Each year the national percentage of juvenile gang members decreases, while the number of gang related crimes has risen in Tennessee. Nearly 50% of gang members are currently under the age of 18. Adjudication of juvenile gang related cases is determined by the presiding judge's discretion, but with the passing of House Bill 227 and Senate Bill 339 the offender would be automatically transferred from juvenile to adult court. These bills, which are sponsored in the Tennessee General Assembly by Representative Sheila Butt and Senator Joseph Hensley respectively, state that if a juvenile was accused of a crime that is associated with gang activity (as listed in § 40-35-121) and has a prior offense, they must be transferred to adult criminal court. This analysis will evaluate the bills' immediate and long-term impact on individuals and the community, the strengths and limitations of this legislation, and our recommendations for change. We will then evaluate the proposed bills in light of our professional values as social workers. We suggest that the mandatory waiver law for juveniles with prior gang related offenses is not in the best interest of juvenile offenders, especially those of color or low socioeconomic status. We understand that the possibility of being tried as an adult could serve as a deterrent for juveniles in the system, but argue that the poor outcomes of juveniles tried as adults outweighs any deterring aspect of the law. A law focused on the rehabilitation of juvenile gang offenders, rather than punishment, would better serve all key stakeholders involved.

Introduction

The American Juvenile Justice System was created so that young offenders may be given a chance to step away from criminal activity while they are still young. It was also created because young people are understood to be, on some level, less culpable than adults for crimes that are committed. William Blackstone, an eighteenth century British philosopher, argues that children cannot be held accountable for a crime, due to their lack of ability to have the malicious will to commit a crime (American Bar Association, n.d.). Although the exact understanding of his sentiment has changed over time, juvenile justice traces back to Blackstone.

The first American court designed specifically to handle delinquent youth began operating in Chicago, Illinois in 1899. Julian Mack, one of the first judges in the Cook County Juvenile court described the disposition of the court to be one of appropriate seriousness. Ideally, the judge would be seated at a table with the youth and would express both care and sympathy while simultaneously being firm and direct (American Bar Association, n.d.). This attitude of the original juvenile court is in line with social work values on every level. The dignity and worth of delinquent youth was to be expressed through the individualized correction plans and focus on rehabilitation. The court essentially believed that youth caught committing crimes were able to change, and were worth the states effort of intervention (Juszkiewicz, 2007).
The current practices of the Juvenile Justice system look quite different than the original mission. The posture of the system changed due to a spike in the number of violent crimes committed by juvenile offenders in the 1970s and 80s. All forty-nine states with juvenile justice systems began to refocus the juvenile court system on the punishment of rather than the rehabilitation of young offenders (U.S. Department of Justice, 2014). This shift in public opinion and perception of juveniles lead to an increase in legislation created to allow the transferring of juveniles into the jurisdiction of adult, or criminal, courts. There are three ways in which a juvenile accused of committing a crime may be tried in criminal court: through concurrent jurisdiction laws, statutory exclusion, and judicial waivers (Hockenberry & Puzzanchera, 2011). This policy analysis is concerned with the nature and consequences of judicial waivers in the lives of Tennessee’s juvenile gang members.

**Legislation**

House Bill 227 and Senate Bill 339 are straightforward in language, but the possible implications of the two bills are not as easily understood. The twin pieces of legislation propose the establishment of a mandatory judicial waiver into the criminal court system for juveniles who have been previously adjudicated for a criminal gang related offense and are being accused of a second criminal gang related offense (Butt, 2015). Representative Sheila Butt is the author and sponsor of the House version of the bill, while Senator Joseph Hensley sponsored the Senate version of the bill. Though the proposed legislation is quite straightforward in language, it is difficult to determine exactly how the policy would affect Tennessee’s juvenile population. However, it is an important piece of proposed legislation to consider from a social work perspective due to the intersectionality of issues at play, especially those of race and the American criminal justice system.

It is important to note that most adjudicated youth remain outside of state holding after being found delinquent or in other words, guilty. Since the juvenile system is focused on community-based rehabilitation, most youth are given treatment and service oriented sentences that allow them to remain outside of state holding facilities. It is also important to note that Tennessee law enforcement is told to “report an offense as gang related if the offense was committed in furtherance of the gang. This does not include all crimes committed by gang members” (Gibbons, Schofield, & Gwyn, 2012).

