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A STUDY OF OUTCOMES OF PROSECUTORIAL
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John D. Burrow

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Charles Corley
Major professor

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**IN THE INTEREST OF JUSTICE: A STUDY OF OUTCOMES OF
PROSECUTORIAL WAIVER IN MICHIGAN**

By

John D. Burrow

A DISSERTATION

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ABSTRACT

In The Interest Of Justice: A Study Of Outcomes Of Prosecutorial Waiver In Michigan

By

John D. Burrow

The purpose of this study was to examine the influence of legal variables on the waiver decision. More specifically, this research analyzed whether prosecutors place more emphasis on legal factors such as age and the nature of the offense in their charging decisions.

To examine this issue, all waived juveniles from 1988 to 1996 were analyzed. A total of 577 juvenile offenders from one Michigan county comprised the final sample. The data on these juveniles were obtained from the prosecutor's office, the juvenile court, and the Family Independence Agency. Logistic regression was the statistical method used in the analysis.

The results showed that legal factors are the most important factors in the waiver decision. Though extra-legal factors such as the presiding judge and psychological history may exert an influence, their impact on the waiver decision does not rise to the level of influence of legal factors. The presiding judge was a significant extra-legal factor while race did not have an impact on the waiver decision.

There are several implications of this research. The first issue concerns age. Most of the juvenile offenders who were waived in this study were sixteen or seventeen years old. This may call into question why states have continued to lower the jurisdictional age

necessary for prosecution as an adult given that it is a rare occurrence for all but older juvenile offenders. Second, because there was a “judge effect,” there may be a need to reconsider the utility of prosecutorial waiver. That is, there may be a need to refine waiver statutes in order that personal and judicial philosophies of judges do not undercut the decisions of prosecutors.

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This dissertation is dedicated to my parents, Laura and J.D. Burrow, and my sisters and brothers who were always there when I needed them the most. In addition, this dissertation is dedicated to the memory of my brother, Stanley, who told me several years ago that I had the ability to go as far as I would let my imagination take me.

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Chapter 1

Introduction and Purpose

Statement of the Problem

Waiver is the process whereby juveniles are removed from the jurisdiction of the juvenile court to the adult court. This removal may be based on factors such as 1) amenability to treatment, 2) dangerousness or protection of community, 3) nature of offense in terms of severity or heinousness, and 4) subjective factors such as home environment or pattern of living or any of the other guidelines enumerated in Kent (383 U.S. 541, 1966). It is these factors which have given rise to the various mechanisms which are used to remove juveniles from juvenile court jurisdiction.

This research will report the results of an investigation of prosecutorial waiver using a sample of Michigan juveniles. Specifically, the research project will focus on the use of prosecutorial waiver (concurrent jurisdiction) as a means of dealing with serious and chronic juvenile offenders.

Prior to 1988, Michigan used judicial waiver, the most commonly used waiver mechanism. Naturally, Michigan was one of forty-eight (48) states that used judicial waiver to deal with serious and chronic juvenile offenders. In the fall of 1987, the Michigan legislature began debate on a package of bills which sought to alter the manner in which juvenile offenders were handled by the juvenile justice system. These bills called for the expansion of prosecutorial power to make waiver decisions. Further, these bills enumerated nine (9) offenses which were to fall within the discretion of the prosecutor to decide whether the juvenile court should have jurisdiction or whether the criminal court would be a more

appropriate forum.

Given this, several proposed intentions guide this research. First, this research will seek to identify the factors that contributed to the legislature's decision to grant prosecutors charging authority in juvenile matters. Second, this research will explore the expanded authority of prosecutors to make waiver decisions. That is, the "Principle of Offense" will be examined to determine if it is primarily legal factors that influence the decision to waive youths to the adult court. Third, this research will examine whether there are any differences between those juvenile offenders who are waived to criminal court versus those who are retained in the juvenile court. In other words, a profile will be generated as a means to determine what makes waived juvenile offenders different. Fourth, this research will examine whether waived juvenile offenders receive longer, more severe sanctions versus those who commit similar offenses but are retained in the juvenile court.

Significance of the Problem

The issue of prosecutorial waiver is important for several reasons. To begin, research on waiver is sparse. The usefulness of the waiver has never been systematically studied. Since 1970, there have only been approximately 30 empirical studies of waiver in the United States (see Appendix 1). A recent examination of dissertation abstracts revealed that since 1977, there have been only seven (7) doctoral dissertations which examined the issue of waiver (see Eigen, 1977; Surrell, 1990; Lee, 1992; Feiler, 1995; Fritsch, 1995; Pierce, 1995; and Podkopacz, 1996). Of these, six were written since 1990. There is clearly a need for research in this area.

In addition, there are no studies of national scope which have examined prosecutorial waiver (Snyder and Sickmund, 1995:87, also see Guttman, 1995:521). Of the fourteen states that use prosecutorial waiver (concurrent jurisdiction), systematic studies have been undertaken only in Florida (see Bishop, Frazier, Lanza-Kaduce, and Winner, 1996; Bishop and Frazier, 1991). There have been no such studies undertaken in Michigan even though the state amended its waiver statutes in 1988 and again in 1996. Moreover, it is not clear whether prosecutorial waiver (concurrent jurisdiction) is having any discernible effect on the “perceived” escalating juvenile crime problem which prompted the initial changes in the waiver statutes. Also, it is not clear whether those juveniles who are waived are receiving longer sentences or more severe sanctions for their criminal offenses. Only a comprehensive examination of prosecutorial waiver in Michigan can determine whether the desired effects conceived of by the legislature have indeed manifested among juvenile offenders.

Some critics of prosecutorial waiver (concurrent jurisdiction) allege that prosecutors may abuse their discretion when making charging decisions relative to juvenile offenders. This allegation posits that the office of prosecutor is political in nature, thus, their charging decisions are tainted by politics (Grundfest, Paskow, Szabo, and Williams, 1982). The sparse research that exists in this area has not adequately addressed this issue.

Policy implications are inextricably tied to the issue of prosecutorial waiver. The use of waiver suggests that some juvenile offenders are simply beyond the help of the juvenile justice system and they, and society, are better served by trying them as adults. The use of waiver mechanisms of any type suggests that certain juveniles are beyond the scope or jurisdiction of the juvenile justice system. Though the original charter of the juvenile

court did make allowances for waiver (see Julian Mack, 1909), it did not suggest that habitual, chronic, or serious juvenile offenders have the mental capacity of adults. Prosecutors subscribe to a punishment orientation which is implicit in waiver. However, it is not clear whether they make adequate findings of fact that juvenile offenders cannot be rehabilitated within the juvenile court.

Some researchers have found that juvenile offenders who are waived recidivate at a rate which is higher than that for juvenile offenders retained in the juvenile court (Bishop and Frazier, 1996). If true, it might be that waiver has an enhancement effect which worsens the offending of juveniles as opposed to making them more “responsible.” As such, one could extend the arguments of Edwin Sutherland’s “Differential Association” which suggests that juveniles actually “learn” more of crime when “captured” and housed in restrictive environments such as prisons. Such an argument underscores the point that waiver is not conducive to responsibility and rehabilitation but to greater criminogenic behavior since the worst juvenile offenders are housed so closely together where they can “learn” the attitudes and values needed to be a “better” criminal.

There are many unanswered questions about the issue of prosecutorial waiver (concurrent jurisdiction). Only systematic research in this area will alleviate concerns relative to recidivism, the influence of politics on waiver decisions, discretion, and amenability to treatment within the juvenile system. We need more knowledge about these issues before further changes are made to waiver statutes or other steps are taken which would further erode juvenile court jurisdiction. However, before reviewing the research literature relative to waiver, a discussion will be presented on the advantages and

disadvantages associated with using particular waiver mechanisms. In addition, a chronicle of Michigan's experience with waiver and waiver-related issues will be presented.

Three Waiver Mechanisms

There are three primary mechanisms which set the waiver process in motion: judicial, prosecutorial, and legislative. Judicial waiver is based on what could be termed the principle of the offender or individualized justice. Prosecutorial and legislative waiver, on the other hand, are based on the principle of offense. Prosecutorial waiver is one of three waiver mechanisms that is used throughout the United States. However, only fourteen states and the District of Columbia utilize prosecutorial waiver alone or in combination with another waiver mechanism. All 50 states use some variation of these waiver mechanisms and each has certain shortcomings. None are infallible but, they do all serve very different purposes. In the pages that follow, a brief discussion will be presented outlining these three waiver mechanisms and their strengths and weaknesses (see **Appendix 2**).

Judicial Waiver Philosophy

Judicial waiver refers to the process whereby a presiding juvenile court judge makes the decision regarding the waiver or transfer process. In such instances, the juvenile court judge must hold a waiver hearing which takes into account the best interests of the child and the safety of the public (Champion and Mays, 1991:68).

Charles Polen (1987) builds upon this imagery by suggesting that "judicial waiver exists when juvenile court judges are vested with discretion in determining whether to transfer juvenile offenders to criminal court for prosecution as adults." (p.498) He notes that

this discretion is limited to the criteria outlined in *Kent v. United States*¹ (383 U.S. 541, 1966) but judicial waiver decisions tend to rest most often on amenability to treatment and dangerousness issues. He also notes that the instructions given by the Supreme Court relative to judicial waiver are pertinent only to felony offenses (p.499).

There is general agreement among various authors who have addressed the issue of judicial waiver that it is still a highly subjective process irrespective of the fact that Kent attempted to standardize the criteria applicable to these decisions. Franklin Zimring (1982) and Barry Feld (1989) are but a few who have addressed the weaknesses inherent within

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The Kent decision provides the legal basis for waiver. In this case, the U.S. Supreme Court expressed concern about the deprivation of rights of children. The Court stated that though juvenile proceedings are supposedly civil in nature, they still tend to enjoin juveniles from receiving the care and treatment that they so sorely need. As such, "... 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." (343 U.S. 556) Following the Supreme Court's ruling, eight guidelines were elucidated for subsequent waiver decisions. These guidelines are as follows:

- (1) the seriousness of the alleged offense to the community and whether 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 for offenses against persons especially if personal injury resulted,
- (4) the prosecutive merit of the complaint, i.e., whether there is evidence upon which a grand jury may be expected to return an indictment (to be determined by consultation with the United State Attorney),
- (5) the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who would be charged with a crime in the U.S. District Court for the District of Columbia;
- (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, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions, [and]
- (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the offense) by the use of procedures, services, and facilities currently available to the Juvenile Court. (343 U.S. 566,577)

judicial waivers. Zimring (1982) likens judicial waiver to capital punishment. Using this analogy, he suggests that these two sanctions share several characteristics. First, he notes that both are rare occurrences (low incidence). It is specifically this rarity which worries Zimring in that he believes that it is impossible to develop guidelines which would absolve these processes of discretion (1982:194). He notes that both grant broad discretion to judges who are responsible for implementing them. As such, the biases of the judges may play as important a role in the process as the offender himself. He also suggests that their low incidence may be a reflection of widespread mistrust that these sanctions are capable of accomplishing their stated goals (1982:194).

Second, Zimring comments upon the lack of standards inherent within both processes. One needs not to be reminded of pre-Furman capital punishment cases which were deemed completely arbitrary and capricious. The same aura of capriciousness is applicable to judicial waiver decisions irrespective of the Kent criteria especially in view that individualized justice or "kadi-justice" pervades such decisions. He notes that

those courts that operate with long lists of standards to 'guide' discretionary decisions fare no better: the substantive standards are highly subjective, and the large number of factors that may be taken into consideration provides ample opportunity for selection and emphasis in discretionary decisions that share the outcome of individual cases. (p. 195; also see Sorrentino and Olsen, 1977)

Third, Zimring comments upon the "ultimacy" of such decisions. "Transfer to criminal court is the ultimate response available within the terms of reference to juvenile court... Waiver represents a judgment that the person no longer merits the consideration, regard, and special protection provided by law for juveniles." (p.195) In this regard, once

waiver takes place, no matter the result, juveniles will forever be considered as adults. Thus, such decisions should rest on stronger ground than what a judge believes to be in the best interests of the child. A fifteen year old, for example, does not possess any other legal right when waiver takes place except the right to punishment. As such, he or she is seen as an adult only in the eyes of the juvenile court. Does the juvenile's status then exist in limbo until he or she has reached the true age of majority? What interests are protected in view that the youth is no longer considered a juvenile yet, he or she is not an adult according to conventional legal definitions?

Last, Zimring (1982) addresses the issue of "dissonance". In this instance, both capital punishment and judicial waiver seem curiously out of place given the presumption that great value attaches to life, especially to that of youth. He writes that "the special terminology, stated goals, and dispositional options associated with juvenile courts cannot be made coherent without a theory that is suspended when the court for children expels its subjects." (p.195-196) How can one appropriately suggest that youth is valued when adult-like responsibilities are heaped upon juvenile offenders? How can one hope to preserve the philosophy of the juvenile justice system when judicial waiver decisions continually infuse it with the characteristics of adult criminal courts, especially punishment? These actions confound and blur the role of the juvenile court.

Barry Feld (1989) makes two criticisms of judicial waiver. The first criticism harkens back to Franklin Zimring's comparison of judicial waiver to capital punishment in that such decisions are arbitrary, capricious, and not guided by normative legal standards. He writes that

judicial waiver statutes, couched in terms of amenability to treatment or dangerousness, are effectively broad, standardless grants of sentencing discretion characteristic of the individualized, offender-oriented dispositional statutes of the juvenile court. They are the juvenile equivalent of the discretionary capital punishment statutes condemned by the Supreme Court in *Furman v. Georgia*. (p.15)

Juvenile court judges unnecessarily add mystification to waiver decision making through selective use of criteria that fit individual offenders. As such, there is no limit to the factors that could be considered nor are there clearly defined parameters within which they must operate.

Second, Feld indicates that interpretation of waiver statutes tend to vary among judges. This is both a reflection of their judicial philosophies and the locales in which the courts are located. He notes that

idiosyncratic differences in judicial philosophies and the locale of a waiver hearing are far more significant for the ultimate transfer decision than is any inherent quality of the criminal act or characteristic of the offending youth. (p.17) Thus, judicial waiver decisions tend to reflect justice by ideology and justice by geography (see Feld, 1988b).

Of the subjective factors which may influence judicial waiver decisions, none are more disturbing than the possibility that race may influence this decision. Yet, several studies have examined this issue and found some rather surprising results. Keiter (1973), for example, assessed the judicial waiver process in Cook County, Illinois and found that blacks were vastly over represented among those who were waived regardless of offense. In addition, Eigen (1981) found that there was a race of victim effect wherein inter-racial felonies resulted in harsher dispositions than intra-racial felonies (p.1088). To allow a decision of such magnitude to be marred by racial considerations demonstrates that judicial

waiver still allows subjective and perverse thought processes of judges to roam free.

Prosecutorial Waiver Philosophy

Prosecutorial waiver, or concurrent jurisdiction, describes the process whereby the prosecutor's office chooses the forum in which juveniles are to be tried for their offenses. In such instances, prosecutors may, based upon their own discretion, file charges in the juvenile court or bypass it altogether and file charges directly in criminal court (Champion and Mays, 1981:70; Flicker, 1983:3-4; McCarthy, 1994:656-657). Prosecutorial waiver is seen as a better alternative to judicial waiver in that it supposedly removes most of the discretion from the waiver process. In such instances, the offense takes precedence above all else. In addition, this choice of waiver tends to be contingent upon several other factors- 1) whether certain designated felonies have been committed by the offender, 2) age of offender, and in some states, 3) the offense history of the juvenile (also see Mylniec, 1976:33-36; McCarthy, 1994:656-657; Sabo, 1996:2439-2443). Though this method of waiver has been lauded as a tremendous improvement, there are still criticisms about its use.

Like judicial waiver, prosecutorial waiver has its proponents and detractors. One of the champions of this waiver mechanism is Grundfest et al. (1981). These authors identify three specific areas which derive benefit from this waiver mechanism: 1) protection of the interests of the child and society, 2) addition of beneficial information to the proceedings, and 3) serves as an advocate for society. First, it is reasoned that participation of the prosecutor is essential within the context of the adversarial nature of these proceedings. It is noted that

the interests of society as well as the juvenile accused of violating the law are best protected by the utilization of legal proceedings most appropriate to the particular individual and offense in question. To be effective, this decision must be founded on the fullest possible picture of all the circumstances involved. (p.328)

One must question the utility of this argument though since it is unclear how the prosecutor can adequately balance the needs and interests of the state with those of the juvenile, especially within the context of an adversarial system. The prosecutor's main objective is to seek retribution and punishment, concepts foreign to the juvenile justice philosophy and antithetical to the needs of the child. For the most part, the prosecutor's office refrains from focusing on the needs of the child since it must focus on building a case on objective, provable fact. The needs of the juvenile tends to be subjective and theoretical, items which are immaterial in a court of law².

Second, Grundfest et al. (1981) suggest that the prosecutor is instrumental in adding additional information to the waiver proceedings. It is supposed that this information lends credence to both the needs of the state and the juvenile offender. They write that

the prosecutor possesses a unique ability to add a wide range of information to this quest for the proper mode of proceeding against a juvenile. The prosecutor and his representatives are involved in all areas of the criminal

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Barry Feld (1987) takes the same position in his discussion of prosecutorial waiver. He notes that the interests and welfare of the accused juvenile offender may be overlooked or forgotten when this waiver mechanism is used given the adversarial nature of the prosecutor's office. Moreover, because prosecutors are more likely than juvenile court judges to be responsive to political pressures and the visibility of serious offenses, more likely to emphasize retributive considerations over rehabilitative ones, and, as adversaries, less likely to consider the welfare of the accused, their charging decisions will more frequently emphasize considerations of the offense, such as probable cause, and provable legal guilt, than considerations of the offender. (p.514)

Thus, the concern that there is an insurmountable imbalance between the needs of the state and the needs of the juvenile would seem to be justified.

justice system, from investigation through grand jury, trial, and appellate levels. Thus, the prosecutor obtains the broadest possible overview of the criminal justice system and acquires an unparalleled opportunity to assess an individual and offense in the perspective of other of other crimes committed in that jurisdiction. (p.328)

Again, there is an issue of how much information the prosecutors could gather which would demonstrate a lesser degree of culpability on the part of the juvenile. Further, there is an issue of how carefully the prosecutor would scrutinize information relative to treatment programs and services which would demonstrate that the juvenile could still be treated within the juvenile system. Just how willing are prosecutors to forgo waiver for a treatment option? Sadly, this is a question that has not yet been addressed in the research literature.

Grundfest et al. (1981) also note that the prosecutor assesses the offense within the context of other crime that have been committed in the community. This should provide little comfort to the juvenile in view that punishment, like the guiding philosophy of the juvenile court, is relative and varies by jurisdiction. As such, the standards of the community may prevail in these waiver proceedings irrespective of the information provided by the prosecutor which may be beneficial to the juvenile. (c.f., Feld, 1988b)

Third, Grundfest et al (1981) suggest that the prosecutor serves as an advocate for the community. That is, the prosecutor is charged with articulating the views of the community which he or she represents. "The prosecutor is the representative of the society which is[, in theory, victimized by the] criminal behavior [of] juveniles. Thus, it is manifestly appropriate that his agency advocates society's position on the issue of how to proceed against a particular juvenile offender." (p.329) Of concern here is the fact that the prosecutor may be more concerned with scandal avoidance than the interests of the child.

As such, the waiver decision is very responsive to public outcry. This issue is inextricably tied to politics, of which the prosecutor is keenly aware. Accordingly, one could suggest that prosecutorial waiver tends to be guided by emotion more so than what the juvenile needs (see McCarthy, 1994:658).

This last point also happens to be one of the more prominent criticisms of prosecutorial waiver, of which, there are three: 1) there is a lack of procedural safeguards and failure to address amenability to treatment issues, 2) shows a shift in juvenile justice policy, and 3) non-appealable decisions. On the first issue, Gasper and Katkin (1980) indicate that prosecutorial waiver does not exist apart from the political arena. These waiver decisions do not occur in isolation since, as an agent of the state, the prosecutor is buffeted on all sides by political winds. These authors note that

it is a political fact of life the prosecutors must be concerned with their conviction rates. Therefore, there is the possibility that they might be inclined to waive cases to criminal court when their evidence is strong, and leave them in the juvenile court when their evidence is weak. Prosecutorial waiver decisions are particularly susceptible to political pressure (district attorneys generally run for reelection more often than judges) and pressures from the police with whom prosecutors must maintain cordial working relations. (p.944)

In essence, prosecutors are captives, of sorts, of their office. They must quell public discontent by demonstrating that they are tough on juvenile crime (thereby side lining the interests of the juvenile) and they must appease those who form part of their work group if they are to obtain the information that they need for their cases³. To this end, prosecutors

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Sabo (1996) likens the tensions between the office of the prosecutor and the public to “serving two masters.” She notes that

a prosecutor cannot serve justice when she must serve both the state and the best interests of the juvenile at the same time. Moreover, her dual role compromises the premises of the

may be less zealous in giving consideration to the prospects of rehabilitation for certain offenders within the juvenile justice system (also see Bove, 1991, Boyce, 1994; McCarthy, 1994; Guttman, 1995).

Second, critics of prosecutorial waiver point to the lack of procedural safeguards for the juvenile. Further, there tends not to be any delineation of the criteria to be used with the exception of offense and age. In their quest for retribution and punishment, prosecutors may not consider whether the juvenile is amenable to treatment at all (see Boyce, 1994:999; Sabo, 1996:2441; Cintron, 1996:1270). This waiver mechanism bypasses scrutiny of such factors. For example, Mylniec (1976) writes that

while statutes permitting adult treatment may have been meant to deal with the hardened, incorrigible juvenile offender, the traditionally wide latitude given to prosecutors regarding discretionary acts in the criminal justice system creates a serious likelihood that the process may ensnare the wrong child. In the absence of proper exercise of discretion, the statutes can have an unnecessarily harsh effect on first offenders. Without safeguards, these laws may be applied to young children who may be permanently harmed in the absence of sentencing guidelines, or correctional facilities designed to separate young offenders from older, more experienced criminals. (p.36)

Central to this criticism is concern about the inappropriateness of this waiver provision for certain offenders. In addition, there is concern that age and impulsivity are not given enough weight when making this type of waiver decision (also see Bishop and Frazier, 1991; Hirase, 1992).

Third, critics of this waiver provision express concern about the shift in juvenile justice philosophy. Here, the critics focus upon the fact that punishment and retribution are

juvenile justice system. As both a party to the suit and the representative of the state, a prosecutor acting alone, in the absence of statutory criteria, is in a poor position to represent the best interests of the child. (p.2451)

central components of this decision rather than whether the juvenile can be "saved" within the juvenile justice system. Prosecutorial waiver sends the message that a get tough approach is being adopted by the courts (also see Thomas and Bilchik, 1985; Boyce, 1994:999; Sabo:1996:2447). Bishop and Frazier (1991), for example, note that

because prosecutorial waiver statutes greatly expand the power of prosecutors- who historically have been more concerned with retribution than with rehabilitation- widespread use of prosecutorial waiver seems to signal a fundamental shift in delinquency policy away from the *parens patriae* philosophy that is the cornerstone of the juvenile court and toward a more punitive orientation characteristic of criminal courts. (p.255; also see McCarthy,1994:665; Cintron, 1996:1270)

While prosecutorial waiver may not be the death knell for the two separate systems of justice, it does suggest that the juvenile system is in a state of crisis. As such, the juvenile court must re-evaluate its mission if it is to survive this assault.

Fourth, the critics of prosecutorial waiver lament the fact that such decisions, for the most part, are non-appealable. It is charged that there is no process in place wherein the decisions of the prosecutor can be reviewed to ensure that there are no factual errors in the case. This may be attributable to the traditionally wide latitude given to prosecutors in their charging decisions (see Mylniec, 1976; Flicker, 1983; Salazar, 1983; Guttman, 1995). It is suggested that it is precisely because prosecutors possess so much latitude that there should be some mechanism for review. Further, it is charged that prosecutorial waiver expands the traditional function of prosecutors. It is contended that though discretion in bringing charges against offenders is a necessary part of prosecutors' jobs, it must still be structured and constrained (see Boyce, 1994:996). Allowing prosecutors wide latitude in deciding the forum for prosecution unnecessarily expands this discretion without any benefit of checks

and balances. The choice of forum, it is suggested, carries as much importance as the final disposition itself (Boyce, 1994:997).

Last, prosecutorial waiver has come under scrutiny because of fear of inconsistency, both real and imagined, in application of the law. It has been suggested that there is nothing to prevent a prosecutor from refusing to charge a juvenile offender in criminal court though he/she may have committed crimes similar to those which resulted in the waiver of others (Boyce, 1994:997; also see Salazar, 1983:629; Hirase, 1992:167). For example, Alan Salazar points out that in Colorado, a state that uses prosecutorial waiver,

... Colorado's statutory scheme allows a prosecutor to charge one minor in district court as an adult and another minor as a juvenile delinquent even if the misbehavior or criminal conduct is the same. The prosecutor's decision to charge the child as an adult is therefore not based upon rationally distinct offenses. (p.629)

Thus, the point remains that the application of prosecutorial waiver is arbitrary and irrational. Though it has been argued that prosecutorial waiver is better suited to deal with juvenile offenders who commit serious felony offenses, it is still susceptible to the charge that too much discretion is vested in a single individual who makes decisions of such tremendous consequences.

Legislative Waiver Philosophy

Legislative waiver is a procedure through which certain offenses are excluded from the jurisdiction of the juvenile court. In other words, it delimits the breadth of cases that the juvenile court can hear (Champion and Mays, 1991:70). In addition, legislative waiver

affixes age requirements (automatic adulthood) to coincide with jurisdiction and forum. It is reasoned that this procedure is really not a waiver mechanism at all but is more akin to legislative exclusion whereby certain offenses are considered to be beyond the purview of the juvenile court⁴.

There are two primary strengths associated with legislative waiver- 1) constrains discretion and 2) improves accountability. First, legislative waiver has been heralded as the best way to remove discretion from waiver decisions. It is believed that, with the reliance on totally objective and legally relevant criteria, biased or arbitrary decisions cannot be made (see also Gasper and Katkin, 1980; Feld, 1987; Hirase, 1992; Singer, 1993). For example, Feld (1978) suggests that the waiver decision making process should be built upon a legislative matrix wherein age, offense seriousness, and offense persistence are used to determine who should be beyond the jurisdiction of the juvenile court. He writes that

... the matrix eliminates all discretion with respect to the decision to refer for adult prosecution. Once the decision to proceed against the offender has been made and the appropriate charge determined, the decision whether to proceed in the juvenile court or the district court is made mechanically by reference to the matrix. (p.588)

In actuality, this legislative scheme is troublesome for two reasons. The legislative selection of an appropriate age is itself an arbitrary decision since it assumes that juveniles

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Joseph Sanborn (1994), for example, takes issue with use of the term legislative waiver. He believes that it is erroneous to use the term legislative waiver for several reasons. First, he suggests that the legislature cannot actually waive juveniles because that is a power that is reserved for prosecutors and judges (p.264). At most, he claims, the legislature can increase the charging authority of prosecutors or reduce the jurisdiction of judges. Second, Sanborn believes that it is inappropriate to use this term because the prosecutor "tightly controls" who is actually waived through his/her charging authority. By electing to bring reduced charges or not filing charges at all, the prosecutor can circumvent any legislative proscriptions on offenses for which juvenile offenders may be charged. (p.264)

have reached a level of maturity which is reflective of adulthood. Also, there is the assumption that persistence is indicative of non-amenability to treatment. One could make the argument that continued offending may be more representative of inadequate or improper treatment (all persistent offenders do not require the same type of treatment program). Further, the argument could also be advanced that offense persistence reflects inadequate supervision. The inherent flaw within legislative waiver schemes is that they are in fact too mechanical. Can one truly suggest that a juvenile's social background is not relevant to his or her success in rehabilitative programs? While too much discretionary decision making in the waiver process is bad, there still needs to be a degree of flexibility to allow decision makers to do what is really in the best interests of the child. It is questionable whether legislatures are cognizant of these interests.

Second, legislative waiver is believed to increase accountability on the part of the juvenile and adult criminal justice systems. Feld (1978) indicates that

the rehabilitative ideal has minimized the significance of the offenses as a dispositional criterion. The emphasis on the 'best interests of the child' has weakened the connection between what a person does and the consequences of that act on the theory that the act is at best only symptomatic of real needs... The results of efforts to treat offenders in the absence of an effective change technology, in the face of inadequate resources and a lack of social commitment to provide them, and through a process that grants discretion without rational, objective basis for its exercise suggests that juveniles still receive the worst of both worlds. (p.65)

This assertion is built upon several assumptions. It assumes that juveniles would fare better in the adult system but there is no recognition of the fact that there are as many resource shortages in prisons and jails as there are in the juvenile justice system. There is also the assumption that there is more of a willingness to treat and rehabilitate offenders in the adult

system than in the juvenile system. Feld (1978) forgets that the mission of the adult criminal justice system is punishment, not treatment. What's more, there is a paucity of treatment programs in the adult system. Why would the public be more accepting of treatment in the adult system than in the juvenile system? This is a question that Feld leaves unanswered. On balance, there would not seem to be any more accountability in the adult system than in the juvenile system.

There are two very prominent criticisms of legislative waiver- 1) it signals a repudiation of the juvenile justice philosophy and 2) it denies juveniles rehabilitation, at least in the juvenile justice arena. It has been suggested that legislative waiver is an expression of the lack of confidence in juvenile court judges in general and a more specific disenchantment with the juvenile justice philosophy. Feld (1987) writes that "exclusion on the basis of offenses represents a legislative repudiation of the courts' philosophical premise that it can aid those appearing before it by denying the courts the opportunity to try, without even an inquiry into the characteristics of the offending youth." (p.520; also see Polen, 1987; Evans, 1991; Feld, 1993) The problem is that legislatures really do not present a better alternative to judges in making waiver decisions. Juvenile court judges tend to have a better awareness of the problems and needs of the juvenile. They are closer to the community in terms of advancing and defending its interests and values. Legislative waiver tends to take an "one size fits all" mentality by suggesting that juveniles who fit a certain profile, as determined by offense and age, are beyond the help of the juvenile system. Such as blanket policy unnecessarily penalizes juveniles and denies many of them the fundamental right to treatment.

In fact, the second criticism of legislative waiver is that it denies juveniles rehabilitation in the proper juvenile justice arena. Marshall Young (1982) finds this waiver provision unpalatable because it considers only the offense and the history (criminal) of the juvenile but not the circumstances surrounding the offense or the circumstances of the juvenile (p.316; see also Polen, 1987). Similarly, Hirase (1992) notes that

transfer occurs regardless of the offender's amenability to treatment and rehabilitation in the juvenile system. The legislative waiver system provides no discretion in deciding whether to waive, and does not consider anything about the child, except the crime committed, his or her age, and past criminal history. (p.166)

This would suggest that guided discretion is good within an acceptable range relative to waiver decisions. However, legislative waiver rules out any possibility that mitigating factors could be considered irrespective of whether the juvenile belongs in the adult criminal system.

As indicated in the aforementioned pages, there are three types of mechanisms that are currently used to trigger waiver to adult criminal court. The first mechanism, judicial waiver, is the most common waiver mechanism as it is used in forty-eight of fifty states. As its name implies, the juvenile court judge is the central figure in judicial waiver. The decision to waive jurisdiction is entirely at the discretion of the juvenile court judge after he/she holds a hearing which weighs the best interests of the child against those of the community. It is this wide discretion that is most troublesome for critics of judicial waiver. Such critics believe that extra-legal factors such as race may be inappropriately used in these decisions. Also, there is concern about the disparate sentences that are given to juvenile offenders who commit similar offenses.

The second mechanism, prosecutorial waiver, expands the charging authority of the prosecutor. That is, the prosecutor can determine which forum in which to try the case, juvenile or adult, if certain conditions such as age and certain designated offense are met. It is for this reason that prosecutorial waiver is often referred to as concurrent jurisdiction.

