

An Analysis of Juvenile Transfer Laws and the Appropriateness of
Prosecuting Juveniles as Adults

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An Analysis of Juvenile Transfer Laws and the Appropriateness of
Prosecuting Juveniles as Adults

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ABSTRACT

Statement of the Problem

Early juvenile courts were created with the principle of *parens patriae*. For nearly a century, the juvenile court acted under the concept of rehabilitation. In response to growing juvenile crime in the 1980s and 1990s, a majority of states in the U.S. responded by expanding juvenile waiver laws. The intent of juvenile waiver is to remove juveniles from the system who are beyond rehabilitation and deter future crime.

There are three types of juvenile waiver: Statutory exclusion laws, prosecutorial discretion, and juvenile waiver. Juvenile waiver is the most common, and the preferred method. The Supreme Court has set 8 criteria for Judges to consider in their waiver decisions. These include seriousness of the offense, manner in which the offense was carried out, injury to the victim, merit of the offense, disposition of co-defendants, maturity of the juvenile, previous history, and rehabilitative efforts. A look at those being waived reveals the typical offender is a male, at least 16-years-of age, and a minority.

Method of Approach

This study will be an analysis of secondary data from peer reviewed studies in criminological journals. Also being used is statistical data collected by the Office of Juvenile Delinquency Prevention, the National Juvenile Court Data Archives, the State of Wisconsin and the State of Utah. Additional data sources include law review articles, Supreme Court Opinions, and current state statutes.

Results of the Study

Neither goal of juvenile waiver has been fulfilled. Review of the literature shows that while some youth who are waived are long time offenders who have exhausted the resources of the juvenile court, others are first-time offenders. Review of the literature also shows that juvenile waiver does not deter crime. In many cases, juvenile waivers have shown to cause the opposite effect, and juveniles who are waived are more likely to commit future crime.

Juveniles who are waived face serious legal and personal consequences. Juveniles prosecuted in the adult system are more likely to receive harsher punishment. Juveniles are more likely to face juror bias in the adult court. Juveniles who are sentenced to incarceration face serious issues. Juveniles in prison are five times more likely to be sexually assaulted and twice as likely to be physically assaulted. Most juveniles in prison are not rehabilitated and adapt a criminal mentality in order to fit in.

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I. INTRODUCTION

Statement of the Problem

In 2008, juvenile courts in the United States handled approximately 1.7 million delinquency cases (Adams & Addie, 2011). From these cases, approximately 1% were waived to the adult criminal justice system for prosecution. Laws governing crimes committed by juveniles have been present since the earliest criminal codes (Griffin, Addie, Adams & Firestone, 2011). Judicial waiver laws were first introduced in the 1950s. Waiver was rare and decisions to transfer a juvenile to adult court were left almost entirely to the discretion of Judges. Prior to 1970, a handful of states enacted automatic transfer laws, but only for the most serious of offenses (i.e. murder). During the 1970s, and 1980s, all states saw an increase in juvenile crime. In response, nearly every state enacted new legislation that either created new transfer mechanisms, expanded existing transfer laws, eliminated discretion in transfer decision making, and shifted authority from Judges to prosecutors (Griffin, 2008, p. 1).

Between 1985 and 1994, the number of juveniles waived to adult court increased by 90% (Adams & Addie, 2011). The number of cases declined until 2001, when the number of juveniles waived slowly began to increase. Some proponents of juvenile transfer argue that the reason for the decline is that prosecuting juveniles in adult court has a deterrent effect. Waiver of juvenile to adult court should accomplish two goals. First, transfer should remove juveniles from the system who are beyond rehabilitation. Second, transfer should be a mechanism to deter future crime (Steiner & Wright, 2006). As Redding & Fuller (2004) explain, an underlying assumption to the policy is that the threat of stricter, adult punishments will act as a deterrent to future crime. A review of the literature will show that this is simply not the case. Adams and

Addie (2011) argue that the decline in waivers was simply the result of a decline in violent crime by juveniles.

There has always been a recognition that some adolescents commit offenses that are so serious, that the juvenile court is simply ill-equipped to provide necessary resources and punishments (Loughran, Mulvey, Schubert, Chassin, Steinberg, Piquero, Fagan, Cota-Robles, Cauffman, & Losoya, 2010). The Supreme Court has declared that “waiver to adult court is the single most serious act the juvenile court can perform...because once waiver of jurisdiction occurs, the child loses all protective and rehabilitative possibilities available” (Redding, 2003, p. 129). Before a juvenile is waived, there are several factors that should be considered.

The question of whether a juvenile should be prosecuted in adult court is widely debated. This paper will examine reasons for and against transfer of juveniles. Every state acknowledges that juveniles are fundamentally different from adults (Griffin, 2008). In several opinions involving juvenile crime, the Supreme Court has also acknowledged that juveniles are different and should be treated as such. Because waiver is so serious, they have required juvenile courts to consider six factors before making waiver decisions. These include (1) age and background of the juvenile, (2) nature of the offense, (3) extent and nature of juvenile’s prior record, (4) juveniles present intellectual development and psychological maturity, (5) the nature of past treatment efforts, and (6) the availability of programs to rehabilitate offenders.

Purpose and Significance of the Study

The purpose of the study will be to examine trends in juvenile crime and present criminological theories that explain delinquency. Bryan-Hancock and Casey (2010) explain that many assume if a juvenile commits a crime adult in nature, they are functioning at an adult level and should be treated as such. This is one of the main arguments for transfer. The study

will examine this theory as well as the theory that some juveniles are beyond rehabilitative efforts.

The study will also briefly examine the types and the appropriateness of current transfer laws in many states and if they comply with requirements of *Kent v. United States*. It will also determine if transfer is being used fairly and equitably. Waiver thresholds in many states are quite low. Some states do not require a hearing before a Judge where the appropriateness of transfer is examined. In Alaska, Kansas, and Washington states, prosecutors can seek to waive any juvenile delinquency case to criminal court (Griffin et al., 2008, p. 2). This study will look at disparity in transfer laws. Griffin et al. (2008) found that a majority of juveniles were more likely than their adult counterparts to be male and Black. Kirkish, Sreenvisan, Welsh, Van Gorp, Eth, Shopto and Ling (2000) studied juveniles in one California prison and discovered that 62% were Hispanic, a high number compared to their adult counterparts.

When crime, particularly crime committed by juveniles, is perceived to be a problem, there is a public outcry for solutions. A common solution to crime is harsher punishments. In response to growing juvenile crime, many states rewrote or expanded their transfer laws. An argument commonly heard in support of tougher laws is harsh penalties deter crime. Statistics show that prosecuting juveniles as adults does not deter youth from crime. Flesch (2004) reports that many juveniles commit crimes within two years of their release from adult prisons. Fifty-eight percent of juveniles will commit new crimes compared to only 42% of juveniles who remain in the juvenile system. Juveniles sentenced to prison miss out on opportunities for education, counseling, and substance abuse treatment.

Proponents of waiver argue that trying a juvenile as an adult is a solution for juveniles who have exhausted rehabilitative efforts in the juvenile system. Flesch (2004) argues that many

of the youth waived are in fact first time violent offenders. These offenders have never received the benefit of rehabilitative efforts. Judging rehabilitative amenability cannot be judged on one offense. A juvenile who commits a violent offense is likely to commit only one such offense and can benefit from the rehabilitative setting of a juvenile correctional facility (Flesch, 2004, p. 6) As Kirkish (2000) explains, there are many factors associated with juvenile violence. Among these are ineffective parenting, parental alcoholism, disrupted parental bonding, chaotic family style, and presence of personality disorders.

Studies of juvenile development show that the maturity emotional functioning of juveniles is well below the level of adults. Bryan-Hancock and Casey (2010) describe adolescents as displaying impulsivity and having an absence of complex consideration in decision making. In addition, juveniles do not possess the same psychosocial maturity of adults. Psychosocial maturity is measured by (1) responsibility, including self-reliance, (2) perspective, including the ability to take the point of view of others, and (3) temperance, which looks to the ability to limit impulsivity (Bryan-Hancock & Casey, 2010, p. 58). These are just some of the factors to consider when deciding if it appropriate to prosecute a juvenile as an adult.

The study specifically will examine waivers in Utah and Wisconsin, two States specifically chosen as study sites by the Office of Juvenile Justice and Delinquency Prevention. The State of Utah has an automatic transfer statute but relies primarily on judicial waiver. From 1988 to 1995, only 225 youth were waived to criminal court (Snyder, Sickmund,& Poe-Yamagata, 2000, p. 18). By contrast, Wisconsin lowered their age of original jurisdiction of criminal court to age 17, shifting an entire group of youth to the adult system, despite prior delinquency history and seriousness of current charges (Torbert, Griffin, Hurst, & MacKenzie, 2000, p. 7).

This paper will provide an understanding of current juvenile transfer laws, particularly current laws in Utah and Wisconsin. It can be used as an educational tool for individuals who work in the juvenile justice system to understand the history of the juvenile waiver, the reasons for current policy, and the problems with current laws. This paper will highlight problems in the current system and can serve as a tool for prosecutors and law makers in deciding future juvenile transfer laws.

Limitations of the Study

Statistics from individual states tracking juvenile crime and waiver is fragmentary and incomplete (Griffin, 2008). Data is submitted to the National Juvenile Court Data Archive which makes it possible to form an estimate of cases that are waived, including offenses and demographics. However, the number of cases referred to criminal court by statutory exclusion or prosecutorial discretion is hard to track. Many states do not track and report this kind of detailed information. Griffin (2008) estimates that complete information on the number of youth transferred to adult court is available for only 17 states. This lack of information study limits any future and current studies of the issue.