Current Tennessee law allows judges in the juvenile courts to waive jurisdiction over a youth being charged, once certain requirements are met. This is common across the country. Tennessee law also allows juveniles to be transferred into the adult system for any criminal offense, as long as they are at least sixteen years of age. For murder and person crimes (Rape, aggravated rape, aggravated or especially aggravated robbery, kidnapping, aggravated or especially aggravated kidnapping, or the attempt to commit any of these offenses), there is not a minimum age of transfer (Griffin, Torbet, & Szymanski, 1998).

Judicial waiver laws in Tennessee are discretionary. This means it is under the decision of a judge. After hearing the charges, the judge decides if there is sufficient evidence to suggest that the juvenile committed the crime, if the juvenile is eligible to be placed in a mental institution, and if the safety of the community demands the transfer. This process, where the judge must meet the youth being accused, hear their story, and then decide if transfer is the best interest of
the child and community, is vital. It makes sure that the context of youth coming into contact with the juvenile court system is acknowledged before they are automatically transferred into the adult system (Griffin, Torbet, & Szymanski, 1998; Keenan, Rush, & Cheeseman, 2015).

The decision resting with judges and the resulting variation in decisions have caused fear of discrimination. However, the fact that decisions vary can be considered a strength of a discretionary waiver. Judges in the Juvenile Justice System are there because they believe that delinquent youth are able to change. These judges see contact with the juvenile court as an agent of change, rather than a mere punishing mechanism (Keenan, Rush, & Cheeseman, 2015). As literature suggests, transferring youth into the criminal system has lasting implications for that youth, and should not be done without careful, empathetic consideration (Juszkiewicz, 2007; Burke, 2005). Making the transfer of juveniles mandatory through legislation only creates a larger gap between the ideas behind the juvenile justice system and practices that are within.

The latest analysis of Tennessee’s Juvenile Justice system comes from a sample of five counties in 1997. The study focused on the difference in outcomes for juveniles transferred to adult court versus those who remained in the juvenile system. The counties considered were Shelby, Davidson, Montgomery, Rutherford, and Washington. They were chosen because of the high numbers of juveniles transferred to adult court across the state. In 1997, there were 182 juveniles transferred to adult court in the five counties. That was 6.7% of cases processed by the selected juvenile courts. The most common offense causing juveniles to be transferred was aggravated robbery, which can be prosecuted as a gang related offense. Of those transferred, 174 were male and 151 were black (The Tennessee Bureau of Investigation, 1999). These numbers are worthy of noting because the most active gangs in Tennessee are either direct branches of, or modeled after historically black street gangs. In 2012, the Tennessee Bureau of Investigation estimated that there are 48 major gangs, 766 gang subsets, and 25,000 gang members in Tennessee. (Gibbons, Schofield, & Gwyn, 2012).

**Population**

In assessing the congruence of HB0227 and SB0339 with the values of the social work profession, it is important to gain a deeper understanding of the population potentially affected. There are a number of people that could be affected by this bill. This includes juvenile gang members and their families, public schools, juvenile holding facilities, adult prisons, public defenders and social workers.

Juvenile gang members are most affected by this bill. Tennessee has legislation that defines a gang, gang member, and gang related offenses. Under the Tennessee Criminal Gang Offense Enhanced Punishment Procedure law (2010), a criminal gang is defined as a “formal or informal ongoing organization, association, or group consisting of three (3) or more persons” (National Gang Center, n.d., para. 2). One of the group’s activities must involve the demand to commit a crime and the group must consist of at least two members who have a pattern of criminal gang activity (National Gang Center, n.d.).

In order for someone to be charged with a gang offense, the prosecutor must establish the defendants gang membership. Therefore, being tried for a gang crime is a two-part process: first, it must be proved that the defendant meets the legally outlined definition of a gang member, or
seeking to join a gang. Then, the state has to prove that the specific crime in question can be tied to the gang (National Gang Center, n.d.).

Memphis had the highest rate of juvenile court cases in the 1997 Tennessee Bureau of Investigation’s analysis of juvenile’s transferred to criminal court. Most youth being adjudicated for violent offenses were from neighborhoods of concentrated violence and were in gangs (Operation: Safe Community, 2011). It is important that it is understood why this is the case, which can be done by looking at the individuals from a person-in-environment perspective. Individuals who grow up in economically poor environments, tend to witness a significant amount of violence. Everyone has a need for safety, belonging, and status (Miller, 1958). In many cases, a gang is the only place this can be found for these individuals. Most of these juveniles have fewer opportunities, fewer role models, and feel a need for protection that can only be found in a gang (Tomkpins, 2000).