Prosecutorial waiver also has its detractors. Critics charge that prosecutorial waiver unnecessarily expands the power of the prosecutor. In addition, critics charge that the nature of the prosecutor's office increases the likelihood of politicization cases often to enhance the notoriety of the prosecutor himself/herself. Further, critics suggest that such politicization allows for disparity in the punishments that are meted out to juvenile offenders.

The third mechanism, legislative waiver, is the least used type of waiver. Often referred to as legislative exclusion, this waiver mechanism excludes certain offenses from the jurisdiction of the juvenile court. In addition, this waiver mechanism exempts certain age groups from juvenile court jurisdiction. Though lauded as the best way to remove discretion from waiver decisions, legislative waiver is still problematic for a few reasons. First, its age requirement is artificial and arbitrary. Second, it denies rehabilitation to some offenders who may still be salvageable within the juvenile justice system.

Though the aim of this research is not to determine which mechanism is best, it will seek to gain a better understanding of prosecutorial waiver. This research will explore whether the expanded charging authority of prosecutors has resulted in more severe punishments for juvenile offenders. In addition, this research will examine whether the "Principle of Offense" is the primary factor behind the decision of prosecutors to waive

jurisdiction to adult criminal court. Relatedly, this research will seek to uncover the differences between juvenile offenders who are retained in the juvenile court versus those who are waived to criminal court.

Michigan's Experience with Waiver

The state of Michigan's modern-day experiment with waiver goes back to 1972. It was at this time that a statute was outlined which expressly addressed the issue of juvenile waiver. In essence, this statute established that waiver was permissible for juveniles provided that they committed a punishable felony and were at least 15 years of age⁵. More specifically, this statute reads

[(1)] where a child [who has attained] the age of 15 years is accused of an act the nature of which constitutes a felony, the judge of probate of the county wherein the offense is alleged to have been committed may [waive jurisdiction pursuant to this section upon motion of] the prosecuting attorney, whereupon it shall be lawful to try such child in the court having general criminal jurisdiction of such offense. (M.S.A. §27.3178 (598.4); see also M.C.L.A. §712a.4)

This statute seems to be in compliance with the Kent criteria wherein it is required that notice be given to the child, attorney, and parent that the court is filing a waiver motion. Also, this statute outlines the criteria that the judge is to consider when making the waiver decision as specified in the Kent decision. These criteria include

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M.C.L.A., ch.64 §2012 (1915) also provided for the criminal prosecution of juveniles. While the express purpose of this provision was to establish the jurisdiction of the probate court, it also indicated that proceedings under this act shall not be deemed to be criminal proceedings and this act shall not prevent the trial by criminal procedure in the proper courts of children over fourteen years of age, charged with the commission of a felony. (also see M.C.L.A., ch.64, §2016 (1915); M.C.L.A., §712A.4 (1948) In addition, Moore and Bartlam (1986:36) point out that the antecedents to the modern-day waiver law date back to 1939.

(a) the prior record and character of the child, his physical and mental maturity, and his pattern of living, (b) the seriousness of the offense, (c) whether the offense, even if less serious, is part of a repetitive pattern of offenses which would lead to a determination that the child may be beyond rehabilitation under existing juvenile programs and statutory procedures, (d) the relative suitability of programs and facilities available to the juvenile and criminal courts for the child. [and] (e) whether it is in the best interests of the public welfare and the protection of the public security that the child stand trial as an adult offender. (M.S.A. §27.3178 (598.4); also see M.C.L.A. §712A.4)

Still, some of the items contained in this statute are problematic.

First, several of the items within the criteria are vague. For example, determinations about the character of the child is a very subjective process. There are no indications as to what the general standards should be for making what are tantamount to value judgments. In addition, one does not know what aspects of the child's character would turn the decision in favor of waiver to criminal court. Second, there is no mention of a standard relative to amenability to treatment. While this statute does provide for the consideration of whether the "... child may be beyond rehabilitation..." one is unsure as to how much emphasis is given to the treatment prospects of the child. This omission is noted in two cases, *People v. Schumacher* (1977) and *People v. Durham* (1985). In both cases, it was noted that

although our statute and court rule do not speak in terms of 'amenability,' we discern within them an intention that the juvenile's prospects for rehabilitation be seriously considered. Otherwise, our duty of liberal construction, aimed at providing care, guidance, and control similar to that provided by the child's parents would have little meaning in that instant setting. (256 N.W. 2d 39, 1977; 377 N.W. 2d 262, 1985)

One can only assume that the Court of Appeals and the Supreme Court of Michigan were keenly aware of the fact that juveniles should be given a reasonable opportunity to be rehabilitated within the juvenile system. This statute seems to take an offense-centered

approach where repetitive offending is seen as an indicator that the child cannot be helped within the juvenile system and not whether the child may respond to treatment. Third, there is some concern about the "suitability of programs" standard. One is unsure as to whether this criterion means appropriate treatment programs which target specific types of offenders or whether resource issues would preclude suitability and amenability. This difference escapes the attention of the drafters of this statute. While these may indeed be very minor concerns, they do suggest that a degree of clarification is needed relative to this statute (see *People v. Schumacher*, 256 N.W. 2d 39, 1977).

Information collected by Hamparian et al. (1982) on the state of Michigan provides some insight as to how waiver was working in 1978. This information gives an indication of who was touched by waiver and the extent of its use. First and foremost, they found that forty-seven percent of all waivers in the state occurred in the most populous county, Wayne County (p. MI-5). In total, nine counties accounted for seventy-three percent of all waivers within the state (p. MI-8). Also noteworthy is the fact that those waived tended to fit a certain profile- male, 16 years of age, and minority background (p. MI-8; also see Keiter, 1973).

In 1978, there were a total of eighty-six juveniles waived to criminal court in the state of Michigan. Personal offenses accounted for seventy-six of these waivers while property offense accounted for ten percent of the waivers (p. MI-9). By far, the most common offense which warranted waiver was murder/manslaughter (31) followed by robbery (16), aggravated assault (6), and burglary (6) (p. MI-10). Thus, it seems that judicial waiver had been living up to the expectations of the legislators responsible for passage of

the statute. The most serious offenses (felonies) were in fact being targeted for waiver. Moreover, the vast majority of those offenders committing felonies were waived to criminal court. In addition, thirty-one of those actually convicted were sentenced to an adult correctional facility while only one was given probation (Hamparian et al., p.MI-13).

Though it appears that judicial waiver was achieving its desired objective, there was still growing disenchantment with the fact that violent crime was increasing not only in the state of Michigan but also at the national level⁶. This disenchantment culminated in the

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To get an idea of the magnitude of the crime problem, Juvenile Court Statistics were examined from 1984 to 1988. These statistics are prepared by the Office of Juvenile Justice and Delinquency Prevention. These statistics were compared with crime figures compiled by the Michigan Justice Statistics Center from 1984 to 1988. The following trends were observed:

	1984	1985	<u>National*</u>			1984	1985	1986	<u>Michigan**</u>	
Index			1986	1987	1988				1987	1988
Violent	61400		70000	64000	68400	2213	2412	2592	2624	2054
Property	442400		496000	498000	503000	15878	14873	16029	16620	15753
Non-index										
Drug	64600		73000	73700	80200	1044	1147	1017	1214	1488
Percent Change										
Violent	4.7		6.1	5.6	5.9	5.9	6.3	6.3	6.2	5.2
Property	33.9		43.2	43.5	43.5	42.9	38.8	39.2	39.3	40.0
Drug	5.0		6.4	6.4	6.9	2.8	2.9	2.4	2.8	3.7

* Source- Juvenile Court Statistics

** Source- Michigan Justice Statistics Center

These figures suggest that violent crime in Michigan was relatively stable. That is, there were no dramatic swings in the number of violent crimes that were committed. However, the violent crime rate in Michigan was higher than the national average. It is interesting to note that drug related crimes in Michigan were well below the national average. This point is salient given the emphasis placed on Detroit during the early stages of the "war on drugs." The drug scene in Detroit was heavily scrutinized by local and national media and it was labeled as one of the most notorious and violent in the country. As such, Detroit was named as one of twelve sites for a regional anti-crime task force established by the federal government (see Canty, 1996). However, the figures for drug-related crimes suggest that such heightened scrutiny may have been misplaced.

amendment of the waiver law in 1988 which conferred upon prosecutors the power to make waiver decisions (prosecutorial waiver). The course of events leading up to this amendment will be briefly discussed in the next few pages.

In 1987, the Michigan House of Representatives began debate on a package of bills which would amend the juvenile code and give prosecutors expanded power to make waiver decisions. This proposed statute change would also amend and revise the criteria for consideration in making waiver decisions. The impetus for this change grew out of a concern that the number of hardened, serious juvenile offenders was increasing at both the state level and nationally (see House Legislative Analysis Section, H.B. 4731 et al., 8-19-87). This concern would seem to be borne out through statistics obtained from Juvenile Court Statistics (1988) which showed that in the four year period from 1984 to 1988, personal offenses increased by 10.2% among juvenile offenders. It would seem that there was a valid concern within the public that a new strategy had to be found to deal with these juveniles.

Many of the legislators who supported changes in the law believed that by providing stiffer punishments and longer sentences, juvenile offenders would be forced to take responsibility for their actions. Such juveniles would be forced to recognize that their actions could pose serious consequences as far as severe punishment is concerned (see Duranczyk et al., 1988; House Legislative Analysis Section H.B. 5203, 12-16-87; House Legislative Analysis Section, H.B. 4730 et al., 8-19-87; House Legislative Analysis Section, H.B. 4731 et al., 7-26-88). Further, proponents of change in the waiver statute believed that the current judicial waiver system was too cumbersome, especially where crowded court dockets prevented some juveniles from getting the immediate treatment that they needed. As such,

greater flexibility was sought by empowering prosecutors to make waiver decisions (see Duranczyk et al., 1988; House Legislative Analysis Section, H.B. 4830 et al., 8-19-87; House Legislative Analysis Section, H.B. 4731 et al., 7-26-88).

House Bill No. 5203 sought to amend and improve upon the waiver language that had been outlined in M.S.A. §27.3178(598.4). By way of comparison, the new bill retained the criteria outlined in items a, b, and e (see M.S.A. §27.3178(598.4) but added the following criteria- "(c) whether the offense is part of a repetitive pattern of offenses which would lead to [one] of the following determination: (i) the child is not amenable to treatment [,and] (ii) that despite the child's potential for treatment, the nature of the child's delinquent behavior is likely to disrupt the rehabilitation of other children in the treatment program [,] whether despite the child's potential for treatment, the nature of the child's delinquent behavior is likely to render the child dangerous to the public if released at the age of 19 or 21 [,and] (e) whether the child is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile program and services." (M.S.A. §27.378(598.4); House Bill No. 5203) These changes in the language of the law were an attempt to add clarity to the waiver provisions. However, there still remained a few troublesome issues.

The legislature still did not clarify "amenability to treatment". An argument that could be made relative to this term is that amenability has a reliance on prediction of outcomes, a capacity that is beyond judges, prosecutors, clinicians, and legislators. One cannot predict the efficacy of treatment programs with any degree of certainty considering the multitude of factors which impinge upon the juvenile such as environment and

"character". Further, it seems that the legislators are of the opinion that rehabilitation programs in the adult system may be better than those in the juvenile system. However, there is no indication of greater treatment success of such programs. Martinson's (1974) observation that "nothing works" is just as applicable to the adult system as to the juvenile system. Treatment programs in both systems lack proper resources. Beyond this, the goal of the adult penal system tends to be one of punishment so, one would think that there would be less emphasis on treatment even though these goals are not mutually exclusive. Is the primary factor then the amount of time during which juveniles would be exposed to such treatment programs? An answer to this question is not provided by the legislature.

Several counter arguments are worthy of mention relative to House Bill No. 5203. Some called the new waiver provision a simplistic solution to a national problem (House Legislative Analysis Section, H.B. No. 5203, 12-16-87; House Legislative Analysis Section, H.B. 4730 et al., 8-19-87; House Legislative Analysis Section, H.B. 4731 et al., 7-26-88). This argument suggests that the new waiver provision would effectively allow the state to write off salvageable young juveniles. Further, evidence suggested that the problem of overcrowding in the state's prisons and court dockets led some judges to sentence these serious offenders to relatively shorter terms than would normally be expected for crimes of such magnitude thereby exacerbating the "leniency gap" (House legislative Analysis Section, H.,B. 5204, 12-16-87; House Legislative Analysis Section, H.B. 4730 et al., 8-19-87; House Legislative Analysis Section, H.B. 4731 et al., 7-26-88). Thus, the actual purpose and intent behind waiver is thwarted. Other arguments suggested that the best way to deal with serious, violent, and chronic offenders is to automatically try them as adults but allow the criminal

courts to place them in the juvenile system following trial (House legislative Analysis Section, H.B. No. 5203; 12-16-87; House Legislative Analysis Section, H.B. 4730 et al., 8-19-87; House Legislative Analysis Section, H.B. 4731 et al., 7-26-88).

Catherine Bove (1991) specifically addressed the changes in the Michigan waiver law. She indicates that as a result of the changes in statutes, Michigan joined states such as Florida and Utah with dual waiver systems. Such a system, on the one hand, would place the discretion to waive cases to criminal court in the hands of the prosecutor and, on the other hand, retain decision making power with juvenile court judges. She suggested that many state legislators fully believed that juveniles were cognizant of the limitations on the juvenile system and used them to their advantage (1991:1086). This dual system would then remove the incentive to attempt to abuse the juvenile justice system.

She also made observations about some of the reservations that legislators had concerning the new law. For example, some critics of the new legislation opined that prosecutors were being given too much discretion in that the law would simply allow them to screen cases to determine whether "... to recommend a warrant, or to seek a permissive waiver from juvenile court, or simply file charges in juvenile court." (1991:1087) Under such conditions, the youth and his/her defense counsel may be subject to different policy and procedures in every county since there will inevitably be inconsistency in the manner in which prosecutors pursue charges.

Bove also called attention to the lack of proper resources and facilities within the juvenile and adult systems. In order to meet the resource demands that the changes in the waiver law would hoist upon them, resources would have to be reallocated away from services

and programs that would most likely reform less serious offenders (1991:1089). It was estimated that approximately fifteen new 64 bed facilities would have to be built to accommodate these juveniles (House Legislative Analysis Section, H.B. 5203, 12-16-87; House Legislative Analysis Section, H.B. 4730 et al., 8-19-87). Fiscal projections indicated that annual costs and expenditures for three years alone would be approximately \$72 million dollars (House Legislative Analysis Section, H.B. 5203, 12-16-87; House Legislative Analysis Section, H.B. 4730 et al., 8-19-87) Thus, it could be assumed that the benefits that would accrue to the public, in terms, of safety, would outweigh the costs of building these new facilities.

While Bove contends that many of the arguments in opposition to the new waiver law lack merit, she concedes that there are no clear guidelines to guide local prosecuting attorneys. As a result, she foresaw the possibility that great disparity could exist among prosecutors from the various counties throughout the state (1991:1095). Here, the issue is one of consistency. Outside of the criteria outlined in House Bill 5203, prosecutors and judges of the state are really no better off than before the change went into effect.

As a means of demonstrating that the new waiver law had not yet removed the discretion from the decision making process, one can turn to a report on discretionary waiver (prosecutorial waiver) prepared by Marjorie Gutske (1989) for the Office of Children and Youth Services. She found that

... the use of discretionary waiver [was] not resulting in a lot of tough sentences to DOC for juveniles. In fact, the discretionary waiver actually calls for a more limited jurisdiction by only allowing the waiver of juveniles who have committed a class 1A felony... In the time period, 92 % of the juveniles waived with the traditional waiver were of a minority race. This

appears to demonstrate that it may be easier to waive juveniles depending on factors other than just the crime committed. These waivers are based on possibly biased judgments of the individual juveniles, rather than determined by the seriousness of the crime. (p.11)

In either case, the state legislators seemed to be engaging in wish fulfillment in believing that waiver could deliver on all the promises made to the community. As such, a need has been demonstrated that strict criteria are needed to guide not only judges but also local prosecutors.

Summary and Conclusion

Of the three types of waiver presented and discussed, judicial waiver seems to be the best method for disposing of juveniles who are beyond the help of the juvenile justice system. Unlike prosecutorial and legislative waiver, it ensures that the procedural and constitutional rights of juveniles are protected and it assures consideration of appropriate mitigating and aggravating factors. Moreover, with some refinement of "dangerousness" and "amenability to treatment," judicial waiver could eliminate some of the discretion possessed by juvenile court judges. Judicial waiver seems to be the best method to ensure that juvenile offenders are not arbitrarily removed from the protection of the juvenile justice system. Further, the use of judicial waiver refrains from making arbitrary determinations of adulthood without consideration of factors such as sophistication, "environment", and "pattern of living".

As has been earlier suggested, prosecutorial waiver signals a shift in the philosophy of the juvenile court. Where once treatment was the primary goal, punishment has now

superceded this function so much so that many states have rewritten the purpose clause of the juvenile court to reflect this new punishment orientation. This new orientation greatly diverges from the original principles of the juvenile court. Some commentators have suggested that the juvenile court was due for such a change in that the “justice pendulum” now reflects the attitudes of the broader society. Writers such as Sanford Fox (1970a and 1970b)) and Robert Mennel (1973) have voiced such sentiments and even go so far as to say that the juvenile court has always been an instrument used to keep juveniles in their place. So, it should come as no surprise that waiver has been added to the court’s arsenal. At the same time, other commentators have suggested that these are dangerous times for the juvenile court and it is in danger of extinction. What is behind this change in the juvenile court’s philosophy? Are such changes a part of an inevitable evolution of the juveniles court’s purpose? Questions such as these will be addressed in the following chapter which a) briefly recounts the history of the juvenile court and b) documents some of the changes which have taken place in the court’s philosophy and function

Chapter 2

The Foundations and Changes in Juvenile Court Philosophy

Introduction

Much commentary has been presented over the last decade which suggests that the juvenile court has outlived its usefulness. Where once there was a supposed benevolent attitude, at the dawn of the juvenile court era, toward those deemed in need of the state's protection, there is now a harsh edge to the justice which is meted out to juveniles. Where once it was thought juveniles could be transformed if changes were effected in their attitudes and environments, there is now a cry for protecting communities (or society) from these uncontrollable and dangerous juveniles. What's more, there is the suggestion that juveniles need to be protected from their own destructive ways.

These changes in attitude did not just materialize over night. In actuality, they have seemingly occurred when there was fear that children were being lost. During the 1890's and early 1900's, there was pervasive fear that children were being lost to poverty and idleness (see Sanford Fox, 1970). During the 1960's and early 1970's, it was thought that children were being lost to a culture of drugs and depravity (see Justine Wise Polier, 1989). Since the mid- to -late 1980's, it has been thought our children are being lost to a culture of violence wherein drugs, guns, and misery brought on by the living conditions in our urban centers are subjecting them to conditions reminiscent of war (Polier, 1989). In such a culture, children have no respect for law and conventional norms, they have no sense of accountability or

appreciation of the gravity of their actions, and they have no respect for the sanctity of “person” and life.

The philosophy of justice which has evolved out of this culture is one of restoring accountability for one’s actions and restoring respect for the law. Such a philosophy may be called a conservative view of justice. For some, this philosophy may be called a “just deserts” model of justice. The underlying premise of such a view is that juveniles must be taught that there are consequences for their actions. What’s more, the notion of proportionality or commensurability is interjected as a means of dispensing justice.

It should come as no surprise that this “just deserts” model has roots in the classical school of criminology. The question though is why has the juvenile justice system seemingly ended up where it began. Why has the juvenile justice system reverted to a more punitive approach in dealing with adolescent offenders? Has the system of juvenile justice indeed run out of ideas and now is a bankrupt institution? Answers to these questions should provide insight into the problems which have plagued the juvenile justice system since its inception.

The purpose of this chapter is to reflect upon the intent and purpose of the juvenile justice system. Specifically, this chapter will address the following issues: 1) the origin of juvenile justice, 2) the treatment approach to juvenile justice, and 3) the punitive approach to juvenile justice. In addition, this chapter also has a secondary purpose in terms of examining the rationale of Matza’s notion of the “Principle of Offense”. This theory also provides the justification for the juvenile court’s movement away from “kadi justice,” wherein subjective non-legal factors allowed judges wide discretion to make waiver decisions, to the “Principle of Offense” and punitive juvenile justice which focuses only on

legally relevant factors.

Origin of the Juvenile Court

The invention of the juvenile court was seen as the dawn of a new era in the way children were treated in society. The juvenile court was deemed a rational approach to deal with the ills of society and those children who were unwittingly influenced by the dark forces of society. It was believed that through the juvenile court, children who had been abandoned or abused or those who were destitute or indolent could get the help that they needed so that their lives could be turned around. The juvenile court was premised upon the assumption that the state was the ultimate guardian of children. *Parens patriae*, upon which this notion of guardianship was founded, bestowed upon the state the duty to act as protector and chief advocate for children. It must be noted that *parens patriae* was a concept transplanted from the English Chancery Courts wherein the Crown was guardian and protector of the neglected and abandoned. The incorporation of delinquency into this doctrine is a more recent phenomenon (Fox, 1970a:1192).

The forces which gave rise to the juvenile court can be found in the “child saving” movement. The “child savers” were composed of a group of progressive reformers who believed that poverty was the root of children’s problems and that crime was but a manifestation of it. As such, this movement went about trying to alleviate the suffering which children endured because of their poverty stricken status. A remedy was found in the so called “House of Refuge.”

Houses of Refuge sprang up in all the large eastern cities such as Boston, New York,

Philadelphia, and Baltimore. They were premised upon the assumption that children could be saved a future life of crime if they were removed from environments which were conducive to indolence, ignorance, pauperism, and disease. As such, they embraced the poor, neglected, abandoned, and orphaned. Thomas Mennel (1973) suggests that these refuges were all-encompassing as can be exemplified by the Boston House of Refuge which “.. received all children who live[d] an idle or dissolute life, whose parents [were] dead or if living, from drunkenness, or other vices, neglect[ed] any suitable employment or exercise[d] any salutary control over said children.” (p.13)

Those who supported the Houses of Refuge believed that children should be provided with those things which they were not getting at home- discipline, religious instruction, and education (training through apprenticeships). The Houses of Refuge were adamant about establishing routines for the children whereby middle class values could be inculcated within them (Mennel:18). At the same time, the refuges were very strict in terms of discipline whereby questioning authority and rejecting the “help” which one was receiving was expressly forbidden. Punishment, like the rehabilitative process of the juvenile court which would follow, was individualized (Mennel:19). Lastly, education was provided to the children through a system of contract labor and apprenticeships which supposedly paved the way for the children to become independent and earn their own livelihood (Mennel:21; also see Kelling, 1987:41).

Corroboration of these precepts are provided through the works of both Sanford Fox (1970a) and Anthony Platt (1977) who both believed that the House of Refuge and the “child saving” movement was a cloaked attempt to bring more children, whose only misfortune

was that they was poor, under the aegis of state control. For example, Fox comments upon the language that was frequently used to describe those who were to be helped by the refuge. Hostility and disdain were clearly evident in the following passage which was ascribed to Thomas Eddy of the New York House of Refuge-

these little vagrants, whose depredations provoke and call down upon them our indignation are yet but children who have gone astray for want of that very care we exercise towards our own. They deserve our censure, and a regard for our property, and the good of society, requires that they should be stopped, reprov'd, and punished. (1970:1194)

It appears that Eddy subscribes to the belief that saving the poor (the middle class version of noblesse oblige) is a duty which must be undertaken for the betterment of society. Though despised, some of the poor were believed to be salvageable. That is, they could be deterred from a future course of criminality. This belief may have provided the impetus for indoctrination within the poor of middle class values.

There is commentary upon the fact that poor children were constantly barraged by middle class values such as emphasis upon subservience to authority, thrift, self-restraint, and self-discipline. What's more, it has been suggested that "child saving" was nothing more than a attempt to preserve the preeminence of traditional middle class values in the face of turbulent changes which were transpiring in the cities. Anthony Platt (1977) notes that

child saving may be understood as a crusade which served symbolic and ceremonial functions for native, middle class Americans. The movement was not so much a break with the past as an affirmation of faith in traditional institutions. Parental authority, home education, rural life, and the independence of the family as a social unit were emphasized because they seemed threatened at this time by urbanism and industrialism. The child savers elevated the nuclear family, especially women as stalwarts of the family, and defended the family's right to

supervise the socialization of youth. (p.98)

The aforementioned passage suggests that the family was conceived along middle class ideals. Under such a conception, children were defined as helpless, weak, and impressionable. The “child saving” movement realized its end goal by relegating children to dependent status within the family. Children were not seen as independent actors possessing a will capable of acting upon their environments. Instead, the view of them was akin to blank slates which are acted upon by forces from their surroundings (Kelling, 1987:43). If such children were not given structure and guidance, they were prone to mimic or imitate patterns of destructive behavior with which they have come into contact. With this in mind, Platt writes that

many of the child savers’ reforms were aimed at imposing sanctions on conduct unbecoming youth and disqualifying youth from the benefit of adult privileges. The child savers were more concerned with restriction than liberation, with protection of youth from moral weaknesses as well as from physical dangers...

They were active and successful in extending governmental control over a whole range of youthful activities that had been previously ignored or dealt with informally. Their reforms were aimed at defining and regulating the dependent status of youth. (p.99)

While it is very apparent that the “child savers” were mainly interested in preserving the family, they tended to resort to drastic measures that were often not “family friendly.” First, it has been documented that poor children were removed from their families simply because of their economic status (see Fox, 1970a; Platt, 1977). Second, children were “placed out.” That is, some were apprenticed to other families or businesses so that they could be taught a useful skill. This was all a part of the “new education” which was the brain

child of the “child saving” movement⁷. Though some children were simply “placed out” in the countryside away from the corrupt influences of the city (Platt, p.65), others were taken to neighboring states and even to the West. Some estimates indicate that by 1879, as many as 48,000 children had been “placed out” of New York alone to homes in other parts of the country (Fox:1210). Additionally, Robert Mennel (1973) notes that

apprenticeship usually meant placing children with farmers away from their former companions and thickly spread snares of the city. More often than not, these farms were located in the East- in Pennsylvania, New Jersey, upstate New York, Cape Cod, or Connecticut. Older boys were sometimes indentured to ship captains in the whaling or merchant service on condition that their voyages last at least two years. (p.21)

It has been noted that one of the tests of the “child saving” movement was its ability to transform children through the system of apprenticeships (placing out) which it had sought to perfect. If this is true then, the “child saving” movement failed this test. Evidence suggests that the children often did not get the skills and training which they had been promised. Furthermore, many of the children were abused by those to whom they were apprenticed. Alexander Pisciotta (1982), in a study of the apprenticeship system of the New York House of Refuge, found that

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In Michigan, for example, a system of laws were put into place wherein children could be contracted out. However, this system for “bonding out” children was tightly controlled. One such provision indicated that

... if it shall come to the knowledge of such agent that any child thus placed in charge of any person as aforesaid, is neglected, abused, or improperly treated by the person having such child in charge, or that the person holding the child in unfit to have the care thereof, he shall report the fact to the board or officers of the institution by which such child was indentured, and such board or officers shall cancel the contract and cause the child to be returned to the institution from whence he or she was taken, or indentured to some other persons, or to be discharged, in the discretion of the board or officers. (Michigan Public Acts, No.171, 1873; also see M.C.L.A., ch. 64 §2014, 1915)

72 percent of the inmates either ran away, voluntarily returned to the Refuge because they were not pleased with their placement, were returned to the Refuge by their master, or committed an offense and were incarcerated in another institution. (p.422)

In sum, the apprenticeship system failed because there was a lack of accountability on the part of some unscrupulous masters and intractable children. The “child savers” assumed that all the “masters” would have the best interests of the child in mind when that is clearly not the case as evidenced by the fact that some complained about and wanted to return children simply because of the amount of food that they consumed (Pisciotta:421). In addition, the “child savers” assumed that a mere change of environment would cure all that was wrong with the child. Clearly, many of the children had problems that went well beyond where they lived.

Though the “child saving” movement exacerbated some of the problems that it had attempted to solve- breaking up families to save them; denigrating poor children yet abhorring the practice of labeling them- , its work culminated in what was deemed the greatest achievement of the Progressive Era. This achievement was the creation of the juvenile court. The juvenile court expanded upon the ideals that were originally put forth by the House of Refuge, that children should have a place or venue where they were protected from the harsh realities of the world. Here, it was thought that children would get the “care and solicitude” which they could get nowhere else. Here, children would be ascribed a status analogous to that of a patient wherein their problems could be diagnosed and treated. It was also here that the state was deemed the penultimate arbiter of what was best for the child.

The juvenile court was founded in 1899 in Cook County, Illinois. This court was

based upon the premise that children were different from adults and they should be treated as such. The juvenile court also had as a premise the assumption that age mitigates culpability is so far as a child's ability to distinguish right from wrong (see Bearrows, Bleich, and Oshima, 1987:65). These ideas coincided with five principles elucidated by Julian Mack (1910) which he suggests are inherent within the fabric of the juvenile court-

The first is that the child offender ought to be kept separate from the adult criminal, and should receive at the hands of the law a treatment differentiated to suit his special needs; that the courts should be agencies for the rescue as well as the punishment of children...

The second principle... is that the parent of the child offender must be made to feel more responsible for the wrong doing of the child...

The third principle... is that the commitment of children in common gaols, no matter what the offense may be that is committed, is an unsuitable penalty to impose...

The fourth principle, that taking a child away from its parents and sending it even to an industrial school is, as far as possible, to be avoided; and as the fifth and most important principle, that when it is allowed to return home, it must be under probation, subject to the guidance and friendly interest of the probation officer, the representative of the court. (p.115-116)

These principles, for better or worse, gave guidance and credibility to the juvenile court for more than eight decades. However, there are some who would suggest that the intent behind the juvenile court has always been far from benevolent. For example, there are commentators such as Fox (1970a), Mennel (1973), and Platt (1977) who suggest that the introduction of the juvenile court was merely a veiled attempt to expand social control over the poor and disaffected youth from the cities. Mennel writes that

juvenile courts, even those with a panoply of supporting staff and institutions, provided new bottles for old wine- ways of supervising delinquent children which, while not formally incarcerating them, provided penal sanctions for persistent wrongdoers. The charismatic approach of some early judges and the sheer amount of organizational and promotional activity associated with the creation of a seemingly novel tribunal obscured for a long while the

juvenile court's traditional attitude toward delinquent children and their parents. (p.144)

Further evidence of this fact is provided by Anthony Platt who suggested that the juvenile court found a legal and socially acceptable way to criminalize and bring within its ambit of governance behaviors that traditionally had been ignored or handled informally (1977:139; also see J. L. Schultz, 1973:193). Even more, the behaviors targeted once again characterized activities which were most frequently engaged in by the poor (Fox, 1970a).

In all fairness, there are some who believe that Platt, and others of the same mindset, exaggerate or misstate the case against the juvenile court. J. Lawrence Schultz (1973) suggests that Platt (1977), Fox (1970a), and others are engaging in revisionist history and do not provide corroborating evidence to substantiate their claims (also see Salerno, 1991). First, Schultz takes issue with the assertion that the juvenile court movement was an exercise in the retrenchment of middle class values. He suggests that some people and communities within the cities would have welcomed increased social control if it meant that lawlessness and other problems could be contained (p.471-472; also see Salerno, 1991). While this may be true, Schultz himself does not present any evidence to support this claim. He does not demonstrate that those poor communities in the large cities welcomed this encroachment of the state yet, he finds fault with Platt and others for this very same reason. There is no evidence to suggest that this increased social control was carried out in an evenhanded fashion so that the poor would not be selectively targeted by the new laws. There is also no evidence to suggest that these communities embraced these new laws. If anything, the juvenile court made the poor more vulnerable before the state, especially in view of the fact

that there is no proof that children from the middle class were brought into juvenile court in numbers equal to that of the poor⁸.