II: LITERATURE REVIEW

Early History of Juvenile Courts and Juvenile Waiver Laws

In the early days of the criminal justice system, children were prosecuted and incarcerated with along with adults (Steward-Lindsey, 2006). Social groups, concerned for the welfare of children, advocated the belief that young offenders simply were in need of individualized treatment and rehabilitation (Steiner & Wright, 2006). In 1824, the New York Legislature gave authority to the criminal courts to sentence youth under the age of sixteen to the House of Refuge (Flesch, 2004). Following New York's example, several homes for delinquent children were established with the main goal of educating and treating troubled youth (Steward-Lindsey, 2006).

In 1899 using the concept of *parens patriae* (the state as parent), Illinois became the first state to create a court specifically for juveniles. In addition to the goals of protecting the community from crime and deterring future violations, the philosophy of the new court was one devoted to treatment and rehabilitation of juvenile offenders. This was a direct contrast to the philosophy of the adult criminal court, whose goal was the punishment of the offender (Flesch, 2004). By 1925, a majority of states had enacted their own juvenile court system (Steward-Lindsey, 2006).

Since the beginning of the juvenile court, judges have had the option of relinquishing jurisdiction of certain offenders to criminal courts, although this option was traditional reserved for the worst of the worst offenders (Pagnanelli, 2007; Griffin, Addie, Adams, & Firestone, 2011). Other types of transfer mechanisms were rare. This would slowly change. By 1969, only two-thirds of states had laws governing judicial waivers; only three states had laws specifically excluding certain classes of crimes from the juvenile court, and only two states

granted discretion to the prosecutor in filing decisions (Griffin, 2008). However, starting in the 1970s, many states would begin to make changes to how they handled waivers.

During the 1970s and early 1980s, many states began to expand traditional waiver laws. By 1983, a majority of states had enacted judicial waiver laws, twenty states passed exclusionary laws, and nine states granted more discretion to the prosecutor (Griffin, 2008). During the mid-1980s and 1990s, the United States saw a surge in violent crime committed by juveniles (see Figure 1 and Figure 2). During the 1990s, there was a 75% increase in violence crime committed by juveniles (Flesch, 2004, p. 585). Pagnanelli (2007) explains that violent crime became a frequent topic of conversation in the media. This in turn promoted a negative image of the juvenile justice system. Members of the public felt that enough was not being done to protect society from dangerous youthful offenders. It became a common belief for juvenile offenders that “if you are old enough to do the crime, you are old enough to do the time (Singer, 2011, p. 271).

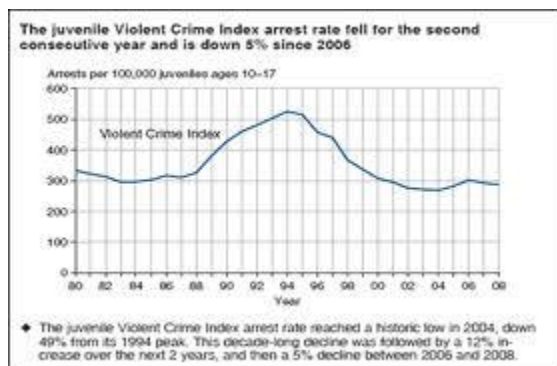


Figure 1. Juvenile Violence Crime Index 1980-2008 (Adams & Addie, 2011).

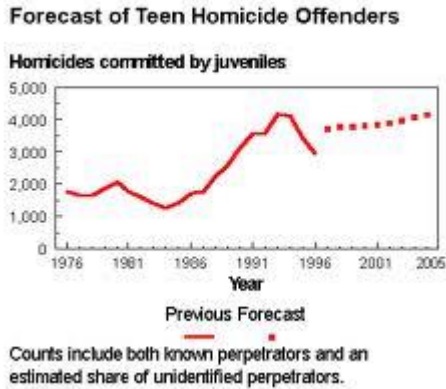


Figure 2. Forecast of Teen Homicides 1976-2005 (Adams & Addie, 2011)

By 1999, every state in the nation and the federal government had made significant changes to their waiver laws. The federal government passed the Violence Crime Control and Law Enforcement Act of 1995 allowing the federal government to criminally prosecute any youth over the age of 13 who commits a violent crime with a firearm on federal property (Redding, 1999). The bill's sponsor, Representative Bill McCollum believed that "serious juvenile offenders should be thrown in jail, the key should be thrown away and there should be very little or no effort to rehabilitate them" (Redding, 1999, p. 92). The consensus among many law makers was that (1) juvenile offenders were responsible for their actions and needed to be punished, (2) many juveniles were beyond rehabilitation, (3) rehabilitation does not work, (4) waiver would deter future crime, and (5) violent juveniles should remain incarcerated into adulthood (Redding, 1999).

Types of Juvenile Waiver

Juvenile waivers can be classified into three categories: (1) legislative waiver, (2) prosecutorial waiver, and (3) judicial waiver.

Legislative, also known as statutory exclusion laws, grant criminal courts exclusive jurisdiction of certain classes of crimes (Griffin, 2008). In response to rising fears about juvenile

crime, during the 1990s, a majority of state legislatures passed new laws mandating that certain crimes were excluded from the jurisdiction of juvenile court and automatically sent to criminal court (Pagnanelli, 2007). When a juvenile is automatically transferred to adult court by statute, in most cases they are unable to challenge the waiver. The transfer cannot be reviewed by a juvenile court judge (Flesch, 2004). Legislative, or statutory exclusion laws, work with an age/offense formula. For example, in some states if a juvenile commits murder and is 14 years of age, they will automatically be tried as an adult. Other violent crimes commonly covered under legislative waiver include rape, kidnapping, and aggravated assault. As Flesch (2004) suggests, legislative waivers assume that juveniles of a certain age who commit violent crimes are not amenable to rehabilitation, regardless of prior record or previous rehabilitation efforts.

Prosecutorial, concurrent jurisdiction, or direct file laws give prosecuting attorneys the discretion to determine whether to prosecute a juvenile as an adult, or keep the case in juvenile court (Adams & Addie, 2011). No hearing is held and in some states and the decision of a prosecutor cannot be appealed (Flesch, 2004). Prosecutorial waivers are the least used because they are somewhat controversial (Pagnanelli, 2007).

Concurrent jurisdiction or direct file laws give the prosecutor the broadest of discretion. This power can be abused. A prosecutor can be influenced by a political agenda or personal bias rather than the best interests of the juvenile (Flesch, 2004). Prosecutors often request waiver in response to public outcry or their own outrage over the crime (Lockwood, 1992). As Steiner & Wright (2006) explain, direct file laws give a prosecutor discretion to keep a child in juvenile court; however they are likely to put the state's interests above the child. A prosecutor's racial bias can also influence transfer decisions. Flesch (2004) reported the findings of a Texas study

that found that prosecutors were more likely to transfer Black and Hispanic offenders to adult court than White offenders.

The third type of waiver, the judicial waiver, is the most common (Flesch, 2004). Judicial waivers give authority to the juvenile court judge to remove a youth from their jurisdiction and transfer them to the adult court (Adams & Addie, 2011). Lockwood (1999) argues that juvenile court judges are in the best position to decide waiver. When making transfer decisions, judges, rather than prosecutors and legislators, have the ability to focus on the characteristics of the offender, rather than the nature of the crime. The juvenile court has the dual purpose of protecting public interests and the best interest of the child. To balance their goals, the juvenile court has the responsibility to see that serious juvenile offenders are held accountable, while seeing these offenders receive individual treatment and opportunities for rehabilitation.

Flesch (2004) argues that despite the criteria set forth in *Kent*, many judges primarily consider only two factors, the dangerousness of the offender and the amenability to rehabilitation. Flesch (2004) also argues that having too much discretion may result in judges unequally applying waiver criteria to youth who appear before them. Judges, like prosecutors, may also be subject to political pressure to transfer juveniles to adult court. McCall (2011) reported the findings of a 2004 study which found evidence that elected judges in Pennsylvania were more punitive when reelection time came closer. McCall (2011) found that elected judges were particularly more punitive towards juveniles after the Columbine High School shooting in 1999, an incident that further propelled juvenile violence into the national spotlight.

In addition to the three types of waivers, many states have enacted other provisions (Griffin, 2008). “Once and adult/always adult” laws state that once a juvenile has been waived

to adult court, any subsequent violations of the law will be prosecuted in criminal court, regardless of the type of offense. Reverse waiver laws allow juveniles to petition the criminal court to send their cases back to criminal court. Finally, blending sentencing laws allow juvenile courts to use tough criminal penalties as well as allowing the criminal courts to impose juvenile dispositions.

State Transfer Laws

Starting in 1990, many states drastically changed existing waiver laws. Changes included lowering the minimum age for transfer, increasing the number of transferable offenses, and expanding prosecutorial discretion while reducing judicial discretion (Redding & Fuller, 2004). Currently, 45 states have discretionary judicial waiver laws (Griffin, Addie, Adams, & Firestone, 2011). Upon the prosecutor's motion, a Judge will consider several factors and determine if the juvenile should be waived.

Waiver thresholds vary among states, as does the age a juvenile can be transferred (see Figure 3). For example, in Alaska, Kansas, and Washington, a prosecutor can request that any juvenile be sent to juvenile court. Other states have stricter standards. In discretionary waivers, the burden of proving the juvenile should be transferred is placed on the prosecution. In 15 states, there is also a presumptive waiver law where the burden is shifted to the juvenile if their offense falls under a certain category. The juvenile must argue to the Judge why waiver is not appropriate.