The mandatory waiver would increase the number of juveniles tried in adult criminal court. Being found guilty in adult court has a huge affect on the juvenile. Juveniles that have been transferred and found guilty are given a negative stigma that will extend into adulthood. Many studies have found that the juveniles transferred are more likely to commit crime in the future (Brown & Sorensen, 2013). However, gang membership has not been seen to be a good determinate of committing future crime. The age-crime curve shows that the rate of crime spikes between the ages of 15 to 19, but then decreases steadily. Juveniles adjudicated for drug offenses and possession of a weapon were more likely to keep committing crimes, while those who were in gangs were not seen to continue offending at a higher rate, and gang membership was seen to be a transient phase (National Institute of Justice, 2014).

Although juvenile gang members are the main population affected by this bill, the effects stretch out to other populations. For example, public schools are challenged with the reentry of juvenile offenders into the school system. They would not face that challenge as often with the passing of this bill. But generally speaking, teachers and administration care for their students and would welcome the challenge of reintegrating these juvenile offenders into their learning community (Goldkind, 2011).

The bill also has an effect on both prisons and juvenile holding facilities. If the juvenile’s well being is taken into account, prisons face added challenges. They would face the challenge of keeping juvenile offenders separate from adults. They would also face the challenge of learning how to fill developmental and psychosocial needs of the juveniles (Bechtold & Cauffman, 2014). One positive effect would be a smaller gang presence in juvenile holding facilities.

Lastly, the bill would effect both social workers and public defenders. Both of these professions respect the individual and care for them. They want a decision to be made in the individual’s best interest. Deanna McCarthy, a school social worker at Bass Learning Center, which is an alternative school in Nashville, said that she hated the legislation. She explained that in all the literature and in all the work she has done, it has been made clear to her that these juveniles are still children and their brains are still developing. Deanna believes that it would be wrong to try them as adults (personal communication, April 27, 2015).
Strengths

The strengths of this piece of legislation, from the perspective of social work values, are few. However, there is some merit in the idea that a law with less room for differences in sentencing would limit any sort of bias in the judge’s decision on whether the juveniles should be transferred to criminal court.

Also, this mandatory waiver would speed up the process of placing re-offending violent youth into the criminal system, meaning they would be placed in holding. This would be good for public safety in that a person who has committed a violent crime would be off the streets, and away from other gang members.

Limitations

By Tennessee law, a person can be considered a gang member quite easily. This can be done through the testimony of a parent, a vetted witness, or a tested witness if there is corroborating evidence. An individual can also be named a gang member if he or she wears the same style of dress, hangs out in gang territory, or has been arrested in the presence of known gang members (National Gang Center, n.d.). Memphis law enforcement has determined that the youth gang problem cannot be solved by harsher punishment through transferring. This bill does not address the need for comprehensive rehabilitation of juvenile offenders. It is seeking to use a transfer to adult court, and the possibility of prison time, as a deterrent. If juveniles are locked up with older gang members, it is likely that they will reenter society more dangerous than they were prior to their arrest (Operation: Safe Community, 2011; Keenan, Rush, & Cheeseman, 2015).

Recommendations For Change

HB0227 and SB0339 were both killed in committees during the 2015 Tennessee General Assembly. After it seemed as though the bill would not be voted on again, Representative Butt’s office explained that she was no longer pressing the issue. Although the bill was not passed, it is important to address suggestions for future legislation concerning juvenile gang members in Tennessee.

As previously stated, the original mission of juvenile courts was to encourage delinquent youth to change their course of life and to become better citizens. The money, time, and effort that could be spent by the state in punishing juveniles for criminal gang offenses could be used to help fight the problem at the roots.

Thus, when seeking to find a way to cut down on juvenile gang activity it makes sense to look for violence prevention programs gaining traction. In Memphis, as part of the Obama administration’s national forum on preventing youth violence, Operation: Safe Community (2011) devised the Memphis Youth Violence Prevention Plan (MYVPP). This plan embodies the principles that we believe the Tennessee General Assembly should focus on if they want to address juvenile criminal gang offenses.
In creating the MYVPP, Operation: Safe Community (2011) surveyed the communities that are experiencing high levels of violence and community agencies on what they believed would be effective in addressing the issue. The foremost need identified, which is also the top goal of the Office of Juvenile Justice and Delinquency’s Comprehensive Gang Model (U.S. Department of Justice, 2010), was positive youth development (Operation: Safe Community, 2011). This is a broad goal, which encompasses the specific targets of healthy, supportive families, extra-familial adult support, leadership opportunities for youth where they can have their voices heard, and access to graduated sanctions that both hold youth accountable for their actions and create access to rehabilitative services (Operation: Safe Community, 2011).

