# CERTIFICATION OF MINORS TO THE JUVENILE COURT: AN EMPIRICAL STUDY*

This paper reports the results of two studies: a survey of the law pertaining to the transfer of cases between the adult court[1] and the juvenile court and the results of an empirical study of cases actually transferred from the municipal and superior courts in San Diego, California to the juvenile court during a one-year period.[2] The latter study involved the examination of two hundred and thirty-one cases which represented approximately one-third of the cases transferred in a one-year period.

## DEVELOPMENT OF THE JUVENILE COURT

The problem of proper jurisdiction over young offenders has been a source of constant argument since the first juvenile court[3] was founded in Chicago, Illinois in 1899.[4] The juvenile court was founded in an attempt to get away from the strict punitive orientation of the adult courts and to afford the youthful offender treatment leading to rehabilitation through modern social and behavioral concepts.[5] Under the theory of *parens patriae*, the court would step into the situation in the place of the parent and do what was "best for the child" rather than simply punish the young offender. Since the child was no longer viewed as a "young criminal" and the

* The data contained herein have not been submitted to statistical tests of significance, and thus the conclusions and inferences drawn by the author are possibilities as seen by the author and not meant to reflect probabilities.

1. For brevity, the term "adult court" will be used when referring to the principal trial court in a jurisdiction which will usually be the municipal or superior court.

2. For a recent study with comparative statistics on a related aspect of the problem *see* Aldinger, *Certification Practices in California*, 23 C.Y.A.Q. 42 (1970) (hereinafter cited as Aldinger).

3. For an excellent historical discussion of the juvenile court *see* Note, *Problem of Age and Jurisdiction in the Juvenile Court*, 19 VAND L. REV. 833 (1966) (hereinafter cited as *Problem*).

4. *Id.* at 836.

5. Herman, *Scope and Purposes of Juvenile Court Jurisdiction*, 48 J. CRIM. L.C. & P.S. 590 (1958).

court was simply doing what was best for the child, it was felt that the constitutional safeguards had no place in the juvenile court. Of course the court knew best, it was argued, and the court could easily look out for the minor and make sure that substantial justice was done. It was further argued that being free of bothersome constitutional considerations, such as the right to confront accusers and the right to counsel, the court was more free to devote its time and energy to its rehabilitation goal.

*Constitutional Criticism*

Recently, however, the juvenile court has come under a barrage of attacks. Many prominent authorities, although agreeing with the basic philosophy of the juvenile court, have questioned the actual practices of the juvenile court. The attitude of the criticism is best exemplified by the often quoted remark of Mr. Justice Fortas in *Kent v. United States*:[6]

> While there can be no doubt of the original laudable purpose of the juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. . . . There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[7]

The *Kent* decision sparked much debate[8] and led to the reform of juvenile courts in many jurisdictions. Also of great importance to juvenile court reform was *In re Gault*[9] which secured additional constitutional rights to minors.

Gault, age 15, and a friend were accused of making obscene calls to a neighbor woman and were arrested and detained. No notice of detention was given to Gault's mother and she learned about the detention from a neighbor. When she went to the detention home, she learned that the juvenile hearing was the next day. At the

6. 383 U.S. 541 (1966).
7. *Id.* at 555-56.
8. Gardner, *The Kent Case and the Juvenile Court; A Challenge to Lawyers*, 52 A.B.A.J. 923 (1966); McLean, *An Answer to the Challenge of Kent*, 53 A.B.A.J. 457 (1967).
9. 387 U.S. 1 (1967).

hearing, a petition was filed but the minor was not given a copy or told of its content. There were no witnesses present and no transcript of the proceeding was made. Several days later, the probation officer sent Gault's mother a handwritten note stating that Gault's final hearing would be the following Monday. At that hearing, the neighbor who made the complaint was again not present. The judge then committed Gault to the State Industrial School, a commitment which could last for six years. The maximum sentence for an adult for the same offense would be no more than two months.

In overturning the juvenile court's decision, the court held that: the minor and his parents have a right to detailed notice of the charges sufficiently in advance of the hearing to allow for preparation of defense; the minor has a right to court appointed legal counsel if he cannot afford to pay for one and he must be informed of this right; the minor has a right to remain silent and so must be informed; there must be a valid waiver of the right to remain silent according to the Miranda rules or else a confession is void; and in the absence of a valid confession, sworn testimony by the minor's accusers, with opportunity for cross-examination, is necessary to uphold a finding of delinquency.

Many of these constitutional rights had been denied to minors in some jurisdictions before the *Kent* and *Gault* decisions, but some states, such as California, had extended most of these rights to minors as early as six years before the *Gault* decision.[10]

The degree of proof needed to substantiate a charge in the juvenile court has in the past been a subject of debate.[11] However, a recent Supreme Court decision, *In re Winship*,[12] requires the adult court standard of "beyond a reasonable doubt" to be used in substantiating all charges that would constitute a crime if committed by an adult. This standard requires a greater degree of proof than did the "preponderance of evidence" used by many juvenile courts before the decision.

