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# **THE IMPACT OF PROSECUTING YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM**

**A Review of the Literature**

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Juvenile Justice Project  
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## **I. Introduction**

The juvenile justice system was founded with the goal to serve the best interests of the child, with an understanding that youth possessed different needs than adults. Transfer laws<sup>1</sup> represent a departure from that traditional understanding of juvenile justice and are contrary to fundamental notions of justice. As the overwhelming majority of research studies show, the adult criminal justice system is ill-equipped to meet the needs of youth offenders at all stages of the process, from trial to sentencing options to incarceration. The findings of this literature review indicate that justice is not served by forcing juveniles through a system never intended to process youth and that transfer laws have exacerbated the problems they sought to address.

### **A. Increased treatment of juvenile delinquents as adults**

Over the last several decades, laws allowing for the transfer of juveniles into the adult criminal justice system grew in popularity throughout the United States in response to fears

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<sup>1</sup> Youth may be prosecuted as adults via a variety of mechanisms – judicial waiver, direct file or prosecutorial discretion, legislative or automatic exclusions, and age of jurisdiction issues – and they are collectively referred to as “transfer laws” throughout this literature review. Under “judicial waiver” laws, the case originates in juvenile court. Under certain circumstances, the juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. Some states call the process “certification,” “remand,” or “bind over for criminal prosecution.” Others “transfer” or “decline jurisdiction” rather than waiver. Almost all states have judicial waiver provisions, and statutes vary in how much guidance they provide judges on the criteria used in determining if a youth’s case should be transferred. “Prosecutorial waiver” laws grant prosecutors discretion to file cases against young people in either juvenile or adult court. “Automatic exclusions,” or “legislative or statutory exclusion” laws exclude certain youth from juvenile court jurisdiction entirely by requiring particular types of cases to originate in criminal rather than juvenile court. “Age of jurisdiction issues” refer to laws that determine the age of adulthood for criminal justice purposes. They effectively remove certain age groups from the juvenile court control for all infractions, whether violent or non-violent, and place them within the adult court jurisdiction. Thirteen states have defined the age of juvenile court jurisdiction as below the generally accepted age of 18 years old. Sources: Sickmund, M. (2003). *Juveniles in court*. Washington, DC: US Department of Justice, Office of Juvenile Justice and Delinquency Programs. <http://www.ncjrs.gov/html/ojjdp/195420/contents.html>. Griffin, P. (2005). *National overviews. State juvenile justice profiles*. Pittsburgh, PA: National Center for Juvenile Justice. <http://www.ncjj.org/stateprofiles/>.

of a juvenile “superpredator” that never materialized.<sup>2</sup> While that myth has all but disappeared, the transfer laws and their disastrous effects are still present.<sup>3</sup> The myriad of transfer laws, policies and procedures made it easier to transfer greater numbers of youth to adult criminal court.<sup>4</sup> State legislatures enacted statutes that extended the age and offense reach of judicial waiver, legislative waiver/automatic transfer, and prosecutorial discretion/concurrent jurisdiction policies.<sup>5</sup> Of particular interest is the increased shift of discretionary power from judge to prosecutor, and an increasing number of juveniles are now transferred to adult criminal court via automatic transfer provisions.<sup>6</sup> Notably, some states place no limit on the types of offenses for which the prosecutor may charge a juvenile in criminal court.<sup>7</sup> Initiatives that make it easier to prosecute youth in adult criminal court have increased despite the decrease in youth crime in recent years.<sup>8</sup> Studies report that over 200,000 youth under the age of 18 are tried annually in adult criminal court.<sup>9</sup>

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<sup>2</sup> CAMPAIGN FOR YOUTH JUSTICE, *THE CONSEQUENCES AREN'T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM 3* (2007), *available at* [http://www.campaign4youthjustice.org/Downloads/NEWS/National\\_Report\\_consequences.pdf](http://www.campaign4youthjustice.org/Downloads/NEWS/National_Report_consequences.pdf).

<sup>3</sup> HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP'T. OF JUSTICE, *JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT* (2006).

<sup>4</sup> Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, *JUV. JUST. BULL.* (Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Washington, D.C.) Aug. 2008, at 1.

<sup>5</sup> *Id.*

<sup>6</sup> GERARD RAINVILLE & STEVEN SMITH, U.S. DEP'T. OF JUSTICE, *JUVENILE FELONY DEFENDANTS IN CRIMINAL COURTS 1* (2003); Jason J. Washburn, et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 *PSYCHIATRIC SERVICES* 965, 965 (2008).

<sup>7</sup> Benjamin Steiner & Emily Wright, *Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance?* 96 *J. CRIM. L. & CRIMINOLOGY* 1451, 1451 (2006).

<sup>8</sup> John H. Lemmon et al., *The Effect of Legal and Extralegal Factors on Statutory Exclusion of Juvenile Offenders*, 3 *YOUTH VIOLENCE AND JUV. JUST.* 214, 215 (2005).

<sup>9</sup> Jennifer J. Woolard et al., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 *INT'L J. FORENSIC MENTAL HEALTH* 1, 4 (2005).

## **B. Negative consequences of transfer laws**

Researchers and academics overwhelmingly agree that transfer policies have harsh and negative consequences, as this report demonstrates. Transfer policies disproportionately affect youth of color.<sup>10</sup> Youth in the adult system are convicted and incarcerated at higher rates compared to their counterparts in the juvenile justice system and they also tend to receive harsher sentences.<sup>11</sup> Transferred juveniles experience high rates of pretrial detention,<sup>12</sup> are often detained or incarcerated in adult facilities, where they have no access to resources vital to their development, and are at an unacceptably high risk for assault and abuse.<sup>13</sup> Transfer policies have demonstrated no proven deterrent effect<sup>14</sup> and have caused sharp increases in recidivism across several jurisdictions.<sup>15</sup>

## **II. Methodology**

This report was commissioned by the Campaign for Youth Justice to update a previous literature review compiled by the Youth Law Center in light of two new recent

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<sup>10</sup> See, e.g., Alex R. Piquero, *Disproportionate Minority Contact*, THE FUTURE OF CHILD., Fall 2008, at 59.

<sup>11</sup> AARON KUPCHIK, JUDGING JUVENILES: PROSECUTING ADOLESCENTS IN ADULT AND JUVENILE COURTS 114, 115 (2006); Lemmon, *supra*, at 226; Marcy R. Podkopacz & Barry C. Feld, *The End of the Line: An Empirical Study of Judicial Waiver*, 86 THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 449, 451, 486 (1996); JENNIFER LYNN KRANCE, AN EXAMINATION OF JUVENILE TRANSFER, BLENDED SENTENCING AND THE YOUTHFUL OFFENDER SYSTEM (YOS): A COLLECTIVE CASE STUDY 41, 43 (2004).

<sup>12</sup> J. BECK & PAIGE M. HARRISON, PRISON AND JAIL INMATES AT MIDYEAR 2005 (2005).

<sup>13</sup> JAMES AUSTIN, KELLY DEDEL JOHNSON & MARIA GREGORIOU, JUVENILES IN ADULT PRISONS & JAILS: A NATIONAL ASSESSMENT, at 7-8 (2000).

<sup>14</sup> JEFFREY FAGAN, AARON KUPCHIK & AKIVA LIBERMAN, BE CAREFUL WHAT YOU WISH FOR: LEGAL SANCTIONS AND PUBLIC SAFETY AMONG ADOLESCENT FELONY OFFENDERS IN JUVENILE AND CRIMINAL COURT (2007).

<sup>15</sup> Steiner & Wright, *supra*; Woolard, *supra*; COALITION FOR JUVENILE JUSTICE, CHILDHOOD ON TRIAL: THE FAILURE OF TRYING & SENTENCING YOUTH IN ADULT CRIMINAL COURT (2005); FAGAN, KUPCHIK & LIBERMAN, *supra*, at 17, 70.

compilations by the Center for Disease Control and the Office of Juvenile Justice and Delinquency Prevention. To compile the study, the authors conducted an extensive search of legal, social science and science scholarship and acquired the universe of empirical studies and analyses dealing with the included topics, published since 2004. A complete list of the recent studies was compiled (see Appendix A). The primary reason for omitting a study from the review was its failure to address one of the topics covered by the report. Furthermore, studies that dealt primarily with anecdotal evidence were not relied on in favor of studies examining quantitative data. Finally, the universe of studies focused on those studies published since 2004 because other comprehensive reviews have already dealt with the research produced through 2004. The final list of studies incorporated in this review are included in Appendix B.

### **III. Which Juveniles Are Transferred?**

Both the decisions to seek and to grant transfer are inherently subjective, based on such factors as “amenability to treatment,” and “dangerousness to society.” Even legislative waiver involves the prosecutor’s discretion to charge the juvenile with a designated offense, a decision that involves non-offense related characteristics.<sup>16</sup> Attempts to standardize the transfer decision have not removed the high level of discretion and arbitrariness.<sup>17</sup>

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<sup>16</sup> See Simon I. Singer, *The Automatic Waiver of Juveniles and Substantive Justice*, 39 CRIME & DELINQ. 253 (1993); Franklin Zimring, *The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver*, 5 NORTE DAME J.L. ETHICS & PUB. POL’Y 267.

<sup>17</sup> See, e.g., Eric L. Jensen, *The Waiver of Juveniles to Criminal Court: Policy Goals, Empirical Realities, and Suggestions for Change*, 31 IDAHO L. REV. 173 (1994), citing Lee Ann Osburn & Peter A. Rode, *Prosecuting Juveniles as Adults: The Quest for “Objective” Decisions*, 22 CRIMINOLOGY 187 (1984) (finding no effects of MN’s “objective” waiver criteria).

### A. Offense characteristics

While earlier studies found that most transferred cases involved property crimes, studies conducted since the early to mid-1990s indicate that the number of transferred youth charged with person offenses have exceeded those charged with property offenses.<sup>18</sup> One explanation for this shift is the increasing use of prosecutorial or legislative waiver, which Myers notes far outnumber the use of judicial waiver and are more likely to charge youth with violent offenses.<sup>19</sup> National data from 2005 indicates that person offenses accounted for 51% of judicially waived cases while cases involving property offenses as the most serious charge made up 27% of all waived cases.<sup>20</sup> Studies of individual jurisdictions have likewise found that property offenses no longer dominate the number of transferred cases. As an example, 65% of Idaho juveniles waived to adult criminal court from 1995 to 1999 were violent offenders.<sup>21</sup>

The increasing prevalence of transferring youth charged with person offenses is also reflected in the profiles of youth sentenced to adult prisons. One 1997 study reports that juveniles convicted of violent crimes comprised 69% of all juveniles under the age of 18 incarcerated in adult prisons (compared to 15% of youth serving time for property offenses,

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<sup>18</sup> DAVID L. MYERS, *BOYS AMONG MEN: TRYING AND SENTENCING JUVENILES AS ADULTS* 59 (2005). Myers notes that studies using data collected in the 1970s and 1980s generally indicate that youth charged with property offenses occupied the largest percentage of transferred youth. To be sure, violent offenders continued to be outnumbered by property offenders in national waiver statistics even into the early 1990s, when violent crimes were becoming a central focus of juvenile justice attention. However, by mid-1990s juveniles charged with personal or violent crimes comprised the largest percentage of waived youths.

<sup>19</sup> *Id.*; Cf. Jeffrey J. Shook, *Contesting Childhood in the US Justice System: The Transfer of Juveniles to Adult Criminal Court*, 12 *CHILDHOOD* 461, 467 (2005) (finding that studies of prosecutorial discretion and statutory exclusion also reveal that youth are transferred for a variety of person, property, and drug offenses).

<sup>20</sup> CHARLES PUZZANCHERA & MELISSA SICKMUND, *JUVENILE COURT STATISTICS 2005* 41(2008).

<sup>21</sup> Benjamin Steiner, *Predicting Sentencing Outcomes and Time Served for Juveniles Transferred to Criminal Court in a Rural Northwestern State*, 33 *J. CRIM. JUST.* 601, 606 (2005).

11% for drug crimes, and 5% for public order offenses).<sup>22</sup> Even though violent crimes account for the majority of youth sentenced to adult prisons, it is important to note that a significant number of youth within adult prisons (30%) are not serving time for a violent crime. Thus, while it is generally assumed that the transfer mechanism is reserved for more serious violent crimes, other offense and individual characteristics may carry significant weight in transfer decisions.<sup>23</sup>

In contrast, some jurisdictions do use transfer primarily for property and nonviolent crimes. For example, the Campaign for Youth Justice reports that in Connecticut, North Carolina, and New York, youth age 16 and 17 can automatically be tried as adults regardless of how minor the offense is.<sup>24</sup> In Connecticut, 96% of the 16- and 17-year-olds arrested are arrested for non-violent offenses but all of them are tried in the adult criminal system.<sup>25</sup> Similarly, all 17-year-olds in Wisconsin end up in the adult criminal system despite the fact that 85% of them were charged with non-violent offenses.<sup>26</sup> A recent Wisconsin study found that from 2002 to 2006 17-year-olds statutorily transferred to adult court were most often charged with property crimes, which accounted for 29.8% of all cases (compared to

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<sup>22</sup> Woolard et al., *supra* at 6. See also Redding, *supra* note 3, at 1 (finding that of the 4,100 youth committed to state adult prisons in 1999, 61% were incarcerated for person offenses, 23% for property offenses, 9% for drug offenses, and 5% for public order offenses (e.g. weapons possession)).

<sup>23</sup> Woolard et al., *supra* at 6.

<sup>24</sup> CAMPAIGN FOR YOUTH JUSTICE, *supra* at 6.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

14.8% for crimes against persons).<sup>27</sup> The same study revealed that in roughly two-thirds of cases filed against 17-year-olds in 2006, the most serious charge was a misdemeanor.<sup>28</sup>

Situational factors related to the crime – such as multiple offenders, or multiple victims, or severity of injury – have also been posited as other predictors of transfer, but strong correlations have not been found.<sup>29</sup>

## **B. Offender characteristics**

Most studies agree that, all else being equal, the transferred juvenile is typically an older male with prior delinquency adjudication and prior commitment.<sup>30</sup> A review of national data indicates that about 95% of all transferred youth are male.<sup>31</sup> An Idaho study found that males comprised 98% of all juveniles age 17 and younger that were waived to criminal court between 1995 and 1999.<sup>32</sup> Additionally, a 2008 California study reports that courts were more likely to find males unfit to remain in juvenile court over females; 64.2% of males were determined to be unfit and were transferred to adult court for trial compared to

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<sup>27</sup> KATE WADE ET. AL, WIS. LEGISLATIVE AUDIT BUREAU, REPORT 08-03, 17-YEAR-OLD OFFENDERS IN THE ADULT CRIMINAL JUSTICE SYSTEM, DEPARTMENT OF CORRECTIONS: A REVIEW 26 (2008), *available at* <http://www.legis.state.wi.us/LaB/reports/08-3Full.pdf>.

<sup>28</sup> *Id.* at 26-27.

<sup>29</sup> *See, e.g.*, JEFFREY FAGAN ET AL., SEPARATING MEN FROM THE BOYS: THE CRIMINALIZATION OF YOUTH VIOLENCE THROUGH JUDICIAL WAIVER (1987).

<sup>30</sup> *See, e.g.*, Carole W. Barnes & Randal S. Franz, *Questionably Adult: Determinants and Effects of the Juvenile Waiver Decision*, 6 JUST. Q. 117 (1989); MYERS, *supra* note #, at 57; WADE ET. AL, WIS. LEGISLATIVE AUDIT BUREAU, *supra* at 25.

<sup>31</sup> MYERS, *supra* at 58.

<sup>32</sup> Steiner, *supra* at 604.

48.5% of females.<sup>33</sup> The gender discrepancy is also reflected in the number of youth incarcerated in adult correctional facilities. One study found that approximately 97% of youth sentenced to adult facilities are male.<sup>34</sup>

While older juvenile offenders are more likely to be transferred, prosecutorial discretion and statutory exclusion provisions have increased the transfer of younger youth.<sup>35</sup> The increasing transfer of younger juveniles is also seen in the proportion of younger youth admitted to adult state prisons, which has increased since the mid-1980s and extends as low as age 13.<sup>36</sup> One study found that more than 1,600 youth judicially waived to adult court in the last 20 years were 13 and under.<sup>37</sup> Furthermore, studies show that generally the more extensive the prior record of the youth the greater the chance of being transferred to adult court.<sup>38</sup> Research examining the characteristics of transferred youth indicates that prior record is among the strongest predictors in a juvenile court judge's decision to transfer.<sup>39</sup>

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<sup>33</sup> CRIMINAL JUSTICE STATISTICS CTR., CAL. DEP'T OF JUSTICE, JUVENILE JUSTICE IN CALIFORNIA, 2008 38 (2008), available at <http://www.ag.ca.gov/cjsc/publications/misc/jj08/preface.pdf>

<sup>34</sup> Woolard et al., *supra* at 6.

<sup>35</sup> Myers, *supra* at 57; *see also* Shook, *supra* at 467 (finding that data compiled from judicial discretion, prosecutorial discretion, and statutory exclusion shows that 32 percent of all transferred youth are under 16, suggesting that prosecutorial discretion and statutory exclusion provisions transfer younger juveniles).

<sup>36</sup> Woolard et al., *supra* at 6.

<sup>37</sup> MICHELLE DEITCH ET AL., FROM TIME OUT TO HARD TIME: YOUNG CHILDREN IN THE ADULT CRIMINAL JUSTICE SYSTEM 30 (2009), available at <http://www.utexas.edu/lbj/sites/default/files/file/From%20Time%20Out%20to%20Hard%20Time-revised%20final.pdf>.

<sup>38</sup> Kareem L. Jordan & David L. Myers, *The Decertification of Transferred Youth: Examining the Determinants of Reverse Waiver*, 5 YOUTH & VIOLENCE 188, 196 (2007).

<sup>39</sup> *Id.* at 201.

### C. Race

Youth of color are transferred to adult criminal court in disproportionately greater numbers than white youth.<sup>40</sup> Myers noted that virtually all studies that measure the race of transferred youth find that nonwhites, especially African-Americans, are highly overrepresented and constitute 50% to 95% of all transferred youth.<sup>41</sup> African-American youth age 10 to 17 comprise about 15% of their age group nationally, yet they represent close to 60% of waivers to adult criminal court.<sup>42</sup> Data from a 2008 report indicates that African-American youth constitute 62% of cases filed in adult courts.<sup>43</sup> Native American youth constitute the majority of youth held in the federal juvenile justice system, and 31% of Native American youth are committed to the Federal Bureau of Prisons as adults.<sup>44</sup> Additionally, Latino youth are 43% more likely than white youth to be waived to the adult criminal justice system and 40% more likely to be incarcerated in adult prison.<sup>45</sup> One study found that all juveniles transferred in Cook County under an Illinois law mandating the

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<sup>40</sup> See, e.g., CAMPAIGN FOR YOUTH JUSTICE, *supra* at 11-12; MYERS, *supra* at 57; NAT'L COUNCIL ON CRIME & DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 16 (2007); Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes about Adolescent Offenders*, 28 LAW & HUM. BEHAV. 483 (2004).

<sup>41</sup> Myers, *supra* at 57.

<sup>42</sup> Graham & Lowery, *supra* at 483-84.

<sup>43</sup> CAMPAIGN FOR YOUTH JUSTICE, CRITICAL CONDITION: AFRICAN-AMERICAN YOUTH IN THE JUSTICE SYSTEM 26 (2008), *available at* <http://www.campaignforyouthjustice.org/documents/AfricanAmericanBrief.pdf>.

<sup>44</sup> CAMPAIGN FOR YOUTH JUSTICE, A TANGLED WEB OF JUSTICE: AMERICAN INDIAN AND ALASKA NATIVE YOUTH IN FEDERAL, STATE, AND TRIBAL JUSTICE SYSTEMS 26 (2008), *available at* [http://www.campaignforyouthjustice.org/documents/CFYJPB\\_TangledJustice.pdf](http://www.campaignforyouthjustice.org/documents/CFYJPB_TangledJustice.pdf).

<sup>45</sup> CAMPAIGN FOR YOUTH JUSTICE, AMERICA'S INVISIBLE CHILDREN: LATINO YOUTH AND THE FAILURE OF JUSTICE 6 (2009), *available at* [http://www.campaignforyouthjustice.org/documents/CFYJPB\\_InvisibleChildren.pdf](http://www.campaignforyouthjustice.org/documents/CFYJPB_InvisibleChildren.pdf).

transfer of 15- and 16-year-olds charged with a certain drug violation were African-American.<sup>46</sup>

Similarly, a study of Florida transfers found that while African-Americans and Latinos account for fewer than half of the youth population in the state, nearly 7 out of 10 youth transferred were youth of color in 2005.<sup>47</sup> The overrepresentation of youth of color is also apparent across certain offense categories. For example, among drug-related offenses, white youth comprised 69% of cases petitioned but only accounted for 58% of cases waived to adult court while African-American youth charged with similar offenses were 29% of cases petitioned but 41% of cases waived to adult court.<sup>48</sup> One study explicitly found that after controlling for seriousness of the offense, juvenile court judges were more likely to transfer youth of color than white youth, with disparities greatest for youth charged with violent and drug offenses.<sup>49</sup> A study in California found that youth from racial-ethnic minority groups arrested for violent crimes were 3.1 times more likely to be transferred and convicted than white youth arrested for violent crimes.<sup>50</sup>

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<sup>46</sup> Donna M. Bishop, *The Role of Race and Ethnicity in Juvenile Justice Processing*, in OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE 23, 36 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005). Bishop refers to numbers from a study of transfers in Cook County over a one-year period following the law's implementation in the early 1990s.

<sup>47</sup> CAMPAIGN FOR YOUTH JUSTICE, *supra* at 11.

<sup>48</sup> NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* at 16.

<sup>49</sup> Barry C. Feld, *Race and the Jurisprudence of Juvenile Justice: A Tale in Two Parts, 1950-2000*, in OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE 122, 154 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005).

<sup>50</sup> Jason J. Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERVICES 965, 966 (2008).

Studies also show that youth of color are substantially overrepresented in the number of juveniles sentenced to adult jails and prisons. In 2002, around 4,100 youth under the age of 18 entered adult prisons; three out of four of these young people were youth of color.<sup>51</sup> Piquero's study found that while African -American youth make up 16% of all youth in the general population, they comprise 58% of youth admitted to state adult prison.<sup>52</sup> Studies investigating the incarceration of minority youth in adult correctional facilities demonstrate that the disproportionate representation of minority youth in the adult system appears to exceed that of minority adults, with African-American youth comprising approximately 60% of youth in state prisons and jails.<sup>53</sup> In a Wisconsin study of 17-year-olds transferred to adult court through statutory waiver, 21.3% of African-Americans and 19.4% of Latinos convicted in felony cases were sentenced to prison compared to 4.2% of white offenders.<sup>54</sup>

Unchecked, the over-representation is unlikely to correct itself over time. Waivers of minority youth more than doubled during a four-year period in the 1990s and the disproportionate impact of transfer policies continues today.<sup>55</sup> Moreover, racial disparities in the transfer process exacerbate already existing disparities at every other stage of the juvenile and criminal justice processes, most crucially in prosecution and sentencing decisions.

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<sup>51</sup> NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra*, at 3. This study also found that African-American youth accounted for 58% of total new admissions to adult prisons in 2002.

<sup>52</sup> Piquero, *supra* at 62-63.

<sup>53</sup> This data refers to a 2003 midyear census of adult prisons and jails which compares the youth population to the adult population, where 43.8% of adult inmates were black, 19.1% were Hispanic, and 34.9% were white. WOOLARD ET AL., *supra* at 6.

<sup>54</sup> WADE ET. AL, WIS. LEGISLATIVE AUDIT BUREAU, *supra* at 5.

<sup>55</sup> C. Aaron McNeece, *National Trends in Offenses and Case Dispositions*, in CRITICAL ISSUES IN CRIME AND JUSTICE 157 (Albert R. Roberts ed., 1994).