Second, Schultz takes issue with the assertion that the juvenile court was nothing new. He notes that commentators such as Fox (1970a) and Platt (1977) both accepted the fact that the antecedents of the juvenile court could be gleaned from the precedents established in other states. By his interpretation, social reformers did not claim that they were responsible for establishing these new precedents (p.461). Instead, they were responsible for pulling together these separate precedents within a single doctrine to ensure that children were treated differently than adults. In that regard, social reformers could claim a degree of originality (1973:462).

Just as there have been differences with regard to the intent and purpose of the juvenile reform movement, there has been an ongoing debate about the significance of the treatment orientation of the juvenile court. Though one of the professed goals of the juvenile court was to “treat” the child, short shrift is typically given to this issue. From the earliest inception of the juvenile court, its supporters believed that “the court would serve as a place where psychologists, psychiatrists, and other specialists concerned with the diagnosis of youth problems both helped children and trained parents and teachers to understand the complex nature of juvenile delinquency” (Mennel:156). Over time, this view has evolved to one where it is believed that some children are not amenable to treatment and, by

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Salerno (1991), on the other hand, takes the view that the juvenile court was created as a protective mechanism for capitalism (p.42). Moreover, he suggests that the creation of the juvenile court was the best available remedy to the perceived increase in juvenile crime. Still, he suggests that there simply was no evidence to support the contention that the juvenile court, or the Child Saving Movement, was a conspiracy aimed at controlling the dangerous classes (p.43).

extension, that they are not entitled to treatment. This view takes a harsher, more punitive stance toward children and further clouds the issue concerning the role of the juvenile court. According to Francis Allen (1964), this merely reflects the ongoing tension between the desire for retribution, a vestige of the period before child saving began, and the willingness of the community to become fully supportive of the rehabilitation of its youth (p.50). With this in mind, there are three questions for which answers must be provided. First, what is the role of the juvenile court relative to the rehabilitative ideal? Second, are juveniles entitled to treatment and rehabilitation? Alternatively, on what grounds are juveniles entitled to treatment and rehabilitation? Third, what have been the consequences of the treatment orientation for the juvenile court? Answers to these questions should provide insight into the assertion that the desire for retribution has never been ameliorated even though some have professed allegiance to the non-punitive nature of the juvenile court.

The Juvenile Court and the Right to Treatment

The role of the juvenile court is best captured within the context of providing care, guidance, and nurturance to children. Some commentators have suggested that the express purpose of the court is to “arrest” a child’s misbehavior by proffering treatment so that his or her problems will not be later manifested in criminality. This task can only be accomplished by gaining a thorough understanding of what drives and motivates the child. Julian Mack (1910) voices similar sentiments by suggesting that the whole child must be understood if a solution is to be found for what ails him or her. He writes that

a thorough investigation, usually made by a probation officer, will give the

court much information bearing on the hereditary and environment of the child. This, of course, will be supplemented in every possible way, but this alone is not enough. The physical and mental condition of the child must be known, for the relation between the physical defects and criminality is very close. It is, therefore, of the utmost importance that there be attached to the court, as has been done in a few cities, a child study department, where every child, before hearing, shall be subjected to a thorough psycho-physical examination. (p.120)

It is very important to note at this point that the juvenile court was believed to be the only place where the child could get care and treatment. This is not to suggest that the juvenile court had the capacity to provide treatment to all children but, it does suggest that one of the pillars of the juvenile court is treatment (also see Allen:51).

This belief unabashedly begs the question of whether treatment is an inherent right of children. There are both advocates and detractors who take opposing sides to this issue. Some do suggest that children do have a right to treatment, a right which was made explicit in the Gault decision (see Ellis, 1976; Blasko, 1985). At the same time, there are those who believe that the right to treatment was a tradeoff for the lack of procedural guarantees afforded to children (see McNulty and White, 1976; Heugle, 1980; Blasko, 1985). Beyond this, there are those who suggest that there is no absolute right to treatment. For them, treatment is an antiquated notion bearing little relevance to the behavior of the child. As such, children only have the right to be treated as a person but nothing more (see Fox, 1974; Monarski, 1987; Gardner, 1989). Such a notion suggests that children are miniature adults who deserve no more, and no less, than the protections and services that are given to adults.

With regard to the position taken by Ellis (1976) and Blasko (1985), it is believed that therapeutic treatment can best be obtained through the informal process of the juvenile

court. Those who subscribe to this view are “traditionalists” in that they believe

... the prevention function of the juvenile court is fundamental and that therefore undesirable behavior should be dealt with by the juvenile correctional system, even though no specific offense has been committed, in order to ‘impress’ the child with the consequences of aberrant behavior. (Ellis:720)

Here, it is made explicit that the court should have broad discretion in terms of exerting social control over children. This view also coincides with the objectives of the “child savers” who sought to rein in behaviors which, technically, were not illegal or criminal but posed more of a nuisance to the community. Similarly, Blasko (1985) makes the observation that states have a compelling interest in rehabilitating and reintegrating children back into society. Under the doctrine of *parens patriae*, rehabilitation must be paramount in so far as serving the best interests of the child. “In order to promote the child’s welfare, the only other alternative [is] institutionalization focused on reforming and rehabilitating the juvenile to conform to societal norms and facilitate the restoration into society.” (p.128-129)

The second issue regarding the right to treatment presupposes that a *quid pro quo* exists in the juvenile justice system. Of significance here is the belief that treatment, as a goal, was a concession granted to “traditionalists” in return for lesser procedural protection for children (see Heugle, 1980:364; Blasko, 1985:130). A very strong case for this position is made by Huegle (1980) who writes that

procedural due process, as a source of the right to treatment for the non-criminality committed, demands that, for a person confined pursuant to a proceeding that did not possess all the procedural guarantees of a criminal prosecution, the only tradeoff for the lack of procedural safeguards is treatment. Substantive due process demands that even if full procedural rights have been accorded, treatment remains the only justification for the deprivation of the liberty of a person not convicted of a crime. (p.364)

This position suggests that even though juvenile court proceedings are supposedly civil in nature, the only rationale for depriving children of their liberty for the purposes of confinement is treatment. Confinement for the purpose of retribution and punishment cannot then be justified in view that these motives are secondary considerations. The only compelling interest that the state has in children within the civil arena of the juvenile court is to ensure the provision of proper treatment.

McNulty and White (1976) also acknowledges the quid pro quo argument, however, they contend that it poses problems for the juvenile court. First, they suggest that this argument presupposes that all children are receptive to treatment. The issue turns on what to do with children who can't be treated within the scope of the juvenile justice system (p.763). Second, they suggest that this argument diminishes the possibility that treatment and punishment can effect change in juveniles. McNulty and White indicate that

... state intervention in most cases of criminality by minors is based more on society's needs for protection than the minor's need for treatment. The juvenile court in delinquency cases, while it has a rehabilitative focus, is nonetheless serving societal ends similar to those served by the criminal court: condemnation, deterrence, and incapacitation of those whose behavior is threatening to society. If we decline to acknowledge this function of the juvenile court, then those offenders whose problems are beyond the capability of the behavioral scientists to diagnose or treat would be entitled to release from institutions lacking programs to meet their treatment needs. (p.764)

If one follows their logic to its conclusion then, it could be demonstrated that treatment and punishment are not antithetical because both serve to isolate and correct wayward youth.

The third issue related to treatment is premised upon the assumption that the juvenile court's mandate for rehabilitation is no longer valid. Various authors point out the fact that disenchantment with the rehabilitative ideal is so pervasive that there is a movement toward

greater punitiveness rather than compassion and care. This disenchantment is manifested in the belief that juveniles have no absolute right to treatment but rather that they have only a right to punishment. Michael Gardner (1989) characterizes this disenchantment as the “new juvenile justice.” He writes that

the new juvenile justice reflects a general disillusionment with the ability of the juvenile justice system to live up to its traditional rehabilitative promise. because punishment is justified only if its recipient is a ‘person’ capable of moral agency, the movement toward a punitive model seriously questions the existing view that juveniles lack capacity for rational decision making. (p.195)

Gardner’s main contention is that there is a movement away from thinking about juveniles only in terms of children needing treatment. Instead, there are other issues which must ascend the hierarchy of importance within the juvenile court, namely accountability for one’s actions. Franciszka Monarski (1987) supports these sentiments by suggesting that society no longer has faith in the juvenile court’s ability to treat and rehabilitate children. Society’s frustration with the juvenile court has resulted in the advocacy for more punishment. She writes that

the public has lost confidence in the ability of the juvenile system to effectively control delinquency and deal with the problems confronting children today. Concluding that traditional goals of rehabilitation fails to protect the public adequately, many critics advocate a new system that focuses on punishment and incarceration. (p.1116)

It seems that the juvenile court has come full circle. There was a period in our history during which time children were treated as if they were miniature adults. The Progressive Movement sought to change this highly punitive orientation, yet it placed a great deal of control in the hands of one agency, the juvenile court. During the reign of the juvenile court,

segments of society called for care, compassion, and treatment of children so that they would not grow up to become future problems. This was indeed a break from the past. Advocates of the juvenile court such as Julian Mack, Jane Adams, and Julia Lathrop called upon social service agencies to work in cooperation with the court to ensure that children received the treatment that they needed. Presently, however, we have once again retreated to the past for solutions. Though our society never truly gave treatment agencies the resources that they needed to be effective and efficient, we were quick to pass judgment by suggesting that treatment was not working and that new solutions must be found for the problem of delinquency. These new solutions in fact have merely been an embracing of the punitive ideas of old.

Of paramount importance are those factors which prompted the pendulum swing back to punishment. It is already known that there was the widespread perception that treatment was not working. Added to this was the problem of what to do with children who simply were not responding to treatment. These things in themselves are only partial explanations. Two other factors must be taken into account- 1) the perception that crimes committed by children were on the rise and getting more serious and 2) the changing political winds of the country.

There are numerous reports and statistics which suggest that the problem of juvenile crime is getting worse. What's more, these same reports and statistics suggest that violence among children is skyrocketing. Information obtained from Juvenile Court Statistics (1988) indicates that the aggregate level of violent index offenses committed by juveniles increased 13 percent between 1984 and 1988 (p.65). During this same period, murder increased almost

42 percent while aggravated assault increased 39 percent (p.65). It is statistics such as these which fed the disquiet experienced by society (also see Guarino-Ghezzi, 1996; Hamparian, 1987). However, there are some who would suggest that these perceptions of increased violence are not supported by the facts. Michael Jones and Barry Krisberg (1994) indicate that

the ten year trend in arrests for violent crimes, however, does not suggest that youth violence is any more out of control than it was a decade ago. Juvenile arrests or violence increased by 45 percent between 1982 and 1992, but this increase was characteristic of violent crime arrests in general (adult arrests increased by 41 percent during the same period). (p.10)

These two very different interpretations of the data only add to the confusion about the level of juvenile crime. Should we not be concerned with juvenile crime because it is no worse than the rate for adults? Jones and Krisberg (1994) seem to suggest that our sense of fear is actually misdirected. They also suggest that certain organizations have an interest in sustaining a heightened level of fear within the public. For example, they cite police reporting practices which inflate arrest and victimization trends (p.13). The question still remains, though, to what end does the increased perception of violence among juveniles serve. An easy answer would lie in shifting the emphasis in juvenile court from treatment to punishment.

Conservative Philosophy and Classical Criminology

It has previously been stated that there has always been an uneasy tension between retribution and rehabilitation within the juvenile court (Allen, 1964). Perceptions of increased seriousness and violence among youthful offenders have placed the juvenile court

under increased strain. Presently, there are calls to make juveniles more accountable, to criminalize the juvenile court, or do away with the juvenile court altogether (see Wizner and Keller, 1977; Feld, 1984(b); Feld, 1988(a); Gardner, 1989; Dawson, 1990; Federle, 1990; Guarino-Ghezzi and Loughran, 1996). Commentators on the juvenile court, such as Polier (1989), suggest that the juvenile court, in its original mission, was called upon to perform an impossible task- to do away with delinquency and violence. When it became clear that this task could not be accomplished, the public withdrew its support from the court and demanded that it act as a vessel for its outrage (also see Feinberg, 1970). Polier notes that

incapacitation was the demand of fearful communities. Judges with reduced discretion to evaluate individual youths were expected to act only on the delinquent acts. This distanced them from youth in one more way. The judges became instruments for the imposition of community vengeance. (1989:28)

It was this change in community sentiment that ushered in the new age of conservative philosophy relative to the juvenile court. This philosophy identifies responsibility and accountability as paramount concerns.

Whether called a “get tough strategy,” “crime control model,” or “just deserts model,” the conservative philosophy of juvenile justice holds that juveniles must be made to understand that there are consequences, serious consequences, for reckless and dangerous behaviors (also see Katkin, Kramer, and Hyman, 1976). As such, stiff penalties are seen as a reasonable avenue for effecting the desired change from antisocial behaviors in juveniles. In view that traditional means within the juvenile court have failed to link behavior with consequences, the adult system of punishment is held up as a panacea for society’s problems.

Several authors have commented on what this conservative philosophy means for juvenile justice. Justine Polier (1989), for example, notes that the conservative philosophy placates the hew and cry for greater protection of the community (p.30). That is, there is the desire to remove from the community for lengthy periods of time juveniles who pose a threat to the safety of others. At the same time, this view expresses a harsh indifference to youth and the fact that they are developmentally different from adults (also see Federle, 1990). There is a strict adherence to the belief that if one commits an adult crime then, he or she should get adult time. Proceeding along a similar line of thought, Susan Guarino-Ghezzi and Edward Loughran (1996) indicate that

the adult system was turned to as an answer to satisfy stake holders and also to demonstrate rationally escalating consequences to juveniles' offense behavior. These goals would be accomplished by adult courts sending a presumably stronger and more predictable message to offenders, and thereby restoring a sense of justice for other interested parties. (p.16)

The conservative philosophy of juvenile justice has but one goal, punishment of offenders. Notions of treatment are only coincidental to this end. Much faith is placed in the adult system of punishment to effect changes in juveniles and ensure the safety of communities. This view is held in spite of the fact that the adult system itself is beset with problems. The method of choice that is in current vogue with those holding a conservative view of justice is waiver. Before proceeding with a discussion of waiver, it is important to point out that the conservative philosophy has roots in the classical school of criminology and, by extension, to a "just deserts" philosophy.

The classical school of criminology is built upon the pillars of punishment and

retribution. Adherents to this school believe in the free will of the individual. Further, they believe that individuals choose to pursue a certain course of action designed to maximize their pleasure. Problems arise when one's actions imbalance the scales of equity so that one unfairly benefits from the suffering or penalization of others. As such, corrective actions must be taken to restore a sense of balance. This is the position taken by Jeremy Bentham, one of the founders of the classical school. Bentham noted that punishment is needed in so far as it sends the message that offenses, or injustices, perpetrated against others will not be tolerated and that further offenses will be appropriately sanctioned (see Feinberg and Gross, 1980:548; also see Fletcher, 1982; Wertheimer, 1983; Davis, 1985). Thus, punishment is used to exact retribution for those "injured" by an offense. It also serves as a deterrent to others. Bentham goes on to lay out a general framework within which punishment is to be carried out. The rules which he explicated were designed to structure punishment so that individuals would not be penalized beyond what was deemed reasonable. His rules included the following:

Rule 1... the value of the punishment must not be less in any case than what is sufficient to outweigh that of the profit of the offense...

Rule 2... the greater the mischief of the offense, the greater is the expense, which it may be worth while to be at, in the way of punishment...

Rule 5... the punishment ought in no case to be more than what is necessary to bring into conformity with the rules here given...

Rule 6... that the quantity actually inflicted on each individual offender may correspond to the quantity intended for similar offenders in general...

Rule 7... to enable the value of the punishment to outweigh that of the offense, it must be increased, in point of magnitude, in proportion as it falls short in point of certainty...

Rule 9... where the act is conclusively indicative of a habit, such an increase must be given to the punishment as may enable it to outweigh the profit not only of the individual offence, but of such other like offences as are likely to have been committed with impunity by the same offender... (1980:548-550)

These rules, as simple as they may appear, have been a guiding force not only in adult corrections but in juvenile justice as well. The major point of focus of these rules, given the classical stance, is the offense. One is concerned only with the fact that another person has been harmed. Hugo Adam Bedau (1975) conveys this very same point by suggesting that the classical or retributivist view uses the objective criterion of offense to determine the appropriate steps to take when dispensing punishment (p.53).

It is important to note that two of the rules elucidated by Bentham (Rule 5 and Rule 6) give rise to the notion of “just deserts.” Deserts rests on the notion of deservedness. In other words, “just deserts” assumes that one deserves the reprobation of society for some wrong that has been perpetrated upon another. This desire to assess blame, though, must have limits. Andrew von Hirsch (1976), one of the leading proponents of deserts theory suggests that the assessment of blame must be proportional to the gravity of the offense (p.66; also see von Hirsch, 1985; Davis, 1985).

Andrew von Hirsch (1976) suggests that three requirements must be observed if deserts is to serve its ends-

- 1) sanctions disproportionate to the wrong are seen as manifestly unfair...
- [(2) the principle ensures ... the rights of the person punished not be unduly sacrificed for the good of others, [and (3)] the principle ensures that offenders are not treated more (or less) blameworthy than is warranted by the character of the offense. (p.69-71)

The first requirement has relevance for the notion of arbitrariness or “kadi-justice” (see Matza, 1964). That is, the use of extra-legal factors to determine waiver dispositions exacerbates the sense of injustice that may be experienced by juvenile offenders because of the uncertainty inherent within such discretionary decisions. The third requirement also has

significance for the waiver process in that emphasis shifts to the offense rather than the offender. Of importance here is what the offender did and not who he or she is or needs. Thus, subjectivity is removed from the decision making process.

Andrew von Hirsch (1976) extends the retributivist argument that the offense should be the focus when deciding the issue of punishment. While a strict retributivist position would suggest that any offense is justification for punishment, a derivation of *lex talonis*, von Hirsch questions the utility of taking such a narrow view. He suggests that certain criteria must be considered before one can accurately affix punishment. Thus, he puts forth the notions of harm and culpability (p.79; also see von Hirsch,1985). He notes that the harmfulness of an offense should be used as a criteria because it allows one to gauge offenses along a continuum of seriousness. For him, only those actions that pose grave harm to others are of any consequence (p.79; also see Burgh, 1987). Similarly, he believes that an offender's culpability should be considered before assessing punishment. Culpability as he defines it, takes into account three things: 1) the degree to which one should be blamed for his or her actions, 2) the degree to which one's actions set events into motion which caused the harm, and 3) the role of the offender in terms of whether he or she had a major or minor role in precipitating an act (p.80). Thus, von Hirsch believes that there are mitigating factors which should be considered before administering punishment (also see Burgh, 1987)⁹. This position is very different from that of the strict retributivist position wherein factors outside

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One such mitigating factor that merits some discussion is age. Barry Feld (1995), for example, has repeatedly suggested that age (or youthfulness) should be a part of the equation when assessing responsibility and punishment. Such a consideration would necessitate a "youth discount" which would take the form of shorter sentences (p.1127; also see Streib, 1995:777; Feld, 1997).

of the offense itself are believed to be unimportant (also see Matza, 1964; Feld, 1988).

The notion of culpability does present problems for the issue of waiver even though von Hirsch (1976) notes that culpability rests upon "... the degree to which [the offender] may justly be held to blame for the consequences or risks of his act." (p.86) Since waiver is the most extreme disposition available to juvenile court judges, there seems to be some underlying assumption on the part of judges and prosecutors that juveniles possess the requisite mens rea and mental maturity or sophistication to warrant such a harsh disposition. There does not seem to be any recognition of the fact that maturity varies across adolescence and adulthood (see Scott and Grisso, 1997). As such, varying degrees of mental maturity would necessitate that the tenets of culpability be violated (see also von Hirsch, 1985).

It is the "just deserts" model upon which the conservative position and new juvenile court are built. The new juvenile court believes that offenders can be held accountable for their crimes by treating them like adults. Incidentally, a similar position is taken by Michael Gardner (1989) who suggests that children should be viewed as persons with moral agency. This notion of conferring upon pseudo-adulthood upon children is akin to waiving them to adult court.

There does not appear to be any evidence to suggest that our current fondness of the conservative philosophy is going to change. Though it is apparent, based on the available evidence, that this philosophy is not working, there is a great deal of hostility aimed at those who would seek other alternatives. Our society is not yet ready to admit that it was wrong about waiver, specifically, and the conservative philosophy, in general. Because we are hesitant to change, our policies toward youths are stagnating. We are reverting back to old

practices where childhood and adulthood were virtually synonymous. In a manner of speaking, our philosophy of youth is devolving rather than evolving.

The same trend is also apparent in the theories which are used to explain juvenile delinquency. Though there has been an evolution from the classical tradition, to positivism, and then to sociological theories, it seems that theories of youth and delinquency have remained unchanged over the past 30 years. There is a perception that all that can possibly be said about juvenile delinquency has already been stated. There are no new paradigms in delinquency theory. In the remaining pages, a critique will be presented of an existing theory, "Principle of Offense," and its significance for how the justice system looks at juvenile offenders and dispenses a "recycled" brand justice and punishment for them.

The Juvenile Court, Theory and Waiver

The "Principle of Offense", in actuality, has roots in the work of David Matza (1964) who indicates that this principle is merely one of equality. This principle is a reaction against individualized justice which Matza likens to "kadi-justice". He writes that

the principle of individualized justice suggests that disposition is to be guided by full understanding of the client's personal and social character and by his 'individual needs.' This view is well captured by the slogan which suggests that nowadays the treatment fits the individual whereas in the olden times the punishment fit the crime. (p.114-115)

One gets the sense from Matza that the "principle of individualized justice" connotes a lack of accountability. Not only are juvenile offenders not held responsible for their offenses but, the juvenile justice system also lacks accountability in that its dispositions lack substantive

merit and tend to be based on criteria irrelevant to the offense¹⁰. As such, the juvenile court engages in “mystification” in that one does not know how the disposition was arrived at and must engage in a guessing game as to the significance of the decision. Matza notes that the

principle of individualized treatment is a mystification...To the extent that it prevails, its function is to obscure the process of decision and disposition rather than to enlighten it. The principle of individualized justice results in a frame of relevance that is so large, so all-inclusive, that any relation between the criteria of judgment and the disposition remains obscure. (p.115)

Matza goes on to say that the "Principle of Offense" does not rest upon subjective judgment but objective fact. This principle restrains discretion and provides clear guidelines for rendering decisions. In a sense, the juvenile court is removed from the equation so that the disposition stands or falls on its own merits. He also indicates that the public demand for severity can more easily be met through such a principle. Matza writes that the “Principle of Offense”

is importantly qualified by doctrines that allude to, but routinize, the sentiments of individualized justice and treatment. This means that whether a juvenile goes to some manner of prison or is put on some manner of probation- the alternative sentences from which the kadi mainly chooses- depends first, on a traditional rule-of-thumb assessment of the total risk of danger and thus scandal evident in the juvenile’s current offense and prior record of offenses; this initial reckoning is then importantly qualified by an assessment of the potentialities of ‘out-patient supervision’ and the guarantee against scandal inherent in the willingness and ability of parents or surrogates to supervise the child. (p.125)

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Ralph A. Rossum (1996), for example, notes that when focus is on treating the juvenile offender rather than the offense, two very important principles are violated- equality and proportionality (p.838). Moreover, he suggests that

a juvenile justice system that is so committed to curing juveniles of their disease of delinquency that it will act unjustly by denying them the principle of equality, proportionality, and commensurate deserts has become T.S. Lewis’ “man-eating weed,” all the more dangerous because it still denies “justice” in its name. (p.838)

This first issue is one of dangerousness or protection of community, a cornerstone of the waiver decision as intimated by the *Kent v. United States* (383 U.S. 541, 1966) decision. A balance must be struck between the potential risk to the community and resulting scandal relative to giving the juvenile a lesser disposition. The "Principle of Offense" would suggest that waiver should be chosen when these risks are high both in terms of future crimes and public outcry.

Matza next elaborates upon a second component to the "Principle of Offense" wherein treatment potential and availability are considerations. The paramount issue facing the court should be whether treatment programs exist which can assist in the rehabilitation of the youth. In addition, the court must consider the likelihood that the youth would benefit from such a treatment program. He writes that

the judge may be able to sort juveniles into those who are better or worse, or, as he may put it, those who require more or less help, but it is difficult for him to know the precise or even reasonable dividing line between those who are to receive probation and those who will go to prison. Thus, the dividing line may vacillate somewhat depending on residential availability. (p.126)

This issue is one of amenability to treatment, the other cornerstone of the *Kent v. United States* decision. As stated earlier, juvenile court judges must make their waiver dispositions based on what they believe are available programs. However, an issue was raised as to how much knowledge these judges have of treatment programs and strategies. What is the actual extent of their knowledge about programs in the community, both public and private? Do they actually survey these programs to find out which are available to the youths facing waiver? If not, then these judges are again making subjective decisions about

treatment potential and thus may waive more juveniles than is really necessary.

David Matza (1964) provides a viable explanation as to why one's beliefs in the law and the conventional order may be weakened or broken. His explanation is premised upon the assumption that one experiences a sense of injustice and antagonism toward the conventional order because its agents continually pervert the spirit and intent of the law. He writes that

the moral bind of the law is loosened whenever a sense of injustice prevails. Law, whatever its guiding principle ... binds member to society to the extent that it maintains a semblance of even handed administration. Guiding principles may vary but, whatever their substance, persistent violation of their spirit occurs at the peril of alienating the subjects of law and order. A legal system based on trial by ordeal is tenable, but one in which the internal logic of that system is regularly violated would to that extent lose the loyalty of its subjects. The legitimacy granted to law would be withdrawn. (p.102)

The point of the aforementioned passage is that one cannot believe in the existing system of laws if those laws themselves are arbitrary. Put another way, both judges and prosecutors have ulterior motives when it comes to juvenile offenders. Though some judges profess to base their decisions on a notion of individualized justice, they may still corrupt the spirit of the law by allowing personal prejudices and attitudes to become intertwined with legal fact. As such, dissimilar punishments are often meted out to juveniles who have committed the same crimes and also have similar offense histories. Thus, the law is not applied in an evenhanded fashion.

Matza's notions of justice are built upon five components- 1) cognizance, which refers to awareness of one's actions and state of mind; 2) consistency, which refers to like treatment for like actions [or equity and evenhandedness]; 3) competence, which refers to

the capacity to render judgment; 4) commensurability, which refers to the relationship between the offense and the punishment; and 5) comparison, which refers to the evaluation of one's status and demands placed upon him relative to others who are similarly situated (Matza, 1964).

The notion of consistency is important for its relevance to the waiver of juveniles. Some of the research literature demonstrates that waiver, a tool of conservative philosophy, is not working as planned. The reason can partly be linked to the arbitrary, and sometimes irrational, standards that are used to make waiver decisions. Various criteria such as amenability to treatment or protection of the community are used to justify waiver decisions, but in themselves, they do not constitute a uniform policy for making decisions of such magnitude. In addition, waiver is not "consistently" applied to all juvenile offenders who commit similar offenses but is in fact a product of discretion by both judges and prosecutors (see Rossum, 1996:839).

In a manner of speaking, justice officials tend to tailor or individualize their dispositions to coincide with the needs of the individual and their perceptions of justice. It is this concept of individualized justice that breeds contempt and cynicism. Matza notes that

the principle of individualized justice is more inclusive than the principle of offense. it contains more criteria in its framework of relevance. Spokesmen for individualized justice do not suggest that offense is irrelevant; rather, that it is one of many considerations that are to be used in arriving at sound disposition... The principle of individualized justice suggests that disposition is to be guided by a full understanding of the client's personal and social character and by his 'individual needs.' (p.114-115)

Fairness is also an issue. Offenders within the juvenile system do become aware of the fact that some among them are "less equal than others." That is, there are some juvenile

offenders who, though they have committed similar offenses, will receive punishments which are vastly different. On the basis of this inconsistency, one cannot place too much faith in the system of laws or those who act as agents of the law (see Brooks, 1995:894).

Cognizance, another concept utilized by Matza, has relevance because it gets at the issue of amenability. In other words, prosecutors and judges use a juvenile offender's cognizance of his/her actions as a measuring rod for whether the offender can be helped or treated within the juvenile justice system. Cognizance assumes a degree of both culpability and responsibility. Though it is assumed that juvenile offenders are less responsible for their actions, for reasons of mental maturity, they still are capable of forming intent (see Zimring, 1982; also see Fox, 1970(b); Gardner, 1989) and, thus, must be held responsible. At the same time, cognizance gets at the issue of whether a juvenile offender is remorseful and associates his/her actions with the harm inflicted upon others. Such recognition may signal to prosecutors and judges that the juvenile is not "hardened" and still malleable in terms of personality development. In other words, the character offender is called into question and whether he/she is still salvageable.

The idea of comparison has implications for what can be termed the "going rate." That is, what do juvenile offenders who are waived get in terms of punishment relative to others who are similarly situated. It is suggested by the literature that comparisons of the "going rate" among waived offenders is disparate and unjust. For example, Elizabeth Clarke (1996) has found that waiver disproportionately disadvantages minority offenders and also targets offenders who commit crimes of lesser seriousness (also see, Gillepsie and Norman, 1984; Wizner, 1984; Fagan and Deschenes, 1987).

Theoretical Implications

The more important point about Matza's theory is that it provides the justification for the use of waiver. Waiver, in their various forms, aim to heighten the relevance of commensurability and consistency of punishment for crimes. Though one may disagree with their usage, waiver is not simply a "sword" brandished by judges and prosecutors to keep juvenile offenders in line. As opposed to being arbitrary and discretionary, it would seem that waiver arose as a means to inject a sense of stability within the juvenile justice system. Thus, one objective of this proposed study is to examine the impact of Matza's concept of the "Principle of Offense" as a criterion for waiver. This theory guides the aforementioned part of the proposed study given the alleged importance of seriousness of offense as a factor in juvenile justice decision making.

Chapter 3

Review of the Research

Research on Judicial and Prosecutorial Waiver

Introduction:

As has been recounted in the previous chapter, waiver has its roots in the conservative notion of justice and the “Principle of Offense.” Though the notions of justice are decades old, there has not been a comparable number of empirical research studies to investigate waiver. Of those which do exist, a few have gained credibility and prominence (c.f., Gillespie and Norman, 1984; Champion, 1989; and Feld, 1989). Feld’s study, for example, found that even though waiver was an option available to the court, it was not extensively used in view that far more offenders with serious juvenile records were retained in juvenile court rather than waived to adult criminal court (1989:43).

Due to the scarcity of empirical studies in this area, one still do not really know whether waiver actually works. In other words, one does not know whether waiver is achieving the objective for which it was designed. Currently, there is evidence to suggest that waiver is not working. Jones and Krisberg (1994), for example, state that most of the juveniles who are waived to criminal court committed property offenses rather than the more serious violent, person- related offenses (p.4). Even more, the majority of those waived did not receive longer sentences relative to their counterparts in the juvenile justice system (p.4).

This chapter will examine some of the research findings relative to waiver. An attempt will be made synthesize the relevant findings and offer explanations as to why such discouraging results have been found by researchers. Last, a critique of some of the studies will be offered as will be suggestions for overcoming their weaknesses.

Empirical Realities of Waiver

Waiver is the process by which juvenile offenders are removed from the jurisdiction of the juvenile court to face adjudication in the criminal courts. While referred to by various names such as fitness, transfer, and certification, waiver entails a process by which juvenile offenders are deemed to be beyond the help of the juvenile court. This view may be attributable to the heinousness of the crime, the juvenile's offense history, or even public outcry over the presumed leniency of dispositions given to juvenile offenders. Even more, it is often presumed to be inappropriate to continually use scarce resources on those hardened youth who are either unwilling or unable to change their behavior.