An issue that has not directly been decided by the Supreme Court is the minor's right to trial by jury. Most jurisdictions still refuse to provide a jury trial in the juvenile court, but a few jurisdictions hold that a jury trial is a constitutional right that cannot

10. Note, *The California Juvenile: His Rights and Remedies*, 1 PACIFIC L.J. 350 (1970).

11. Comment, *Constitution law—juvenile delinquency—to insure due process and equal protection, such facts as are necessary to adjudicate a child a delinquent must be proved beyond a reasonable doubt rather than by a preponderance of evidence*, 1 ST. MARY'S L.J. 132 (1969).

12. 397 U.S. 358 (1970).

be denied to minors.[13] The Supreme Court had an opportunity to decide the question in *DeBacker v. Brainard*,[14] but passed by it stating that at the time the case was heard by the juvenile court, the right to a trial by jury had not been incorporated into the fourteenth amendment and was not, therefore, applicable to the states. There were dissenting opinions in *De Backer* and Justice Douglas stated that he would reach the merits and hold that the sixth and fourteenth amendments require a jury trial as a matter of right where the delinquency charge is an offense which, if the person were an adult, would be a crime triable by jury.[15]

Critics of the trial by jury proposition stress the inconvenience and administrative expense involved in providing a jury trial. They point out that a trial by jury would destroy the "wise discretion" of the judge upon which the juvenile court theory is founded.[16] They believe the informal atmosphere of the juvenile court is essential to rehabilitation and feel that the jury would both destroy the confidentiality of the hearing and expose the minor to public ridicule. Finally, critics of trial by jury stretch the argument by stating that jury trial would have to be by the minor's peers which supposedly could provide the spectacle of a jury of six year olds.

Proponents of jury trial in the juvenile court believe that the added protection of the jury trial outweighs the supposed disadvantages. They cite the repeated failure of the juvenile court to provide adequate protection to the minor while operating under the theory of *parens patriae*.[17] Those in favor of jury trial believe that the critics' arguments are not founded on logic and that jury trial would not necessarily alter the juvenile court in the manner suggested by the critics. For example, "trial by one's peers" does not necessarily mean trial by those of one's own age: a forty-five year-old man does not now have the right to trial by a jury made up exclusively of forty-five year olds. In addition, proponents of jury

13. Nieves v. United States, 280 F. Supp. 994 (1968).
14. 396 U.S. 28 (1969).
15. *Id.* at 35.
16. Arthur, *Should Children be as Equal as People?*, 45 N.D. L. REV. 204 (1969).
17. For a good historical analysis of the concept of *parens patriae, see* Cogan, *Juvenile Law, Before and After the Entrance of "Parens Patriae"*, 22 S.C.L. REV. 147 (1970).

trial point out that in a bifurcated hearing the jury could be utilized only in the adjudication stage and the judge could be free to use his wide discretion in the dispositional hearing.[18] Most scholarly discussions emphasize the desirability of balancing the need for protection to the minor on one hand with the advantages of an informal approach and the practical problems of administrative expense on the other hand.[19] It seems that we can expect more states on their own to extend jury trials to minors and that the Supreme Court will eventually decide the issue.

*Criticism of Basic Assumptions*

From the foregoing, it can be seen that the juvenile court has indeed been under attack for its failure to provide constitutional safeguards to minors.[20] Criticism has not limited itself to constitutional issues alone. Some of the basic presumptions of the juvenile court are being challenged.[21] Thoughtful individuals are beginning to wonder if the juvenile court really saves a child from the stigma of being labeled a criminal. A recent study indicates that for an alarmingly broad segment of our society the term "delinquent" was just as bad, or even synonymous with the term "criminal."[22]

This is particularly frightening when you consider the wide variety of essentially juvenile and non-criminal behavior that can lead to a determination of delinquency.[23] Most authorities agree that in some cases, being adjudged a delinquent has no practical consequences different from being labeled a criminal and thus there appears to be little justification for the denial of any constitutional safeguards in the juvenile court.

Some of the doubts concerning the juvenile court have been more than theoretical. There has been some empirical research into the relationship between the stated goals of the juvenile court and the

18. Comment, *Constitutional Law: An Infant's Right to a Trial by Jury*, 22 S.C.L. REV. 423 (1970).

19. Comment, *A Balancing Approach to the Grant of Procedure Rights in the Juvenile Court*, 64 NW. U.L. REV. 87 (1969).

20. For a good recent discussion of constitutional questions in light of waiver proceeding *see* Note, *Waiver of Jurisdiction in the Juvenile Court: Another Gault Question Still Unanswered*, 15 S.D.L. REV. 376 (1970).

21. For a recent article that critically examines some of the cherished ideals of the juvenile court *see* Parker, *Instant Maturation for the Post-Gault "Hood"*, 4 FAM. L.J. 113 (1970).

