Transferring Juveniles To The Adult Court: A Factorial Survey Of Florida Prosecutors

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**ABSTRACT**

Prosecutors have enormous discretion in the criminal justice system. Their decisions can ultimately impact and shape the course of the lives of the offenders whom they prosecute. This is certainly true for juvenile offenders considered for transfer to the adult court. Previous research indicates that serious, violent offenders are the most likely to be transferred to the adult court. However, very little is known on prosecutors’ views of the role of the juvenile court, the process of transfer or the facts that influence their decision to transfer a juvenile to the adult court.

A statewide survey of 800 Florida prosecutors was implemented using factorial vignettes. The results indicate that prosecutors support the idea of transfer generally, particularly when they are making the final determination to transfer to the adult court. Further, prosecutors indicate that juvenile transfer should be used sparingly, in extreme cases that are not appropriate to the resources of the juvenile court.

The data were also examined to determine the effect of juvenile offender and juvenile offense characteristics on the decision to transfer a juvenile to the adult court. Analysis revealed several significant predictors of preference for transfer: age, threat to society, presence of a violent offense, ethnicity of juvenile, presence of prior adjudications, and amenability to treatment.
For my parents, Robert and Mary King
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CHAPTER 1: INTRODUCTION

Discretion -- a critical element in the criminal justice process -- refers to the use of personal decision-making and choice in situations where laws and policies do not completely dictate a course of action. Prosecutorial discretion is one example of this significant element of the justice system. Ultimately, prosecutors carry the responsibility of having an enormous influence over the criminal justice process as well as the lives of those persons affected by the criminal justice system.

One area of prosecutorial discretion of particular importance concerns the recommendation and determination to exclude youthful offenders from the juvenile justice system. Exclusion from the juvenile justice system, also sometimes referred to as transferring a youth to the adult court, has received a fair amount of attention in the social science literature (Bishop, Frazier & Henretta, 1989; Feld, 1997; Frazier, Bishop & Lanza-Kaduce, 1999; Moon, Sundt, Cullen & Wright, 2000). Researchers, however, largely have focused on describing the mechanisms of excluding youth from the juvenile court, outlining the types of offenders who are excluded, and assessing the impact of exclusion. The orientation of prosecutors and the specific process by which prosecutors make the crucial decision to exclude juveniles has received relatively little scholarly attention.

Due to the broad influence that prosecutors have on these youthful offenders and the flow of justice, this discretionary decision-making process and
the perceptions that influence and guide this process should be examined. This research is necessary for several reasons. First, prosecutorial transfer decisions are subject to little or no judicial review (Office of Juvenile Justice and Delinquency Prevention, 1999). Prosecutors have a great deal of authority, influence, and impact over the course a juvenile will take through the criminal justice system. However, there are few safety mechanisms with which to check and balance this authority (Klein, 1998; Office of Juvenile Justice and Delinquency Prevention, 1999).

Second, once a prosecutor has made the decision to exclude a youthful offender from the juvenile justice system, the impact of the decision ensues. Juveniles who are transferred to the adult criminal justice system have higher rates of re-arrest, more serious re-arrest offenses and shorter periods of time to new offenses compared to juveniles who remain in the juvenile justice system (Bishop, Frazier, and Henretta, 1989). The Office of Juvenile Justice and Delinquency Prevention (1999) reports that 54% of male and 73% of female youthful offenders who remain under the umbrella of the juvenile justice system will never return to the justice system. These figures are not so promising among transferred youth. Thus, the decision to exclude a youth from juvenile court can have a sweeping impact on the offender, the criminal justice system, and the community into which the offenders must reintegrate after their sentence.

Due to the influence and impact that prosecutors have in the juvenile and criminal justice systems, it is essential that a greater understanding of their decision-making process is realized. Specifically, this research seeks to examine
three aspects of prosecutorial exclusion of youthful offenders from the juvenile justice system. First, I assess the impact of potentially relevant factors on the decision to exclude youth. Prosecutors will be presented with mock cases, describing aspects of a youth, his or her context, and the charged offense. Personal and professional characteristics of the prosecutors also will be examined. Second, prosecutors’ views about their role in the transfer process and their responsibilities will be explored. The key issues considered here will be to what extent youth should be waived and what role prosecutors believe various justice system actors should play in this decision. Third, I examine prosecutors’ views on the future of a separate juvenile system. By addressing these issues, this research seeks to provide clarity and a greater understanding of the prosecutors’ decisions to exclude a juvenile from the juvenile justice system and to prosecute those youths as adults.
CHAPTER 2: REVIEW OF THE LITERATURE

This chapter provides a thorough examination of the factors relevant to researching juvenile exclusion from juvenile court. Several key concepts and areas of the literature are examined. The historical, political, and ideological environment from which the juvenile justice system was born is explored. This frame of reference is necessary in order to ascertain how the current juvenile justice system came into existence and currently functions, particularly with regard to the response of government to youthful offenders. Furthermore, significant changes in the way juveniles are managed in the criminal justice system are identified and discussed. The chapter reviews the system of juvenile justice with regard to its development, its differences from the adult criminal justice system, changes in juvenile justice in recent history, and contemporary discussions as to the appropriate role of the juvenile court with youths accused of serious offenses.

Youthful offenders can be transferred to the adult criminal court in a variety of ways. These particular methods of excluding juveniles from the juvenile court are identified and the process through which juveniles are excluded is detailed. The role of the prosecutor in American criminal justice is discussed, particularly with regard to the broad discretionary power of this office. In particular, this section reviews the ways that prosecutorial discretion comes into play with transfer by virtually all mechanisms. A separate section reviews what we know about the correlates of exclusion. Based on official data, some insights
can be gained about what types of youths are more likely to be transferred to the adult system. Finally, the existing data concerning perceptions of juvenile justice are reviewed. Special attention in this area is given to studies examining support for and opposition to transfer of youthful offenders as a window into what we may expect regarding prosecutors’ views of this practice.

**The History of the Juvenile Court (1800s-1960)**

**Early Views of Children**

The manner in which American society has responded to disobedient and delinquent children has changed throughout history. Various restrictions and regulations have been implemented in efforts to control, manage, protect, and punish children (Bernard, 1992; Binder, Geis, and Bruce, 1997). The state’s view of children—especially regarding their level of culpability, responsibility, and maturity—has often framed the response for delinquent behavior (Finckenauer, 1984).

Prior to the 19th century, youthful offenders were treated in the same manner as adult offenders (Binder et al., 1997). At the turn of the century, the perspective of children as being equal to adults with regard to culpability and responsibility began to change. Rather than view children and adults as equal with regard to responsibility, Puritans in colonial America began to place value on the child and the child rearing process. Specifically, they believed that children, while born full of sin, should be molded as productive members of a collective family (Binder et al., 1997).
For the Good of the Child

In the early 1800s, a rapid increase in immigration, urbanization, and industrialization in the United States resulted in changes in the manner in which children were viewed as well as the nature of family life. Upper-class citizens of New York, for example, grew concerned about the increasing number of immigrant children who were roaming the streets unsupervised. During this period, it was often necessary for both immigrant parents to maintain employment in order to have enough money to provide the necessities of life in New York.

The concerned, upper-class citizens decided that the working, immigrant parents were not equipped to provide the supervision necessary to ensure the proper upbringing of their children. As a result, the elitist citizens concluded that they needed to take the initiative to provide adequate management and control of these youth (Bernard, 1992; Platt, 1969). These upper-class citizens determined that with their help poor, immigrant children could not only be raised properly, but made into respectable, productive citizens (Bernard, 1992).

Thus, the Society for the Reformation of Juvenile Delinquents, originally called the Society for the Prevention of Pauperism, was formed in 1817 (Bernard, 1992). This upper-class organization was mostly concerned with the development of a house of refuge for the poor children of the streets of New York (Bernard, 1992). The Society’s objectives were twofold. First, they wanted to implement a plan that would provide adequate guidance and direction for these children. The members genuinely believed that, without adequate supervision,
The youth were destined for misfortune (Bernard, 1992). The second goal, which stems from the first, is far more suspect. The members believed that poor, immigrant children were “potential paupers” (Bernard, 1992, p. 60). A great deal of the problems associated with rapid industrialization and urbanization were attributed to the immigrant families moving into the city. In particular, the members of the Society blamed poor immigrants for the deterioration and disorder in New York City in the early 1800s. Thus, in order to alleviate the imminent destruction of society and create a comfortable, respectable and moral way of life, the members decided that these poor children of the streets of New York had to be dealt with (Bernard, 1992).

As a result, the House of Refuge, the first juvenile institution, was opened on January 1, 1825 as a means to care for the poor, immigrant children of society who were labeled as vagrants or who had been convicted of a minor criminal offense (Bernard, 1992). Ostensibly, the first House of Refuge was initiated for the welfare of children, and the majority of the youths who were sent to the House of Refuge were not criminal but poor (Bernard, 1992).

Platt (1969) observes that a “child-saving” movement began around the middle of the 1800s. The “child savers” maintained that it was a child’s environment that made him or her bad or criminal (Bernard, 1992; Binder et al., 1997; Platt, 1969). Supporters of this movement argued that youthful offenders should be handled differently than adult offenders. The primary corrective approach, they contended, was to be education and rehabilitation. This group also had ulterior objectives. The ultimate objective of this movement was to
change youth through education (Platt, 1969). Platt (1969) notes, however, harsh discipline was considered to be the most expedient manner in which to achieve this goal. The child savers were determined to instill in youth the structure, discipline, and morals of respectable, upper-middle-class members of society.

The children who were sentenced to the House of Refuge were sentenced for an unspecified period of time. In general, males were confined until their twenty-first birthday, and females were held until their eighteenth birthday (Bernard, 1992). These lengthy sentences were justified based on the perception that criminality and delinquency were produced by poor parental management and weak self-control of children (Bernard, 1992). Thus, juveniles needed supervision until they reached adulthood. To address the mediocre child rearing of their parents, the House of Refuge initiated strict discipline and structure in the youths’ lives. For example, the youths who were sent to the House of Refuge were forced to endure long hours of hard labor as well as suffer through brutal, corporal punishment on a regular basis (Bernard, 1992). Ultimately, the directors of the House of Refuge were attempting to change the errant youths into moral, productive members of society.

In 1826, Boston opened its own House of Refuge, followed by Philadelphia in 1828. The House of Refuge was an attractive policy option for the upper-class members of urban society when faced with increasing crime rates in their growing cities. News spread throughout the northeastern United States about this new sanction for delinquent and potentially delinquent youth. By
1868, over twenty houses of refuge had opened in the United States (Binder et al., 1997), all ostensibly pursuing the goal of preventing potential youth crimes through strict discipline and harsh punishment.

The treatment of juveniles in 19th century Houses of Refuge may seem unduly punitive by contemporary standards, but it was based on the ostensibly benevolent philosophy of *parens patriae*. *Parens patriae* refers to the obligation of the government to care for a child whose parents fail to care for him or her. The states employing houses of refuge contended that they were merely exercising *parens patriae*. After all, these were minors who could not possibly be expected to care for themselves, nor were their parents viewed as being of the moral foundation necessary to ensure the development of a law-abiding citizen (Binder et al., 1997). The state, acting as parent, was going to look out for the best interests of youths in trouble.

Unfortunately, there was no regulatory system in place to ensure that a child was being treated fairly. At this time, children were still viewed as being not quite adults (Bernard, 1992). Consequently, children had yet to be given any constitutional or due process protections. Thus, the poor, immigrant children of poor, immigrant parents were vulnerable to the whims of the upper, ruling class. These youths could be taken from their parents at any time, and there was no legal mechanism functioning to ensure that this placement was righteous.

The case of Mary Ann Crouse in Pennsylvania clearly demonstrates the attitude toward youth during this time period. Crouse was committed to the Philadelphia House of Refuge as per a petition from her mother that she could
not manage Mary Ann (Bernard, 1992; Feld, 1999). The father filed a writ of *habeus corpus*. The Pennsylvania Supreme Court heard this case, Ex parte Crouse. The legal issue concerned the confinement of a person who had not been accused or convicted of any offense. The Court rejected the father's legal concern, ruling that the confinement was legal (Bernard, 1992; Feld, 1999). Further, the Court said that the confinement of Crouse was for society's good as well as Mary Ann's.

In 1870, the Illinois Supreme Court heard a *habeas corpus* case in the matter of a child, Daniel O'Connell (Bernard, 1992). Daniel, like the majority of the children in the houses of refuge, had not committed a criminal offense. The Illinois Supreme Court ordered Daniel O'Connell to be released from the House of Refuge because, in the court's view, Daniel was being punished but not helped in any meaningful way (Bernard, 1992). This decision set a precedent recognizing that a minor child has an expectation to fundamental due process rights (Bernard, 1992). The upper-class society's attempt to protect their status and class had come to an abrupt halt. It was now illegal to proactively take poor children, who had yet to commit a crime, from their homes (Platt, 1969). Still, child-saving reformers were steadfast in their belief in the necessity of the removal and retraining of these youth.

The reformers and moralists of the time realized that they had to find another means to establish social control over wayward and needy youth. They worked tirelessly to create a social program to deal with the miseries of urban life (Platt, 1969). As a result, in 1899, the first juvenile court was established in Cook
County, Illinois (Bernard, 1992; Schwartz, 1989). This juvenile court was developed by the Illinois Juvenile Court Act labeled an Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children. This act was quite broad and achieved the reformers’ intended goals of regaining control of errant youth. Finckenauer (1984, pp. 115-116) identifies five motives for the passage of this act:

1. An interest (on the part of police and other community officials) in removing idle youths from the street, where they might cause trouble or commit crimes.

2. A desire (especially among upper-class leaders) for ways to remove the child from the home (particularly immigrant homes), in order to educate and socialize the young to accept American values.

3. A demand (by businessmen) that young people be taught the discipline and minimal skills necessary to permit the expanding factory system to absorb them and operate efficiently.

4. A need (on the part of some women in the child-saving movement) to find acceptable social and professional roles in an industrializing, urbanizing society.

5. Perhaps least important, a concern that young people be given the tools and education needed to earn a living within the existing economic and social structure.
Platt (1969) suggests that this legislation was merely a mechanism created by the reformers to achieve their ultimate goal: suppression and control of the underclass. Again, the reformers had found a way to legitimize the practice of institutionalizing children without providing them due process. This juvenile court was to be an informal, patriarchal process. The language of the act and the informal nature of the new juvenile court evaded the O'Connell case and enabled the deprivation of children's due process (Schwartz, 1989). The legal principle of *parens patriae* was used as a justification for the creation of this court, which was not a punitive, criminal court. Thus, the requirement of due process was not applicable. The court was acting under the notion of the best interest of the child and, as such, its actions could not technically be considered illegal (Bernard, 1992; Schwartz, 1989). The Act was constructed to provide the court with jurisdiction over any youth who violated a law or any poor, neglected or abused child (Bernard, 1992).

This new alternative to achieve social change was appealing. By 1917, all but three states had implemented some form of specialized court for dealing with errant, delinquent and pre-delinquent youth (Schwartz, 1989). By 1925, all but two states had implemented a juvenile court system (National Research Council and Institute of Medicine, 2001).

These special courts continued to manage and control delinquent children based on the court's view of what was in the best interest of the child. Juvenile court judges had a wide range of dispositional alternatives available to them (Office of Juvenile Justice and Delinquency Prevention, 1999). Regardless of the
offense committed, judges were often able to sentence juveniles to a period of confinement until the youth reached the age of twenty-one (Office of Juvenile Justice and Delinquency Prevention, 1999). Until the early 1960s, juveniles were detained, often in jails, and sentenced in a manner that was sometimes more punitive than an adult would receive for an equal offense.

Also during this time period (1920-1960), Americans were beginning to grow concerned about the apparent rise in youth crime (Bernard, 1992; Binder et al., 1997). As a result of the perceived crime increase, Americans were growing concerned about how young offenders were being managed in the juvenile courts. As public fear of crime escalated, so did criticism of the juvenile courts throughout the country (Binder et al., 1997).

The President’s Commission on Law Enforcement and the Administration of Justice (1967a; 1967b) conducted a large investigation on the practices of juvenile courts and detention practices throughout the country. The Commission found that juvenile delinquency was not being deterred by the then current juvenile court practices. Rather, the Commission suggested a shift in the manner in which juveniles were being managed and sentenced. The report implied that the time had come to examine the philosophy that was driving the juvenile justice system. The Commission also made recommendations regarding the incarceration and detention of youthful offenders. Included in these recommendations were deinstitutionalization of minor offenders, diversion or informal intervention, and implementation of procedural safeguards for youth in the juvenile justice system (1967b). The Commission (1967b) urged that the
juvenile justice system develop into a two-tiered system, one system to be dedicated to providing social services for neglected youth and children in need of services and a social control system for punishing delinquent youth. In general, the Commission noticed unfair and potentially unconstitutional practices throughout the juvenile court system in the United States.