In most States, no minimum age is specified in at least one judicial waiver, concurrent jurisdiction, or statutory exclusion provision for transferring juveniles to criminal court

Minimum transfer age indicated in section(s) of juvenile code specifying transfer provisions, 1997

No minimum age		10	12	13	14	15
Alaska	Nevada*	Kansas	Colorado	Illinois	Alabama	New Mexico
Arizona	Oklahoma*	Vermont	Missouri	Mississippi	Arkansas	
Delaware	Oregon*		Montana	New Hampshire	California	
Dist. of Columbia	Pennsylvania			New York	Connecticut	
Florida	Rhode Island			North Carolina	Iowa	
Georgia*	South Carolina			Wyoming	Kentucky	
Hawaii	South Dakota				Louisiana	
Idaho*	Tennessee				Massachusetts	
Indiana	Washington*				Michigan	
Maine	West Virginia				Minnesota	
Maryland	Wisconsin				New Jersey	
Nebraska					North Dakota	
					Ohio	
					Texas	
					Utah	
					Virginia	

*Other sections of State statute specify an age below which children cannot be tried in criminal court. This minimum age for criminal responsibility is 14 in Idaho, 12 in Georgia, 8 in Nevada and Washington, and 7 in Oklahoma. In Washington, 8- to 12-year-olds are presumed to be incapable of committing a crime. In Oklahoma, in cases involving 7- to 14-year-olds, the State must prove that at the time of the act, the child knew it was wrong.

Source: Authors' adaptation of Griffin et al.'s *Trying juveniles as adults in criminal court: An analysis of State transfer provisions*.

Figure 3. Minimum age juvenile can be transfer to criminal court (Griffin et al. 2011)

Fifteen states also have mandatory waiver laws in which a case is initiated in juvenile court, but the court is required to transfer if the case meets certain conditions. The Judge's only purpose is to validate the waiver (Griffin et al., 2011). Twenty-nine states have enacted legislative or statutory exclusion laws. Fifteen states give prosecutors the discretion to either file in juvenile court or file the case directly with the criminal court. In 37 states, original jurisdiction of the criminal court does not begin until a youth's 18 birthday, but in ten states, jurisdiction of the criminal court begins at age 17. In three states, original jurisdiction of the criminal court begins at age 16 (See Table 1). In recent years, despite a reduction in juvenile crime, few states have made amendments to their transfer laws. Appendix A is an overview of laws as of 2009.

Upper Age of Original Juvenile Court Jurisdiction as of 2007		
15	16	17
Connecticut* New York North Carolina	Georgia Illinois** Louisiana Massachusetts Michigan Missouri New Hampshire South Carolina Texas Wisconsin	All other states and the District of Columbia
*Upper age of jurisdiction is being raised from 15 to 17 in 2012 **Upper age rose from 16 to 17 in 2010.		

Table 1. Upper Age of Original Juvenile Court Jurisdiction (Griffin et al., 2011)

Significant Supreme Court Decisions

The first significant Supreme Court decision affecting the juvenile justice system and juvenile waiver was *Kent v. United States* (Flesch, 2004). Morris Kent was a juvenile with a history of delinquency offenses. In September 1961, while on probation for theft, 16-year old Kent was charged with rape and burglary. Kent was subsequently arrested and placed in a home for children. Anticipating waiver to criminal court, Kent's legal counsel immediately filed a motion with the juvenile court indicating that he opposed waiver and requested a hearing to argue against transfer. Rather, the judge issued an order of transfer without a hearing and without any reference to counsel's motion. On appeal, the Supreme Court invalidated the waiver and held that a juvenile facing waiver to adult court is entitled to a hearing and a statement of the rationale of the waiver (Steward-Lindsey, 2006).

Prior to *Kent*, judges could transfer juveniles to adult court without a hearing and without specifically stating the reasons why waiver was necessary. In their decision, the Supreme Court held that the decision to transfer was critically important and that juveniles were entitled to receive due process and fairness. The Supreme Court established eight factors that a judge should consider in their transfer decisions. The factors cited by the court are:

(1) the seriousness of the alleged offense to the community and whether the protection of the community requires waiver; (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3)...greater weight being given to offenses against persons especially if personal injury resulted; (4) the prosecutive merit of the complaint...; (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...; (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...; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile...by the use of procedures, services and facilities currently available to the Juvenile Court.

(*Kent v. United States*, 383 U.S. at 566-568 as cited by Pagnanelli, 2007).

The decision in *Kent* was later reaffirmed by the Court in *Breed v. Jones*. In *McKeiver v. Pennsylvania*, the Supreme Court held that juveniles were not entitled to jury trials in delinquency proceedings. The Court believed that there should be differences between the juvenile courts' treatment philosophy of rehabilitation versus the criminal court's punitive nature (Flesch, 2004). In 1980, the Supreme Court vacated the death sentence of a juvenile convicted of murder. In *Eddings v. Oklahoma*, the court found that "youth is more than a chronological fact. It is a time of life when a person may be the most susceptible to influence and psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults" (Sarker, 2007, p. 366). In *Roper v. Simmons* (2004), the Supreme Court ruled that it was cruel and unusual punishment to sentence a juvenile to death (Sarker, 2007).

Who is Being Waived?

Annually, about 1% of petitioned delinquency cases are transferred to criminal court (Adams & Addie, 2011). Currently, a majority of youth transferred are at least age 16, male, and have committed a crime against a person (See Appendix B and Appendix C). This has not always been the case. From 1989 to 1992, drug cases were more likely to be waived to court

than any other offense. In 1991, 4.2% of drug cases were transferred to adults courts (Adams & Addie, 2011). A majority of youth transferred during this time for drug offenses were Black. Redding & Fuller (2004) argue that existing laws transfer laws have disproportionately affect minorities. In 2008, a majority of youth transferred in the State of Florida were Black, while in Arizona and California, a majority of transferred youth were Hispanic.

The purpose of waivers is to divert youth who have exhausted the resources of the juvenile court and are no longer amenable to rehabilitation efforts. Often, this is not the case. Flesch (2004) argues that discretionary waivers have resulted in first time violent offenders, or offenders with little delinquency history, being transferred to juvenile court. The easiest way to waive a juvenile to adult court is through legislative waivers. A juvenile with no prior record or who committed a non-serious crime could be automatically waived based simply on statute (Tang, Nunez, & Bourgeois, 2009).

General and Specific Deterrence

A common argument for transfers is that it (1) deters other juveniles from committing serious crimes, and (2) keeps a juvenile from committing future crimes (Redding & Fuller, 2004). Griffin (2008) reports that most studies have failed to uncover any link between juvenile crime rates and adult criminal prosecution. Schubert, Mulvey, Thomas, Loughran, Fagan, Chassin, Piquerro, Losoya, Steinberg, and Cauffman (2010) suggest that evidence instead points to the assumption that youth are more likely to reoffend, and to reoffend more quickly and more often than those who remain in the juvenile court. A 1994 study looked at recidivism rates amongst juveniles age 14-18 in Idaho from 1976 to 1986. The State of Idaho changed their existing waiver laws in 1981, resulting in more juveniles being prosecuted as adults. Arrest rates in neighboring Montana and Wyoming (that had laws similar to Idaho before 1981) actually

decreased while crime in Idaho increased by 13% (Redding, 1999; Steiner & Wright, 2006; Redding, 2010).

A 1996 Minnesota study reported that transferred juveniles were more likely to recidivate than non-transferred juveniles by a rate of 150% (Redding, 1999; Redding, 2003; Pagnanelli, 2007). A New York study determined that youthful robbery offenders sentenced in criminal court also reoffended at faster and higher rates than retained in juvenile court (Redding, 1999; Pagnanelli, 2007). A Florida study compared recidivism rates among juveniles offenders transferred to criminal court to non-transferred juveniles. The study found that rearrest rates for transferred juveniles were higher than their counterparts, and time between re-offenses was shorter. A follow up study in Florida six years later affirmed previous findings (Redding, 2003).

Some research has suggested that transfer laws may have a general deterrent effect on juveniles if they were more aware of the possibility of being prosecuted as an adult (Redding, 2010). Redding and Fuller (2004), conducted a study amongst youth prosecuted in the adult court in Georgia. The State of Georgia had conducted an awareness campaign to educate youth on juvenile waiver laws. However, of the 37 youth interviewed, only 8 were aware that being tried as an adult was even a possibility. Those who were aware expected that they would be tried as a juvenile and that they would receive only minor punishments from the juvenile court. Of the youth interviewed, 75% stated that if they had known they could be tried and punished in the adult system, they likely would not have committed the crime (Redding, 2010).

Legal Consequences for Juveniles Prosecuted as Adults

Legislative reforms have resulted in an increase in the number of minors convicted of felonies (Redding, 2003). In its decision in *Kent*, the Supreme Court found that transfer can have tremendous consequences for a juvenile (Redding, 1999). Specifically, if a juvenile is convicted

of a felony in criminal court, they risk the loss of several rights and privileges. These consequences could include the following: lose the right to vote; lose the right to serve in military; lose the right to own a firearm; the conviction becomes public record; the conviction must be reported to potential employers; the conviction is considered in sentencing for future crimes and sentencing under three-strikes laws; and possible incarceration in adult prison (Redding, 1999, p. 93-94).

Other Issues for Juveniles in the Adult System

Juveniles transferred to the adult system face other unique challenges. Juveniles prosecuted as adults are entitled to the same constitutional protections as adults, including the right to a jury. Some scholars have conducted studies to determine if jurors treated youth any differently than they would an adult facing similar charges. Levine, Williams, Sixt, & Valenti (2001) discovered that jurors could potentially show some bias against a juvenile, simply for the fact they were facing charges in criminal court. Using a panel of mock jurors, the authors found that without knowing anything about a previous history, jurors would be most likely to infer a juvenile had past criminal history, simply for the reason that they were being charged as an adult. As a result, these jurors would be more likely to believe in the guilt of the juvenile.

Another study looked into juror bias against juveniles if they had a history of child abuse. Najdowski, Bottoms, and Vargas (2009) report that 51% of adjudicated adolescents are victims of child abuse. Mock jurors in the authors study only considered abuse as a mitigating factor if the youth was accused of murdering their abuser. In other cases, mock jurors used abuse history as an aggravating factor in their decision of guilt. These jurors believed being a victim made them less amenable to rehabilitation. Najdowski et al. (2009) suggest the mock jurors saw the abused offenders as damaged goods, more likely to reoffend.