22. Comment, *"Delinquent Child": A Legal Term Without Meaning*, 21 BAYLOR L. REV. 352 (1969).

23. *Id.* at 396. The author prepared an informative table revealing the various types of conduct which constitutes delinquency according to the juvenile codes of the fifty states.

actual results, such as a 1969 study of commitments to the California Youth Authority made by David Fogel.[24] Fogel examined the history of ten minors committed to the California Youth Authority from one county which included an examination of numerous court reports written by twelve different probation officers. He found a marked deviation from the stated rehabilitation goals of the California Youth Authority in the attitude of probation officers recommending a commitment to the California Youth Authority in court reports. Fogel's research indicates that when probation officers recommend commitment to the California Youth Authority, they tend to rely little on a social history casework approach in the court report. Instead, they emphasize the seriousness of the present offense and the general hopelessness of the case which indicates that they do not view a commitment to the California Youth Authority as a particularly rehabilitating measure:

> The most plausible explanation of this process is that the youngster has exhausted the probation officer's patience and that he's getting too hot in the community.
>
> The conclusion that there is individualized justice for children cannot be sustained because of the demonstrable frustration (even if they selected the right treatment course each time) of probation officers in trying to perform as rehabilitators in a system (juvenile court administration) which does not provide enough means (placements) to reach its goals of rehabilitation. The probation officer is driven into a sort of deviant procedure to maintain the myth of rehabilitation while actually sending children into custody (CYA).[25]

In summary, the juvenile court is now in a process of rapid change as the result of criticism in two major areas. One area is the lack of constitutional safeguards to minors subject to the basic loss of freedom in the juvenile court. Sparked by reform and debate following major discussions such as *Kent* and *Gault*, the juvenile courts have steadily increased constitutional rights of minors, and with the right to jury trial being currently debated, many authorities wonder if it is not time for the pendulum to swing more towards the original position of the juvenile court as the omniscient protec-

24. Fogel, *The Fate of the Rehabilitative Ideal In California Youth Authority Dispositions*, 15 CRIME & DELIN. 479 (1969). Fogel is chairman of the sociology department at Laney College and was formerly Director of Institutions for the Marin County Probation Department.
25. *Id.* at 493-94.

tor of the minor. The second area of criticism follows directly from the first and constitutes a direct attack on some of the basic assumptions that underlie the juvenile court movement. Many authorities wonder if the juvenile court really is providing meaningful protection to the minor accused of crime. It is no secret that many professional practitioners in the area question the rehabilitative nature of many juvenile court procedures. While the movement for more constitutional rights has affected some states more than others, all states are now taking a close look at the quality of justice that has paraded under the protective cover of the principle of *parens patriae*.[26]

### The Jurisdictional Age Dilemma

Almost all states have separate juvenile courts which take jurisdiction over offenders below a certain age, usually 16 or 18. In addition, most states have statutes which basically allow concurrent jurisdiction of offenders between the ages of 16 and 18. Details vary from one state to another, but the general scheme is for the juvenile court to have original jurisdiction of offenders under a certain age, usually 18 with a possibility of transferring any offender over a certain age, usually 14 or 16, to the adult court after a finding is made in the juvenile court that the offender is unfit for juvenile process. The process of transferring a case from juvenile to adult court is known as "waiver of jurisdiction" in most states,[27] but the terms "certification" and "remand" are also common and are used in California. The adult courts generally have original jurisdiction over offenders over the age of 16 or 18 with authority to certify offenders under the age of 21 to the juvenile court for consideration of treatment as a juvenile where the minor would appear to benefit more from the services of the juvenile court. Although this study examines the practice in one county of California, the problem exists in every state and the local situation is considered reasonably representative of the national practice.[28]

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26. For critical examination of the juvenile court *see*, Alper, *The Childrens Court at Three Score and Ten: Will It Survive Gault?*, 34 Albany L. Rev. 46 (1969); Ferguson, *Some Kangaroo Aspects of Our Juvenile Courts*, 45 Calif. S.B.J. 85 (1970); Ketcham, *The Changing Philosophy of the Juvenile Justice System*, 20 Juv. Ct. Judges J. 58 (1969).

27. Comment, *Waiver—Right to Counsel—Certification of Juvenile to Criminal Proceedings*, 9 Natural Resources J. 310 (1969).

28. The following list was prepared by Alice B. Freer, a program analyst in the Office of the Director of the Division of Juvenile Delinquency Service of the Children's Bureau of the Department of Health, Education and Welfare, as of February 1965, and it previously appeared in *Problem, supra* note 3, at 838:

In California, the juvenile court has sole jurisdiction of offenders

| *State* | *Waiver Age* | *Jurisdiction Age* |
|---|---|---|
| Alabama | 14 | 16 |
| Alaska | None Stated | 18 |
| Arizona | No Waiver | 18 |
| Arkansas | None Stated | 18 |
| California | 16 | Minor (21) |
| Colorado | No Waiver | 18 |
| Connecticut | Under 16 | 16 |
| Delaware | 16 | 18 |
| District of Columbia | 16 | 18 |
| Florida | 14 | 17 |
| Georgia | 15 | 17 |
| Hawaii | Under 18 | 18 |
| Idaho | 16 | 18 |
| Illinois | Any Case | 17M, 18F |
| Indiana | 15 | 18 |
| Iowa | No Waiver | 18 |
| Kansas | M16, F18 | M16, F18 |
| Kentucky | 16 | 18 |
| Louisiana | No Waiver | 17 |
| Maine | Any Juvenile | 17 |
| Maryland (Montgomery County) | 16-18 | 18 (except Baltimore which is 16) |
| Massachusetts | 14-17 | 17 |
| Michigan | 15 | 17 (17-19) |
| Minnesota | 14 | 18 |
| Mississippi | 13 | 18 |
| Missouri | 14 | 17 |
| Montana | 16 | 18 (21) |
| Nebraska | No Waiver | 18 |
| Nevada | 16 | 18 |
| New Hampshire | None Stated | 18 |
| New Jersey | 16-17 | 18 |
| New Mexico | 14 | 18 |
| New York | No Waiver | 16 |
| North Carolina | 14 | 16 |
| North Dakota | 14 | 18 |
| Ohio | Any Age | 18 |
| Oklahoma | None Stated | 18F, 16M |
| Oregon | 16 | 18 |
| Pennsylvania | 14 | 18 |
| Rhode Island | 16 | 18 |
| South Carolina | Any Child | 17 |
| South Dakota | None Stated | 18 |
| Tennessee | 16 | 18 |
| Texas | No Waiver | M17, F18 |
| Utah | 14 | 18 |
| Vermont | No Waiver | 16 |
| Virginia | 14 | 18 |
| Washington | None Stated | 18 |
| West Virginia | 16 | 18 |
| Wisconsin | 16 | 18 |
| Wyoming | No Waiver | 18 |

under the age of 16 and original jurisdiction of minors under the age of 18. The adult court has sole jurisdiction of offenders above the age of 21 and original jurisdiction of minors over the age of 18.[29] In practice, an offender over 18 would be processed in the adult court but could be certified to the juvenile court if he were under the age of 21 at the time he committed the offense. Likewise, an offender under 18 would be processed in the juvenile court, but he could be transferred to the adult court if he were over the age of 16.

Although there has been much discussion about transfers from juvenile to adult courts, there are few guidelines in determining what cases are proper for initial transfer from the adult to the juvenile court. The California statute, for example, provides that any offender under the age of 21 *may* be certified to the juvenile court.[30] Every judge must, out of necessity, make his own standards. It would seem that many judges have no standards, certifying any offender under the age of 21 who may or may not even request certification.[31]

The California statute giving the adult court judge total discretion in the certification decision has been upheld by the courts. In *People v. Luzovich*,[32] a minor tried in adult court did not inform the court that he was 17 years of age until the trial was already in progress. The appellate court upheld the trial judge's action in not certifying the minor. In a more recent case, *People v. Navarro*,[33] the minor was 18 years of age on the date the crime charged was committed. The appellate court approved the trial court's discretion and held that denial of a motion for certification is proper unless there is a showing of abuse of that discretion.

Once a case has been certified to a juvenile court in California, there are definite standards a juvenile court must consider in deciding whether to retain jurisdiction or return the case to the adult court. A landmark case in this area is *Kent v. United States*.[34]

In *Kent*, a 16-year-old juvenile was arrested following a house breaking, robbery and rape. Without a hearing or a statement of reasons, the juvenile court waived its jurisdiction and sent him to

29. CAL. WELF. & INST'NS CODE §§ 603-07 (West 1966).
30. CAL. WELF. & INST'NS CODE § 604(B) (West 1966).
31. The problem of lack of standards for certification prompted the judge of the juvenile court of San Diego County, California, to write a letter to the municipal and superior court judges essentially suggesting an initial consideration of the *Kent* standards (below) *before* a minor is certified.
32. 127 Cal. App. 465, 16 P.2d 144 (1932).
33. 212 Cal. App. 2d 299, 27 Cal. Rptr. 716 (1963).
34. 383 U.S. 541 (1966).

the adult court for trial. He was convicted in the United States District Court for the District of Columbia and his conviction was affirmed by the United States Court of Appeals for the District of Columbia Circuit. On writ of certiorari, the Supreme Court reversed, stating that the Juvenile Court Act of the District of Columbia requires a hearing before waiver of jurisdiction, a statement of reasons for waiver, and that the minor's attorney be allowed access to his social file.