#### D. Mental Health

Transferred youth possess a substantial need for psychiatric and substance abuse services.<sup>56</sup> A recent study examining the mental health profiles of transferred youth found that 66% of youth processed in adult criminal court had at least one psychiatric disorder and 43% had two or more types of disorders.<sup>57</sup> In addition, transferred youth sentenced to adult prison had significantly greater odds, when compared to those receiving a less severe sentence, of having a disruptive behavior disorder, a substance use disorder, or comorbid affective and anxiety disorders.<sup>58</sup> Although these results are not significantly different from youth remaining in the juvenile justice system, the prevalence of psychiatric disorders is particularly significant for transferred youth given that many adult correctional facilities are ill-equipped to provide adequate mental health care for juveniles.<sup>59</sup> There is also evidence that transferred youth may have a greater need for psychiatric services than detained adults (less than 35% of adult males have a psychiatric disorder compared to 64% of transferred youth, even where conduct disorder is excluded).<sup>60</sup> For example, the six-month prevalence rate for major depression was three times greater for transferred youth than the lifetime rate among adult males.<sup>61</sup>

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<sup>56</sup> Wasburn et al., *supra* at 969.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 968, 970.

<sup>59</sup> *Id.* at 968 (finding no significant differences in the prevalence of specific disorders found between youth processed in adult criminal court and youth processed in juvenile court – both had high rates of disorders); Woolard et al., *supra* at 11 (noting that the adult corrections system provides limited mental health treatment for the general adult inmate population and usually does not provide additional services specifically targeted for youth under 18).

<sup>60</sup> Wasburn et al., *supra* at 969-70.

<sup>61</sup> *Id.* at 970.

The disproportionate transfer of minority youth also affects access to psychiatric services. One study found that the sociodemographic factors associated with greater odds of being transferred to adult criminal court are the same factors associated with lower odds of receiving psychiatric services, regardless of need.<sup>62</sup> For example, studies have found that males and youth from racial-ethnic minority groups are significantly less likely than females and white youth to receive needed mental health treatment after they are detained.<sup>63</sup> The result is that the largest numbers of transferred youth in need of psychiatric services are also the least likely to receive them.<sup>64</sup>

#### **IV. Transfer's Impact on Culpability**

##### **A. Conviction rates for transfers**

The majority of studies show that conviction rates for youth transferred to adult criminal court are high.<sup>65</sup> Although rates vary by jurisdiction, some studies report the likelihood of conviction as approximately 80% overall<sup>66</sup> and 90% for violent juvenile

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<sup>62</sup> *Id.* at 970.

<sup>63</sup> *Id.* at 966.

<sup>64</sup> *Id.* at 970.

<sup>65</sup> KRANCE, *supra*, at 41.

<sup>66</sup> See D. Bishop et al., *Prosecutorial Waiver: Case Study of a Questionable Reform*, 35 CRIME AND DELINQUENCY 179 (1989); JUVENILE WAIVERS TO ADULT COURT: A REPORT TO THE NEW JERSEY STATE LEGISLATURE (TRENTON, NJ: NEW JERSEY DIVISION OF CRIMINAL JUSTICE) (1985) (over 70%); Sagatun et al., "The Effect of Transfers from Juvenile Court to Criminal Court: A Loglinear Analysis," 8 Crime and Justice 65 (1985) (80%); J. HEUSER, OR. STATE DEP'T. OF JUSTICE, JUVENILES ARRESTED FOR SERIOUS FELONY CRIMES IN OREGON AND "REMANDED" TO ADULT CRIMINAL COURTS: A STATISTICAL STUDY (1985) (81 %).

offenders.<sup>67</sup> Significantly, many comparisons between the adult and juvenile court outcomes demonstrate higher conviction rates in adult criminal court.<sup>68</sup>

One study examined the outcomes of 330 youth offender cases from Minnesota.<sup>69</sup> Of the 215 youth from the study who were transferred to adult criminal court, 97% were convicted.<sup>70</sup> A study that examined data from Pennsylvania found that the conviction rate for the sample of transferred youth was 72%.<sup>71</sup> An older, large-scale study, which included data for a total of 7,135 youth *felony* offenders tried in adult courts in 40 major counties, across 19 states, reported a 63% conviction rate.<sup>72</sup> Even though some older studies found low conviction rates and high dismissal rates for juvenile transfers,<sup>73</sup> the majority of studies, including many recent studies, show that this is not the norm.<sup>74</sup>

Tracking juvenile transfers' dispositions is complicated by the uncertain role of plea bargaining. However, one study found that virtually all convictions of juvenile transfers were for the target crime.<sup>75</sup> But the Habitual Serious and Violent Juvenile Offender Program

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<sup>67</sup> J. Fagan, *Social and Legal Policy Dimensions of Violent Juvenile Crime*, 17 CRIM. JUST. AND BEHAVIOR 93 (1990), citing J. Fagan et al., *Racial Determinants of the Judicial Transfer Decision*, 33 CRIME AND DELINQUENCY 259 (1987).

<sup>68</sup> KRANCE, *supra*, at 41

<sup>69</sup> KRANCE, *supra*, at 43; Podkocacz, *supra*, at 451, 486.

<sup>70</sup> KRANCE, *supra*, at 43; Podkocacz, *supra*, at 486.

<sup>71</sup> Lemmon, *supra*, at 227.

<sup>72</sup> RAINVILLE, *supra*, at 1.

<sup>73</sup> KRANCE, *supra*, at 41.

<sup>74</sup> KRANCE, *supra*, at 41; KUPCHIK, *Judging Juveniles*, *supra*, at 110.

<sup>75</sup> C. Rudman et al., *Violent Youth in Adult Court: Process and Punishment*, 32 CRIME AND DELINQUENCY 75 (1986).

(HSVJOP) study showed a wide variation in plea-bargaining frequency between its twelve sites.<sup>76</sup>

### **B. Direct comparisons of transfer conviction rates and juvenile court adjudication rates**

According to the National Center for Juvenile Justice, there was a 66% average adjudication rate for all cases handled by juvenile justice systems nationwide in 2005.<sup>77</sup> Adjudication rates for particular offense categories are similar to the total rate, with a 64% adjudication rate for aggravated assault cases and a 61% rate for total person offenses.<sup>78</sup> The adjudication rates are similar for non-person offenses as well.<sup>79</sup> These numbers are substantially lower than the conviction rates of transfers in the adult criminal justice system. When compared to the national data set that puts youth transfer conviction rates at 63%, the national averages seem very close.<sup>80</sup> However, the national youth transfer data examined only felony charges, whereas the data on the juvenile justice system includes all offenses.<sup>81</sup>

There is evidence that even in some jurisdictions where the adjudication rates of youth in the juvenile justice system are fairly high, they are still lower than the conviction rates of youth transferred to the adult criminal justice system for the same area or data pool.<sup>82</sup>

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<sup>76</sup> F. GRAGG ET AL., *JUVENILES IN ADULT COURT: A REVIEW OF TRANSFERS AT THE HABITUAL SERIOUS AND VIOLENT OFFENDER PROGRAM SITES* (Washington, D.C. Office of Juvenile Justice and Delinquency Prevention) (1986).

<sup>77</sup> PUZZANCHERA, *supra*, at 45.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*; RAINVILLE, *supra*, at 1.

<sup>81</sup> PUZZANCHERA, *supra*, at 45; RAINVILLE, *supra*, at 1.

<sup>82</sup> KRANCE, *supra*, at 43; Podkopacz, *supra*, at 486.

In the Minnesota study, which looked at a sample of 330 youth offender cases, there was a 97% conviction rate for the youth transferred to the adult system, compared to an 86% conviction rate for the youth who were retained in the juvenile justice system.<sup>83</sup> Other studies support these findings as well, with one concluding that “the criminal court takes action in a greater percentage of cases than the juvenile court.”<sup>84</sup>

National data indicates a much lower adjudication rate for youth in the juvenile justice system.<sup>85</sup> Moreover, the dismissal rate was only half that found in juvenile court.<sup>86</sup>

## **V. Transfer’s Impact on the Probability of Incarceration**

### **A. Incarceration rates for convicted transfers**

Most studies cite high incarceration rates for convicted transfers for both violent and nonviolent offenses. A study examining transfer in four states, Arizona, Pennsylvania, South Carolina and Utah, found that youth transferred to the adult court were incarcerated at a rate of 87%.<sup>87</sup> Amongst the transferred youth felony offenders in a large-scale, 40 county and 19 state study, 63% of those convicted were incarcerated, 43% in prisons and 20% in jails.<sup>88</sup>

Transferred youth convicted of violent offenses were more likely to receive incarceration sentences than those convicted of nonviolent offenses.<sup>89</sup> The Pennsylvania

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<sup>83</sup> KRANCE, *supra*, at 43; Podkopacz, *supra*, at 486.

<sup>84</sup> KUPCHIK, *Judging Juveniles*, *supra*, at 114.

<sup>85</sup> PUZZANCHERA, *supra*, at 45

<sup>86</sup> Fagan 1990, citing Fagan 1987, *Racial Determinants*, *supra*.

<sup>87</sup> Lemmon, *supra*, at 227.

<sup>88</sup> RAINVILLE, *supra*, at 1; WOOLARD ET AL., *supra*, at 4.

<sup>89</sup> RAINVILLE, *supra*, at 6.

study, which examined data of youth tried in adult courts as a result of a statute that excluded them from the juvenile justice system, found that for many of these youth the likelihood of incarceration was definite.<sup>90</sup> Specific examples demonstrated a 99% chance of incarceration for youth with certain characteristics.<sup>91</sup> A Utah study found that 53% of convictions resulted in incarceration.<sup>92</sup> An Oregon study reported 55% incarceration, 41% probation.<sup>93</sup> A Florida study reported 61% incarceration.<sup>94</sup> The New Mexico study reported 64% incarceration, 28% probation, even though sentencing was not mandatory for juvenile transfers.<sup>95</sup> The HSVJOP study reported 63% incarceration.<sup>96</sup> The Virginia study reported 78% incarceration.<sup>97</sup> Barnes and Franz's study reported 80% incarceration.<sup>98</sup> The New Jersey study reported 95% incarceration.<sup>99</sup>

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<sup>90</sup> Lemmon, *supra*, at 226.

<sup>91</sup> Lemmon, *supra*, at 226.

<sup>92</sup> L. Gillespie and M. Norman, *Does Certification Mean Prison: Some Preliminary Findings from Utah*, JUV. AND FAM. CT. 23 (1984).

<sup>93</sup> HEUSER, *supra*.

<sup>94</sup> Bishop et al., *Prosecutorial Waiver*, *supra*.

<sup>95</sup> Sagatun *supra*.

<sup>96</sup> Gragg et al., *supra*.

<sup>97</sup> COALITION FOR JUVENILE JUSTICE, *citing* H. Snyder, *Delinquency Cases in Juvenile Courts* (1991) (Washington, D.C. Office of Juvenile Justice and Delinquency Prevention) (1994).

<sup>98</sup> C. Barnes & R. Franz, *Questionably Adult: Determinants and Effects of the Juvenile Waiver Decision*, 6 JUSTICE QUARTERLY 117 (1989).

<sup>99</sup> New Jersey Study, *supra*.

Some jurisdictions report very low rates of incarceration for youth. This is the case for a study that looked at the outcomes of 17-year-olds in the adult courts in Wisconsin.<sup>100</sup> The data shows that only 9.7% of the sample was sentenced to prison.<sup>101</sup> The findings of this study cannot be generalized, however, and should not be construed as discrediting any of the findings already mentioned. The low incarceration rate can be explained by the fact that two-thirds of the youth were charged only with misdemeanors.<sup>102</sup> Also, the incarceration rate given is limited to prison sentences and does not include those sentenced to jails.<sup>103</sup> Furthermore, the data sample used by this study is not representative because it deals only with 17-year-olds in Wisconsin.<sup>104</sup> Importantly, Wisconsin considers 17-year-olds to be adults, so all youth of this age are beyond the jurisdiction of the juvenile justice system.<sup>105</sup>

One study claims that the likelihood of incarceration for transferred youth actually increases in the case of younger juveniles.<sup>106</sup> Overall, the data shows that youth who are transferred to the adult criminal courts are disadvantaged at the sentencing stage.<sup>107</sup> They tend to receive harsher sentences because of a lack of alternatives in the adult criminal justice

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<sup>100</sup> WADE ET. AL, WIS. LEGISLATIVE AUDIT BUREAU, *supra*.

<sup>101</sup> *Id.* at 28.

<sup>102</sup> *Id.* at 5.

<sup>103</sup> *Id.* at 28.

<sup>104</sup> *Id.* at 9.

<sup>105</sup> *Id.* at 9.

<sup>106</sup> Steiner, *Predicting Sentencing Outcomes*, *supra*, at 606.

<sup>107</sup> Benjamin Steiner, *The Effects of Juvenile Transfer to Criminal Court on Incarceration Decisions*, 26 JUSTICE QUARTERLY 77, 77 (2009).

system,<sup>108</sup> which is further evidence that adult criminal courts are inappropriate venues for adjudicating youth offenders.

**B. Direct comparisons of incarceration rates for convicted transfers and those for adjudicated juveniles**

National data on incarceration rates for youth processed in juvenile justice systems indicates that in 2005, only 22% of adjudicated youth offenders were sentenced to “out-of-home” placements, which includes youth correctional facilities.<sup>109</sup> When compared to the national data on incarceration rates for youth transferred to the adult criminal justice system, which puts the rate at approximately 63%, it is clear that a youth’s likelihood of incarceration is greatly increased when transferred to the adult system.<sup>110</sup>

Regional studies confirm this finding. A study comparing incarceration rates for transferred youth and youth remaining in the juvenile justice system concluded that “the criminal court is significantly more likely to incarcerate defendants” than the juvenile court, which is likely to employ alternative sanctions.<sup>111</sup> This conclusion has been confirmed by subsequent studies and applies both to males and females, whites and racial minorities and to different categories of offenses.<sup>112</sup>

Even in areas where the juvenile court incarceration rates are higher than the national averages, they are still significantly lower than those of the adult criminal courts. For example, a study examining transfer in four states, Arizona, Pennsylvania, South Carolina

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<sup>108</sup> KUPCHIK, *Judging Juveniles*, *supra*, at 122.

<sup>109</sup> PUZZANCHERA, *supra*, at 51.

<sup>110</sup> RAINVILLE, *supra*, at 1.

<sup>111</sup> KUPCHIK, *Judging Juveniles*, *supra*, at 115.

<sup>112</sup> Kupchik, *Decision to Incarcerate*, *supra*, at 322.

and Utah, found that the adult court was significantly more likely to incarcerate than the juvenile court, with adult courts incarcerating at a rate of 87% and juvenile courts incarcerating at a rate of 55%.<sup>113</sup>

The same is true of areas where incarceration rates are low for both adult court and juvenile court. Even in these areas, a youth's likelihood of incarceration in adult court is still significantly greater than in juvenile court.<sup>114</sup>

Not all studies agree that incarceration rates are always higher for youth in criminal courts. Some studies interpret data as showing higher incarceration rates for non-violent offenders in juvenile court.<sup>115</sup> However, these studies agree with the majority of studies that rates of incarceration for violent offenders are higher in criminal court. Furthermore, the conclusion that non-violent offenders experience lower incarceration rates in criminal court is not consistent with the majority of studies, relying on both national and regional data, which establish that the likelihood of incarceration for transferred youth is indeed higher than the likelihood for incarceration of youth in the juvenile justice system.<sup>116</sup>

An older study of juveniles charged with homicide found that transfers received more severe sentences than either juveniles adjudicated in juvenile court or adults tried in criminal court.<sup>117</sup>

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<sup>113</sup> Lemmon, *supra*, at 227.

<sup>114</sup> Kupchik, *Decision to Incarcerate*, at 322 (36.3% in adult court compared to 13.7% in juvenile court).

<sup>115</sup> Steiner & Wright, *supra*, at 3.

<sup>116</sup> Compare RAINVILLE, *supra*, at 5, Table 9 (transferred youth who are convicted of property offenses experience a 59% incarceration rate, split almost evenly between prison and jail) and PUZZANCHERA, *supra*, at 51 (the incarceration rate for juveniles adjudicated for property offenses is only 21%. The same rate applies to the average of rates for all non-violent offenses).

<sup>117</sup> E. Jensen, *The Waiver of Juveniles to Criminal Court: Policy Goals, Empirical Realities, and Suggestions for Change*, 31 IDAHO LAW REVIEW 173 (1994).

## **VI. Transfer's Impact on the Length of Incarceration**

### **A. Sentence lengths for convicted transfers**

The justification for transfer assumes that the criminal court is better suited to sanction youth for whom juvenile court dispositions are inadequate, in terms of sentence length or placement.<sup>118</sup> Most studies do report severe sentence lengths.

Studies show that transferred youth are sentenced to lengthy incarcerations.<sup>119</sup> This is especially true for transfers convicted of violent offenses.<sup>120</sup>

The Rainville national data shows that the average sentence length nationally for transferred youth was 90 months.<sup>121</sup> Nearly 40% of all transferred youth sentenced to prison received sentences longer than 72 months.<sup>122</sup> About 18% received prison terms up to 2 years and 26% received sentences between 2 and 4 years.<sup>123</sup> About 4% of transferred youth nationwide received life sentences.<sup>124</sup>

Drawing on the same national data in assessing sentence length for transferred youth, a 2005 report determined that sentence length varied based on the offense.<sup>125</sup> The most

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<sup>118</sup> KRANCE, *supra*, at 43; KUPCHIK, *Judging Juveniles*, *supra*, at 122.

<sup>119</sup> Steiner, *Predicting Sentencing Outcomes*, *supra*, at 607; Rainville, *supra*, at 1 & 6.

<sup>120</sup> Steiner, *Predicting Sentencing Outcomes*, *supra*, at 607; Woolard et al., *supra*, at 7; Steiner & Wright, *supra*, at 3.

<sup>121</sup> RAINVILLE, *supra*, at 1.

<sup>122</sup> RAINVILLE, *supra*, at 6.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> WOOLARD ET AL., *supra*, at 7.

common prison sentence for transferred youth convicted of violent offenses was over 72 months, with sentence lengths averaging 98 months.<sup>126</sup> The report estimated that 59 months of the sentence were served on average.<sup>127</sup> Average sentence lengths for nonviolent offenses were lower, with 57 months for property offenses and 54 months for drug offenses.<sup>128</sup>

In Texas, parole is disfavored by law such that only about 22% of transferred violent offenders receive early release, with aggravated offenders, including youth capital offenders, serving at least 80% of their total incarceration time.<sup>129</sup>

Some studies show that transferring youth to the adult system results in harsher treatment of the transferred youth than the young adult defendants who are 18 and over.<sup>130</sup> One study found that sentences were longer for transferred youth than for young adults ages 18 to 24 who were sentenced during the same period.<sup>131</sup> Moreover, the data shows that, at least for violent offenders, once transferred, youth were less likely to be paroled and therefore more likely to serve longer sentences.<sup>132</sup>

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> David Mikhail, *Refining and Resolving the Blur of Gault for Juvenile Capital Offenders in Texas: A World without the Juvenile Death Penalty*, 1 VICTIMS & OFFENDERS 99, 99 (2006).

<sup>130</sup> Steiner, *Effects of Juvenile Transfer*, *supra*, at 84.

<sup>131</sup> Steiner & Wright, *supra*, at 3.

<sup>132</sup> Steiner, *Predicting Sentencing Outcomes*, *supra*, at 607 (transferred youth convicted for violent offenses received longer sentences in adult facilities).

Contrary evidence does exist, however. For instance, an older study of prosecutorial waiver in Florida found that 54% of transfer sentences were between one and three years, and only 15% were seven or more years.<sup>133</sup>

A further uncertainty regarding the relative severity of adult criminal court lies in the distinction between sentence and actual time served. The few studies that examine the length of sentence actually served are inconclusive as to whether the longer sentences translate into longer incarceration. In Virginia, transferred juveniles served an average of 17 months, compared to an average service (in juvenile learning centers) of 7.6 months for juveniles adjudicated in the juvenile court.<sup>134</sup> However, in Utah, 28 of 53 juveniles sentenced to incarceration through the criminal court served only 2 years of their sentences and only 5 would spend time in prison beyond their 21st birthdays.<sup>135</sup>

### **B. Direct comparisons of transfer sentences and juvenile court commitments**

The Kupchik study determined that youth transferred to the adult criminal court were given significantly longer sentences than those who remained in the juvenile court, with the average incarceration sentence length issued by the criminal court nearly triple that issued by the juvenile court.<sup>136</sup> That study relied on data from the New Jersey juvenile court and New York criminal court, which reported average commitment lengths of 9.5 and 27.2 months

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<sup>133</sup> Bishop et al., *Prosecutorial Waiver*, *supra*.

<sup>134</sup> Barnes & Franz, *supra*.

<sup>135</sup> Coalition for Juvenile Justice 1994, *supra*, citing M. Phillips, SOME OBSERVATIONS REGARDING THE CERTIFICATION AND DIRECT FILING OF JUVENILES TO BE TRIED IN UTAH'S ADULT COURT SYSTEM (Salt Lake City, UT Administrative Office of the Courts, 1994) (unpublished).

<sup>136</sup> KUPCHIK, *Judging Juveniles*, *supra*, at 115.

respectively.<sup>137</sup> This conclusion is further supported by a 2006 national report that clearly demonstrates the shorter overall commitments given to juveniles who remain within the juvenile justice system.<sup>138</sup> Specifically, 66% of all committed juveniles spent no more than six months in commitment, with only 13% of committed juveniles serving over a year.<sup>139</sup>

The average sentence lengths for out-of-home placements of juveniles vary by state. For 2008, California reported an average juvenile sentence length of 25.5 months.<sup>140</sup> The 2007-08 data for juveniles committed in Florida reports average lengths of stay between 4 months in low risk programs to 14 months in high risk programs.<sup>141</sup> In an older study that examines data from the single largest county in Minnesota, average incarceration lengths for juveniles retained in the juvenile justice system was 18.7 months.<sup>142</sup>

There is an overall lack of national data on the length of commitments for youth in the juvenile justice system. Some recent data is available for some states, but it is difficult to get a comprehensive sense of juvenile commitments nationwide from the available data.

Older comparative studies of juvenile transfers in general tend to show a leniency gap in sentence length,<sup>143</sup> or likelihood of severest sentence available.<sup>144</sup> For example, a study of

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<sup>137</sup> *Id.* at 112, 115.

<sup>138</sup> SNYDER & SICKMUND, *supra* at 215.

<sup>139</sup> *Id.*

<sup>140</sup> CAL. DEP'T. CORRECTIONS AND REHABILITATION DIVISION OF JUVENILE JUSTICE, LENGTH OF STAY 2008, 1 (2008), available at [http://www.cdcr.ca.gov/Reports\\_Research/docs/research/CYLOS2008.pdf](http://www.cdcr.ca.gov/Reports_Research/docs/research/CYLOS2008.pdf).

<sup>141</sup> FLA. DEP'T OF JUVENILE JUSTICE, COMPREHENSIVE ACCOUNTABILITY REPORT 2007-08, 4 (2008) available at [http://www.thejrc.com/docs/CAR2008\\_FullFinal.pdf](http://www.thejrc.com/docs/CAR2008_FullFinal.pdf).

<sup>142</sup> Podkopacz, *supra*, at 486.

<sup>143</sup> D. Champion, and G. Mays, TRANSFERRING JUVENILES TO CRIMINAL COURTS: TRENDS AND IMPLICATIONS FOR CRIMINAL JUSTICE (1991), citing S. Singer, RELOCATING JUVENILE CRIME: THE SHIFT FROM JUVENILE TO CRIMINAL JUSTICE (Albany, NY: Rockefeller Institute of Government, SUNY, 1985).