**Modern Changes to the Juvenile Justice System (1960-Present)**

By the 1960s, there was increasing concern among the legal community throughout the United States regarding rights of criminal defendants. It was at this point that child advocates began to scrutinize closely the juvenile court and the manner in which delinquent children were being disposed (Mahoney, 1987). While juvenile courts may have developed out of a concern for the welfare of delinquent youths, the dispositions of these youths were often exceedingly punitive and restrictive. Yet, juveniles were not afforded the same constitutional protections as were their adult counterparts. Juveniles were being punished like adults but were not afforded the same due process safeguards. Recognizing these inconsistencies between the juvenile and adult courts, two states sought to address the lack of due process for juveniles (Binder et al., 1997). The New York and California state legislatures passed laws requiring due process protections for juveniles (Bernard, 1992).
Two-Stage Processing as Due Process

In 1960, the governor of California commissioned a study to evaluate juvenile justice in the state. The commission found that, while the intent of the juvenile justice system was immersed in the language of *parens patriae*, the spirit of this creed was hardly being met. Rather, the study found that the juvenile court’s procedures were inconsistent with regard to dispositions of cases, there were little or no constitutional or procedural safeguards, and detention was utilized to excess (Binder et al., 1997). Thus, following the governor’s study, the state legislature passed into law the California Juvenile Court Act of 1961. This act made certain provisions for due process for delinquent youth. Specifically, the 1961 Act mandated a two-stage process for handling delinquent children. The first stage consisted of an adjudicatory hearing similar to an adult criminal trial. Only after the allegations had been evaluated and the youth was found to meet a minimum level of maturity or culpability would the case move to the second stage where the judiciary would impose sanctions. Finally, this act provided juveniles who were charged with felonies the right to counsel (Binder et al., 1997).

Following California’s lead, the New York legislature passed the New York Family Court Act of 1962. Similar to the intent of the California law, the act called for the implementation of a statewide family court with power over all cases involving youth in the state. This included criminal youth, neglected and abused

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1 The initial hearing only required a “preponderance of evidence” standard of proof as opposed to the adult “beyond a reasonable doubt” standard (Binder et al., 1997).
youth, and difficult, but non-criminal youth. Like California, this act also required a two-stage hearing process. In addition, this act called for counsel to be appointed for all youth brought before the family court (Binder et al., 1997).

Despite New York and California’s attempts to address due process issues, juveniles throughout the country were still being sanctioned harsher for their delinquent behavior than adults would have been had they committed similar offenses. While the aforementioned acts contributed to the much needed attention to procedural protections for youth, the United States Supreme Court ultimately delivered the opinions which would dramatically alter the mechanisms for disposing of delinquent cases and begin ensuring constitutional protections for juveniles.

**Landmark Supreme Court Decisions**

In 1961, Morris Kent, a sixteen-year-old on probation, was arrested and charged with housebreaking, rape, and robbery. Kent’s attorney, anticipating a waiver from the District of Columbia’s Juvenile Court jurisdiction to the criminal system, filed a motion requesting a hearing on the issue of jurisdiction and a request for access to Kent’s Juvenile Court Social Service file. The juvenile court judge did not rule on these motions. Rather than responding, the judge issued an order waiving original jurisdiction over Kent citing that he had completed a “full investigation” as required by the District of Columbia’s Juvenile Court Act. The juvenile court judge never explained the details of this investigation nor did he provide a written explanation as to the reasons why Kent was waived to the adult
criminal court. Kent was then indicted in the adult criminal court on eight counts involving housebreaking, robbery, and rape. Kent was tried and convicted of six counts of housebreaking and robbery.² He was sentenced to 5 to 15 years on each count (30 to 90 years in prison). It should be noted that had Kent remained in the court of original jurisdiction, he would have received no more than five years in a juvenile correctional facility. It appears that juvenile court sanctions for minor crimes may be more severe, but for serious crimes, the adult system can be considerably more harsh. At this point, there seemed to be a huge gap in the range of punishments, both for minor juvenile offenders kept in the juvenile justice system and for serious youthful offenders considered for adult criminal justice sanctions.

Kent's attorney challenged the validity of the waiver to the adult criminal court because there was not a full investigation and the refusal to provide Kent's juvenile court records. In 1966, the Supreme Court ruled that the juvenile court waiver of jurisdiction was invalid. The Court held that Kent should have had access to all pertinent records and that, minimally, the juvenile court judge should have provided a written statement regarding the reasons for the waiver as mandated in the District of Columbia's Juvenile Court Act. Furthermore, the Court found that the presiding judge should have conducted a hearing regarding the decision to waive original court jurisdiction. Specifically, Justice Fortas, writing for the majority, offered that “appointment of counsel without affording an opportunity for hearing on a ‘critically important’ decision is tantamount to denial of counsel. There is no justification for the failure of the Juvenile Court to rule on

² He was acquitted of the two counts of rape by reason of insanity.
the motion for hearing filed by petitioner's counsel, and it was error to fail to grant a hearing” (Kent v. United States, 383 U.S. 541). The Court held that while the waiver hearing did not need to conform to the formal requirements of a criminal trial, they must conform to the “essentials of due process and fair treatment” (383 U.S. 541).

Thus, the Court specified those due process requirements for juveniles facing a waiver. The Court determined that Kent had been entitled to a waiver hearing, that the hearing should have conformed to the essentials of due process, Kent’s counsel should have had access to all court service records, and a right to counsel itself. Finally, the Court held that the juvenile court judge should have provided a written statement of the reasons for the waiver.

In the appendix to Kent, the Court issued explicit guidelines that the presiding judge should consider when determining whether to waive original juvenile court jurisdiction:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be
determined by consultation with the United States Attorney [prosecuting attorney]).

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia [criminal court].

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.

7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division [social service agencies], other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court [the court], or prior commitments to juvenile institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court. (Kent v. United States)

The Kent decision was monumental for a number of reasons. First, while the Court's decision only applied to the District of Columbia, states across the nation adopted the Court's guidelines (Bernard, 1992). Failure to adopt the considerations for waiver would leave other states vulnerable to appeal to the Supreme Court. Second, this case made it clear that juvenile court cases that reached the Supreme Court for review would be considered on a due process basis as opposed to the standard parens patriae model (Bernard, 1992). As a
result, greater protection for juveniles under the law began to emerge. The juvenile court and states’ laws regarding juvenile transfer changed with this precedent to protect themselves from the problems associated with Kent.

In 1967, the Supreme Court decided the *In re Gault* case. In this landmark case, the Supreme Court reviewed the case of Gerald Gault, who was taken into custody for making lewd telephone calls. At a subsequent hearing, Gault was not given right to counsel, adequate notification of the charges, nor was he able to confront and cross-examine his accusers. Gault’s disposition ordered him to an institution until Gault reached the age of majority (approximately six years). The Court ruled that, as a result of the blatant denial of Gault’s constitutional right to due process, Gault had been unconstitutionally imprisoned. Specifically, the Court maintained that the denial of due process rights for juveniles being adjudicated was unconstitutional, particularly when the adjudication could result in a loss of freedom. The Supreme Court ruled that a juvenile has the right to adequate and timely notice of charges, the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination. The Court had required that juveniles being adjudicated be given some of the same procedural protections afforded to adults.

Samuel Winship, a twelve-year-old, was charged with stealing $112 from a woman’s purse. In the subsequent juvenile disposition in New York Family

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3 The woman who made the complaint never even appeared to testify during the hearing.

4 It should be noted that the offense in question held a maximum penalty of a $5-$50 fine or imprisonment not to exceed two months if committed by an adult. Thus, for merely having a status of being a child, the punishment was far more substantial. Justice Fortas, writing for the majority, asserted that “Under the United States Constitution, the condition of being a boy does not justify a kangaroo court” (387 U.S. 1).
Court, the court determined that Winship had stolen the money. Winship’s lawyer maintained that he had established a reasonable doubt as to Winship’s guilt. The judge acknowledged in the court record that he made a finding based on the preponderance of the evidence.\(^5\) The juvenile was ordered to a juvenile training school for a period up to six years. The legal issue in this case was whether proof beyond a reasonable doubt is included in the “essentials of due process and fair treatment” required in juvenile court as provided by *Gault*.

In 1970, the Supreme Court held that the finding of guilt based on a preponderance of the evidence was invalid. Justice Brennan delivered the opinion of the Court maintaining that “the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*” (In re Winship, 397 U.S. 358). Thus, the standard of proof beyond a reasonable doubt was required in proceedings where a juvenile was charged with an act that, if committed by an adult, would be considered a crime.

Not all landmark Supreme Court rulings have resulted in extending due process protections for juveniles. Joseph McKeiver was charged with robbery, larceny, and receiving stolen goods. At the beginning of his juvenile hearing, McKeiver’s lawyer requested a jury trial. The presiding judge refused, and McKeiver was ultimately adjudicated delinquent and placed on probation. This case was appealed and joined by three other similar cases where juveniles had requested a jury trial. These cases presented “the narrow but precise issue whether the Due Process Clause of the Fourteenth Amendment assures the right

\(^5\) This finding was based in accordance with the New York Family Court Act.
to trial by jury in the adjudicative phase of a state juvenile court delinquency proceeding” (McKeiver v. Pennsylvania, 403 U.S. 528). In 1971, the Supreme Court issued its opinion maintaining jury trials are not required in juvenile adjudications. The Court maintained that, while juvenile adjudications may have their shortcomings, “the trial by jury in the juvenile court’s adjudicative stage is not a constitutional requirement” (403 U.S. 528).

The Court cited a number of justifications for their decision. First, if the jury trial was required as a matter of due process, the Court was concerned that the juvenile court process would be completely adversarial, slow and public in nature. Thus, any hope of maintaining an informal, protective environment would be expelled. The Court held that “if the jury trial were to be injected into the juvenile court system as a matter of right, it would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial” (403 U.S. 528).

Second, the Court maintained that the purpose of the jury in adult criminal trials was to enhance and ensure the fact-finding process. However, there were clearly deficits with regard to juries in the adult system. Thus, there was no perceived enhanced fact-finding function in prescribing jury trials to juvenile court adjudications. Conversely, the Court was concerned that the imposition of juries on the juvenile court would weaken the juvenile court’s ability to provide individualized justice to juveniles. Rather, juveniles would be in a parallel situation as adults in the criminal process. The Court was not convinced that criminal and juvenile trials should be the same, particularly with regard to rules of
evidence. The Court went on to urge for the distinction between the juvenile and adult criminal systems. “If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it” (McKeiver v. Pennsylvania, 403 U.S. 528).

The Supreme Court decisions have helped to shift the nature of the juvenile court, but the Court does not seem willing to extend all due process safeguards. The Court appears reluctant to completely abolish the *parens patriae* justification for the juvenile court. Rather, the Court seems to be concerned that if juries were a constitutional requirement there would be no point in having a separate system of justice. At this point, the Court seems unwilling to make that ultimate decision. However, the Court did suggest that legislating jury trials for unique juvenile court proceedings would be acceptable. The Court held that “if, in its wisdom, any state feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is that state’s privilege and not its obligation” (McKeiver v Pennsylvania, 403 U.S. 528).

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6 Of particular concern was the inclusion of the juvenile’s prior record as a matter of public record.

7 Justices Douglas, Black, and Marshall dissented with the Court’s opinion. They suggested that juveniles are already being punished (as opposed to helped) in the juvenile system. As such, they were entitled to the same due process rights as adults in criminal trials, particularly when the youths face loss of freedom.
Juvenile Justice and Delinquency Prevention Act

In 1968, Congress passed the Juvenile Delinquency Prevention and Control Act. This act strongly encouraged that youth charged with status offenses be removed from the formal juvenile court system (Office of Juvenile Justice and Delinquency Prevention, 1999). The Act also recommended utilizing community means rather than formal justice resources when disposing of minor offenses (Office of Juvenile Justice and Delinquency Prevention, 1999).

Several years later, in 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP Act) (Office of Juvenile Justice and Delinquency Prevention, 1999). This Act provided two custody requirements. First, the act mandated deinstitutionalization of status offenders. Second, the Act required that incarcerated juvenile offenders be separated from adult offenders. Specifically, the Act directed that, when confined, juvenile offenders must be separated from sight and sound of adult offenders. Later, in 1980, Congress amended this Act to include the removal of juvenile offenders from adult jail facilities. Then, in 1992, Congress amended the Juvenile Justice and Delinquency Prevention Act, mandating that attention be given to the disproportionate detention of minority juveniles (Howell, 1998). Specifically, this amendment required that States assess the nature of the problem of disproportionate minority confinement and work to alleviate the problem (Office of Juvenile Justice and Delinquency Prevention, 1999). To encourage compliance with this federal act at the state level, the Act’s mandates require all states to adhere to the provisions in order to be eligible for Formula Grants from the
The juvenile court has seen great changes since its inception. Not only has the United States Supreme Court clarified the manner in which juveniles are to be treated in the juvenile justice system, but state and federal legislation throughout the country also has shaped the handling of juvenile offenders. Arguably, granting juveniles some rights has opened the door for very serious sentencing for some youths in some states. Current sentencing guidelines in some states extend to youths age 23 to 25.

In addition to the actions already mentioned, states have made it easier to try juveniles as adults (Bernard, 1999; Bishop, 2000). For example, many states have legislated offense-based, rather than individualized, offender-based waiver requirements. Furthermore, states have altered their state juvenile court acts to include punishment as a dispositional goal versus the traditional rehabilitation theme (Bernard, 1999; Feld, 1998). Feld (1998) argues that despite the rhetoric of rehabilitation, states have adopted a more punitive approach to dealing with youthful offenders. These philosophical changes in the juvenile court often were brought about by the perception of increasing youth crime and a perceived failure of rehabilitative efforts (Bernard, 1999; Feld, 1997). States now view some youthful criminals as responsible and deserving of retribution and punishment rather than malleable and in need of treatment or rehabilitation (Feld, 1997). Some states have split populations into two distinct groups: juveniles who commit less serious (and less chronic) offenses and youth who commit serious
(and chronic) offenses. The former receiving more rehabilitative sentences and the latter receiving more retributive and extensive forms of punishment.

Despite these get tough responses to youth crime, a debate within the criminal justice community as to the appropriate role and response to youth crime remains. Are youths criminally responsible, and should they be treated similarly to adults? Are youths criminally less responsible than their adult counterparts, and should they be treated with a lesser degree of punitiveness? More broadly, scholars and professionals continue to consider the question, what is the appropriate role of the juvenile court?

**What is the Appropriate Role?**

As the juvenile court has moved into its second century, scholars and practitioners are reconsidering how youthful offenders should be handled (Merlo, 2000). When considering the appropriate role and function of the juvenile court in responding to youth crime, there are three predominant schools of thought: abolish the juvenile court; the juvenile court should remain intact and juveniles should not be waived to the adult criminal justice system; or retain the juvenile court in a modified form to adhere to the original ideals and philosophy of *parens patriae* recognizing that certain youths should be waived to the adult court due to the serious nature of their offenses and the degree of risk they pose to society.

Feld (1997) is perhaps the most vocal advocate of the first position, strongly favoring the abolishment of a separate justice system for juveniles. While Feld (1998) recognizes the societal consensus that youths are somehow
criminally different from adults (e.g., less responsible or culpable) and should not receive the same sentences, he does not concede that this difference is a valid argument for the continuation of a binary system. Rather, he advocates for the abolition of the binary system, with the allowance that an offender’s age be used as a mitigating factor during sentencing. In order to allow for any developmental differences between youthful and adult offenders, he suggests the implementation of a youth sentencing policy specifically designed to address those needs (Feld, 1998).