In an appendix to the opinion, the *Kent* court referred to Policy Memorandum Number 7, November 30, 1959, which sets forth factors which should be considered by the juvenile court judge in waiving jurisdiction, summarized as follows:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
4. The prosecutive merit of the complaint, *id est* whether there is evidence upon which a Grand Jury may be expected to return an indictment.
5. The disposition of companions, whether they were tried as adults?
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile.
8. The prospects for adequate protection of the public and likelihood of reasonable rehabilitation of the juvenile by use of procedures, services and facilities currently available to the juvenile court.[35]

The courts have made it quite clear that the seriousness of the alleged offense alone is not sufficient reason for remanding a mi-

35. *Id.* at 566-67.

nor to the adult court. The California courts emphasize that the "total behavioral pattern" should be considered and that the key issue is the likelihood of rehabilitation through the services of the juvenile court. So, in *Richerson v. Superior Court*,[36] the appellate court reversed a juvenile court decision remanding a minor to adult court. The juvenile court considered only the crime charged and did not measure fitness for treatment by the juvenile court by balancing behavioral patterns in the minor's history against the seriousness of the offense. The probation officer's report revealed nothing but favorable material in the minor's background but ended with the conclusion that the minor was emancipated from his parents' home, that he had the ability to know right from wrong, and that he had admitted involvement in the commission of an offense punishable as a felony.[37] The court found that *"his 'behavioral background' is not mentioned in connection with this recommendation."*[38]

Likewise, in *Bruce A.M. v. Superior Court*,[39] the appellate court vacated a juvenile court order certifying a minor to adult court because the juvenile court had based its order on the seriousness of the offense and because the probation officer did not submit any report on the behavioral pattern of the minor. The minor was certified at a brief detention hearing over his attorney's objection that there was no evidence to show that the petitioner would not be amenable to proceedings in juvenile court. The juvenile court, despite this, indicated that it was going to certify the minor because "of the very serious nature of the offense"[40] and because the place for the minor to establish his innocence was before the adult court, a clearly untenable position, but one unfortunately heard too often in actual practice.

However, the court, in a recent case, *People v. Arauz*,[41] upheld a certification from juvenile court to the adult court even though the juvenile court failed to expressly find that the defendant was not a fit and proper subject for treatment under juvenile court law. But considerable evidence concerning the minor's background was introduced at the hearing and the appellate court noted:

> While we have held the juvenile court was not required by Welfare and Institutions Code section 707 to make an express finding appellant, as a minor over 16 years of age, was not a fit and proper

36. 264 Cal. App. 2d 729, 70 Cal. Rptr. 350 (1968).
37. *Id.* at 731, 70 Cal. Rptr. at 351.
38. *Id.* at 731, 70 Cal. Rptr. at 351.
39. 270 Cal. App. 2d 566, 75 Cal. Rptr. 881 (1969).
40. *Id.* at 570, 75 Cal. Rptr. at 884.
41. 5 Cal. App. 3d 523, 85 Cal. Rptr. 266 (1970).

> person for treatment under the juvenile court law before it could order him prosecuted as an adult, we do not wish to be understood as saying the court need not in fact have made that determination. It is only when the court concludes upon substantial evidence the minor is not amenable to care and treatment under the program available through juvenile court facilities, the court is empowered to order an adult prosecution. . . . So long as the evidence adduced at the hearing supports such a finding, it may be properly implied from the court's order he be prosecuted as an adult.[42]

It appears that there are settled guidelines for certifying a minor from juvenile court to the adult court and yet no guidelines for certifying a minor from adult court to juvenile court other than the judge should not "abuse his discretion." The empirical study reported below seeks to determine what type of cases are, in fact, certified to the juvenile court and, just as important, what is done with these cases when they reach the juvenile court.

## METHOD

The probation case folders of cases certified from the municipal and superior courts of San Diego County, California to the juvenile court were examined for four months during a one-year period after the final disposition of the case in the juvenile court. The four months were randomly chosen except that months with an unusually low or high amount of certifications were avoided to insure uniform sample size. All the cases that were certified in each month were examined except for a minimal number of cases each month that were not available because of misfiling or similar mechanical problems. The period covered was August 1969 to July 1970. The four months examined were October 1969, January 1970, March 1970 and July 1970, or one month in each quarter. The total number of cases examined was 231, which represented approximately one-third of the total of 742 cases certified during the period.

The cases were tabulated into different categories based on the criteria suggested in *Kent*;[43] for example, the number and percentages of youth certified with extensive criminal records, serious offenses, emancipated status, et cetera. The final disposition of the

42. *Id.* at 528, 85 Cal. Rptr. at 269-70.
43. 383 U.S. at 566-67.

juvenile court was also tabulated into four different categories reflecting either adult-oriented dispositions, such as court costs (basically a fine), or juvenile type dispositions, such as juvenile probation, juvenile work project, voluntary counseling, et cetera.

## Results

The individual factors, isolated as they are, must be viewed with caution since each case must be decided on its own merits taking the totality of factors into consideration on a case by case basis. However, certain general trends can be ascertained by using a statistical approach and for this purpose only the approach is valid.

TABLE 1

PAST RECORD

| | OCTOBER 1969 | JANUARY 1970 | MARCH 1970 | JULY 1970 | TOTAL SAMPLE |
|---|---|---|---|---|---|
| JUVENILE RECORD | (18) 37% | (15) 28% | (19) 30% | (23) 34% | (75) 32% |
| ADULT RECORD | (7) 15% | (3) 6% | (4) 6% | (5) 7% | (19) 8% |
| TRAFFIC RECORD (EXTENSIVE) | (4) 8% | (5) 9% | (6) 10% | (9) 13% | (24) 10% |
| TOTAL PAST RECORD | (29) 60% | (23) 46% | (29) 46% | (37) 55% | (118) 51% |
| | N=48 | N=53 | N=63 | N=67 | TN=231 |

*Table I* shows the number and percentages of minors certified with past records. The juvenile record column included only cases serious enough to have a probation file opened and did not include minor offenses handled by the police on an informal basis. The adult record column included only convictions or prosecutions then pending in adult courts. Arrest records were not used. The traffic record column included only repeated violators and excluded non-moving violations.