Over the past decade, there has been a movement in America whereby serious and violent juvenile offenders have been removed from the auspices of the juvenile court to the adult criminal court. This "waiver movement" has been used as a tool to restore accountability on the part of some judges and responsibility to juveniles. In fact, the necessity for waiver was built into the original framework of the juvenile court (see Julian Mack, 1909) based upon the premise that some offenders simply did not belong in the juvenile justice system. Law and order advocates have seized upon this premise by suggesting that even the founders of the juvenile court recognized that some juveniles, by

their actions, are mature enough to be treated as adults.

Barry Feld (1978), one of the leading authorities in this field, suggests that waiver is needed to deal with those juveniles who demonstrate a blatant disregard to the rehabilitative ideal of the juvenile court. Such disregard can be observed

when a youth, by his behavior, experience, or sophistication evinces criminal maturity and culpability... Moreover, it is argued, in light of their persistent delinquencies, further efforts to rehabilitate these hardcore offenders could entail a misallocation of scarce treatment resources vis-a-vis other, more treatable juvenile offenders. (p.518)

Feld (1978) seems to be evincing a concern for what could be termed career juvenile offenders who have established records of serious or violent offenses. While such offenders may evoke little sympathy from some, capitulation to waiver suggests that the juvenile justice system has given up its battle for the souls of these offenders. They are deemed lost causes.

Feld (1978) goes on to make two other points relative to waiver. First, he indicates that waiving certain offenders will diminish their influence over more impressionable youthful offenders (p.518). This would then suggest that waiver is intended for older juvenile offenders who may be near the upper limit of juvenile court jurisdiction. Second, he suggests that waiver allows the public, and politicians, to feel good about themselves by using a few serious offenders as sacrificial lambs upon the altar of the criminal courts (p.518). Here, waiver may be seen as a “feel-good measure” which helps to salve the consciences of politicians and dissipate public anger and hostility by allowing them all to say that they are doing something about juvenile crime.

David Parker (1976) states a position which seemingly confirms the belief that waiver is an admission of failure on the part of the juvenile justice system. He notes that "the fitness determination [waiver] constitutes an institutionalized admission of the system's failure, with the minor often being made to suffer the consequences of inadequate state provision for rehabilitative resources." (p.992) Parker's position acknowledges that waiver is a response to scarce resources which are allocated to the juvenile courts. This contention hinges upon the assumption that the more troublesome youths are sent to criminal court because the juvenile justice system is unable to provide them with needed treatment programs and services. As such, juveniles are denied the right to treatment. He even says as much in a rather sharp criticism of the juvenile court-

In practice, however, the juvenile courts often merely consider a list of unsuccessful treatment programs, compiled by the probation authorities responsible for administering them, without analyzing the extent to which the inadequacies of the programs themselves are responsible for the minor's continued delinquency. The juvenile court system's pattern of neglect, particularly in probationary dispositions, does not warrant immunity from criticism, and the right to treatment, if it is to be meaningful, compels such criticism. (p.1013)

At the same time, Parker makes the argument that "transfers are largely acts of retribution, the only constructive value of which lies in the protection of society and the diversion of political pressure from the juvenile court. Its ultimate failure is that it cannot even assure these ends." (p.992-993) Of note here is the suggestion that even when transferred to criminal court, juveniles still do not receive treatment services because the emphasis in such arenas is punishment. Thus, juveniles are twice denied the "right to treatment."

Several others have commented upon waiver and its consequences for juvenile justice. Among these are Charles Polen (1987), Fagan and Deschenes (1990), and Forst and Blomquist (1991). Polen delineates the same view that waiver removes hardcore, yet "influential," juvenile offenders from the juvenile justice system in order that precious resources may be preserved. He also notes that certain offenses committed by youths provoke outrage and fear within the public which can only be calmed by removing the perpetrators for the streets for extended periods of time. However, Polen seems to possess a dual philosophy- he is a sentimentalist, or a true believer, as far as the philosophy of the juvenile court and a realist. This duality is expressed through especially poignant comments which he makes relative to waiver. First, he notes that

transfer proceedings weaken the juvenile justice system at its roots. The transfer process admits that the rehabilitation of certain juvenile offenders cannot be accomplished. Thus, transferring juveniles to adult court derogates the view that youth are capable of being rehabilitated no matter what crime they have committed. (p.502)

In essence, Polen is advancing the position that, by using waiver, juvenile courts are abrogating their duties to rehabilitate and effect change in wayward youth. Thus, juvenile courts are beginning to subscribe to the notion that rehabilitation and individualized treatment are experiments that have not achieved the results that were promised.

Second, Polen can be termed a realist in that he recognizes that certain offenses do merit severe sanctions which are often unavailable through the juvenile courts. He also recognizes the fact that juvenile courts simply cannot help some offenders, whether by virtue of lack of resources and treatment options or by virtue of "maturity" on the part of the offenders. He elaborates upon these points in the following passage - "As long as good

rehabilitative programs remain conspicuously absent from those children subject to transfer, there will have to be some way to maintain an effective jurisdiction over the child to preserve the interests of justice, if not the juvenile court philosophy or the child." (p.503) Further, "even though the waiver mechanism may seem like an unsatisfactory way of dealing with the problem offender, in many cases it is the only common-sense method available. These offenders have not responded to treatment and adult punishment may be the only available deterrent for them." (p.503) This would suggest that waiver should be couched in terms of a necessary evil. Moreover, waiver should be tolerable to the extent that it reaffirms the notion that certain boundaries are impassable and codes of conduct are unassailable even for children. Thus, waiver establishes the outer limits of conduct for juveniles beyond which they must be called into account.

Fagan and Deschenes' (1990) assessment of waiver bears great similarity to that of Polen (1987), Parker (1976), and Feld (1978) in that there is general agreement that waiver calls into question the sufficiency of the juvenile court's capacity to deal with certain offenders. There is even further agreement, for all ostensible purposes, in terms of what waiver means for the philosophy of the juvenile court. Fagan and Deschenes suggest that waiver invokes notions of punishment and/or retribution, philosophies which are diametrically opposed to the presumed juvenile court philosophy of benevolence and treatment. The issue for them centers upon whether these seemingly dissimilar philosophies can be reconciled. In addition, they suggest that the issue of waiver raises the thorny question of adulthood (1990:325). When is a child no longer a child? How can the severity of an offense reasonably determine mental maturity? These are a few of the unresolved

issues which Fagan and Deschenes believe are buried under the rhetoric of waiver.

Further corroboration of these positions on waiver can be ascertained from the writings of Forst and Blomquist (1991). These authors intimate that waiver is couched in terms of accountability. That is, waiver supposedly serves the purpose of making juvenile offenders accountable for their behavior and the juvenile justice system more accountable to the public. This accountability scheme is accomplished in two ways. First, waiver limits the jurisdiction of the juvenile courts by siphoning off those offenders whose behavior demands more punitive handling. "By limiting the jurisdiction of the juvenile court to younger juveniles or those who commit less serious crimes, some proponents of these measures hope to preserve the treatment and protection functions of the juvenile justice system." (p.334)

One could suggest that the juvenile justice system seems to be engaging in a futile exercise for the following reason- the juvenile justice system exacerbates the problem of scarce resources by "net widening" in terms of those whom it takes in. Though the juvenile court may shift the serious or hardened juvenile offenders to criminal court, their places within the juvenile system are soon filled by individuals who may be better served by social welfare agencies. Such a process could be likened to a recursive sieve where as nuisance juveniles leave the system, lesser nuisances assume their positions. As such, there is no net gain in resources. In fact, more energies and resources are expended to accommodate these lesser nuisance clients.

Second, Forst and Blomquist (1991) suggest that waiver has the effect of changing or subverting the philosophy of the juvenile court. Demand for such change comes in light

of concerns about "... public safety, equal justice, and rationality in decision processes." (p.335) This would suggest that the desire for a punitive juvenile court goes beyond the doctrine of *parens patriae* to one of justice and accountability. Within such a philosophical shift, the relevance of the offender fades into the background while the offense emerges as the preeminent factor of consideration. It could be suggested that

predicated on proportionality, an offense-based system of justice permits greater equality between the sanctions imposed on adults and those imposed on juvenile adjudicated for the same crime. A justice model presumes to confront offenders with their wrongdoing, regardless of age, by requiring that they bear the consequences of their criminal behavior. (p.337)

But in this rush to judgement, one small fact seems to elude the proponents of waiver-children and adults are not the same. Though one could make the argument that a man killed by an adult or child is still dead, the degree of maturity and culpability sets them apart. While in theory, waiver suggests that the offense and offender are separable entities, one could question the extent to which this assumption holds true. Most children cannot appreciate the gravity of their actions because of their age. Nor would they truly appreciate the seriousness of their adjudications (length of sentences) in the same manner as adults and again this is attributable to their age (see Zimring, 1982). Is waiver really worth the price which we ask of children?

One other factor pertinent to this discussion, and briefly alluded to earlier, is the notion of "safety-valve theory". Safety-valve theory derives from the notion that society brings ever increasing pressure upon the juvenile justice system to levy harsher penalties upon juvenile offenders. When the system can no longer withstand this pressure, it opens its "safety-valve" thereby releasing those who are presumed to be good candidates for quelling

or dissipating public anger and hostility much like opening the floodgates of a dam would dissipate threats to its underlying structure. Waiver embodies this allegory where the flow of juveniles to the criminal courts is controlled by a "safety-valve" built into the machinery of the juvenile justice system.

Jeffrey Schwartz (1983) succinctly captures the essence of this theory in the following passage-

This theory suggests that society constantly has the desire to place stricter punitive measures on juveniles so that they do not 'get off easy.' There is sufficient documentation that the general population is not satisfied to afford the juvenile his or her right to rehabilitation in the juvenile justice system. Society must release its own pressures by seeing juveniles suffer more severely or become more susceptible to harsher punishments and procedures. (p.295; also see Feld, 1978; Valliere, 1986)

The "safety-valve" theory suggests that waiver is a quick-fix solution to the problem of juvenile crime. As long as it can be shown that the juvenile court is toughening its stance toward serious juvenile offenders, it is presumed that the public will soften its rhetoric and let the court continue its work. One further rhetorical point can be made in that the "safety-valve" seems to be stuck. That is, increasing numbers of juveniles are being waived to the criminal courts yet, there is no appreciable decrease in the public demand for tougher sanctions. As such, one is uncertain as to whether this means the public is simply becoming more vocal or whether the juvenile justice system is failing.

Though much has been written about the concept of waiver relative to due process concerns, philosophical changes, and the strengths and weaknesses of the various transfer mechanisms, there actually have been few empirical studies which have examined this phenomenon. Most of these studies have been purely descriptive in nature and provide little

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insight into the realities of waiver. That is: 1) what changes brought it about, 2) whether changes in the law have had the desired effects on waiver, 3) how justice personnel feel about waiver procedures, and even 4) whether the changes are seen as beneficial or detrimental to the juvenile court. In the pages that follow, a short description of some of the past waiver studies will be presented. In addition, suggestions will be given as to a research agenda for exploring whether waiver is living up to its expectations.

Researchers who have looked at waiver as a research question include Mays and Houghtalin (1992), Champion (1989), and Gillepsie and Norman (1984). The commonality among the works by these authors is the descriptive nature of their research. Mays and Houghtalin (1992) conducted research on the waiver question through use of all probation files of juveniles who were transferred in New Mexico from 1981 to June 1990. Their primary interest lay in obtaining information about the outcomes of these juveniles who tried as adults. A search of these probation files for this ten year period uncovered forty-nine cases in which juveniles were transferred to criminal court (p.817). Of these cases, they found that "... 37 [had] reached disposition, ten were pending trial or sentencing, and two had no record of criminal charges being filed after the transfer." (p.817)

They next obtained demographic information pertinent to these cases including ethnicity, gender, and age (p.817). They also obtained ecological information (information pertinent to employment status and home environment and legal information (such as offense, priors, etc.). Because of the small number of cases, Mays and Houghtalin used simple descriptive information to discuss factors pertinent to waiver. The most notable finding that they obtained was that the vast majority of juveniles who were transferred to

criminal court were treated very leniently relative to adults who committed similar offenses. Other findings suggested that older juveniles were primarily transferred. That is, juveniles who were 16 or 17 years old were most often waived (1992:818). In addition, these researchers found that the transfer process targeted serious offenders (1992:819). Further, they found that the majority of juveniles who were transferred were incarcerated for their offenses (1992:819-820).

Champion (1989) collected information on waiver in four states- Tennessee, Virginia, Mississippi, and Georgia- for the years 1980 to 1988. Of interest to him was the type of punishment imposed upon those juveniles who were transferred to criminal court. In addition, he was interested in whether there was an increase in the frequency of use of waiver in these states. All pertinent information used in the study was obtained from the various juvenile service agencies, court reports, juvenile justice system personnel, and other official records (p.580).

From this information, Champion found that there had been approximately 2818 waivers during this nine year period. Using descriptive statistics, he revealed that between 1980 and 1988, the proportion of successful waivers for property offenses rose from 19% to 50% (p.581). In addition, he found that as a proportion of successful waivers, homicide offenses decreased during this same time span from 40% to 31 % (p.581). Champion's most revealing finding was that the number of offenders placed on probation as a result of the proceedings grew from 40% to 62% during the 1980-1988 time period (p.582). Those actually sent to prison remained relatively steady (about 5%).

Gillepsie and Norman (1984) obtained information from various juvenile court

districts in the state of Utah for the years 1967 to 1980 on certified juveniles. Some of the issues they sought to investigate included the frequency of use of waiver in Utah, the offenses juveniles are typically waived for, and the dispositions of those who are actually waived (p.23-24). Information pertinent to those who were waived was taken from juvenile court records from each of the five juvenile court districts.

Gillepsie and Norman (1984) found that most of those juveniles who were waived committed property offenses. They noted that this finding contradicts assumptions that waiver is used most frequently for offenders who commit more serious crimes against persons. This group (personal crimes) comprised the second largest number of juveniles who were waived to criminal court (p.30). Also of note is the fact that twenty-one of the juveniles that were waived received prison sentences and nine received jail sentences (p.30-31).

The weaknesses inherent in purely descriptive studies is that they cannot provide information relevant to the impetus behind waiver legislation. More importantly, descriptive studies cannot readily account for the factors that play a role in waiver decisions. In this respect, research employing techniques which have some predictive efficacy, as in logistic regression or log-linear, may be more appropriate. However, studies employing such techniques are few in number.

Simon Singer (1993) conducted a study of the legislative waiver provision in the state of New York. He used information from 103 juvenile offenders arrested between the years of 1978 and 1985. All of the offenders within his sample committed at least one of the enumerated designated felonies under the New York Juvenile Offenders law. The primary focus for his research centered upon those factors which are the best predictors of a

prosecutor's decision to seek an indictment. The dependent variable under study was the decision of the prosecutor to seek an indictment (p.256). The independent variables which were deemed relevant included race, marital status of parents, nature and extent of injuries to the victim, prior felony offenses, and amount of media scrutiny (p.256-257).

The statistical techniques used to gauge the predictive efficacy of these variables was logistic regression. This technique enables researchers to directly predict the odds of an event occurring (see Agresti and Finlay, 1986 and SAS/STAT User's Guide, 1990). The most significant finding of Singer's research centered upon the fact that the only offense-related variable of significance was the nature and extent of injuries to the victim (p.257). Also of note was the fact that non-offense variables like the marital status of parents still had an influence on the prosecutor's decision to seek an indictment (p.257).

Poulos and Orchowsky (1994) also used logistic regression to explore the relevance of legal and extra-legal factors on the waiver decision. Their study derived information about 1028 juvenile offenders who were waived over a three year period (1988-1990) for commission of one of nine felony offenses (p.7). From this number, a random sample of 364 offenders was chosen for analysis. Information about these offenders was collected from data sources including a PSI database and the Youth and Family Services Profile databases (p.8). Variables used in this analysis included basic demographics (age, sex, race, locality, living arrangements) and other legally relevant variables such as offense, type of weapon involved, and number of counts (p.9).

Their results indicated that prior adjudications for property offenses was the best predictor of the waiver decision. In addition, age and usage of a gun proved to be good

predictors of this decision as well. Of special note was the fact that there was not a statistically significant race effect. Also of note was the fact that prior commitments and drug offending behaviors were important predictors of the waiver decision (p.13).

Even though logistic regression is probably the best statistical method for analyzing the waiver decision, there still seems to be something missing from these studies. One does not derive a sense of whether waiver is working to achieve the ends for which it was implemented. In addition, one does not get a sense of how juvenile justice decision makers feel about the various waiver mechanisms. More importantly, one does not get an indication of whether the needs of the juvenile offenders (treatment and procedural rights) are being met or if waiver is antithetical to such needs. The only way to derive such information is through survey data but again, studies employing this strategy are scarce.

Waiver Studies Conducted through Surveys

Hamparian et al. (1982) conducted a nationwide study of waiver which consisted of two phases. During Phase I, the authors conducted telephone interviews with state agencies which had the responsibility of collecting information pertinent to juvenile offenders and also their processing within the justice system. There were five specific areas of interest for these researchers- 1) the total number of juvenile offenders waived to criminal court after Kent-style hearings, 2) the total number of juvenile offenders prosecuted in criminal court through prosecutorial waiver, 3) the total number of juvenile offenders prosecuted in criminal court due to legislative waiver, 4) the total number of juvenile offenders prosecuted in criminal court because they met the minimum age requirements established by statute,

and 5) the total number of juveniles prosecuted in criminal court for misdemeanor offenses (p.241).

These researchers used a somewhat elaborate process to ensure that they collected the relevant information. Since they were interested in obtaining data for the year 1978, they offered several definitions to pinpoint this time period- calendar year, fiscal year, and other- since state agencies tend to operate according to different time constraints for budgetary purposes (Hamparian et al.:245). The respondents were then asked to provide a figure or estimate of the number of juvenile offenders waived to criminal court (judicial waiver). The next question asked was contingent upon whether a non-zero response was given for question #2. If the previous response was not zero, the respondents were asked whether any of the juvenile offenders requested their own transfer to criminal court. This was an interesting question in light of the researchers' recognition that some juveniles would request such transfers if they thought they a less severe punishment was possible in criminal court. In addition, these juveniles were used an alternative data source through which the researchers could obtain information that state agencies may have been aware (see Hamparian et al., 1982:245).

Hamparian et al. (1982) also asked the respondents to provide a figure or estimate of how many judicial waiver hearings did not result in a transfer to criminal court. There again seemed to be the recognition that the state agencies may not have exact numbers because of the use of different recording practices. The respondents were next asked a series

of questions regarding the frequency of use of prosecutorial and legislative waivers (p.245-246). Afterwards, they were asked to differentiate between the figures (or estimates) based on whether they were referring to individuals, cases, charges, or some other classification (p.246). This was a commendable effort in light of the fact that agencies within and across states use different recording practices to dispense with offenders who are adjudicated in the justice system. These classifications appear to be consistent with the literature. Last, Hamparian et al. (1982) asked the respondents to indicate whether misdemeanor offenses resulted in the transfer of juvenile offenders. If unable to do so, they were asked to provide an alternative source who would know this information (p.246). The attempt to obtain information via these sources is also consistent with the literature (see Champion, 1991; Feld, 1987).

There were a few concerns that are worthy of discussion concerning the Phase I questionnaire. First, the researchers should have made an explicit differentiation between felony and misdemeanor offenses. The broad categories they used allow for the possibility of overlap which could result in double counting. Second, the researchers should have more carefully differentiated between prosecutorial waiver and legislative waiver. As it stands, the respondents may have been uncertain as to the type of waiver mechanism that is being addressed by the questions because both incorporate age restrictions as triggering mechanisms.

Phase II of the Hamparian et al. (1982) study attempted to obtain more intensive

information concerning waiver from the most populous counties within individual states and also those counties that had requested five or more waivers during the year 1978. During this phase of the study, the researchers were primarily interested in obtaining seven specific types of information: 1) the ages of those waived, 2) the sex distribution of those waived, 3) the racial breakdown of those waived, 4) the most serious offense charged, 5) the disposition of the cases in criminal court, 6) the sentences imposed by criminal court, and 7) the maximum sentences imposed on those juvenile offenders who were confined by the criminal court (p.244). As in phase I, the researchers employed telephone interviews to collect this information.

There were also a few concerns with the manner in which Phase II data was collected. First, it may have been appropriate for the researchers to ask the respondents to provide information about the male and female distributions for all waiver provisions-judicial, prosecutorial, and legislative. In this manner, the researchers could get a clearer picture of how often waiver is used (see Dawson, 1992; Feld, 1987). Second, since the juvenile court tends to retain jurisdiction up to age eighteen, it may have been appropriate to include ages seventeen and eighteen within the age distribution. This is especially true since the research literature demonstrates that these age groups are waived more often because they are at the upper limit of juvenile court jurisdiction and it cannot do much in terms of sanctioning them (see Bishop and Frazier, 1991; Feld, 1987; Forst and Blomquist, 1991). Third, the researchers should have expanded the race category. This would be

especially true for those more populous states with substantial Afro-American, Hispanic, and Asian populations. To simply suggest that these groups are one and the same runs the risk of confounding data interpretations relative to disparity that may exist between the categories of offenders (see Eigen, 1981; Fagan, Slaughter, and Hartstone, 1987; Fagan, Forst, and Vivona, 1987; Hairston, 1981). Last, the literature suggests that waiver decisions are not only based on the present offense with which juveniles are charged but also their prior offense histories (see Keiter, 1973; Feld, 1983; Feld, 1984; Wizner, 1984). There is not any evidence that Hamparian et al. (1982) attempted to gather this information.

A second study which used a survey to examine waiver decisions was conducted by Joseph Sanborn (1994). Sanborn was interested in obtaining information about three specific areas: 1) what is waiver (certification), 2) for whom should the waiver process be geared, and 3) is waiver necessary at all. To explore these issues, Sanborn developed a uniform, closed-end questionnaire which was administered to 100 juvenile court personnel including judges, attorneys, and probation officers (p.268). In addition to the closed-end questions, probes were used to allow the interviewees to expand upon various points pertinent to the waiver process.

This questionnaire was administered to 100 respondents at three research sites so that Sanborn could examine the comparability of responses. These sites included a large urban city, the suburban fringe around the city, and a rural county (p.269). The questions which the interviewees were asked included the following:

- 1) Has the research literature been accurate in describing the waiver process? (p.270),
- 2) Is the waiver process necessary within the juvenile justice system? (p.270),
- 3) How appropriate are the waiver provisions? (p.271), and
- 4) What is the best method for transferring juvenile offenders to criminal court and its relative strengths and weaknesses? (p.272)

Sanborn's questionnaire does present a few problems in that some of the questions are vague and overly broad. For example, he asked if the research literature was accurate in depicting the waiver process but the responses somehow do not seem appropriate for the questions. The responses ranged from "failure in the juvenile court philosophy" to "lack of resources" (p.270-271). These responses seem to be more indicative of a shift in juvenile justice policy. This author should have considered using different terminology to ask this question.

In addition, the author may have been better served by asking multiple questions with regard to the appropriateness of the waiver provisions. That is, Sanborn should have asked different questions to get at how the respondents felt about age restrictions, whether prior record should play a factor in the waiver decision, and the importance of attorney representation during waiver proceedings. As it stands, this question is also overly broad and confuses the issue especially with the inclusion of a self-certification response category. Finally, the author should have considered asking the respondents questions about the frequency of use of the various waiver provisions. These then should have been followed by questions about their effectiveness and which worked best. These modifications may have

given the author a better sense of the usage of these various mechanisms.

Summary

Though the studies that have been herein examined do not offer conclusive proof that waiver is achieving its objective of identifying serious and violent juvenile offenders, they do offer insight into a much larger issue relative to this area of inquiry. The studies all seem to be asking different questions. That is, some of the empirical studies look only at felony offenders while others seek to draw comparison between both misdemeanor and felony offenders. Still, in others, the results are of limited value because of small sample sizes and the homogeneity of the study population. A different approach is needed if one is to uncover whether waiver really identifies and targets the appropriate candidates for waiver. Such an approach will be offered in the following chapter.

Chapter 4

Methodology and Proposal for a Study of Waiver in Michigan

Proposed Framework for a Study of Waiver

Few of the studies that have examined waiver have gone beyond using simple descriptive techniques (see Keiter, 1973, Eigen, 1981, Fagan et al, 1987, Champion, 1989). Even more, fewer studies have used survey techniques to explore this subject (see Hamparian et al, 1982, Sanborn, 1994). What seems to be interesting is that most researchers tend to think of these techniques as being mutually exclusive- one or the other can be used but not both. One could suggest that a study combining both the qualitative assets derived from a survey and the quantitative assets derived from statistical techniques would provide data with a richness that is rare in the waiver literature. Given this, several proposed intentions guide this research: (1) identify the factors that contributed to the legislature's decision to grant prosecutors charging authority in juvenile matters; (2) identify the criteria used in making waiver decisions; and (3) assess the importance of Matza's concept of the "Principle of Offense" as a criterion for waiver. The manner in which this task will be accomplished will be explained in the following pages.

This study chronicles the waiver statute changes of 1988. Though this research project will primarily seek to determine the characteristics of waived youths, there are other pertinent issues that will be addressed. First, this research explores the expanded authority

of prosecutors to make waiver decisions. Second, this research examines whether there are any differences between those juvenile offenders who are sentenced as adults versus those who are retained in the juvenile court. In other words, a profile will be generated as a means to determine what makes waived juvenile offenders different. Third, this research examines whether waived juvenile offenders receive longer, more severe sanctions versus those who commit similar offenses but are retained in the juvenile court.

Data Collection

The data used in this research study was obtained from several sources. First, records were gathered from the Wayne-Metro Region Intake and Court Services Unit. Pre-sentence social reports of juvenile offenders who were waived by the Wayne County Prosecutor's Office between the years of 1988 and 1996 were examined in order to obtain both socio-demographic and legally relevant information. These files were prepared by intake workers who worked under the auspices of the Intake and Court Services Unit and addressed the following issues: (1) amenability to treatment and prospects of being helped within the juvenile system; (2) nature of the offense (including co-defendants, victim relationship, injuries, and use of weapons), prior offense history, and contacts with the juvenile court; (3) family situation and pattern of living within the community; (4) work history; (5) school history, including history of suspensions and fighting; (6) history of use and/or abuse of alcohol and drugs; (7) psychological/psychiatric history; and (8) demographics, including

age, sex, race, gang membership, and out-of-home placements (non-detention) .

A second source of information were records maintained by the Wayne County Prosecutor's Office. Information was gathered on all life offenders (offenders who committed waivable offenses) between the years of 1988 and 1996. These records included legally relevant information such as the instant or current offense, date of petition, result of waiver motion, presiding judge, final charge, and sentence.

The third source of information were records maintained by the Wayne County Juvenile Court. Here, legally relevant information was also collected on those juveniles who were waived to adult court. With the assistance of juvenile court personnel, I was able to locate mittimus forms on these juveniles which documented their court appearances subsequent to the petition for waiver to adult court. The forms contained information on dates for court appearances, preliminary hearings, bail decisions, and admittance date into the Wayne County Juvenile Detention Facility. In addition, information was obtained on the investigative reports filed by police officers.

While no one set of data was complete, there was missing information, these combined sources of data provided a fairly accurate description of not only the juvenile offender but also the legal environment in which the waiver decisions were made. The use of multiple data sources is a highly recommended technique and it tends to be especially useful to "fill in gaps" in data (see Maxfield and Babbie, 1995). Information from the above-mentioned sources was cross-referenced so that accurate profiles of the waived

juvenile offenders could be constructed and compared and also allow for the identification of waiver criterion. Further, this information was instrumental in terms of making a determination of what takes place from the initial charging decision to final sentencing. In short, the issues of whether serious and violent juvenile offenders were actually being targeted for waiver to adult court could more easily be addressed through use of these data sources.

The time periods under consideration for this study span the years 1988 to 1996. These years were chosen primarily because the new prosecutorial (discretionary) waiver law went into effect in 1988. It should be pointed out that records from the earliest time periods, 1988 and 1989, were the least informative given that they contained much missing information. In addition, the manner in which the respective offices of Intake and Court Services and the Wayne County Prosecutor's Office collected information on waived juveniles changed over time so there were some discrepancies in the data (issues centered on amenability, charges, and dispositions were not always available in the data).

Variables

The variables used from the previously described data sources include: age of offender (date of birth), race, sex, marital status of parents, instant offense (or charge), and offense history (number and type of prior offenses). The selection and use of these variables are informed by research conducted by Gutske (1989), Fagan and Deschenes (1990), Bishop

and Frazier (1991), Forst and Blomquist (1991), Mays and Houghtalin (1992), and Bishop et al. (1996). Other variables which the research has shown to have an impact on the waiver decision include: number of victims, injury to victims, use/type of weapon, and treatment options and availability (see Feld, 1988; Feld, 1989 Poulos and Orchowsky, 1994). There are other variables that may be appropriate to this study such as original charge and final charge. These variables (and others) will be also be included in the analysis.

These dependent and independent variables will be operationalized in the following manner-

Dependent Variable:

(a) sentence:

0= sentenced as juvenile

1= sentenced as adult

Measurement: Nominal/Categorical

Independent Variables:

(b) age will be separated into three groups:

15 yrs,

16 yrs,

17 yrs;

Measurement: Interval level

(c) instant/current offense (offense which resulted in arrest) will be measured in the following manner:

1 = felony- personal offense (class I),

2 = felony- property offense (class I),

3 = felony- personal offense (class II),

4 = felony- property offense (class II)

5 = felony- personal offense (class III),

6 = felony- property offense (class III),

7 = felony- personal offense (class IV),

8 = felony- property offense (class IV),

9 = other felony (see Thomas and Bilchik, 1985; Bove, 1991; Zimring, 1991; Poulos

Measurement: Nominal/Categorical

and Orchowsky, 1994)

(d) offense history (number of prior felonies) will be measured according to the number of prior felonies accumulated by the youth:

- 1 = no prior felonies
- 2 = 1-2 prior felonies,
- 3 = 3 or more prior felonies,

Measurement: Interval level

(e) race will be categorized as:

- 1 = black,
- 2 = white,
- 3 = Hispanic,
- 4 = Asian-American,
- 5 = Native American,
- 6 = other;

Measurement: Nominal/Categorical

(f) use of weapon will be measure as:

- 1 = used gun,
- 2 = used knife/razor,
- 3 = used club, stick, bat,
- 4= used other object;

Measurement: Nominal/Categorical

(g) victim(s) injured will be measured as:

- 1 = victim died,
- 2 = victim injured/no hospitalization,
- 3 = victim injured/hospitalized, (see Poulos and Orchowsky, 1994);

Measurement: Nominal/Categorical

(h) number of victims will be measured as:

- 1 = 1 victim,
- 2 = 2 victims,
- 3 = more than 2 victims (see Poulos and Orchowsky, 1994);

Measurement: Interval level

(i) amenable to treatment will be measured as:

- 1 = not amenable to treatment,
- 2 = amenable to treatment;

Measurement: Nominal/Categorical

(j) sex of offender will be measured as:

- 0 = male,

Measurement: Nominal/Categorical

1= female;

(k) recommendation of intake worker:

0= waive jurisdiction to adult court,
1= retain jurisdiction in juvenile court;

Measurement: Nominal/Categorical

(l) number of accomplices will be measured as:

1 = 1 accomplice,
2 = 2 accomplices,
3 = more than 2 accomplices;

Measurement: Interval level

(m) number of prior detention placements will be measured as:

1 = 1 prior detention placement,
2 = 2 prior detention placements,
3 = 3 prior detention placements,
4 = more than 3 prior detention placements;

Measurement: Interval level

(n) living arrangements will be measured as:

1= two parent family
2= single parent/extended family
3= other arrangement

Measurement: Nominal/Categorical

Hypotheses

The following hypotheses about the decision to sentence a juvenile as an adult court versus retention in juvenile court were developed based on policies developed in accordance with state statute. According to MCL §712A.4, MCL § 764.1f, MSA §27.3178(598.4), MSA §28.860(1), and MSA §28.1072(3), if a juvenile committed one of nine enumerated offenses and was at least 15 years old, he/she was eligible for waiver. Thus, the following hypotheses were generated:

Hypothesis 1: only the most serious, violent, and chronic juvenile offenders are waived to criminal court

Hypothesis 2: juvenile offenders who are 16-17 years old, at the upper age ceiling, are more likely to be waived to criminal court than juvenile offenders who are 15 years old.