This position is based generally on the argument that, because of the true nature of the juvenile court system, a separate court does not help and may harm youths accused of crimes. Due to the “get tough” approach to crime prevailing in recent decades, youthful offenders are often met with retributive dispositions rather than treatment oriented plans based on the offenders’ specific needs (Feld, 1997). The growing practice of offense-based sentencing, as opposed to individualized, treatment-oriented dispositions, eliminates the distinct purpose of a separate juvenile system of justice (Feld, 1993). Furthermore, Feld (1993) suggests that, due to the “get tough” nature of sentencing, juveniles are being sentenced harshly but not given the same procedural and due process protections that an adult offender would receive. Specifically, he maintains that, in many cases, juveniles are not represented by counsel during delinquency hearings. Sanborn (1994a) also questions the degree to which juveniles can get an impartial hearing ensuring due process.
While eliminating the binary system may ensure the application of due process for all defendants in the criminal justice system, there are several criticisms to Feld’s proposal. Rosenberg (1993) counters Feld’s criticism of due process by suggesting that the difference between juvenile and adult court due process is very minimal. The minor discrepancies between due process assurances in the juvenile court and the adult court do not warrant an elimination of the juvenile justice system. Rosenberg (1993) also notes instances where juveniles are afforded more rights and consideration than adults. For example, juveniles are afforded more protections with regard to confessions than are adults. Rosenberg (1993) also suggests that abolitionists should take a closer look at the rights actually afforded to adult criminal defendants. For example, she notes that *Miranda* protections and exclusionary rule protections are becoming increasingly narrow. As protections for adults shrink, the due process gap between the criminal and juvenile systems is similarly diminished. Finally, she criticizes the idealized view of the adult criminal courts. Justice is slow and crowded in the adult criminal justice system. Most defendants plead guilty and are hardly given individualized justice (Rosenberg, 1993). Thus, eliminating the juvenile court would scarcely eliminate Feld’s concerns of compromised justice for juveniles.

Another criticism of Feld’s proposition concerns the degree to which juveniles can participate and appreciate the nature of the proceedings and take an active and effective role in their own defense. The entire basis for the development of the juvenile court was the recognition that youths were not
merely small versions of adults. Due to their young age, juveniles had yet to accumulate the life experiences necessary to equip them physically, emotionally, and intellectually for the criminal process (Van Vleet, 1999). If juveniles are still viewed as being different by the mere status of their age, then surely the abolitionists could acknowledge that those same youth are hardly intellectually, physically, and emotionally developed to the point where they can effectively participate and understand the proceedings in which they are involved (see Grisso, 2000). In sum, how can youth be distinguished by age for sentencing purposes, but assumed to possess the tools necessary to participate in their own defense?

Redding (1999) identifies other negative consequences of the transfer of youth to the adult criminal court. Specifically, he identifies the legal consequences of a felony court conviction that Feld’s proposal seems to disregard. Juveniles convicted of a felony can lose the right to vote, lose the right to serve in the United States military, and lose the right to possess or own certain firearms. Furthermore, Redding (1999) observes that trying juveniles in adult court means the juvenile’s conviction is public record, the conviction must be reported on employment applications, and convictions could possibly be considered for future sentencing considerations (e.g. escalating punishment under three strikes laws).

Finally, even if it is accepted that juvenile courts fail to ensure full procedural protections for youth, it is not clear how the adult courts would utilize age as a mitigating factor in sentencing (Rosenberg, 1993). Clearly, the
suggestion to abolish the juvenile court has some serious problems. Some social scientists and juvenile justice practitioners not only disagree with the suggestion but also maintain that no juveniles should be waived to the adult criminal justice system.

This second common perspective regarding the appropriate role of the juvenile court favors retention of a separate system of justice for all youthful offenders. A number of arguments are put forth to support this position. The first issue concerns the degree to which exclusion from the juvenile court adversely affects those juveniles who are waived to the adult court. Bishop (2000) has maintained that, with increased avenues for waiver, more juveniles will be waived to the adult criminal justice system. For example, Puzzanchera (2000) notes that in 1988, there were 6,700 juveniles judicially waived into the adult criminal justice system. From 1988 to 1994, there was a 73% increase in juvenile transfers to adult court when 11,700 juveniles were transferred in 1994 (Puzzanchera, 2000). With a large and increasing number of youth being waived, the possible negative effect that adult dispositions can have on juveniles is of great concern.

Several studies have found that recidivism rates of youths transferred to the adult criminal justice system are higher than comparable youths who remain in the juvenile court system (Bishop, Frazier, Lanza-Kaduce, and Winner, 1996; Fagan, 1996; Winner, Lanza-Kaduce, Bishop, and Frazier, 1997). Bishop et al. (1996), for example, found that recidivism rates for transferred juveniles were 11 percentage points higher than those for a matched sample of youths handled in the juvenile court when they were followed for up to two years after the case was
disposed. In a later analysis that followed these youths for seven years, the overall recidivism rates were nearly equal (42% and 43% respectively). Multivariate analyses, however, showed that once other factors were controlled, transfer was associated with a slightly increased risk of recidivism. Transfer also resulted in a shorter delay until rearrest and a higher total number of rearrests (Winner et al., 1997).

Another concern regarding waiver of youthful offenders is the effect that exposure to adult, career criminals may have on young, malleable youth (Bishop, 2000). Furthermore, Bishop (2000) is particularly concerned about the negative impact of youth socializing with adult offenders, potential victimization of youthful offenders in adult correctional facilities, and the long-term consequences that confinement in an adult correctional facility will have on a youthful offender. For some scholars, the appropriate response to these evident and potential deleterious effects of transfer is that no youths should be excluded from the juvenile justice system.

The final camp in the discussion regarding the appropriate role of the juvenile court falls somewhere between the two previous perspectives. Proponents of this third perspective acknowledge the problems in the juvenile court as well as the original intention of the initial juvenile court. Further, these advocates recognize that the juvenile court has transformed itself into a system that no longer reflects the ideals that drove the foundation of this separate system of justice. Van Vleet (1999) urges that abolition of the juvenile court would fail to adequately address the needs of the majority of offenders for whom
the juvenile system still works. Furthermore, he disagrees with the position that no youth should be transferred to the adult court. Specifically, he advocates excluding those youth who represent the most chronic, violent, serious youthful offenders.

This perspective seeks to strike some balance regarding the appropriate role of the juvenile court. It recognizes that youthful offenders, because of their immaturity, are different from their adult counterparts, yet it takes into account societal intolerance for serious youth crime. Proponents acknowledge that the juvenile court has serious limitations and is not functioning in the manner in which it was created or intended (Butts & Harrell, 1998). These practitioners and social scientists, however, hardly encourage total elimination or inclusion of all offenders within the juvenile court. Rather, they view the system as having drifted from its intended goals. The limited resources that exist must be allocated to those youths that can still be helped. Those youth who are no longer amenable to treatment and rehabilitative efforts must be waived to the adult criminal justice system in an effort to save the system and the majority of the youth who would remain (Merlo, Benekos, and Cook, 1999; Van Vleet, 1999).

Transfer Provisions

Regardless of the debate over whether all youths, no youths or some youths should be excluded from the juvenile court, or whether the juvenile court should be abolished, the fact remains that a separate system exists for juveniles and certain cases are removed to the adult criminal justice system. Precise
figures on the number of youth transferred are not available. Rather, several authors and agencies have painstakingly produced estimates based on partial data. Puzzanchera (2001), for example, approximates that 8,100 youth were judicially waived to the adult court in 1998 (the year for which the most recent data were available). This represents a decline from 1994, when the number of judicial transfers reached 12,100. Notably, these figures include only cases that were excluded from juvenile court jurisdiction by a juvenile court judge. Because juvenile cases can be removed to the adult system in several ways, Puzzanchera’s (2001) figures represent only a portion of all cases waived. In fact, as Bortner, Zatz, and Hawkins (2000) observe, “by 2000 the vast majority of transfers occur through legislative exclusion” (p. 282). Thus, when all avenues of exclusion are considered, estimates such as Bishop’s (2000) – 210,000 to 260,000 cases waived for 1996 – can be reached. To better understand how some juveniles come under the jurisdiction of the adult court and how prosecutors influence this practice, it is necessary to consider the various transfer procedures available.

**Overview**

All states have at least one provision or mechanism for transferring juveniles accused of a crime into the criminal system for processing as adults (Puzzanchera, 2000). It should be noted that 31 states also have legislated “once an adult, always an adult” (Office of Juvenile Justice and Delinquency Prevention, 1999, p. 14). This provision means that once a juvenile has been
transferred, tried, and convicted (and sometimes sentenced) as an adult, that juvenile must be tried as an adult for any subsequent offense that he or she commits (Office of Juvenile Justice and Delinquency Prevention, 1999).

Procedures to handle youthful defendants as adults go by many names: transfer, exclusion, certification, and waiver. Regardless of the particular term applied, these mechanisms generally fall into one of two categories: judicial waiver and prosecutorial waiver (Sanborn, 1994b; Griffin, Torbet, and Szymanski, 1998).

Judicial waivers are the most commonly used form of transfer for juvenile offenders (Klein, 1998). In comparison to other waiver provisions, commentators argue that the judge should be the one to make the decision. Prosecutorial provisions are often viewed as being too easy a way to transfer a youth (Bishop, Frazier, & Henretta, 1989).

There are two general types of judicial waivers: traditional waiver and presumptive waiver (Strom, 2000). Traditional waivers, also referred to as discretionary waivers, allow more discretion to juvenile court judges. This type of waiver gives juvenile court judges the ability to waive juveniles to the adult criminal justice system at their discretion. In 1997, laws in 47 states allowed this form of judicial waiver (Strom, 2000).

Exclusion of youth from juvenile court jurisdiction may also occur when judges waive youths under presumptive waiver provisions. Under this arrangement, certain categories of juvenile offenders – defined by age, instant

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8 It should be noted that all judicial transfer is discretionary in nature.
9 These type of waivers are subject to appellate review (Klein, 1998).
offense, and past offense history – are to be waived to the adult criminal justice system. This presumption can be overridden, however, if the juvenile can prove that he or she is likely to be rehabilitated in the juvenile system (Strom, 2000).

In general, judicial waivers allow the judge to be the primary decision-maker with regard to whether or not a juvenile will be tried as an adult (Klein, 1998). The judge’s discretion, however, is constrained by legislation and is influenced by the actions of the prosecutor. In general, states limit waivers based on the type of the offense, the nature of the offense (level of violence), the age of the juvenile, and the past delinquent history of the juvenile (Klein, 1998; Office of Juvenile Justice and Delinquency Prevention, 1999). As noted earlier, the 1966 Supreme Court case, *Kent v. U.S.*, also outlined eight factors that a judge should consider before waiving a juvenile to adult, criminal court. These considerations include the seriousness of the alleged offense, degree of danger that the juvenile poses to the community, whether the offense was violent and against person(s), the level of maturity of the juvenile, previous history of juvenile delinquency, the level of protection that should be afforded the community, and the likelihood that the juvenile can be rehabilitated. Therefore, judges, while maintaining a great deal of discretion, are constrained to some degree with regard to which juveniles they can waive to adult court.10

Moreover, in practice, prosecutors play an important role in judicial waiver. The judge’s decisions to waive juveniles into the adult court are usually initiated

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10 Despite the individualized consideration given in judicial waivers, there have been considerably more juveniles transferred to criminal court in the "get tough" era (Klein, 1998). Thus, politics may play a grossly exaggerated role in the determination if a juvenile will be transferred or waived to the adult, criminal court.
by a request from the prosecutor (Office of Juvenile Justice and Delinquency Prevention, 1999). Prosecutors also decide on the offense to charge; as we have seen, statute and case law establish the instant charge as a central consideration in the judge’s waiver decision.

Aside from waiver through judicial discretion, youths may be excluded from juvenile court by statute. This type of waiver excludes certain categories or types of juvenile offenders from the jurisdiction of the juvenile court system (Klein, 1998). Under this waiver provision, judges also are required to waive a juvenile to the adult jurisdiction after finding probable cause for certain crimes (Strom, 2000). There are only 15 states that have statutes that mandate a judicial waiver (Strom, 2000). Still, the very jurisdiction of the juvenile court system is a product of legislative statutes. Therefore, there is no “constitutional right to be treated as a juvenile” (Klein, 1998, p. 383) and states have enacted legislation establishing the adult criminal court as the court of original jurisdiction for certain youthful defendants. As a result of the “get tough” approach to juvenile offenders, legislatures are rapidly increasing the scope of these statutory exclusions. Specifically, 37 states have some form of statute that excludes certain juvenile offenders from the jurisdiction of the juvenile court system (Klein, 1998).

There are three factors that are typically included in statutory exclusion provisions: age, severity of the offense the youth is currently accused of having committed, and the criminal history of the juvenile (Klein, 1998). Notably, these provisions are among the same factors that must be considered when
determining judicial waivers but typically at a higher threshold for prosecutors; youths must be older and more serious, chronic offenders. Still, the discretionary influence of the judge is removed. The statutes abandon the role of the individualized judicial process and replace it with a broad exclusion of all juvenile offenders who fall within the scope of these statutes. Notably, however, prosecutorial discretion must still adhere. It is the prosecutor who decides whether a youth should be charged with an offense specified for transfer.

Another avenue for waiving juveniles to the adult criminal justice system is prosecutorial direct file also known as concurrent jurisdiction. In this mechanism of juvenile waiver, the prosecutor has a great deal of discretion with regard to which juveniles will be waived or filed in adult court (Klein, 1998).

**Prosecutorial Discretion**

Prosecutors play a powerful role in the criminal justice system. Ultimately prosecutors must review the cases of every offender arrested by the police, evaluate the efficiency of every pending case, determine and file charges against defendants, and represent the state in criminal adjudications (McCoy, 1998). As it is not feasible to prosecute every criminal case by a jury, prosecutors must make this ultimate determination. The limits or checks to this discretionary power are few (Davis, 1969; McCoy, 1998).

Historically, as elected officials, prosecutors were able to apply the laws of their jurisdiction as they saw fit. State (or district) attorneys would prosecute behaviors that met both the letter and the spirit of the law as a means of meeting
the needs of their constituencies (Jacoby, 1997). Their decisions to prosecute were supported by statutory provisions; yet, the decision to prosecute was not legally reviewable (Jacoby, 1997). While judicial discretion regarding waiver is legally reviewable, appellate courts will not extend that mandated review to prosecuting attorneys. It has become customary and accepted that prosecutors vigorously pursue cases that reflect societal sentiment regarding crime and justice. In doing so, it is necessary to make decisions based upon the varying dimensions of individual offenses and offenders.

Prosecutors’ discretionary application of the law has been extended to juvenile exclusions. The American Prosecutors Research Institute (1996) argues that it is wholly appropriate for the decision to exclude a youth from the juvenile system to rest with prosecutors. In support of this position, the APRI makes the following seven assertions:

1. Prosecutors have a responsibility to represent the state in court on juvenile cases and therefore, should have the right to determine what cases are filed in that court.
2. Prosecutors are unable to utilize an effective prosecution policy or effectively implement prosecution standards without control over the charging decision.
3. Prosecutors are trained on the legal aspects of the charging process.
4. Prosecutors give public safety a high priority in their decision making process.
5. Prosecutors take into consideration the interests of the victim and follow procedures for exchanging information with victims.

6. Prosecutors have access to both the criminal and social background of the juvenile.

7. Prosecutors are more easily accountable to the public than are other individuals in the juvenile justice system.

(p. 5)

Prosecutors, of course, are often statutorily limited with regard to which youthful offenders and which offenses they may file in adult court. Still, they exercise considerable discretion, which some view as potentially problematic when it comes to charging. Opponents of this form of waiver maintain that prosecutorial waiver is too arbitrary and may be unduly influenced by the public and politics, leading to unfair decisions (Allen, 2000; Klein, 1998). Others, like the APRI (1996) embrace prosecutorial transfer as efficient and acknowledge the need to consider the particulars of each case. As Allen (2000, p. xiv) observes, “Discretionary authority is particularly required in situations in which there is a multiplicity of factors to be taken into account in decisions to be made, many of which factors are peculiar to the particular case under consideration.”

Prosecutors, it should be noted, play a critical role in all mechanisms of juvenile waiver. The vast discretion in prosecutorial or direct file waivers is certainly clear. The significant influence prosecutors play in other forms of transfer must be acknowledged. Often, a judicial waiver is initiated by a request
from the prosecutor. Furthermore, the judiciary must detail grounds for refusing such a request for transfer. Prosecutors are also responsible for making charging decisions. They must decide whether or not to seek an indictment or file an information. They must also determine which charges (the severity of charges) will be filed with the court. This vast discretion clearly influences how juveniles are processed through the justice system. The largely unchecked discretion of prosecutors looms as a profoundly important aspect of American justice (Schiraldi, 1999; Walker, 1993).