Some studies have shown that youth offenders in criminal courts received harsher penalties than both their counterparts in the adults system, as well as youth who remain in the juvenile system (Redding, 2003; Steiner, 2009; Jordan & Freiburger, 2010, Kurlycheck & Johnson, 2010). Kurlycheck & Johnson (2010) report a 2004 study that found that sentences for minors sentenced in criminal court in Pennsylvania were 80% more severe than similar defendants ages 18-20. Racial disparity is also present in juvenile sentences. Jordan and Freiburger (2010) discovered that Black youth are more likely to be sentenced to both prison and jail than White Youth. They also discovered that Hispanic youth were also more likely to be sentenced to prison their White peers. An interesting phenomenon in their study revealed that prior contact with the juvenile system increased the likelihood of prison for Blacks, but reduced the likelihood for Whites.

Judges in adult criminal courts have less discretion in sentencing than judges in the juvenile system (Johnson & Kurlychek, 2012). During the period of reform of juvenile waiver laws, many legislatures introduced sentencing guidelines to the criminal court. Sentencing guidelines attempt to standardize sentences based on seriousness of the offense and prior record of the defendant. Sentencing guidelines limit the judge's ability to individualize punishments based on offenders, rather than offense. Judges in the juvenile system have more discretion in sentencing and punishments are more individualized and tend to be less severe. When using sentencing guidelines, some argue that juvenile status should be used as a mitigating factor in sentencing. Because they are less culpable and less responsible for their actions, they should receive less punishment. Instead, youth is often used as an aggravating factor because judges have no formal basis to judge future offending (Kurlycheck & Johnson, 2010).

The number of juveniles sentenced to prison rose 218% from 1983 to 1998 (Johnson & Kurlychek, 2012). Juveniles sentenced to the adult prison system face unique challenges. Redding (2003) reported a 1997 study that found that juveniles in prison were eight times more likely to commit suicide. The same study also found that youth in prison were five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by fellow inmates. In prison, youth are exposed to the adult criminal culture. Youth become socialized and adapt their behavior to fit it. Many youth soon accept violence as a daily part of life, and become violent themselves in order to fit in. As one youth stated “being a kid is to be suspected of incompetence” (Redding, 2003, p. 139).

III: THEORETICAL FRAMEWORK

A review of the literature to this point has examined past and current state laws in juvenile delinquency and transfer to adult court. The review has also examined reasons for and against juvenile transfer. It is also important to examine the reasons for juvenile delinquency. Understanding theoretical perspectives into juvenile behavior and delinquency can assist in examining whether juvenile transfer to adult court is proper.

For many years, countless researchers have looked for any number of factors that explain juvenile delinquency. Early criminologists focused on biological traits, while modern day criminologists have been more focused on examining environmental and social factors. Clifford Shaw and Henry Mackay believed juvenile delinquency was a product of the urban environment. Edwin Sutherland, Donald Cressey, and Ronald Akers theorized that criminal behavior is a learned behavior (Cullen & Agnew, 2006). Dozens of theories could be discussed to explain juvenile delinquency and why the juvenile system is the best venue to handle youth. This paper will focus on three theories: life course development and psychosocial maturity; labeling theory; and social bonds theory.

Life Course Development Theory/Psychosocial Maturity

Moffit (1993) presented the theory of life course development. This theory examines individuals who commit deviant and antisocial behavior throughout their lifetime and those whose behaviors are short-term. Moffit (1993) suggests that only a small group of individuals engage in antisocial behavior through their life. In contrast a larger group will limit their behaviors to their adolescent years. Moffit refers to these groups individuals as life course persistent and adolescent limited (see figure 4).

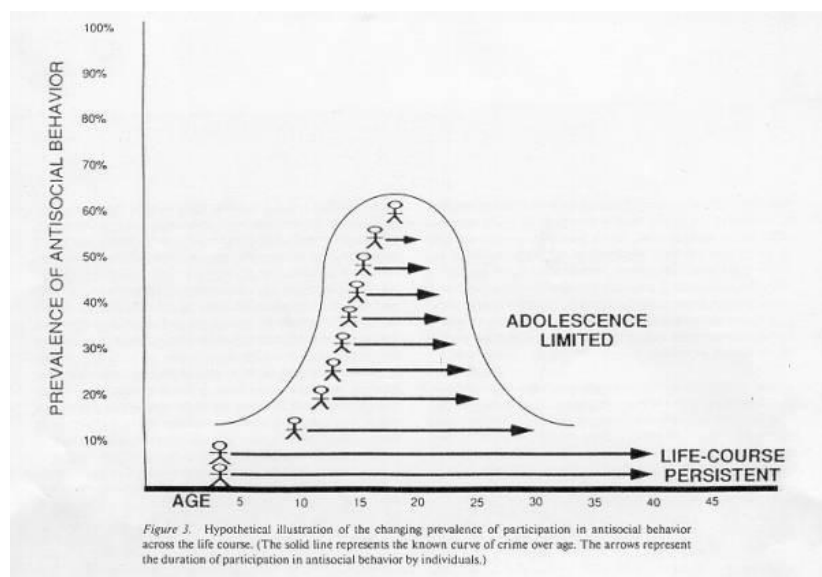


Figure 4. Illustration of Life Course Development (Moffit, 1993)

According to Moffit (1993), one-third of males will be arrested during their lifetime for a serious criminal offense. Approximately four-fifths of males will commit at least a minor criminal infraction. Flesch (2004) reports that 90% to 93% of males will commit at least some kind of delinquent act. Bryan-Hancock and Casey (2010) believe it is both normal and common for a juvenile to be involved in one or two delinquent acts as they grow and mature. As Moffit (1993) explains, a majority of these males will begin committing delinquent offenses during their adolescent years, starting at the onset of puberty and continuing anti-social behavior throughout their adolescent development. By the time a male reaches their mid-20s, three-fourths of delinquents will cease their offending behaviors. Flesch (2004) cites statistics that indicates most delinquent behavior peaks at age 16, and then starts to decline. Kruh, Frick, and Clements (2000) support this information, reporting that only a small subset of violent youth continue their crimes into adulthood.

Several scholars have studied why delinquent behavior decreases as juveniles age into adulthood. Moffit (1993) theorizes that a majority of juvenile offenders engage in antisocial behavior when they perceive the outcome to be profitable for them. Juveniles are less able to evaluate long term consequences. Moffit also reports that juvenile offenders also engage in antisocial behavior to mimic the behavior of peers they wish to gain acceptance from. Pagnanelli (2007) theorizes that youth have an immaturity level and an underdeveloped sense of responsibility, are more vulnerable and susceptible to negative influences and outside pressures, and have characters that are not as formed as adults. Kurlycheck & Johnson (2010) state that young violators are less culpable and deserve less punishment, no matter the venue simply for the fact they are less responsible for their actions. Young violators have yet to develop full moral capability to judge right from wrong.

Bryan-Hancock and Casey (2010) present their theory of juvenile delinquency with the concept of psychosocial maturity. Psychosocial maturity is defined as the general level of individual's socio-emotional competence and adaptive functioning (Bryan-Hancock & Casey, 2010, p. 58). A person's psychosocial maturity is made up of three factors: responsibility, including self-reliance and independence; perspective and the ability to analyze decisions in a broader context; and the ability to limit impulsiveness and the level of evaluation of a situation before an action. The authors explain that adolescents are impulsive and lack complex consideration in decision making, which can result in dangerous situations. Further, juveniles under the age of 18 are less likely to apply relevant information to situations and process events in a much less meaningful way than young adults ages 18-14.

Bryan-Hancock and Casey (2010) report on the results of several studies to support their theory. A 2000 study found that adolescents did not appear to be stabilized in their judgments

and psychosocial maturity until the age of 21. A 2005 study found that young people between the ages of 16 and 19 lacked the ability to function at adult levels of maturity. Juveniles may understand that their behavior is wrong; they simply lack the inability to consider long-term consequences for their actions.

Bryan-Hancock and Casey (2010) specifically studied the psychosocial maturity of three groups. Those under the age of 18, participants age 18, and participants age 25. Results showed that the psychosocial maturity of the group under the age of 18 differed significantly than that of the participants who were age 25. The 25-year-old group was better able to accept responsibility for their actions, consider future consequences, consider the perspective of others, and suppress aggressive behaviors. There was less of a marked difference between the 18-year-old group and the 25-year-old group. However, results clearly indicated that young people are not functioning at the same psychological maturity level as their adult peers (Bryan-Hancock & Casey, 2010, p. 66).

Labeling Theory

According to labeling theory, deviant behavior will continue and possibly intensify when negative labels are attached to offenders (Matsueda, 2000). Negative labels stigmatize individuals, lowers self-esteem, and isolates individuals from conventional society. According to Matsueda (2000), deviant labels are more likely to be applied to members of disadvantaged classes, ethnic minorities, and other groups stereotyped as deviant or criminal. These are groups considered high-risk for delinquent behaviors.

Youth form their identity by associating with families, peer groups, and the community. As Matsueda (2000) further explains, if an adult labels a youth as a “bad kid”, they may begin to see themselves that way and adopt the bad kid persona. A youth may commit small delinquent

acts such as breaking windows, climbing on roofs, and shoplifting, believing these acts to be play, fun, or adventure. Society however, labels these as acts as evil, nuisance, and delinquency. Repeated conduct by the youth soon causes polarization in the community. The community perspective changes by no longer considering the acts as evil, but instead labeling the offender as evil. In response, the youth adopts a delinquent self-identify and further integrates himself into the delinquent culture. The more a youth is arrested, the more the labeling process is intensified.