Hypothesis 3: juvenile offenders who commit a class I felony- personal offense are more likely to be waived than juvenile offenders who commit any other type of felony offense.

Hypothesis 4: the “Principle of Offense” is a more important criterion for waiver than social or legally-irrelevant factors.

Hypothesis 5: the prior record (offense history) of juvenile offenders strongly influences their final disposition or case outcome.

Sample Size

Using the information obtained from the three previously mentioned data sources, approximately 1,967 cases were identified as life offenders (juvenile who committed offenses which resulted in a waiver petition being filed by the Wayne County Prosecutor’s Office. Of these 1,967 cases, only 827 cases actually resulted in waiver while the remainder (n=1,140) were kept in the juvenile court. Upon further investigation, it was discovered that the actual number of waived cases was much smaller given that some of the cases were still pending before the court or had been dismissed, declared as a mistrial, or resulted in not guilty verdicts (see Table 1). Records could not be located for these cases so they were

Table 1.**Cases not included among those waived to adult court**

Pending cases	n = 137
Dismissed cases	n = 74
Not Guilty	n = 33
Mistrial	n = 3
Returned to Juvenile Court	n = 2
Transferred to other jurisdiction	n = 1
Total cases	n = 250

removed from the sample. Once these cases were removed, the final sample size was **n = 577**. It was presumed that this sample size would be adequate given that most of the research to date have all used fairly small samples (see Appendix 1). It must be noted that these cases were removed from the analysis because their respective files contained little or no information and would thus skew the analysis (pre-sentence reports were not created for these cases). The resulting sample size does meets the requirements necessary for both logistic regression and discriminant analysis which require sample sizes of at least 20 to 50 times larger than the number of predictors or independent variables (see Hair, Anderson, Tatham, and Black, 1995:195, Wright, 1995:221).

Ideally, multiple counties should be examined in order to account for variation in waiver decision making that may exist from one jurisdiction to another. Such an approach

was utilized in a report issued by the Office of Children and Family Services (1990). This report examined waiver over a six month time period in twenty-seven Michigan counties. The counties selected accounted for approximately 94% of all waiver cases in the state (p.4). Wayne County, the most populous county in the state, accounted for approximately 52% of the waiver cases (p.5). However, in the present study, access could only be obtained from Wayne County. Given that this county accounts for over half of the waiver cases in the state (approximately 52 percent), the generalizations that will be drawn about waiver may not be an accurate depiction of prosecutorial waiver operates in other Michigan counties or even other states that use this same waiver mechanism.

Survey

The survey component of this project is a more direct way of examining specific components of the "Principle of Offense." Bearing in mind that waiver connotes a philosophical change in the manner in which juvenile offenders are handled by the justice system, it is believed that a survey is superbly suited for discerning issues which are not easily quantifiable such as justice philosophy, amenability, and treatment. Further, many empirical studies have simply failed to even consider these issues as they relate to the likelihood that a juvenile will be waived (c.f., Norman and Gillepsie, 1986; Champion, 1989; Fagan and Deschenes, 1990; Dawson, 1992).

Two research studies which can shed some light on this issue were conducted by

Sanborn (1994) and Bishop and Frazier (1991). In their study conducted in 1991, Bishop and Frazier conducted telephone interviews with juvenile prosecutors in twenty judicial circuits in Florida. The primary area of concern for these researchers was how the prosecutors adapted to and used their expanded power to make waiver decisions. They noted that

it [was] important to consider how prosecutors reacted to their expanded power, both in terms of their philosophical views regarding the transfer of juveniles to criminal court, and in terms of the policies and procedures they established to apply the law. We [were] concerned with how prosecutors' personal orientations toward juvenile justice influenced their perceptions of the utility and appropriateness of transfer; with whether the change in the law had any impact on their perceived ability to achieve valid and desirable goals; and with how the change in the law affected practice throughout the state. (1991:288-289)

These issues are important precisely because the prosecutors' personal justice philosophy is related to their likelihood to pursue waiver of jurisdiction. The more punitive the justice philosophy, the more likely the prosecutor will initiate waiver proceedings. Not surprisingly, Bishop and Frazier found that prosecutors with a "deserts" orientation favored waiver. In addition, this group thought the juvenile justice system was too lenient and that such leniency made juveniles worse (p.291). In contrast, the prosecutors that adhered to the traditional juvenile justice philosophy believed that waiver should be used only as a last resort (p.291).

Sanborn (1994) also utilized an survey methodology to examine the relevance of justice philosophy and its relevance for waiver. He administered a survey to 100 juvenile

justice workers in three courts in order to determine whether perceptions of justice varied across jurisdictions. Sanborn found that there was relatively little support for the “get tough” strategy to crime reduction (p.272). Moreover, he found that “only about one-fourth of the pro-waiver respondents maintained that society’s protection was better served by sending some juveniles to criminal court and that certain crimes were so heinous that they were beyond the purview of the juvenile court (p.270). Further, he found that the majority of juvenile justice workers believed that the burden of proving that a juvenile offender was not amenable to treatment should rest with prosecutor (p.272).

The issues raised by these methodologies are important for two reasons. First, justice philosophy plays a central role in determining whether waiver proceedings will be initiated by the prosecutor yet, empirical studies tend to overlook this very important concept. More importantly, it is a concept that is central to the notion of waiver and the “Principle of Offense”. This research will seek to find out whether justice philosophy does in fact play a role in this very important decision.

Second, the issue of treatment options and amenability tend to be overlooked by the empirical research. Sanborn (1994) points out that many justice workers believe that amenability to treatment should play a role in whether a juvenile offender is waived. However, as has been pointed out, the importance of both treatment and amenability issues are overshadowed by more legal-oriented factors. This may be due in part to the vagueness of these concepts. Though they were originally mentioned as criteria to be considered in

waiver decisions by the U. S. Supreme Court in *Kent v. United States* (383 U.S. 451, 1966), there has yet to be a clear elucidation of what they mean. This study will seek to provide clarity and measures of these terms.

Operational Definitions for Major Survey Items

1. “Just deserts” Orientation- adherence to a philosophy of justice in which it is believed that juvenile offenders must be held accountable for their crimes through punishment. Juvenile offenders must not be coddled but instead, they must suffer the consequences for their criminal acts. Punishment is the primary goal rather than treatment and rehabilitation.

2. “Traditional Juvenile Justice” Orientation- belief in a philosophy of justice in which waiver is the last resort. Waiver should be a rare event and only those who are serious, chronic and violent offenders should be waived to adult criminal court. The resources (programs) of the juvenile justice system should be exhausted before waiver is triggered.

3. Amenability- the likelihood that a juvenile offender can be helped through services and programs offered through the juvenile court given his/her age, character, family and community controls, and treatment prognosis.

4. Dangerousness- a pattern of offending which includes referrals/adjudications for four or more offenses, known histories of violent or aggressive behavior, or an offense resulting in injury or death.

5. Plea bargain- negotiations between defense counsel and the prosecuting attorney whose aim is to secure a reduction in charges for the juvenile offender.

Data

The survey (see **Appendix 3**) was mailed to all judges (n=35) with jurisdiction in the 3rd judicial circuit. This judicial circuit encompasses the entire county under investigation

and includes the Recorder's Court in Detroit. Much like Bishop and Frazier (1991) sought to demonstrate in their study, this research aims to assess whether justice philosophy varies among the judges.

Using information obtained from the 1997 edition of the Michigan Bar Journal, the survey was mailed out to all judges who have preside over waiver cases in Detroit Recorder's Court. The researcher of cognizant of the fact that the Recorder's Court was undergoing reorganization and that some of the personnel (judges) may have changed. Still, it was felt that any such changes would not affect or bias the findings that would be obtained.

Of the 35 surveys that were mailed to the Recorder's Court judges only ten were returned. In addition, three judges declined to participate in the study. In an effort to increase the response rate, a follow up letter was sent to all of the judges and requested that they return the survey. This follow up letter was accompanied with endorsement letters provided by the Family Independence Agency (see Hagan, 1994). Unfortunately, additional surveys were not returned.

The small number of surveys that were returned posed severe limitations on the amount of useful information that can be obtained about the philosophies of judges. Further, there was limited information about the factors that judges believed to be important in waiver decisions. Thus, the decision was made to discontinue the survey portion of the study.

Method of Data Analysis

Discriminant Analysis

The data for this study may use one of two statistical procedures: discriminant analysis and logistic regression. These procedures were chosen because of the nature of the dependent variable. Since the dependent variable was measured at the nominal (or categorical) level, the primary assumption underlying OLS regression is violated. Discriminant analysis is one multivariate technique that is useful for estimating relationships between a single categorical variable and multiple independent variables measured at the interval or ratio level (Hair, Anderson, Tatham, and Black, 1995:179, also see Klecka, 1980). Discriminant analysis can be used to explore the significance of several independent variable in determining waiver outcomes- retain juvenile court jurisdiction vs. sentence as an adult. More specifically, discriminant analysis can be used to determine (1) which variables were most useful in predicting the likelihood of waiver to adult court and (2) the accuracy of the predictions.

As briefly noted, discriminant analysis requires that the dependent variable be measured at the nominal or categorical level. The group or entities under observation must be mutually exclusive and collectively exhaustive (Silva and Stam, 1995:279; also see Klecka, 1980). In other words, the entities can belong to one and only one group (waived vs. retained). In addition, all entities must belong to some group (p.279).

A second characteristic of discriminant analysis is that the groups should be well-

defined (p.279). That is, there should be a qualitative, rather than an arbitrary, difference between the groups. For example, the waived vs. non-waived groups in this research study naturally differ with respect to their legal status.

A third characteristic of discriminant analysis is that the independent variables (discriminating variables or attributes) should form as complete a description of the groups (or entities) as possible (p.280; also see Klecka, 1980). These variables (or attributes) are measured at the interval or ratio level. The specification of the variables (or attributes) allows for accurate discrimination between groups. In the present research, the groups (or entities) under observation are described by twenty (20) attributes, all of which have some basis of support in the research literature. Still, it is often very difficult to know beforehand which attributes are most relevant for purposes of discriminant analysis (see Hair et al.:94-195; Silva and Stam:287).

Several assumptions guide discriminant analysis. First, the independent variables (attributes) must be drawn from a population that has multivariate normality (Silva and Stam:285; Klecka:9, Hair et al., 1995:196). That is, all independent variables are normally distributed and conform to linearity in regression models when set to a dependent variable (Silva and Stam:285). In addition, there is an assumption of independence among the attributes. That is, attributes are not highly correlated with one another (Klecka:8). Second, there is the assumption of equality of covariance for each group (Klecka:9). It is noted that unequal covariances may adversely affect the classification process. Thus, violation of any

one of these assumptions may lead to the invalidity of the conclusions derived from the discriminant analysis.

Logistic Regression

Logistic regression is also an alternative to OLS regression given that the dependent variable is not measured at the ratio or interval level (continuous) but rather is dichotomous (or binary). Again, the dependent variable under observation is marked by the occurrence or nonoccurrence of two states- waiver to adult court or retention in juvenile court. The relationship between such a variable and other independent variables cannot be examined using OLS regression because several assumptions would be violated, the more important one being normality of the error term (see Hair et al., 1995:130; Wright, 1995:218). That is, the distribution assumes a binomial form rather than the more traditional linear form¹¹.

In addition, the values of the dependent variable are bounded by zero and one. (Hosmer and Lemeshow, 1989:7; Hair et al, 1995:130-131; Wright, 1995:219; Bachman and Paternoster, 1997:567). In other words, one derives values or probabilities that are never less than zero and never greater than one. Thus, one can estimate the probability that an event

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This difference is also noted by Hosmer and Lemeshow (1989) who note that the error term in logistic regression can assume only two forms where
 if $y=1$ then $\epsilon = 1 - \Pi(x)$ with probability $\Pi(x)$, and if $y=0$ then $\epsilon = -\Pi(x)$ with probability $1 - \Pi(x)$. Thus, ϵ has a distribution with mean zero and variance equal to $\Pi(x)[1 - \Pi(x)]$. That is, the conditional distribution follows a binomial distribution with probability given by the conditional mean, $\Pi(x)$." (p. 7)

will occur or not occur simply by calculating the coefficients or odds ratios (Hair et al., 1995:131; Wright, 1995:222-223; Liao, 1994:14-15). An odds ratio of greater than one indicates an increased likelihood or chance of an event occurring while an odds ratio of less than one indicates a decreased likelihood or chance of an event occurring.

Logistic regression, like discriminant analysis, is also guided by several assumptions. First, there is an assumption of mutual exclusivity and collective exhaustive groups (Wright, 1995:220). That is, no case can belong to more than one group (waiver vs. non-waiver) and every case must be a member of the groups under observation. Second, the logistic regression model must be correctly specified (Wright, 1995:220). In other words, all essential (or relevant) independent variables must be included and nonessential variables must be left out. Third, the probabilities (or outcomes) must be statistically independent (Wright, 1995:220). That is, any individual case cannot have more than one outcome among the data. For example, an indication of waiver status before and after adjudication by a judge. Fourth, the dependent variable of interest must be dichotomous (Wright, 1995:220).

It is noted that logistic regression is not as constrained by meeting all assumptions (as in multivariate normality) as discriminant analysis so, it may be more useful when certain assumptions cannot be met (see Hair et al., 1995:130)¹². Still, the results obtained by both discriminant analysis and logistic regression will be equivalent. For these reasons,

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Press and Wilson (1978) make a similar observation when noting that discriminant analysis is applicable only when the strict requirements of normalcy are met (p.700).

logistic regression was used in the analysis.

Chapter 5

Analysis of Data and Results

The purpose of this chapter is to address the issues raised by the hypotheses in the previous chapter. Before doing so, I will first describe the sample and the social, legal, and extra-legal variables that were contained in the data. A description will be found within the following pages of the demographic variables as well as other social and legal variables related to the waiver decision. The intent behind examining these variables is to determine whether the “Principle of Offense” or legal factors are the predominant influence on the waiver decision. That is, are legal factors the most significant elements in the decision to waive youths to the adult court. In addition, the analysis of these variables will indicate whether there are any significant differences between those juvenile offenders who are waived to criminal court versus those who are retained in the juvenile court.

Description of the Population

There were approximately 577 juvenile offenders that were waived to adult court in Wayne County between the years 1988 and 1996. Table 2 and Table 3 make a comparison between the raw figures provided by the Wayne County Prosecutor’s Office for waived and retained juvenile offenders for each of the years following the passage of the new waiver legislation as compared with figures for waived juvenile offenders less cases that had the following notations: dismissed, pending, not guilty, and mistrial.

As can be seen in Table 2, juvenile waiver to adult court was granted in about 40% of cases initiated by the prosecutor's office. It can also be seen in Table 2 that the volume

Table 2.

Summary of Total Waivers by Year

Year	1988	1989	1990	1991	1992	1993	1994	1995	1996	Totals
Total Waived	17	68	74	97	61	82	165	121	99	784
Total Retained Juvenile Court	50	110	79	90	85	88	268	218	175	1163
Percent Waived	25%	38%	48%	52%	42%	48%	36%	36%	36%	40%
Total Waiver Petitions to Date	67	178	153	187	146	170	453	339	274	1967

of waiver petitions dramatically increased from 1994 to 1996. This increase may reflect a change in the philosophy of the prosecutor's office whereupon greater emphasis is placed on targeting serious and violent juvenile offenders for prosecution.

Table 3 is illustrative of how waiver cases are handled in the adult court. Almost 1/3 (31%) of all juvenile offenders whose cases were waived were sentenced as adults. This figure is comparable to the percentage suggested by Jeffrey Fagan (31%) in his study which looked at serious and violent crime among juveniles in Detroit and three other cities (1990:112). Two observations can be made: (1) the trend in sentencing juvenile as adults in

Wayne County has been steady over the last 9 years and (2) for the most part, serious and violent juvenile offenders are given one last chance at rehabilitation before the juvenile justice system transfers or waives them to the adult system.

Table 3.

Summary of Sentencing Outcomes by Year

Year	1988	1989	1990	1991	1992	1993	1994	1995	1996	Totals
Total Sentenced as Adult	8	27	10	29	16	22	26	21	18	177
Total Retained in Juv. Court	3	33	46	45	34	45	73	51	58	388
Percent Sentenced as Adult	73%	45%	18%	37%	28%	31%	26%	29%	24%	31%
Total Waived to Date	11	60	56	74	50	67	99	72	76	565
* Totals are less than N= 577 due to missing sentencing outcomes.										

Age, Sex, Race, and Sentencing

Of the 577 juveniles who went through the waiver process, from petition to sentencing, approximately 557 were males and 20 were females. This disproportionate involvement of males in waivable offense has been documented in other research (see

Thomas and Bilchik, 1985; Nimick, Szymanski, and Snyder, 1986; Dawson, 1992; Podkopacz and Feld, 1995; Podkopacz, 1996; Bishop et al., 1996;) and, thus, is not very surprising that males account for 96% of the sample.

This sample also showed that minority youth were disproportionately involved in waivable offenses (see Eigen, 1981; Fagan et al., 1987; Fagan and Deschenes, 1990). African American youth accounted for 84% of the sample while white youth accounted for 9% of the sample (see Table 4).

Table 4.

Summary of Age and Race by Sentence

Age	Race	Sentence Yes	Sentence No	Totals
fifteen	Other	5	17	22 (4%)
fifteen	Afri-Am	37	140	177 (32%)
sixteen	Other	15	29	44 (8%)
sixteen	Afri-Am	182	109	291 (52.9%)
seventeen	Other	1	0	1 (.18%)
seventeen	Afri-Am	5	9	15 (2.7%)
Total		245 (44.5%)	304 (55.2%)	550
* missing values omitted (n=7)				

In view that other racial groups comprised only 7 % of the sample (Hispanics, Asian Americans, and Amerinds), they were combined with the white youth to form a dichotomy consisting of African American and "Other".

The finding that African American youth are disproportionately involved in waivable offenses may simply be an artifact of the data given the racial composition of the county from which the data was taken and may not necessarily imply that they black youths are discriminated against. However, this finding will be later explored in greater detail.

The age composition of this sample, a very important legal criterion for waiver, indicates that the vast majority of juvenile offenders who were waived were between the ages of 16 and 17 (see Table 4). More specifically, juveniles who were fifteen years old comprised thirty-six percent of offenders waived to adult court. Further, offenders who were sixteen years old comprised the bulk of all offenders who were waived (64%) while offenders who were seventeen years of age comprised only three percent of those waived. Thus, the picture that emerges is one which suggests that waiver tends to predominately affect African American males who are sixteen years old. Moreover, older juveniles (17 years) are waived less frequently even though they are near the end of the jurisdictional age limit of the juvenile court.

Characteristics of Present/Instant Offense

Given that juvenile offenders must commit a designated felony as required by Michigan Statutes before the waiver process is triggered, an attempt was made to identify the offenses for which they were most often waived. It was found that the initial charge filed by the prosecutor's office was most often a felony-personal offense. Approximately 98% of

the initial charges against the waived juvenile offenders were felony-person offenses that included murder I, murder II, assault, robbery, and CSC (criminal sexual conduct) and all contained an element of violence (see Table 5). It should also be noted that 56% of the waived juvenile offenders had multiple charges filed against them by the prosecutor's office. Among multiple charged offenders, thirty-eight percent were charged with two offenses, fourteen percent were charged with three offenses, and four percent were charged with four or more offenses (see Table 5). Table 5 shows that waived juvenile offenders accounted for a total of 753 violent felony-personal offenses, 12 felony property offenses, and 248 Other-type offenses inclusive of possession of firearms, drug related offenses, fleeing and eluding police, carrying a concealed weapon.

Thus far these data suggest the prosecutor's office uses prosecutorial waiver to target serious and violent juvenile offenders. The vast majority of waived juvenile offenders committed Class I felonies, the most serious of all felony offenses as defined by Michigan criminal statutes. Thus, there does not appear to be any evidence that less serious and/or non-violent juvenile offenders are targeted for waiver.

Accomplices, Weapon Use, and Victims

In addition to the severity of the offense, previous research suggests that other legal factors affect the waiver decision. These factors include weapon use, accomplices, victim/

Table 5**Summary of Initial Charges Filed by Prosecutor's Office**

	Felony-Personal (Violent)	Felony Property	Other
One Charge	569		6
Two Charges	152	7	157
Three Charges	26	4	69
Four or more Charges	6	1	16
Total offenses	n= 753	n= 12	n= 248

offender relationship, and injury to victims. First, the use of a weapon in the commission of an offense is believed to influence the waiver outcome (Poulos and Orchowsky, 1994). Among this sample of juvenile offenders, approximately eighty percent used a weapon during the commission of the offense. The weapon of choice was a gun. A gun was used in seventy-three percent of the offenses committed by juveniles in this sample. A knife/razor was used in five percent of the offenses and a club/bat was used in two percent of the offenses. Finally, it should be noted that eleven percent of the juveniles did not use a weapon of any type.

Another factor believed to affect the waiver decision is co-defendants (accomplices), especially adult co-defendants. There is the presumption that juveniles are more likely to be waived if there were adult co-defendants (see Fagan et al., 1987; Fagan and Deschenes,

1990). These data show that 62% of the offenders had accomplices. Among those who had accomplices, 22% had one accomplice, 20% had two accomplices, 14% had three accomplices, and 6% had four or more accomplices. Thus, it becomes quite clear that the majority of waived juvenile offenders in this sample did not act alone but rather in tandem with others.

Examination of the offender/co-defendant relationship showed that adults were just as likely as sixteen year old juveniles to be named as co-defendants in felony offenses committed by juveniles. In particular, these data show that 101 adults were co-defendants in criminal cases committed by juveniles, whereas, 102 sixteen year old juveniles were co-defendants in crimes committed by adults. Moreover, fourteen and fifteen year old juveniles were less likely to be named as co-defendants in the cases brought by the prosecutor's office. In fact, only 7 co-defendants were below the age of fourteen. While the exact number of co-defendants could not be determined for the entire sample due to missing data in 17% (n= 100) of the cases, these data provide a fairly accurate description of the offenders' age and co-defendant relationship.

The number of victims as well as the nature of the relationship between the offender and victim revealed some interesting facts. First, there was a single victim in approximately 64% of the cases and in 19.4% of the cases there were multiple victims comprised. In one case there was no identifiable victim because it as a VCSA offense (violation of controlled substance act) in which drugs were sold to an undercover officer). Here again, victim-related

information was missing in the remaining 16.5% (n= 95) of the cases. Nonetheless, these data show that most offenses involved a single victim.

When the victim-offender relationship was examined, it was found that approximately 3% of the victims were family members, whereas another 25% of victims were acquaintances, and 52% of the victims were strangers. Information was missing in 19.4% (n= 112) of the case . Nonetheless , these data show that the majority of the victims were male (see Table 6) and strangers to the perpetrators. Males were most susceptible to victimization in violent gun-related offenses. Ninety-seven percent of victims in gun-related offenses were male. These data also show that male victims tended to be alone during the time at which they were the victimized (72% were the sole victim in such incidents). It should be noted that to a much lesser extent, males also tended to be the primary victims of stabbings (n= 27).

The majority of the victims sustained some injury during the commission of the offense. Specifically, it was found that sixty percent of the victims sustained an injury during the commission of the offense. Further examination revealed that 37% of the victims had gunshot wounds, 2% were stabbed or cut, 10% were sexually assaulted, 7% were beaten/kicked, and 1% received some other form of trauma to the body.

Examination of Table 6 illustrates that males comprised the bulk of those who were victimized with guns. Among the approximately 256 victims injured or otherwise victimized by guns, males accounted for approximately 95% of the victims. Even in sexual assault

cases, males were victims in 38% of the victims.

Table 6

Summary Table for Nature of Injury by Sex

Nature of Injury	Injured- Yes	Hospitalized- Treated Males Only	Hospitalized- Died Males Only	Total for all Incidents (male)
Gunshot	Yes	100 (39%)	143 (55.8%)	256
Stab/cut	Yes	6 (35%)	9 (53.9)	17
Trauma	Yes	0 (0%)	7 (100%)	7
Sex Assault	Yes	25 (38%)	0 (0%)	65
Beat/kicked	Yes	6 (15%)	5 (12.5%)	40

* Note: nature of injury and treatment was missing in 18% of the cases and thus the injury sustained and the treatment could not always be determined from the case files.

Legal factors (Statutory)- Recommendations, Amenability, Threat, and Risk

The recommendation made to the court by the Intake and Court Services Unit is also believed to influence the waiver outcome. The data showed that a recommendation to retain the juvenile in the juvenile system was given in 69% of the waiver cases. A recommendation to waive custody to the adult system was given in only 16% of the cases. The full impact of the recommendation could not be gauged because there was missing data in 15% of the cases (n=87).

The research literature indicates that juvenile offenders who are not amenable to treatment tend to be more often waived to adult court (c.f., Fagan and Descehenes, 1990; Podkopacz and Feld, 1995). Hence, the relationship between amenability and waiver was also examined for this group of juvenile offenders. Data showed that for the waived juveniles in this sample, 57% were considered amenable to treatment; whereas another 8% were considered not amenable to treatment. Hence, there was considerable missing data for this variable (34%) so the extent of the relationship between amenability to treatment and waiver could not be fully examined.

Waived juveniles were also assessed in terms of their pattern of offending, threat to community, and risk. These data showed that only 12% of the juveniles had prior histories of serious or repetitive patterns of offending. Fifty-six percent (56%) of the waived juveniles did not have prior histories of serious or repetitive patterns of offending. However, there was a significant amount of missing data for this variable (32%) which may obscure the influence of this variable on waiver.

In twelve percent the cases, waived juveniles were considered a threat to the community if they were released at age 21. That is, these juveniles were believed to require more time for rehabilitation than could be offered by the juvenile justice system. On the other hand, data also showed that 58% of waived juveniles were not considered a threat to the community. Yet it must be noted that a significant amount of data was also missing for this variable (30%).

The risk level of the waived juveniles was also examined. Risk refers to the potential of the juvenile to commit further crimes or pose an danger to others. Data showed that 31% of the waived juveniles had low risk scores, 27% of the waived juveniles had medium risk scores, and 20% of the waived juveniles had high risk scores. Thus, even among waived juveniles, risk scored varied. Data was missing for 21% of the cases.

Prior Offense and Previous Court Processing

Given that previous research suggest that prior offending behavior impact waiver, the nature and extent of past offending was examined (see Singer, 1993; Poulos and Orchowsky, 1994; Kinder et al., 1995; Podkopacz and Feld, 1995). These data showed that 54% of the waived juvenile offenders had committed prior felony records. Among this group, 26% had committed one prior felony, 13% had committed two prior felonies, 17 % had committed three or more prior felonies. It should be noted that about 30% of the waived juveniles in this sample had no history of past felony offending.

The majority of waived juveniles' first contact with the juvenile justice occurred at age fifteen (25%) or sixteen (24.7%). The youngest age for initial justice system contact among waived youth was age nine (n=1). However, it did appear that offending dropped off considerably once juveniles reached their seventeenth birthday.

Relative to detention, approximately 1/3 of the juveniles (33.6%) had previously been confined in juvenile detention. Among those who had been previously detained, 21%

had been detained only once, while 8% had two prior detentions and , 4% experienced three or more prior detentions. Approximately 42% of the juvenile offenders had no prior history of detention. While 24% of the cases had missing data on prior detention (n= 137), these data show the majority had never experienced detention.

Information was obtained on whether the juvenile offenders had experienced prior placements (non-detention) outside of the home. These data showed that almost three-quarters of the youth (73.4%) had never experienced placement outside of the home. Among those waived juveniles who were placed outside of the home, five percent had only one non-detention placement and three percent two or more placements (non-detention). While there was missing data for 17.8% of the cases, most waived juveniles were never placed outside of the home..

Nineteen percent (19%) of the waived youth were under a sentence charge at the time of the instant offense. That is, they were under some type of supervision by the juvenile court at the time the current waivable offense occurred. Of this group of waived youth, 18.5 % (n=107) had active probation status at the time of the instant offense.

Extra-legal Factors- Presiding Judge

During the years 1988 to 1996, approximately sixty-two different judges presided over juvenile waiver cases in Wayne County. Given the assumption that the judge himself/herself may influence the waiver outcome, the relationship between the judge and

waiver was examined. One judge, who has inconspicuously been identified as Judge #3, handled approximately 33% of the cases in which these juvenile offenders were waived (n=188). Another judge, identified as Judge #2, handled about one-fifth the number of cases as Judge #3 (n=37). Since Judge #2 handled a moderate number of cases, other judges who handled a similar number were consolidated in this category (judges who handled 11 to 50 cases). Given the small number of cases that were handled by the remaining judges, they were consolidated into one group and labeled Judge #1 (judges who handled fewer than 11 cases). Thus, the following categories were formed: Judge #1, Judge #2, and Judge #3.

Extra-legal Factors- Family and Employment

The research literature suggests that extra-legal factors exert an influence on the waiver decision. However, the influence of such factors is believed to be significantly reduced with prosecutorial waiver (see Poulos and Orchowsky, 1994). In order to examine the relationship between extra-legal factors and the waiver decision, the family environment and employment status of the parents were included in the analysis. Among waived youth, the overwhelming majority came from single-parent homes. That is, 45% of waived youth lived in female-headed households. Approximately 5% of the waived youth resided with their fathers, 20% of the waived youth resided with two parents (i.e., biological parents, stepfather/mother, and/or stepmother/father), 7% of the waived youth resided with their grandparents, 5% of the waived youth resided with relatives (e.g., aunt, cousins), and 2%

had some other living arrangement (wards of the state).

In regard to employment, forty-four percent (44%) of the waived youth had primary care givers who were employed while thirty-one percent (31%) of the waived youth resided with care givers who were not employed. However, the employment status for care givers was missing in 23% (n=131) of the case files.

The employment status of the waived juvenile offenders was also examined. These data showed that 34% of waived youth had some type of employment history. It should be noted, however, that this figure does not reflect whether they were employed at the time of their arrest for the current offense. Data also showed that 50% of the waived youth had no employment history. Employment history could not be determined for 16% of the waived youth due to missing data.

Extra-legal Factors: Substance Use/Abuse and Mental Health

The nature of the relationship between substance use and abuse among waived youths was also examined. The data showed that 52% of waived youths had a history of substance use and/or abuse while 32% of the waived youths did not use or abuse alcohol or drugs. The vast majority of waived youths used/abused alcohol (n=237). The second most commonly used substance among waived youths was marijuana (n=215). For the most part, waived youths tended to avoid using “hard” drugs such as crack/cocaine (n=6), lsd (n=3) and mescaline (n=3). Substance use/abuse could not be determined in 16% of the cases due to

missing data.

Though 52% of waived youths records indicated a history of substance use/abuse (n=301), less than 1% sought or received treatment (n=4). Fifty-one percent of waived youths never received any kind of treatment or counseling (n=293). Treatment history could not be determined for 16% of the waived youth due to missing data.

Next, the mental health status of waived youths was examined. These data showed that 7% of the waived youth had a history of psychological problems. Sixty-two percent (62%) did not have a history of psychological problems. In 12% of cases, the psychological history of the juvenile could not be determined because the psychological reports on the youths had not yet been received by the Intake and Court Services Unit. The psychological history of the waived youth was missing in 19% of the cases.