**Florida’s Transfer Provisions**

The general description of exclusion mechanisms provided above varies to some degree from one jurisdiction to another. Because the present study focuses on Florida, it is essential to review this state’s particulars. Florida statutes provide three mechanisms by which a juvenile may be waived to the criminal justice system for prosecution. The first mechanism is *voluntary waiver*. As set forth in Fla. Stat. § 985.226, a child can be transferred and certified as an adult if the child, joined by a parent, guardian, or guardian ad litem, demands in writing to be tried as an adult.

The second mechanism utilized to transfer juveniles is called *involuntary waiver*. This approach is termed “involuntary” because rather than relying on the accused juvenile to determine whether he or she wants the case heard in adult court, cases are waived through the discretion of judges and prosecutors as dictated by statute. Before enumerating the remaining mechanisms it is
important to clarify the language used in the statutes. Florida’s certification provisions repeatedly utilize words that imply an if-then relationship, such as *must* and *mandatory*. However, the terminology can be misleading. While the statutes utilize these terms, they are often contradicted in the specification of the certification method, where it becomes clear that discretion can be exercised.

As set forth in Fla. Stat. § 985.226, there are two types of involuntary waiver: discretionary waiver and mandatory waiver. Discretionary allows the state attorney to file a motion with the court to request the transfer of the child for criminal prosecution if the child was 14 years of age or older at the time of the alleged offense. This can include any offense category, but the child must be at least 14 years of age.

Mandatory waiver occurs:

1. If the child was 14 years of age or older, and if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or

2. If the child was 14 years of age or older at the time of commission of a fourth or subsequent alleged felony
offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person;

the state attorney shall request the court to transfer and certify the child for prosecution as adult or shall provide written reasons to the court for not making such request or proceed pursuant to § 985.227(1). Upon the state attorney’s request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order. (Fla. Stat. § 985.226)

In addition, within seven days of a petition alleging that the child has committed an offense, but before an adjudicatory hearing and after consideration of the recommendation of the juvenile probation officer, the state attorney may file a motion requesting the court to transfer the youth for criminal prosecution. This is legally defined as a discretionary provision for transfer. Once the motion has been filed, and all parties are summoned, the court must conduct a hearing
on the transfer motions. In making the determination to keep the case in the juvenile court or transfer it to the adult system, the court must consider:

1. The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.

2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

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

4. The probable cause as found in the report, affidavit, or complaint.

5. The desirability of trial and disposition of the entire offense in one court when the child’s associates in the alleged crime are adults or children who are to be tried as adults.

6. The sophistication and maturity of the child.

7. The record and previous history of the child, including:
   a) Previous contacts with the department, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, other law enforcement agencies, and courts;
   b) Prior periods of probation;
c) Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving an offense classified as a felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor; and

d) Prior commitments to institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense, by the use of procedures, services, and facilities currently available to the court. (Fla. Stat. § 985.226)

The last mechanism of transfer is called direct file. “Direct file” means that juveniles are tried as adults because the prosecutor directly files an information in the criminal division of the circuit court (Fla. Stat. 985.227). According to Schiraldi and Ziedenberg (2000), Florida leads the nation on this form of juvenile transfer. They report a 7.8% increase in prosecutorial waiver from 1981 to 1987. Schiraldi and Ziedenberg (2000) also observe that the number of youths transferred by prosecutors to adult court in Florida nears the total number of judicial waivers in the United States. Given Florida’s extensive use of this
method of exclusion, an explanation of Florida’s provisions for prosecutorial waiver or direct file are necessary. There are two types of direct file: mandatory direct file and discretionary direct file. Mandatory direct file provisions are set forth in Fla. Stat. 985.227 as follows:

a) With respect to any child who was 16 or 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and the child is currently charged with a second or subsequent violent crime against a person.

b) With respect to any child 16 or 17 years of age at the time an offense classified as a forcible felony, as defined in § 776.08, was committed, the state attorney shall file an information if the child has previously been adjudicated delinquent or had adjudication withheld for three acts classified as felonies each of which occurred at least 45 days apart from each other. This paragraph does not apply when the state attorney has good cause
to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

c) The state attorney must file an information if a child, regardless of the child’s age at the time of the alleged offense was committed, is alleged to have committed an act that would be a violation of law if the child were an adult, that involves stealing a motor vehicle, including, but not limited to, a violation of § 812.133, relating to carjacking, or § 812.014(2)(c)6., relating to grand theft of a motor vehicle, and while the child was in possession of the stolen motor vehicle the child caused serious bodily injury to or the death of a person who was not involved in the underlying offense. For purposes of this section, the driver and all willing passengers in the stolen motor vehicle at the time such serious bodily injury or death is inflicted shall also be subject to mandatory transfer to adult court. “Stolen motor vehicle,” for the purposes of this section, means a motor vehicle that has been the subject of any criminal wrongful taking. For purposes of this section, “willing passengers” means all willing passengers who have participated in the underlying offense.
d) 1. With respect to any child who was 16 or 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been charged with committing or attempting to commit an offense listed in § 775.087(2)(a)1.a.-q., and, during the commission of or attempt to commit the offense, the child:

   a) Actually possessed a firearm or destructive device, as those terms are defined in § 790.001.

   b) Discharged a firearm or destructive device, as described in § 775.087(2)(a)2.

   c) Discharged a firearm or destructive device, as described in § 775.087(2)(a)3., and as a result of the discharge, death or great bodily harm was inflicted upon any person.

What Florida statutes term “mandatory” direct file still allows some discretion from prosecutors – such as what offense to charge and whether “exceptional circumstances” exist – but their decision making is more restricted than under provisions for “discretionary” direct file.

Discretionary direct file is waiver at the option of the prosecutor. The statute outlines when prosecutors may exercise
this discretion. As provided in Fla. Stat. § 985.227 directly filing a juvenile case in adult court is allowed:

a) With respect to any child who was 14 or 15 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney’s judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

1. Arson;
2. Sexual battery;
3. Robbery;
4. Kidnapping;
5. Aggravated child abuse;
6. Aggravated assault;
7. Aggravated stalking;
8. Murder;
9. Manslaughter;
10. Unlawful throwing, placing, or discharging of a destructive device or bomb;
11. Armed burglary in violation of § 810.02(2)(b) or specified burglary of a dwelling or structure in violation of §
810.02(2)(c), or burglary with an assault or battery in violation of § 810.02(2)(a);

12. Aggravated battery;

13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;

15. Grand theft in violation of § 812.014(2)(a);

16. Possessing or discharging any weapon or firearm on school property in violation of § 790.115;

17. Home invasion robbery;

18. Carjacking; or

19. Grand theft of a motor vehicle in violation of § 812.014(2)(c)6 or grand theft of a motor vehicle valued at $20,000 or more in violation of § 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of § 812.014(2)(c)6 or § 812.014(2)(b).

b) With respect to any child who was 16 or 17 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney’s judgment and discretion the public interest
requires that adult sanctions be considered or imposed. However, the state attorney may not file an information on a child charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudication withheld for delinquent acts, one of which involved an offense classified as a felony under state law. (Fla. Stat. § 985.227)

The plethora of offenses and offenders who are eligible for transfer to the criminal court system demand that a greater understanding of waiver decisions be achieved. Specifically, while the Florida statutes provide specific guidelines framing discretion, a greater understanding is needed about the reality of how it is exercised by prosecutors in their transfer decisions. The power of prosecutorial discretion was reinforced by a recent decision of the Florida Supreme Court. In its 1998 decision in State of Florida v. J.M., the appellate Court ruled that the criminal court had exceeded its authority when it dismissed the prosecutor’s pre-trial petition against a minor. The decision stated that even when the case involves a juvenile, “the state attorney possesses complete discretion in determining whether to prosecute, which includes the authority to continue to prosecute” (State of Florida v. J.M., a child, filed September 16, 1998).

Clearly prosecutors have a great deal of influence on which cases are transferred for adult prosecution. However, relatively little is known about the
factors that are most influential in prosecutors’ decisions to waive youth to the adult court. The following section helps to frame this question by reviewing what is known about the correlates of transfer decisions.

**Correlates of Transfer Decisions**

It is clear that prosecutors have vast discretion when determining the course of potential criminal sanctions against an offender within the criminal and juvenile justice systems. The critical decision to charge or not charge an offender will have an immense effect on the offender, the criminal justice system, and society. As we have seen, prosecutors can influence whether a youth is tried as a juvenile or as an adult even when they do not make the decision on transfer directly. To gain insight on how this discretion is exercised, we must consider what types of cases are excluded from juvenile jurisdictions.

Two preliminary observations about the available evidence on the correlates of transfer will help to clarify what we know. First, the data are somewhat spotty, often being drawn from individual jurisdictions and disparate time periods. Second, and more important, often the information presented represents indirect evidence. Rather than determining the differential probability of being transferred for different demographic groups, some researchers present the characteristics of those who have been transferred. Discriminatory decisions are therefore inferred from the end result. Despite these limitations, some generalizations about who gets transferred and for what charges are possible.
The key correlates of transfer have been explored and four common areas surfaced: offense, gender, age, and race. The following sections will discuss broadly three areas concerning these correlates. First, general patterns in who gets transferred are identified. Second, any significant shifts in these patterns over time are distinguished. Finally, original analyses of Florida transfer data are presented. While other studies provide indirect evidence of decision making, the Florida data directly assess the relationships between offense and demographic variables and transfer.¹¹

Table 1.1 provides an overview of the research in studies examining the instant offense as a correlate of juvenile exclusion. Generally, personal offenses tend to make up roughly 40-45% of the transfers to the adult criminal justice system (Bortner, 1986; McNulty, 1995; Podkopacz & Feld, 1995; Puzzanchera, 2000; Snyder et al., 2000). Most of the remaining cases for which a youth had been certified to the adult court involved property offenses (Bortner, 1986, McNulty, 1995; Puzzanchera, 2000). Thus, while person or violent offenses have emerged as the most serious offense waived, there does not appear to be a substantial distinction between the percentage of property and person offense cases waived to adult court.

¹¹ These data were obtained from the Florida Department of Juvenile Justice website (http://www.djj.state.fl.statesnresearch/0002prof/profile.html). Rates of transfer were computed by dividing the number of youths transferred by the number of youths referred in corresponding categories.
Table 1.1 – Studies Examining Offense as a Correlate of Juvenile Exclusion

<table>
<thead>
<tr>
<th>Study</th>
<th>Sample</th>
<th>Offense Distribution</th>
<th>Drugs</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Personal</td>
<td>Property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bortner (1986)</td>
<td>1980-81 all transfers In S.W. state</td>
<td>47%</td>
<td>61%</td>
<td>*</td>
</tr>
<tr>
<td>McNulty (1995)</td>
<td>552 transferred youth in 1994 (Arizona)</td>
<td>45%</td>
<td>39%</td>
<td>*</td>
</tr>
<tr>
<td>Podkopac &amp; Feld (1995)</td>
<td>Studied all waiver decisions (330) btwn 1986-1992 in Hennepin County, MN</td>
<td>42%</td>
<td>25%</td>
<td>*</td>
</tr>
<tr>
<td>Puzzanchera (2000)</td>
<td>Judicial Waiver</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>National sample</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1989</td>
<td>28%</td>
<td>53</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>1994</td>
<td>44</td>
<td>37</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>1997</td>
<td>40</td>
<td>38</td>
<td>15</td>
</tr>
<tr>
<td>Puzzanchera (2001)</td>
<td>Judicial Waiver</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>National Sample</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1998</td>
<td>36</td>
<td>40</td>
<td>16</td>
</tr>
<tr>
<td>Snyder et al. (2000)</td>
<td>South Carolina</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>All youth who waiver was requested from 1985-1994 (595 requests)</td>
<td>57</td>
<td>17</td>
<td>11</td>
</tr>
</tbody>
</table>

\(^{12}\) This includes other person offenses, other property offenses (other than "serious") and public order offenses. It should also be noted that of these public order offenses, only 39% were approved for waiver. As opposed to the majority, 65-85%, being approved for other more serious offense categories.
<table>
<thead>
<tr>
<th>Study</th>
<th>Sample</th>
<th>Personal</th>
<th>Property</th>
<th>Drugs</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Snyder et al. (2000)</td>
<td>Utah 1988-1995</td>
<td>42</td>
<td>20</td>
<td>5</td>
<td>33\textsuperscript{13}</td>
</tr>
<tr>
<td>(continued)</td>
<td>All cases where prosecutor requested juvenile waiver</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(225 Cases)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pennsylvania</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Looked at changes in waiver</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>From year 1986 to year 1994</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td></td>
<td>46</td>
<td>46</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td>49</td>
<td>25</td>
<td>22</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Pennsylvania</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 counties in 1996\textsuperscript{14}</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>(statutory exclusion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{13} Same as S.C. 58\% of all public order requests for waiver were approved.

\textsuperscript{14} Tracked all youth who had a prelim hearing between March 18, 1996 and December 31, 1996 and met new exclusion criteria. Tracked youth until January 1998. Legislation concerned use of weapons during offense.
Two trends in transfer across offense have emerged over the last 15 or so years. First, juvenile exclusions for drug offenses as the most serious charging offense have increased from the mid-1980s to the late 1990s (Puzzanchera, 2000; Snyder et al., 2000). The increase in waiver for drug offenses is not surprising due to the "war on drugs" as well as the emergence of zero tolerance policies on drug use across the country. The second discernable change is in "other" offenses being the most serious charge for juvenile exclusions. As represented in the studies in Table 1.1, "other offenses" generally include non-serious person and property offenses and public order offenses. While the representation of "other" offenses among transferred youths has remained relatively constant nationally (Puzzanchera, 2000), some jurisdictions have noticed a marked increase in this offense-category for waiver (Snyder et al., 2000). This shift may reflect legislative trends that have tended to be more inclusive of juvenile offenders eligible for juvenile exclusion (Snyder et al., 2000).

Offense history also impacts the waiver decision. Poulos and Orchowsky (1994) found that the most important predictor of waiver was the number of prior adjudications that an offender had. Indicating that while the most serious offense is a significant determinant of transfer, so too is the number of prior offenses. Dawson (2000) provides insight into how this relationship emerges. He found that prior offense information interacts with the seriousness of the current charge. When the instant offense is a serious charge, prior offenses do not play a role in the determination to transfer a youth. However, when the current charging
offense is not as serious, particularly for property offenses, prior record plays a significant role in the determination to waive a youth.

General observations about the proportion of youth being waived and changes over time are readily available in the existing data on juvenile waivers. More difficult to ascertain is the rate or probability of transfer across the identified variables. In order to clarify this issue, bivariate analyses were conducted on aggregate data from the Florida Department of Juvenile Justice (http://www.djj.state.fl.us/research/0002prof/profile.html). Table 1.2, which is based on youths processed in 2001-2002, separates the data by offense category. Columns show the number of youth transferred to the adult court, the percentage of transfer, the number of youth referred, and the rate of transfer.

It is important to note that upon initial inspection, Florida mirrors research in other settings. The percentages of transfers by offense-type are consistent with prior research both nationally and at local and state levels. Serious personal offenses account for the largest portion of transfers, with serious property offenses running a close second. The rate of transfer by offense-type, however, paints a different picture of the nature of the impact of the instant offense on the exclusion decision. For example, serious property offenses make up a large percentage of youth excluded from juvenile court; yet, they are not the most likely offense to be excluded. In contrast, drug offenses account for only 15% of all excluded youths because of the relatively small number of referrals for drugs. Taking this base into consideration reveals that drugs are the offense for which transfer is the most likely in Florida. One in every ten youths referred for drugs in
2001-2002 was waived to the adult court. Following close to drug offenses are serious person offenses with a rate of transfer of 9.16%.