New York's Juvenile Offender Law found that only 4.2% of all juveniles arrested as adults received longer sentences than they would have through the juvenile court. Adult court sentences for waived violent juvenile offenders averaged four times the length of corresponding sentences for retained youth.<sup>145</sup> Sixty-one percent of adult court sentences for juveniles were longer than four years (and 43% greater than 7 years), whereas the corresponding proportion for juvenile court sentences was only 11 %; on the other extreme, 42% of juvenile court sentences were less than two years, whereas the corresponding proportion for adult court sentences was 11 %.<sup>146</sup> The study suggested that the largest sentencing differences occur for violent murder and rape charges: the average murder sentence for juvenile transfers was 192 to 247 months, compared to an average sentence of 56 months in the juvenile court.<sup>147</sup> An older study of youth charged with homicides found that 75% of transferred juveniles would remain in prison by the time the last retained juvenile would be released.<sup>148</sup>

Barnes and Franz's study supports the violent/nonviolent offense split in relative sentence severity. They found that personal offenders receive more severe sentences in adult court, but property offenders receive less severe sentences.<sup>149</sup> Their results indicated that the

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<sup>144</sup> Champion, and Mays, *supra*.

<sup>145</sup> Fagan 1990, *supra*.

<sup>146</sup> C. Rudman et al., *Violent Youth in Adult Court: Process and Punishment*, 32 CRIME AND DELINQUENCY 75 (1986).

<sup>147</sup> Rudman et al., *supra*.

<sup>148</sup> R. BONNIE, *Juvenile Homicide: A Study in Legal Ambivalence*, in E. BENEDEK AND D. CORNELL, JUVENILE HOMICIDE (1989).

<sup>149</sup> Barnes & Franz, *supra*.

factors significant to disposition differed in the two courts: in the adult court, the severity of the offense tracked with the severity of the offense, but no such relationship existed in the juvenile court, where prior incarceration was the strongest predictor of adjudication and prior offenses the next strongest.<sup>150</sup>

Some evidence suggests that a leniency gap could result from the general harshness of the juvenile system relative to the criminal system: California youth adjudicated for violent offenses and committed to California Youth Authority serve longer sentences than do adults and juveniles committed to adult correctional facilities for the same crimes: 60 instead of 41 months for homicide, 30 instead of 25 months for robbery.<sup>151</sup>

Other evidence suggests a special leniency in the criminal system for young offenders compared to adult offenders: the average length of incarceration for juveniles convicted in adult courts has been found to be short relative to sentences received by adults for the same crimes.<sup>152</sup> An older national study reported that one-third of all 18-year-olds convicted of burglary served time in incarceration, compared to over one-half of older offenders convicted of the same crime.<sup>153</sup> One researcher found that young adults were treated more leniently than older offenders for about two years after graduating from the juvenile court.<sup>154</sup> The

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<sup>150</sup> *Id.*

<sup>151</sup> M. JONES AND B. KRISBERG, *IMAGES AND REALITY: JUVENILE CRIME, YOUTH VIOLENCE, AND PUBLIC POLICY* (1993).

<sup>152</sup> Champion and Mays, *supra*.

<sup>153</sup> K. Evans, *Trying Juveniles as Adults: Is the Short Term Gain of Retribution Outweighed by the Long Term Effects of on Society?* 62 *MISSISSIPPI LAW JOURNAL* 95 (1992).

<sup>154</sup> Champion and Mays, *supra*, citing B. Feld, *Legislative Policies Toward the Serious Juvenile Offender*, 27 *CRIME AND DELINQUENCY* 497 (1981).

relative leniency of criminal courts on juveniles may be explained by the mitigating effect of their youth, especially on a jury (not available in most juvenile courts). Also, offenses considered serious by juvenile courts may be considered less serious by criminal courts, especially in the context of scarce jail and prison space. Further, the costliness of jury trials is an incentive for prosecutors to plea bargain, resulting in conviction on lesser charges (in some cases, charges that would not have triggered the initial transfer).<sup>155</sup> Finally, because transferred cases are becoming less likely to represent the most violent of juvenile crimes, the stricter evidentiary standards used in criminal court may result more frequently in outright dismissal.<sup>156</sup>

In any case, the older research supporting the leniency gap, if only for nonviolent offenders, predates the present extensive use of waiver. The Coalition for Juvenile Justice, in its 1994 literature review, proposes that the trend since those older studies has been to punish even nonviolent juvenile offenders more severely in adult court.<sup>157</sup>

## **VII. Transfer's Impact on the Location of Incarceration**

A growing recognition of the unique needs of juveniles by policymakers at every level has contributed to declining numbers of youth incarcerated in adult prisons.<sup>158</sup> However, thousands of youth remain in adult prisons, and still more are detained in adult

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<sup>155</sup> Champion and Mays, *supra*.

<sup>156</sup> *Id.*

<sup>157</sup> Coalition for Juvenile Justice 1994, *supra*.

<sup>158</sup> Karen J. Mathis, American Bar Association, *Adult Justice System Is The Wrong Answer For Most Juveniles*, AM. J. PREVENTIVE MED. (2007); SNYDER & SICKMUND, *supra*, at 237.

jails while they await trial and are often incarcerated there for the duration of their sentences.<sup>159</sup>

On the whole, thousands of juveniles are estimated to be held in adult jails today. Over time, the number of youth incarcerated in adult jails has risen. Between 1994 and 2004, the juvenile population in adult jails increased by 21%.<sup>160</sup> That number has been declining since 2000<sup>161</sup>, but the prevalence of transfer mechanisms facing juveniles makes renewed increases a dramatic risk. Pretrial detention of juveniles in adult jails varies widely between jurisdictions. Only two states had barred such detention by 2006, and most states have set no limit on the age at which children can be detained with adults. Many states have completely failed to establish protections for children detained in adult jails pretrial.<sup>162</sup> While juvenile placement in adult prisons is not as common as it once was, such placement is still the result of transfer for thousands of children.<sup>163</sup> Unsurprisingly, the experiences of juveniles in adult jails are much the same as juveniles' experiences in adult prisons. Juveniles in adult facilities are at much greater risk for sexual abuse, violent attacks, and suicide than youth in juvenile facilities.<sup>164</sup> Furthermore, youth in adult facilities are not

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<sup>159</sup>ALLEN J. BECK & PAIGE M. HARRISON, PRISON AND JAIL INMATES AT MIDYEAR 2005 (2005).

<sup>160</sup> SNYDER & SICKMUND, *supra* at 237.

<sup>161</sup> *Id.* at 236.

<sup>162</sup>MELISSA GOEMANN, TRACEY EVANS, EILEEN GELLER & ROSS HARRINGTON, CHILDREN BEING TRIED AS ADULTS: PRE-TRIAL DETENTION LAWS IN THE U.S. (2007).

<sup>163</sup> CHRISTOPHER HARTNEY, YOUTH UNDER AGE 18 IN THE ADULT CRIMINAL JUSTICE SYSTEM: NATIONAL COUNCIL ON CRIME & DELINQUENCY FACT SHEET, at 4-5 (2006).

<sup>164</sup>JAMES AUSTIN, KELLY DEDEL JOHNSON & MARIA GREGORIOU, JUVENILES IN ADULT PRISONS & JAILS: A NATIONAL ASSESSMENT, at 7-8 (2000).

entitled to the same essential developmental services as youth in juvenile facilities.<sup>165</sup> Policymakers have roundly judged the incarceration of youth in adult prisons a failure, and have begun moving away from that policy. But transfer results in several thousands of youth incarcerated or detained in adult facilities, before or after their trials, in both prisons and jails.

### **VIII. Transfer's Impact on Processing Time**

Transferred juveniles are subjected to significant delays. Social learning theorists have suggested that the timeliness of a sanction is as significant to its effectiveness as its severity,<sup>166</sup> both in terms of its deterrent effect and its rehabilitative potential. More immediately, the case-processing time is significant in that the youth will probably be kept in temporary detention during transfer hearings, awaiting disposition, as well as awaiting placement after conviction. Two studies addressing the timing issue suggest significant delays associated with the transfer process. Fagan's 1990 comparison study found that New York Juvenile Offender transfers took 145 days to process, whereas comparable New Jersey juveniles took 100 days from arrest to sentencing.<sup>167</sup> The VJO study found that, on average over four jurisdictions, it took 2.5 times as long for a violent youth to be transferred, convicted, and sentenced in adult court than it did for her to be considered for transfer,

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<sup>165</sup> Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, THE FUTURE OF CHILDREN, Fall 2008.

<sup>166</sup> See, generally, Jeffrey Fagan, *Social and Legal Policy Dimensions of Violent Juvenile Crime*, 17 CRIMINAL JUSTICE AND BEHAVIOR 93 (1990), for more specific references.

<sup>167</sup> COALITION FOR JUVENILE JUSTICE, NO EASY ANSWERS: JUVENILE JUSTICE IN A CLIMATE OF FEAR (1994), citing JEFFREY FAGAN, THE COMPARATIVE IMPACTS OF JUVENILE AND CRIMINAL COURT SANCTIONS ON ADOLESCENT FELONY OFFENDERS (1991).

retained, adjudicated, and disposed in juvenile court (246 days compared to 98 days).<sup>168</sup> In the Newark study site, the difference was a factor of 4.25.<sup>169</sup> The difference would be even greater between a transferred juvenile and one who was never considered for transfer at all. A recent study of juvenile transfer in Wisconsin indicated that processing time in that jurisdiction is typically one week, but the report also found that transfer can result in processing times of up to two and half years for juveniles awaiting trial.<sup>170</sup>

## **IX. Transfer's Impact on Deterrence and Recidivism**

Transfer has not proven successful thus far on any justifying outcome measures. It has not led to increased deterrence of juvenile crime. Many studies have found that transfer has increased recidivism.<sup>171</sup> The overwhelming weight of current research indicates that transfer has no deterrent effect on juveniles prosecuted under transfer laws or the general juvenile population.<sup>172</sup> Several states' transfer laws have failed to deter crime, and at least two have led to an increase in crime.<sup>173</sup> Studies indicate only one state has experienced a declining crime rate as a result of transfer.<sup>174</sup>

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<sup>168</sup> JEFFREY FAGAN, SEPARATING THE MEN FROM THE BOYS: THE CRIMINALIZATION OF YOUTH VIOLENCE THROUGH JUDICIAL WAIVER (1987).

<sup>169</sup> *Id.*

<sup>170</sup> WADE ET AL., *supra*.

<sup>171</sup> Steiner & Wright, *supra*; Woolard, *supra*; COALITION FOR JUVENILE JUSTICE, CHILDHOOD ON TRIAL: THE FAILURE OF TRYING & SENTENCING YOUTH IN ADULT CRIMINAL COURT (2005); JEFFREY FAGAN, AARON KUPCHIK & AKIVA LIBERMAN, BE CAREFUL WHAT YOU WISH FOR: LEGAL SANCTIONS AND PUBLIC SAFETY AMONG ADOLESCENT FELONY OFFENDERS IN JUVENILE AND CRIMINAL COURT (2007).

<sup>172</sup> FAGAN, KUPCHIK & LIBERMAN, *supra*, at 17, 70.

<sup>173</sup> Steiner & Wright, *supra*.

<sup>174</sup> *Id.*

While transfer laws do not seem capable of seriously deterring crime, research indicates that they have a marked negative impact on recidivism.<sup>175</sup> In Wisconsin, where all 17-year-olds are subject to adult jurisdiction, a legislative study found that those offenders were reincarcerated much more often than either adults or non-transferred juveniles.<sup>176</sup> Within a three year timeframe, transferred juveniles reoffended at more than double the rate of adults. Wisconsin is not the only state to experience increased recidivism as a result of transfer laws. A compilation of statistics from 15 states indicates that juveniles released from state prisons are rearrested at a rate of 82%, a rate 16% higher than their adult counterparts.<sup>177</sup> Studies focusing on individual states produced similar results. Violent juvenile offenders in New York subject to transfer reoffended at a higher rate and more quickly than similar juvenile offenders not subject to transfer in New Jersey.<sup>178</sup> Youth tried as adults in Pennsylvania were more likely to be rearrested after their release, and for more serious crimes, than youth prosecuted in juvenile court.<sup>179</sup> Minnesota youth tried as adults were 16% more likely than their peers tried in juvenile court to reoffend within 2 years of release.<sup>180</sup> Again, these youth were rearrested for more serious crimes than those sentenced as juveniles, evidenced by a 12% difference in arrests for felony offenses against persons and

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<sup>175</sup> WOOLARD ET AL., *supra*; Steiner & Wright, *supra*.

<sup>176</sup> WADE ET AL., *supra*.

<sup>177</sup> WOOLARD ET AL., *supra*.

<sup>178</sup> CHILDHOOD ON TRIAL, *supra*, at 26.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

property between the two groups.<sup>181</sup> Studies examining the negative impact of transfer on recidivism have concluded that youth in juvenile custody benefit from services that juvenile facilities are uniquely equipped to provide, whereas youth subject to transfer are often placed in an environment where “adult criminals [are] their teachers.”<sup>182</sup> Transfer seriously limits juveniles’ capacity for development, by disrupting “a critical developmental stage during which youths acquire competencies, skills and experiences essential to success in adult roles.”<sup>183</sup> Studies suggest that transfer negatively impacts both deterrence and recidivism by denying youth access to services essential to their developmental needs.<sup>184</sup>

## **X. Conclusion**

The modern juvenile justice system was founded with the goal to serve the best interests of the child, with an understanding that youth possessed different needs than adults. Transfer policies represent a departure from that understanding of juvenile justice and are contrary to fundamental notions of justice. The majority of studies have found that youth transfer disproportionately impacts minority youth and results in high rates of pretrial detention, conviction and incarceration, with adult courts often sentencing youth more severely than juvenile courts, and placing them in adult facilities where they are exposed to high risk of assault and abuse. Furthermore, transfer policies have demonstrated no proven

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<sup>181</sup> FAGAN, KUPCHIK & LIBERMAN, *supra*, at 14.

<sup>182</sup> Mathis, *supra*; CHILDHOOD ON TRIAL, *supra* at 27; Scott & Steinberg, *supra*.

<sup>183</sup> Scott & Steinberg, *supra*.

<sup>184</sup> Scott & Steinberg, *supra*; Steiner & Wright, *supra*.

deterrent effect and have caused sharp increases in recidivism across several jurisdictions. The adult criminal justice system is ill-equipped to meet the needs of youth offenders at all stages of the process, from trial to sentencing options to incarceration. All of these findings indicate that justice is not served by forcing juveniles through a system never intended to process youth, while transfer policies have exacerbated the problems they sought to address.



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IMPACT OF TRANSFERRING JUVENILES  
INTO ADULT CRIMINAL COURT:

A Review of the Literature on Transfer

December 1995

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## I. INTRODUCTION

### A. Increasing willingness to treat juvenile delinquents as adults

Perceiving an uncontrollable rise in juvenile crime, especially violent juvenile crime, 68% of Americans nationally now favor trying violent juvenile offenders as adults, in order to remove them from the supposedly more lenient jurisdiction of the juvenile court.<sup>1</sup> State legislatures have responded accordingly,<sup>2</sup> enacting statutes that extend the age and offense reach of judicial waiver, legislative waiver/automatic transfer, and prosecutorial discretion/concurrent jurisdiction policies. Of particular interest is the increased shift of discretionary power from judge to prosecutor:<sup>3</sup> as of 1992, 10 states<sup>4</sup> practiced concurrent jurisdiction. Notably, Florida, Nebraska, Vermont, and Wyoming place no limit on the types of offenses for which the prosecutor may charge a juvenile in criminal court.<sup>5</sup>

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<sup>1</sup> Sourcebook of Criminal Justice Statistics 1993 (Washington, D.C.: Bureau of Justice Statistics, 1994). See also I. Schwartz et al., "The Impact of Demographic Variables on Public Opinion Regarding Juvenile Justice: Implications for Public Policy," 39 Crime and Delinquency 5 (1993). For a comparison of juvenile court and criminal court sanctions, see also S. Singer, The Case Processing of Juvenile Offenders in Criminal Court and Legislative Waiver in New York State (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1994).

<sup>2</sup> See generally P. Lemov, "The Assault on Juvenile Justice," Governing (December 1984). For a history of how and why New York transfer policies developed, see Singer 1994, supra.

<sup>3</sup> See generally R. Buckingham, "The Erosion of Juvenile Court Judge Discretion in the Transfer Decision Nationwide and in Oregon," 696 Willamette Law Review 695 (1993).

<sup>4</sup> AR, CO, DC, FL, GA, LA, MI, NE, NH, SD, UT, VT, and WY

<sup>5</sup> M. Sickmund, How Juveniles Get to Criminal Court, (Washington D.C.: Office of Juvenile Justice and Delinquency Prevention, 1994).

**B. The number of juveniles in adult court**

The transfer practice best documented is judicial waiver. Recent statistics indicate increased numbers of waiver motions, increased rate of waiver motions, and increased rate of motion approval, independent of caseload pressures.<sup>6</sup> The number of waiver hearings more than doubled between 1980 and 1989.<sup>7</sup> Continuing the trend, the number of cases actually waived rose from 7,000 in 1988 to 11,700 in 1992, a 68% increase.<sup>8</sup> Moreover, in the same period, the percentage of juvenile delinquency petitions resulting in transfer rose from 1.2% to 1.6%.<sup>9</sup>

In addition, at least another 7,000 juveniles are placed annually in criminal court jurisdiction by direct filing.<sup>10</sup> Youth directly referred to criminal court by law enforcement agencies comprised an average 4.8% of all juvenile offenders taken into custody in 1993, with significantly higher rates in small cities.<sup>11</sup>

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<sup>6</sup> In one study, transfers increased though delinquency filings decreased during the same time period. D. Bishop et al., "Prosecutorial Waiver: Case Study of a Questionable Reform," 35 Crime and Delinquency 179 (1989).

<sup>7</sup> D. Champion, "Teenage Felons and Waiver Hearings: Some Recent Trends, 1980-1988," 35 Crime and Delinquency 577 (1989).

<sup>8</sup> Juvenile Court Statistics 1992 (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1995).

<sup>9</sup> No Easy Answers: Juvenile Justice in a Climate of Fear, (Washington, D.C.: Coalition for Juvenile Justice, 1994), citing J. Wilson and J. Howell, Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1993).

<sup>10</sup> Id.

<sup>11</sup> Uniform Crime Reports 1993 (Washington, D.C.: Bureau of Justice Statistics 1995).

### C. Uncertain and varied consequences

Ironically, however, the implications of processing juvenile offenders as adults in criminal court are unclear. Most existing studies are somewhat inconclusive because they track only the fate of transferred juveniles and not a counterpart comparison group, thus providing a general sense of the severity of their treatment but not a reliable comparison. They also offer inconsistent conclusions that vary with the particulars of any given jurisdiction's transfer policy, as well as its demographics.<sup>12</sup> Further, the great majority of studies examine the effects of judicial waiver, whereas the current trend is toward legislative and prosecutorial transfer. Finally, a few studies have focused exclusively on violent juvenile offenders, for whom transfer's impact seems to be distinct.

With these limitations in mind, this report reviews the last 10 years of research on the impact of transfer at each stage of a transferred juvenile's disposition. The following table summarizes the basic information about each study to facilitate an understanding of what is being compared and why some study results might differ from others.

## TRANSFER STUDIES

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<sup>12</sup> For instance, rural counties may practice the same transfer policy differently than urban counties. B. Feld, "Bad Law Makes Hard Cases: Reflections on Teen-Aged Axe Murderers, Judicial Activism, and Legislative Default," 8 *Law and Inequality* 1 (1989). Also, a New York study found that counties with lower severity of arrests are more severe in the adjudication of transfers. Singer 1994, *supra*.

Author	Year	Jurisdiction	Transfer policy	Special focus, if any
Barnes and Franz	1989	CA	Judicial waiver	
Bishop and Frazier	1988	FL	Prosecutorial waiver	
Bishop et al.	1989			
Frazier	1991			
Bortner et al.	1986	Western county	Judicial waiver	
Champion	1989	TN VA MS GA	Judicial waiver	
Clarke	1994	IL	Automatic transfer	Drugs and weapons offenses
Cornell	1989	MI	Judicial waiver	Homicide offenses
Dawson	1992	TX	Judicial waiver	
Eigen	1981	PA	Judicial waiver	Homicide offenses

Fagan	1991	NY/NJ	Legislative waiver with reverse transfer	
Fagan et al.	1984	Violent Juvenile Offender (VJO) Experiment: AZ	Judicial waiver	Violent offenses (another criteria was a prior adjudication)
Rudman et al.	1986			
Fagan et al.	1987 (2 studies)			
Fagan	1990	MA MI NJ		
Fagan and Deschenes	1990	TN		
Feld	1989	MN	Judicial waiver	
Gillespie and Norman	1984 1986	UT	Judicial waiver plus prosecutorial waiver	

Gragg	1986	Habitual Serious and Violent Juvenile Offender Program  MA, NJ, IL, CO, IN, FL, NV, WI, PA, RI, WA	Judicial waiver, plus prosecutorial waiver in 3 of 12 sites	
Heuser	1985	OR	Judicial waiver	
Houghtalin and Mays	1991 1992	NM	Judicial waiver	
Lee	1994	AZ	Judicial waiver	
Jensen and Metsger	1994	IO	Legislative waiver	Violent offenses
New Jersey Division of Criminal Justice	1985	NJ	Judicial waiver	

Nimick et al.	1986	AZ, CA, HI, IO, KS, MS, PA, TN, VA	Judicial waiver	
Ohio Department of Youth Services	1992	OH	Judicial waiver	
Phillips	1994	UT	Prosecutorial waiver	
Poulos and Orchowsky	1994	VA	Judicial waiver	
Singer and MacDowall	1988	NY	Legislative waiver w/ reverse transfer	Violent offenses
Singer	1994			
Virginia Commission on Youth	1993	VA	Judicial waiver	Serious juvenile offenses

## II. WHICH JUVENILES ARE TRANSFERRED?

Both the decisions to seek and to grant transfer are inherently subjective, based on such factors as "amenability to treatment," and "dangerousness to

society." Even legislative waiver involves the prosecutor's discretion to charge the juvenile with a designated offense, a decision that involves non offense related characteristics.<sup>13</sup> Attempts to standardize the transfer decision have not removed the high level of discretion and arbitrariness.<sup>14</sup> Nevertheless, profiles of the "typical" transferred juvenile have emerged from various studies. Understanding these personal and offense characteristics not only helps explain certain dispositional effects of the waiver decision, but is also central to the policy judgment of whether transfer accomplishes the perceived goal of enhancing public safety.

**A. Offense characteristics: A significant proportion are transferred for property offenses.**

Generally, even though concern about violent personal crimes has motivated increased transfer, most studies report that a large percentage, if not most, of transferred cases involve property crimes that are not necessarily physically threatening.<sup>15</sup> In fact, the rates for violent offense transfer have been unpredictable, ranging, for example, from 21% to 71% in the multisite Violent

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<sup>13</sup> See S. Singer, "The Automatic Waiver of Juveniles and Substantive Justice," 39 Crime and Delinquency 253 (1993); F. Zimring, "The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver," 5 Notre Dame Journal of Law, Ethics, and Public Policy 267.

<sup>14</sup> See, e.g., E. Jensen, "The Waiver of Juveniles to Criminal Court: Policy Goals, Empirical Realities, and Suggestions for Change," 31 Idaho Law Review 173 (1994), citing L. Osburn and P. Rode, "Prosecuting Juveniles as Adults: the Quest for 'Objective' Decisions," 22 Criminology 187 (1984) (finding no effects of MN's "objective" waiver criteria).

<sup>15</sup> See Champion 1989, *supra*; see also D. Champion and G. Mays, Transferring Juveniles to Criminal Courts: Trends and Implications for Criminal Justice (Westport, CT: Praeger, 1991), citing E. Nimick et al., Juvenile Court Waiver: A Study of Juvenile Court Cases Transferred to Criminal Court (Pittsburgh, PA: National Center for Juvenile Justice, 1986).

Juvenile Offenders (VJO) study.<sup>16</sup> Recent national transferred crime profiles estimate that property offenses comprise at least one third of all transfers: one study reports 34% (compared to the 45% share accounted for by person offenses)<sup>17</sup>; the other 46% (compared to 35% person offenses).<sup>18</sup> Studies of individual jurisdictions have found that property offenses make up as much as 61% of transferred cases.<sup>19</sup> As a recent example, only 23% of Florida juvenile transfers in 1991 were violent offenders.<sup>20</sup> The growing abdication of juvenile property offenders to adult criminal court jurisdiction is also evident in the strong correlation between prior property adjudications and probability of transfer.<sup>21</sup> Additionally, some studies indicate that property offenders account for a rapidly growing

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<sup>16</sup> J. Fagan and E. Deschenes, "Determinants of Judicial Waiver Decisions for Violent Juvenile Offenders," 81 Journal of Crime and Criminology 314 (1990).