Society's response to youth misbehavior can make delinquency worse. Kirkish et al. (2000) blames the national shift from rehabilitation of delinquents to punishment. Pagnanelli (2007) argues that the transfer process contributes to the labeling process. Transferring youth to criminal court can have a significant negative effect on development. As Pagnanelli (2007) explains, a juvenile who is tried in criminal court feels unjustly treated, and juveniles with a negative perception are more likely to adopt a delinquent self-concept which in turn will cause them to re-offend.

Jordan and Frieberg (2010) rationalize that the juvenile justice system was created to protect adolescents from the stigma of the adult criminal justice system. With tougher transfer laws, there has been an ideological shift to the idea that society needs to be tough on juvenile delinquency. Johnson and Kurlycheck (2012) state that transfer to adult court sends a message to youth that they are unsuitable for the protections of the juvenile justice system, and that they are so incorrigible or morally reprehensible that they are beyond forgiveness and leniency.

Redding (2003) interviewed youth who had been transferred to the adult system. Most saw the process not so much a condemnation of their behavior, but a condemnation of them as a person. These youth gained the impression that they were being punished not because their behavior was bad, but that they were bad. Unlike their treatment in criminal court, these youth

believed that the juvenile court communicated to them they retained some worth in society. Redding (2003) found that juveniles generally perceived juvenile court punishments as fair and helpful whereas the criminal court only wanted to punish them. These juveniles were angry and resentful. If a juvenile perceives their sentence as unfair, they are more likely to adopt a criminal self-concept. Redding (2010) further elaborates that stigmatization and labeling a juvenile as a convicted felon also results in higher recidivism.

Social Bond Theory

Hirschi's (1969) social bond theory suggests that delinquency and a youth's social bonds are inversely related. Hirschi contends that someone is less likely to engage in delinquency if they have strong bonds to family, community, and society. The stronger the attachments, the less likely a person would be to commit crimes. Social bond theory has four elements: attachment, commitment, involvement, and belief. The first element suggests that psychopathy and deviant behavior is the result of a lack of attachment to others. When a youth has an emotional connection to another person, they are more likely to care what the other person thinks of them. If the opportunity for delinquency presents itself, the youth will be concerned about disappointing their attachments. Parents represent the most important attachment a child can have. As children grow into teens and parents have less of a physical presence, if attachment is positive, parents will remain psychologically present.

Hirschi (1969) next explains the role of commitment. Youth who are less likely to engage in delinquent acts display a commitment to conforming to society's standards. Youth with strong commitment do well in school and have bright prospects for the future. Youth with weak commitment have little to no stake in conformity. They struggle in school and have little hope or incentive for the future. The third element is involvement. The more a youth engages in

wholesome, conventional activities, the less time they are idle. Idleness and boredom can result in deviant behaviors. The last element is belief. Simply stated, if a young person believes they should obey the rules of society, the less likely he or she will violate those rules.

Kirkish et al. (2000) explain that many delinquent youth share common risk factors. Juvenile delinquents possess weak familial bonds. Many come from homes with ineffective parents, parental alcoholism, and disrupted parental bonds. A majority of delinquent youth are victims of childhood abuse and neglect. Pagnanelli (2007) states that family is the major socializing agent that influences and helps shape a child's attitude, values, behavior, and personality. When youth lack strong familial bonds, many will seek to form attachments elsewhere finding themselves in a violent culture of gangs. Delinquent youth also have low commitment. Najdowski et al. (2009) reports that many juveniles in the legal system are more likely to be intellectually disabled than their non-delinquent peers. The average offender has an IQ that is one standard deviation below youth who are not involved in the system. These youth struggle in school reducing their commitment.

As Pagnanelli (2007) points out, the juvenile justice system can improve the social bonds of at-risk youth. The juvenile court has many positive characteristics that assist youth in their rehabilitation. Judges, practitioners, probation officers, and caseworkers all work together and form relationships with delinquent youth. These positive attachments are often lacking in the adult system. Redding (2003) reports that practitioners in the criminal justice system are ill-equipped to deal with the special circumstances of young people. In particular, prison staff are not trained to counsel, educate, or simply provide basic case management in juvenile cases. In addition, as part of adjudication, the juvenile court system can refer youth to positive, pro-social

programs and activities to create and/or strengthen community bonds. These programs are not as available to youth in the criminal system.

Discussion of Theories

Each of the three theories discussed can assist in explaining why some kids choose to participate in delinquent acts. Statistics show that many youth will participate in at least one delinquent act before their eighteenth birthday. Some acts are minor, while a number of acts are serious in nature. Statistics also show that for a number of these youth, their offending will peak at the age of 16. By the age of 25, a number of youth will cease all offending behaviors.

Transfer to the adult system is meant to deter future crime. A review of the literature revealed that youth transferred to adult court are at a higher risk to recidivate than youth who remain in juvenile court. If a juvenile delinquent is kept in the juvenile court, life course development theory believes that these many of these youth may reduce or even cease their behaviors as they grow and mature.

The psychosocial maturity level of minors is not on the same level as adults. Youth are impulsive and they lack the ability to make decisions based on long term consequences. However, youth who are transferred to the adult system are treated and punished on the same level as adults. The juvenile court system was originally created because officials recognized the difference between adults and children, and they believed children were deserving of leniency. Juvenile court officials receive specific training on how to deal with juvenile offenders. In juvenile court, delinquents still receive consequences while participating in rehabilitative programs to improve their psychosocial maturity level.

Labeling a child as a delinquent can also have negative consequences. Youth interviewed by Redding (2003) felt that the adult system made them feel as if they were of less worth, while

they felt that the juvenile court cared about their well-being. There are also other benefits for a youth who remains in juvenile court. Review of the literature revealed that there were legal consequences for a youth who are convicted of a felony in adult court. Unlike the juvenile court, the conviction becomes public record. Any convictions must be reported on employment applications. Employers are less likely to hire someone who has been convicted of a felony. Redding (1999) points out that the consequences can increase recidivism as opportunities in life are limited when someone is labeled a criminal. When a youth remains in juvenile court, their adjudications are not considered a criminal conviction.

Finally, it has been shown how important strong social bonds are in preventing juvenile delinquency. A typical juvenile offender lacks strong bonds to family and community. Many come from single parent homes. Many are abused and/or neglected. The juvenile court is in the best position to assist youth in strengthening their bonds by developing programs for troubled youth. A Judge in the Third District Juvenile Court in Utah started The Village Project in 1994 (Utah State Courts, 2012). The program matches troubled youth with community mentors. Mentors work with youth by helping them with school work, teaching them new skills and hobbies, participating in activities, and just by being a positive role model in their life. This is just one example of hundreds of programs in the country to assist at-risk-youth. Youth who are transferred to adult court do not have access to special programs aimed at increasing their bonds to the community.

SECTION IV: STATE CASE STUDIES

In the 1980s and 1990s, 46 states made significant changes to their Juvenile Justice Codes. Utah and Wisconsin are both states with lower crime rates, yet both were concerned about juvenile crime and were among states to make changes. Both responded in different ways. Utah was one of the first states to make significant changes in 1987, allowing any juvenile age 14 and over charged with a felony to be waived. In 1996, Wisconsin removed all 17-year-olds from the jurisdiction of the juvenile court regardless of their charge and prior record.

Wisconsin

The State of Wisconsin allows for two types of waivers: discretionary juvenile waiver and statutory exclusion laws. Wisconsin Juvenile Justice Code sec. 938.18 allows for prosecutors to petition to waive juveniles age 14 and older to adult criminal court when accused of one of the following criminal acts: felony murder, second-degree reckless homicide, sexual assault, taking hostages, kidnapping, using a dangerous weapon or explosive in the commission of a burglary or assault, robbery of a financial institution, and manufacturing, distributing, or delivering a controlled substance. In addition, a prosecutor can also request a juvenile age 14 or older be waived to adult court when committing a felony for the benefit of a criminal gang (Wis. Stat. Ann., sec. 938.18(1)(b)). A prosecutor, upon the filing of a petition, can request that any juvenile over the age of 15 be transferred for violating any state criminal law (Wis. Stat. Ann., sec. 938.18(1)(c)).

Year	Petitions Filed	Youth Waived
2003	14,206	323
2004	13,182	370
2005	13,305	377
2006	12,489	303
2007	11,688	281
2008	11,060	194
2009	9,324	167
2010	8,366	173

Table 2. Youth Waived in Wisconsin, 2003-2010 (Mendell, 2011)

The Wisconsin State Legislature has established statute specifically granting criminal court exclusive jurisdiction over juveniles ages 10 and older when charged with the following: committing assault or battery while placed in a juvenile correctional facility or residential care center, first degree intentional homicide, attempted first degree intentional homicide, first degree reckless homicide, and second degree intentional homicide (Wis. Stat. Ann., sec. 938.183(1)). The State of Wisconsin also has once-an-adult always-an-adult laws. Once a juvenile has been convicted of any violation in criminal court, any subsequent violations will be prosecuted in criminal court.

Effective January 1, 1996, the state of Wisconsin enacted significant changes to their Juvenile Justice Code. Section 938.12(1) granted the juvenile court exclusive jurisdiction over juveniles over the age of 10. Previous law granted the court jurisdiction over juveniles as young as 12. Section 938.02(1) was amended as follows:

“Adult” means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, “adult” means a person who has attained 17 years of age.

With this amendment, Wisconsin joined 11 other states to exclude youth younger than 18 from the jurisdiction of the juvenile court (Torbet, Griffin, Hurst, & MacKenzie, 2000). In 2008,

lawmakers proposed returning jurisdiction of 17-year-olds back to the juvenile court. The measure failed to pass (Boggs, Campbell, Martin & Wolf, 2008).