Table 1.2 – Florida’s Waiver By Offense (2001-2002)\(^{15}\)

<table>
<thead>
<tr>
<th>Offense</th>
<th>Number Transferred</th>
<th>Percent of Transfers</th>
<th>Number Referred</th>
<th>Rate of Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious Person Offenses</td>
<td>1,344</td>
<td>40.4%</td>
<td>14,669</td>
<td>9.16%</td>
</tr>
<tr>
<td>Serious Property Offenses</td>
<td>1,218</td>
<td>36.6%</td>
<td>21,811</td>
<td>5.58%</td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>514</td>
<td>15.4%</td>
<td>5,133</td>
<td>10.01%</td>
</tr>
<tr>
<td>Other Offenses</td>
<td>251</td>
<td>7.5%</td>
<td>6,896</td>
<td>3.64%</td>
</tr>
</tbody>
</table>

When gender is examined as a correlate of waiver decisions, findings across studies are highly consistent. Males are considerably more likely to be requested for waiver, and they are waived more often than females (Bishop, Frazier, and Henretta, 1989; Bortner, 1986; Puzzanchera, 2000; Snyder et al., 2000). Bortner (1986) looked at all waived youths in a county in a southwestern state. She found that nearly 97% of those youths were male. Similarly, Bishop, Frazier and Henretta (1989) report that 92% of direct file cases from 1981 to

\(^{15}\) For the purposes of this analysis, “serious person offenses included murder/manslaughter, attempted murder, sexual battery, other felony sexual offenses, armed robbery, other robbery, and aggravated assault/battery. “Serious property offenses” includes arson, burglary, auto theft, and grand larceny. “Drug offenses” include felony non-marijuana drug and marijuana felony. “Other offenses” include receiving stolen property, concealed weapon, forgery, escape, resisting arrest with violence, shooting/throwing missiles, felony traffic offenses, and other felony. Misdemeanor offenses utilized as the most serious offense for exclusion were not included in this
1984 in Florida involved male youths. Nationally, Puzzanchera (2000) found that 95% of all juvenile waivers involved males. Snyder et al. (2000) found similar rates of males represented among youths waived in South Carolina, Utah, and Pennsylvania (95%, 96%, and 99%, respectively). Notably, they found a decrease in female waiver from 1986 to 1994 in Pennsylvania. In 1986, female offenders made up four percent of the waived youths. In 1994, they only constituted one percent of the youths transferred to the adult court.

Clearly, there are more male than female youths being transferred to the adult court. However, the existing research merely reports the gender distribution of cases already waived. To gain a better understanding of the true nature of the effect of gender on transfer decisions, the rate of waiver by gender must be ascertained. Looking at Table 1.3, we gain a better understanding of the impact of gender on waiver. In 2001-2002, 93.5% of all transfers in Florida were male. So, among those transferred, males outnumber females 14 to 1, but the rate at which males are transferred is only about 5 times that of females. Thus, when the substantially larger number of male youths referred is taken into account (110,413 versus 39,245 female referrals), the disparity between males and females transferred is much smaller than what the distribution of transferred cases indicates. Florida’s data suggest that sex does have an effect on the waiver decision, although we still have to consider the possibility that the sex effect can be explained away by offense or something else.

---

analysis, nor were other non-serious “other” offenses as categorized by Florida Department of Juvenile Justice due to the relatively small number of cases.
Table 1.3 – Florida’s Waiver By Gender (2001-2002)

<table>
<thead>
<tr>
<th></th>
<th>Number Transferred</th>
<th>Percent of Transfers</th>
<th>Number Referred</th>
<th>Rate of Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>MALE</td>
<td>3,489</td>
<td>93.5%</td>
<td>110,413</td>
<td>3.160%</td>
</tr>
<tr>
<td>FEMALE</td>
<td>243</td>
<td>6.5%</td>
<td>39,245</td>
<td>0.619%</td>
</tr>
</tbody>
</table>

A youth’s age also seems to figure prominently in decisions to exclude. The results from prior studies are consistent: older youths are waived more often than younger youths. Puzzanchera (2000) found that, nationally, the vast majority of youth waived to adult court were 16 or older (87% in 1997). Research on individual jurisdictions parallels Puzzanchera’s national figures. Generally, most youths transferred to the adult system are 16 or 17 years old (Kinder, Veneziano, Fichter and Azuma, 1995; McNulty, 1996; Poulos and Orchowsky, 1994; Snyder et al., 2000).

While the majority of youth transferred are 16 or older, there has been a slight increase in the representation of youth under 16 years of age among those waived to the adult court. Puzzanchera (2000) reports national figures showing that, in 1988, 93% of all juveniles waived to the adult courts were 16 or older. By 1997, waived juveniles 16 or older accounted for only 87% of cases. Frazier et al. (1999) reported a similar pattern in Florida. With the authorization of direct
file in 1994\textsuperscript{16}, the number of youths age 14 and 15 transferred increased between 1992-1993 and 1995-1996 from 731 youths to 921 youths.\textsuperscript{17} Similarly, Pennsylvania saw an increase in younger youths waived as a result of their legislative reforms. The number of youth 15 or younger waived to the adult court increased from 10% in 1986 to 20% in 1994 (Snyder et al., 2000).

Turning to analysis of Florida data, an overwhelming majority of the youths waived to the adult court in 2001-2002 were 16 or older. Almost none were under 14 years old. The rate of transfer also follows this pattern (see Table 1.4). Older youths are considerably more likely to be transferred than are younger youths.

<table>
<thead>
<tr>
<th>AGE</th>
<th>Number Transferred</th>
<th>Percent of Transfers</th>
<th>Number Referred</th>
<th>Rate of Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-9</td>
<td>0</td>
<td>0%</td>
<td>1,606</td>
<td>0.00%</td>
</tr>
<tr>
<td>10</td>
<td>0</td>
<td>0%</td>
<td>1,517</td>
<td>0.00%</td>
</tr>
<tr>
<td>11</td>
<td>0</td>
<td>0%</td>
<td>3,459</td>
<td>0.00%</td>
</tr>
<tr>
<td>12</td>
<td>3</td>
<td>0.08%</td>
<td>7,793</td>
<td>0.04%</td>
</tr>
<tr>
<td>13</td>
<td>11</td>
<td>0.29%</td>
<td>14,066</td>
<td>0.08%</td>
</tr>
<tr>
<td>14</td>
<td>104</td>
<td>2.27%</td>
<td>21,367</td>
<td>0.49%</td>
</tr>
<tr>
<td>15</td>
<td>250</td>
<td>6.69%</td>
<td>28,126</td>
<td>0.89%</td>
</tr>
<tr>
<td>16</td>
<td>1,068</td>
<td>28.62%</td>
<td>33,315</td>
<td>3.20%</td>
</tr>
</tbody>
</table>

\textsuperscript{16} Known as the Juvenile Justice Reform Act, these 1994 reforms made several changes to the mechanism of transfer for youth, including direct file for 14 and 15 year old youths charged with a range of person or property offenses.

\textsuperscript{17} The rate of transfer went from 2.6% in 1992-1993 to 2.7% in 1994-1996. Yet in 1996-1997, the rate of transfer for youths 14 and 15 decreased to 2.2%.
<table>
<thead>
<tr>
<th>AGE</th>
<th>Number Transferred</th>
<th>Percent of Transfers</th>
<th>Number Referred</th>
<th>Rate of Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>2,090</td>
<td>56.00%</td>
<td>35,100</td>
<td>5.95%</td>
</tr>
<tr>
<td>18+</td>
<td>206</td>
<td>5.52%</td>
<td>3,309</td>
<td>6.23%</td>
</tr>
</tbody>
</table>

Race, above all the other characteristics of waived and waive requested youthful defendants, has been at the heart of most research and debate about certification of juveniles. The issue of race as a correlate of transfer is not as uncomplicated as offense, gender and age as correlates. Rather, explaining the effects of race on criminal justice outcomes is complex (see Bortner et al., 2000). Typically, the research on race and juvenile justice decision-making suffers from two primary flaws. First, the research often examines race as a black-white dichotomy and does not attend to other races or ethnicities. In some studies, Latinos, American Indians, and Asian/Pacific Islanders are simply excluded from analysis. The research that does attempt to make a distinction between race and ethnicity also falls short. Latinos and American Indians may be included within the analysis, but are classified as white (Bortner et al., 2000).

Second, findings and discussions regarding race tend to oversimplify the relationship. Specifically, looking at race and its effects in the justice system does not typically include a more salient aspect of this dimension – social classifications or status. While identifying race and ethnicity are often plausible for researchers, data on the social status of an offender, particularly a juvenile offender, is not readily available (Bortner et al., 2000). As a consequence, the
possible intercorrelation of race and social status is largely ignored. Discussions and implications regarding racial biases within the system, therefore, can be misleading. These limitations must be considered when examining the existing literature on the nature of race and juvenile transfer.

Table 1.5 identifies the research regarding race and transfer. Several general observations can be made. Nationally, whites represent a little over half of all youth waived (Puzzanchera, 2000). Blacks represent a little less than half of those transferred. While the national pattern is somewhat clear, the findings do not differentiate by ethnicity. Moving away from national data, the issue of race becomes more fragmented. Research that focuses on more specific geographic areas paints quite a different picture of the demographics of waived youth. For example, Thomas and Bilchick (1985) looked at 844 waived youth in Dade County, Florida, through direct file and judicial waiver. They found that 67% of waived youth were non-white. In South Carolina, blacks represented 80% of youth requested for waiver between 1985 and 1994 (Snyder et al., 2000). In Utah between 1988 and 1995, whites made up 57% percent of all youth requested for transfer (Snyder et al., 2000). More telling, blacks only represented 5%; while, Hispanic and “other” youth made up 37%. At least in Utah, it is important to distinguish Hispanic youths from black and white youths.
<table>
<thead>
<tr>
<th>Study</th>
<th>Sample</th>
<th>White</th>
<th>Race Distribution</th>
<th>Hispanic</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas and Bilchick (1985)</td>
<td>844 waived youth; Dade County, FL Direct file and judicial waiver</td>
<td></td>
<td></td>
<td>67% non-white(^\text{18})</td>
<td></td>
</tr>
<tr>
<td>Bortner (1986)</td>
<td>1980-81 all transfers In AZ county (214 waived Youth) judicial waiver</td>
<td>52.2%</td>
<td>23.5%</td>
<td>20.6% (Mexican)</td>
<td>3.5%</td>
</tr>
<tr>
<td>Barnes &amp; Franz (1989)</td>
<td>NC County (1978-83) 206 considered for waiver through judicial waiver</td>
<td></td>
<td></td>
<td>55% black or Hispanic considered unfit for juvenile court</td>
<td></td>
</tr>
<tr>
<td>Podkopacz &amp; Feld (1995)</td>
<td>Studied all waiver decisions (330) between 1986-1992 in Hennepin County, MN Judicial Waiver</td>
<td>28%</td>
<td></td>
<td>55%</td>
<td>17%</td>
</tr>
<tr>
<td>Puzzanchera (2000)</td>
<td>Judicial Waiver National sample</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1988</td>
<td></td>
<td>55%</td>
<td>43%</td>
<td></td>
<td>2%</td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td>48%</td>
<td>48%</td>
<td></td>
<td>4%</td>
</tr>
<tr>
<td>1997</td>
<td></td>
<td>50%</td>
<td>46%</td>
<td></td>
<td>4%</td>
</tr>
</tbody>
</table>

\(^{18}\) Note S.W. State demographics. Large Hispanic population, depending on the county (more southern) will have larger numbers of Hispanic residents.
<table>
<thead>
<tr>
<th>Study</th>
<th>Sample</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Puzzanchera (2001)</td>
<td>Judicial Waiver National Sample</td>
<td>55%</td>
<td>42%</td>
<td>3%</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>Snyder et al. (2000)</td>
<td>South Carolina All youth who waiver was</td>
<td>20%</td>
<td>80%</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>requested from 1985-1994 (595 requests)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Snyder et al. (2000)</td>
<td>Utah 1988-1995 All cases where prosecutor</td>
<td>57%</td>
<td>5%</td>
<td>27%</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>requested juvenile waiver (225 Cases)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Snyder et al. (2000)</td>
<td>Pennsylvania Looked at changes in waiver</td>
<td>38%</td>
<td>50%</td>
<td>12%</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>From year 1986 to year 1994.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td>28%</td>
<td>60%</td>
<td>10%</td>
<td>4%</td>
</tr>
<tr>
<td>Study</td>
<td>Sample</td>
<td>White</td>
<td>Race Distribution</td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------------------</td>
<td>-------</td>
<td>-------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Snyder et al. (2000)</td>
<td>Pennsylvania 3 counties in 1996(^{20})</td>
<td></td>
<td>81(^{\text{19}})</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(statutory exclusion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{19}\) This study looked at juveniles excluded based on new legislation regarding weapons used during the commission of the instant offense. Researchers only reported the percentage of blacks being excluded.

\(^{20}\) Tracked all youth who had a prelim hearing between March 18, 1996 and December 31, 1996 and met new exclusion criteria. Tracked youth until January 1998.
Looking at changes over time, it appears that blacks are a growing portion of excluded youths. Puzzanchera (2000) found that blacks represented 43% of waivers in 1988 and increased to 46% of the waivers in 1997 nationally. Snyder et al. (2000) found similar results in Pennsylvania. From 1986 to 1994 blacks went from 50% of juveniles waived to 60% of waived youth.

Table 1.6 shows the original analysis of Florida data. In terms of all youths transferred, blacks made up nearly 57% of the transferred youth in Florida between 2001-2002. This figure is fairly consistent with many of the studies shown in Table 1.5. More telling is the rate of transfer by ethnicity (see Table 1.6). Not only are blacks -- at a rate of nearly 3.5% -- more likely to be transferred to the adult court than whites, but all other ethnicities in Florida are more likely to be transferred than are whites.

### Table 1.6 – Florida’s Waiver By Race (2001-2002)

<table>
<thead>
<tr>
<th></th>
<th>Number Transferred</th>
<th>Percent of Transfers</th>
<th>Number Referred</th>
<th>Rate of Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>1,606</td>
<td>43.03%</td>
<td>87,620</td>
<td>1.83%</td>
</tr>
<tr>
<td>Black</td>
<td>2,103</td>
<td>56.35%</td>
<td>61,221</td>
<td>3.44%</td>
</tr>
<tr>
<td>Asian</td>
<td>15</td>
<td>0.40%</td>
<td>525</td>
<td>2.86%</td>
</tr>
<tr>
<td>Other21</td>
<td>8</td>
<td>0.21%</td>
<td>292</td>
<td>2.74%</td>
</tr>
</tbody>
</table>

In summary, the existing research on the correlates of juvenile exclusion suggest that transfer is more likely for youths who are older, black or hispanic, or male and for those who have prior offenses or are currently facing charges for
drug or serious personal crimes. Two aspects of the aforementioned studies, however, should be noted. First, the relationship between race and transfer has often been explained away by other factors such as prior offenses and age (Poulos and Orchoswky, 1994), current offense type (Podkopacz and Feld, 1996), and prosecutor's emphasis on violent crime (Podkopacz and Feld, 1995). Second, all of the studies reviewed have relied on official data. Thus, they are restricted in the types of variables they can examine and in how the characteristics of interest are operationalized. As Applegate et al. (2000) have observed, the salient considerations influencing juvenile justice decision-making frequently are missing from or are operationalized poorly in official data (also see Sanborn, 1996).

While there are some striking results regarding race and gender, particularly in Florida, the geographic location for the current study, conclusions regarding these findings should be drawn cautiously. Disparity does not necessitate discrimination. The interactions between race or gender and other dimensions of this issue may not be readily available or were not considered in past studies. The determinants of juvenile waiver, particularly regarding extra-legal variables need to be further explored using other data sources.

**Views of Juvenile Transfer**

The discussions reviewed earlier demonstrate some facts essential to framing the current study. Waiver may occur in several ways, alternative visions for the future of juvenile justice have been offered, and we know some of the

---

21 “Other” includes Native Americans, Pacific Islanders, and Other (not defined in data provided).
correlates of decisions. As scholars and professionals weigh possible changes to the way serious juvenile offenders are treated, a central concern is the policy space that exists for alternatives. The degree of support for or opposition to transferring juveniles to adult court can constrain policy choices. It is also likely that the correlates of transfer may reflect professional sentiments. It, therefore, is essential to consider what views are held regarding this issue.

Broadly, this discussion is divided into two parts. First, this section will review available research on the public’s perception of the juvenile court, sanctioning of youthful offenders, and juvenile exclusion. Second, practitioners’ views will be examined regarding the issue of transfer. Although public attitudes are not the focus of the current research, they are relevant in two ways. Because prosecutors ostensibly represent "the people," broadly construed, public preference may help shape their decisions. Also, the available research on practitioners' opinions on juvenile exclusion is extremely sparse. Reviewing studies of the public, therefore, helps to flesh out what we may expect in assessing prosecutors.

Public Perceptions of Juvenile Exclusion

Consensus theory contends that criminal justice policies generally reflect commonly held societal views about how to deal with offenders. As noted in previous discussions, the philosophy of the juvenile court has undergone several shifts or changes. Recent legislation tends to reflect a more punitive response toward youthful offenders. However, most of these legislative efforts are geared
toward serious, violent youthful offenders. According to consensus theory, public attitudes regarding youth crime would mirror these initiatives.

