

Introduction

THIS IS A CASE STUDY of legislation that redefines previous acts of delinquency as crimes, and delinquents as juvenile offenders. It examines one state's response to violent juvenile crime through waiver legislation that transfers jurisdiction over juveniles from juvenile court to criminal court. Specifically, it focuses on the creation, implementation, and effects of New York's 1978 Juvenile Offender (JO) law, which lowered the eligible age of criminal responsibility to 13 for murder and 14 for other violent offenses.

The JO law is often referred to as *waiver by offense categories* or *legislative waiver*, and it is sometimes called *automatic transfer legislation*. It shifts the initial source of legal decision making on juveniles from juvenile justice officials to criminal justice officials. In contrast to more traditional systems of waiver that initiate with a hearing in juvenile court as mandated by the U.S. Supreme Court's 1966 *Kent* decision, legislative waiver begins with a specific set of offense categories for which juveniles can be considered criminally responsible.¹

In placing initial decision making in the hands of criminal justice officials, legislative waiver in New York and in other states "recriminalized" delinquency and juvenile justice. Like other newly created criminological words, such as *deinstitutionalization* or *decarceration* (Scull 1977), the word *recriminalization* has not yet entered the dictionary and is in need of a definition. I use it here to refer to the creation and implementation of legal rules that place juveniles in the adult criminal justice system. Recriminalization is an effort to return a part of the juvenile justice system to a period that existed prior to the creation of juvenile courts.

But recriminalization has not eliminated the need for juvenile justice. It

exists on top of a shaky foundation of earlier juvenile justice reforms in which juvenile courts still remain as an integral part of the diverse legal avenues for transferring juveniles to criminal courts. Juvenile courts exist not necessarily as first resort legal settings but as another legal avenue in which to classify juveniles as either delinquents or offenders. By recriminalizing delinquency, modern systems of juvenile and criminal justice are able to provide officials with a larger set of legal avenues in which to identify and track juveniles as either delinquents or offenders.

The need to recriminalize delinquency stems from modern-day political and organizational concerns and interests in maintaining the legitimacy of juvenile justice. That legitimacy is threatened by chronic delinquents who continue to commit serious violent offenses and by brutal acts of juvenile violence. By diverting the most difficult and violent of juveniles away from the juvenile justice system, recriminalization attempts to satisfy public and official demands to see serious delinquents punished in a public, criminal court.

The reasons for recriminalization over the past several decades are discussed in the first two chapters by focusing on the question: Why did New York wait until 1978 to move from a state without any waiver legislation to automatic waiver? The answer is first revealed in Chapter 1 in a brutal set of murders committed by a chronic delinquent on New York City's subway system during a Governor's election-year campaign. I then argue that the type of recriminalization that New York produced went beyond a single juvenile's lethal acts of violence and the immediate political concerns of the governor and other officials. Instead, I see an increasingly complex system of juvenile justice setting into motion the need for recriminalization and waiver legislation. Legislative waiver, I suggest, is not merely triggered by violent juveniles. It is also a product of negotiated orders of justice and loosely coupled systems of juvenile and criminal justice.

In Chapter 2 I extend my argument by taking stock of earlier juvenile justice reforms to explain the unique shape of recriminalization. I see legislative waiver as a product of earlier reforms that I divide into periods of decriminalization and criminalization. That explanation continues in Chapter 3 where I describe recriminalization and the immediate factors leading to the creation of the JO law in New York. My sources of data consist of the historical literature, media stories, commission reports, and legislative debates. I consider the words of officials as important bits of information that help us to understand the political value of waiver reforms. I further detail the various legal rules related to legislative waiver in New York.

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Chapter 4 raises the complex question of implementation. I wish to determine how legislative waiver relates to principles in juvenile justice decision making. Prior research on waiver decisions in states with judicial forms of waiver suggest that juvenile justice officials base their transfer decisions on factors other than the seriousness of the offense. In New York, with its system of legislative waiver, I first show the importance of offense and offender characteristics on the decision to prosecute juveniles as offenders in criminal court with interviews and survey data based on the perceptions of criminal justice officials. I then analyze the effects of nonoffense-related characteristics on one aspect of initial criminal justice decision in the form of a grand jury indictment.

Chapter 5 further examines the implementation of waiver legislation with case processing data on eligible juvenile offenders from their arrest to adjudication and disposition. The data consist of an extremely large number of juveniles arrested as juvenile offenders in various counties of New York. I consider the jurisdictional and temporal context of legal decision making with multivariate statistical techniques of analysis to determine the relative effects of offense and offender characteristics on the arrest, adjudication, and sentencing of juveniles as offenders. Each figure and table presented in Chapter 5 provides a complex statistical picture of the diverse effects of waiver legislation on juveniles in the criminal justice system.