From *Table I* we note that thirty-two percent of all certifications had previous juvenile records. While this factor alone might not indicate unfitness for juvenile court process, one wonders why the minor is suddenly in a position to take advantage of juvenile services because he is over the age of eighteeen and has committed another offense after having previously had the advantage of juvenile services. It is a fact that the juvenile court is overloaded in almost every jurisdiction and that certifications which have already shown an inability to profit from the juvenile court process take

time and resources away from juveniles who may better be able to profit from the experience. It is not suggested that a prior juvenile record be a bar to certification, but it is suggested that 32 percent is too high a percentage to believe that individual factors in each case outweighed the behavior pattern suggested by the previous record with the juvenile court. A much more likely theory is that the minors are being certified to the juvenile court in many cases with little, if any, consideration of their amenability to the juvenile court process.

The adult record column reveals that 19 minors, or 8 percent of all certifications, had either adult convictions, were on adult probation, or had prosecutions pending in adult court. Again, one wonders why a minor should now be handled in a juvenile court if his background had previously been found more appropriate for adult court process or if he in some cases was already on adult probation.

Another facet of the same problem is the effect of older, sophisticated offenders on younger, more impressionable youth. The older age and previous law violations may serve as a status symbol for a youth who may be on the brink of choosing a life of crime. Minors with adult and juvenile records together comprise 40 percent of all certifications. These statistics suggest more thought about the certification process from the vantage point of the adult court.

Individual cases may have additional factors which defeat the presumption of "adulthood," but the large percentage certified suggests that much judicial time and energy could be saved if more consideration of record were given at the adult court before certification.

*Table II* shows the number and percentage of minors certified charged with serious offenses. Statistics on the type of offense for the month of July 1970 were not available and the table covers three months with a total sample of 164 cases. Using the *Kent* criteria, these include mostly offenses against the person although burglary of $500 or more and sale of drugs were included as they are almost universally considered serious offenses. The sale of drugs column included only actual sales and almost all of these were admitted sales to undercover agents.

TABLE II

SERIOUS OFFENSES

| | OCTOBER 1969 | JANUARY 1970 | MARCH 1970 | JULY 1970 | TOTAL SAMPLE |
|---|---|---|---|---|---|
| SALE OF DRUGS | (3) 6% | (3) 6% | (10) 16% | — | (16) 10% |
| BURGLARY OF $500+ | (3) 6% | (1) 2% | (2) 3% | — | (6) 4% |
| ASSAULT & BATTERY | (1) 2% | (1) 2% | 0 | — | (2) 1% |
| ROBBERY | (1) 2% | (1) 2% | 0 | — | (2) 1% |
| MURDER & MANSLAUGHTER | 0 | (1) 2% | 0 | — | (1) 1% |
| TOTAL SERIOUS OFFENSES | (8) 17% | (7) 13% | (12) 19% | — | (27) 16% |
| | N=48 | N=53 | N=63 | — | TN=164 |

TABLE III

LESS SERIOUS OFFENSES

| | OCTOBER 1969 | JANUARY 1970 | MARCH 1970 | TOTAL SAMPLE |
|---|---|---|---|---|
| POSSESSION MARIJUANA | (11) 23% | (13) 25% | (17) 27% | (41) 25% |
| POSSESSION DANGEROUS DRUGS | (8) 17% | (6) 11% | (16) 25% | (30) 18% |
| UNDER INFLUENCE DRUGS | (6) 13% | (8) 15% | (2) 3% | (16) 10% |
| POSSESSION LSD | (3) 6% | (1) 2% | (6) 10% | (10) 6% |
| ALL OTHER OFFENSES | (12) 25% | (18) 34% | (10) 16% | (40) 24% |
| TOTAL LESS SERIOUS OFFENSES | (40) 83% | (46) 87% | (51) 81% | (137) 84% |
| | N=48 | N=53 | N=63 | TN=164 |

*Table III* shows the number and percentages of minors certified with less serious offenses. Although the offenses may seem serious to some and from a social and personal standpoint are serious indeed, they are categorized using the *Kent* standards and are offenses where the real victim is usually the offender and society at large.

Since the seriousness of the alleged offense is only one factor in the certification process and is a factor the courts appear to feel of less importance, *Table II* and *Table III* would seem to be of less significance. However, in view of the current drug problem, sale of drugs might be considered of special importance. Again, although individual case factors may defeat the presumption, it is hard to imagine a person over the age of 18 who sells drugs illegally for a profit as the type of individual who is best suited for handling by our juvenile courts. It is especially hard to entertain this belief for all 16 of the minors certified when they comprise 10 percent of the certification in the sample for the one-year period.