Table 1.7 depicts the salient research in public attitudes toward certification of youthful offenders to the adult criminal justice system. Based on the review of this literature, several findings emerge. First, in general, the public supports transferring serious, youthful offenders to the adult criminal justice system (King-Davis, Applegate, & Cullen, 2003; Sprott, 1998). The research findings indicate that people support transferring youth when given global questions or statements about transferring serious, youthful offenders.

Using a nationally representative sample, for example, Triplett (1996) looked at public support for waiver of juvenile offenders to the adult criminal justice system. An overwhelming majority of the respondents agreed or strongly agreed that youths charged with a serious property crime, serious drug crime, or serious violent crime should be tried as adults (62%, 69%, and 87%, respectively). The response to these offenders tends to indicate that the public is still in a “get tough” mentality and has relatively little patience with certain categories of offenders.

Second, the level of support varies depending on the type of offense presented to the respondent. Public support for transfer is highest for serious, violent offenses. Selling large quantities of drugs and property offenses tend to elicit somewhat lower levels of preference for exclusion (Bouley and Wells, 2001; Mears, 2001; Schwartz, 1992; Schwartz, Guo, and Kerbs, 1993; Triplett, 1996; Wu, 2000). Thus, the public is generally quite supportive of transfer and the level
of support for transfer is related to the type of offense presented to the respondent.

Third, some distinction can be made between public views on trying youths as adults and punishing youths as adults. The salience of separating these issues is raised by Feld's (1992) assertion that youths should be tried by the adult system but their age should result in mitigated sentences. The evidence on public preferences is equivocal.

Sprott (1998) investigated Canadian public opinion regarding transfer of juveniles to the adult criminal justice system and the degree to which the public supported a separate youth system.\(^{22}\) Sixty-eight percent of her respondents were opposed to a separate court for juvenile justice. Of those who opposed the separate system, nearly 94 percent maintained that the current juvenile court dispositions were not as harsh as they needed to be. Those who opposed the separate juvenile court system believed that juvenile sanctions should be similar to adult sanctions. That is, they maintained that the punishment should fit the crime \textit{irrespective} of age. Generally, they believed that youth should be sentenced \textit{like} adults. However, the support for more severe treatment of youth crime did not extend far beyond this point. There was little support for sentencing youth \textit{with} adults.

In contrast, Schwartz’s (1992) analysis revealed little support for sentencing juveniles as adults or to adult prisons. More broadly, Moon, Sundt, Cullen, and Wright (2000) sought to develop a better understanding of the

\(^{22}\) Canada has similar transfer provisions to the United States regarding certification of juveniles to the adult criminal justice system.
degree to which the public perceives juveniles as being distinct from adults and deserving distinct treatment from the justice system. Mail-out surveys were sent to 1,500 people in Tennessee with 539 usable surveys being returned. Almost two-thirds of the respondents indicated that they believed the goal of imprisoning juveniles is rehabilitation. This ideology is indicative of the individualized adjudication intended in the inception of the juvenile justice system. Yet, respondents were also quite supportive of punitive or just deserts oriented approaches to youthful offenders. There was little support for incarcerating juveniles for long periods of time without some underlying rehabilitative purpose; suggesting that, while the public supports punitive treatment of youthful offenders, they seem to view most youth as being distinct from adult offenders.
Table 1.7 – Public Views of Juvenile Exclusion

<table>
<thead>
<tr>
<th>Study</th>
<th>Question Asked</th>
<th>% Favoring Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>King-Davis et al. (2003)</td>
<td>Juveniles who commit violent crimes should be tried as adults</td>
<td>73.2%</td>
</tr>
<tr>
<td></td>
<td>Scenarios describing specific youthful offender with varied attributes. Should case should be handled in juvenile or adult court?</td>
<td>40.3%</td>
</tr>
<tr>
<td>Bouley &amp; Wells (2001)</td>
<td>Should juveniles who commit the following crimes be tried as adults:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Serious property crime</td>
<td>64.8%</td>
</tr>
<tr>
<td></td>
<td>Violent offenses</td>
<td>71.3%</td>
</tr>
<tr>
<td></td>
<td>Selling illegal drugs</td>
<td>90.0%</td>
</tr>
<tr>
<td>Wu (2000)</td>
<td>“Juvenile tried as adult for property crime”</td>
<td>68.3%</td>
</tr>
<tr>
<td></td>
<td>“Juvenile tried as adult for drug crime”</td>
<td>73.5%</td>
</tr>
<tr>
<td></td>
<td>“Juveniles tried as adult for violent crime”</td>
<td>90.8%</td>
</tr>
<tr>
<td>Schwartz (1992)</td>
<td>How should juveniles who commit X be handled:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Serious property crimes</td>
<td>almost 50%</td>
</tr>
<tr>
<td></td>
<td>Selling large amounts of drugs</td>
<td>62%</td>
</tr>
</tbody>
</table>

23 Some questions asked have been paraphrased. Exact questions are in quotations.
<table>
<thead>
<tr>
<th>Study</th>
<th>Question Asked</th>
<th>% Favoring Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Serious violent crimes</td>
<td>68%</td>
</tr>
<tr>
<td></td>
<td>Juveniles found guilty of committing X crime should be punished:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Serious property crimes</td>
<td>97%</td>
</tr>
<tr>
<td></td>
<td>Selling large amounts of drugs</td>
<td>97%</td>
</tr>
<tr>
<td></td>
<td>Serious violent crimes</td>
<td>99%</td>
</tr>
<tr>
<td>Schwartz, Guo, Kerbs (1993)</td>
<td>Do you strongly agree or strongly disagree to trying juveniles in adult court?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Serious violent crimes (Part I violent crimes)</td>
<td>67%</td>
</tr>
<tr>
<td></td>
<td>Part I property crimes</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td>Sale of illicit drugs in large quantity</td>
<td>62%</td>
</tr>
<tr>
<td>Schiraldi &amp; Soler (1998)</td>
<td>“Current law gives federal judges the authority to decide whether a juvenile will be prosecuted in juvenile or adult criminal court. This bill would give federal prosecutors total discretion, not subject to review by a federal judge, to try juveniles as adults for all felonies. Would you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that federal prosecutors should have total discretion to try juveniles as adults for all felonies?”</td>
<td>41%</td>
</tr>
<tr>
<td>Study</td>
<td>Question Asked</td>
<td>% Favoring Transfer</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Sprott (1998)</td>
<td>“Do you think that young persons charged with criminal offenses should continue to be handled in a separate youth justice system, or do you think that they should be dealt with in the adult justice system?”</td>
<td>64% oppose separate system</td>
</tr>
<tr>
<td>Ontario, Canada</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Triplett (1996)</td>
<td>“Tell me for each of the following statements whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree:”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>“A juvenile charged with a serious property crime should be tried as an adult”</td>
<td>62%</td>
</tr>
<tr>
<td></td>
<td>“A juvenile charged with selling illegal drugs should be tried as an adult”</td>
<td>69%</td>
</tr>
<tr>
<td></td>
<td>“A juvenile charged with a serious violent crime should be tried as an adult”</td>
<td>87%</td>
</tr>
<tr>
<td>Mears (2001)</td>
<td>“Juveniles should be tried as adults if charged with”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Selling illegal drugs</td>
<td>70%</td>
</tr>
<tr>
<td></td>
<td>Committing a property crime</td>
<td>64%</td>
</tr>
<tr>
<td></td>
<td>Committing a violent crime</td>
<td>87%</td>
</tr>
<tr>
<td>Stalans and Henry (1994)</td>
<td>Specific scenarios varying homicide-offender characteristics</td>
<td>25-76.4%</td>
</tr>
</tbody>
</table>
In the abstract, the public wants violent youthful offenders to be tried as adults. Closer inspection of the available data, however, yields variation on support for juvenile exclusion. While this type of research is hardly exhaustive, several studies have identified the ways people’s attitudes vary and variables correlated with the degree of support for juvenile exclusion.

The extant research was examined to identify how the demographics of youthful offenders may affect public support of waiver. Schwartz (1992) examined the degree to which the public varied in support for trying youth as adults across age. The question posed was: “At what age do you think a person accused of a crime should be brought before an adult criminal court rather than a juvenile court?” (Schwartz, 1992, p. 222). Support for excluding youth who were fifteen or younger was 16 percent. Youths sixteen and older accused of a crime received 84 percent support for transfer. Stalans and Henry (1994) reported similar results. For both first-time and repeat offenders, respondents were significantly more likely to recommend adult court for 16-year-old youth than for 14-year-old youth. King-Davis et al. (2003) did not find significant differences in preferences for transfer by age, but exclusion was endorsed more strongly for youths who were perceived as more mature. Relatedly, Moon, Wright, Cullen, and Pealer (2000) looked at support for the death penalty for youthful offenders; the ultimate juvenile certification. They found that the public who supports capital punishment are generally willing to sentence relatively young offenders to death. For example, they found that nearly 25% of capital punishment supporters did not think there should be a minimum age to sentence a youth to death. Almost
half (43.8%) supported capital punishment for twelve-year-olds, and an overwhelming 85.6% of those who favored the death penalty for at least some juveniles supported capital punishment for youths aged sixteen and older.

The juvenile's age is not the only factor that has been examined. The more exhaustive research on how offender characteristics affect support of juvenile waiver was done in Georgia with randomly selected adult residents through telephone interviews. Stalans and Henry (1994) conducted a study examining effects of offender and offense characteristics on support for transfer. They found that prior convictions of the youth were significantly related to support for recommending adult court for youth charged with a killing. Youths with two relatively serious prior convictions (a conviction of theft and a conviction of breaking an arm of another teenager) received significantly more support for waiver. Past abuse of the youthful offenders was also significant in predicting support for transfer. Respondents were significantly more supportive of transfer to the adult court for both first-time offenders and youth with prior convictions who were not abused as compared to the same youth who had a history of abuse. Stalans and Henry (1994) suggest that their findings are contrary to certain provisions of juvenile certification. The researchers suggests that this is one example of how legislative provisions are contrary to public sentiment.

The above research demonstrates that variations in the youthful offender’s characteristics influence support of waiver. Other research has examined the extent to which the respondent’s demographics influence support of juvenile transfer. Table 1.8 presents the extant research in this area.
Table 1.8 – Respondent Demographic Correlates of Public Views of Juvenile Exclusion

<table>
<thead>
<tr>
<th>Study</th>
<th>Male</th>
<th>White</th>
<th>Age</th>
<th>Conservative</th>
<th>Married</th>
<th>Education</th>
<th>Income</th>
<th>Fear Of Crime</th>
<th>Have Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schwartz, Guo, and Kerbs (1993)</td>
<td>-</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
<td>-</td>
<td>NA</td>
<td>+</td>
<td>0</td>
</tr>
<tr>
<td>Drugs</td>
<td>+</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
<td>-</td>
<td>NA</td>
<td>+</td>
<td>0</td>
</tr>
<tr>
<td>Property</td>
<td>+</td>
<td>0</td>
<td>+</td>
<td>NA</td>
<td>NA</td>
<td>-</td>
<td>NA</td>
<td>+</td>
<td>0</td>
</tr>
<tr>
<td>Violent</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
<td>NA</td>
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<td>0</td>
</tr>
<tr>
<td>Bouley and Wells (2001)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>-</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
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<tr>
<td>Drugs</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>-</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
</tr>
<tr>
<td>Property</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>0</td>
<td>-</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Violent</td>
<td>0</td>
<td>+</td>
<td>0</td>
<td>NA</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
</tr>
<tr>
<td>Triplett (1996)</td>
<td>0</td>
<td>0</td>
<td>+</td>
<td>+</td>
<td>NA</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Drugs</td>
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<td>0</td>
<td>+</td>
<td>+</td>
<td>NA</td>
<td>0</td>
<td>0</td>
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<td>NA</td>
</tr>
<tr>
<td>Property</td>
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<td>NA</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Violent</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>0</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Wu (2000)</td>
<td>0</td>
<td>0</td>
<td>+</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
</tr>
<tr>
<td>Drugs</td>
<td>0</td>
<td>0</td>
<td>+</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
</tr>
<tr>
<td>Property</td>
<td>+</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>0</td>
<td>0</td>
<td>NA</td>
</tr>
<tr>
<td>Violent</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>NA</td>
</tr>
<tr>
<td>Study</td>
<td>Male</td>
<td>White</td>
<td>Age</td>
<td>Conservative</td>
<td>Married</td>
<td>Education</td>
<td>Income</td>
<td>Fear Of Crime</td>
<td>Have Children</td>
</tr>
<tr>
<td>------------------------</td>
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<td>---------</td>
<td>-----------</td>
<td>--------</td>
<td>---------------</td>
<td>---------------</td>
</tr>
<tr>
<td>King-Davis et al.</td>
<td>+</td>
<td>0</td>
<td>0</td>
<td>+</td>
<td>NA</td>
<td>0</td>
<td>NA</td>
<td>NA</td>
<td>-</td>
</tr>
<tr>
<td>(2003)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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| Mears (2001)           |      |       |     |              |         |           |        |               |               |
| Drugs                  | 0    | 0     | 0   | 0            | +       | -         | +      | NA            | 0             |
| Property               | +    | 0     | +   | 0            | +       | -         | 0      | NA            | 0             |
| Violent                | 0    | 0     | 0   | 0            | +       | -         | 0      | NA            | 0             |

+ = positively related  
- = negatively related  
NA = not examined  
0 = not related
The majority of the research in this area has found that demographics of respondents and support for transfer are unrelated. The public's characteristics addressed in this area of research are respondent gender, race, age, political affiliation, marital status, level of education, income, fear of crime, and having children. Male respondents are much more likely than female respondents to support transfer of youth to the adult court, particularly for property offenders (King-Davis et al., 2003; Mears, 2001; Schwartz, Guo, and Kerbs, 1993; Wu, 2000). The race of the respondent was significantly related to support of transfer in only one identified study; whites were more favorable toward exclusion (Bouley and Wells, 2001). Older members of society tend to be more supportive of transfer of drug offenders (Triplett, 1996; Wu, 2000). Mears (2001) and Schwartz, Guo, and Kerbs (1993) also report a positive relationship between age and support for transferring property offenders. Political ideology was found to be significant in predicting support of waiver in two studies (King-Davis et al., 2003; Triplett, 1996). Findings regarding marital status were not as consistent across these studies. Mears (2001) found that people who were married were significantly more likely to support waiver than those who were unwed. However, Bouley and Wells (2001) found a negative relationship between being married and support for waiver for drug offenders. Level of education also tends to be negatively related to support for transfer. Less educated members of the public are more supportive of waiver of youth than people with higher levels of education. Finally, having children yielded no significant predictions of support for juvenile waiver. Although not entirely consistent, the findings suggest that
people who are older, single, less educated, non-minority, and male hold more favorable views toward transferring juveniles.

Several common conclusions can be drawn from the research on public opinion toward juvenile justice issues. There is an underlying sense that punishment must be served. Furthermore, it seems apparent that citizens typically favor juveniles being waived to the adult court for particularly serious offenses. Even for juveniles accused of serious offenses, however, the public acknowledges differences between youths and adults. The public has not become so disenchanted with the idea of malleability as to demand the same punishments for juveniles as for adults.

**Practitioners’ Views of Juvenile Waiver**

The previous section examined the public’s view of juvenile certification to the adult court. In an effort to better understand current and future directions of the juvenile court and the appropriate role of juvenile waiver, scholars have examined practitioners’ views of juvenile justice. Only a few studies have examined specific approaches and decision-making by juvenile justice practitioners in an effort to better understand the ideology of those practitioners as well as how those ideologies impact dispositions of youth. Applegate, Turner, Sanborn, Latessa, and Moon (2000) mailed questionnaires to 106 juvenile court judges in Ohio in an effort to determine the characteristics of a juvenile court case that has the most impact on the judge’s decision to commit an offender to a state facility. Specifically, the authors sought to determine whether judges use
social as well as legal factors when making commitment decisions. Sixty-five percent (N = 69) of the judges participated in the study. The respondents were provided with a factorial vignette and asked to indicate how likely it was that they would commit the juvenile offender to a state facility on a scale of zero to 100 percent.

Analysis indicated that several legal and social factors are significant in explaining the decision to commit a youth to a state facility. The legal factors that influenced the judges’ decision to commit included the seriousness of the offense, measured by both the degree of felony and harm caused to or loss suffered by the victim, whether or not the youth had a prior felony on his or her record, and the number of times the youth had been adjudicated prior to the current offense. The social factors that were predictors of commitment were the age of the youth (older youth being more likely to be committed) and whether families were willing to participate and cooperate with the court. Although the decision to commit a youth is distinct from the decision to transfer, Applegate et al. (2000) asserted that the dominance of legal factors in explaining judges’ decisions suggests an orientation closer to the adult criminal justice system than the parens patriae guided juvenile system envisioned at the turn of the 20th century.