Removing an entire age group from the jurisdiction of the juvenile court is considered the broadest form of statutory exclusion (Torbert et al., 2000). At the time of the reform, it was estimated that 17-year-olds were responsible for approximately 25% of violent crime, and 15% of property crime. By automatically removing this age group from the jurisdiction of the juvenile court, Wisconsin reduced the number of youth in the system by 12%. Lawmakers believed this change was necessary, citing three main concerns.

First, law makers believed it was necessary to promote individual accountability. A study of the juvenile system classified Wisconsin's courts as revolving doors. The report recommended that 17-year-olds were mature enough to be held to a greater accountability with the full range of adult dispositions. The study also reported the belief that the criminal justice system was in a better position to enforce accountability through incarceration in prisons and jails. In addition, law makers felt that adult probation and parole agents were better equipped at enforcing sanctions than officials in the juvenile justice system.

Second, the change was enacted to bring jurisdiction in line with neighboring states. Illinois and Michigan had established the age of original jurisdiction at 16.¹ Officials were concerned that criminals, in particular sophisticated criminals from neighboring Chicago, would use older juveniles to expand drug markets in southern Wisconsin (Torbert et al., 2000, p. 8). And third, law makers felt that by removing 17-year-olds from juvenile court, already limited resources would be freed up for the rehabilitation of younger offenders.

When the amendments to the Juvenile Justice Court were enacted, the state of Wisconsin felt both immediate and long term impacts (Torbert et al., 2000). Juvenile courts experienced a

¹ Illinois has since raised the age of original jurisdiction to 17.

decrease in referrals. Milwaukee County along saw a 25% decrease from 1995 to 1997. Admissions in juvenile correctional institutions decreased by 15% between 1995 and 1997. However, by 2000, the population had risen to prereform levels. While juvenile correctional centers saw a decrease in population, already crowded adult correctional centers experienced increased workloads. Jail admissions between 1996 and 1997 increased by 10% while prison admissions increased 36%.

Placing minors into adult correctional facilities came with a new set of challenges for officials (Torbert et al., 2000). Under current Wisconsin law, with the exception of criminal responsibility, 17-year-olds are not considered as adults. They cannot vote, make legal decisions, or obtain medical treatment without the consent of parents. In 1995, the Wisconsin legislature gave power to correctional officials to provide medical care to minors. However, many jailors have expressed concern and still try and obtain parental consent before providing any medical care to an inmate who has not yet turned 18.

In Wisconsin, 17-year-olds are still subject to educational requirements (Torbet et al, 2000). After 1996, jails and prisons were required to work with local school district and add classrooms so youth could continue with their education. A study found that this has been a positive addition to jails. Inmates up to age 21 were also given access to classrooms. Older inmates often encouraged younger inmates to participate in school and graduate. Offering educational opportunities also contributed to the overall safety and security in jails. Teachers however have struggled to teach inmates who already function at grade levels below other high school students. Many of the inmates lack necessary high school credits, so planning a curriculum to benefit the students has also been difficult.

A study conducted by Torbet et al. (2000) found other issues with Wisconsin's reforms. Prior to the changes in legislation, only the most serious, violent, and chronic offenders were transferred into the adult system. Seventeen-year-old offenders with minor violations were kept within the juvenile system where charges could be handled informally. After the reform, all 17-year-olds were subject to prosecution in criminal court. Mendell (2011) reports that since 1996, approximately 250,000 of 17-year-olds have been arrested for non-violent offenses. Only 5% of 17-year-olds are charged with serious or violent offenses. One of the counties in the studied lacked resources to operate a diversion program for young offenders. In another, staff was untrained in how to work with youth and found difficulty in tailoring programs to meet their special needs.

Urbina (2005) interviewed practitioners in the Wisconsin Criminal Justice System to understand their views on prosecuting juveniles in criminal court. Public defenders in Wisconsin reported that in their view the primary objectives of juvenile waiver were meant to be (1) severe punishment, (2) deterrence, (3) public safety, and (4) retribution. When questioned about convictions and sentences, public defenders reported that being waived to adult court did not increase the probability of conviction, however it did increase the probability of receiving a longer or harsher sentence.

Public defenders were then asked what they felt were the benefits of juvenile waivers. A majority reported that first, adult court allowed for longer sentences for violent juveniles charged with extremely serious offenses. Second, juveniles were granted additional constitutional rights, such as jury trials, that they would not be guaranteed in juvenile court. Third, the criminal court was in a better position to impose swifter and harsher consequences for non-compliance. Fourth, some treatment programs were more accessible in adult facilities. Fifth, the adult system was

better able to implement restitution. Sixth, sending the most violent offenders to adult court freed up additional resources for younger juveniles. And last, waivers were a positive social control mechanism (Urbina, 2005, pp. 156-157).

The public defenders in Wisconsin also reported problems with the current waiver system. By automatically sending all 17-year-olds to criminal court, each juvenile is unable to be judged individually. Some public defenders have also seen waivers used as a threat by a prosecutor to induce a plea. Some judges have focused more on an offense than on the individual or their psychological maturity. Some waivers are based more on age than on rehabilitative needs. Some public defenders complain that social workers are not working enough with families before recommending waiver. Public defenders also felt that some waivers were politically motivated or done because of a lack of resources in the juvenile system. Finally, many public defenders felt that the criminal justice system was a dumping ground for troubled kids that the juvenile court was ill-equipped at dealing with (Urbina, 2005, p. 157).

In addition to the problems encountered, public defenders also reported many other negatives (Urbina, 2005). Many juveniles were unable to adequately read or write, had several mental health issues, and substance abuse issues. Juveniles in Wisconsin prisons have little access to treatment or educational services. When they are released, they do not possess the necessary skills to function in the adult world. Many of the juveniles are also ill-equipped to deal with the strict conditions of adult probation and parole. The public defenders also reported youth who became discouraged when they realized they were being labeled as youth who could not be reformed. Youth who were sent to institutions became more bitter and anti-social. The public defenders also noticed a great disparity between African American and other minority youth who were waived compared to their white counterparts.

Prosecuting attorneys were also interviewed in Urbina's (2005) study. Prosecutors felt the primary objectives for waivers were (1) punishment, (2) better treatment options in the adult system, and (3) public safety. Prosecutors in Wisconsin also believe the waivers are a good way of sending a message to potential offenders in the community about the consequences of committing a crime (Urbina, 2005, p. 160). Like the public defenders, the prosecutors expressed a belief that being waived into adult court did not increase the likelihood of conviction, but did increase the probability of a harsher sentence.

When asked about benefits of waivers, prosecutor responses differed from public defenders (Urbina, 2005). Prosecutors felt that the benefits were individual accountability, public safety, longer period of control and monitoring by adult corrections, increased deterrence, lower recidivism, better rehabilitation, retribution, swifter consequences, victim satisfaction, restitution, and permanent criminal record (Urbina, 2005, p. 161). In addition, prosecutors believed that waivers were a good mechanism to keep society happy and a way to send a message that juvenile crime will not be tolerated.

Unlike the public defenders, few prosecutors reported problems in the system (Urbina, 2005). If anything, prosecutors felt that juveniles weren't being waived to adult court soon enough. Some prosecutors expressed belief that not enough juveniles were being waived to criminal court. Problems reported were that social workers within the juvenile system were equipped to deal with at-risk-youth and that the juvenile system simply did not have enough resources.

Less than half of the prosecutors surveyed did report some negative consequences to waivers (Urbina, 2005). Some of the problems referenced were permanent criminal record, loss of confidentiality, inability to handle adult prison, inability of probation officers to understand

teenage problems, limited treatment options in prison, victimization in adult prison, juveniles learning to be criminals in prison and negative impact on the juvenile's development (Urbina, 2005, p. 162). In addition, some prosecutors conceded that waiving juveniles is not changing their behaviors. It is only a temporary remedy and soon hardened criminals will be released back into society.

Finally, Urbina (2005) surveyed judges in Wisconsin for their perspective. Most judges agreed with the public defenders and the prosecutors on the objectives of waivers. A majority of judges also conceded that a waiver increased the likelihood of a longer or harsher sentence. When asked about the benefits of waivers, the judges responded that waivers offered more severe sanctions, wider range of sentencing options, intense community supervision, greater accountability, community protection, deterrence, rehabilitation, restitution, retribution, more serious consequences for not complying, public satisfaction publicity (Urbina, 2005, pp. 164-165).

Many of the judges surveyed reported critical problems with the current system (Urbina, 2005). In addition to some of the issues cited by public defenders and prosecutors, Judges in Wisconsin report that statutory guidelines are too vague and there is no uniformity in decisions. Decisions differ from county to county. Judges also agreed with prior research to show that waivers are not a deterrent to future crime. Most judges expressed belief that juveniles sent to prison simply learn how to be better criminals. Judges also expressed belief that they received request to transfer certain juveniles because professionals in the system were worried about resources and simply wanted to wash their hands of problems. The judges surveyed reported that waivers were also being disproportionately applied to poor and minorities.

When asked about negative consequences of waivers, the judges cited many of the main concerns cited by public defenders and prosecutors (Urbina, 2005). Specifically, judges were concerned with the inability of the juveniles to fully comprehend the adult system, juveniles only agreeing to waivers as part of a plea agreement, and the adult system forces juveniles to grow up too soon. Judges in Wisconsin expressed concern that juveniles get lost in the adult system and develop negative and antisocial attitudes as a result of their experiences (Urbina, 2005, p. 166).

The Wisconsin legislature had good intentions when deciding to transfer 17-year-olds to the adult system. In addition to the problems already discussed, a recent study found that the goal of deterrence has failed (Boggs et al., 2008). A Wisconsin Legislative Audit estimated that recidivism rates for 17-year-olds to be approximately 48%, a figure almost three times higher than juveniles or adult incarcerated in age-appropriate facilities (Boggs et al. 2008, p. 9.) Additionally, the goal of making the juvenile justice system more efficient has also failed. Wisconsin's juvenile justice system has become more expensive and less efficient. The study by Boggs et al. (2008) also discovered that Wisconsin has a greater percentage of African-Americans incarcerated than any other state. Mendell (2011) reports that Wisconsin has the highest racial disproportionality of minority youth in the nation.

