (Edmonds 11A). Michael Corriero, a New York State Supreme Court justice who presides over a special division of juvenile court for violent youths, remarked that ". . .if I want to send them up for more than 3 to 10 (years), I can't" (Edmonds 10A). It is rare for juveniles to receive the same sentence as an adult would for committing violent crime; in fact, this is the major difference between criminal court and juvenile court (Greenwood 3). Juveniles who have been waived to adult criminal court are among the most serious offenders, having committed violent, heinous crimes. One would think that they would receive one of the strictest sentences possible, but the juvenile offenders look youthful and harmless when compared to the appearances of the hardened adult criminals (Greenwood 3). While victims of juveniles who are waived to adult criminal court possess the same rights as victims of adults, the disparity in sentencing, parole, probation, and punishment are insulting. Such injustice overrides all rights obtained.

With this leniency, teenagers are often probated and paroled. Approximately 70

percent of youths released will be the perpetrators of crime again (Edmonds 10A). Judith Scheindlin, Head Judge in New York's Family Court, found that 86 percent of juveniles who came through her courtroom would return (Edmonds 10A). Victims are enraged because youths are being neither punished nor rehabilitated by the judicial system. Instead, they are allowed to continue their destructive behavior, committing crimes again and again. Thus, juveniles are being released to harm and abuse more of the innocent, creating greater numbers of victims.

Policy Suggestions

There is currently great change occurring within the juvenile justice system, and this in turn has a direct effect upon victims' rights. Many states have passed legislation to change the juvenile courts. With states moving in various directions, it is difficult to determine which program will prevail.

Despite the trend towards tougher sentencing, various states are attempting other methods for dealing with the juvenile justice system. Such programs are part of the rehabilitation model. Kentucky has developed a radical strategy for dealing with the juvenile justice system. Based upon the Juvenile Justice and Delinquency Prevention Act passed by Congress in 1974, teen court is founded on the premise that juveniles who understand the law will be less likely to break it. First-time juvenile offenders are permitted the opportunity to participate in teen court and to be sentenced by a jury of their peers. Each participant is between the ages of fourteen and seventeen, and the judge is a retired district judge. Teen jurors are required to hear the case and then to recommend a

sentence; they are not there to determine guilt (Williamson et al. 56).

Teen court meets the public's need for get-tough policies. Teen juries have been found to impose stricter sentences upon defendants than judges. Because the sentences are directly supervised by the teen court coordinator, they allow for tougher sanctions. Since Kentucky social workers are overburdened with caseloads, this allows a better method for monitoring juvenile case dispositions (Williamson et al. 57).

The state of Utah has committed itself to community-based programs which stress treatment programs and the development of education and social skills. Part of the least-restrictive-setting principle, this requires that only a few secure institutions are needed for the most serious offenders (Anderson 160). Utah also developed alternative sanctions in the community itself. "Almost all the programs--group homes, day treatment, outreach through 'trackers'--are managed by contract with private providers . . ." (Anderson 160).

The current trend of many states is to pass legislation to do away with the perceived leniency of the juvenile justice system. These programs fall under the retribution model. For example, in the state of Colorado, a special session was called in 1993 by Governor Roy Romer after a particularly violent summer (Pipho 286). This special session passed H.B. 1001, which made it illegal for minors to have a handgun except for the use of hunting, target practice, and firearms competition. Any transgression of this law could result in $1,000 fine and one year in jail (Pipho 286).

Colorado also passed S.B. 9, which established the "youth offender system." This corrections facility is provided for violent offenders who fall between the ages of fourteen and eighteen. Run by the Department of Corrections, such facilities provide intermediate

level security. Colorado's special session also approved legislation which increased the number of boot camps for juvenile offenders, increased the fees which youths must pay to aid in financing the overburdened justice system, required parents to attend their child's court proceedings, and opened court proceedings of violent juveniles to the public (Pipho 286).

In 1993 with H.B. 1643, Florida developed alternative education programs for juveniles who repeatedly commit serious crimes (Pipho 287). The state of Texas has rewritten its juvenile penal code, toughening its sentences, by establishing a Commission on Children (Pipho 287).

While these programs cannot as of yet be measured according to their success or failure, states are nonetheless making valid attempts to correct the problems with the juvenile justice system. Yet, this is not improving the plight of victims of juveniles. Victims are still largely ignored under the community-based, rehabilitative models for reform. The only change which these programs bring about is the treatment of the youthful offenders. Meanwhile, victims are left unaided. The "adultrification" or get-tough model allows the victims greater participation because it regards the juveniles as responsible adults. With the granting of more waivers for violent crime, victims are allowed more involvement with the justice system. They are essentially permitted a voice in an otherwise mute system.