The above study implies that practitioners may support handling at least some youthful offenders as adults. A more direct assessment, however, is necessary before such a conclusion is warranted. Bishop, Frazier, and Henretta (1989) conducted telephoned interviews with the key prosecutor in charge of
transfer policy in each of Florida's judicial districts. Their research focused on several attitudes toward the juvenile justice system, perspectives on avenues of juvenile certification, why youth are certified, and why youth are not certified. The majority of the prosecutors, as indicated through close-ended questions, thought that transfer provisions were adequate. However, through open-ended questions, half thought the law should have been more far-reaching, particularly with regard to the ability to certify youth younger than 16 years of age. The other half of respondents were concerned that too much discretion might open the door for instances of abuse. Specifically, prosecutors opposed to greater expansion in juvenile certification criteria were concerned that less ethical prosecutors may use the direct-file provision inappropriately. The reason for this concern was the lack of formal standards concerning direct-file.24 A slight majority of the respondents supported the principles of the juvenile justice system, while the remainder expressed disdain for a separate youth system. Virtually all of the prosecutors, regardless of their opinion regarding the juvenile justice system, reported an increase in juvenile certification after the change in law enacting direct-file provisions.

Prosecutors were also asked to cite the criteria used for determining whether to file in criminal court. All respondents indicated a large emphasis on two variables: seriousness of the offense and a youth's prior adjudications of delinquency. Age of the youth was also cited as figuring heavily into the transfer decision. In Florida, the juvenile court jurisdiction over most youthful offenders

24 Bishop et al. (1989) note that only one jurisdiction (Miami-Dade County) has formal policies concerning juvenile certification through direct-file provisions.
ends at age 19. Prosecutors indicated a propensity to transfer youths who were close to their 18th birthdays, because they were uncomfortable with the brief jurisdiction the system would have otherwise. Prosecutors also indicated an inclination to file charges in the criminal court when, during the commission of the crime, the youth was accompanied by an adult accomplice. To these respondents, the presence of an adult accomplice indicated that the youth was more mature and criminally sophisticated. Finally, prosecutors indicated that once a transfer decision had been made on one youth, for severity of offense or prior record, any juvenile accomplices also would be seriously considered for transfer to ensure equitable treatment.

Prosecutors were then asked to indicate reasons for making the decision not to transfer a youth to criminal court. Prosecutors indicated that "boyish" youth or young defendants are not good candidates (Bishop et al., 1989, p. 189). They reasoned that acquittal of such defendants was probable in the adult system due to juror biases.

The only other study specifically on the issue of professionals' views of excluding youth from the juvenile court is provided by Sanborn (1994b). Sanborn sought to gain a better understanding of whether juvenile court workers, including judges, assistant district attorneys, public defenders, social workers assisting public defenders, and probation officers, perceived juvenile waiver to be an appropriate response to juvenile crime, what they believed were the appropriate reasons for certification (e.g. beyond rehabilitation, protection of society, seriousness of offense, deterrence, and conserve resources), and who they
thought were appropriate candidates for waiver or certification. He conducted interviews with 100 workers in three juvenile court settings (one large urban area, one suburban area, and one rural area).

An overwhelming 88% of the workers interviewed indicated that waiver to the adult court was needed. The respondents were asked to identify appropriate candidates for waiver. Respondents indicated an overwhelming agreement with the jurisdictional age of the juvenile court (89%). The majority of respondents (91%) also agreed that the minimum age of transfer should be 14 years. Seventy-five percent of the respondents agreed that certification should be considered for “felonies only.” Twenty-one respondents were more restrictive, indicating that they would like to see youths eligible for certification only for second and first-degree felonies.

Juvenile court workers were then asked to provide information about why this system should certify any youth. Conceptually, this issue can be approached two ways. First, why don’t juvenile court workers want these particular youthful offenders in the juvenile court? Second, what do the juvenile court workers expect from certification? The majority (77.3%) indicated that certification to the adult court was appropriate as a response to a juvenile being beyond rehabilitation. When asked what waiver to the adult court represented, the majority of respondents indicated that certification was a reflection of a lack of resources in the juvenile justice system as well as the inability of the court to handle certain youthful offenders. Deterrence, a need to conserve resources, protection of society from certain offenders, and belief that certain crimes were
too heinous to be handled in the juvenile court were also cited as reasons for transfer. Generally, respondents indicated that certification to the adult court was a rational and practical response for a certain range of offenses and offenders.

Finally, Sanborn (1994b) asked the workers to indicate whether they agreed with the methods for certifying a juvenile as an adult. It is noteworthy that among this broad sample of juvenile court workers, there was relatively little support for prosecutors making the decision about transfers to the adult criminal justice system. Respondents indicated that judicial transfers were better suited to promote due process and neutrality. It is unclear whether prosecutors also will favor vesting transfer power with judges.

Research Questions and Hypotheses

The previous examination has illuminated four key areas of juvenile justice and juvenile certification in particular: the history of juvenile justice, the role of the prosecutor, correlates of juvenile waiver, and attitudes toward waiver, both those of the public and of practitioners.

Within philosophic, scholarly discussions, there is little agreement in the literature regarding the appropriateness of transfers of youth to the adult criminal justice system. There seems to be little cohesiveness regarding who should make the transfer decision. Furthermore, only two studies exist that specifically ask practitioners about their perspectives regarding certification. There is also a clear gap in the research regarding the process by which prosecutors use their discretion and authority in making the waiver decision and the factors that
influence their decision to transfer or request a transfer to the adult criminal justice system. Existing research gives us merely a pattern of the youth being waived. Yet, official data can only illuminate so much on the subject of waiver. A more comprehensive examination of the factors affecting juvenile waiver is necessary. Specifically, analyzing the factors associated with the decision to waive youth from prosecutors’ perspectives is required to begin remedying this knowledge gap. The handling of serious youthful offenders is guided largely by legalistic considerations. Among criminal justice practitioners, however, transfer is widely supported for at least some youth. Yet, there is no clear understanding about the basis for this general support. Further, there is clearly concern, both scholarly and professionally, about the appropriateness of transfer decisions being predominately dictated by prosecutors. As the future of the juvenile court is debated, understanding the views of these prosecutors is essential.

The reviewed literature provides a good deal of insight into the current state of affairs regarding juvenile exclusion. However, much remains to be learned in this area of juvenile justice. The majority of the research in this area has relied on official data. As a result, policy implications, interpretation of data, and suggestions for future directions of juvenile exclusion are restricted to what can be gleaned from court records. To begin addressing these limitations, the following research questions are examined here:

**RQ1:** To what extent do prosecutors support the option of transfer generally?
RQ2: Relatedly, to what extent would prosecutors favor abolishing the juvenile court, maintaining it as is with some youths being excluded, or handling all juveniles in the juvenile court?

RQ3: To what extent do prosecutors agree or disagree with the arguments for and against transfer?

RQ4: To what extent do prosecutors support or oppose the various mechanisms of transfer (judicial, legislative, prosecutorial, mandatory, discretionary)?

The prior literature establishes that transferring decisions vary as do attitudes regarding the appropriateness of transfer. Based on these studies, a series of expectations about prosecutors' views can be extended. The current project tests the following hypotheses:

H1: Prosecutorial preference for exclusion will be positively related to the youth's age.

H2: Prosecutorial preference for exclusion will be positively related to the perceived maturity of a youth.

H3: Prosecutorial preference for exclusion will be negatively related to the perceived likelihood of rehabilitation.

H4: Prosecutorial preference for exclusion will be positively related to presence of a violent offense.

H5: Prosecutorial preference for exclusion will be positively related to the severity of the offense charged.
H6: Prosecutorial preference for exclusion will be greater when the youth is perceived as a threat to society.

H7: Prosecutorial preference for exclusion will be greater for youth with a record of prior adjudications in the juvenile court.

H8: Prosecutorial preference for exclusion will be positively related to prior commitment to a residential facility.

H9: Prosecutorial preference for exclusion will be greater for youth whose family is not supportive than for youth with supportive families.

H10: Prosecutorial preference for exclusion will be greater for minority youth than for non-minority youth.

H11: Prosecutorial preference for exclusion will be greater for male youth than for female youth.

H12: Prosecutorial preference for exclusion will be greater for youth who have not been abused than for those who have.

H13: Prosecutorial preference for exclusion will be negatively related to socio-economic status.

The next section provides the research methodology constructed to examine these questions. Details on the sample, operationalization of variables, the survey instrument, and data collection procedures are provided.
CHAPTER 3: RESEARCH PROCEDURES

Overview

The purpose of this research is to better understand juvenile certification to the adult criminal justice system in Florida. While previous research has looked at official data, empirical inquiry into the factors that influence prosecutors to certify youth is lacking. This research will contribute to the overall body of juvenile justice literature. More importantly it will create a foundation for a greater understanding of the current policies and procedures available to transfer youth to the adult criminal justice system. Specifically, this study examines attitudes of prosecutors regarding the appropriate role of the juvenile court, the degree to which prosecutors agree with transferring youth to the adult criminal justice system and the various mechanisms of transfer, and the factors that are most influential in a state attorney’s decision to certify a youth to the adult criminal justice system.

This chapter provides a detailed description of the research methodology and specific procedures to be employed, including the methods of sampling from the research population, operationalization of variables, the data collection instrument, and data collection strategy.

Research Sample

The respondents in this research were randomly selected from a sampling frame obtained by the researcher. Several sources were considered for this sampling frame. The respondents in this research are in professional, legal
positions, and it was important to obtain the most current and accurate list of prosecutors from which to draw the sample. The sampling frame was the Judicial Administration Commission’s most current list of State Attorneys and Assistant State Attorneys in Florida. The Judicial Administration Commission receives updated lists from all judicial districts in Florida on a monthly basis. On the third week of every month, the Judicial Administration Commission receives a current list of the State Attorneys and Assistant State Attorneys from each of Florida's twenty judicial districts. The researcher requested the most recent list two weeks prior to implementation of the survey. Because this list is regularly updated, coverage error should be negligible. The sampling frame consisted of 1808 prosecuting attorneys. A sample of 800 State Attorneys and Assistant State Attorneys was randomly selected. Based on the number sampled and the response rate of 37 percent, the sampling error is ± 5%.

Data Collection Method

Mail-out surveys were utilized for data collection. The data collection process was based on Dillman’s (2000) Tailored Design Method. The survey involved four of Dillman’s (2000, p. 150) five suggested elements for achieving high response rates in survey implementation: respondent friendly questionnaire, multiple contacts by first-class mail, return envelopes with real first-class stamps, and personalization of correspondence. The fifth element, a token prepaid financial incentive, was not appropriate for the population under

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25 The researcher needed this time to adequately prepare mail-out lists, labels, and database construction prior to the initial mailing.
study. State Attorneys in all judicial districts in Florida were mailed a pre-notice letter three days prior to the initial mail-out. This pre-notice letter was only mailed to State Attorneys, not Assistant State Attorneys. The purpose of this letter was to inform the supervisors of those who would be contacted for the study, to garner support for participation in this research, and to convey the significance of the project.

Questionnaires, including a detailed cover letter explaining the importance of this research, were mailed with return envelopes with first-class stamps to all members of the sample on May 27, 2005. Five days later, a thank-you postcard was mailed expressing sincere thanks for completing the survey. The postcard also expressed the hope that if the respondent had yet to return the completed survey, he or she would do so soon. Two weeks after the mailing of the initial questionnaire, a replacement questionnaire was sent to the non-respondents. The cover letter included in this mail-out indicated that the respondent's completed questionnaire had yet to be received and politely urged the respondent to complete and return the survey as soon as possible. Finally, non-respondents were sent a final contact. Non-respondents received a second postcard that requested the completed survey. All written correspondence had original signatures from this researcher. (Copies of the pre-notice letter and all cover letters are included in Appendix A.)

The analyses presented here includes all responses that were received by July 27, 2005. There were 58 surveys that were returned to the researcher from the post-office as being undeliverable. There were also 4 ineligible surveys
returned to the researcher. This researcher received 272 usable, completed surveys for a response rate of 36.6%.

**Operationalization of Variables**

**Respondent Demographics**

Respondents were asked to answer a few demographic questions for statistical analysis purposes. The following are the demographic measures used and the answer options provided. Age was measured by asking each prosecutor, "How old are you?" Ethnicity was measured by asking each respondent to indicate whether he or she was white/caucasian, black, Hispanic, Asian/Pacific Islander, Native American, or other. Data were also collected on each respondent's professional experience. First, the questionnaire measured tenure as a prosecutor: "To the best of your recollection, how many years and months have you been a prosecutor?" Each respondent was also asked, "In what division of the state attorney's office do you currently work?" They were asked mark "felony," "misdemeanor," or "other." Finally, the judicial district in which each attorney worked was determined using the addresses from the sampling frame.

**General Support for Transfer and the Role of the Juvenile Court**

The appropriate role and necessity of the juvenile court has been challenged in recent years. As reviewed in the previous chapter, there are three
major perspectives regarding the direction and future of the juvenile court and transfer:

1. all youths should stay in the domain of the juvenile court;

2. certain youthful offenders should be transferred to the jurisdiction of the adult criminal justice system, and some the some youthful offenders should stay in the juvenile system; and

3. all youths should go to the adult court, the juvenile court should be abolished, and age should be a mitigating factor in sentencing decisions.

Prosecutors were given a series of statements concerning the appropriate role of the juvenile court and asked to indicate the degree to which they agreed or disagreed with each statement. The answer options were strongly agree, agree, neutral, disagree, and strongly disagree. The following statements measured the respondents' level of support for the role of the juvenile court.

- All youthful offenders age 17 and under should be adjudicated in a separate juvenile court, not in the adult court.

- Most juvenile offenders should stay under the jurisdiction of the juvenile court.

- In general, I support transferring some youths to the adult court.

- In general, serious, violent juvenile offenders should be transferred to the adult court.

- The juvenile court's jurisdiction on a juvenile should end once he or she turns eighteen.

- The juvenile court should be abolished.
Agreement with Arguments For and Against Transfer

Seventeen statements were given to prosecutors regarding the arguments for and against transfer. Respondents were asked to indicate the extent to which they agreed or disagreed with each statement using the same Likert scale described above, where the answer options were agree strongly, agree, neutral, disagree, and disagree strongly. The following statements measured the respondents' level of support for the arguments in favor of transfer:

- Some juveniles are beyond the rehabilitation capacities of the juvenile justice system.
- For the protection of society, it is necessary to transfer some juveniles to the adult court.
- Some offenses are serious enough to warrant transfer to the adult court.
- Resources in the juvenile justice system are too scarce to warrant spending them on juvenile offenders who are habitually offending.
- Transferring certain juveniles to the adult court will deter other juveniles from committing crime.
- Juveniles that commit serious offenses have a significant negative influence on other youth in the juvenile justice system.
- Juveniles that repeatedly commit crimes have a significant negative influence on other youth in the juvenile justice system.
- The due process rights of juvenile offenders are better protected in the adult court.
The following statements were utilized to ascertain prosecutors' support for arguments against transfer.

- Juvenile offenders get more individualized attention in the juvenile court compared to the adult court.
- Transferring youths to the adult court may jeopardize their futures by having a record open to the public rather than a confidential record.
- Juvenile offenders should not be exposed to adult offenders.
- Juvenile offenders cannot get the proper treatment and rehabilitative services they need in the adult system.
- Juvenile offenders can be influenced to change easier than adult offenders.
- Juvenile offenders do not need the same due process protections as adult offenders because the juvenile justice system is not adversarial.
- Juvenile offenders are less responsible for their actions than adult offenders.
- Juvenile offenders are less mature than adult offenders.

**Support For and Opposition to Methods of Certification**

Eleven statements were given to prosecutors concerning support for or opposition to various methods of certification of juvenile offenders. Respondents were asked to indicate the extent to which they agreed or disagreed with each statement, given the answer options agree strongly, agree, neutral, disagree, and disagree strongly. The following three statements measured who the respondents believed should be responsible for certification decisions - judges or prosecutors:
• Judges alone should be responsible for making transfer decisions.
• Prosecutors alone should be responsible for making transfer decisions.
• Prosecutors should make the transfer recommendation, but judges should make the final transfer decision.