Utah

The state of Utah relies on judicial waiver and statutory exclusions laws. Utah Code Ann. §78A-6-103 grants the juvenile court exclusive jurisdiction over any child who has violated any law before turning 18-years of age. The juvenile code has made exceptions to this section. Utah Code Ann. §78A-6-701 grants the District Court exclusive jurisdiction of a minor over the age of 16 who has committed murder or aggravated murder, any felony after being previously

committed to secure confinement, or any violation of law after being previously certified to criminal court. These are the only statutory exclusions to juvenile court jurisdiction.

The Utah Legislature has also established procedures for a juvenile court judge to waive a youth to district court. Utah Code Ann. §78A-6-702, or the Serious Youth Offender statute, allows the prosecutor to file a criminal information in the juvenile court for any youth age 16 and older who commits one of the following acts: aggravated arson, aggravated assault with bodily injury, aggravated kidnapping, aggravated burglary, aggravated robbery, aggravated sexual assault, felony discharge of a firearm, attempted aggravated murder, attempted murder, or any offense involving the use of a dangerous weapon. Utah Code Ann. §78A-6-703 places the burden on the prosecutor to prove that the juvenile should be prosecuted in adult court. The judge will decide using several criteria including the seriousness of the offense, gang involvement, premeditation, maturity, previous record, home environment, and likelihood of rehabilitation. Juveniles who are waived to adult court have the right to appeal.

Snyder, Sickmund, and Poe-Yamagata (2000) studied Utah's juvenile waiver system. Between 1988 and 1995, requests were made to transfer 225 youth to criminal court. Most of the youth were male (96%), white (57%), and 17 (70%). A majority of the youth had lengthy juvenile records having at least one formally handled referral and one prior adjudication. However, Snyder et al. (2000) found that less than half had previously been placed on probation or had completed a residential treatment program. A majority of the requests involved serious person or property offenses. However, in 40% of the cases involved less serious charges such as burglary. Approximately 66% of the youth had accomplices, but most were determined to be the primary offender. Twenty percent of offenders were known gang members. In addition,

32% of the youth used a firearm and 26% used a weapon other than a firearm. In 20% of the cases, the victim required medical treatment.

Snyder et al. (2000) reported that waiver requests were approved in 76% of the cases (171 youth). A study of those waived revealed that the juvenile court was more likely to waive a minority youth than a white youth. The court was also more likely to waive younger offenders rather than older offenders. Juveniles with five or more formally handled cases were more likely to be waived than juveniles with one to four previous cases. However, the court was also just as likely to waive youth who had no previous record. Waiver was also just as likely for youth with no previous ordered placements as youth with three or more court-ordered placements.

Snyder et al. (2000) also studied patterns between the offense and waiver. The court was more willing to transfer a youth charged with a serious person offense than youth charged with a less serious property offense. Waiver was slightly more likely if the offender used a weapon. If the victim was injured in the offense, it was almost certain the juvenile would be waived. Gang affiliation did not have much of an impact. Snyder et al. (2000) expressed concern with why first time offenders were being transferred. Eighty-seven percent of waived cases involved use of a weapon and serious injury. First time offenders accounted for 17% of these cases. If a case did not involve serious injury, the courts looked more at previous record. When cases were transferred to adult court, the most common outcome was confinement in prison or jail rather than probation.

Results of the Snyder et al. (2000) study was a factor in a decision for Utah to develop the Disproportionate Minority Contact Subcommittee of the Utah Board of Juvenile Justice (UBJJ, 2012). One main goal of the project is to eliminate the disproportionate representation of minority youth in the juvenile justice system. As previous literature has pointed out, youth are

also over represented in waiver decisions throughout the country. Statistics collected in Utah support this trend. Utah has a predominately white population, followed by Hispanic and Native American. Minorities, particularly those of Hispanic descent, are waived more often than whites, when compared to population totals in Utah.

Year	Arrests	# of Waivers	White	African American	Hispanic	Pacific Islander	Native American	Asian
2005	27,877	41	21	1	10	5	2	2
2006	40,005	52	16	6	24	6	1	0
2007	30,042	43	15	1	21	6	0	0
2008	29,563	31	11	7	11	1	1	0
2009	25,974	22	9	0	12	1	1	0

Table 3. Waivers in Utah from 2005-2009 by Race (UBJJ, 2012)

Issues have been raised questioning the constitutionality of Utah’s waiver statutes. While many state’s changed their transfer laws in the 1990s in response to growing juvenile crime rates, Utah responded much earlier by enacting direct file legislation (Visser, 2011). In 1987, Utah Code Ann. §78-3a-25(6) read as follows:

If the petition in the case of a person 14 years of age or older alleges that he committed an act which would constitute a felony if committed by an adult, and if the court after full investigation and a hearing finds it would be that it would be contrary to the best interests or of the public to retain jurisdiction, the court may enter an order certifying to that effect and directing that the child be held for criminal proceedings in the district court , with a hearing before a committing magistrate to be held as in other felony cases.

The first challenge to the statute came in 1989 in *State v. Bell*, 785 P.2d 390, 405 (1989).

When he was 17, Bell shot a gas station attendant during a robbery. Bell was convicted of attempted murder and aggravated robbery in district court. On appeal, Bell challenged the waiver statute on the grounds that 1) being an adult violated both federal and state due process and equal protection clauses and 2) the statute granted unencumbered discretion to the prosecutor in waiver decisions (Visser, 2011). The Court held that there is no special right to be treated as a juvenile offender. Further, the court held that “the State interest in addressing the rise in the

number of crimes committed by juveniles as well as the growing recidivist rate among this group was sufficiently related to the classification scheme (Visser, 2011, p. 366).

The statute stood until 1995 when the Court reversed themselves in *State v. Mohi*, 901 P.2d 991, 1002 (1995) (Visser, 2011). Mohi and two accomplices were convicted of aggravated felonies in district court. On appeal, Mohi challenged the constitutionality of the statute. In its decision, the Utah Supreme Court reversed the *Bell* decision ruling that the waiver statute allowed for arbitrary and sometimes abusive charging decisions. Further, the Court held that the statute contemplated two separate classes of juvenile offenders resulting in a disparate impact. The Court concluded by ruling that although there was a legitimate need to try certain violent offenders as adults, legitimacy could not justify arbitrary means.

The Utah Legislature responded by amending the statute to giving the juvenile courts discretion over serious youth offenders (Visser, 2011). Prosecutors were responsible to file a criminal information in court and show probable cause why a youth should be waived. An offender is responsible to prove three factors why they should remain in juvenile court. In 2002, the Utah Legislature passed legislation giving the district court original jurisdiction over certain felonies committed by a youth at least 14 years of age. In 2010, both statutes were amended again raising the age of possible waiver to age 16.

A case currently pending before the court highlights another potential issue with Utah's automatic waiver statute. Jonatan Bustos is currently awaiting trial for murder in Utah's Third District Court. In 2010, at age 16, Bustos stabbed a classmate outside of a retail store. Bustos claims he was acting in self-defense when the victim confronted him about a stolen iPod. Under Utah's statutory exclusion statute, Bustos was charged in district court. However, Bustos

attorney argued that the facts supported a charge of manslaughter, a crime that is eligible for prosecution in juvenile court (Visser, 2011).

In Utah, manslaughter is a lesser included offense to murder (Visser, 2011). Therefore, the jury will have the option of finding Bustos guilty of manslaughter. If that is the case, it is possible for Bustos to receive a sentence of 15 years. If Bustos were found adjudicated of manslaughter in juvenile court, he would receive a sentence of five years. Visser (2011) argues that the only effective safeguard against abuse of discretion is to provide juveniles a transfer hearing in all circumstances to justify prosecution in the adult system.

SECTION V: CONCLUSIONS AND RECOMMENDATIONS

Based upon the literature, many recommendations to current policy can be made. One recommendation is the elimination of statutory exclusion and prosecutorial discretion laws. The problem of juvenile crime should remain in the juvenile system. As the literature has shown, Judges are in the best position to determine if a youth should be prosecuted in adult court, or if they should remain in the juvenile system. When the juvenile court was created, it was the express belief that juveniles needed a separate system operating under the goal of rehabilitation. It has been established that some youth transferred to the adult system are first time offenders who have not had the opportunity to participate in rehabilitation programs. One factor in transfer is prior rehabilitative efforts and amenability to rehabilitation. A waiver hearing will allow a judge to determine the possibility of rehabilitation.

Rehabilitation needs to be the number one priority of the juvenile justice system. In order to convince policy makers, the effectiveness of the juvenile rehabilitation system must be improved. Programs specifically targeted at reducing juvenile crime should be created or improved upon. One example of a program is California's 8% solution. In a three year study, Orange County, California probation officers discovered that 55% of juvenile crime was committed by 8% of offenders. The county developed programs specifically targeting the 8%. Services included mental and physical evaluations, personal and family counseling, job programs and placement services, and evening classes for the entire family. A 2002 study found that participants had fewer petitions for new law violations and fewer were on warrant status when compared to youth who did not participate (Pagnanelli, 2007).

Waiver hearings also reduce other problems caused by automatic waiver. A problem was highlighted in the State of Utah with the case of Jonatan Bustos. Underlying facts to murder or

automatic waiver charges are best left to judges to consider in the waiver process. The return to hearing-based, judicially controlled waivers is a policy fully supported by the American Bar Association and the National Council of Juvenile and Family Court Judges (Griffin, 2008).