Summary of the Population

Thus, waived juvenile offenders were assessed in terms factors such as age, sex, race, prior offense history, family environment, employment history, substance use/abuse history, psychological history, and amenability. Table 7 provides a summary of the variables that are believed to influence the waiver decision. From 1988 to 1996, there were 577 waiver motions filed by the prosecutor's office. The number of these waiver motions seemed to peak in 1994 but leveled off by 1996. Thirty-one percent of these waiver motions resulted in adult sentences (n=177) while the remainder were kept in the juvenile court (n=388).

African-American males were disproportionately represented among those who were waived to adult court. Juvenile offenders from an African-American background made up 84% of the waived cases while white youth comprised 9% of waived cases, and Other racial groups comprised 7% of the waived youth.

Fifteen and sixteen year old youth comprised the bulk of those offenders who were waived to adult court (71%). Older juvenile offenders (17 years and older) comprised only 26% of the youth that were waived. However, sixteen and seventeen year old African-American males were much more likely to be sentenced as adults than was any other group (n= 62 and n=56 respectively).

The majority of waived youth committed class I felonies, the most serious felonies under Michigan statute. Less than 1% of the waived youth committed class IV felonies. Thus, it appears that the waived juveniles do indeed commit the violent and serious crimes that are targeted by prosecutorial waiver.

The majority of the waived youth were not considered a threat to the community (58%). In addition, 58% of the waived juveniles had either low or moderate risk scores. Only 20% of the waived youth had high risk scores.

Table 7.**Summary Table of Variables Affecting the Waiver Decision****Legal Factors**

Variable	Frequencies	Percentages
Current Offense-Total #		
Felony- Person(violent)	1000	98%
Felony- Property	12	1%
Other	4	
Age at Instant Offense		
15 yrs	207	36%
16 yrs	349	60%
17 yrs	16	3%
Weapon Used		
Yes	461	80%
No	50	7%
Victim Injured		
Yes	343	59%
No	161	30%
Hospitalized- Died		
Yes	175	30%
No	149	26%
Co-defendants		
1 Co-defendant	125	22%
2 Co-defendants	113	20%
3 Co-defendants	81	14%
4 or more Co-defendants	32	6%
Prior Felony Referrals		
Yes	315	55%
No	175	30%

Table 7 (continued)**Extra-legal factors- Offender Specific**

Variable	Frequencies	Percentages
Race		
African-American	487	84%
Other	67	12%
Sex		
Male	557	97%
Female	20	3%
Age at First Referral		
less than 14 yrs	73	13%
14 yrs	93	16%
15 yrs	146	25%
16 yrs	143	25%
17 yrs	30	5%
Prior Out-of-Home Placements		
Yes	49	8.5%
No	424	73%
Employment History		
Yes	192	33%
No	290	50%
Substance Use/Abuse History		
Yes	301	52%
No	185	32%
History of Psych. Problems		
Yes	43	7%
No	356	62%
Presiding Judge		
Judge #1	178	31%
Judge #2	200	35%
Judge #3	182	31%

Table 7 (continued)**Legal Factors- Statutory Criteria**

Amenable to Treatment		
Yes	328	57%
No	48	8%
Risk Level		
Low	179	31%
Medium	156	27%
High	118	20%
Time Remaining in Juvenile Jurisdiction		
less than 1 yr	78	14%
1 to 1.5 yrs	149	26%
1.5 to 2 yrs	144	25%
2 to 2.5 yrs	57	10%
2.5 to 3 yrs	46	8%
time expired	11	2%
Recommendation of Intake/Court Services		
Retain	397	69%
Waive	93	16%

Bivariate Relationships

The bivariate relationships between the independent variables and the dependent variable were examined in order to assess the direction and strength of the relationships. This procedure was done in an attempt to determine which variables would be most suitable for use in multivariate predictive type models. Legal variables were first examined to assess their impact on the waiver decision.

Legal Factors

It was hypothesized that the current offense would exert the most influence on the decision to waive a juvenile offender to adult court. Given that 98% of the juveniles in the sample committed felony- personal offenses, this variable should be the predominate factor in the waiver decision. There was a significant relationship between the current offense and the waiver decision (-0.3379 , $p = .000$). Relatedly, the relationship was examined between whether a gun was used during the instant offense and the waiver decision, however, a significant relationship was not found between these two variables (0.0706 , $p = .156$). One possible explanation may hinge on the high degree of multicollinearity between two variables- use of weapon and use of gun. That is, when the relationship between use weapon and sentence was examined, there was a significant relationship (0.1283 , $p = .010$). The explanatory power of use gun may be masked given the high degree multicollinearity with the variable use weapon (0.70). Thus, the use of weapon variable was

be dropped in favor of use of gun.

Relative to the current offense, injury to victim and death of victim were examined. Given that the extent of a victim's injury is related to the seriousness of the offense, it was reasoned that juveniles were more likely to be waived if the victims sustained injury or died. Whereas these data did reveal a significant relationship between injury to victim and the waiver decision (.2606, $p = .000$); when injury was examined in terms of gun injury versus non-gun injury, a significant relationship was also found. In sum, a greater proportion of those juveniles who had a gun and used it during the current offense were waived (32%) more than juveniles who did not use a gun (29%). Given that the victim's death reflects the most serious or egregious offense, it was not surprising to find a significant relationship between the victim's death and waiver (.3086, $p = .000$).

The number of charges pending against a juvenile affected also affects the waiver decision. Prior research suggests that the number of charges is an important legal variable (c.f., Fagan and Deschenes, 1990; Lee, 1994; Poulos and Orchowsky, 1994; Podkopacz and Feld, 1995). Similarly, these data showed that the number of charges impacts waiver and it was positively associated with the waiver decision (Gamma = .1971, $p = .000$). That is, more juveniles were waived who had multiple charges than were juveniles who had only one of two charges.

The relationship between the age of the juvenile offender and the waiver decision was examined. These data showed that there was a significant relationship between age and

waiver (Spearman $R=.1511$, $p=.000$). Specifically, these data suggest that older juveniles are more likely to experience waiver. Moreover, twenty-seven percent of sixteen year old juveniles were waived compared to eighteen percent of fifteen year old juveniles, forty-seven percent of seventeen year old juveniles, and fifty-eight percent of eighteen year old juveniles.

Legal Factors- Prior Offense History

The prior offense history of juvenile offenders is also believed to affect the waiver decision. When the relationship between prior felony offenses and waiver was examined no significant relationship was found. However, when there was a history of prior felony offenses (2, 3, or more), a significant relationship was found (Gamma=.2193, $p=.000$). This finding suggests that while waiver was not associated with a single prior felony, it was associated with the number of prior felony charges. For example, twenty-four percent of juvenile offenders with no prior felony offense were waived, whereas twenty-seven percent of juvenile offenders with one prior felony were waived, thirty-one percent of juveniles with two or three prior felonies were waived and forty-eight percent of juveniles with four or more prior felonies experienced waiver. Clearly, a larger percentage of juvenile offenders with an extensive past felony offense history were more often waived.

The prior offense history of juvenile offenders was further scrutinized to determine whether a relationship existed between probation status and the waiver decision. This

variable was examined because juveniles with prior felonies are also more likely to have experienced probation at some point in their offense history. In addition, it is also likely that the juvenile was on probation at the time of the current offense. For this study, probation status was dichotomized in terms of previous probation experience and no probation experience. These data showed that there was no significant relationship between probation status and the waiver decision (.0826, $p = .097$). That is, there was little difference in waiver between the percentage of juvenile offenders with a past history of probation (37%) and juvenile offenders without a past history of probation (26%).

Because of the relevance of detention and the risk to the community posed by the juvenile offender, the relationship between detention status and waiver was examined. Detention was dichotomized into detained and bail experiences. There was a significant relationship between detention status and the waiver decision (-.1483, $p = .002$). That is, more juvenile offenders were waived who were detained than were juveniles who were on bond. For example, thirty-three percent of juveniles who were detained were waived while twenty percent of juveniles on bond were similarly waived.

Legal Factors- Other Statutory Considerations:

The amenability of juvenile offenders to treatment has long been thought to influence the waiver decision. Though there is uncertainty as to what constitutes amenability to treatment (see Feld, 1987), it nevertheless remains one of the cornerstones of the waiver

decision. When the relationship between amenability and waiver was examined, these data showed that there was a significant relationship between amenability to treatment and waiver ($-.3827, p = .000$). That is, more juveniles were waived to adult court who were considered non-amenable than are juveniles who were considered amenable. For instance, twenty-four percent of juvenile offenders who were considered amenable to treatment were waived to adult court, whereas seventy-seven percent of juvenile offenders who were not considered amenable to treatment were similarly waived. This finding suggests that some juvenile offenders were given another chance for rehabilitation if it was believed they were salvageable and/or could still be helped through the resources available in the juvenile justice system.

Further, the time line, amount of time remaining in juvenile court jurisdiction, was examined. This variable was included in the analysis given that amenability to treatment is often thought to be contingent upon how much time the juvenile court retains jurisdiction over the offenders before he/she reaches the age of majority. A significant relationship ($-.1185, p = .039$) was found between time line and waiver.

The relationship between threat to community and the waiver decision was included in the analysis given its significance as a proxy for juvenile offenders' past offense history and seriousness of the current offense. These data indicated that there was a significant relationship between threat to community and waiver ($.5089, p = .000$). That is, perceived as a threat to the community were waived more than juveniles who were not perceived as

a threat. In particular, seventy-nine percent of juvenile offenders who were perceived as a threat to the community were waived to adult court, whereas only twenty percent of juvenile offenders not perceived as a threat to the community were similarly waived.

The risk level of the juvenile offender was included in the analysis because of its proxy for the seriousness of the current offense and amenability to treatment. A significant relationship was found between risk and waiver (.2096, $p = .000$). That is, juvenile offenders with high risk levels were more often waived to adult court than were juvenile offenders with either low or moderate risk levels. Consider, twenty-one percent of juveniles assessed as low risk were waived to adult court while thirty-one percent thought to be of moderate risk and forty-two percent ranked as high risk juvenile offenders were similarly waived.

To summarize, the factors consisting of amenability to treatment, threat to community, and risk level all influence the waiver decision. Given their individual influence on this decision and the impact of the aforementioned variables on the court's recommendation, the recommendation decision as a whole was next evaluated. Recommendation was dichotomized into retain in juvenile system versus waive to adult system. These data showed a significant relationship between recommendation and waiver (.5708, $p = .000$). That is, more juvenile offenders are waived to the adult system if a recommendation was made for waiver. For instance, eighteen percent of juvenile offenders whose recommendation was retention in the juvenile system were waived, however, eighty-three percent of juvenile offenders whose recommendation was waiver were waived to adult

court. This finding suggests that judges tend to follow the recommendations that were made to them.

Extra-legal factors- Offender Specific:

The research literature suggests that the race of the offender influences the waiver decision (see Eigen, 1981; Fagan, 1987; Fagan and Deschenes, 1990; Poulos and Orchowsky, 1994). That is, it is believed that juvenile offenders who are African-American are more often waived to adult. Accordingly, the relationship between race and the waiver decision was examined. Given the small numbers of non African-Americans in the sample ($n=67$), this variable was dichotomized into African-American and other. Unlike the aforementioned studies, these data showed that there was no significant relationship between race of the offender and waiver ($.0237, p=.973$). In other words, African-American juvenile offenders (31%) were waived to adult court just as often as non-African-American juvenile offenders (31%).

The living arrangement of youths is also believed to affect waiver outcomes. In brief, juveniles from intact homes may be less often waived than juveniles from non-intact homes (see Lee, 1992; Poulos and Orchowsky, 1994). Thus, the relationship between living arrangement and waiver was examined. This variable was categorized into two parent home, single parent/extended family, and other. These data showed that there was no significant relationship between living arrangement and waiver ($.0328, p=.526$). That is, juvenile

offenders from two parent homes (28%) were similarly waived to adult court as juveniles from single parent/extended households (30%) and juveniles in other living arrangements (28%).

Extra-legal Factors- Out-of-Home Placements and Judges:

The relationship between out-of-home placements and the waiver decision was examined. The rationale behind examining this variable reflects the court's prior attempts to treat the juvenile offender. It is also related to the exhaustiveness of treatment efforts made by the juvenile court in that juveniles who have extensive out-of-home placements are more often waived to adult court because they have reached the limits of the resources that can be offered by the juvenile court. These data showed that there was a significant relationship between the number of out-of-home placements and the waiver decision ($\text{Gamma}=.2416, p=.015$). That is, juvenile offenders with previous out-of-home placements were no more likely to be waived to adult court than were juvenile offenders with no out-of-home placements. This may reflect the fact that many of those who are waived have no prior felony histories. Thus, there should be no expectation that they would experience multiple out-of-home placements.

It is also believed that the presiding judge may indirectly influence the waiver decision (see Podkopacz and Feld, 1995). Given that the tenure on the bench may differ among the judges, it is assumed that judges with more experience in handling juvenile cases

are less inclined to sentence juveniles to adult court while judges with less experience are more inclined to sentence juveniles to adult court. Initially, a significant relationship was found between presiding judge and waiver ($-.2390$, $p = .000$). However, it was believed that the true relationship may be masked because of the great differential that existed in the number of cases handled by the judges. Accordingly, this variable was grouped by the number of cases handled by the judges. Thus, judges who handled between one and ten cases were labeled category A judges (31%); judges who handled between eleven and fifty cases were labeled category B judges (35%); and the judge who singularly handled more than fifty cases (31%) were labeled category C judges..

These data showed that there was a significant relationship between category A judges and waiver ($-.1730$, $p = .000$) as well as the category C judge and waiver ($.2493$, $p = .000$). There was no significant relationship between category B judges and waiver ($-.0753$, $p = .076$). This finding suggests that juvenile offenders who appear before category A judges were more often waived (43%) than juveniles who appeared before category C judges (14%). Further, juveniles who appear before category B judges were waived at nearly equal rates (36% waived versus 28% retained). The reason could lie in the fact that Judge C has the most experience in handling waiver cases (longest tenure as he handled cases which appeared in all nine years of the data) whereas, juveniles who appear before judges in category A faced judges who have the least amount of experience in handling waiver cases since they handled the fewest number of cases.

The bivariate relationships show that both legal and extra-legal variables influence the waiver decision (see Table 8). Various aspects of the juvenile's past were influential even though they were not legal factors. In particular, these data point out that juvenile offenders who had previously been on probation and detained experienced waiver more often than juveniles who had no such past history. In addition, it was found that the recommendations made to the court were influential in the waiver decision. These recommendations include assessments of a juvenile's amenability to treatment, threat to community, and risk level. All of these elements are positively associated with the waiver decision. Moreover, the amount of experience that a judge has on the bench affects the waiver decision. That is, judges with the least amount of experience with adolescent offenders waive juveniles to adult court more than do judges with extensive experience. Thus, one could argue that there are courtroom processes that are just as important to the waiver decision as the legal factors themselves. However, this will be further explored in the proceeding multivariate analysis.

Three Competing Logistic Regression Models:

In order to assess the influence of both the legal and extra-legal variables on the waiver decision, three logistic regression models were developed. Logistic regression is an alternative statistical technique used to assess relationships among variables when the

Table 8**Bivariate Correlations**

I. V.	D.V.- Sentence
Age	.1511*
Recommendation	.5708*
Current Offense	-.3379*
Number of charges	.1971*
Victim Injured	.2606*
Death of victim	.3086*
Number of prior felonies	.2193*
Use weapon	.1283*
Use Gun	.0706
Sex	.0242
Race	.0237
Judge	-.2390*
First-time Offender	-.0860
Detention	-.1483*
Probation	.0826
Threat	.5089*
Amenable	-.3827*
Time line	-.1185*
Risk	.2096*
Number of Placements	.2416*
Living Arrangement	.0328
Substance Use/Abuse	.0070
Psychological History	.0363
*Marked Correlations are significant at $p < .05$	

dependent variable is binary or dichotomous. Further, this method does not assume linearity or equality of variance (see Wright, 1995). It should also be noted that logistic regression is

advantageous because it allows one to estimate the probability that a certain event will occur. That is, the coefficients that are derived from the logistic regression can be used to “... estimate the probability of y [dependent variable] at different values of x [independent variable] , and from that, determine the exact change in the predicted probability between any two values” (Bachman and Paternoster, 1997, p.577). Thus, positive coefficients increase the probability of an event while negative coefficients decrease the probability that an event will occur (see Liao, 1994).

Three logistic regression models were constructed. The first model (Model I) contained the legal offense variables believed to affect the waiver decision. The second model (Model II) contained both the legal and extra-legal variables (see Table 9). The third model (Model III) contained the legal variables and all significant extra-legal variables. In Model I, there were four very significant predictors- death of victim, number of charges, recommendation, and age. First, death of victim was a significant predictor. These data showed that there was an increased likelihood that juvenile offenders would be waived if the victim died as a result of the offense (odds ratio 2.76, $p = .000$). Given that homicide is the most serious felony offense for which juveniles can be prosecuted, it is understandable that offenses which result in the death of the victim would also result in a greater likelihood of waiver.

The number of charges pending against a juvenile was also significant. Juveniles with a greater number of charges had a higher likelihood of being waived than juveniles who

Table 9**Logistic Regression Results for Predictors Affecting the Sentencing Decision**

	Model I			Model II			Model III		
	Estimates	S.E.	Odds Ratio	Estimates	S.E.	Odds Ratio	Estimates	S.E.	Odds Ratio
Legal Predictors									
Age									
16 or 17	.820	.291	2.27	.966	.455	2.62	.850	.297	2.34
Number of Charges	.473	.164	1.60	.634	.237	1.88	.484	.165	1.62
Felony Category	.045	.140	1.04	-.148	.332	.862	.033	.138	1.03
Used Gun	-.155	.379	.855	-.147	.545	.862	-.202	.382	.816
Number of Accomplices	-.067	.138	.934	-.361	.215	.693	-.138	.143	.871
Victim Died	1.01	.275	2.76	.759	.413	2.13	.863	.285	2.37
Number of Prior Felonies	-.045	.135	.955	-.216	.315	.804	-.028	.138	.972
Legal Predictors- Statutory Considerations									
Recommendation	3.00	.361	20.192	1.09	.828	2.99	2.93	.369	18.67
Threat to Community				1.85	.834	6.39			
Amenable to Treatment				.384	.795	1.46			
Time line				-.182	.163	.833			
Risk				.425	.271	1.53			
Extra-legal Predictors									
Sex				.627	1.04	1.87			
Race				.205	.600	1.22			
Presiding Judge									
Judge #3				1.02	.498	2.79	1.22	.342	3.40
First Time Offender				-.043	.608	.957			
Probation Status				.158	.407	1.17			
Number of Placements (non-detention)				.162	.327	1.17			
Living Arrangements				-.058	.424	.943			
Substance Use/Abuse History				-.514	.397	.597			
Psychological History				.012	.009	1.01			
Constant	-3.10	.549	.044	-5.71	2.38	.003	-5.09	.812	.006
-2*log (Likelihood)	367.34			191.91			352.74		
Model Chi-square	160.77	df= 8	p=.000	108.43	df= 21	p=.000	175.37	df= 9	p=.000

had fewer charges (odds ratio 1.60, $p = .004$). That is, as the number of charges filed by the prosecutor's office increased, the likelihood that a juvenile would be waived also increased. While this finding may be a result of prosecutorial overcharging, the alternative, and perhaps better explanation, suggests the prosecutor has a very strong case which supports the serious charges against the juvenile. Surprisingly, the current offense was not significant in this logistic regression model. The reason could be that there was little variation in this predictor given that 98% of the waived juvenile offenders committed felony-personal offenses¹³.

A third significant predictor was the recommendation of the Intake/Court Services Unit. This predictor was included in this model because specific statutory criteria (threat, amenability, time line, risk) are addressed in all recommendations that are made to the court. These data showed that there was an increased probability of being waived if the recommendation favored waiver. That is, juvenile offenders were more likely to be waived if the Intake/Court Services Unit made a recommendation for waiver (odds ratio 20.1, $p = .000$). This finding also makes sense given that the Intake/Court Services Unit assesses juvenile offenders' amenability to treatment (or lack thereof) and the risk they posed to the community, two factors outlined in the waiver statute. Since these individuals would have

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Barnes and Franz (1989) also note that the current offense was not a very influential predictor in their research on waiver. More specifically, they note that "the number of priors, the use of a pleas bargain, prior treatment, and the nature of the most serious prior offense all overshadow current offense in sentencing." (p.131) It is important to point out that these researchers attributed the lack of significance of current offense to what they called a "ladder of treatment." That is, there are successive stages of punishment severity attributed to offenders based on the current offense and past "treatment" options (1989:130).

more knowledge of the offenders' responsiveness to treatment and history, judges hesitate to disregard their recommendations.

The fourth strongest predictor was age at current offense (amount of time remaining under juvenile court jurisdiction). Older juvenile offenders faced a greater probability of being waived than juveniles with longer periods of time remaining in juvenile court jurisdiction (odds ratio 2.27, $p = .005$). That is, juveniles who were sixteen or seventeen had a higher likelihood of being waived than juveniles who were fifteen years old. It should be noted that age of the offender may serve as a proxy for time line, a statutory criteria that addresses whether offenders can be reasonably rehabilitated in the amount of time they have remaining in the juvenile system. Thus, older juvenile offenders would have shorter time lines while younger juvenile offenders would have longer time lines. Accordingly, the shorter the time line (age at offense), the greater the probability that offenders will be sentenced as adults.

These four legal factors were the most influential predictors of whether a juvenile will be waived. A recommendation of waiver by the Intake/Court Services Unit significantly increases the likelihood that juveniles will be waived. These recommendations include an assessment of whether offenders can be adequately treated in the amount of time remaining in the juvenile system. Since offenders with shorter time lines (older offenders) have the least amount of time to undergo treatment or rehabilitation, it is not surprising that they face a higher probability of being waived. Moreover, juvenile offenders who commit felonies

which result in the victim's death also face a high probability of being waived . In addition, juveniles with numerous charges were more often waived.

The second logistic regression model (Model II) showed great improvement in the predictors of waiver (see Table 9). Two additional significant predictors were found in this model. First, the presiding judge was a significant predictor. The data showed that there was an increased probability that juvenile offenders would be sentenced as adults if they appeared before particular judges (odds ratio 2.79, $p = .040$). More specifically, juveniles who appeared before judge C, the judge who had the greatest amount of experience in handling waiver cases, were less likely to be sentenced as adults compared to juveniles who appeared before judges with less experience (judges A and judges B) with waiver cases. This would suggest that judges' tenure on the bench may temper their waiver decisions.

The second significant predictor was threat to community. Juvenile offenders who were perceived to pose a threat to the community had a higher likelihood of being waived (odds ratio 6.39, $p = .027$). This predictor, an issue of safety, is also addressed in the recommendation by the Intake/Court Services Unit, however, there were no problems with multicollinearity.

The data in Model II also showed that predictors such as race, sex, living arrangement were not significant. For example, juvenile offenders who were African American were no more likely to be sentenced as adults than non-African American youth (odds ratio 1.22, $p = .733$). The fact that race was not an influential factor was also seen in

the bivariate correlations. Similarly, sex (odds ratio 1.87, $p = .549$) and living arrangement (odds ratio .943, $p = .891$) had no significant impact on the likelihood that juvenile offenders would be waived.

In order to assess which model had the greater predictive value, the classification tables were examined. In Model II, the percent correctly classified as waived increased. That is, when only legal variables were in the model, fifty-seven percent of the cases were correctly classified as waived. However, when the legal-statutory and extra-legal variables were added to the model, the percentage of cases correctly classified as waived increased to sixty-nine percent¹⁴. Thus, one may conclude that the addition of the legal-statutory and extra-legal variables increases the predictive utility of Model II beyond that of Model I.

A third logistic regression model was developed (Model III) in order to determine which of the previous models were the most parsimonious. Model III contained the legal variables and the significant extra-legal factors. All of the previous legal factors remained significant predictors as well as one extra-legal factors. It should be noted that one predictor, threat, was dropped from the model because of problems with multicollinearity (.79).

The data showed that death of victim remained significant in Model III (odds ratio 2.37, $p = .002$). Again, this finding was not surprising considering that homicide represents the most egregious and violent offense for which juveniles can be prosecuted. It seems that

¹⁴ To test the overall rate of correct classification, the following method was used:
 $100[(156+52)]/243 = 85.5\%$ (Hosmer and Lemeshow, 1989:147).

judges are likely to waive juveniles when the offense results in a homicide.

In order to assess the overall goodness of fit of the three models, one has to examine the difference in the likelihood ratio statistic for the baseline model (legal variables only) and the models containing legal-statutory, extra-legal predictors and significant extra-legal predictors (see Bachman and Paternoster, 1997). The likelihood ratio statistic for Model I is 367.3475 (8 d.f.) and 191.9160 (21 d.f.) for Model II. The difference between these two likelihood ratio statistics is 175.4315 with 13 degrees of freedom. The critical value of chi-square with 13 degrees of freedom and alpha .05 is 22.362. Because the obtained value from the likelihood ratio statistic (175.4315) is greater than the critical value (22.362), the null hypothesis suggesting that extra-legal factors have no effect is rejected (also see Hosmer and Lemeshow, 1989:31).

A similar value was derived for Model II and Model III (160.8317, d.f.= 12). The critical value of chi-square with 12 degree of freedom and alpha .05 is 21.026. Because the obtained value from the likelihood ratio statistic (160.8317) is greater than the critical value (21.026), the null hypothesis regarding the impact of extra-legal variables is also rejected. Thus, it would appear that Model II is the better of the three models. Further evidence which confirms the better fit of the model can be obtained from the classification table. In Model I and Model III, fifty-seven percent of the cases were correctly classified as waived. However, in Model II, the percent correctly classified as "sentenced as adult" increased to sixty-nine percent.

One other measure of goodness of fit for logistic regression models is pseudo R^2 which is analogous to the R^2 measure in linear regression. Its chief advantage is that the values for this statistic are bounded by 0 and 1 (where it approaches 0 as the quality of fit diminishes and 1 as it improves). Also, it should be noted that there are several drawbacks to using this summary statistic. First, it is not universally accepted or employed¹⁵. Second, it is subject to misinterpretation and it does not take into account the number of independent variables (see Aldrich and Nelson, 1984: p.58-59). Thus, one must be cautious in interpreting the significance of this statistic.

Pseudo R^2 is defined in the following manner:

$$\text{pseudo } R^2 = c/(N+c),$$

where c is the chi-square statistic for the overall fit of the model and N is the total sample size (Aldrich and Nelson, p.57; also see Walsh, 1987:182; Feder, 1995:298). Calculations based on this formula show that

$$\text{pseudo } R^2 = 108.4368/577 + 108.4368$$

with a value of .16¹⁶.

¹⁵

King (1986), for example, suggests that the presumption that there exists an R^2 statistic in logistic regression is a statistical fiction (p.682).

¹⁶

An alternative pseudo R^2 measure has been proposed by Hagle and Mitchell (1992). This measure has the form:

$$R^2 = -2\ln(L_0/L_1)/N - 2\ln(L_0/L_1) = 2LLR/N - 2LLR$$

where L_0 = likelihood value of the null hypothesis, and
 L_1 = likelihood value for the full model.
 Thus, $191.9160/(557 - 191.9160) = .498$

Summary

This analysis indicates that both legal and extra-legal predictors are influential in the decision to sentence a juvenile as an adult. Four significant legal predictors- age, number of charges, death of victim, and recommendation- were significant in Model I and Model III. These data showed that death of victim was a significant predictor of waiver in Model I and Model III. That is, juvenile offenders who committed crimes in which the victim died were more likely to be sentenced as adults compared to other offenders. Given that homicide is the most serious and egregious offense, one should not be surprised that juveniles committing these crimes would be harshly sanctioned by the court. However, In Model II, death of victim did not achieve significance (odds ratio 2.13, $p = .06$).

Two legal-statutory factors, recommendation and threat, achieved significance in the models. It may be suggested that judges closely follow the recommendations made by the Intake/Court Services Unit. The reason may lie in the fact that judges rely on the expertise of this unit to make assessments about the prospects of juvenile offenders to be rehabilitated through the services offered by the juvenile justice system. Consequently, the court sentenced eighteen percent of the juveniles as adults in cases in which a recommendation

A third pseudo R^2 measure was proposed by DeMaris (1992:53), where

$$R^2_L = -2\log L_0 - (-2\log L_1) / -2\log L_0$$

with
 L_0 = log likelihood with constant only, and
 L_1 = log likelihood of full model.

Thus,

$$(300.3528 - 191.9160) / 300.3528 = .36$$

Given that all three measures produced different values, one should heed the admonition of Aldrich and Nelson (1984) and interpret their significance with caution.

for retention in the juvenile system was made and eighty-two percent of the cases in which there was a recommendation for waiver.

Though recommendation did not achieve significance in Model II, one of its components, threat to community, was significant (odds ratio 6.39, $p = .027$). This finding may suggest that judges consider the totality of the recommendation. That is, the court may express an interest in how the Intake/Court Services Unit arrive at its decision because of the possible masking effect exerted by a blanket recommendation. Still, the data showed that in cases where juveniles were considered a threat to the community, seventy-nine percent were sentenced as adults whereas in cases where they were not considered a threat twenty percent were sentenced as adults.

There was one surprisingly significant extra-legal predictor- presiding judge. This finding was unexpected given the fact that the new waiver legislation supposedly removed subjectivity from this arena. Prosecutorial waiver was designed so that objective fact would be the preeminent factors in the decision making process. Subjectivity, it seems, is still an ingrained part of the sentencing process. While the motives of the judges are beyond the scope of this study, one could suggest that their philosophies of justice may play a part in this decision making process.

Chapter 6

Implications of Findings and Conclusions

The purpose of this research was twofold. First, it sought to explain how prosecutorial waiver came about in Michigan. Second, it sought to identify those factors that best predict whether a juvenile offender will be sentenced as a juvenile or adult. That is, the idea behind the “Principle of Offense” was examined to determine if legal factors drive the decision to prosecute and sentence juvenile offenders as adults.

It must be recalled that in 1987, the Michigan House of Representatives debated a 68 bill package which amended the juvenile code and gave prosecutors expanded power to make waiver decisions. The statute changes also amended and revised the criteria for consideration in making waiver decisions. For example, the following criteria were added: whether the offense is part of a repetitive pattern of offenses which would lead to one of the following determinations-- (1) the child is not amenable to treatment, [and] (2) that despite the child’s potential for treatment, the nature of the child’s delinquent behavior is likely to disrupt the rehabilitation of other children in the treatment program (see M.S.A. 27.378(598.4); House Bill No. 5203). In addition, the changes also provided for: (1) whether despite the child’s potential for treatment, the nature of the child’s delinquent behavior is likely to render the child dangerous to the public if released at the age of 19 or 21 and (2) whether the child is more likely to be rehabilitated by the services and facilities available

in adult programs and procedures than in juvenile programs and services. (see M.S.A. 27.378(598.4); House Bill No. 5203).

The impetus for these changes grew out of a concern that the number of hardened, serious juvenile offenders was increasing at both the state and national level. (see House Legislative Analysis Section, H.B. 4731 et al., 8-19-87). Justification for the changes in Michigan were inferred from several sources. Statistics obtained from Juvenile Court Statistics (1988) indicated that for the four year period 1984 to 1988, personal related offenses such as assault and rape increased by 10.2% among juvenile offenders. A continuation in this trend was reflected in a report released from the Office of Juvenile Justice and Delinquency Prevention which suggested that

in 1991 juveniles were responsible for 19% of all violent crimes (i.e., rape, personal robbery, and aggravated and simple assault) reported to the NCVS in which there was a single offender... (1995:47)

Seventeen percent of all serious violent crimes in 1991 were committed by juveniles only... (1995:47)

Many of the legislators who supported changes in the law believed that by providing stiffer punishment and longer sentences, juvenile offenders would be forced to take responsibility for their actions (sponsors for the bills submitted to the Michigan Legislature included Reps. Strand, Van Regenmorter, Leland, Benane, and Smith). There were two overriding points behind the changes: (1) juvenile crime was up and it was also more serious

and (2) juvenile offenders were not doing enough time (see Duranczyk et al., 1988; House Legislative Section, H.B. 4730 et al., 8-19-87; House Legislative Analysis Section, H.B., 4731 et al., 7-26-88). Further, proponents of changes in the waiver statute believed that the current judicial waiver system was too cumbersome, especially where crowded court dockets prevented some juveniles from getting the immediate treatment that they needed. As such, greater flexibility was sought by empowering prosecutors to make waiver decisions (see Duranczyk et al., 1988; House Legislative Analysis Section, H.B. 4730 et al., 8-19-87; House Legislative Analysis Section, H.B. 4731 et al., 7-26-88).