<sup>17</sup> Sickmund 1994, supra.

<sup>18</sup> Coalition for Juvenile Justice 1994, citing H. Snyder, Delinquency Cases in Juvenile Courts 1991 (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1994).

<sup>19</sup> M. Bortner et al., "Traditional Rhetoric, Organizational Realities: Remand of Juveniles to Adult Court," 32 Crime and Delinquency 53 (1986).

<sup>20</sup> Coalition for Juvenile Justice 1994, supra, citing C. Frazier, Deep End Juvenile Placements or Transfer to Adult Court by Direct File? (Florida Legislature Commission on Juvenile Justice, 1991). Other studies have likewise shown a significant number of transferred cases to be nonviolent, even petty, offenses: See Feld 1989, supra (MN); L. Gillespie and M. Norman, "Does Certification Mean Prison: Some Preliminary Findings from Utah," ... Juvenile and Family Court 23 (1984) [the Utah study]; F. Gragg, Juveniles in Adult Court: A Review of Transfers at the Habitual Serious and Violent Offender Program Sites (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1986) (in the 12 jurisdictions studied, 53.8% of transfers were charged with robbery or burglary); Nimick et al. 1986, supra (AZ, CA, HI, IO, KS, MS, PA, TN, and VA).

<sup>21</sup> T. Poulos and S. Orchowsky, "Serious Juvenile Offenders: Predicting the Probability of Transfer to Criminal Court," 40 Crime and Delinquency 3 (1994); Coalition for Juvenile Justice 1994, supra, citing Virginia Commission on Youth, The Study of Serious Juvenile Offenders, House Document No. 33, 1993.

proportion of transferred juveniles.<sup>22</sup>

In contrast, some jurisdictions do use transfer primarily for violent and person offenses. For example, these offenses account for 66% of all transfers in Ohio.<sup>23</sup> Prosecutors interviewed for a New York study indicated that the decision to charge a juvenile as an adult for murder, rape, and armed robbery proceeds more quickly than for other offenses.<sup>24</sup> Note, also, that the Department of Justice's latest report documents a trend contrary to most studies, in which personal offenses comprised a larger percentage of judicially waived cases in 1992 than in 1988.<sup>25</sup> Automatic transfer statutes for certain violent offenses may partially explain higher proportions of violent offenses in certain states.<sup>26</sup>

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<sup>22</sup> See Champion and Mays 1991, supra; M. Jones and B. Krisberg, Images and Reality: Juvenile Crime, Youth Violence, and Public Policy (San Francisco, CA: National Council on Crime and Delinquency, 1993). See also Bishop et al. 1989, supra.

<sup>23</sup> Juveniles Transferred to Adult Court in Ohio: Fiscal Year 1992 (Columbus, OH: Ohio Department of Youth Services, 1992)[the Ohio study]. Other studies that found waiver/transfer to be used primarily for violent and/or person offenses include C. Barnes and R. Franz, "Questionably Adult: Determinants and Effects of the Juvenile Waiver Decision," 6 Justice Quarterly 117 Crime and Justice 65 (1985); Champion and Mays 1991, supra, citing D. Reed, Needed: Serious Solutions for Serious Juvenile Crime (Chicago, IL: Chicago Law Enforcement Study, 1983); M. Houghtalin and G. Mays, "Criminal Dispositions of New Mexico Juveniles Transferred to Adult Court," 37 Crime and Delinquency 393 (1991) [(1989) (61% of transferred cases were violent/person offenses)]; Champion and Mays 1991, supra, citing Juvenile Waivers to Adult Court: A Report to the New Jersey State Legislature (Trenton, NJ: New Jersey Division of Criminal Justice) (1985)[the New Jersey study]; Champion and Mays 1991, supra, citing I. Sagatun et al., "The Effect of Transfers from Juvenile Court to Criminal Court: A Loglinear Analysis," 8 Journal of the New Mexico study] (70% of transferred cases were violent/person offenses).

<sup>24</sup> Singer 1994, supra.

<sup>25</sup> 34% compared to 29%. In the same time period, the proportion of waived cases represented by property offenses declined from 53 to 45%. Sickmund 1994, supra.

<sup>26</sup> Champion and Mays 1991, supra.

A recent trend has been to transfer juvenile drug cases to criminal court jurisdiction: such transfers increased 91% between 1988 and 1992.<sup>27</sup> Further, the waiver rate for drug charges is highest of all the offenses: 4.0%, compared to a 2.3% waiver rate for person offenses.<sup>28</sup> The effects of this trend are largely unknown as yet.<sup>29</sup>

Situational factors related to the crime -- such as multiple offenders, or multiple victims, or severity of injury -- have also been posited as other predictors of transfer, but strong correlations have not been found.<sup>30</sup>

**B. Offender characteristics: Transfers are likely to be older males with prior adjudications.**

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<sup>27</sup> Juvenile Court Statistics 1992. An even larger increase of 152% occurred between 1987 and 1991. Juvenile Court Statistics 1991 (Washington, D.C.: Bureau of Justice Statistics).

<sup>28</sup> Sourcebook of Criminal Justice Statistics 1993, *supra*.

<sup>29</sup> The only study focusing on drug transfers is E. Clarke, Treatment of Juveniles as Adults: A Report on Trends in Automatic Transfer to Criminal Court in Cook County, Illinois (Evanston, IL: Children and Family Justice Center of the Northwestern University Legal Clinic, 1994).

<sup>30</sup> See, e.g., J. Fagan et al., Separating the Men from the Boys: The Criminalization of Youth Violence Through Judicial Waiver (New York, NY: New York City Criminal Justice Agency, 1987); Singer 1994, *supra*.

Most studies agree that prior delinquency adjudication,<sup>31</sup> prior commitment,<sup>32</sup> and older age<sup>33</sup> (absolute age, as well as age relative to the juvenile jurisdictional cutoff) characterize the typical transferred juvenile. Moreover, transferred juveniles are overwhelmingly male.<sup>34</sup> However, some researchers predict that the gender disparity may close somewhat as the incidence of serious offense commission by girls increases.<sup>35</sup>

One study has found the number of parents in a juvenile's household to be a significant factor in the decision to try her as an adult.<sup>36</sup>

**C. Race: Minority youth are transferred disproportionately.**

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<sup>31</sup> See, e.g., Barnes and Franz 1989, supra; Fagan et al. 1987, supra; Gragg 1986, supra; J. Heuser, Juveniles Arrested for Serious Felony Crimes in Oregon and "Remanded" to Adult Criminal Courts: A Statistical Study (Oregon State Department of Justice, 1985) [the Oregon study]; the New Mexico study, supra; the Ohio study, supra. In fact, a recent study of judicial waiver in Arizona found that prior record was the only consistent predictor of transfer, whereas even the nature of the current offense was not. L. Lee, "Factors Determining Waiver in a Juvenile Court," 22 Journal of Criminal Justice 329 (1994).

<sup>32</sup> See, e.g., Barnes and Franz 1989, supra; Gragg et al. 1986, supra; Poulos and Orchowsky 1994, supra. Studies finding the contrary include the New Mexico study, supra, and the Ohio study, supra.

<sup>33</sup> See, e.g., Fagan and Deschenes 1990, supra; the New Mexico study; ; the Oregon study, supra; Poulos and Orchowsky 1994, supra; the Virginia study, supra. 4.6% of youth aged at least 17 years were transferred, compared to .5% of 15-year old youth. Sourcebook of Criminal Justice Statistics 1993, supra.

<sup>34</sup> See the studies cited in notes 24 and 25. In 1993, 1.6% of males were waived, versus .4% of females. Sourcebook of Criminal Justice Statistics 1993, supra.

<sup>35</sup> See Coalition for Juvenile Justice 1994, supra.

<sup>36</sup> Singer 1994, supra.

Minority youth are over represented among transferred juvenile offenders.<sup>37</sup> Nationally, 5.7% of drug-related petitions against Black youth were judicially waived in the time period from 1987 to 1991, the highest rate for all race-offense combinations. (In comparison, 1.4% of drug petitions against white youth were judicially waived.)<sup>38</sup> In a study of transfer motions in Texas, Black youth were three times more likely, and Hispanic youth twice as likely, to be considered for transfer than white youth with similar offense and prior court referral information.<sup>39</sup> Ninety-eight percent of juveniles transferred for drug and weapons offenses in a recent Cook County study were children of color.<sup>40</sup> Barnes and Franz's study explicitly found racial/ethnic minority status to be a significant predictor of waiver.<sup>41</sup>

Similarly, a study of New York transfers found that Black youth were substantially over represented in arrests for offenses designated for automatic

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<sup>37</sup> See generally Myths and Realities: Meeting the Challenge of Serious, Violent, and Chronic Juvenile Offenders (Washington, D.C.: National Coalition of State Juvenile Justice Advisory Groups, 1992), which also cites National Council of Juvenile and Family Court Judges, "Minority Youth in the Juvenile Justice System: A Judicial Response," 41 Juvenile and Family Court Journal 3A (1990). See also Bortner et al. 1986, supra; D. Bishop and C. Frazier, "The Influence of Race in Juvenile Justice Processing," 25 Journal of Research in Crime and Delinquency 242 (1988); Fagan 1987, supra.

<sup>38</sup> Sourcebook of Criminal Justice Statistics 1993, supra note 1, Table 5.79.

<sup>39</sup> R. Dawson, "An Empirical Study of Kent Style Juvenile Transfers to Criminal Court," 23 St. Mary's Law Journal 975 (1992).

<sup>40</sup> Clarke 1994, supra.

<sup>41</sup> Barnes and Franz 1989, supra.

transfer and that the dismissal rate for nonwhite juvenile offenders was substantially lower than that for nonwhite juvenile offenders, the likelihood of incarceration 71% higher, and the sentences once convicted longer.<sup>42</sup> Singer suggested "greater filtering in criminal justice decision making at earlier stages in the legal process so that black and Hispanic juveniles are more often adjudicated and incarcerated for less serious offenses. If whites are ultimately incarcerated for [Juvenile Offender] offenses, it is for the most serious types of designated felonies, resulting in longer periods of imprisonment."<sup>43</sup>

One study investigating the effects of the victim's race on disposition found that of all Black youth charged with the homicide of a Black person in criminal court, none received life imprisonment sentences. In contrast, half of all Black youth charged with a white homicide received life imprisonment.<sup>44</sup>

Unchecked, the over representation is unlikely to correct itself over time. Waivers of minority youth more than doubled during a recent four-year period.<sup>45</sup> Ohio's examination of its transfer practice showed that the minority proportion of

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<sup>42</sup> Singer 1994, supra.

<sup>43</sup> Id. at 96.

<sup>44</sup> D. Cornell et al., Legal Outcome of Juveniles Charged with Homicide, in E. Benedek and D. Cornell, Juvenile Homicide (Washington, D.C.: American Psychiatric Press, Inc., 1989), citing J. Eigen, "Punishing Youth Homicide Offenders in Philadelphia," 72 Journal of Criminal Law and Criminology 1093 (1981).

<sup>45</sup> C.A. McNeece, National Trends in Offenses and Case Dispositions (Thousand Oaks, CA: Sage Publications, 1994).

transferred juveniles increased from one-half in 1981 to two-thirds in 1992.<sup>46</sup> Even if the transfer process itself is not racially biased, it could exacerbate already existing disparities at every other stage of the juvenile and criminal justice processes, most crucially in prosecution and sentencing decisions.<sup>47</sup>

### III. TRANSFER'S IMPACT ON CULPABILITY

#### A. Conviction rates for transfers: Rates vary widely by jurisdiction.

Some studies report a high likelihood of sanction for juvenile transfers: around 80% overall<sup>48</sup> and 90% for violent juvenile offenders.<sup>49</sup> Moreover, Champion's study documented increasing willingness to retain juvenile offenders in criminal court: the rate of dismissal and acquittal (combined) dropped from 38% in 1980 to 22% in 1988.<sup>50</sup>

In contrast, other studies have found low conviction rates and high dismissal rates for juvenile transfers. Some criminal courts dismiss 50% or more of the

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<sup>46</sup> Ohio study, supra.

<sup>47</sup> See Jones and Krisberg 1993, supra; Poulos and Orchowsky 1994, supra.

<sup>48</sup> See, e.g., Bishop et al. 1989, supra (96% in a transfer pool dominated by property offenses); the New Jersey study, supra (over 70%); the Utah study, supra (76%); the New Mexico study, supra (80%); the Oregon study, supra (81%).

<sup>49</sup> J. Fagan, "Social and Legal Policy Dimensions of Violent Juvenile Crime," 17 Criminal Justice and Behavior 93 (1990), citing J. Fagan et al., "Racial Determinants of the Judicial Transfer Decision," 33 Crime and Delinquency 259 (1987). A study of homicide transfers in Michigan found that 87% of youth so charged were convicted. Cornell et al. 1989, supra.

<sup>50</sup> Champion 1989, supra.

juvenile cases brought to their jurisdiction.<sup>51</sup> New York, which automatically places serious juvenile offenders into the adult criminal court system (with the option to remand the case into juvenile court) fails to take action on 75% of such youth.<sup>52</sup>

As a benchmark, the latest compilation of national juvenile court statistics places the dismissal rate at 49% of all cases and the delinquency adjudication rate at 57% of all formal petitions.<sup>53</sup> For person offenses, the dismissal rate was 45%, and the delinquency adjudication rate 53%.<sup>54</sup>

Tracking juvenile transfers' dispositions is complicated by the uncertain role of plea bargaining: 32% of transferred juvenile convictions in the Oregon study<sup>55</sup> and 45% in Fagan's VJO Experiment were for reduced charges.<sup>56</sup> However, another study found that virtually all convictions of juvenile transfers were for the

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<sup>51</sup> Where We Stand: An Action Plan for Dealing with Violent Juvenile Crime (Reno, NV: National Council of Juvenile and Family Court Judges, 1994), citing an (unidentified) American Institutes of Research study.

<sup>52</sup> Id. See also Singer 1994, supra, which found that 45% were dismissed, 31% removed to juvenile court, and 25% convicted.

<sup>53</sup> Juvenile Court Statistics 1992, supra.

<sup>54</sup> Id.

<sup>55</sup> Oregon study, supra.

<sup>56</sup> Coalition for Juvenile Justice 1994, supra, citing J. Fagan et al., "System Processing of Violent Juvenile Offenders: An Empirical Assessment," in Mathias et al., Violent Juvenile Offenders: An Anthology (San Francisco, CA: National Council on Crime and Delinquency, 1984).

target crime.<sup>57</sup> Accordingly, the Habitual Serious and Violent Juvenile Offender Program (HSVJOP) study showed wide variation in plea-bargaining frequency between its twelve sites.<sup>58</sup>

**B. Direct comparisons of transfer conviction rates and juvenile court adjudication rates: The evidence is mixed.**

The few studies that have compared criminal court conviction rates to juvenile court adjudication rates in a particular jurisdiction have yielded different conclusions. The VJO study found the conviction rate for (violent offense) transfers to be comparable to the adjudication rate for youth retained in juvenile court (after consideration for transfer): 86% compared to 90%. Moreover, the dismissal rate was only half that found in juvenile court.<sup>59</sup> In comparison, the adjudication rate for violent juvenile offenders overall averaged only 35%.<sup>60</sup> This discrepancy suggests that any difference in sanction certainty between adult and juvenile courts derives from "differences in offender perception as manifested by a petition to transfer, age, or offense history,"<sup>61</sup> rather than differences in severity inherent in either court system: once a juvenile has been selected for transfer consideration, the actual transfer decision may not impact the likelihood of

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<sup>57</sup> C. Rudman et al., "Violent Youth in Adult Court: Process and Punishment," 32 Crime and Delinquency 75 (1986).

<sup>58</sup> Gragg et al. 1986, supra.

<sup>59</sup> Fagan 1990, supra, citing Fagan 1987 [Racial Determinants], supra.

<sup>60</sup> Rudman et al. 1986, supra, citing Fagan 1984, supra.

<sup>61</sup> Rudman et al. 1986, supra.

sanctioning.

Other studies assert a "leniency gap," whereby juveniles are less likely to be convicted in adult court than in juvenile court,<sup>62</sup> although such assertions are based on findings of low conviction rates (see above) rather than any direct comparison of criminal and juvenile court sanction probabilities in any particular jurisdiction. General comparisons suggest that the adult court may be systematically more lenient, at least on violent offenders, than the juvenile justice system. In 1990, conviction rates for adults arrested for murder, rape, robbery, or aggravated assault charges ranged from 13% (aggravated assault) to 55% (murder).<sup>63</sup> By comparison, juvenile court dispositions of similar crimes were harsher: 57% of robbery referrals, 55% of violent sex crime referrals, 53% of murder referrals, and 44% of aggravated assault referrals prosecuted in juvenile court resulted in guilty adjudications.<sup>64</sup> Alternatively, a leniency gap could result from special leniency for juveniles in the adult court: for instance, Singer's study found a conviction rate of 25% for transfers, compared to 60% for adults tried for those same crimes in the same time period.<sup>65</sup>

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<sup>62</sup> See generally, Champion and Mays 1991, supra.

<sup>63</sup> Jones and Krisberg 1993, supra, citing J. Butts and D. Connors-Beatty, The Juvenile Court's Responses to Violent Offenders: 1985-1989 (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1993).

<sup>64</sup> Jones and Krisberg 1993, supra, citing P. Langan and J. Dawson, Felony Sentences in State Courts, 1990 (Washington, D.C.: Bureau of Justice Statistics, 1993).

<sup>65</sup> Singer 1994, supra.

#### IV. TRANSFER'S IMPACT ON THE PROBABILITY OF INCARCERATION

**A. Incarceration rates for convicted transfers: Rates tend to be high, especially for violent/personal offenders, but vary by jurisdiction.**

Most studies cite high incarceration rates for convicted transfers -- in the 60% to 90% range -- for both violent and nonviolent transfers. The Utah study found that 53% of convictions resulted in incarceration.<sup>66</sup> The Oregon study reported 55% incarceration, 41% probation.<sup>67</sup> A Florida study reported 61% incarceration.<sup>68</sup> The New Mexico study reported 64% incarceration, 28% probation, even though sentencing was not mandatory for juvenile transfers.<sup>69</sup> The HSVJOP study reported 63% incarceration.<sup>70</sup> The Virginia study reported 78% incarceration.<sup>71</sup> Barnes and Franz's study reported 80% incarceration.<sup>72</sup> The New Jersey study reported 95% incarceration.<sup>73</sup>

Other studies place incarceration rates as low as 8% (even for largely violent transfer populations) with correspondingly high use of probation,<sup>74</sup> attributing the

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<sup>66</sup> Utah study, supra.

<sup>67</sup> Oregon study, supra.

<sup>68</sup> Bishop et al. 1989, supra.

<sup>69</sup> New Mexico study, supra.

<sup>70</sup> Gragg et al. 1986, supra.

<sup>71</sup> Coalition for Juvenile Justice 1994, supra, citing the Virginia study, supra.

<sup>72</sup> Barnes and Franz 1989, supra.

<sup>73</sup> New Jersey study, supra.

<sup>74</sup> Champion 1989, supra, citing Reed 1983, supra.

leniency to transferred juveniles' first-offender status.<sup>75</sup> Champion's study of transfer in Tennessee, Virginia, Mississippi, and Georgia found that 75% of convicted juvenile transfers were given probation, and that probation had become more frequent a sanction between 1980 and 1989.<sup>76</sup> Bortner's study of a western metropolitan community found that 63% of juvenile transfers received probation.<sup>77</sup> Nationally, in 1988, Department of Justice statistics reported that more than half of convicted juvenile transfers received fines and/or probation instead of incarceration.<sup>78</sup>

Transfer's impact for the likelihood of incarceration is distinct for different offenses. For example, a study of Illinois's automatic transfer of drug and weapons offenses indicates an attitude of leniency by the Cook County criminal courts for these juveniles: only 12% of those transferred received incarceration, an additional 60% of whom were found eligible for a boot camp program reserved for young, nonviolent, first-time offenders.<sup>79</sup> Moreover, though drugs and weapons violations accounted for nearly one-third of all automatic transfers in the study, they constituted only 7% of those that resulted in commitment. In contrast, armed

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<sup>75</sup> See Champion and Mays 1991, supra.

<sup>76</sup> Champion 1989, supra.

<sup>77</sup> Bortner et al. 1986, supra.

<sup>78</sup> Champion and Mays 1991, citing Report to the Nation on Crime and Justice (Washington, D.C.: Bureau of Justice Statistics, 1988).

<sup>79</sup> Clarke 1994, supra.

robbery accounted for 47% of automatic transfers resulting in commitment, though only 35% of all transfers.<sup>80</sup>

As a benchmark, 28% of juveniles adjudicated delinquent in juvenile courts nationally are ordered into out-of-home placements (57% get probation).<sup>81</sup> (The corresponding figures for person offenders are 32% placement and 55% probation.) The placement percentage for juveniles considered for transfer but retained in the juvenile court, the more useful figure for comparison, is not available nationally.

Interestingly, one study suggests that the leniency distinction between incarceration and probation may not be as significant as it first appears: New York criminal justice officials and public defenders interviewed for Singer's study perceived an extended probation sentence as being harsher than short-term incarceration, since probation is so easily violated.<sup>82</sup>

**B. Direct comparisons of incarceration rates for convicted transfers and those for adjudicated juveniles: Overall, the evidence is mixed. For violent offenders, incarceration is more likely through the adult court.**

The two recent studies that have directly compared incarceration rates of juvenile transfers to those of juveniles retained in the juvenile court (after being considered for transfer) have found them to be roughly comparable<sup>83</sup> and, for

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<sup>80</sup> Id.

<sup>81</sup> Juvenile Court Statistics 1992, supra.

<sup>82</sup> Singer 1994, supra. In fact, detention admissions increased over the study time period despite a decrease in incarcerative sentences. Id.

<sup>83</sup> Barnes and Franz 1989, supra. (80% compared to 80-90% of retained juveniles)

violent offenses, higher for juvenile transfers.<sup>84</sup> Similarly, an older study of juveniles charged with homicide found that transfers received more severe sentences than either juveniles adjudicated in juvenile court or adults tried in criminal court.<sup>85</sup>

Other studies support the leniency gap theory for nonviolent offenders, by way of low incarceration rates (but not direct comparisons).

The drift of the transferred offense pool toward nonviolent property crimes may affect the relative likelihood of incarceration through transfer, since incarceration is more often found appropriate for violent than for property crimes.<sup>86</sup>

#### IV. TRANSFER'S IMPACT ON THE LENGTH OF INCARCERATION

A. **Sentence lengths for convicted transfers: Sentences are likely to be severe, especially for violent/personal offenders.**

The justification for transfer assumes that the criminal court is better suited to sanction youth for whom juvenile court dispositions are inadequate, in terms of sentence length, or placement. Most studies do report severe sentence lengths. In the Oregon study, 75% of transferred juveniles received sentences of 5 or more

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<sup>84</sup> Fagan et al. 1987, supra (89% incarceration rate compared to 84%); Rudman et al. 1986 (8% probation rate compared to 23%).

<sup>85</sup> Jensen 1994, supra, citing Eigen 1981, supra.

<sup>86</sup> See, e.g., Oregon study, supra.

years.<sup>87</sup> A recent study by the Virginia legislature of juvenile serious offenders in that state found that the average sentence for transferred juveniles was 8.1 years.<sup>88</sup> Sentence severity is particularly clear for violent offenders. For example, a study of transfers charged with homicide found that 75% of convicted youth received sentences of 10 or more years.<sup>89</sup> However, even in a national study of transfers dominated by property offenses, the average sentence for transfers sentenced to adult prison was still a high 6.8 years.<sup>90</sup>

Contrary evidence does exist, however. For instance, a study of prosecutorial waiver in Florida found that 54% of transfer sentences were between one and three years, and only 15% were seven or more years.<sup>91</sup>

A further uncertainty regarding the relative severity of adult criminal court lies in the distinction between sentence and service. The few studies that examine the length of sentence actually served are inconclusive as to whether the longer sentences translate into longer incarceration. In Virginia, transferred juveniles served an average of 17 months, compared to an average service (in juveniles learning centers) of 7.6 months for juveniles adjudicated in the juvenile court.<sup>92</sup>

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<sup>87</sup> Oregon study, supra.