TABLE IV

EMANCIPATION FACTORS

| | OCTOBER 1969 | JANUARY 1970 | MARCH 1970 | JULY 1970 | TOTAL SAMPLE |
|---|---|---|---|---|---|
| EMANCIPATED (Composite Score) | (6) 13% | (9) 17% | (8) 13% | (17) 25% | (40) 17% |
| SELF-SUPPORTING | (9) 19% | (8) 15% | (13) 21% | (18) 27% | (48) 21% |
| MARRIED | 0 | (1) 2% | (2) 3% | (1) 1% | (4) 2% |
| MILITARY | (3) 6% | (5) 9% | (1) 1% | (4) 6% | (13) 6% |
| COLLEGE STUDENT | (8) 17% | (5) 9% | (14) 22% | — | (27) 16% |
| NON-RESIDENT | (5) 10% | (8) 15% | (13) 21% | (13) 19% | (39) 13% |
| | N=48 | N=53 | N=63 | N=67 | TN=231 |

*Table IV* shows some factors used in considering whether a minor's life style is more like a juvenile living at home under the guidance of his parent or like an adult with independent status. The emancipated column is a composite score and represents the number and percentage of minors with three or more indicators of emancipation, such as not living at home, independent income, lack of guidance from parental figure, et cetera. The number of college students certified in the month of July was not available. Twenty-one percent of all the minors certified were self-supporting and 13 percent of all cases certified were non-residents, usually out of state transients. It might be asked what services the local juvenile court

can offer a minor who lives two thousand miles away. Of course, courtesy supervision by an out-of-state juvenile court is a possibility, but practical problems arise because jurisdiction age differs from state to state[44] and many juvenile courts are less than enthusiastic about supervising a 20-year-old for shoplifting a candy bar when the jurisdiction of their court ends at age 16.

TABLE V

MISCELLANEOUS FACTORS

| | OCTOBER 1969 | JANUARY 1970 | MARCH 1970 | JULY 1970 | TOTAL SAMPLE |
|---|---|---|---|---|---|
| MINOR OR ATTORNEY PREFER ADULT CT | (1) 2% | (3) 6% | (2) 3% | (1) 1% | (7) 3% |
| COMPANION HANDLED IN ADULT CT | (1) 2% | (3) 6% | (5) 8% | (10) 15% | (19) 8% |
| PROBATION REPORT RECOMMEND REMAND | (18) 38% | (13) 25% | (10) 16% | (12) 18% | (53) 23% |
| ACTUALLY REMANDED TO ADULT COURT | (10) 21% | (12) 23% | (5) 8% | (12) 18% | (39) 17% |
| | N=48 | N=53 | N=63 | N=67 | TN=231 |

*Table V* shows miscellaneous factors associated with the transfer of cases between the adult or juvenile court. Seven minors wanted their cases to remain in adult court, possibly because a minor may receive a stricter disposition in juvenile court for some traffic matters where the statutes require automatic revocation of driving privileges for certain offenses committed by minors.

*Table VI* shows the status of the cases after final disposition by the juvenile court. The column juvenile type disposition includes cases that were given a disposition of a nature not available to the adult court. Included in this category were juvenile probation, juvenile work project, haircuts, voluntary counseling programs, et cetera. Although probation is available to the adult court, it differs significantly from juvenile probation in that the latter involves more emphasis on family and community factors. Adult type dispositions consisted of court costs and dismissal of the juvenile court petition. The court costs ranged generally from twenty-five dollars

44. *Problem, supra* note 3 at 838.

TABLE VI

JUVENILE COURT DISPOSITIONS

| | OCTOBER 1969 | JANUARY 1970 | MARCH 1970 | JULY 1970 | TOTAL SAMPLE |
|---|---|---|---|---|---|
| JUVENILE TYPE DISPOSITION | (6) 13% | (7) 13% | (20) 32% | (17) 25% | (50) 21% |
| ADULT TYPE DISPOSITION (Court Costs & Dismiss) | (24) 50% | (28) 53% | (27) 43% | (31) 46% | (110) 48% |
| DISMISS, LACK OF EVIDENCE | (8) 17% | (6) 11% | (11) 17% | (7) 10% | (32) 14% |
| REMAND TO ADULT CT | (10) 21% | (12) 23% | (5) 8% | (12) 18% | (39) 17% |
| | N=48 | N=53 | N=63 | N=67 | TN=231 |

to five hundred dollars. It would appear the court cost and dismissal action is essentially a fine which would also be available to the adult court with the important exception that the offender has only a juvenile record and no adult convictions when he is certified to the juvenile court. Thirty-two cases, which comprise 14 percent of all cases certified, were dismissed because of lack of evidence. It appears that some adult courts use certifications to the juvenile court as a convenient means of getting rid of cases which are either lacking in evidence or are of such minor consequence as not to justify court time. This is a minor point, but it was presumably the purpose of the legislature in setting up the juvenile court to provide specialized services for youthful offenders rather than provide disposal of adult cases where the charges were without merit.