My last set of concerns is directed toward the impact of legislative waiver. In Chapter 6 I take a quantitative approach to address the question: Did the JO law reduce the incidence of violent juvenile crime? The results of an interrupted quasi-experimental time-series design are presented to examine the statistical significance of a model that predicts change in rates of violent juvenile crime because of the JO law. In Chapter 7 I look at the punishment- and treatment-oriented objectives of the JO law as viewed in a maximum security institution that was built as a consequence of the JO law. I relate a familiar story of crisis to the dual institutional dilemma of providing treatment and maintaining control within a maximum security setting. Personal interviews with incarcerated juvenile offenders provide a glimpse of how juveniles perceive their convictions in criminal court and subsequent confinement. I also consider the words of officials in describing how crisis emerged to produce a familiar story of conflict and abuse.

Although this study focuses on one state's political and organizational reasons for assigning criminal responsibility to juveniles, it is important to stress that New York is not alone in its recriminalization of delinquency. Other states have also attempted to maintain the credibility of their systems of juvenile justice by bringing more juveniles into adult criminal courts.

The number of arrested juveniles brought directly to criminal courts increased from 1 percent of all juvenile arrests in 1973 to 5 percent in 1992, according to the FBI's Uniform Crime Reports (UCR) (Department of Justice, 1971: 112, 1992: 282).² With more traditional forms of waiver that initiate in juvenile court, the National Juvenile Court Data Archive reveals an increase in transfers from 1.9 percent of all delinquency cases in 1986 to 2.7 percent in 1990 (Butts & Poe 1993: 6).

General support for waiver legislation can be found in opinion polls that show widespread public support for prosecuting juveniles as adults for violent offenses. According to a USA/Gallup survey conducted in 1993, 73 percent of the U.S. adult population favored the transfer of juveniles to criminal courts for violent crime (Prichard 1993, pp. 1 & 6A). Although the poll was not specific in the age of juveniles and types of offenses for which juveniles should be prosecuted in criminal courts, it suggests that the public sees waiver as an effective response to violent juvenile crime. State legislators have responded by revising or creating their waiver statutes. Even federal legislators have recently joined the act of doing something about violent juvenile crime by proposing waiver legislation as an amendment to the 1994 U.S. crime bill.³

Thus, now more than ever, it seems waiver policies directed to a population of juveniles below the age of 16 deserve a close examination. By following New York's history of reforms and implementation of the JO law, I hope to show from legislation, arrest, disposition, and incarceration the real reasons for making juveniles younger than 16 criminally responsible for their behavior.

C H A P T E R O N E

Recriminalizing Violent Juvenile Crime

WHY RECRIMINALIZE DELINQUENCY? Why did New York State wait until 1978 to respond to violent juvenile crime with legislative waiver? To answer these questions, I start with a description of the incident and the juvenile that triggered waiver legislation in New York. I then shift to the reasons for recriminalization that go beyond one juvenile's violent crimes and the immediate politics of election-year campaigns. Some of the reasons for recriminalization I locate in deep-seated political, as well as organizational, concerns and interests in controlling violent juvenile crime. Those concerns and interests I see as rooted in contemporary efforts to classify and to track a segment of delinquents as violent juvenile offenders in complex systems of juvenile and criminal justice.

The Case of Willie Bosket

In March 1978 Willie Bosket murdered two subway passengers and triggered a crisis in New York's system of juvenile justice.¹ Bosket often roamed the city's subways searching for easy targets to rob, such as drunk and sleepy passengers. Soon after his release from a state facility for delinquents, Bosket was back late at night on the subway line near his home, frequently with his older cousin, Herman Spates. One passenger was in the unfortunate position of having awakened to see Bosket searching his pockets when Bosket pulled the trigger of his .22 caliber pistol and shot him in the head. Eight days later on the same subway line, Bosket again shot and killed a subway passenger before emptying the victim's pockets.

Bosket's robbery and killing of subway passengers were not typical of

most homicides. Few of the several murders that occur on average each day in New York City are considered of sufficient interest to even warrant media attention. The subway murders differed from “ordinary” acts of homicide because Bosket appeared motivated by the act of theft and was not acquainted with his victims. His victims also resided outside of his impoverished neighborhood in Manhattan. By attacking passengers on the city’s subways, Bosket’s violent offenses heightened the concern and fears of New Yorkers, particularly those who commuted on public transportation to meet their daily work routines. For many New Yorkers, especially subway passengers who fell asleep between subway stops, Bosket was not a delinquent; he was a modern-day highwayman, a criminal who threatened their personal safety and ability to live without the fear of violence.