<sup>88</sup> Coalition for Juvenile Justice 1994, supra, citing Virginia study, supra.

<sup>89</sup> Cornell et al. 1989, supra.

<sup>90</sup> Gragg et al. 1986, supra.

<sup>91</sup> Bishop et al. 1989, supra.

<sup>92</sup> Id.

However, in Utah, 28 of 53 juveniles sentenced to incarceration through the criminal court served only 2 years of their sentences and only 5 would spend time in prison beyond their 21st birthdays.<sup>93</sup>

**B. Direct comparisons of transfer sentences and juvenile court commitments: Overall, the evidence is mixed. For violent offenders, transfer results in harsher sentencing.**

Older comparative studies of juvenile transfers in general tend to show a leniency gap in sentence length,<sup>94</sup> or likelihood of severest sentence available.<sup>95</sup> For example, a study of New York's Juvenile Offender Law found that only 4.2% of all juveniles arrested as adults received longer sentences than they would have through the juvenile court.<sup>96</sup>

In contrast, direct comparison studies of violent juvenile offenders have clearly supported the greater severity of the criminal court for violent juvenile offenders. The VJO study found that adult court sentences for waived violent juvenile offenders averaged four times the length of corresponding sentences for

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<sup>93</sup> Coalition for Juvenile Justice 1994, supra, citing M. Phillips, Some Observations Regarding the Certification and Direct Filing of Juveniles to be Tried in Utah's Adult Court System (Salt Lake City, UT: Administrative Office of the Courts, 1994) (unpublished).

<sup>94</sup> See, e.g., Champion and Mays 1991, supra, citing S. Singer, Relocating Juvenile Crime: The Shift from Juvenile to Criminal Justice (Albany, NY: Rockefeller Institute of Government, SUNY, 1985).

<sup>95</sup> Champion and Mays 1991, supra, citing Sagatun et al. 1986, supra.

<sup>96</sup> Champion and Mays 1991, supra, citing Schack and Nessen, The Experiment That Failed: The New York Juvenile Offender Law -- A Study Report (New York, NY: Citizen's Committee for Children of New York, 1984).

retained youth.<sup>97</sup> Sixty-one percent of adult court sentences for juveniles were longer than four years (and 43% greater than 7 years), whereas the corresponding proportion for juvenile court sentences was only 11%; on the other extreme, 42% of juvenile court sentences were less than two years, whereas the corresponding proportion for adult court sentences was 11%.<sup>98</sup> The study suggested that the largest sentencing differences occur for violent murder and rape charges: the average murder sentence for juvenile transfers was 192 to 247 months, compared to an average sentence of 56 months in the juvenile court.<sup>99</sup> An older study of youth charged with homicides found that 75% of transferred juveniles would remain in prison by the time the last retained juvenile would be released.<sup>100</sup>

Barnes and Franz's study supports the violent/nonviolent offense split in relative sentence severity. They found that personal offenders receive more severe sentences in adult court, but property offenders receive less severe sentences.<sup>101</sup> Their results indicated that the factors significant to disposition differed in the two courts: in the adult court, the severity of the offense tracked with the severity of the offense, but no such relationship existed in the juvenile court, where prior

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<sup>97</sup> Fagan 1990, supra, citing Fagan et al. 1987 [Racial Determinants], supra.

<sup>98</sup> Id.

<sup>99</sup> Rudman et al. 1986, supra.

<sup>100</sup> R. Bonnie, Juvenile Homicide: A Study in Legal Ambivalence, in Benedek and Cornell 1989, supra, citing Eigen 1981, supra.

<sup>101</sup> Barnes and Franz 1989, supra.

incarceration was the strongest predictor of adjudication and prior offenses the next strongest.<sup>102</sup>

Some evidence suggests that a leniency gap could result from the general harshness of the juvenile system relative to the criminal system: California youth adjudicated for violent offenses and committed to California Youth Authority serve longer sentences than do adults and juveniles committed to adult correctional facilities for the same crimes: 60 instead of 41 months for homicide, 30 instead of 25 months for robbery.<sup>103</sup>

Other evidence suggests a special leniency in the criminal system for young offenders, compared to adult offenders: the average length of incarceration for juveniles convicted in adult courts has been found to be short relative to sentences received by adults for the same crimes.<sup>104</sup> An older national study reported that one-third of all 18-year-olds convicted of burglary served time in incarceration, compared to over one-half of older offenders convicted of the same crime.<sup>105</sup> One researcher found that young adults were treated more leniently than older offenders

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<sup>102</sup> Id.

<sup>103</sup> Jones and Krisberg 1993, supra.

<sup>104</sup> See generally, Champion and Mays, supra, which cites Reed 1983, supra, Singer 1985, supra, and V. Speirs, The Juvenile Court's Response to Violent Crime (Washington, D.C.: Office of Justice Programs, 1989).

<sup>105</sup> K. Evans, "Trying Juveniles as Adults: Is the Short Term Gain of Retribution Outweighed by the Long Term Effects of on Society?" 62 Mississippi Law Journal 95 (1992), citing F. Zimring, Confronting Youth Crime 1978.

for about two years after graduating from the juvenile court.<sup>106</sup> The relative leniency of criminal courts on juveniles may be explained by the mitigating effect of their youth, especially on a jury (not available in most juvenile courts). Also, offenses considered serious by juvenile courts may be considered less serious by criminal courts, especially in the context of scarce jail and prison space. Further, the costliness of jury trials is an incentive for prosecutors to plea bargain, resulting in conviction on lesser charges (in some cases, charges that would not have triggered the initial transfer).<sup>107</sup> Finally, because transferred cases are becoming less likely to represent the most violent of juvenile crimes, the stricter evidentiary standards used in criminal court may result more frequently in outright dismissal.<sup>108</sup>

In any case, the older research supporting the leniency gap, if only for nonviolent offenders, predates the present extensive use of waiver. The Coalition for Juvenile Justice, in its 1994 literature review, proposes that the trend since those older studies has been to punish even nonviolent juvenile offenders more severely in adult court.<sup>109</sup>

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<sup>106</sup> Champion and Mays 1991, supra, citing B. Feld, "Legislative Policies Toward the Serious Juvenile Offender," 27 Crime and Delinquency 497 (1981). See also Champion and Mays's references to Reed 1983, supra; Sagatun et al. 1985, supra; Schack and Nessen 1984, supra.

<sup>107</sup> See Champion and Mays 1991, supra, for discussion of Reed 1983, supra.

<sup>108</sup> See Champion and Mays 1991, supra, for discussion of Schack and Nessen 1984, supra.

<sup>109</sup> Coalition for Juvenile Justice 1994, supra.

**V. TRANSFER'S IMPACT ON THE LOCATION OF INCARCERATION: Most juveniles sentenced through adult court end up in adult prisons.**

Though placement of youth sentenced in criminal court varies widely by jurisdiction, the most common placement is adult prison.<sup>110</sup> For instance, in the VJO study, the one consistency between sites was that no jurisdiction that had the option of placing waived youth into juvenile correction facilities chose to do so.<sup>111</sup> Exceptions may exist, however: New York juvenile offenders convicted in adult court "almost invariably" serve their sentences in juvenile facilities<sup>112</sup>, but can be transferred to adult correctional facilities at age 16.<sup>113</sup>

In general, the number of juveniles admitted to adult state prisons has increased about 30% since 1984, to almost 12,000 annually. One tenth of one percent of female state prison inmates and 0.7% of male state prison inmates were 17 or younger in 1989.<sup>114</sup> The average daily juvenile population incarcerated in jails nationally was 2,572 in 1992, continuing an upward trend begun in 1986, when

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<sup>110</sup> For a sample range of placement options, see Gragg et al. 1986, supra.

<sup>111</sup> Fagan 1987, supra; Rudman et al. 1986, supra. Boston and Newark criminal courts placed all waived youth into state prison (through Newark placed 40% in a special prison for young offenders), whereas Memphis and Phoenix also held youth in county jails.

<sup>112</sup> E. Metchik, "Recommending Juvenile Offenders for Pretrial Release," Juvenile and Family Court Journal 39 (1992).

<sup>113</sup> Singer 1994, supra.

<sup>114</sup> Sourcebook of Criminal Justice Statistics 1993, supra.

the number was 1,404.<sup>115</sup> Though these increases do not necessarily track with increases in transfer,<sup>116</sup> the fact remains that most adult Departments of Corrections have jurisdiction over all offenders sentenced by an adult court to incarceration, regardless of age.<sup>117</sup> States expect anywhere between a 1% to 730% (Alaska) growth in under-18 populations over the next five years as a result of legislative developments expanding transfer policies.<sup>118</sup> Sentencing to state prisons can result in several different kinds of placement depending on the state (and type of offense): some states keep under-18 offenders in separate facilities or units; most house them with adult offenders; some use a combination of the two.<sup>119</sup> Four allow placement of transferred juveniles in juvenile facilities; 12 allow placement with another agency.<sup>120</sup>

Pretrial detention placement also varies: in 1984, Boston youth were detained in juvenile facilities, Phoenix and Newark youth in county jails.<sup>121</sup> Overall,

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<sup>115</sup> Sourcebook of Criminal Justice Statistics 1993, *supra*.

<sup>116</sup> See Coalition for Juvenile Justice 1994, *supra*.

<sup>117</sup> Offenders Under Age 18 in State Adult Correctional Systems (Longmont, CO: National Institute of Corrections, 1995).

<sup>118</sup> Id.

<sup>119</sup> Id. See also Vital Statistics 1994 (Laurel, MD: American Correctional Association, 1994) for a state-by-state breakdown of the number of youth under 18 held in adult correctional facilities.

<sup>120</sup> Id.

<sup>121</sup> Rudman et al. 1986, *supra*.

however, the trend is in the same direction as for dispositional placements: 42 states now require or permit transferred juveniles to be held in adult jails while awaiting trial.<sup>122</sup>

Youth who are placed in adult facilities face a much harsher environment than youth in juvenile detention. They receive less training and are more likely to be victimized. Studies have found that the probability of sexual assault is five times as high in an adult facility as in a juvenile facility, the probability of staff beating twice as high, and the probability of a weapon attack 50% higher.<sup>123</sup>

**VI. TRANSFER'S IMPACT ON PROCESSING TIME: Transferred juveniles are subjected to significant delays.**

Social learning theorists suggest that the timeliness of a sanction is as significant to its effectiveness as is its severity,<sup>124</sup> both in terms of its deterrent effect and its rehabilitative potential. More immediately, the case-processing time is significant in that the youth will probably be kept in temporary detention during transfer hearings, awaiting disposition, as well as awaiting placement after conviction. Both studies addressing the timing issue suggest significant delays

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<sup>122</sup> Coalition for Juvenile Justice 1994, supra.

<sup>123</sup> Coalition for Juvenile Justice 1994, supra, citing Forst et al., "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," 40 Juvenile and Family Court Journal 1 (1989) and Z. Eisikovits, "Doin' Time: Violent Youth in Juvenile Facility and in an Adult Prison," 6 Journal of Offender Counseling, Services, and Rehabilitation 5 (1983).

<sup>124</sup> See, generally, Fagan 1990, supra, for more specific references.

associated with the transfer process. Fagan's recent comparison study found that New York Juvenile Offender transfers took 145 days to process, whereas comparable New Jersey juveniles took 100 days from arrest to sentencing.<sup>125</sup> The VJO study found that, on average over four jurisdictions, it took 2.5 times as long for a violent youth to be transferred, convicted, and sentenced in adult court than it did for her to be considered for transfer, retained, adjudicated, and disposed in juvenile court (246 days compared to 98 days).<sup>126</sup> In the Newark study site, the difference was a factor of 4.25.<sup>127</sup> The difference would be even greater between a transferred juvenile and one who was never considered for transfer at all.

**VII. TRANSFER'S IMPACT ON DETERRENCE AND RECIDIVISM: Transfer policies have impacted neither.**

Transfer has not proved successful thus far on any justifying outcome measures. It has not led to increased deterrence of juvenile crime. After enactment of an automatic waiver statute, Idaho's arrest rates increased, in comparison to arrest rate declines in Wyoming and Montana, both of which had nonmandatory waiver laws.<sup>128</sup> Similarly, no reduction in juvenile crime resulted

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<sup>125</sup> Coalition for Juvenile Justice, supra, citing J. Fagan, The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders (Washington, D.C.: National Institute of Justice, 1991).

<sup>126</sup> Fagan 1987, supra.

<sup>127</sup> Id.

<sup>128</sup> E. Jensen and L. Metsger, "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime," 40 Crime and Delinquency 96 (1994).

from the implementation of New York's automatic waiver state,<sup>129</sup> nor "more public protection, more punishment of juveniles, or better rehabilitation of juveniles."<sup>130</sup> A Chicago study similarly concludes that transfers have not resulted in increased deterrence.<sup>131</sup> Though Florida has been transferring youth extensively for more than 12 years, it also leads the U.S. in violent crime.<sup>132</sup>

Neither does transfer impact recidivism. The VJO study<sup>133</sup> and other older studies found no such effects.<sup>134</sup> In fact, recent Florida statistics indicate that 59% of youth released from adult prisons recidivated within two years, compared to 34% of juveniles released from juvenile treatment programs.<sup>135</sup> Similarly, in a recent study comparing New York juveniles tried as adults to New Jersey juveniles tried as juveniles, the New York juvenile offenders showed higher recidivism, sooner reoffense, more serious new offenses, and higher rates of reincarceration.<sup>136</sup> As yet another example, Washington state's attempt to "get tougher" on juvenile

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<sup>129</sup> S. Singer and D. MacDowall, "Criminalizing Delinquency: the Deterrent Effects of the New York Juvenile Offender Law," 22 Law and Society Review 521 (1988).

<sup>130</sup> National Council of Juvenile and Family Court Judges, supra.

<sup>131</sup> Clarke 1994, supra, citing Special Commission on the Administration of Justice, Illinois Supreme Court, Final Report, 1993.

<sup>132</sup> National Council of Juvenile and Family Court Judges 1994, supra.

<sup>133</sup> Fagan 1991, supra.

<sup>134</sup> National Coalition of State Juvenile Justice Advisory Groups 1992, supra, citing H. Snyder et al., Delinquency in the U.S.: 1982 (National Center for Juvenile Justice, 1985) and others.

<sup>135</sup> T. Neal, "Juvenile Justice," The New Tribune, Pierce County, 12/5/93 at 10.

<sup>136</sup> Fagan 1991, supra.

crime through determinate sentencing has had little impact on recidivism.<sup>137</sup>

Older studies of youth recidivism challenge the assumption that serious juveniles offenders remain a high risk to public safety. A birth cohort study found that just 6% of all juveniles studied went on to commit more than half of total offenses and two-thirds of all violent offenses committed by the cohort as a whole.<sup>138</sup> Another study indicated that involvement in serious violent crimes peaks between 16 and 17 years of age and drops off significantly after age 20.<sup>139</sup>

### VIII. CONCLUSION

In the end, transfer's impacts must be considered specifically and contextually. Study results may not translate across different transfer mechanisms, whose starting assumptions can be so radically different: judicial waiver presuming a youth's right to special proceedings that account for her juvenile status, legislative transfer presuming the opposite, and prosecutorial waiver spanning both philosophies.<sup>140</sup> Thus, different transfer mechanisms result both in different transfer populations and in different dispositional implications.<sup>141</sup>

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<sup>137</sup> National Coalition of State Juvenile Justice Advisory Groups 1993, supra.

<sup>138</sup> The Comparative Dispositions Study, (Columbus, OH: The Academy, 1984), citing M. Wolfgang et al., Delinquency in a Birth Cohort (Chicago, IL: University of Chicago Press, 1972).

<sup>139</sup> Jones and Krisberg 1993, supra, citing D. Elliot, "Serious Violent Offenders: Onset, Developmental Course, and Termination -- The American Society of Criminology 1993 Presidential Address," 32 Criminology 1 (1994).

<sup>140</sup> See F. McCarthy, "The Serious Offender and Juvenile Court Reform: the Case for Prosecutorial Waiver of Juvenile Court Jurisdiction," 38 Saint Louis University Law Journal 629 (1994).

<sup>141</sup> For a discussion of possible differences between jurisdictions using different transfer mechanisms, see Gragg et al. 1986, supra. For a preliminary comparison of judicial waiver and direct file transfers in Utah, see M. Norman and

Further, because of the discretionary nature of the transfer decision, differences in practitioner philosophies make inter-study comparison risky as well.<sup>142</sup> Particularly, the vagueness and even inconsistency of transfer's purpose may lead to uneven implementation. For example, one survey showed that more than 75% of juvenile court personnel who endorsed transfer policies (and nearly all did) cited as the main reason the fact that some juveniles are beyond the rehabilitation focus of the juvenile court,<sup>143</sup> a different motivation, with different effects, than the commonly assumed one of increased public safety through incapacitation.

In addition, incentives not explainable by coherent philosophical goals are embedded in each transfer policy's particularized temporal organizational and political contexts. For example, Singer's study found that a shift in the cost of incarcerating transferred juveniles from the state to the county decreased the likelihood of incarceration for those juveniles by 38% in the new policy's first year and contributed to a decrease in likelihood of conviction.<sup>144</sup>

Nevertheless, the existing research suggests that transferring juveniles to adult criminal court can have harsh and significant consequences, especially for juveniles charged with violent offenses. Accordingly, several juvenile justice organizations, the American Correctional Association, the Coalition for Juvenile

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L. Gillespie, "Changing Horses: Utah's Shift in Adjudicating Serious Juvenile Offenders," 12 Journal of Contemporary Law 85 (1986). In general, the Utah study documents harsher conviction and incarceration rates under direct filing than under judicial waiver. Both studies suggest the high potential for race discrimination in prosecutorial waiver.

<sup>142</sup> See, e.g., Bishop et al. 1989, supra, for the effect of varying prosecutorial philosophies on the use of prosecutorial waiver in Florida.

<sup>143</sup> J. Sanborn, "Certification to Criminal Court: the Important Policy Questions of How, When, and Why," 40 Crime and Delinquency 262 (1994).

<sup>144</sup> Singer 1994, supra.

Justice, the National Coalition of State Juvenile Justice Advisory Group, and the National Council of Juvenile and Family Court Judges, have issued policy recommendations that advocate caution.<sup>145</sup>

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<sup>145</sup> See American Correctional Association, "Resolutions at ACA 1994 Winter Conference," 56 Corrections Today 76 (April 1994); Coalition for Juvenile Justice, No Easy Answers: Juvenile Justice in a Climate of Fear, (Washington, D.C., 1994); National Coalition of State Juvenile Justice Advisory Groups, Myths and Realities: Meeting the Challenge of Serious, Violent and Chronic Juvenile Offenders, (Washington, D.C., 1992); and National Council of Juvenile and Family Court Judges, Where We Stand: An Action Plan for Dealing with Violent Juvenile Crime, (Reno, NV 1994).

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Recommendations and Reports

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### **Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System**

**A Report on Recommendations of the Task Force  
on Community Preventive Services**



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**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR DISEASE CONTROL AND PREVENTION**

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## Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System

### A Report on Recommendations of the Task Force on Community Preventive Services\*

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### Summary

*The independent, nonfederal Task Force on Community Preventive Services (Task Force), which directs the development of the Guide to Community Preventive Services (Community Guide), conducted a systematic review of published scientific evidence concerning the effectiveness of laws and policies that facilitate the transfer of juveniles to the adult criminal justice system to determine whether these transfers prevent or reduce violence among youth who have been transferred and among the juvenile population as a whole. For this review, transfer is defined as placing juveniles aged <18 years under the jurisdiction of the adult criminal justice system. The review followed Community Guide methods for conducting a systematic review of literature and for providing recommendations to public health decision makers. Available evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth. Available evidence was insufficient to determine the effect of transfer laws and policies on levels of violent crime in the overall juvenile population. On the basis of these findings, the Task Force recommends against laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence.*

\* Points of view expressed are those of the contributors and the Task Force on Community Preventive Services and do not necessarily reflect those of CDC, the National Institutes of Health, the National Institute of Justice, the U.S. Department of Justice, or the U.S. Department of Health and Human Services.

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### Background

The purpose of this review was to determine whether laws or policies that facilitate the transfer of juveniles from the juvenile to the adult criminal justice system reduce interpersonal violence, either specifically among juveniles who have experienced the adult justice system or in the general juvenile population. One rationale for the transfer of juveniles to the adult justice system is to deter future criminal activity, on the premise that the adult system is more severe and punitive than the juvenile system. For this review, transfer (also referred to as “waiver” to denote the

relinquishing of authority by the juvenile courts) refers to placing juveniles under the jurisdiction of the adult criminal justice system. Although the legal term “juvenile” is defined differently among states, for purposes of this review, a juvenile is considered a person aged <18 years. Juveniles who are not transferred to the adult court system are said to be retained in the juvenile system.

The reduction of violence through transfer policies is hypothesized to occur by two mechanisms—specific deterrence and general deterrence—both of which rely on the perceived severity of the adult criminal justice system compared with the juvenile system. “Specific deterrence” refers to juveniles who have been subjected to the adult justice system and “general deterrence” refers to all youth in the population who might be subject to transfer provisions if charged with a crime. “Deterrence” applies to the behavioral outcome of reduced offending or re-offending and not to decision processes made by the affected youth. Incapacitation is the inability of incarcerated convicts to commit crimes in society during incarceration; incapacitation is thought to be increased for juveniles in adult settings compared with those in juvenile settings.

In a representative national survey in 2002, rates of the perpetration of violent crime, including simple and aggravated assault, robbery, and rape, were highest among persons aged 15–20 years (1,2). U.S. adults reported approximately 1.9 million incidents of victimization by perpetrators estimated to be aged 12–20 years, a rate of 5.1 incidents per year of victimization per 100 juveniles in this age group (3,4). Although arrest and victimization data indicate declines among juveniles for violent acts in general following a peak during 1993–1994, self-report of offenses continues to indicate high rates of violence (3).

Juvenile and criminal law in the United States are principally state matters. Juvenile courts were first established in 1899 in Illinois. By 1925, all states except Maine and Wyoming had separate juvenile courts (5). Separate judicial process for juveniles has been justified on several grounds related to the psychosocial development of this population (6). Certain developmental differences are cited in justification of the Supreme Court decision to ban capital punishment for crimes committed by offenders aged <18 years at the time of the crime (7). In general, juveniles differ from adults in their biologic development and mental processes and capacities. Juveniles are less aware of consequences, less able to regulate impulses or inhibit behavior, and thus less culpable for their actions than adults. In addition, juveniles have less ability to understand and thus participate in the standard adult judicial process (8). Finally, juveniles are more malleable and amenable to reform of

their behavior. Therefore, an emphasis of the judicial response to their deviant behavior should be on reform rather than, or in addition to, punishment—in contrast to the punitive focus of the adult criminal justice system (6). The policy implications of these developmental issues with respect to court jurisdiction remain controversial, especially because of the variations in adolescent cognitive and social development for which chronologic age is not a precise marker.

In contrast to the adult criminal court, which is oriented toward punishment, the traditional juvenile court has acted “in the interests of the child” and focused on rehabilitation rather than punishment because juveniles are assumed to be more amenable than adults to treatment (9). Juvenile courts in the United States have always followed the principle of *parens patriae*—the state acts as a guardian for those who cannot take care of themselves, such as children and the mentally ill (10,11). Traditionally, transfer from juvenile to adult court jurisdiction has required a determination that the juvenile was not amenable to treatment (5,10). Recent changes to the juvenile court’s mission weighs protection of the community and the interests of the child (11).

Although states establish their own juvenile and adult criminal law, common trends are discernible across states. Following the increases in violent juvenile crime in the late 1980s and early 1990s, during 1992–1999, all states except Nebraska expanded their transfer provisions to facilitate prosecuting juveniles in the adult justice system (12–16). An estimated 210,000–260,000 juveniles, or 20%–25% of all juvenile offenders, were prosecuted as adults in 1996 (14).