[illegible] who are *not* waived to adult criminal court who must

level security. Colorado's special session also approved legislation which increased the number of boot camps for juvenile offenders, increased the fees which youths must pay to aid in financing the overburdened justice system, required parents to attend their child's court proceedings, and opened court proceedings of violent juveniles to the public (Pipho 286).

In 1993 with H.B. 1643, Florida developed alternative education programs for juveniles who repeatedly commit serious crimes (Pipho 287). The state of Texas has rewritten its juvenile penal code, toughening its sentences, by establishing a Commission on Children (Pipho 287).

While these programs cannot as of yet be measured according to their success or failure, states are nonetheless making valid attempts to correct the problems with the juvenile justice system. Yet, this is not improving the plight of victims of juveniles. Victims are still largely ignored under the community-based, rehabilitative models for reform. The only change which these programs bring about is the treatment of the youthful offenders. Meanwhile, victims are left unaided. The "adultrification" or get-tough model allows the victims greater participation because it regards the juveniles as responsible adults. With the granting of more waivers for violent crime, victims are allowed more involvement with the justice system. They are essentially permitted a voice in an otherwise mute system.

It is the victims of juveniles who are *not* waived to adult criminal court who must endure a system that is not capable of bringing forth justice. Victims of youths are not permitted the same rights as other victims. Usually, the only restitution that they receive is provided for by the state or federal governments and sometimes from the parents of the

juvenile (Dempsey). Victims are not permitted the opportunity to submit a victim impact statement, illuminating the court as to the suffering incurred. Inefficiently maintained, the records of juveniles have allowed youths to escape harsher punishment for repeat offenses. Victims are not given the opportunity to communicate to the court the injuries which they have incurred. Essentially, a victim is treated by the court as a third party who has no bearing on the case.

With more states waiving juveniles, this allows for a balancing of rights in which victims are permitted to participate within the judicial system. However, it is not until victims of juveniles are guaranteed certain unalienable rights that justice can be brought forth by the juvenile judicial system. To allow for this equality, victims' rights legislation at both the state and federal levels need only be extended to include victims of juveniles. This will not detract from the rights of the juveniles. Instead, it will only add a measure of equality and justice to the defunct juvenile justice system.

Conclusion

Juveniles account for more violent crime today than ever before in American history. The young have become vicious and brutal in their acts of violence, demonstrating little or no care as to their actions. The juvenile justice system can no longer cope with the increase in crimes or the increase of callousness; it does not have the ability to punish or rehabilitate the youths. The judicial system set up for juveniles is not capable of bringing about justice for either the victims or for the young themselves. Created decades ago to provide special treatment for youths, the juvenile justice system is

currently failing to accomplish its duty. Now, the public has voiced its outrage, causing many state legislatures to reform the juvenile judicial process.

Victims have led much of the judicial reform movement since the 1970s. Victims' rights has concerned itself with bringing about equal treatment in a justice system which has virtually ignored the plight of the victim. Federal laws, such as the Omnibus Victims and Witness Protection Act of 1982 and the Victims of Crime Act of 1984, have propelled victims' rights to the forefront of judicial reform.

Despite this accomplishment, victims of juveniles are still disregarded by juvenile courts. Victims are not permitted participation. Until this injustice is corrected, a juvenile justice system does not truly exist.

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Appendix A

Victim and Witness Protection Act of 1982

Public Law 97-291 [S. 2420]; October 12, 1982

SEC. 2. (a) The Congress finds and declares that:

(1) Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

(2) All too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim.

(3) . . .the Federal Government . . . has an important leadership role to assume in ensuring that victims of crime are given proper treatment by agencies administering the criminal justice system. . . .

(5) While the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed. . . .

Victim Impact Statement

SEC. 3. Paragraph (2) of rule 32(c) of the Federal Rules of Criminal Procedure is

amended to read as follows:

"(2) REPORT.--The presentence report shall contain--

"(A) any prior criminal record of the defendant;

"(B) a statement of the circumstances of the commission of the offense and circumstances affecting the defendant's behavior;

"(C) information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by any victim of the offense; and

"(D) any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense." . . .

Restitution

18 U.S.C. 3579. Order of restitution

"(a)(1) The court, when sentencing a defendant convicted of an offense . . . may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense.

"(2) If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor. . . .