Bosket’s shooting of subway passengers caused many New Yorkers to shout and scream to their officials to “do something” about violent crime. But officials did not know exactly what to do until the age and legal status of Willie Bosket were announced. Bosket was only 15 years of age at the time and could not be charged in criminal court. He was technically a delinquent and therefore not criminally or legally responsible for the subway murders. Instead, Bosket was placed in New York’s juvenile court (technically known as Family Court²), where he was still eligible for the treatment-oriented objectives of the state’s juvenile justice system. Unlike many other states, New York at the time lacked the legal procedures for transferring a 15-year-old juvenile to criminal court if charged with murder.

Meanwhile Bosket’s 17-year-old cousin, Herman Spates, who was at the scene of one of the subway murders and who claimed only to have watched Bosket shoot his victim, was charged and sentenced in criminal court, where he received a maximum of life in prison and a minimum of eight and one-third years as an adult offender. If Spates had not pleaded guilty, he risked a criminal trial by jury and a sentence of 25 years to life. The only variable separating Bosket from the longer sentences of criminal court was his age and New York’s legal definition of his status as a delinquent.

The news reports, however, revealed more about Bosket’s status as a chronic violent offender than as a delinquent in need of treatment. They quoted Bosket’s claim that he had committed over a thousand offenses.³ And they quoted his apparent lack of remorse for the death of the subway passengers: “I shot people, that’s all. I don’t feel nothing” (Butterfield, *New York Times*, March 22, 1989). Bosket was also quoted as saying that he did it “for the experience.” Bosket’s cousin, Herman Spates, told reporters that Willie “got a kick out of blowing them [the victims] away” (*New York Times*, March 2, 1978).

But there is another part to the case of Willie Bosket that caused the

public and officials to question his placement once more as a delinquent in New York's juvenile justice system. Bosket was already there. He had already been through numerous juvenile justice agencies and in many juvenile justice facilities. At the age of 9 he was first brought to the juvenile court by his mother, who complained that she was unable to control his behavior. Since then Bosket spent only 18 months outside of his various state agency placements. In his last Division for Youth (DFY) placement just 6 months prior to the subway killings, Bosket was released despite the complaints of several of the institution's staff that stated Bosket was much too dangerous to be returned to New York City. One staff member was reported to have offered to let Bosket reside in his upstate home rather than to see him return.

Deep inside the news reports, it was also suggested that Bosket's need for help was often ignored by officials. He claimed that just one month prior to the subway killings he called DFY officials to request removal from his home and placement in foster care. Later some officials were quick to acknowledge openly that the system simply had lost track of Bosket and could have possibly prevented the subway murders. Even the Governor at the time, Hugh L. Carey, declared that "blame falls squarely on the shoulders of the Division for Youth" (*New York Times*, July 30, 1978: 1).

Responding to Violent Juvenile Crime

It was not long after Bosket's disposition in juvenile court was announced that Governor Carey stated that he wanted legislation to make sure juveniles such as Bosket "never walk the streets again" (*New York Times*, June 30, 1978: 12). There was no time to create another Governor's commission to study again violent juvenile crime and to once more suggest juvenile justice reforms. Such a commission was created several years earlier, and the get-tough reforms were already part of the juvenile justice system. Besides, election day was less than 6 months away, and the governor faced a tight race for reelection in which he was repeatedly accused by his opponent of being "soft" on crime (McGarrell 1988). Only 6 months earlier he had vetoed a death penalty bill, and some believed that he wanted to act tough on crime by proposing at the time the most punitive delinquency law in the nation (Smith et al. 1980).⁴

Earlier attempts to pass waiver legislation had been resisted. New York was one of a few states that had set an already low general age of 16 for criminal responsibility. However, in criminal court juveniles between the ages of 16 and 18 could be sentenced as Youthful Offenders (YO) for offenses other than A felony crimes such as homicide.⁵ If granted YO

status, their records could remain confidential as is the case in juvenile court. Also, as YOs they would receive substantially shorter sentences and probation. In a sense, New York already automatically waived more juveniles to criminal court than states with waiver where general criminal responsibility began at older ages.

But the governor needed to do something about juveniles such as Willie Bosket who could commit acts of murder without ever facing criminal court or criminal punishment until they had reached the age of 16. He also wanted to do something to prevent chronic delinquents such as Willie Bosket from ever having the opportunity to commit subway murders. To do this he needed to propose legislation that would identify violence among juveniles younger than 15 and for offenses that were inclusive of a wide range of violent behaviors. In proposing the JO law, the governor went beyond automatic waiver in other states, such as Pennsylvania (Eigen 1981), which existed exclusively for the offense of murder. By proposing to transfer automatically initial jurisdiction over 13-year-old juveniles charged with murder and 14-year-old juveniles charged with rape, robbery, assault, and violent categories of burglary, the creators of the JO law wanted to do something more than just transfer juveniles such as Willie Bosket to criminal court. They wanted to classify and to track a wider population of violent delinquents as juvenile offenders before they became 15-year-old murderers.