Persons aged <18 years can be tried in the adult criminal justice system by one of six main mechanisms. In “judicial waiver,” the traditional mechanism, a juvenile court judge can waive a youth to the adult system, generally based on perceived lack of amenability to treatment, which is often based on considerations such as age, seriousness of the current offense, and previous delinquency (13). In “prosecutorial waiver,” the prosecutor has the discretion to file a case in the juvenile or the adult criminal court system. In “statutory exclusion,” youth of particular ages charged with particular crimes (e.g., homicide) are excluded by statute from juvenile justice system jurisdiction. When particular charges are excluded from juvenile court by statutory means, discretion resides with prosecutors, who decide which charges are filed; choice of charge might determine whether the juvenile is transferred (15).

The increases in transfer resulting from the preceding three mechanisms are amplified by a policy that “once an adult, always an adult,” whereby youth once transferred to

adult court also are automatically transferred for any future offending (13). With lowered age of adult court jurisdiction, states set the age at which a person is considered responsible for criminal actions, and no longer eligible for juvenile court, to an age younger than the traditional age of 18 years. Finally, in certain states, juveniles who are married or otherwise “emancipated” (i.e., released from parental authority) are excluded from juvenile court. In a mechanism typically referred to as “reverse waiver,” youth who have not reached the age of majority can be transferred from the adult court back to the juvenile court when cases are deemed inappropriate for the adult criminal court system.

States also are experimenting with “blended sentencing,” which allows a juvenile to be sentenced to both juvenile and adult sanctions by one court. Blended sentencing by the juvenile court allows the court to monitor youth beyond the traditional end of juvenile jurisdiction (16). This frequently involves juvenile incarceration until the age of majority, followed by adult incarceration. Greater sentencing flexibility might reduce the pressure to transfer court jurisdiction, but little research has been conducted on how blended sentencing is used in practice (17).

## Introduction

The independent, nonfederal Task Force on Community Preventive Services (Task Force) develops the *Guide to Community Preventive Services* (*Community Guide*), with the support of the U.S. Department of Health and Human Services (DHHS), in collaboration with public and private partners (18,19). Although CDC provides staff support to the Task Force for development of the *Community Guide*, the recommendations presented in this report were developed by the Task Force and do not necessarily reflect the viewpoints of CDC or DHHS.

This report is one in a series included in the *Community Guide*, a resource that includes multiple systematic reviews addressing preventive public health topics (e.g., violence prevention, preventing tobacco use, and reducing the incidence of cancer) (19). This section provides an overview of the process used by the Task Force to select and review evidence and summarize its recommendations regarding interventions to prevent or reduce violence. A full report on the recommendations, supporting evidence, and remaining research questions regarding the effects of strengthened transfer laws and policies on violence is published elsewhere (20).

Using effective interventions to reduce violence might help to achieve certain objectives specified in *Healthy People 2010* (21), the disease prevention and health promotion agenda for the United States. *Healthy People 2010* objectives iden-

tify some of the substantial preventable threats to health and can help focus the efforts of public health systems, legislators, and law enforcement officials for addressing those threats by establishing measurable targets. Many of the *Healthy People 2010* objectives regarding injury and violence prevention (e.g., the reduction of rates of assault, homicide, rape, and robbery) might be positively affected by the intervention reviewed in this report.

## Methods

In this review, *Community Guide* procedures were used to assess systematically whether policies that facilitate the transfer of juveniles from the juvenile to adult criminal justice system have been effective in reducing violence among juveniles. *Community Guide* methods for systematic reviews have been discussed elsewhere (22). In the *Community Guide*, evidence is summarized about the effectiveness of interventions in changing one or more health-related outcomes and about other positive or negative effects of the intervention. If an intervention is effective, evidence also is summarized regarding the applicability of the findings (i.e., the extent to which available effectiveness data might apply to diverse populations and settings), other harms or benefits of the intervention, economic efficiency, and barriers to the implementation of the intervention.

As with other *Community Guide* reviews, the process used to review evidence systematically and then translate that evidence into conclusions involves forming a systematic review development team; developing a conceptual approach to organizing, grouping, and selecting interventions; selecting interventions to evaluate; searching for and retrieving evidence; assessing the quality of and abstracting information from each study; assessing the quality of and drawing conclusions about the body of evidence (i.e., all available evidence combined) of effectiveness; and translating the evidence of effectiveness into recommendations.

Three groups comprised the systematic review development team: the coordination team, the consultation team, and the abstraction team.\* The coordination team (“the team”) consisted of a Task Force member, specialists in systematic reviews and economics from the *Community Guide*

\* Systematic review team: Coordination team: Robert Hahn, PhD; Angela McGowan, JD; Akiva Liberman, PhD; Alex Crosby, MD; Mindy Fullilove, MD; Robert Johnson, MD; Eve Moscicki, ScD; LeShawndra Price, PhD; Susan Snyder, PhD; Farris Tuma, ScD; Jessica Lowy, MPH; Peter Briss, MD; Stella Cory, MD; Glenda Stone, PhD. Consultation team: Danielle LaRaue, MD; Colin Loftin, PhD; James Mercy, PhD; Laurie Anderson, PhD; Suzanne Salzinger, PhD; Patricia Smith; Dick Bathrick. Abstraction team: Robert Hahn, PhD; Angela McGowan, JD; Akiva Liberman, PhD.

Branch (National Center for Health Marketing, CDC), and authorities on violence from the National Center for Injury Prevention and Control (CDC), the National Institutes of Health (NIH), and the National Institute of Justice (NIJ). This team developed the conceptual framework for the review; coordinated the data collection and review process; and drafted evidence tables, summaries of the evidence, and the reports. The abstraction team—three members of the coordination team—determined which studies met *Community Guide* standards for inclusion in the systematic review and collected and recorded data from these studies. The consultation team members—national authorities on violence-related topics—nominated interventions to be reviewed, participated in the selection of priority interventions for review, provided advice, and reviewed the final products.

Searches for published research were conducted in eight computerized databases: the National Criminal Justice Reference Service (NCJRS), Education Resources Information Center (ERIC), PsycINFO, Wilson Social Sciences Abstracts, Social SciSearch, National Technical Information Service (NTIS), Medline, and Lexis/Nexis.<sup>†</sup> Search terms included “juvenile transfer” and its synonyms (e.g., “waiver”), and “efficacy” and “recidivism.” Relevant references listed in retrieved articles were evaluated and obtained, and subject-matter specialists were consulted to find additional published reports. The coordination team conducted Internet searches to ensure that no additional studies could be found by these means. Journal articles, government reports, books, and book chapters were eligible for inclusion in the review.

Articles published in any year before February 2003<sup>§</sup> were considered for inclusion if they evaluated a new or strength-

ened transfer policy or law; assessed at least one of the specified transfer-related violent outcomes as measured by arrest rates for crimes designated as “violent” (e.g., robbery or assault); were conducted in a country with a high-income economy<sup>¶</sup> (as defined by the World Bank); reported on a primary study rather than a guideline or review; and compared a group of persons exposed to the intervention (i.e., law or policy) with a comparison group that had not been exposed or who had been less exposed. While searching for evidence, the team also sought information about effects on other outcomes (i.e., not violence-related), such as reductions in property crime and disproportionate minority representation among transferred juveniles.

Design suitability was assessed for each candidate study (those meeting the inclusion criteria). The review team’s assessment might result in classification of study design that differs from the nomenclature used by study authors. According to *Community Guide* nomenclature, greatest design suitability refers to studies with a concurrent comparison group and prospective data collection; moderate design suitability refers both to retrospective studies and studies with one pre-intervention and multiple post-intervention measurements but no concurrent comparison group; and least suitable design refers to cross-sectional studies or studies with only single pre- and post-intervention measurements and no concurrent comparison groups.

Research on specific deterrence uses different study designs and effect measures than research on general deterrence. In specific deterrence research, studies aim to compare the recidivism (subsequent criminal activity) of youth transferred to the adult justice system with the recidivism of youth retained in the juvenile system. Transferring juveniles to the adult criminal justice system might involve a court with more formal and adversarial procedures, fewer possibilities of pretrial diversion from court, different detention alternatives, and different sanctions. In this review, outcomes of transferred versus retained juveniles were compared, whether or not the juveniles had been found guilty (or the juvenile court equivalent, adjudicated “delinquent”), or sanctioned.

<sup>†</sup> These databases can be accessed as follows: NCJRS: [http://abstractsdb.ncjrs.org/content/AbstractsDB\\_Search.asp](http://abstractsdb.ncjrs.org/content/AbstractsDB_Search.asp); ERIC: <http://www.askeric.org/Eric/>; PsycInfo: DIALOG <http://www.dialogclassic.com> (requires id/password account), <http://www.apa.org/psycinfo/products/psycinfo.html>; Wilson Social Sciences Abstracts: <http://library.dialog.com/bluesheets/html/bl0142.html> (requires id/password account); Social SciSearch: <http://library.dialog.com/bluesheets/html/bl0007.html> (requires id/password account); NTIS: DIALOG <http://www.dialogclassic.com> (requires id/password account), <http://grc.ntis.gov/ntisdb.htm>; Medline: <http://www.ncbi.nlm.nih.gov/PubMed>; Lexis/Nexis: [www.lexisnexis.com](http://www.lexisnexis.com).

<sup>§</sup> Two articles were published on the general deterrent effects of strengthened transfer laws after the completion of this review. (Steiner B, Hemmens C, Bell V. Legislative waiver reconsidered: general deterrent effects of statutory exclusions laws enacted post-1979. *Justice Q* 2006;23:34–59. Steiner B, Wright E. Assessing the effects of state direct file waiver laws on violent juvenile crime: deterrence or irrelevance? *J Crim Law Criminology* 2006;96:1451–77.) Although findings from these studies are not included in this review, they are among the stronger studies regarding the general deterrence effect of increasing transfer. Both studies used time series methods to examine the effects of increased statutory exclusion and direct file in individual states. In both studies, the findings indicate that transfer laws do not promote the general deterrence of violent crime.

<sup>¶</sup> High-income economies as defined by the World Bank are Andorra, Antigua & Barbuda, Aruba, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bermuda, Brunei Darussaleem, Canada, Cayman Islands, Channel Islands, Cyprus, Czech Republic, Denmark, Estonia, Faeroe Islands, Finland, France, French Polynesia, Germany, Greece, Greenland, Guam, Hong Kong (China), Iceland, Ireland, Isle of Man, Israel, Italy, Japan, Republic of Korea, Kuwait, Liechtenstein, Luxembourg, Macao (China), Malta, Monaco, Netherlands, Netherlands Antilles, New Caledonia, New Zealand, Norway, Portugal, Puerto Rico, Qatar, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, Taiwan (China), United Arab Emirates, United Kingdom, United States, and U.S. Virgin Islands.

A major methodologic concern in studies of specific deterrence is selection bias: transfer to adult criminal court is typically intended for those youth who are considered to be more serious offenders. Consequently, transferred youth would be expected to have greater risk for subsequent violence, independent of any effect of their experience with the adult criminal justice system. All of the included studies attempted to control for possible selection bias by restricting the cases under consideration to serious ones that would be eligible for transfer and by comparing the outcomes of cases transferred with those of cases retained in the juvenile system. In addition, they attempted to reduce selection bias by one of three methods: 1) by using statistical methods to control for factors that might affect transfer decisions (23–25); 2) by matching transferred and retained juveniles on background characteristics (26,27); or 3) by comparing the outcomes of juveniles matched on background demographics, economics, and crime characteristics, but in jurisdictions with difference transfer laws (28). Because juveniles charged with minor offenses are unlikely to be transferred, and juveniles charged with extremely serious offenses are unlikely to be retained, studies that match or otherwise control for severity of criminal background will probably exclude juveniles at both extremes.

In general deterrence research, outcomes are measured in terms of offending rates in the general population of juveniles (e.g., the number of juveniles per 100,000 arrested for violent crimes). Comparison groups must necessarily be in another place or of a different age. Researchers strive for comparison groups unaffected by the transfer law being studied but who are otherwise as similar as possible and similarly affected by many of the other social forces that influence offending.

The team's assessment of general deterrence included only studies that compared rates of violence before and after implementation of a strengthened transfer policy and used a separate comparison group. Juvenile offending rates change over time for many reasons, as evidenced by the dramatic increase and then decrease in crime in general and in juvenile violence in particular during the late 1980s and early 1990s (29,30). Without comparison groups, any law enacted during a period of decline in crime would seem to have a deterrent effect, as indicated by simple before-and-after differences in offending within the same population. As a result, the team considered comparison groups unaffected by the law to be a critical design feature in evaluating the deterrent effect on crime of this particular law.

The team assessed limitations in the execution of all candidate studies. Limitations included failure to describe

study population, use of proxy rather than direct measures of violent outcomes (e.g., general offending outcomes [such as re-arrest] rather than violent offending), and not controlling for background characteristics of transferred and retained juveniles. This assessment might differ from an assessment of limitations for the study's original purposes. Using *Community Guide* methods (22), each study could be coded for as many as nine specific limitations: good execution refers to studies with one or fewer limitations, fair execution to studies with 2–4 limitations, and limited execution to studies with five or more limitations. Studies with limited execution did not qualify for the review.

Unless otherwise noted, results of each study are presented as the relative change in violent crime rates attributable to the interventions. Relative change was calculated as relative percent change using the following formulas:

$$\text{Effect size} = (I_{\text{post}}/I_{\text{pre}}) / (C_{\text{post}}/C_{\text{pre}}) - 1$$

where

$I_{\text{post}}$  is the last reported outcome rate in the intervention group after the intervention;

$I_{\text{pre}}$  is the reported outcome rate in the intervention group immediately before the intervention;

$C_{\text{post}}$  is the last reported outcome rate in the comparison group after the intervention;

$C_{\text{pre}}$  is the reported outcome rate in the comparison group immediately before the intervention.

In specific deterrence studies, intervention groups were composed of transferred juveniles, and control groups were composed of juveniles retained in the juvenile system. In general deterrence studies, intervention groups were populations of juveniles (e.g., in states or cities) exposed to a changed transfer policy, and control groups were populations not exposed to such a change.

If results were reported from logistic regression models, odds ratios were transformed into relative rate changes (31,32) so that these effect measures could be more appropriately compared with other studies in the body of evidence.\*\* If effect measures could not be converted into relative percent changes (e.g., results presented only in graphs), the reported findings are described in the text. In the reporting of study findings, the standard two-tailed p-value of  $\leq 0.05$  was used as a measure of statistical significance.

\*\*  $RR = OR / ((1 - P_0) + (P_0 \times OR))$ , where RR is the relative risk, OR the odds ratio to be converted, and  $P_0$  is the incidence of the outcome of interest in the unexposed population (i.e., juveniles retained in the juvenile justice system).

When available, measures adjusted for potential confounders through multivariate analysis were preferred over crude effect measures. Follow-up periods of <1 year were considered a limitation. When studies included several follow-up periods, the longest period available was used.

Using standard *Community Guide* methods (22), the findings of individual studies were aggregated, and the strength of the body of evidence was summarized on the basis of the number of available studies, the strength of their design and execution, and the magnitude and consistency of effects. For an effect to be considered sufficient evidence of effectiveness, its magnitude must be deemed of public health importance; statistical significance is generally considered only when just one study of greatest design suitability and good execution has qualified for review. Three studies of moderate design suitability and fair execution can provide sufficient evidence if findings are consistent in direction and magnitude. Results deemed sufficient to draw a conclusion are summarized both graphically and statistically.

## Results

### Specific Deterrence Effects

Six studies were identified that examined the effects of juvenile transfer on subsequent violent offending (23–28). All were of greatest design suitability and good execution. Studies followed juveniles for periods ranging from 18 months (23) to 6 years (27) to assess recidivism. More detailed descriptions and evaluations of these studies are available from the *Community Guide's* Violence Prevention website (<http://www.thecommunityguide.org/violence>) and have been published elsewhere (20).

In a prospective cohort study, the re-arrest of 400 youth aged 15–16 years initially arrested in the New York City metropolitan area during 1981–1982 (where the age of adult court jurisdiction is age 16 years and where youth aged 15 years are legislatively excluded from juvenile court when accused of any of 15 felonies) was compared with re-arrest of 400 demographically similar youth in counties in New Jersey (where age 18 years is the age of criminal responsibility and no legislative exclusion exists) (33). To enhance the comparability of the two regions, counties were matched by key crime and socioeconomic indicators (i.e., crime and criminal justice, demographic, socioeconomic, labor force, and housing characteristics). To estimate recidivism, competing hazard models were used that control for time at risk; age, case length, and sentence length were included as covariates. The study indicate that, among those not incarcerated, transferred juveniles were 39% more

likely to be re-arrested on a violent offense than were retained juveniles. Among those incarcerated, exposure to longer sentences was associated with a further increase in violent recidivism among those transferred compared with those who were retained in the juvenile system (28).

Florida's juvenile transfer laws were evaluated by a team of researchers in two separate studies of different cohorts (26,34). The first study compared the overall re-arrest rates of juveniles who were initially arrested in 1987 and then either transferred or retained (34). Each youth transferred to adult court was matched to a youth retained in the juvenile court by six factors (i.e., most serious offense, number of counts; number of previous referrals to the juvenile system; and most serious previous offense, age, and sex), and, when possible, by race. The findings indicated that transfer increased recidivism over the short term but over the longer term reduced recidivism for some transferred juveniles and increased it for others (27). Among youth initially arrested for misdemeanors and for most types of felonies, the effects of transfer were consistent with findings in the other studies that were reviewed. But among those initially arrested for felony property crimes, re-arrest rates were lower for transferred than for retained youth.

The second study essentially replicated the first for youth arrested following implementation of "stronger" juvenile laws enacted in Florida in 1990 and 1994 that increased prosecutorial waiver (26). The outcome compared was felony re-arrest, including nonviolent and violent felonies. In this study, the recidivism examined was restricted to felonies committed after age 18 years, on the grounds that this would ensure equivalent records of offending. The findings indicated that transferred youth had 34% more felony re-arrests than retained youth.

A study on the effects of transfer in Hennepin County, Minnesota, examined all cases in which the prosecutor filed a motion to transfer a juvenile during 1986–1992 (25,35). Sixty percent of juveniles for whom the prosecutor filed a motion to transfer were actually transferred. Recidivism rates for youth who were transferred were compared with rates for those who were retained in the juvenile justice system. The study presented the results of logistic regression analyses of the effects of transfer on reconviction for violent and nonviolent crimes combined, controlling for potential confounders, including sex, criminal history, and whether the case resulted in incarceration. Transfer was associated with a 26.5% increased likelihood of further criminal conviction over that of retained juveniles (25).

A study in Pennsylvania attempted to anticipate the effects of new transfer provisions before their implementation in 1996 (24). The study included 557 males aged

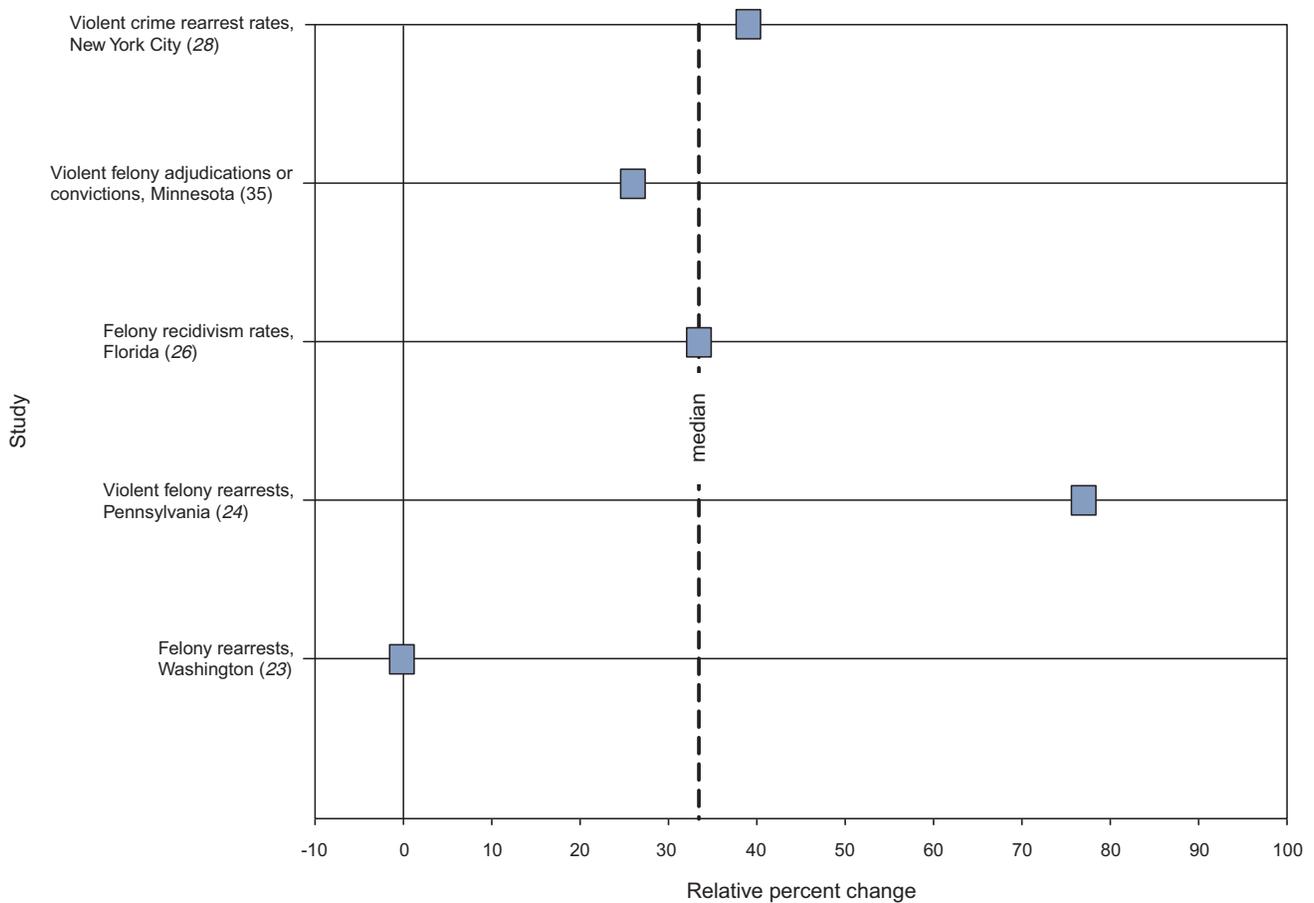
15–18 years arrested in Pennsylvania in 1994 for robbery, aggravated assault, or both, involving use of a deadly weapon. Multivariate analyses controlling for demographics and criminal background indicated that, compared with 419 retained juveniles, transfer of 138 juveniles was associated with a 77% greater likelihood of violent felony arrest following completion of the sentence.

A study in Washington attempted to determine the expected effect of the state’s 1994 Violence Reduction Act as modified by the state legislature in 1997 by examining the effects of discretionary transfers before implementation of the new law that excluded from original jurisdiction in juvenile court youth aged 16–17 years with specified offending histories or charged with any of nine “serious violent felonies” (23). Controlling for offenses charged in the

case, previous record of offenses, sex, and ethnicity, no difference in recidivism was found between transferred and retained juveniles.

Among the six studies reviewed, only one indicated that transfer of juveniles to the adult justice system deterred commission of subsequent violent or general crimes among a subset of those transferred (27); one study found no effect (23). The remaining four studies all found an undesirable effect in which transferred juveniles committed more subsequent violent or general crime than retained juveniles (24–26,28). Effect sizes from the individual studies ranged from 0–77%, and the overall median effect size was a 34% relative increase in subsequent violent or general crime for transferred juveniles compared with retained juveniles (Figure). According to the *Community Guide’s* rules of evidence (22), the review

**FIGURE. Relative change in the percentage of juveniles rearrested after release from the adult as compared with the juvenile justice system, by selected studies — United States, 1996–2007\***



\* Results of a previous study (27) were not presented here because of complex effect modification by initial offense and other status characteristics.

provides sufficient evidence that the transfer of youth to the adult criminal justice system typically results in greater subsequent crime, including violent crime, among transferred youth; therefore, transferring juveniles to the adult system is counterproductive as a strategy for preventing or reducing violence.