The juvenile codes of Michigan were changed in 1988 in an attempt to “get tough” with juvenile offenders. These changes granted prosecutors the power to make waiver decisions if juvenile offenders met certain criteria— (1) if they were 15 or 16 years old and (2) if they committed one of nine enumerated felony offenses. Significant changes and modifications were once again made to the juvenile statutes in 1996.

Addressing the hypotheses:

The first hypothesis suggested that only the most serious, violent, and chronic juvenile offenders are waived to criminal court. The results from the analysis showed that approximately ninety-eight percent of the juvenile offenders who were waived committed Class I felony offenses, the most serious offenses according to Michigan statutes. These felonies included homicide, armed robbery, csc1, carjacking, and kidnaping. To further

illustrate this point, Table 10 shows the offenses committed by the waived juvenile. One can clearly see that the bulk of the offenses for which these juvenile offenders were waived (98%) were violent, person-felonies. Further, these waived juvenile offenders were charged with very few property offenses so the belief that more felony property offenders are waived than felony person offenders is not borne out here (also see Kinder, Veneziano, Fichter, and Azuma, 1995).

Table 10
Summary of Total Offenses Committed by Waived Juveniles

Felony Offense Category	Number of Crimes
Homicide/Attempted Murder/Conspiracy	206
Assault Offenses	205
Robbery	223
Firearms	243
CSC Offenses	65
Carjacking/UDAA	50
Property, including Arson	12
Kidnapping	5
Drugs	2
Other felonies	2
Total (N)	1013

One additional manner in which one can determine whether the most serious and violent offenders are waived is to compare the offenses of the juveniles who were retained in the juvenile court versus those who were sentenced as adults. This issue is specifically addressed in hypothesis 3 which postulates that juveniles who commit Class I felonies are more likely to be waived than juveniles who commit other types of offenses. Table 11 shows the number of waived offenders who were sentenced as adults as well as waived offenders who were retained in the juvenile justice system. These data show that fifty-two percent of juveniles who committed homicide-related offenses were sentenced as adults. This finding is in keeping with the logistic regression models which suggested that offenders faced a higher likelihood of being sentenced as adults if the victim died (also see Eigen, 1981). These data also show that fifteen percent of juveniles who committed armed robbery and thirty-three percent of juveniles who committed CSC offenses were sentenced as adults. Overall, thirty-one percent of the offenders were sentenced as adults. Thus, one can make the argument that serious and violent juvenile offenders are properly targeted by the waiver law.

The issue of age and the likelihood of being waived was addressed in hypothesis two. Specifically this hypothesis suggested that juvenile offenders who are 16 or 17 years old at the time of the instant offense are more likely to be waived than offenders who are 15 years of age. These data showed that there was a significant relationship between age and sentencing at the bivariate level ($.1672, p = .001$). For example, twenty-two percent of 15

Table 11**Summary Table of Offenses Committed by Waived and Retained Juvenile Offenders**

Offense- Most Serious	Waived- Sentenced as Adult	Retained- Sentenced as Juvenile
Homicide	93	85
Attempted Murder	0	1
Armed Robbery	24	135
Unarmed Robbery	0	3
Assault	37	76
CSC	18	40
Carjacking	2	28
Firearms Violation	0	4
Drugs	1	1
Total (N)	175	383

year old youth were sentenced as adults, thirty-seven percent of 16 year old youth were sentenced as adults, and thirty-eight percent of 17 year old youth were sentenced as adults (also see Fagan et al., 1987; Lee, 1994; Kinder et al., 1995). This relationship was confirmed in the logistic regression models which showed that age was a significant predictor of waiver. All three logistic regression models showed that older juvenile offenders (16 and 17) were significantly more likely to be sentenced as adults than younger offenders (15 years old).

The idea behind the “Principle of Offense” was addressed in hypothesis four.

Specifically, this hypothesis suggested that legal variables were more important in the waiver decision than extra-legal variables. The data showed that legal and legal-statutory predictors were more influential in the sentencing decision. Eleven of fifteen legal/legal-statutory predictors were significant at the bivariate level. Among these were instant offense, death of victim, number of charges, prior felonies, and age.

When the relationships between the legal/legal-statutory predictors and waiver were examined in the logistic regression models, age of offender, recommendation, death of victim, number of charges, and number of prior felonies continued to be remain very influential and significant predictors of the sentencing decision. Thus, one can conclude that the "Principle of Offense" is adhered to by prosecutors. That is, elements of the offense are the driving force behind the decision to prosecute juveniles as adults. For example, race, which has been suggested by some researchers as a contributor to the waiver decision (see Keiter, 1973; Fagan et al, 1987, Guttman, 1995) was not influential in this sample of waived juvenile offenders.

Of the twenty-seven predictors examined at the bivariate level, there was only one significant extra-legal predictor of waiver, presiding judge. These data showed that there was a significant relationship between the presiding judge and sentencing. It was reasoned that judges with longer tenure on the bench were less likely to sentence juveniles as adults. The logistic regression models showed that judges with the most time on the bench actually sentenced the fewest number of juvenile offenders as adults. This relationship can be seen

in Table 12. This table implicitly suggests that the philosophies of justice held by these judges affects the waiver decision.

Table 12
Relationship Between Presiding Judge and Sentencing

	Retained in Juvenile Court	Sentenced as Adult
Judges A - (178 cases)	57%	43%
Judges B- (197 cases)	64%	36%
Judge C- (181 cases)	86%	14%

To further illustrate this point, a comparison was made between the case dispositions for the judges. The data in table 13 show some interesting relationships. First, the vast majority of waived offenders were retained in the juvenile justice system. Sixty-nine percent of the juvenile offenders were retained in the juvenile court. Second, the judges rarely utilized alternatives to incarceration.

Table 13**Summary of Dispositions by Judge**

Length of Sentence	Judges A	Judges B	Judge C
DSS/FIA	102	127	155
Probation	6	1	2
Time Served	0	0	1
Boot camp	0	1	1
6 mon to 10 yrs	14	4	5
11 yrs to 19 yrs	10	14	5
20 yrs to 29 yrs	8	17	9
30 yrs to 50 yrs	15	16	3
More than 50 yrs	6	5	0
Life	17	12	0
Total (N)	178	197	181

Only two waived offenders were sentenced to boot camp while nine were placed on probation under supervision of the Department of Corrections. Of those judges who imposed incarceration, Judge C clearly was not as punitive as Judges A or Judges B. This observation is supported by the bivariate correlations which showed a significant relationship between the judge and sentencing. In addition, the odds ratio from the three logistic regression models support this conclusion. That is, waived juvenile offenders who appear before Judges A or Judges B have a greater likelihood of being sentenced as adults than juveniles who appear before Judge C. Thus, these data suggest that Judge C may be more rehabilitation

oriented whereas, Judges A and Judges B are more punitive or punishment oriented. However, any question about the justice philosophy of judges and its effect on their sentencing decisions cannot be definitively answered by this data. Still, the observations derived from this data are congruent with research which suggests that the sentencing decision of judges cannot be viewed in isolation but must take into account other courtroom processes and influences (see Podkopacz and Feld, 1995; Podkopacz, 1996).

The relevance of prior offense history was addressed in hypothesis 5. This hypothesis suggested that prior offense history of waived juvenile offenders strongly influences the final case disposition. The research literature also suggests that juveniles' prior offenses play a significant role in the waiver decision (Lee, 1994; Poulos and Orchowsky, 1994; Podkopacz and Feld, 1995). The data showed that there was a significant relationship between prior offense history and waiver. Specifically, the bivariate correlations showed that there was a significant relationship (.00) between the number of prior felonies and sentencing as an adult. However, prior offense history was not a significant predictor in the three logistic regression models. This finding contradicts assertions found in the research literature about the influence of this variable. For example, Poulos and Orchowsky (1994) found that "... the more prior felony property adjudications a juvenile had, the greater likelihood his or her of being transferred" (p.13). No such relationship was found in this data. Thus, this hypothesis was not supported by the data.

Theoretical Implications:

The guiding philosophy of the "Principle of Offense" is that legal criteria provide objective facts which are to be used as guidelines by both prosecutors and judges in dispensing justice. That is, factors pertinent to the offense are to be the basis upon which one makes decisions regarding the culpability of juvenile offenders. As such, the seriousness of the offense and the harm it caused should be the preeminent concern of the justice system. This principle, in theory, removes subjectivity from the legal arena and routinizes decision making so that like offenses are treated the same. This principle also restrains discretion so that punishment is dispensed in a fair and consistent manner.

David Matza (1964) proposes five components to the "Principle of Offense" which consist of: (1) cognizance, (2) consistency, (3) competence, (4) commensurability, and (5) comparison. Two of these components- consistency and commensurability- have the most significance of this research. Consistency of punishment engenders the notion that similar dispositions should be awarded for similar crimes. To ensure that consistency of dispositions can in fact occur, the "Principle of Offense" stresses the importance of legal criteria in the decision making process.

In this research, an attempt was made to assess the impact of legal criteria on the waiver decision. These legal criteria included age of offender, offense, number of accomplices, number of prior felonies, number of charges, death of victim, and recommendation. Four of these criteria proved to be very strong predictors of the waiver

decision. The logistic regression models showed that the strongest of these predictors was death of victim. That is, offenders who committed offenses in which the victim died faced the highest likelihood of being sentenced as an adult. In fact, fifty-two percent of juveniles who committed offenses in which the victim died were sentenced as adults. In this respect, one could make the argument that there is a degree of consistency in punishment for those who commit homicides. However, the same degree of consistency does not occur with respect to other offenses. For example, only 15% of armed robberies, 33% of CSC offenses, and 33% of assaults result in adult sentences. Thus, the disparity in punishment between those sentenced as adults for these offenses compared to those who are retained in the juvenile court is indicative of arbitrary processes that still operate at some level in the court system.

Commensurability is premised upon the notion that punishment should fit the crime. That is, the punishment that is meted out should be proportionate in nature to the damage caused by the crime. Commensurability also relies upon legal factors as determinants of the appropriateness of punishment. To illustrate this point, consider table 14 which summarizes various offense categories and the punishments meted out for them. One can clearly see that the harshest punishment was reserved for offenders who committed homicide offenses. Given that homicide is the most serious offense under the penal code, the punishments for this offense do reflect a degree of commensurability that is unseen in the other offense categories.

Table 14**Summary Table of Offenses and Dispositions**

Disposition	General Offense Category						
	Homicide	Assault	CSC	Robbery	Carjacking	Firearms	Drugs
DSS/FIA	84	87	41	137	28	4	1
Probation	1	3	5	0	0	0	0
Time served	0	1	0	0	0	0	0
Boot camp	0	1	0	1	0	0	0
6 mon to 10 yrs	1	9	0	13	0	0	0
11 yrs to 19 yrs	14	7	2	6	0	0	0
20 yrs to 29 yrs	18	10	2	2	2	0	0
30 yrs to 50 yrs	22	5	7	1	0	0	0
more than 50 yrs	8	2	1	0	0	0	0
Life	27	0	0	1	0	0	1
Totals	175	125	58	161	30	4	2

From the results of this study, death of victim does seem to be the strongest of predictor of waiver. When the other legal factors are considered, one may indeed conclude that the "Principle of Offense" is observed by prosecutors and even some judges. Still, one cannot overlook the fact that the "Principle of Offense" holds true for the prosecutor's office. Some of the judges do not seem to be bound by this philosophy. Instead, some still seem to prefer an individualized style of justice or what Matza refers to as "kadi justice"(1964, p. 114-115). Specifically, Judge #3, whose dispositions seems to reflect a

rehabilitation orientation, appears to have a philosophy that is closely akin to individualized justice. However, the true nature of this philosophy cannot be explored with this data.

Limitations:

There are four primary limitations of this study. First, the data was collected from only one county in Michigan. Even though waiver to adult court in this county account for approximately 52% of the state total, the generalizations that from can be drawn from the results are still primarily limited to that geographical area. That is, legal and court processes that occur in this county may not be representative of patterns that occur in other counties in Michigan or other states¹⁷.

Second, the findings may be limited by the fact that there was no comparison group. That is, this study only examined juvenile offenders who were waived. It may have been more informative to examine the differences that may have existed between offenders who were waived and a comparable group of offenders that the prosecutor declined to prosecute

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The need for comparative research on prosecutorial waiver has also been underscored by Howell (1997). He makes the observation that definitive answers cannot be obtained from research conducted in only one jurisdiction. Further, he notes that

studies conducted in only one state do not provide an adequate basis for drawing conclusions regarding the efficacy of prosecutorial direct file (or any other transfer method). Rather, these results suggest the need to study the results of prosecutorial direct file in other jurisdictions, for the purpose of comparison. (1997:102)

In a manner of speaking, the waiver process in one jurisdiction is really a snapshot of what may be occurring at only one point in time and may truly not be indicative of how prosecutorial waiver operates across state lines. The political culture, or even more intangible factors, may affect the implementation and operation of this particular waiver mechanism.

as adults. In this manner, one would be able to determine whether differences among the offenders in terms of the current offense and prior offense history are really important predictors of waiver to adult court as suggested by the research literature. Future research on this topic should endeavor to develop appropriate comparison groups to ensure: (1) the possibility of selective prosecution (racial bias) as a predictor of waiver is ruled out and (2) a better understanding of the screening process and threshold requirements used by prosecutors for selection of cases for prosecution¹⁸.

Another limitation of this study concerns the lack of information about judges and their justice philosophies. This study began with the expectation that the judges involved with waiver cases could provide insight into their decision making processes. That is, it was hoped that the judges would provide information about the factors that they believe are important in waiver decisions and also provide information about their justice philosophy given the key role that they play in determining the fate of waived juvenile offenders. Unfortunately, a very poor response rate from the judges severely limited any useful information that could be obtained pertinent to this issue (7 of 32 judges responded to the survey). It would be a worthwhile endeavor for future research to continue to pursue inquiry

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Fagan and Deschenes (1990) call attention to a similar problem. They note that selection bias has been pervasive in the research on waiver and it can be traced to the population from which the samples are drawn. And the lack of controls which adequately account for the seriousness of current and past offenses (p.328). In addition, they note that the samples used in waiver research suffer from a "channeling effect" wherein researchers rely on juvenile offenders who "... were purposively channeled from juvenile court to adult jurisdictions..." (1990:328)

into the judges' role in the waiver sentencing process especially since findings from this research suggest a "judge effect." That is, offenders who appear before certain judges experience a greater likelihood of being sentenced as adults than offenders who appear before other judges. Only closer examination of the judges themselves will answer questions related to this issue.

A final limitation of this study concerns missing data. Though the level of information gathered from records maintained by the prosecutor's office juvenile court, and FIA was good in many respects, there was still a problem with missing data for some of the variables. In some cases, information was missing from 14% to 22% of the cases. Missing data of this magnitude can bias the results and make any conclusions tentative. Part of the problem can be attributed to the manner in which the information was collected by the agencies. Over the nine year time span for this study, the data collection instruments used by these agencies changed. As these changes occurred, certain pieces of information were no longer collected or were collected in a different manner. As such, it became difficult to disentangle some of the information from the pertinent records. Maxfield and Babbie's (1995) admonition that the goals of agencies may not coincide with those of the researcher was especially pertinent here given that some of the agencies simply did not collect information on some of the variables that the researcher believed to be influential in the waiver decision making process. Any future research endeavors of this type would be well suited to use multiple sources of information as a means of offsetting possible shortcomings

in one agency's records.

Discussion

This study attempted to answer some of the questions about prosecutorial waiver that, to date, remain unaddressed because of the sparse nature of research in this area. While a few studies have examined prosecutorial waiver at the state level (see Gillepsie and Norman, 1984; Bishop and Frazier, 1991; Bishop, Frazier, Lanza-Kaduce, and Winner, 1996), there are no national studies which have examined this issue in great detail. This study, while not national in scope, does make a contribution to the research in that it confirms prior research that suggests that legal factors, the "Principle of Offense," guide the decision of prosecutors to waive juvenile offenders to adult court.

This research found that legal offense and legal-statutory factors such as age, number of charges, death of victim, and recommendation are very influential in the waiver decision making process. For example, this research found that juvenile offenders who are sixteen or seventeen years of age face a higher likelihood of waiver and sentencing as adults than juvenile offenders who are fifteen years of age. As previously pointed out, sixteen and seventeen year old youth are two times more likely than fifteen year old youth to be waived and sentenced as adults. Thus, it appears that prosecutorial waiver is primarily targeted at offenders who are approaching the jurisdictional age limit of the juvenile court.

One implication of this finding concerns the current trend among states to reduce the

age at which juveniles can be prosecuted as adults. In the last five years, several states have lowered the jurisdictional age for prosecution as adults. Michigan, for example, lowered its jurisdictional age limit from fifteen to fourteen in 1997. In a very informative commentary on research on waiver, Feld (1987) pointed out a plethora of changes that were being undertaken in numerous states relative to jurisdictional age requirements and offenses necessary to trigger waiver. More recently, Fritsch and Hemmens (1995) reviewed changes in waiver laws and noted that as many as 22 states modified the age at which juveniles could be prosecuted as adults. In all cases, the jurisdictional age was changed to allow younger offenders to be tried as adults. Montana, for example, modified its waiver law to allow children as young as twelve to be prosecuted as adults¹⁹.

Though the current age in Michigan has been set at fifteen, this research showed that of the 207 waived youth in the sample, only 44 were sentenced as adults. However, 125 offenders who were sixteen years old ($n = 349$) and 6 offenders who were seventeen years old youth ($n = 16$) were similarly sentenced as adults. One can clearly see that it is older youths who are primarily sentenced as adults. As a result, one may question why the jurisdictional age for prosecution is continually lowered. If the answer is to ensure that all

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In one of the first commentaries on age as a factor pertinent to the prosecutorial waiver decision, Mylniec (1976) noted that some states had no age requirements at all. For instance, he pointed out that no age requirements existed in Indiana and Pennsylvania (p.35). He also called attention to the fact that many states enacted age requirements that were linked to certain felony offenses. For example, he noted that in Delaware, a juvenile offender must be at least 16 years of age to be prosecuted for felony offenses other than murder, rape, or kidnapping (1976:36).

serious and violent juvenile offenders are punished commensurate to the crimes that they commit, then, lowering the jurisdictional age is without merit. If, however, the purpose is to hold juveniles accountable for their actions, then, prosecuting such youths is a valid way to set boundaries for impermissible conduct. That is, the “process is the punishment.”

One other very important finding concerns the influence of the judge. This research found there was a “judge effect.” That is, juvenile offenders were more likely to be sentenced as adults depending on the judge who heard the case. This finding is interesting for several reasons. First, the goal of prosecutorial waiver was to remove discretion, albeit not total removal, from judges so that their decisions would be consistent, fair, and based only on the facts of the case. This goal does not seem to have been met in the county studied in this research. Though legal factors bring the case before the judges, subjectivity still seem to temper how these legal facts are interpreted. Podkopacz (1996) observed a “judge effect” with respect to the request for reports and evaluations in her dissertation research. She found that

... Judge #1 requested additional services to add to his confidence to retain a youth whereas the other judges requested services to bolster their confidence to refer a youth. When Judge #1 requested these additional services he retained a higher percentage of youth than when he did not request the services, while the other judges as a group retained youth at a higher percentage when they did not request additional reports. These findings again point to the obvious difference in judicial philosophy. (p. 104)

A similar pattern was discerned among the judges in this study. Judge #3 sentenced

waived juveniles as adults at a much lower rate than his contemporaries. In addition, though Judge #3 singularly handled one-third of the waiver cases, he sentenced 86% of the waived youth as juveniles. This finding suggests that the justice philosophy of Judge C is very different from that of either Judges A or Judges B.

Second, this finding suggests that there still exists tension between judges and the goals espoused by prosecutorial waiver. Whereas the chief goal of prosecutorial waiver seems to be primarily punishment, the goals of some of the judges are treatment and rehabilitation. That such tension exists is not surprising given the ongoing debate between supporters of abolition of the juvenile court and those who support the goals and ideals of the court. Scholars such as Braithewaite and Shore (1981), Dawson (1990), Federle (1990), Ainsworth (1991), and Feld (1997) have all commented on abolition of the juvenile court. They cite numerous factors inclusive of: (1) the juvenile court punishes in the name of treatment (see Braithewaite and Shore, 1981), (2) children of today's society were not envisioned when the juvenile court was originally conceptualized (Ainsworth, 1991:40), and (3) all children accused of violating the law will be guaranteed the same constitutional and statutory protections given to adults (Federle, 1990:49)²⁰.

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Dawson (1990) notes that there are two arguments in favor of abolition of the juvenile court. First, he suggests that there would be resource savings in terms of tighter integration of services and reduction in duplicating services (p.142). Second, he suggests that "frictional costs" would be reduced in that there would no longer be costs attached to the transfer process. He writes that the results of a transfer decision is merely to place the case in criminal court. It is not a trial. All of the trial and pretrial steps in the criminal court remain yet to be taken. A merger of the systems would totally eliminate the need for a transfer mechanism of any kind. The resource

On the other side of this debate are those supporters of the juvenile court who believe in its philosophy and usefulness. Catherine Guttman (1995), for example, believes that the frenzy generated by get-tough policies have drowned out the voices of those who need help the most, the juveniles themselves. She notes that waiver or transfer is ill-conceived and inappropriate for the vast majority of juvenile offenders. Moreover, she observes that

those who seek to abolish the juvenile justice system ignore the realities that children face. Children today are not radically different than they were a century ago. Rather, society itself had changed...

The principle of individual treatment guided the evolution of the juvenile justice system. A cogent policy for treating and preventing juvenile crime must begin by listening to the stories of children. The juvenile system is not only capable of handling serious juvenile cases, from a policy standpoint it must do so. Only the juvenile justice system offers prospects for rehabilitating youths and reintegrating them into society. (p.515-516)

In the spirit of Guttman, one judge in this study in particular seems closely aligned with the phrase “solicitous care of the juvenile court.” That is, Judge C seems to have a closely held belief that waived youths can still be helped by the juvenile court if the proper resources and treatments can be delivered to them. Such a belief is contrary to the precepts of prosecutorial waiver²¹.

savings could be substantial. (1990:143; also see Burke, 1995:1028)

Irrespective of these arguments, Dawson (1990) still indicates that, on balance, the juvenile court should not be abolished. The losses attached to such a move would greatly outweigh any potential gains.

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In fact, the disparity in sentencing rates among judges may confirm a point made by Feld (1989) when he suggested that the individual philosophies of judges may play a greater role as a determinate of waiver than the offense itself. These data from this research showed that the justice philosophy of Judge C was clearly at odds with those of Judges A and B. Thus, it may not be so surprising that Judge C waived fewer juvenile offenders than any of the other judges.

Further exploration of the beliefs of judges and their justice philosophy could not be undertaken in this study due to the high level non-response to the survey. Nonetheless, it would be a worthwhile endeavor for future research to continue to explore this area of inquiry. In particular it would be useful if future research could determine if judges' belief systems and philosophies affect the disposition of cases before them.

Taken as a whole, prosecutorial waiver does not seem to have had the impact that was envisioned by the legislators. First, only approximately one-third of juveniles who are waived are actually sentenced as adults. Second, though more than half of offenders who commit homicide-related offenses are sentenced as adults, other offenders who commit felonies such as robbery CSC offenses (criminal sexual conduct), and carjacking fare much better. That is, waived juvenile offenders who commit these offenses are sentenced as adults at much lower rates (15% for robbery and 33% for CSC offenses). These findings are not suggestive that more vigorous prosecution of juveniles offenders would solve the crime problem, however, they point to a need to reevaluate the purpose behind waiver itself given that the number of offenders who are actually waived and sentenced as adults is so small. Part of any such reevaluation requires that one address the goals of prosecutorial waiver (see Frazier, 1991:80-81).

Fourteen states and the District of Columbia currently use prosecutorial waiver. As Appendix 4 points out, there are remarkable similarities among the states that use prosecutorial waiver. For example, the majority of states using this waiver mechanism have

established a minimum age of fourteen (14) for criminal prosecution as an adult. This cutoff seems to be in line with studies that suggest that children cannot form the requisite criminal intent necessary under criminal law (see Fox, 1970; McCarthy, 1977; Walkover, 1984). Appendix 4 also shows that several states allow criminal prosecution before the child attains the age of fourteen (14). In fact, one state allows prosecution to commence at age 10 (South Dakota) and another has no age restriction at all (Nebraska). One could suggest that states with such lenient age requirements have completely removed the idea of adolescence or youth from consideration as a mitigating factor in prosecutions.

Another area of consistency among the states using prosecutorial waiver is in the use of specific criteria (factors) to be considered in arriving at the waiver decision. All of the states, in some form, provide for consideration of the following factors: (1) nature of offense, (2) prior record of offending, (3) mental and physical maturity, (4) prospects for rehabilitation, and (5) protection and safety of the community. What is most striking is the fact that no one individual factor is given supremacy over the others. They must all be used and construed in such a way that a complete picture is formed of the youth. For the most part, the weight given to these criteria (factors) rests within the discretionary domain of the judge. It should be noted that it is here that tensions between judges and prosecutors maybe exacerbated given that some judges may choose to emphasize prospects for rehabilitation and mental and physical maturity over more pertinent legal factors. It seems that competing goals are built into the waiver statutes. For example Alabama, Arkansas, Michigan, and

Utah grant judges wide latitude in how much weight they assign to the factors delineated in the statute. While the judges do not substitute their judgment for that of the prosecutors, there are few constraints which prevent them from reaching conclusions that may be at odds with case presented by the prosecution.

It is a little troubling though that concepts as innocuous and vague as (1) demeanor, (2) pattern of living, and (3) motivation are included among these criteria. Even more, several states provide for “all other relevant factors” to be considered during the course of the waiver process. Conferring such wide latitude upon the courts and prosecutors could seriously disadvantage the juvenile’s defense. Thus, it seems that prosecutorial waiver statutes have not decreased subjectivity but may have in fact added to it²².

Research on prosecutorial waiver, and waiver in general, could benefit from a detailed analysis of these statutes. While there is a great deal of agreement among the states relative to the crimes that trigger prosecutorial waiver, there is also some disagreement concerning the emphasis that should be placed on the criteria that must be considered by both judges and prosecutors. Not until such disagreements are resolved will one truly be able to say that prosecutorial works as envisioned.

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Though unintended, such a provision may allow extra-legal factors to be introduced into the waiver decision making process. That is, factors which have no legal relevance, such as race of victim, may become part of the equation used to determine whether to invoke prosecutorial waiver. One other area of consistency among states using prosecutorial waiver, and cause of possible concern, is the emphasis that is placed on protection of the community. Several states explicitly designate the protection and interests of the community as one of the criteria to be considered in the waiver decision (Alabama, Colorado, Georgia, Florida, Louisiana, Maryland, Michigan, Mississippi, Nebraska, South Dakota, Wyoming).

Appendices

Appendix 1

Appendix 1

Empirical Studies Exploring the Waiver Issue

<u>Researcher</u>	<u>Year</u>	<u>Location</u>	<u>Sample Size</u>	<u>Research Question</u>	<u>Method</u>
Keiter	1973	Cook County	67 cases	exercise of discretion	Desc.
Eigen	1981	Philadelphia	63 cases	factors affecting waiver differences in waived and retained juveniles	Desc.
Gillepsie and Norman	1984	Utah	132 cases	frequency of waiver use	Desc.
Thomas and Bilchik	1985	Florida	844 cases	frequency of waiver use	Desc.
Sagatun et al.	1985	California	430 cases	outcomes for waived and retained juveniles	Loglin.
Nimick et al.	1986	Arizona, California Hawaii Kansas Mississippi Pennsylvania Tennessee Iowa Virginia	2335 cases	frequency of waiver use	Desc.
Norman and Gillepsie	1986	Utah	45 cases	effect of policy change	Desc.
Fagan et al.	1987	Boston, Detroit Newark Phoenix	n1=225 cases n2=201 cases	effect of race on waiver decision	Desc.
Barnes and Franz	1989	California	206 cases	effects of legal and extra-legal variables on waiver decision juveniles tried as adults	Discrim.
Feld	1989	Minnesota	436 cases	legal and extra-legal factors on waiver	Regr.

Champion	1989	Tennessee, Virginia Mississippi	2818 cases	types of punishments imposed, frequency of of waiver use	Desc.
Fagan and Deschenes	1990	Boston Detroit Newark Phoenix	201 cases	criteria that guide waiver decision	Desc.
Fagan	1990	Boston Memphis Newark Detroit Phoenix	201 cases	determinants of waiver	Desc.
*Houghtalin and Mays	1991	New Mexico	49 cases	outcomes of juveniles tried as adults	Desc.
*Bishop and Frazier	1991	Florida	583 cases 20 judicial circuits	waiver trends	Desc. Intvw.
Frazier	1991	Florida		identification and description of factors that influence direct file	Desc.
*Mays and Houghtalin	1992	New Mexico	49 cases	outcomes for juveniles tried as adults	Desc.
Dawson	1992	Texas	112 cases	influence of Kent criteria on waiver decision	Desc.
Singer	1993	New York	103 cases	legal and extra-legal factors on waiver	Logistic
Sanborn	1994	Northeast	100 cases	perspectives on waiver and the manner, reason	Intvw.
Poulos and Orchowsky	1994	Virginia	364 cases	legal and extra-legal factors affecting waiver	Logistic
Jensen and Metsger	1994	Montana Wyoming Idaho		deterrent effect of Idaho legislative statute	T i m e - series

Lee	1994	Arizona (Maricopa County)	567 cases	factors that determine waiver	Logistic
Stalans and Henry	1994	Georgia	805 cases	identification of public preferences and legislative waiver	Intvw.
Podkopacz and Feld	1995	Minnesota	330 cases	identification of offender/offense variables influencing transfer	Multiple/ Logistic Regression
Podkopacz and Feld	1996	Minnesota	330 cases	determinants of the waiver decision	Logistic
*Bishop, Frazier, Lanza-Kaduce, and Winner	1996	Florida	2378 cases	effect of waiver on recidivism	McNemar's Test

* denotes research studies which examined prosecutorial waiver

Appendix 2

Appendix 2

Strengths and Weakness of Waiver Mechanisms

Legislative Waiver:

- | | |
|--------------------|---|
| Strengths- | constrains discretion
improves accountability
reduces the punishment gap
confers automatic adulthood |
| Weaknesses- | signals a repudiation of juvenile court philosophy
denies juveniles rehabilitation
may not reflect policy goals of the legislature
prosecutorial overreaching/abuse
exclusion of all serious offenders from juvenile court
rather than chronic offenders
provides for only worst case scenarios |

Prosecutorial Waiver:

- | | |
|--------------------|--|
| Strengths- | protection of the interests of the child and society
adds beneficial information to the proceedings
serves as an advocate for society |
| Weaknesses- | lack of procedural safeguards
demonstrates a shift in juvenile justice policy
non-appealable decisions
political nature of the prosecutors' office
does not look at amenability issues |

Judicial Waiver:

- | | |
|--------------------|--|
| Strengths- | offender-oriented
protects due process rights
permits individualized justice |
| Weaknesses- | low incidence
lack of standards: abuse of discretion
race influences
subjectivity
ultimacy
inconsistency of tenets
unreliable prediction tools |

Appendix 3

Appendix 3

Survey of Judges and Prosecutors

Perceptions of the Juvenile Court

1. In your opinion, is the juvenile court too lenient on serious and violent juvenile offenders? (please indicate yes or no)

Yes

—

No

—

2. Should juvenile court sanctions become tougher in order to deal with serious, violent, and chronic juvenile offenders? (please indicate yes or no)

Yes

—

No

—

3. Should the juvenile court shift its focus from rehabilitation and focus more on punishment for those juveniles who are serious, chronic, and violent offenders? (please indicate yes or no)

Yes

—

No

—

a. What options should be available to deal with these juvenile offenders?