Although Bosket's status as a delinquent triggered a legal reform, it was not the only incident to threaten the political and moral legitimacy of New York's juvenile justice system. Other incidents of serious violent juvenile crime were reported earlier in the media and repeatedly reproduced public and official criticisms of juvenile justice. A familiar story of crisis and reform appeared well before Bosket's acts of murder and long before the governor's decision to seek reelection. In the remaining sections of this chapter, I argue that the reasons for the sudden emergence of waiver legislation go beyond any particular incident of violent crime or momentary political ambition. In other words, Bosket and a governor's reelection campaign triggered crisis and waiver legislation, but they were not the exclusive reasons for doing something about violent crime by recriminalizing delinquency.

Real Reasons for Crisis and Reform

The deeper reasons for the JO law rest in a complex set of political and organizational concerns and interests.⁶ Part of those concerns are stimu-

lated by the media and their news reports on juvenile violence and juvenile justice. Reforms are advocated as part of a cyclical effort to do something about juvenile crime and justice. Conservative and liberal critics of juvenile justice provide the ideological ammunition for making reforms sell during certain periods of crisis. In the sections that follow, I divide the sources of crisis into first the political need to do something about violent juvenile crime, and then the deeper organizational concerns and interests that lead to juvenile justice reforms.

Although not everyone in New York would have agreed that there was a crisis, violent juvenile crime and the inability of juvenile justice to control its occurrence became familiar media themes. In the many decisions that editors must make as to what stories will sell newspapers and boost television ratings, the case of Willie Bosket fit well-developed themes and patterns of reporting. But the interests of the media in presenting a story are not necessarily the same as the public's interest in a true presentation of all the facts (Cohen & Young 1981: 17). The media's interest in fitting incidents and persons into preselected newsworthy themes neglects other possible relevant sources of crisis (Ericson et al., 1987; Fishman 1978).

Perhaps in a different period of time, what was considered newsworthy in the case of Willie Bosket would have produced a different portrayal of the factors that led to his violent behavior and a different perception of crisis. Bosket might have been portrayed as a repeated victim of violent abuse. His impoverished home environment might have been highlighted, as well as the culture of violence in his neighborhood and the institutions in which he was repeatedly placed. Recommended reforms might have followed which would have reinforced political and organizational interests in treatment and juvenile justice rather than punishment and criminal justice.

This takes us to reasons for crisis that go beyond the objective characteristics of crime and punishment. Crisis, or what Stanley Cohen refers to as a "moral panic," takes on unique forms to suit particular interests. In his description of a moral panic in a declining English resort town, Cohen tells us that

societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible (1980: 9).

In Cohen's analysis new categories of deviance, "mods" and "rockers," were created to help deal with the town's declining social and economic circumstances. The mods and rockers became the new "folk devils" on which editors as well as politicians were able to blame the town's growing troubles (see also Hall et al. 1981: 161).

But what does an English resort town's folk devils have to do with violent juvenile crime in New York City and subsequent juvenile justice reforms? It suggests that at times it became more convenient to blame the deviant for troubles that defy simple solutions. In times of crisis, societies have an occasional need to blame delinquents as offenders, and to develop a legal response that isolates and punishes them for their criminal behavior. Thomas Bernard (1992) in his book *The Cycle of Juvenile Justice* makes this point when he argues that reforms regularly alternate between treatment-oriented and punishment-oriented programs. Officials and the public may start out, as they apparently did before systems of juvenile justice, with the perception that punishment for juveniles is much too harsh and that there are not enough treatment-oriented options. Programs are developed to expand the number of lenient options for officials. After the creation of these treatment-oriented sanctions or programs, calls for reform are repeated when

justice officials and the general public remain convinced that juvenile crime is at an exceptionally high level. After some time, they begin to blame lenient treatments for the high crime rates. Initially responses to serious juvenile offenders are "toughened up," so that those offenders receive harsh punishments rather than lenient treatments. The responses for average or typical juvenile offenders are also "toughened up" so that they too receive harsh punishments. This process continues until there are many harsh punishments available for responding to juvenile offenders but few lenient treatments (Bernard 1992: 4).

And then the cycle of reforms returns to that which advocates treatment programs.

Yet a simplistic, cyclical view of reforms assumes that there are limited sets of directions in which the system can expand. If the punishments become harsh, treatment programs are eliminated. If treatment programs are advocated, then harsh punishments are no longer considered a viable option. Instead, a more complex vision of reform suggests that when the cycle of reforms produces harsher penalties, treatment programs are not dismantled or eliminated. Similarly, when treatment reforms are advocated, punishment is not eliminated but remains in the background as a last resort, just as it did in more punishment-oriented periods of reform.