### General Deterrence Effects

Three studies evaluated the general deterrence effect of transfer laws or policies (11,23,36). All three evaluated the effects of changes to state transfer laws on rates of juvenile offending, as measured by arrest rates in the general juvenile populations of those states. All were of greatest study design suitability and fair execution. Effect sizes could not be computed because the studies provided insufficient data. More detailed descriptions of the studies included in this review and how they were evaluated are available at the *Community Guide's* Violence Prevention website (<http://www.thecommunityguide.com/violence>) and elsewhere (20).

The first study evaluated Washington's 1994 Violence Reduction Act, which legislatively excluded from initial jurisdiction in juvenile court youth aged 16–17 years with specified offending histories or charged with any of nine "serious violent felonies." Violent offending among youth aged 10–17 years in Washington peaked in 1994 and then declined, parallel to the national trend in arrests for violent crime (9,23). The study concluded that "we cannot attribute the decrease in juvenile arrests for violent crimes in Washington state solely to the automatic transfer statutes" (23).

A second study compared changes in offending rates in Idaho with those in Wyoming and Montana to determine the deterrent effect of a 1981 Idaho law mandating automatic transfer to the adult criminal justice system of youth aged 14–18 years charged with any of five violent crimes (36). Compared with violence in Wyoming and Montana, the new transfer law was associated with relative increases in violence in Idaho.

A third study examined monthly arrest rates for youth aged 13–15 years in New York during 1974–1984 (spanning the change in New York law) on four violent crimes (i.e., homicide, assault, robbery, and rape) using several comparison populations. New York City (NYC) was analyzed separately from the rest of the state (11). For NYC, two comparison populations were examined, neither of which was subject to the changed transfer legislation. The first comparison was with offenders in NYC aged 16–19 years who were unaffected by the Juvenile Offender Law because 16 is the age of adult court jurisdiction in New York; these youth were too old for the juvenile justice sys-

tem. The second comparison was with youth aged 13–15 years in Philadelphia. No consistent pattern of results was found across offenses. Only rape had a statistically significant decrease for the intervention group, but the NYC comparison group had a larger decrease that also was statistically significant. The decline was considerably smaller in Philadelphia, suggesting a local effect in NYC that is not attributable to the change in transfer. No consistent pattern of evidence suggested a general deterrence effect.

According to the *Community Guide* rules (22), the evidence from these studies is insufficient to determine whether or not laws or policies facilitating the transfer of juveniles to the adult criminal justice system are effective in preventing or reducing violence in the general juvenile population. One study of general deterrence reported no apparent effect (23), one reported heterogeneous effects (11), and one reported a counterdeterrent effect (36). Although by *Community Guide* standards the number of studies is sufficient for determining effectiveness (i.e., three studies of greatest design suitability and at least fair execution), study findings are inconsistent and typically centered on no effect and thus do not permit a conclusion.<sup>§</sup>

### Discussion

The studies reviewed for this report assessed the effects of strengthened transfer laws in Washington, Pennsylvania, and regions of New York, Minnesota, and Florida. These states are geographically and demographically diverse, which suggests that the findings might apply in other states.

The effects of transfer policies on violence and other crime across levels of severity of crime for which the juvenile was initially charged (e.g., misdemeanors or felonies) require further study. To assure comparability, the reviewed studies control for the severity of the crime for which the juvenile is at risk for being transferred and, where possible, for the juvenile's criminal history. These studies did not generally assess whether transfer had different effects for juveniles with more or less serious offenses and offense histories. Transfer might be more effective or less harmful if restricted to the most serious offenders. The Florida studies indicated that a large number of juveniles committing misdemeanors were transferred to adult court and found greater harm (i.e., recidivism) for these offenders than for juveniles transferred for more serious offenses. In any case, the possibility of transferring the most serious juvenile offenders was available in all court systems before the strengthening and formalizing of the transfer policies. The changes assessed in this review have resulted in lowering the thresholds for the seriousness of crimes for which juveniles are transferred,

thereby facilitating transfer. Because of methodologic controls for juvenile criminal background in studies of specific deterrence, juveniles at the most and least severe ends of the criminal severity spectrum are probably not included in these studies. Therefore, inferences from these studies should exclude these extremes.

The findings in this report indicate that transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.

### Research Needs

Although the Task Force has recommended against transfer of juveniles to the adult criminal justice system to prevent or reduce violence, transfer policies are still in effect, and the following important research issues remain:

- The experiences of youth in both juvenile and adult systems should be explored by comparing the experiences of youth sentenced to juvenile and adult sanctions (37,38) and assessing factors that might reduce (e.g., exposure to rehabilitation or interaction with caring mentors) or increase (e.g., exposure to adult offenders) further violence (38–40).
  - Do youth receive more rehabilitative programming in juvenile institutions than in adult institutions?
  - Has the programming in adult corrections changed in response to the influx of youthful offenders?
  - Do youth in adult correctional institutions have extensive contact with adult offenders and, if so, does that have negative effects on them or promote more subsequent offenses?
- The effects of variations among state laws have not been assessed systematically, limiting the ability to generalize review findings. Systematic comparison of state provisions to determine whether the transfer policies of the states included in the review are representative of all state transfer provisions could support the generalizability of the review's findings.

Little research has been conducted on the economic costs of transferring youth to the adult criminal justice system versus retaining them in the juvenile system (41). In some sense, evaluating costs of interventions (e.g., transfer) that cause net harm seems counterintuitive; ideally, spending that results in increased violence and additional societal costs should be discouraged. However, documenting the variability and relative costs of the two judicial and correc-

tional systems, the distribution of responsibility for these costs across different levels of government and society, and the net balance of program costs, the costs of subsequent crime, and the costs of opportunities lost to the juveniles themselves might allow a constructive discussion of the economic consequences of change.

### Use of the Recommendations

The findings of this review might encourage discussion among legislators and others interested in juvenile justice about the societal and economic costs and benefits of juvenile transfer laws and policies. This review, along with the Task Force on Community Preventive Services' recommendation against juvenile transfer laws, provides guidance for public health and juvenile justice policy makers, program planners and implementers, and researchers.

The findings in this report are subject to at least four limitations. First, transfer laws and policies vary substantially from state to state. The studies reviewed for this report were the only ones that met *Community Guide* standards and might not be representative of transfer laws in all states. Second, the outcome measures in all these studies result from official records of offending (either arrest or conviction) rather than direct measures of offending (e.g., robbery or aggravated assault). The majority of crimes do not result in an arrest (1,42), and certain wrongful arrests are made. Nevertheless, although arrest rates might reflect law enforcement activity as much or more than juvenile criminal behavior, they are among the best available and most commonly used indicators of crime (43) and thus the best available outcome for assessment in this review.

Third, the heterogeneity of laws across jurisdictions and populations studied and the impossibility of conducting experimental trials to evaluate such policies as transfer laws makes controlling for potential confounding difficult. The six specific deterrence studies reviewed have used several approaches to control for confounding, including matched pairs within jurisdictions; cross-jurisdictional comparisons with control of social, demographic, and criminological variables; and simple graphical comparison across jurisdictions. The convergence of results across these studies suggests that increased violent recidivism following transfer is a robust finding.

Finally, the relevance of the findings might be questioned because of the age of the studies reviewed (study cohorts were arrested during 1981–1996). However, the consistency of findings over a substantial period, during which patterns of violent crime varied greatly, suggests the persistence of the phenomenon reported.

Review of the effects of transfer laws on subsequent violence indicates that the experience of transfer to the adult criminal justice system is associated with subsequent violence among juvenile participants when compared with violence among juveniles retained in the juvenile justice system. In addition, little evidence supports the idea that transfer laws deter juveniles in the general population from violent crime. These policies might be favored by policymakers or the public for other reasons (e.g., societal retribution in response to serious crime or incapacitation of serious offenders). However, the review indicates that use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety.

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# Juvenile Transfer Laws: An Effective Deterrent to Delinquency?

**Richard E. Redding**

Beginning in the 1980s, many States passed legal reforms designed to get tough on juvenile crime. One important reform was the revision of transfer (also called waiver or certification) laws (Griffin, 2003) to expand the types of offenses and offenders eligible for transfer from the juvenile court for trial and sentencing in the adult criminal court.<sup>1</sup> These reforms lowered the minimum age for transfer, increased the number of transfer-eligible offenses, or expanded prosecutorial discretion and reduced judicial discretion in transfer decisionmaking (Fagan and Zimring, 2000; Redding, 2003, 2005). In 1979, for example, 14 States had automatic transfer statutes requiring that certain juvenile offenders be tried as adults; by 1995, 21 States had such laws, and by 2003, 31 States (Steiner and Hemmens, 2003). In addition, the age at which juvenile court jurisdiction ends was lowered to 15 or 16 years in 13 States (see Snyder and Sickmund, 2006), although very recently, some States have reduced the scope of transfer laws (Bishop, 2004), and one State has raised the age at which juvenile court jurisdiction ends from 16 to 18.

In the wake of these legislative changes, the number of youth convicted of felonies in criminal courts and incarcerated in

adult correctional facilities has increased (Redding, 2003), reaching a peak in the mid-1990s and then declining somewhat (Snyder and Sickmund, 2006) due, in part, to the decrease in juvenile crime. An estimated 4,100 youth were committed to State adult prisons in 1999, representing 1 percent of new prison commitments (Snyder and Sickmund, 2006). Sixty-one percent of these youth were incarcerated for person offenses, 23 percent for property offenses, 9 percent for drug offenses, and 5 percent for public order offenses (e.g., weapons possession) (Snyder and Sickmund, 2006). Transferred juveniles, particularly those convicted of violent offenses, typically receive longer sentences than those sentenced in the juvenile court for similar crimes (Bishop, 2000; Kupchik, Fagan, and Liberman, 2003; Myers, 2005; Virginia Department of Criminal Justice Services, 1996). But, they may be released on bail for a considerable period of time while they await trial in the criminal court (Myers, 2005), and many youth incarcerated in adult facilities serve no longer than the maximum time they would have served in a juvenile facility (Bishop, 2000; Fritsch, Caeti, and Hemmens, 1996; Myers, 2001). Seventy-eight percent were released from prison before their 21st birthday, and 95 percent were released before their

### A Message From OJJDP

In an effort to strengthen the sanctions for serious juvenile crimes, a number of States have enacted laws increasing the types of offenders and offenses eligible for transfer from the juvenile court to the adult criminal court for trial and potential sentencing.

These laws have lowered the minimum transfer age, increased the number of offenses eligible for transfer, and limited judicial discretion, while expanding prosecutorial discretion for transfers.

Among the principal goals of such transfer laws are the deterrence of juvenile crime and a reduction in the rate of recidivism, but what does the research indicate about their effectiveness in addressing these ends?

Several studies have found higher recidivism rates for juveniles convicted in criminal court than for similar offenders adjudicated in juvenile courts. The research is less clear, however, in regard to whether transfer laws deter potential juvenile offenders.

This Bulletin provides an overview of research on the deterrent effects of transferring youth from juvenile to criminal courts, focusing on large-scale comprehensive OJJDP-funded studies on the effect of transfer laws on recidivism.

It is our hope that the information provided in this Bulletin will help inform public discussion and policy decisions on the transfer of juvenile offenders to adult criminal courts.

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## Types of Transfer Laws

While the age at which juveniles can be transferred to the adult system varies across States, most States will transfer youth ages 14 and older who have committed a serious violent offense. Typically, there are four categories of offenses for which juveniles of a certain age may be transferred: (a) any crime, (b) capital crimes and murder, (c) certain violent felonies, and (d) certain crimes committed by juveniles with prior records (Snyder and Sickmund, 2006). (See Griffin, 2003, and Snyder and Sickmund, 2006, for recent comprehensive lists of States, recent transfer statutes, and statutory requirements.)

There are three types of transfer laws, all of which are referred to in this Bulletin: legislative (automatic transfer), judicial-discretionary (judicial transfer), and prosecutorial-discretionary (prosecutorial direct-file). Each type defines the kind of juvenile offender eligible for transfer under the statute, typically specifying certain offenses and minimum age criteria. Most States have two or three coexisting types of transfer laws (Redding and Mrozowski, 2005). For example, 40 States and the District of Columbia have judicial and prosecutorial transfer statutes, with the prosecutorial statutes often applicable only to older and more serious offenders (Sanborn, 2003).

Automatic transfer laws, currently in effect in 29 States (Snyder and Sickmund, 2006), require transfer of a juvenile if statutory criteria are met (for example, alleged commission of a violent felony by juveniles 14 years of age and older). Under these laws, the case either originates in criminal court, or originates in juvenile court and is then transferred to criminal court. Judicial transfer laws, currently in 45 States and the District of Columbia (Snyder and Sickmund, 2006), vest discretion with the juvenile court judge to decide whether a juvenile should be transferred after the prosecution files a transfer motion. Prosecutorial direct-file laws, currently in 14 States and the District of Columbia (Snyder and Sickmund, 2006), vest the discretion with prosecutors, allowing them to decide whether to file charges in the juvenile or criminal court. Twenty-five States also have reverse waiver laws (Snyder and Sickmund, 2006). In a reverse waiver jurisdiction, the criminal court judge has the discretion to transfer the defendant back to the juvenile court (or to treat the defendant as a juvenile for sentencing purposes).

25th birthday, with an average of 2 years, 8 months of time served on their sentences (Snyder and Sickmund, 2006).

## General and Specific Deterrence

The nationwide policy shift toward transferring juvenile offenders to the criminal court is based largely on the assumption that more punitive, adult criminal sanctions will act as a deterrent to juvenile crime. In terms of specific deterrence—in other words, whether trying and sentencing juvenile offenders as adults decreases the likelihood that they will reoffend—six large-scale studies have found higher recidivism rates among juveniles convicted for violent offenses in criminal court when compared with similar offenders tried in juvenile court. With respect to general deterrence—whether transfer laws deter any would-be juvenile offenders—the picture is less clear. The studies on this issue have produced somewhat conflicting findings; however, the bulk of the empirical

evidence suggests that transfer laws have little or no general deterrent effect.

This Bulletin reviews all of the extant research on the general and specific deterrent effects of transferring juveniles to adult criminal court (Redding, 2005), focusing in particular on recent large-scale studies on specific deterrence funded by the Office of Juvenile Justice and Delinquency Prevention (Fagan, Kupchik, and Liberman, 2003; Lane et al., 2002; Lanza-Kaduce et al., 2005). It also identifies gaps in the field's knowledge base, notes challenges for further research, and discusses whether effective deterrence may be achieved through transfer.

### General Deterrence: Do Transfer Laws Prevent Juvenile Crime?

Two studies conducted in the 1980s found that transfer laws did not lower juvenile crime rates. Jensen and Metsger's (1994) time-series analysis for the years 1976 to 1986 found a 13-percent increase in arrest

rates for violent crime committed by 14- to 18-year-olds in Idaho after the State implemented its transfer law in 1981. In comparison, between 1982 and 1986, the arrest rates for similarly aged juveniles decreased in the neighboring States of Montana and Wyoming (which retained transfer procedures similar to those Idaho had before 1981). In a similar time-series analysis comparing juvenile arrest rates between 1974 and 1984 in New York and Philadelphia, Singer and McDowall (1988) found that a 1978 New York State law that automatically sent violent juvenile offenders to criminal court (by lowering the ages for criminal court jurisdiction to 13 for murder and 14 for assault, arson, burglary, kidnapping, and rape) had no deterrent effect on violent juvenile crime. The law was applied widely and publicized extensively in the media.<sup>2</sup> Although limited, evidence available at the time suggested that juvenile offenders in New York were aware of the law (Singer and McDowall, 1988).

On the other hand, the results of a multi-state analysis for the years 1978 to 1993 suggest that adult sanctions, under certain conditions, may have moderate deterrent effects on juvenile crime (Levitt, 1998). Controlling for demographic and economic variables, the researchers compared the juvenile arrest rates for violent crime across States as a function of each State's minimum age for criminal court jurisdiction to the relative punitiveness of its juvenile and criminal justice systems. Punitiveness is defined as the ratio of the number of incarcerated offenders to the number of total offenders in each State system for different age groups. Researchers found relative decreases in youth crime as youth reached the age of criminal responsibility, but only in those States in which juvenile and criminal justice systems differed significantly in severity of punishment. This suggests that significantly more punitive punishments meted out by criminal courts may deter youth from offending once they reach the age of criminal responsibility.

Two multistate studies reached a different conclusion. Examining data on all felony arrests in the State of Florida between 1989 and 2002, including each offender's age and arrest history, Lee and McCrary (2005) evaluated the effect of turning age 18 on criminal offending. This study found that young people did not lower their offending rates upon turning age 18, suggesting that the prospect of adult sanctions was not a deterrent.

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Steiner and Wright (2006) examined the effects of prosecutorial transfer laws in the 14 States that had such laws as of 2003.<sup>3</sup> These States enacted their laws at different times (between 1975 and 2000), thereby providing data over different historical time periods. Using time-series analyses, researchers compared monthly juvenile arrest rates for violent index crime (homicide, rape, robbery, and aggravated assault) for each month in the 5 years before and the 5 years after each State enacted its prosecutorial transfer law. In addition, 2 States were selected as controls for each of the 14 target States. The control States resembled the target States in size, location, and juvenile arrest rates, but implemented no transfer law during or near the relevant time period. The study found that transfer laws had no general deterrent effect. Only in Michigan did juvenile crime decrease after the State enacted its prosecutorial transfer law; in the other 13 States, juvenile crime either remained constant or increased after the enactment of the law (see also Risler, Sweatman, and Nackerud, 1998).

A few researchers have interviewed juvenile offenders about the effects of transfer. Before the widespread expansion of transfer laws, Glassner and colleagues (1983) reported the results of interviews with a small number of juvenile offenders in New York, who said they had decided to stop offending once they reached the age at which they knew they could be tried as adults.

Researchers in another small-scale study (Redding and Fuller, 2004) interviewed 37 juvenile offenders who had been charged with murder or armed robbery and automatically tried as adults in Georgia. The study examined their knowledge and perceptions of transfer laws and criminal sanctions. Georgia had undertaken a public awareness campaign to inform juveniles about the State's new automatic transfer law. Nevertheless, juvenile offenders reported being unaware of the law; only 8 of the 37 youth knew that juveniles who committed serious crimes could be tried as adults. Even among those who knew about the law, none expected that it would be enforced against them for the serious crime they had committed. Many thought they would only get light sentences (e.g., a sanction of probation, boot camp, or a several-month stay in a juvenile detention facility) from the juvenile court. These results are consistent with those from a Canadian study (Peterson-Badali,

Ruck, and Koegl, 2001) finding that only 22 of the 53 juvenile offenders interviewed thought that they would receive a serious punishment if caught.

Seventy-five percent of the transferred juveniles interviewed by Redding and Fuller (2004) felt that their experiences in the adult criminal justice system had taught them the serious consequences of committing crimes. As one juvenile explained, "[Being tried as an adult] showed me it's not a game anymore. Before, I thought that since I'm a juvenile I could do just about anything and just get 6 months if I got caught" (Redding and Fuller, 2004:39). Seventy-five percent of the juvenile offenders said that if they had known they could be tried and sentenced as adults, they may not have committed the crime (Redding and Fuller, 2004).

In sum, the limited empirical research on the general deterrent effect of juvenile transfer is somewhat inconsistent and does not permit strong conclusions. The bulk of the evidence suggests that transfer laws, at least as currently implemented and publicized, have little or no general deterrent effect in preventing serious juvenile crime. Substantial further research is needed to examine whether transfer laws have—or, under the appropriate conditions, could have—a general deterrent effect. In particular, it is important to examine the following questions:

- ◆ Are juveniles aware of transfer laws?
- ◆ Do they believe the laws will be enforced against them?
- ◆ Does this awareness and belief deter criminal behavior?

In conjunction with such research, there is a need to implement and evaluate well-targeted public awareness campaigns on the State and local levels designed to apprise juveniles of the legal consequences of committing serious crimes (Redding and Fuller, 2004). Public awareness campaigns have proved effective in reducing adult crime in some contexts (e.g., Elder et al., 2004; Johnson and Bowers, 2003).

### Potential Deterrence

It is possible that transfer laws resulting in significant adult sentences might have general deterrent effects if would-be juvenile offenders were made aware of such laws and if the laws were widely implemented. With respect to adult offenders, studies "plainly suggest that

when potential offenders are made aware of substantial risks of being punished, many of them are induced to desist" (Von Hirsch et al., 1999:47). However, research with adults suggests that the severity of punishment appears to have little or no effect on crime rates (Pratt and Cullen, 2005; Robinson and Darley, 2004), perhaps because potential offenders typically have much more information about the likelihood of being arrested than they do about likely sentences (Von Hirsch et al., 1999). Studies show that the general public knows little about potential sentences and tends to underestimate their severity (Robinson and Darley, 2004; Von Hirsch et al., 1999). In addition, offenders tend to discount punishment as an uncertain future event, whereas the short-term rewards of crime are more powerful pull factors (Wilson and Herrnstein, 1985). "[F]uture contingent costs may be discounted less, if their magnitude is sufficiently great *and* their likelihood of being incurred increases. Severe sentencing policies thus might possibly have an impact if coupled with much higher probabilities of conviction" (Von Hirsch et al., 1999:48).

Although studies of juvenile offenders are few in number, they suggest that arrests and sanctions have deterrent effects. For example, Mocan and Rees (2005) examined self-reported delinquency data (for drug selling, assault, robbery, burglary, and theft) for 14,942 adolescents from the 1995 National Longitudinal Study of Adolescent Health. They compared county-level arrests (of adults and juveniles) for violent crime reported in 1993 with county-level juvenile crime rates in 1995, thus providing a measure of the deterrent effects of arrest rates on subsequent juvenile crime rates. They found that the arrest rate had a general deterrent effect on the crimes of drug dealing and assault; for each additional arrest, there was a 3.6-percent decrease in the likelihood that juveniles would sell drugs and a 6.6-percent decrease in the likelihood that they would commit an assault. According to Mocan and Rees (2005:344), "this pattern of results runs counter to claims that at-risk young Americans are so present-oriented that they do not respond to incentives and sanctions."

Similarly, Smith and Gartin (1989) found that being arrested reduced recidivism among youthful male offenders, particularly first-time offenders. A 2003 study of serious juvenile offenders incarcerated in a maximum security facility found a negative

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relationship between their sentence severity and self-reported intent to reoffend and a positive correlation between their self-reported intent and the number of offenses they actually committed after their release. Researchers found evidence that these offenders made “some explicit calculations about the advantages and disadvantages of committing future crimes” (Corrado et al., 2003:197).

Criminal sanctions will only have deterrent effects if potential offenders: (1) believe there is a significant likelihood of getting caught, (2) believe there is a significant likelihood of receiving a substantial sentence, and (3) consider the risk of the penalty when deciding whether to offend (see Von Hirsch et al., 1999). It is useful to consider, however, each of the necessary preconditions for successful deterrence in the context of juvenile offending. A law can act as a deterrent only if the targeted population is aware that the law exists and believes that it will be enforced.

Redding and Fuller (2004) found that few violent juvenile offenders knew that they could be tried as adults, none thought it would happen to them, and few thought they would face serious punishment. Moreover, few reported thinking about the possibility of getting caught when they committed the offense. Indeed, it seems that offenders generally underestimate the risk of arrest (Robinson and Darley, 2004). Juveniles’ psychosocial immaturity, including their tendency to focus on the short-term benefits of their choices (Beckman, 2004; Scott, Reppucci, and Woolard, 1995; Steinberg and Cauffman, 1996), may reduce the likelihood that they will perceive the substantial risk of being arrested or punished as an adult (Schneider and Ervin, 1990).

### Specific Deterrence

To date, six published studies have been conducted to examine the specific deterrence effects of transfer. These large-scale studies indicate that youth tried in adult criminal court generally have greater recidivism rates after release than those tried in juvenile court. It is unclear, however, whether transfer affects recidivism for nonviolent property or drug offenders.