	Yes	No
Limit the court's jurisdiction over certain serious, felony offenses	—	—
Adopt strict juvenile habitual offender statutes	—	—
Increase the charging authority of prosecutors	—	—
Impose mandatory minimum sentences for felony offenses	—	—
Authorize juvenile court to impose determinate sentences for specific felony offenses	—	—
Authorize juvenile court to impose longer sentences for serious, felony offenses	—	—
Extend juvenile court jurisdiction over serious, felony offenders to a later age than presently allowed under law	—	—
Other: _____	—	—
Other: _____	—	—

b. What benefits do you think would be obtained from adopting the strategies suggested in question 3a?

	Yes	No
Increased deterrence	—	—
Protection of community welfare/safety	—	—
Responsibility/Accountability for actions	—	—
Reduction in recidivism	—	—
Reduction of juvenile court case loads	—	—
Save scarce juvenile court resources	—	—
Other: _____	—	—
Other: _____	—	—

c. Would abolition of the juvenile court achieve the same objectives of making juvenile offenders more responsible/accountable for their actions?

Yes	No
—	—

Why?

Next, I would like to ask a few questions about the different types of waiver mechanisms- judicial and prosecutorial- that are available in your jurisdiction.

4. How many waiver motions are typically made during a year’s time in your office/court?

	<u>Prosecutorial (discretionary) waiver motions</u>	<u>Judicial (traditional) waiver motions</u>
1996	_____	_____
1995	_____	_____
1994	_____	_____
1993	_____	_____
1992	_____	_____

5. How many juvenile offenders are typically waived during a year's time by your office/court? (if unsure please give an estimate)

	<u>Prosecutorial (discretionary) waiver</u>	<u>Judicial (traditional) waiver</u>
1996	_____	_____
1995	_____	_____
1994	_____	_____
1993	_____	_____
1992	_____	_____

6. Approximately how many juvenile offenders were judicially waived (traditional) by your court or office during the two years which preceded the change in the waiver provisions in 1988?. That is, how many juveniles were waived during this period before the power of prosecutors was expanded to make waiver decisions? (If an exact number is not known, please give an estimate)

1987 _____ 1986 _____

Criteria for Waiver Decisions

7. Should there be a minimum age restriction on who could be waived to criminal court? (please indicate yes or no)

Yes	No
_____	_____

If yes, what should this minimum age be? Why?

8. How would you rate the following factors in terms of their significance in the waiver decision process.

	(1) Very Important	(2) Somewhat Important	(3) Unsure	(4) Little Importance	(5) Not at all Important
Seriousness of offense	_____	_____	_____	_____	_____
Chronological age	_____	_____	_____	_____	_____
Mental maturity/ Sophistication	_____	_____	_____	_____	_____
Mental Health	_____	_____	_____	_____	_____
Prior offense history	_____	_____	_____	_____	_____
Safety of community	_____	_____	_____	_____	_____
Use of gun in commission of the crime	_____	_____	_____	_____	_____
Brutality of offense	_____	_____	_____	_____	_____
Adult/Juvenile Accomplices	_____	_____	_____	_____	_____
Treatment resources available	_____	_____	_____	_____	_____
Prior commitments	_____	_____	_____	_____	_____
Amenability to treatment	_____	_____	_____	_____	_____
Member of a gang	_____	_____	_____	_____	_____
Pattern of living	_____	_____	_____	_____	_____

9. What kind of predictors does your office/court use when trying to assess the “dangerousness” of a juvenile offender? Please check the appropriate response by indicating “yes” or “no”

Predictors of dangerousness

	Yes	No
degree of harmfulness of the conduct	—	—
extent of the offender’s culpability	—	—
known history of violence	—	—
referral/adjudication for four or more offenses	—	—
known history of fighting behavior	—	—
poor institutional adjustment	—	—
sociopathy	—	—

10. What effect/impact does the juvenile offender’s prior record have on disposition decisions in your office/court? Indicate your level of agreement or disagreement with the items listed below.

	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
No effect	—	—	—	—	—
Likelihood of dismissal of charges	—	—	—	—	—
Chances for bail/ pre-trial detention	—	—	—	—	—
Chances for probation	—	—	—	—	—
Chances for plea bargain agreements	—	—	—	—	—
Final sentence severity	—	—	—	—	—

11. Are there formal policies or guidelines that you consider when making the decision to waive juveniles to criminal court?

	Yes	No
Kent criteria	—	—
State statute/directives	—	—
Other: _____	—	—
Other: _____	—	—

12. Are the criteria found within these policies and guidelines too restrictive?

Yes	No
—	—

Why?

Treatment Issues

13. Please indicate your level of agreement or disagreement with the following statements:

	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
Rehabilitation and treatment are necessary parts of the juvenile justice process. _____	_____	_____	_____	_____	_____
Punishment and treatment cannot coexist within the juvenile justice system. _____	_____	_____	_____	_____	_____
Protection of the community is more important than treatment of juvenile offenders. _____	_____	_____	_____	_____	_____
Rehabilitation of serious, violent, and chronic offenders cannot occur within existing programs in the juvenile justice system. _____	_____	_____	_____	_____	_____
The attempted rehabilitation and treatment of violent and chronic juvenile offenders wastes scarce juvenile court resources. _____	_____	_____	_____	_____	_____
Violent and chronic juvenile offenders must be separated from juvenile offenders who are salvageable. _____	_____	_____	_____	_____	_____
Treatment programs should be specifically geared toward first and second-time juvenile offenders _____	_____	_____	_____	_____	_____

There are no programs within
the juvenile justice system
that have long term effects
on juveniles' behavior. _____

14. What should be the role of juvenile court judges or prosecutors in assessing the treatment needs of juvenile offenders who face the possibility of waiver to criminal court?

	Yes	No
Fact-finder	_____	_____
Clinician	_____	_____
Other:	_____	_____
Other:	_____	_____

15. Does the availability of treatment programs play a role in your decision to waive juvenile offenders to criminal court? (please indicate yes or no)

Yes	No
_____	_____

If yes, what type of treatment programs or resources do you consider when making this decision?

	Yes	No
Psychological/Psychiatric counseling services	_____	_____
Medical services	_____	_____
Substance abuse treatment	_____	_____
Academic/Education	_____	_____
Vocational/Technical	_____	_____
Trained personnel	_____	_____
Other:	_____	_____
Other:	_____	_____

16. Are there uniform standards or guidelines regarding treatment issues used by your office/court as they relate to the likelihood that juvenile offenders will be waived to criminal court?

Yes

No

—

—

If yes, what are these standards?

17. What considerations or criteria are used when trying to establish a juvenile's "amenability to treatment"? Please indicate your level of agreement or disagreement with the use of the criteria indicated below when making a decision to waive a juvenile to criminal court.

Criteria	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
Age	—	—	—	—	—
Mental maturity/ Sophistication	—	—	—	—	—
Severity of offense	—	—	—	—	—
Offense history	—	—	—	—	—
Sociopathic personality characteristics	—	—	—	—	—
Family/Community					
Nature of effective behavioral controls	—	—	—	—	—
Nature of peer selection	—	—	—	—	—
Nature and quality of coping behaviors	—	—	—	—	—

Character of the youthRemorse for the offense
and for the victim _____Conscious and moral
development _____Malleability, or rigidity,
of juvenile's personal-
ity _____Development of personal
responsibility for the
offense committed _____Development of empathy/
ability to put oneself in the
"shoes of the victim" _____Nature and quality of
problem-solving skills _____**Treatment prognosis**Available services
and facilities _____

Prior state intervention _____

Other: _____

Other: _____

18. What types of behavior (or patterns of behavior) should subject a juvenile offender to compulsory treatment by the state? Please indicate your level of agreement or disagreement with the use of these behaviors as listed below [note- this question refers to treatment within FIA agencies].

Behavior	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
Aggressive behavior	_____	_____	_____	_____	_____
Substance abuse (narc.)	_____	_____	_____	_____	_____
Substance abuse (alcohol)	_____	_____	_____	_____	_____
Violent behavior (comm.)	_____	_____	_____	_____	_____
Violent behavior (school)	_____	_____	_____	_____	_____
Repetitive criminal behavior	_____	_____	_____	_____	_____
Mental disorders	_____	_____	_____	_____	_____
Predatory sexual behavior	_____	_____	_____	_____	_____
Pattern of escalating serious- ness of crimes	_____	_____	_____	_____	_____

Nature and Type of Attorney Representation

19. During the last two years (1995 and 1996), for waiver proceedings initiated by your office or court, which type of attorney (counsel) was most frequently used to represent juvenile offenders? [please provide an estimate if an exact number is unknown]

	<u>Year</u> 1996	<u>Year</u> 1995
<u>Type of Attorney</u>		
Privately retained	_____	_____
Court Appointed	_____	_____
Public Defender	_____	_____
Other (describe)	_____	_____
Other (describe)	_____	_____

20. What should be the role of the defense attorney (counsel) in both discretionary and traditional waiver proceedings? Please indicate your level of agreement or disagreement with the following statements:

Role of Attorney	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
As an advocate, the defense attorney must defend his/her client's constitutional and legal rights _____	_____	_____	_____	_____	_____
The defense attorney is the primary advocate for the juvenile offender _____	_____	_____	_____	_____	_____
In his/her capacity of interpreters of the law for juvenile clients, defense attorneys are well trained and knowledgeable about pertinent case law and statutes _____	_____	_____	_____	_____	_____
The defense attorney is helpful as an interpreter of law and the meaning of court decisions _____	_____	_____	_____	_____	_____
In his/her capacity as a guardian, the defense attorney must have regard for the best interests of the juvenile offender _____	_____	_____	_____	_____	_____
The defense attorney is the protector of the legal rights of the juvenile offender _____	_____	_____	_____	_____	_____
The defense attorney acts as a mediator between the court, the prosecutor, and the juvenile offender _____	_____	_____	_____	_____	_____
The defense attorney always vigorously defends the juvenile client _____	_____	_____	_____	_____	_____

In his/her role as advocate,
the defense attorney must avoid
becoming too adversarial in
court proceedings _____

As a negotiator, the defense
attorney must secure the co-
operation of the judge and
prosecutor in the court's
dispositions _____

The defense attorney is
most helpful in the role
of negotiator _____

In his/her role as advocate, the
defense attorney obstructs the
legitimate operations of the
court and the rehabilitation
process _____

The level of advocacy provided
by defense attorneys for juvenile
clients is quite adequate _____

21. Is plea bargaining a common practice among defense attorneys (counsel) who represent juvenile offenders in waiver cases initiated by your office or court?

Yes

No

22. What incentives, if any, exist for defense attorneys and prosecutors to seek plea bargains in cases involving waiver? Please indicate your level of agreement or disagreement with the following statements.

	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
Plea bargains secure charge reductions	_____	_____	_____	_____	_____
Plea bargains avoid costly and time consuming trials	_____	_____	_____	_____	_____
Plea bargains offer protection from overly harsh sentences	_____	_____	_____	_____	_____
Plea bargains avoid the uncertainty associated with jury decisions	_____	_____	_____	_____	_____
Plea bargains protect the interests of the state in terms of securing punishment for juveniles	_____	_____	_____	_____	_____
Plea bargains get rid of bad cases where evidence and facts are insufficient	_____	_____	_____	_____	_____
Plea bargains ensure that the best interests of the juvenile are protected	_____	_____	_____	_____	_____

a. Now that you have responded, please rate these incentives relative to their importance in waiver decisions

	Very Important	Somewhat Important	Not Sure	Little Importance	Not at all Important
Plea bargains secure charge reductions _____	_____	_____	_____	_____	_____
Plea bargains avoid costly and time consuming trials _____	_____	_____	_____	_____	_____
Plea bargains offer protection from harsh sentences _____	_____	_____	_____	_____	_____
Plea bargains avoid the uncertainty associated with jury decisions _____	_____	_____	_____	_____	_____
Plea bargains protect the interests of the state in terms of securing punishment for juveniles _____	_____	_____	_____	_____	_____
Plea bargains get rid of bad cases where evidence and facts are insufficient _____	_____	_____	_____	_____	_____
Plea bargains ensure that the best interests of the juvenile are protected _____	_____	_____	_____	_____	_____

23. In the last five (5) years, what percentage of waiver proceedings initiated in your office or brought to court resulted in a plea bargain? (If exact number is not known, please provide an estimate)

1996 _____	1995 _____	
1994 _____	1993 _____	1992 _____

24. In your opinion, are the best interests of juvenile offenders adequately protected when defense attorneys (counsel) seek plea bargains?

Yes	No
_____	_____

Please explain your response:

Justice and the Court

25. Please indicate the extent to which you agree or disagree with the following statements about philosophies of punishment.

Philosophy of Decision makers	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
Retribution is the primary objective of waiver _____	_____	_____	_____	_____	_____
Retribution is a legiti- mate expression of the state's desire to punish serious, chronic juvenile offenders _____	_____	_____	_____	_____	_____
Deterrence of serious crime is achieved through waiver _____	_____	_____	_____	_____	_____
Waiver of juvenile offenders to criminal court promotes accountability _____	_____	_____	_____	_____	_____
Just Deserts ensures that the punishment of juvenile offenders fits the crime _____	_____	_____	_____	_____	_____
The philosophy of Just Deserts should guide all waiver decisions because it focuses characteristics of the offense rather than characteristics of the offender _____	_____	_____	_____	_____	_____
Incapacitation of serious and chronic offenders ensures the safety of the community _____	_____	_____	_____	_____	_____

A policy of selective
incapacitation was the
primary emphasis behind
the changes in the waiver
statutes in 1988

Rehabilitation is
secondary to the need
for punishment

Waiver of juvenile
offenders to criminal
court promotes the
idea of rehabilitation

26. What are the positive and negative consequences associated with using prosecutorial (discretionary) waiver? Please indicate your level of agreement or disagreement with the following statements.

	(1) Strongly Agree	(2) Agree	(3) Not Sure	(4) Disagree	(5) Strongly Disagree
Prosecutorial waiver fails to adequately consider whether a juvenile offender is amenable to treatment. _____	_____	_____	_____	_____	_____
Prosecutorial waiver accurately targets violent, and chronic juvenile offenders and thus eliminates inconsistency of punishment among offenders with similar offense histories. _____	_____	_____	_____	_____	_____
Prosecutorial waiver lacks adequate procedural safeguards. _____	_____	_____	_____	_____	_____
Prosecutorial waiver protects the community from predatory juvenile offenders. _____	_____	_____	_____	_____	_____
Prosecutorial waiver allows the prosecutor to express society's outrage over violent crimes that are committed by juveniles. _____	_____	_____	_____	_____	_____
Information beneficial to the juvenile offender is often obtained from the prosecutor's office. _____	_____	_____	_____	_____	_____

The decision to initiate waiver proceedings is non-appealable.	_____	_____	_____	_____	_____
Prosecutorial waiver provides unfettered charging discretion for prosecutors.	_____	_____	_____	_____	_____
Waiver decisions are suspect due to the political nature of the prosecutor's office.	_____	_____	_____	_____	_____
Prosecutorial waiver unnecessarily expands the traditional function of prosecutors.	_____	_____	_____	_____	_____

27. What have been the effects of the changes in the waiver statutes in 1988 in your jurisdiction?

28. Does your office or court have a review process to ensure that appropriate cases are considered for prosecutorial (discretionary) waiver motions?

Yes	No
_____	_____

If yes, please describe this review process:

Demographic Information:

Thank you for your participation in this study. Before ending, I would like to ask a few questions about your background. Please provide answers to these questions as fully as possible.

Name:

Title:

How long have you held this position?

What is the district or jurisdiction for which you are responsible?

Appendix 4

Appendix 4

States Using Prosecutorial Waiver

<i>State and Statute Citation</i>	<i>Juvenile Court Jurisdiction</i>	<i>Minimum Age for Adult Prosecution</i>	<i>Offenses which Trigger Adult Prosecution</i>	<i>Criteria for Waiver Decision</i>	<i>Evidence Standard</i>
Alabama <i>Alabama Code</i> <i>Annotated (1995)</i> <i>§12-15-2</i> <i>§12-15-34</i> <i>§12-15-34.1</i>	18	14	1. Capital offense 2. Class A felony 3. Felony which has as an element the use of a deadly weapon 4. Felony which has as an element the causing of death or serious physical injury 5. Felony which has an element a dangerous instrument against any person who is: A. law enforcement officer or official B. correctional officer or official C. parole/probation officer or official D. juvenile court pro- bation officer or official E. district attorney or other prosecuting officer or official F. judge or other judicial official G. court officer or official H. grand juror, juror, or witness in any legal proceeding I. teacher, principal, or employee of the public education system 6. Trafficking in drugs	1. Nature of present alleged offense 2. Extent and nature of child's prior delin- quency record 3. Nature of past treatment efforts and the nature of the child's response to such efforts 4. Demeanor 5. Extent and nature of the child's physical and mental maturity 6. The interests of the com- munity and of the child requiring that the child be placed under legal restraint or discipline	Clear and Convincing

Weight given to Criteria:
May use own discretion
in assigning appropriate
weight to the six factors

Arkansas 18
Arkansas Statutes
Annotated (1995)
 § 9-27-318

14

1. Capital murder
2. Murder I
3. Murder II
4. Kidnaping I
5. Aggravated Robbery
6. Rape
7. Battery I
8. Possession, handgun on school property
9. Aggravated Assault committed with deadly weapon
10. Battery II
11. Aggravated Assault
12. Terroristic Acts
13. Unlawful discharge of firearm from vehicle
14. Any felony committed while armed with firearm
15. Soliciting minor to join criminal street gang
16. Criminal use of prohibited weapons
17. Felony attempt, solicitation, or conspiracy to commit: capital murder, murder I, murder II, kidnaping, aggravated robbery, rape, battery I

1. Seriousness of offense and whether violence was employed
2. Whether the offense is part of a repetitive pattern of adjudicated offenses which would lead to the determination that the juvenile is beyond rehabilitation under existing rehabilitation programs as evidenced by past efforts to treat and rehabilitate the juvenile the response to such efforts
3. Prior history, character traits, mental maturity, and any other factor which reflects upon the juvenile's prospects for rehabilitation

Clear
 and
 Convincing

Conditionals:

Must be at least fourteen yrs old when he/she engages in conduct that, if committed by and adult, constitutes a felony and who has, within the preceding two years, three times been adjudicated as a delinquent juvenile for acts that would have constituted a felony if they had been committed by an adult

Weight given to Criteria:
 Not necessary to give equal weight to each factor

Colorado 18
Colorado Revised Statutes (1997)
 § 16-11-309
 § 18-1-105
 § 19-1-2-517
 § 19-2-518

12

1. Class I Felony
2. Class II Felony
3. Murder
4. Assault I or II
5. Kidnaping
6. Sexual Assault
7. Aggravated Robbery
8. Arson I
9. Burglary I
10. Escape
11. Criminal Extortion

1. Seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner
3. Whether the alleged offense was against

Conditionals:

The juvenile has, within the two previous years, been adjudicated a juvenile delinquent for delinquent acts that constitutes a felony, is 16 yrs of age or older, and allegedly has committed a crime defined by Section 18-1-105, C.R.S., as a Class 3 felony

The juvenile is 14 yrs of age or older and has allegedly committed a delinquent act that constitutes a felony, and has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2-518

The juvenile is 14 yrs of age or older and has allegedly committed a delinquent act that constitutes a felony, and is determined to be a habitual juvenile offender

*persons of property,
greater weight being
given to offenses against
persons*

*4. Maturity of the juvenile
as determined by considera-
tions of the juvenile's home,
environment, emotional
attitude, and pattern of
living*

5. Record and prior history

*6. Likelihood of rehabili-
tation by use of facilities
available to the juvenile*

*7. Interest of the community
in the imposition of a
punishment commensurate
with the gravity of the offense*

*8. Impact of the offense
on the victim*

*9. That the juvenile was
twice previously adjudicated
a delinquent juvenile for
delinquent acts that constitute
felonies*

*10. That the juvenile was
previously adjudicated a
juvenile delinquent for a
delinquent act that constitutes
a crime of violence*

*11. That the juvenile was
previously committed to the
department of human services
following an adjudication for
delinquent acts that constitute
a felony*

*12. That the juvenile is 16 yrs
of age or older at the time of
the offense and the present
act constitutes a crime of
violence*

*13. That the juvenile is 16 yrs
of age or older at the time of
the offense and has twice
previously been adjudicated
a juvenile delinquent for
delinquent acts against property
that constitute felonies*

*14. That the juvenile used,
or possessed and threatened
the use of, a deadly weapon
in the commission of a delinquent*

act

Georgia 17
Georgia Code
Annotated (1994)
 § 15-11-5
 § 15-11-37

- 13
1. *Murder*
 2. *Voluntary manslaughter*
 3. *Rape*
 4. *Aggravated Sodomy*
 5. *Aggravated Child Molestation*
 6. *Aggravated Sexual Battery*
 7. *Armed Robbery, if committed with a firearm*
 8. *Designated Felony:*
 - A. *Kidnap I*
 - B. *Arson I*
 - C. *Aggravated Assault*
 - D. *Arson II*
 - E. *Aggravated Battery*
 - F. *Robbery*
 - G. *Armed Robbery, not involving firearm*
 - H. *Attempted Murder*
 - I. *Attempted Kidnapping*
 - J. *Carrying/Possession of weapon*
 - K. *Highjacking, motor vehicle*

1. *Needs and best interests of the juvenile*
2. *Record and background of the juvenile*
3. *nature and circumstances of the offense, including whether any injury involved was inflicted by the juvenile or another participant*
4. *Need for protection of the community*
5. *Age and physical condition of the victim*

Weight Given to Criteria:
Specific written findings of fact as to each of the elements

Florida 18
Florida Statutes
Annotated (1996)
 § 39.02
 § 39.09

- 14
1. *Capital Offense*
 2. *Felony I*
 3. *Felony II*
 4. *Felony III*
 5. *Life Offense*

1. *Seriousness of alleged offense to community and whether the protection of the community is best served by transferring the child for adult sanctions*
2. *Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner*
3. *Whether the alleged offense was against persons or property, greater weight being given to offenses against persons, especially if personal injury resulted*
4. *Prosecutive merit of the*

- complaint
5. *The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults who will be or have been charged with the crime*
6. *Sophistication and maturity of the child, as determined by consideration of his home, environment situation, emotional attitude, and pattern of living*
7. *Record and previous history of the child including:*
- A. *previous contacts with the department, other law enforcement agencies, and courts*
 - B. *prior periods of probation or community control*
 - C. *prior adjudications that the child committed a delinquent act or violation of law*
 - D. *prior commitments to institutions*
8. *Prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if he is found to have committed the alleged offense, by use of procedures, services, and facilities currently available to the court*

Louisiana <i>Louisiana Revised Statutes Annotated (1995)</i> § 6-1570 § 6-1571.1 § 4-305 §11-857 §11-862	17	14	1. <i>Murder I</i> 2. <i>Murder II</i> 3. <i>Aggravated Rape</i> 4. <i>Aggravated Kidnap</i> 5. <i>Attempted Murder I</i> 6. <i>Attempted Murder II</i> 7. <i>Manslaughter</i> 8. <i>Armed Robbery when committed with firearm</i> 9. <i>Forcible Rape</i>	1. <i>Chronological age of the child</i> 2. <i>Maturity of the child, both mental and physical</i> 3. <i>Nature and seriousness of alleged offense to community and whether the protection of the community</i>	<i>Clear and Convincing</i>
---	----	----	--	---	-----------------------------

10. Simple Rape
11. Kidnaping II
12. Aggravated Battery when committed by
13. Aggravated Oral Sexual Battery

requires transfer

4. Prior acts of delinquency, if any, and their nature and seriousness
5. Past efforts at rehabilitation and treatment, if any, and the child's response
6. Whether the child's behavior might be related to physical or mental problems
7. Techniques, programs, personnel, and facilities available to the juvenile which might be competent to deal with the child's particular problems

Conditionals:

Second or subsequent aggravated battery

Second or subsequent aggravated battery

Second or subsequent offense of burglary of an inhabited dwelling

Second or subsequent felony-grade violation involving manufacture, distribution, manufacture, or possession with intent to distribute controlled dangerous substances

Maryland 18
Maryland Code
Annotated (1995)
 § 3-804

14

1. Abduction
2. Kidnaping
3. Murder
4. Manslaughter
5. Mayhem/maiming
6. Rape II
7. Robbery with dangerous or deadly weapon
8. Second degree sexual offense
9. Third degree sexual offense
10. Wearing, using, carrying, or transporting of firearms during and in relation to a drug trafficking crime
11. Carjacking/armed carjacking
12. Assault, intent murder
13. Assault, intent rape
14. Assault, intent robbery
15. Assault, intent sexual offense in the first or second degree

1. Age of the child
2. Mental and physical condition of
3. Child's amenability to treatment in any institution, facility, or program available to delinquents
4. Nature of the offense and the child's alleged
5. Public safety

Preponderance of evidence

Weight Given to Criteria:
Not all five factors need be resolved against the juvenile in order for the waiver to be justifiable

Michigan 18
*Michigan Compiled
 Laws (1994)*
 § 712A.4
 § 764.1f
*Michigan Statutes
 Annotated (1994)*
 § 27.3178 (598.4)
 § 28.860 (1)
 § 28.1072 (3)

15
 1. *Murder I*
 2. *Murder II*
 3. *Attempted Murder*
 4. *Assault, intent
 murder*
 5. *Assault, intent armed
 robbery*
 6. *Armed Robbery*
 7. *CSC I*
 8. *Possession, manu-
 facture, delivery of
 650 grams or more
 of a Schedule 1 or 2
 controlled substance*
 9. *Possession, intent
 to deliver 650 grams
 or more of a Schedule
 1 or 2 controlled substance*

*1. Prior record and Preponderance
 character of the child, of evidence
 his/her physical and
 mental maturity, his/
 her pattern of living*
*2. Seriousness of
 offense*
*3. Whether offense is
 part of a repetitive
 pattern of offenses
 leading to the deter-
 mination that:*
 *A. not amenable to
 treatment*
 *B. despite the child's
 potential for treatment
 the nature of the child's
 delinquent behavior is
 likely to disrupt the re-
 habilitation of other
 children in the treatment
 program*
*4. Nature of the child's de-
 linquent behavior is likely
 to render the child dangerous
 if released at age 19 or 21*
*5. Whether the child is
 more likely to be re-
 habilitated by the services
 and facilities available in
 adult programs and pro-
 cedures rather than in
 juvenile programs and
 procedures*
*6. Whether it is in the
 best interests of the public
 welfare and protection of
 public security that the child
 stand trial as an adult*

Weight Given to Criteria:
 Give each weight as
 appropriate to the circum-
 stances

Mississippi <i>Mississippi Code</i> <i>Annotated (1993)</i> § 43-21-151 § 43-21-157	18	13	<i>All Felonies</i>	<i>1. Whether or not alleged offense con- stituted a substantial danger to the public</i> <i>2. Seriousness of alleged offense</i> <i>3. Whether or not transfer is required to protect the community</i> <i>4. Whether or not the alleged offense was committed in an aggres- sive, violent, premeditated, or willful manner</i> <i>5. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons, especially if personal injury resulted</i> <i>6. Sophistication, maturity, and educational background</i> <i>7. Child's home situation, emotional condition, and lifestyle</i> <i>8. History of the child, in- cluding experience with the juvenile justice system, other courts, probation, commit- ments to juvenile institutions or other placements</i> <i>9. Whether or not the child can be retained and rehabili- tated in the juvenile justice system long enough for effective treatment</i> <i>10. Dispositional resources available to juvenile justice system</i> <i>11. Dispositional resources available to the adult cor- rectional system for the child if treated as an adult</i> <i>12. Any other factors deemed relevant by the youth court</i>	<i>Clear and Convincing</i>
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Weight Given to Criteria:
*Recital of findings of
probable cause and the
facts and reasons under-
lying the youth court*

decision

Montana	18	12	1. Sexual intercourse without consent 2. Deliberate Homicide 3. Mitigated Deliberate Homicide 4. Attempt of, or accountability for either deliberate or mitigated deliberate homicide 5. Negligent Homicide 6. Arson 7. Aggravated or felony 8. Robbery 9. Burglary or Aggravated Burglary 10. Aggravated Kidnap 11. Possession of Explosives 12. Criminal Sale of dangerous drugs 13. Criminal production or manufacture of dangerous drugs 14. Use of threat to coerce criminal street gang membership	1. Seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities 2. Alleged offense was committed in an aggressive, violent, or premeditated manner 3. Sophistication and maturity of the youth determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living 4. Record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions	Preponderance of Evidence
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Weight Given to Criteria:
Written statement by the court of the evidence relied on and the reason for the transfer

Nebraska	18	None	All Felonies	1. Type of treatment such juvenile would most likely be amenable to 2. Whether there is evidence that the alleged offense included violence or was committed in an aggressive or premeditated manner 3. Motivation for the	Beyond a Reasonable Doubt
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Revised Statutes of Nebraska (1993)
§ 43-247
§ 43-279
§ 43-261
§ 43-276

commission of the offense

4. Age of the juvenile and ages and circumstances of any others involved in the offense

5. Previous history of the juvenile, including whether he/she had been convicted of any previous offenses or adjudicated in juvenile court and, if so, whether such offenses were crimes committed against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence

6. Sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he/she has had previous contact with law enforcement agencies and courts

7. Whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile

8. Whether the best interests of the juvenile and the security of the public may require that the juvenile continue in custody or supervision for a period extending beyond his/her majority and, if so, the available alternatives best suited to this purpose

9. Such other matters as the county attorney deems relevant to his/her decision

Weight Given to Criteria:

Court need not resolve every factor against the juvenile

7. Aggravated Sexual Assault		the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties were he an adult	
8. Discharge of firearm from vehicle		3. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner	
9. Attempted Aggravated Murder		4. Whether the alleged offense was against persons or property greater weight being given to offenses against persons	
10. Attempted Murder		5. Maturity of the minor as determined by considerations of his home, environment, emotional attitude, and pattern of living	
11. An offense including the use of a dangerous weapon which would be a felony if committed by an adult		6. Record and previous history	
		7. Likelihood of rehabilitation of the minor by use of facilities available to the juvenile court	
		8. Desirability of trial and disposition of the entire offense in one court when the minor's associates are adults who will be charged with the crime in the district court	
		9. Whether the minor used a firearm in the commission of an offense	
		10. Whether the minor possessed a dangerous weapon on or about school premises	
		<u>Weight Given to Criteria:</u> Amount of weight given to each of the factors listed is discretionary with the court	
Wyoming	18	13	All Felonies
Wyoming Statutes Annotated (1997)			
§ 14-6-203			1. Seriousness of the alleged offense to the community and whether the protection of the community required waiver
§ 14-6-237			2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful
§ 14-6-229			Beyond a Reasonable Doubt
§ 14-6-225			

manner

3. Whether the alleged offense was against persons or property, greater weight being given to persons especially if personal injury resulted

4. Desirability of trial and disposition of the entire offense in one court when the juvenile's associates are adults who will be charged with a crime

5. Sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living

6. Record and previous history of the juvenile including previous contacts with law enforcement agencies, juvenile courts, and other jurisdictions, prior periods of probation to this court or prior commitments to juvenile institutions

8. Prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile

Weight Given to Criteria:

Court must state for the record the basis for the decision

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