Federal Guidelines for Fair Treatment of Crime Victims and Witnesses in the Criminal Justice System

SEC. 6. (a) Within two hundred and seventy days after the date of enactment of this Act, the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act. In preparing the guidelines the Attorney General

shall consider the following objectives:

(1) Services to Victims of Crime.--Law enforcement personnel should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following--

(A) availability of crime victim compensation . . .;

(B) community-based treatment programs;

(C) the role of the victim in the criminal justice process, including what they can expect from the stem as well as what the system expects from them; and

(D) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

(2) Notification of Availability of Protection. . . .

(3) Scheduling Changes. . . .

(4) Prompt Notification to Victims of Major Serious Crimes. . . .[this includes]---

(A) the arrest of an accused;

(B) the initial appearance of an accused before a judicial officer;

(C) the release of the accused pending judicial proceedings; and

(D) proceedings in the prosecution of the accused . . .

(5) Consultation with Victim. . . . including the views of the victim or family about--

(A) dismissal;

(B) release of the accused pending judicial proceedings;

(C) plea negotiations; and

(D) pretrial diversion program.

(6) Separate Waiting Area. . . .

(7) Property Return. . . .

(8) Notification to Employer. . . .

(9) Training by Federal Law Enforcement Training Facilities. . . .

(10) General Victim Assistance. . . .

Appendix B

Victims of Crime Act 1984

Public Law 98-473

Title XII

PART A--Prosecution of Certain Juveniles as Adults

Introduction

Part A of title XII amends 18 U. S. C. 5032 and 5038, provisions of the Juvenile Justice and Delinquency Act of 1974, passed by the Ninety-Third Congress. The essential concepts of the 1974 Act are that juvenile delinquency matters should generally be handled by the States and that criminal prosecution of juvenile offenders should be reserved for only those cases involving particularly serious conduct by older juveniles. The Committee continues to endorse these concepts, but has determined that certain modifications in current law are necessary to allow an adequate Federal response to serious criminal conduct on the part of juveniles.

Juveniles account for nearly half of our violent crimes. The Committee's goal is to identify, convict, and incarcerate the small number of juveniles who commit the most violent crimes.

. . .The Committee believes that additional, mandatory provisions for treating juveniles as adults are needed.

. . . Confidentiality of juvenile records has been protected at the expense of

informed decision-making by Federal judges in cases involving juveniles. The Committee determined that the interest to society in identifying and tracking youthful offenders under some circumstances must take precedence over the juvenile offender's interest in confidentiality.

In addition, fingerprints, photographs, and records of prior convictions must be maintained on juveniles charged with an offense that if committed by an adult would be a crime of violence.

The Committee believes these amendments will equip the juvenile justice system with tools adapted to meet the challenges posed by today's violent youths. Subjecting these youths to closer scrutiny by the public, will lead to a fairer, more effective juvenile justice system.

Section 1201

1. In General

Section 1202 of title XII amends 18 U.S.C. 5032, the provision of current law which governs proceedings against juvenile offenders. The most significant of these amendments are those which would allow retention of Federal jurisdiction over a juvenile offender on the basis of a substantial Federal interest in the offense charged and which would expand the authority to proceed against older juveniles charged with particularly serious offenses in a criminal prosecution rather than a juvenile delinquency adjudication.

2. Present Federal Law

. . . Criminal prosecution of juveniles under the age of 16 is strictly barred. For juveniles over 16, criminal prosecution is permitted only if the offense involved is one that, if committed by an adult, would be a felony punishable by a maximum of ten years

of imprisonment or more or death, and the court makes a determination, after a hearing, that a transfer for prosecution would be "in the interest of justice."

. . . The authority to prosecute juveniles charged with Federal offenses is enlarged, although only moderately, in three respects. First, the current minimum age for prosecution at sixteen has been lowered to fifteen. Second, the types of offenses which may trigger a motion for prosecution on the part of the government will no longer be limited to offenses punishable by ten or more years of imprisonment. Prosecution may be sought if the offense charged is a crime of violence . . . The third change provides a limited exception to the rule in current law that prosecution of a juvenile is permitted only upon the court's determination, after a hearing, that a transfer for prosecution is "in the interest of justice." In the Committee's view, it is generally appropriate that a case-by-case determination be made whether prosecution of a juvenile is merited. However, where a juvenile is charged with a serious crime involving violence against persons or a particularly dangerous crime involving destruction of property, and he has previously been found guilty of such a serious offense, this fact alone should serve as adequate justification for the prosecution of the juvenile.