Fagan (1996) examined the recidivism rates of 800 randomly selected 15- and 16-year-old juvenile offenders charged with robbery or burglary during 1981–82. Controlling for eight variables (race, gender, age at first offense, prior offenses,

offense severity, case length, sentence length, and court), as well as for time residing in the community, researchers compared offenders charged in New Jersey’s juvenile courts with offenders charged in New York’s criminal courts under that State’s automatic transfer law (under which 16 is the age of full criminal responsibility). Both areas shared similar demographic, socioeconomic, and crime-indicator characteristics. Thus, the study provides a comparison of recidivism rates as a function of whether cases were processed in the juvenile or criminal court, without the sample selection problems inherent in studies comparing cases within a single jurisdiction where prosecutors or judges decide which cases to transfer.

A higher percentage of youth who were tried for robbery in criminal court were rearrested (91 percent) than those tried for robbery in juvenile court (73 percent). Of youth who were rearrested, those tried in the criminal court also were rearrested sooner and more often. However, there were no differences in recidivism rates (in terms of the percent rearrested, rearrest rate, and time to rearrest) for burglary offenders tried in the criminal court versus those tried in juvenile court. The findings on robbery offenders suggest that criminal court processing alone, irrespective of whether youth are incarcerated in juvenile or adult facilities, produces a higher recidivism rate. This finding is emphasized by the parallel finding that even those youth sentenced to probation in criminal court had a substantially higher recidivism rate than those incarcerated in the juvenile justice system (see also Mason and Chang, 2001).

Juveniles with the highest recidivism rates were those who were incarcerated after being tried in the criminal court. The study indicated that, overall, youth adjudicated in juvenile court had a 29-percent lower risk of rearrest than those tried in criminal court. Drug offenses were the one exception. Criminal court adjudication substantially reduced the risk of rearrest in those cases.

Bishop and colleagues (1996) compared the 1-year recidivism rate of 2,738 juvenile offenders transferred to criminal court in Florida in 1987 with a matched sample of 2,738 juvenile offenders who had not been transferred. Florida relies almost exclusively on prosecutorial transfer. These transfer decisions are largely offense-driven and made soon after arrest, before the

prosecutor has much information about the youth’s background. Therefore, it is less likely that the youth retained in the juvenile justice system had lower recidivism rates due to variables other than those controlled for in the analysis, such as the youth’s mental health status or amenability to treatment (Bishop and Frazier, 2000). The study controlled for seven variables (race, gender, age, number of referrals to juvenile court, most serious prior offense, number of charges, and most serious charge). Researchers found that the rearrest rates were higher (0.54 versus 0.32 offenses per person, per year of time living in the community) among transferred youth. Also, the average time to reoffending was shorter (135 versus 227 days) for the transferred youth across seven offense types (including violent felonies, property offenses, and minor misdemeanors).

Following the same Florida offenders 7 years after the initial study by Bishop et al. (1996), Winner et al. (1997) compared transferred versus nontransferred offenders matched for gender, age, race, and offending history. They found that the rearrest rates were higher and the time to reoffending shorter (adjusting for time residing in the community following release from incarceration) among those who had been transferred to criminal court. The exception was transferred property felons who had lower recidivism rates than similar offenders who remained under juvenile court jurisdiction.

Myers (2001, 2003) examined the 18-month recidivism rates of 494 juvenile offenders charged with robbery or aggravated assault in Pennsylvania in 1994, using a statistical model to control for the possibility that the transferred juveniles were the more serious offenders in the first place (and therefore more likely to recidivate) or those less amenable to treatment in the juvenile system. The study controlled for age at referral, race, geographical location, school and family status, various indices of prior offending history, use of a weapon, and various case-processing variables. Youth who were judicially transferred to criminal court were twice as likely to be rearrested, and were rearrested more quickly (and often for more serious offenses) upon their return to the community, than youth who were retained in the juvenile justice system during the same period.

Finally, two recent large-scale studies funded by OJJDP are particularly informative:

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## Recent OJJDP-Funded Studies

Lanza-Kaduce and colleagues (2005) conducted a second Florida study that included 950 young adult offenders.<sup>4</sup> Half of the offenders had been prosecutorially transferred to the criminal court in 1995 or 1996 for offenses they had committed as juveniles; the other half had remained in the juvenile system. This resulted in a sample of 475 matched pairs of transferred and retained cases.

The cases were drawn from six urban and rural judicial circuits in Florida that differed considerably in their rates of transfer. The cases were matched within each judicial circuit (thus controlling for geographical effects in case processing and decisionmaking) along seven relevant demographic, criminal history, and offense variables: age, gender, race, number of previous juvenile referrals, most serious prior offense, offense, and number of charges. In addition, a subset of this group, consisting of 315 best matched pairs, were further matched according to an offense seriousness index created by examining local records to obtain data about 12 other case characteristics: prior juvenile referrals, multiple charges at arrest, multiple incidents involved in the case, charge consolidation, legal problems during case processing, gang involvement, codefendants or accomplices, property loss or damage, victim injury, use of weapons, felony charges, and the presence of mitigating and aggravating factors. The measure of recidivism was the number of offenses committed after youth turned age 18, and data analyses were conducted on the 475 matched pairs, as well as on the subset of 315 best matched pairs.

### Transferred Juveniles More Likely To Offend

The Lanza-Kaduce study expands on the earlier Florida studies (i.e., Bishop et al., 1996; Winner et al., 1997). It includes reoffense types and a detailed matching on relevant case and offense characteristics (see Frazier et al., 1999). Its recidivism data draws on information from two different State databases. To reduce a potential lack of comparability in recidivism measures between transfers and juvenile court retainees due to differences in decisionmaking and recordkeeping between the two systems, it examines offending after age 18. “The focus on adult recidivism . . . captures the persistence of a criminal

career into adulthood—a pivotal policy concern” (Lanza-Kaduce et al., 2005:64). Moreover, the data “include cases transferred in 1995 and 1996, after the ‘get tough’ idea was fully entrenched in the American culture and after prosecutorial transfer had been used in Florida for a long time” (Lanza-Kaduce et al., 2005:65).

Like the earlier Florida studies, this study found that transferred offenders, particularly violent offenders, were significantly more likely to reoffend.

- ◆ Overall, 49 percent of the transferred offenders reoffended, compared with 35 percent of the retained offenders.
- ◆ For violent offenses, 24 percent of the transferred offenders reoffended, compared with 16 percent of the retained offenders.
- ◆ For drug offenses, 11 percent of the transferred offenders reoffended, compared with 9 percent of the retained offenders.
- ◆ For property offenses, 14 percent of the transferred offenders reoffended, compared with 10 percent of the retained offenders.

The results were virtually identical for the subset of 315 best matched pairs. In addition, researchers conducted paired-comparison analyses in which each matched pair was the unit of analysis. This analysis classified each pair according to whether both offenders reoffended (21 percent of cases), only the transferred offender reoffended (29 percent of cases), only the retained offender reoffended (15 percent of cases), or neither reoffended (36 percent of cases).<sup>5</sup> Again, the results were virtually identical for the subgroup of best-matched pairs. However, the study failed to replicate the 1997 Florida study finding of lower recidivism rates among transferred property offenders (Winner et al., 1997).

In addition to the recidivism study, the Florida research group conducted detailed interviews with 144 serious male offenders between the ages of 17 and 20, half of whom had been transferred and the other half of whom were retained in the juvenile system (Bishop and Frazier, 2000; Lane et al., 2002). Eighty-three percent had more than one prior arrest, 60 percent began offending before the age of 14, and 47 percent had committed a violent offense as their most serious current offense. Interviews were conducted in four “deep-end” juvenile correctional institutions (i.e., 9–36

month placements in highly secure juvenile correctional facilities designed for high- and medium-risk offenders) and eight adult prisons in Florida (mostly youthful offender facilities designed to house young adults up to age 24), with youth at different stages in serving their sentence. Of the 71 youth who had been transferred to the adult system, 63 also had prior experience in the juvenile system. Fifty-eight percent of the youth rated the deep-end juvenile placements as beneficial, 33 percent rated the adult prison as beneficial, 20 percent rated the less restrictive juvenile dispositions (for example, probation, placement in low-restrictive residential programs) as beneficial, and 12 percent rated adult probation as beneficial.

The youth rated the deep-end juvenile programs the most beneficial largely because these programs provided intensive, long-term job skills training and treatment. In addition, the lengthier period of incarceration gave them more time to consider their futures and the consequences of reoffending, suggesting that the longer sanctions had an impact (Lane et al., 2002). But “[o]ften when adult sanctions were perceived as being beneficial, the benefit was not attributed to anything gained from the disposition. Rather, many youth indicated that they expected to remain crime-free because their experiences in the adult system had been so horrible. Youth who believed the adult sanctions would keep them from committing crimes primarily pointed to three reasons: pain and denigration, time spent in prison, and fear of future consequences, especially tougher sentences. Paradoxically, most of those who said the adult experience was negative also mentioned pain, denigration, and/or anger, but they gave these as reasons why the adult dispositions had made matters worse. Others attributed a negative impact to adult sanctions because they ‘learned more crime while there’” (Lane et al., 2002:444). While a substantial minority of the youth said that prison had taught them a lesson—declaring that they would not reoffend because they did not want to endure the pain of imprisonment again—61 percent said that prison had either no impact or a negative impact on their behaviors (Lane et al., 2002:448). Overall, the “findings call into question the practice of [incarcerating juveniles in adult prison and] ‘skipping’ the deep-end juvenile programs when sentencing youth for serious crimes” (p. 452).

In another OJJDP-sponsored study, Fagan and colleagues (2003) extended and largely replicated previous research (Fagan, 1996). This time, they examined the time-at-risk (i.e., residing in the community) recidivism rates for 2,382 15- and 16-year-old juveniles charged in 1992 or 1993 with robbery, burglary, or assault. The 2003 study used a larger sample drawn from more counties in each State as well as more detailed measures of important variables, such as offenders' prior juvenile record. The study compared those charged in selected counties in northern New Jersey, where such cases originate in the juvenile court, with those charged in matched counties in New York, where such cases originate in the criminal court. The New York and New Jersey counties are contiguous, and part of a large metropolitan area that shares common demographic, economic, and social characteristics as well as similar criminogenic influences and crime rate characteristics. Thus, the study design allows for comparison of recidivism rates as a function of whether cases are processed in juvenile court or criminal court, without the sample selection problems inherent in designs that compare cases retained in the juvenile court with those transferred in a single jurisdiction wherein decisionmakers decide which cases to transfer. All cases were followed for a 7-year period until 2000, by which time almost all of the offenders had served their sentences and had spent at least 2 years living in the community. The study statistically controlled for a variety of relevant demographics (age, gender, ethnicity), case and offense characteristics (for example, most serious charge, weapon use, whether detained, case length), criminal history variables (age at first arrest, number of prior arrests, previous incarcerations), and sentence length. It used statistical techniques that analyzed recidivism in different ways (first rearrest, severity of rearrest charges, time until rearrest, likelihood of subsequent incarceration).

### **Greater Likelihood of Rearrest**

The study found a 100-percent greater likelihood of rearrest for a violent offense and a 47-percent greater likelihood of rearrest for a property offense, among the New York juveniles whose cases were processed in the criminal court than for the New Jersey juveniles. They also had a greater number of rearrests for such offenses and a 26-percent greater chance

of being reincarcerated. The pattern of findings was even stronger for first-time offenders. For drug offense rearrests, however, the results were reversed, with the juveniles tried in juvenile court having a 31-percent greater likelihood of rearrest for drug offenses. Finally, the study found that the differences in recidivism were unrelated to periods of incarceration in adult versus juvenile facilities. Thus, incarceration in adult prisons "does not seem to be responsible for the criminogenic effect of adult court processing" (Fagan et al., 2003:66).

These findings fully replicate those of the earlier Fagan (1996) study, except with respect to property offenses. The 1996 study found no difference in recidivism rates for burglary, whereas the 2003 study found that criminal court processing increased the recidivism rates for property offenses.

### **Transfer Found To Increase Recidivism**

In sum, to date, six large-scale studies have been conducted on the specific deterrent effects of transfer. These studies used large sample sizes (between 494 and 5,476 participants), different methodologies (natural experiment across two jurisdictions, matched groups within the same jurisdictions, or statistical controls), multiple measures of recidivism, and were conducted in five jurisdictions (Florida, New Jersey, New York, Minnesota, Pennsylvania) having different types of transfer laws (automatic, prosecutorial, or judicial). The strong consistency in results across the studies is all the more compelling given that they used different samples and methodologies, thereby providing a degree of convergent validity for the findings. All of the studies found higher recidivism rates among offenders who had been transferred to criminal court, compared with those who were retained in the juvenile system. This held true even for offenders who only received a sentence of probation from the criminal court. Thus, the extant research provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism. A recent review of the extant research on transfer conducted by the Centers for Disease Central arrived at the same conclusion (McGowan et al., 2007). Only two apparent exceptions challenge this

pattern of findings. For nonviolent property offenders, the effects of transfer remain unclear, with one study finding that transfer had no effect on recidivism (Fagan, 1996) and another finding that transfer decreased recidivism (Winner et al., 1997), but with two studies (conducted in the same jurisdiction as the first two studies) finding that it increased recidivism (Fagan et al., 2003; Lanza-Kaduce et al., 2005). In addition, with respect to drug offenders, two studies (Fagan, 1996; Fagan et al., 2003) found decreased recidivism rates among those tried in the criminal court.

### **Challenges for Future Research**

Important challenges for future research are to determine: (1) whether transfer differentially impacts recidivism as a function of offense type (violent offenses, property offenses, drug offenses), and (2) what features of the criminal justice system increase recidivism, an important question for policymaking. These challenges raise such questions as the following:

- ◆ Can changes be made in the criminal court processing and adult system sanctions of juveniles to make them less detrimental? What are they?
- ◆ In what ways should the juvenile justice system guard against those features of the criminal justice system that serve to increase recidivism?
- ◆ How can States' blended sentencing systems, which allow the juvenile courts to impose adult sentences in certain cases (see Redding and Howell, 2000), incorporate the best features of the juvenile and criminal justice systems, while avoiding the negative effects of criminal justice system processing?

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## Why Do Juveniles Tried as Adults Have Higher Recidivism Rates?

Experts (see Bazemore and Umbreit, 1995; Myers, 2003; Thomas and Bishop, 1984; Winner et al., 1997) have identified several possible explanations for the higher recidivism rates of violent juvenile offenders tried in criminal court as compared to those adjudicated in juvenile court:

- ◆ The stigmatization and other negative effects of labeling juveniles as convicted felons.
- ◆ The sense of resentment and injustice juveniles feel about being tried and punished as adults.
- ◆ The learning of criminal mores and behavior while incarcerated with adult offenders.
- ◆ The decreased focus on rehabilitation and family support in the adult system.

A felony conviction also results in the loss of a number of civil rights and privileges (see Redding, 2003), further reducing the opportunities for employment and community reintegration.

Findings from several studies (Fagan, 1996; Fagan, Kupchik and Liberman, 2003) show that criminal court processing alone, even without the imposition of any criminal sentence, increases recidivism. Juveniles' sense of injustice at criminal court processing may cause them to react defiantly by reoffending, and it may further harden an emergent criminal self-concept (see Sherman, 1993; Thomas and Bishop, 1984; Winner et al., 1997). "The concept of fairness appears to be an important variable in an individual's perception of sentence severity and its subsequent relationship to future recidivism" (Corrado et al., 2003:183). Furthermore, it appears that many adolescents with conduct disorders already have a sense of having been dealt an unfair hand by authority figures (Chamberlain, 1998). Bishop and Frazier (2000) interviewed 95 serious and chronic juvenile offenders in Florida, roughly half of whom were transferred to the criminal court and were incarcerated in adult correctional facilities, and half of whom had been adjudicated in the juvenile court and were incarcerated in maximum-security juvenile facilities. According to the authors, many of the juveniles felt a strong sense of injustice about being tried as adults:

*Many experience the court process not so much as a condemnation of their behavior as a condemnation of them. Unlike the juvenile court, the criminal court failed to communicate that young offenders retain some fundamental worth. What the youths generally heard was that they were being punished not only because their behavior was bad but also because they were personifications of their behavior. Far from viewing the criminal court and its officers as legitimate, the juvenile offenders we interviewed saw them more often as duplicitous and manipulative, malevolent in intent, and indifferent to their needs. It was common for them to experience a sense of injustice and, then, to condemn the condemners (Bishop and Frazier, 2000:263).*

These findings are consistent with those of Redding and Fuller (2004), who found that juveniles tried as adults clearly felt that transfer laws were unfair. Many felt that their juvenile status and immaturity dictated that they should be tried as juveniles, despite the serious crimes they had committed. They also did not understand why the legal system was trying them as adults, and they saw themselves as being treated differently from other similarly situated juveniles. Both perceptions contributed to their sense of unfairness, perhaps leading to greater cynicism about the legal system as a result of being incarcerated (see Piquero et al., 2005).

Some studies indicate that prison incarceration "does not seem to be responsible for the criminogenic effect of adult court processing" (Fagan, Kupchik, and Liberman, 2003:66). One reason for the increased recidivism of these offenders, however, might be the reduced opportunities for meaningful rehabilitation in adult prison. Forst, Fagan, and Vivona's 1989 study, for example, found that youth in juvenile facilities gave higher marks than youth in adult facilities to the available treatment and case management services. Youth in juvenile detention described these services as helpful in providing counseling, enabling them to obtain needed services, encouraging participation in programs, teaching the consequences of rule breaking, and deepening their understanding of their problems. Similarly, in a recent study comparing the experiences of youths in adult versus juvenile correctional facilities in a large Northeastern State, all

of whom had been tried in adult criminal court, Kupchik (2007) found that youths in juvenile facilities reported far more positive, mentoring-style staff-inmate interactions than did the youths in adult facilities. However, youths in adult facilities reported having greater access to counseling and educational services, perhaps because of the larger size of the adult facilities.

Bishop and Frazier's recent Florida study (2000) vividly portrays the differences between juvenile and adult correctional facilities. They found that the juvenile correctional institutions were treatment-oriented and adhered to therapeutic models of rehabilitation (Bishop and Frazier, 2000:255). "Compared to the criminal justice system, the juvenile system seems to be more reintegrative in practice and effect" (Bishop and Frazier, 2000:265). Youths in juvenile facilities had positive feelings about the staff, who they felt cared about them and taught them appropriate behaviors. Most of the juveniles incarcerated in juvenile facilities felt confident that they would not reoffend, often crediting the staff with helping them make this positive change. Conversely, only a third of the juveniles in adult prisons said that they would not reoffend.

Juveniles in adult prison reported that much of their time was spent learning criminal behavior from the inmates and proving how tough they were. They also were much more fearful of being victimized than they had been when incarcerated in juvenile facilities, and more than 30 percent had been assaulted or had witnessed assaults by prison staff. Indeed, Beyer (1997) paints a bleak picture of life in adult prison for juveniles, who are at greater risk for suicide, as well as for physical and sexual abuse from older inmates. As compared with those in juvenile facilities, juveniles incarcerated in adult prison are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by inmates or beaten by staff (Beyer, 1997). Because juveniles in adult prisons are exposed to a criminal culture in which inmates commit crimes against each other, these institutions may socialize delinquent juveniles into true career criminals. In an older study about life in prison (Eisikovits and Baizerman, 1983), violent juvenile offenders reported that their daily survival required finding ways to fit into the inmate culture, dealing with difficult

and authoritarian relationships with adult inmates, and adjusting to the institution by accepting violence as a part of daily life and, thus, becoming even more violent.

Finally, Redding and Fuller (2004) found that juveniles whose jail or prison experiences were worse than they had expected, and those who reported witnessing or experiencing violence while incarcerated, were less likely to say that their incarceration would deter them from committing crimes in the future. This finding raises the possibility that incarceration in adult facilities may have brutalizing effects on juveniles, which may partly account for their increased recidivism. (The term “brutalization effect” describes the finding that homicide rates in a State often increase after an execution (Bowers, 1998), perhaps because executions model and communicate that violence is an acceptable and psychologically cathartic alternative.) Likewise, juveniles’ brutal experiences in adult prison may teach the wrong lessons about the acceptability and psychological benefits of criminal conduct, particularly violent crime, while also contributing to their sense of being treated unfairly, both of which may increase recidivism. Further research is needed on this issue.

### Implications for Policymakers and Practitioners

The research findings on juvenile transfer have the potential to impact both policy and practice. In a recent study, Hensl and Redding (2005) found that juvenile court judges who were knowledgeable about the ineffectiveness of transfer in reducing recidivism were somewhat less likely to transfer juvenile offenders to the criminal court. This finding suggests that educating judges, prosecutors, court personnel, and legislators about the research on transfer may reduce the number of cases transferred to criminal court or the number of transferred cases that result in criminal sanctions. The Miami-Dade County Public Defender’s Office developed the Juvenile Sentencing Advocacy Project, which produced a 350-percent increase in the number of transferred cases receiving a juvenile rather than an adult sanction from criminal court judges (Mason, 2000). In Florida, which has had some of the most aggressive transfer policies in the Nation, the number of juveniles prosecuted in the criminal court decreased by two-thirds between 1996 and 2003 (whereas

the total number of juvenile court cases decreased by only 9 percent), apparently due, in part, to research disseminated showing the counter-deterrent effects of transfer (Bishop, 2004). Moreover, in the last several years, some States have reduced the scope of transfer laws to make fewer juvenile offenders eligible for prosecutorial or judicial transfer (Bishop, 2004; Griffin, 2003).

Yet in Florida, for example, the data show that the transferred cases were generally no more serious, and sometimes were less serious, than the cases retained in the juvenile justice system (Lanza-Kaduce, Frazier, and Bishop, 1999). Forty-three percent of the 1,100 juveniles incarcerated in adult prisons for offenses committed when they were 15 years old or younger had not previously been committed to a juvenile justice program (Annino, 2000). Thus, the juvenile justice system never had an opportunity to rehabilitate these youth before they were transferred to the adult system, despite the fact that serious juvenile offenders in Florida report that intensive juvenile placements are relatively more beneficial than either adult prison or mild juvenile sanctions (Lane et al., 2002).

But Florida is not unique in transferring first-time offenders to the criminal court. Transfer laws, particularly automatic transfer laws, often target first-time offenders, even though they do not pose the greatest recidivism risk or threat to community safety. The frequency of offending, instead of the seriousness of the first offense, best predicts overall recidivism and the risk for committing a subsequent violent offense (see Bishop, 2004; Piquero, 2000; Redding, 1997). To best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized. Moreover, those who are transferred should be the chronic repeat offenders—rather than first-time offenders—particularly in cases where the first-time offense is a violent offense.

### Conclusion

Most practitioners would agree, consistent with the extant research, that it is important that the juvenile courts’ response to juvenile offenders be calibrated to have sufficient effectiveness as a deterrent while not being overly punitive. The practice of transferring juveniles for trial and sentencing in adult criminal court

has, however, produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby of promoting life-course criminality (Scott, 2000). But, if it was indeed true that transfer laws had a deterrent effect on juvenile crime, then some of these offenders would not have offended in the first place. Although the limited extant research falls far short of providing definitive conclusions, the bulk of the empirical evidence suggests that transfer laws, as currently implemented, probably have little general deterrent effect on would-be juvenile offenders.

### Notes

1. Seventeen States currently have “blended sentencing” laws (see Redding and Howell, 2000) that permit the criminal court, after its adjudication of the youthful offender, to impose juvenile sentences in certain cases. Fifteen States permit the juvenile court to impose limited criminal sanctions (Snyder and Sickmund, 2006).
2. In addition, brochures were sent to public schools announcing the law and the legal risks juvenile offenders faced, and juvenile court judges warned youth about the risks of committing violent offenses (S. Singer, 2004, personal communication).
3. These States included Arizona, Arkansas, California, Colorado, Florida, Georgia, Louisiana, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia, and Wyoming.
4. This is the most recent in a series of studies conducted by the Florida research group. These studies, which have been funded by the Florida Department of Justice and OJJDP, are part of an ongoing research program, beginning in the mid-1980s, studying the effects of transfer in Florida. For an overview of the Florida research program, see Frazier et al., 1999.
5. The total does not equal 100 because of rounding.

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