The goal of access to graduated sanctions and rehabilitative services for delinquent youth is of greatest interest for this policy analysis. According to the MYVPP report, “Graduated sanctions for youth in the juvenile justice system, which couples accountability with increasingly intensive intervention services, is a research-based approach to deterring youth in earlier stages of unruly and delinquent behavior from future crimes.” (Operation: Safe Community, 2011, p. 20) Since it is not unlikely for youth from high-risk communities to have up to sixteen encounters with the juvenile system before reaching 18, a mandatory waiver for delinquent youth with only one previous criminal gang offense can still be considered the early stages of delinquent behavior.

In order to gain more access to and more culturally competent graduated sanctions for juvenile offenders, Operation: Safe Community has partnered with the District Attorney’s office, Memphis Public Schools, Memphis Shelby Crime Commission, as well as the Memphis Juvenile Court, Memphis Police Department, and the Shelby County Sheriff’s office (Operation: Safe Community, 2011). This community based approach to getting at risk youth better services would make a good focus for state wide legislation aimed at decreasing juvenile criminal gang crime while still holding youth accountable for the crimes they do commit.

**Connection To Social Work Values**

The six core values named by the NASW are service, social justice, the importance of human relationships, dignity and worth of the individual, integrity, and competence (NASW, 2008). The concept of a mandatory judicial waiver for second time offending juvenile gang members is not inline with the values of the social work profession.

This bill does not value service. In order to best serve juveniles we should be focused on gang prevention community outreach programs and gang violence prevention programs rather than using the threat of criminal court as a deterrent. Focusing of the punishment rather than the rehabilitation of the juvenile is not serving their best interest (Ramsey, Rust, & Sobel, 2003).

The bill does not value social justice because it is specific to gang criminal offenses, not all criminal offenses. This suggests that juvenile gang members deserve to be tried as adults and other juveniles that commit similar crimes are still considered children and deserve to have their story heard. Because gangs prevail in economically poor communities, it lacks justice and equality for juvenile offenders coming from low-income neighborhoods (Butt, 2015; Howell & Lynch, 2000).
The bill also lacks respect for the importance of human relationships. If the juvenile is transferred, they are taken out of their community. The juvenile will be held and then sentenced to prison if found guilty. In prison, they become even more disconnected from their community and from their peers (Bechtold & Cauffman, 2014).

The bill does not acknowledge the dignity and worth of the individual. When looking at the situation from a person-in-environment perspective, we see a child who has more than likely witnessed a significant amount of violence and experienced great trauma. It is clear that the juvenile is not inherently a violent criminal, but he or she has been greatly influenced by his or her surroundings. If social workers value the dignity and worth of the individual, they have the responsibility to help juvenile offenders learn from their mistakes. Whatever the crime committed, the juvenile has worth and his or her potential needs to be acknowledged and fostered.

The bill is also lacking competence. It was very difficult to find Tennessee statistics and it seems that the bill was not rooted in research. Creating a bill without the proper information to back it up is not valuing competence. If policy makers were competent in the consequences the bill would have on the juvenile, it is lacking integrity. If we know the effect that the mandatory waiver will have on the juvenile and we disregarded the importance of rehabilitation, we are not holding to this value.

**Conclusion**

During the 2015 Tennessee General Assembly Representative Sheila Butt of Murray County introduced House Bill 227. The aim of the bill was to create a mandatory judicial waiver for delinquent youth who are accused of a criminal gang offense and have previously been adjudicated for a gang related offense. Thankfully, the bill never made it past committee. Moving juveniles into the criminal court should be done by means of judicial discretion, not legislation. When a judge hears the evidence for a case, they are able to take the context into consideration. This enables them to decide whether or not they believe there are graduated sanctions, which could serve to rehabilitate the juvenile. It is in line with social work values and the original mission of the American Juvenile Justice System to take the person-in-environment perspective into account when deciding how a juvenile should be held accountable for the crime committed. The failed bill presented by Representative Butt was not in line with the values of the Juvenile Justice System or the social work profession.
References