Of more significance in *Table VI* is the fact that 110 minors, or 48 percent of all minors certified, were given adult type dispositions. These dispositions were court costs which appear to be a fine; a disposition also available to the adult court. The reason for these dispositions is apparent; what else can the juvenile court do with a minor who has already been on juvenile probation and failed, is not living at home under parental supervision, is self-supporting and lives out of state, et cetera. The remand column shows that a significant number of these minors are remanded (17

percent). In many cases, this is a waste of time for all concerned, since the adult court will likely give the minor a suspended sentence and a fine which, to the minor, is viewed the same as court costs in the juvenile court.

Indeed, a recent statistical study examined a total of 184 cases in Riverside County and concluded that there was no statistically significant difference between the success rates of the cases handled on juvenile probation and those handled on adult probation (Chi Square = .098 P>.70).[45]

> The results of the study indicate that among cases which were eligible to be considered for certification the likelihood for success was the same whether juvenile or adult probation was granted (85 percent and 82.4 percent). This could be the basis for an argument to either extend certification to many more individuals or to do away with it, depending on one's point of view.[46]

It appears to be a misuse of judicial process to certify these gross cases in the first place, and an equal misuse of judicial process for the juvenile court to be forced to either give a fine or remand the case to the adult court.

Concerning California certification practices in general, it was further noted:

1. Most of the counties use differing guidelines to determine suitability for certification, and many of these guidelines are quite dissimilar.
2. Five counties do not accept certification cases in juvenile court, as a matter of policy. Larger counties are included, so that availability of probation supervision is not the determining factor in these policies.
3. Five counties generally accept certification in juvenile court, as a matter of policy, in order to prevent the client from having an adult conviction record.
4. Of the 46 counties which accept certifications, only three have special supervision programs for those clients, and only one has a specific treatment program which has organized rehabilitatative services for them.[47]

The question devolves to the difference between a juvenile record and an adult conviction. Many attorneys are quite frank in admitting that the reason they seek certification to the juvenile court is not because they feel their client is more amenable to the

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45. Aldinger, *supra* note 2, at 45. Walter Aldinger is a clinical psychologist with the Riverside County Probation Department. *Chi Square* is a traditional test of statistical significance which in this case shows that the slight difference in the two groups is attributable to chance rather than to a meaningful difference between the groups.
46. Aldinger, *supra* note 2, at 46.
47. Aldinger, *supra* note 2, at 42-43.

services of the juvenile court but because, in the spirit of advocacy, they are trying to get the best deal for their client and avoid the serious consequences of an adult conviction. The merits of this practice is the subject of another debate, but surely the legislature's purpose in creating the juvenile court was to provide specialized services for youthful offenders rather than save adults from the consequences of their own acts. This practice becomes further suspect when we re-examine *Table I* and note that many of these clients we are trying to save from the horrors of an adult conviction have already enjoyed the services of the juvenile court and have failed to benefit and some, in fact, already have adult convictions on their record. The practice only succeeds in mixing older offenders with younger offenders without providing any specialized treatment program for the older offender. An illusionary benefit is thus bought at a high price.

## IV. Conclusion

The provisions of most state statutes for the transfer of cases of young offenders from the adult court to the juvenile court is necessary to avoid many injustices in individual cases. Unquestionably, the vast majority of cases certified to the juvenile courts result in greater justice and better service to the community. But a substantial minority of minors are either certified to the juvenile court without any consideration of their amenability to the juvenile court process or are certified for reasons in violation of the spirit of the juvenile court, such as avoidance of the stigma of an adult conviction or frivolity of the case against the minor. The results are a misuse of judicial process, a denial of the accused's right to a speedy trial, and an overburdening of both the adult and the juvenile court calendars.

An alternative might be, first, to give a brief consideration of the *Kent* factors at the adult level, perhaps by requiring the attorneys to include some type of brief information concerning the minor's background with the motion for certification and, second, to either eliminate or reduce to minor violations some of the unpopular laws which the adult courts are so hesitant to adjudicate. But the real significance of this problem is not the specific misuse of judicial process which it represents, but the dishonesty it reveals concerning the juvenile court process. At a time when many people are

beginning to question the underlying assumptions of the juvenile court process, we see that attorneys are deliberately working against one of the basic goals of the juvenile court by mixing older sophisticated offenders with more impressionable youth in order to "get their client the best deal." We also see that to many people, being judged delinquent is synonymous with being "criminal." At this same critical period in juvenile court evolution, we see indications that probation officers do not consider a commitment to the Youth Authority as rehabilitative and statistics that strongly indicate that older youth do just as well when handled in the adult courts without the "benefits" of a certification to the juvenile court. Manipulation of the mechanics of a legal system to avoid evils which have entered that system is no substitute for honest recognition of the problems and a straight forward effort at solution.

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* The author was a probation officer at the time the statistical research was done, and he wishes to express his appreciation to the San Diego County Probation Department for their help in this study.