Judges must follow all the criteria presented in *Kent*. One of the criteria put forth by the Supreme Court asks judges to consider the maturity level of juveniles in their waiver decisions. The literature has made clear that juveniles are not on the same psychosocial maturity level as individuals who have reached adulthood. If it does not already exist, all juvenile courts should develop an assessment tool to determine the psychological functioning of youth who face the possibility of adult court. This will ensure fair and equitable justice by ensuring all youth who are transferred possess comparable capabilities with the adults they are judged alongside.

Another recommendation would be to establish a minimum age before a juvenile can be waived to adult court. Some states have made it possible for youth as young as 10-years-old to be prosecuted as adults. Flesch (2004) reports the findings of psychologists that believe juveniles under the age of fifteen are unlikely to possess the maturity or competency to fully appreciate the nature of their actions. For this reason, children who are under 15 should never be waived to adult court. There is concern that juveniles who commit serious crimes will not receive adequate punishments for serious crimes if they are sentenced to the juvenile system.

As Bryan-Hancock & Casey (2010) discovered, some youth do not reach full psychosocial maturity until age 25. If lawmakers are concerned with adequate punishment, they may consider extending the upper age of juvenile court jurisdiction from age 21 to age 25. The theory of life course development also supports this recommendation. Increasing the legal age of adulthood would prolong an offender's stay in the juvenile system offering more access to

rehabilitation programs and would be in accordance with the fact that most criminality tends to peak by late adolescence and decline thereafter (Pagnanelli, 2007).

Another issue highlighted by the review of the literature was a youth's awareness of juvenile transfer law. Many youth who are transferred are either unaware of the possibility of prosecution in criminal court, or they simply do not believe they could be tried as adults. The State of Georgia was one state who elected to automatically remove some juveniles from the jurisdiction of juvenile court for certain crimes. To educate youth on the new laws, the state produced a video entitled "Multiple Choice" that explained the new laws and portrayed a picture of conditions within Georgia's adult prisons. The video was distributed to schools and was occasionally shown on local television stations. The video proved an ineffective strategy. In a study by Redding (2004), only 1/3 of juveniles who were tried as adults in Georgia under the automatic waiver were aware of the new laws. If policy makers intend to use waiver laws as a deterrent to juvenile crime, a more effective way of educating at-risk-youth needs to be developed.

It is necessary for some youth to be prosecuted as adults. Juvenile waiver should be used as a mechanism to remove juveniles from the system who have exhausted all resources. A recommendation to reduce the negative incarceration of youth in the adult system would be to offer specialized programming for juveniles. One example of a successful program is Virginia's youthful offender program. Criminal court judges sentence youth between the ages of 16 and 21 to indeterminate sentences. Juveniles are housed separately from adult offenders. Each individual is assessed and an individual treatment plan is created. Participants participate in therapeutic services that include counseling and support groups, anger management, life skills training, substance abuse education, and mental health services (Redding, 2003).

Further follow up is needed in the State of Wisconsin to study the effects of prosecuting 17-year-olds in the adult system. Categorically excluding an entire age group from the juvenile court has resulted in unanticipated consequences. Prior to reform, waivers were being sought for 17-year-olds already charge serious and violent offenses. Altering the age of jurisdiction merely shifted nonviolent, first time offenders from the jurisdiction of the juvenile court to the criminal court. In addition to problems previously discussed, waiver petitions for 16-year-olds increased 90% in Milwaukee County in the first year after new law took effect. Prior to the reform, waivers for 16-year-olds were not sought to the same extent as 17-year-olds. Merely being 16 increased a juvenile's odds of waiver (Torbet et al., 2000). In 2007, legislation to change the age of original jurisdiction back to 18 failed. Improved data collection and evaluation of the current system in Wisconsin should be completed prior to the introduction of another bill.

RESOURCES

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APPENDIX A

Demographic characteristics of cases waived to criminal courts												
Year	Total	>12	13 - 15	16	<17	Male	Female	White	Minority	Black	American Indian	Asian /NHPI
1989	8,000	<50	900	2,100	4,900	7,600	400	4,000	3,900	3,700	200	<50
1990	8,700	<50	800	2,400	5,400	8,300	400	4,100	4,500	4,300	200	100
1991	10,800	<50	1,100	3,000	6,700	10,300	500	5,100	5,700	5,500	100	100
1992	11,300	<50	1,400	3,400	6,500	10,900	400	5,500	5,800	5,600	200	100
1993	12,200	100	1,600	3,500	7,000	11,600	600	6,200	6,000	5,700	200	100
1994	13,800	100	1,900	4,000	7,800	13,000	800	7,500	6,300	5,900	300	100
1995	12,900	100	2,200	3,800	6,800	12,100	800	7,000	5,900	5,600	200	100
1996	13,100	100	2,200	3,900	7,000	12,200	800	7,400	5,600	5,300	300	100
1997	12,700	100	1,900	3,500	7,100	11,800	900	7,600	5,100	4,700	300	100
1998	11,700	100	1,800	3,000	6,900	10,600	1,100	7,500	4,300	3,900	300	100
1999	10,500	100	1,700	2,600	6,000	9,400	1,000	6,700	3,800	3,400	200	100
2000	9,200	100	1,400	2,000	5,700	8,200	1,000	6,000	3,200	2,800	200	100
2001	8,100	100	1,200	1,800	5,000	7,200	800	5,200	2,900	2,500	200	100
2002	8,700	100	1,300	2,500	4,900	7,800	1,000	5,900	2,900	2,600	200	100
2003	8,500	100	1,200	2,300	4,900	7,700	900	5,700	2,800	2,500	200	100
2004	8,300	<50	1,200	2,300	4,700	7,300	900	5,400	2,900	2,600	200	<50
2005	8,400	<50	1,200	2,400	4,800	7,500	900	5,200	3,200	2,900	200	100
2006	8,800	<50	1,200	2,500	5,100	8,000	900	5,200	3,600	3,200	300	100
2007	8,900	100	1,100	2,400	5,300	8,000	900	5,300	3,600	3,300	300	100
2008	8,800	<50	1,100	2,300	5,400	8,000	800	4,900	3,900	3,600	300	100
2009	7,600	<50	800	1,900	4,900	6,800	800	4,500	3,200	2,900	200	100

Note: The estimates in this table are rounded to the nearest 100.

Puzzanchera, C. and Kang, W. (2012). "Easy Access to Juvenile Court Statistics: 1985-2009." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezajcs/>

National Juvenile Court Database (2012)

APPENDIX B

Cases Waived to Criminal Court by Offense					
Year	Person	Property	Drugs	Public Order	Total
1989	2433	3750	1235	555	7973
1990	2943	3812	1228	674	8657
1991	3635	4538	1826	773	10772
1992	4125	4869	1371	903	11268
1993	5104	4652	1369	1101	12226
1994	5787	5204	1620	1232	13843
1995	5525	4630	1672	1054	12881
1996	5397	5003	1721	957	13079
1997	4952	4846	1817	1079	12694
1998	4367	4383	1820	1168	11738
1999	4137	3668	1518	1140	10464
2000	3554	3263	1378	1038	9232
2001	3355	2706	1209	817	8086
2002	3395	3254	1231	839	8719
2003	3358	3121	1231	815	8525
2004	3556	2636	1208	860	8260
2005	4013	2415	1137	868	8433
2006	4218	2641	1160	812	8831
2007	4243	2614	1205	846	8908
2008	4325	2567	1074	854	8820
2009	3534	2336	978	794	7642
Total	85957	76905	29009	19180	211052
Suggested citation: Sickmund, M., Sladky, A., and Kang, W. (2012). Easy Access to Juvenile Court Statistics: 1985-2009 Online. Available: http://www.ojjdp.gov/ojstatbb/ezajcs/					

National Juvenile Court Database (2012)

APPENDIX C

Most states have multiple ways to impose adult sanctions on offenders of juvenile age									
State	Judicial waiver			Prosecutorial discretion	Statutory exclusion	Reverse waiver	Once an adult always an adult	Blended sentencing	
	Discretionary	Presumptive	Mandatory					Juvenile	Criminal
Number of states	45	15	15	15	29	24	34	14	18
Alabama	■				■		■		
Alaska	■	■			■			■	
Arizona	■			■	■	■	■		
Arkansas	■			■		■		■	■
California	■	■		■	■		■		■
Colorado	■	■		■		■		■	■
Connecticut			■			■		■	
Delaware	■		■		■	■	■		
Dist. Of Columbia	■	■		■			■		
Florida	■			■	■		■		■
Georgia	■		■	■	■	■			
Hawaii	■						■		
Idaho	■				■		■		■
Illinois	■	■	■		■		■	■	■
Indiana	■		■		■		■		
Iowa	■				■	■	■		■
Kansas	■	■				■	■	■	
Kentucky	■		■			■			■
Louisiana	■		■	■	■		■		
Maine	■	■					■		
Maryland	■				■	■	■		
Massachusetts					■			■	■
Michigan	■			■			■	■	■
Minnesota	■	■			■		■	■	
Mississippi	■				■	■	■		
Missouri	■						■		■
Montana				■	■	■		■	
Nebraska				■		■	■		■
Nevada	■	■			■	■	■		
New Hampshire	■	■					■		
New Jersey	■	■	■						
New Mexico					■			■	■
New York					■	■			
North Carolina	■		■				■		
North Dakota	■	■	■				■		
Ohio	■		■				■	■	
Oklahoma	■			■	■	■	■		■
Oregon	■				■	■	■		
Pennsylvania	■	■			■	■	■		
Rhode Island	■	■					■	■	
South Carolina	■		■		■				
South Dakota	■				■	■	■		
Tennessee	■					■	■		
Texas	■						■	■	
Utah	■	■			■		■	■	
Vermont	■			■	■	■			■
Virginia	■		■	■		■	■		■
Washington	■			■	■		■		
West Virginia	■		■						■
Wisconsin	■				■	■	■		■
Wyoming	■			■		■			

Note: Table information is as of the end of the 2009 legislative session.