The juvenile court workers interviewed by Sanborn (1994b) expressed more specific views on the various mechanisms of transfer. They pointed out problems with waiver by legislation, prosecutors, and judges. The following eight statements were also presented to the prosecutors in the present study to assess their level of agreement or disagreement with these arguments.

• A judicial waiver hearing promotes protection of youths’ due process rights.
• Mandatory transfer set out by the legislature takes away the subjective quality of transfer.
• Judges are inconsistent in their decisions to transfer a juvenile to the adult court.
• Judicial waiver is too subjective.
• Judges are too hesitant to waive appropriate juveniles to the adult court.
• Prosecutorial direct file is influenced by political decisions.
• Prosecutorial direct file leads to abuse of power.
• Statutes mandating transfer are too automatic.

**Correlates of Exclusion Decisions**

A factorial survey approach was used to examine the correlates of prosecutors’ waiver decisions. The factorial survey approach involves the
creation of a story or a vignette that contains personal and situational characteristics that are randomly assigned to each vignette. The factorial survey approach depicts lifelike complexities (Rossi and Anderson, 1982). This approach enables researchers to distinguish the individual influence of characteristics on attitudes (Rossi and Anderson, 1982).

This method was appropriate for two reasons. First, prior research has looked only at official data to determine the factors that are most influential in certification decisions. Use of official records limits the types of variables that can be examined and the manner in which they are operationalized. In contrast, a factorial vignette survey uses hypothetical scenarios to examine the determinants of decision-making. Thus, a researcher is free to construct the best operationalization of all salient variables, rather than being constrained to whatever is available in official records.

Second, some criminal justice processing characteristics are highly correlated in reality (Rossi and Anderson, 1982). Using data from official records of actual cases, therefore, limits our ability to assess the independent effects of these variables. In contrast, factorial vignettes are constructed by randomly selecting one level from each dimension. The result is that each dimension is orthogonal (within the limits of probability sampling) and their effects on decision making can be separated. Thus, factorial vignette analysis can disentangle the effects on transfer of race and economic status, gender and offense, and other salient variables.
Youthful Offender Dimensions and Levels

Each survey contained one factorial vignette, formatted as a charging sheet. The following are the variables or dimensions included in the factorial vignette. The possible values for each dimension, called levels, are also presented. Using the Vigwrite Software Program, one level for each dimension was randomly assigned in each vignette.

Age

Ages were provided in increments of individual years ranging from 12 to 17 years old. The lower range of this dimension was determined based on the data from Florida (2001-2002). No youths under twelve were transferred to the adult court. Thus, while it is possible that a youth younger than twelve might be transferred to the adult court, it is a rare occurrence in Florida; most youths waived to the adult court are much older (see Table 1.4). The upper limit of seventeen years old was established because he or she has reached the age of majority in Florida and would be under the jurisdiction of the adult court.

Gender

The gender of the youth was given as male or female.

Ethnicity

Ethnicity was presented as three possibilities: white, black, or Hispanic. Ethnicity, as opposed to race, was used for a couple of reasons. First, prior research looking at correlates of transfer has predominantly looked at race as a correlate to transfer. The attributes are often presented in terms of either white or non-white. Hispanics could potentially be coded as white or non-white using
available data in which the researcher had no control over the operationalization of the variables. Second, as presented in Chapter 1, ethnicity may be more relevant as a variable depending on the geographic location of the research. Florida does have a large Hispanic population. Thus, whites and Hispanics were distinguished.

**Family Environment**

Prior research by Applegate et al. (2000) suggests that perceptions about a youth's family can substantially influence juvenile court decisions (also see Sanborn, 1995). Three separate dimensions operationalized aspects of the youth's home environment.

*Prior History of Abuse:*

- No prior history of abuse by family member(s)
- Prior history of abuse by family member(s)

*Family Socio-Economic Status*

- Upper-income family
- Middle-income family
- Lower-income family

*Level of Family Support*

- Family appears willing and able to participate in any special requirements that might be imposed by the court.
- Family appears neither willing nor able to participate in any special requirements that might be imposed by the court.
Prior Adjudications and Commitments

Youth has no prior adjudications in the juvenile court and no prior commitments

Youth has one prior felony adjudication in the juvenile court and no prior commitments

Youth has three prior felony adjudications in the juvenile court and no prior commitments

Youth has one prior felony adjudication in the juvenile court and one prior commitment to a juvenile residential facility

Youth has three prior felony adjudications in the juvenile court and one prior commitment to a juvenile residential facility26

Maturity

Youth's maturity is appropriate to age

Youth is less mature than same-age peers

Youth is more mature than same-age peers

Current Offense

The vignette also included current offense as a dimension for assignment. Three broad offense types were included for consideration: person, property, and drug. These offenses were included because prior research, using official data, has identified differences in transfer rates for these types of offenses. Other offenses, as noted in Table 1.2, only represent a small portion of total cases transferred to the adult court. Further, the type of offenses included as

26 The selection of these levels was weighted so that approximately one-third of the vignettes described a youth with no priors, one prior, or three prior adjudications in the juvenile court.
other are quite varied and relatively minor, such as a violation of probation. Thus, other offense types were not included.

Variations within offense type were also included to manipulate the offense and the severity of the offense. The items were constructed to vary the extent of harm. Warr's (1989) research has shown that offenses that cause greater harm are perceived as more serious. All of the levels, however, include offenses for which youth may be certified to the adult court under Florida law. Finally, the offense possibilities were those for which youth are relatively commonly referred to the juvenile court (e.g. burglary, not identity theft).

**Person Offenses**

**Robbery**
- The youth is accused of threatening to beat up a young girl unless she gave up her money. The victim gave up $20 dollars and was not physically harmed.
- The youth is accused of threatening to stab a young girl with a large knife unless she gave up her money. The victim gave up $20, and was not physically harmed.

**Aggravated Battery**
- The youth is accused of intentionally cutting another youth with a knife during an argument. The victim had a small cut on the arm, requiring three stitches.
• The youth is accused of intentionally cutting another youth with a knife during an argument. The victim was cut badly on both arms, requiring more than 20 stitches.

Property offenses

Burglary

• The youth is accused of breaking into a residence and stealing about $100 worth of merchandise.

• The youth is accused of breaking into a residence and stealing about $1,000 worth of merchandise.

Auto Theft

• The youth is accused of stealing an automobile. The car was located and returned undamaged to the owner.

• The youth is accused of stealing an automobile. The car was located and was damaged beyond repair.

Drug offenses

Felony Marijuana

• The youth is accused of possessing one plastic baggy containing approximately one ounce of marijuana and drug paraphernalia.

• The youth is accused of possessing twelve plastic baggies filled with marijuana. The youth also had $400 cash in a jacket pocket.

Felony Non-Marijuana

• The youth is accused of possessing 1 rock of crack cocaine for personal use.
• The youth is accused of possessing 15 individually wrapped rocks of crack cocaine. The youth also had $400 cash in a jacket pocket.

Amenability to Treatment

After reading the vignettes the prosecutors were given statements to determine their perceptions about the youth’s amenability to treatment. This question was constructed to determine the degree to which prosecutors think the described youth is able to change. The answer options were agree strongly, agree, neutral, disagree, and disagree strongly. The following statements measured the respondents’ perceptions about the youth’s ability to change.

• Given the proper care and individualized treatment, this youth can change for the better.

Threat to Society

Prosecutors were then given a measure to determine whether or not they perceived the youth to be a threat to society. Respondents were given a statement then asked to indicate the degree to which they agreed or disagreed using the same five-point Likert scale as above. The following statement was used to measure perceived threat to society:

• This youth poses a significant threat to society.

Prosecutorial Preference for Exclusion

The purpose of this study is to examine the factors that influence prosecutorial decision-making. In order to achieve this goal, prosecutors were asked to render a judgment on what they would want to see actually happen with the youth in the vignette. Prosecutors were given the following item:
Regardless of what the law currently allows, we would like to know your own views on the best way to handle this juvenile’s case. Based on the information provided, what are the chances that you would want to certify this youth to the adult court? _____% (0% means the youth would stay in the juvenile court, and 100% means the youth would go to the adult court. You can also choose any number in between).

Data Collection Instrument

The survey questionnaire, which is provided in Appendix B, was pre-tested in two ways recommended by Dillman (2000). First, the research instrument was given to knowledgeable colleagues. This was done to ensure that all of the necessary questions were included and to eliminate duplicate, unclear, or unnecessary measures. Second, using cognitive interviews, the instrument was tested with 2 Assistant State Attorneys from the Ninth Judicial District. Structured, cognitive interviews were conducted to determine whether respondents would understand each question and whether they could answer each question accurately (Dillman, 2000). The pre-test procedure followed the "think-aloud" method explained by Dillman (2000, p. 142). Based on the pre-testing, some changes were made to simplify statements in order to improve comprehension and enhance reliability of items.
The Respondents

Two hundred and seventy-two prosecutors completed the survey instrument. The majority of the respondents were males (61%). The respondents' ages ranged from 24 to 65, with a mean of 40 years. The vast majority of the respondents were white (87.6%), followed by Hispanic (6%), then black prosecutors (4.1%). Most of the prosecutors that participated in the research worked in their Felony division (58%) and had at some point been involved in the decision-making process to transfer a juvenile to the adult court (64%). The prosecutors in this study were fairly experienced (M = 9 years, 5 months), ranging from 10 months to 32 years of experience. The following chapter provides the results of their participation in this research.
CHAPTER 4: RESULTS

Chapter 3 reported the methods that were employed to collect the data for this research. This chapter presents the results of this research effort. Generally, this discussion is divided into two sections: a descriptive analysis of prosecutors' attitudes toward transfer and an assessment of the predictors of transfer decisions.

Support of Juvenile Transfer and the Role of the Juvenile Court

In order to address the first two research questions, prosecutors were given statements to assess their views on the concept of juvenile transfer in general. Further, they were given a series of statements constructed to measure the extent to which they would favor handling all juveniles in the juvenile court, abolishing the juvenile court, and maintaining the juvenile court as it is, with some youths being excluded. As shown in Table 4.1, almost all prosecutors agreed with the statement that, in general, some youths should be transferred to the adult court. Further, more than three-fourths of prosecutors agreed with the statement that most juvenile offenders should remain under the jurisdiction of the juvenile court. Taken together, these results indicate considerable support for transfer as an option for handling juvenile cases but a belief that it should not be applied in a blanket manner. This interpretation is reinforced by prosecutors' responses to two other items.
Table 4.1: Overall Support for Juvenile Transfer and the Role of the Juvenile Court

<table>
<thead>
<tr>
<th>Item</th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Mean</th>
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<tr>
<td>In general, I support transferring some youths to the adult court (n=272)</td>
<td>4.4%</td>
<td>1.1%</td>
<td>0.7%</td>
<td>33.1%</td>
<td>60.7%</td>
<td>4.44</td>
</tr>
<tr>
<td>Most juvenile offenders should stay under the jurisdiction of the juvenile court (n=272)</td>
<td>5.9%</td>
<td>8.5%</td>
<td>8.5%</td>
<td>59.6%</td>
<td>17.6%</td>
<td>3.75</td>
</tr>
<tr>
<td>All juvenile offenders age 17 and under should be adjudicated in a separate juvenile court, not in the adult court (n=272)</td>
<td>54%</td>
<td>31.6%</td>
<td>4.4%</td>
<td>6.3%</td>
<td>3.7%</td>
<td>1.74</td>
</tr>
<tr>
<td>The juvenile court should be abolished (n=271)</td>
<td>58.7%</td>
<td>32.8%</td>
<td>3.7%</td>
<td>1.8%</td>
<td>3.0%</td>
<td>1.58</td>
</tr>
<tr>
<td>The juvenile court's jurisdiction on a juvenile should end once he or she turns eighteen (n=272)</td>
<td>20.6%</td>
<td>33.8%</td>
<td>11.8%</td>
<td>21.7%</td>
<td>12.1%</td>
<td>2.71</td>
</tr>
<tr>
<td>In general, serious, violent juvenile offenders should be transferred to the adult court (n=272)</td>
<td>2.2%</td>
<td>5.9%</td>
<td>4.8%</td>
<td>33.7%</td>
<td>53.5%</td>
<td>4.30</td>
</tr>
</tbody>
</table>
Eighty-five percent of Florida's prosecutors disagreed with handling all juveniles in a separate juvenile court. At the same time, nearly ninety-two percent of prosecutors disagreed with the statement that the juvenile court should be abolished. Prosecutors appear to agree with a more moderate view of juvenile transfer. That is, most juvenile offenders should be adjudicated in the juvenile court and some juveniles should be transferred to the adult court. Beginning insight into which juveniles prosecutors believe ought to be removed from juvenile court jurisdiction is provided by the final item reported in Table 4.1. When prosecutors were asked whether serious, violent juvenile offenders should be transferred to the adult court, almost nine in ten agreed. It is important to note that prosecutors do not support the elimination of the juvenile court.

Support for Arguments For and Against Transfer

As reviewed in Chapter 2, several arguments for and against the idea of juvenile transfer have developed in the literature. Prosecutors were given statements to measure the extent to which they agreed or disagreed with these positions. Table 4.2 illustrates prosecutors' extent of agreement with arguments offered in favor of transferring juveniles to the adult court.
### Table 4.2: Prosecutors' Support for Arguments for Transfer of Juveniles to the Adult Court

<table>
<thead>
<tr>
<th>Item</th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some offenses are serious enough to warrant transfer to the adult court (n=272)</td>
<td>0.4%</td>
<td>0.4%</td>
<td>1.1%</td>
<td>22%</td>
<td>76.2%</td>
<td>4.73</td>
</tr>
<tr>
<td>For the protection of society, it is necessary to transfer some juveniles to the adult court (n=272)</td>
<td>0.4%</td>
<td>1.1%</td>
<td>0.7%</td>
<td>24.9%</td>
<td>72.9%</td>
<td>4.69</td>
</tr>
<tr>
<td>Some juveniles are beyond the rehabilitation capacities of the juvenile justice system (n=272)</td>
<td>1.5%</td>
<td>0.7%</td>
<td>2.9%</td>
<td>35.3%</td>
<td>59.6%</td>
<td>4.51</td>
</tr>
<tr>
<td>Juveniles that repeatedly commit crimes have a significant negative influence on other youth in the juvenile justice system (n=272)</td>
<td>0.4%</td>
<td>4.4%</td>
<td>25.7%</td>
<td>51.5%</td>
<td>18%</td>
<td>3.82</td>
</tr>
<tr>
<td>Juveniles that commit serious offenses have a significant negative influence on other youth in the juvenile justice system (n=272)</td>
<td>0.4%</td>
<td>5.1%</td>
<td>32%</td>
<td>46.7%</td>
<td>15.8%</td>
<td>3.72</td>
</tr>
<tr>
<td>Transferring certain juveniles to the adult court will deter other juveniles from committing crime (n=272)</td>
<td>4.8%</td>
<td>20.6%</td>
<td>28.7%</td>
<td>36.4%</td>
<td>9.6%</td>
<td>3.25</td>
</tr>
<tr>
<td>Resources in the juvenile justice system are too scarce to warrant spending them on juvenile offenders who are habitually offending (n=270)</td>
<td>5.6%</td>
<td>24.8%</td>
<td>27.4%</td>
<td>28.1%</td>
<td>14.1%</td>
<td>3.20</td>
</tr>
<tr>
<td>The due process rights of juvenile offenders are better protected in the adult court (n=272)</td>
<td>9.2%</td>
<td>34.9%</td>
<td>44.9%</td>
<td>8.5%</td>
<td>2.6%</td>
<td>2.60</td>
</tr>
</tbody>
</table>
Nearly all of the arguments for transfer of juvenile offenders to the adult court received strong support from Florida prosecutors. As shown in Table 4.2, virtually all of the prosecutors surveyed believe that transfer of some juveniles is justified by the seriousness of some offenses and by the need to protect society. Over ninety percent agree that some juveniles are beyond the rehabilitation capacities of the juvenile justice system. Strong consideration for transfer was also given to the influence serious or repeat juvenile offenders may have on other youth in the juvenile justice system. Nearly half of the prosecutors agreed that transferring certain juveniles to the adult court would deter other juveniles from committing crime. However, two arguments for the support of juvenile transfer to the adult court did not receive much support. One argument is the idea that resources in the juvenile system are too scarce to warrant spending them on habitual offenders. This argument received only mild support (42.2% agreed or strongly agreed with this statement). Prosecutors also showed little enthusiasm for supposed differences in due process protections. Only 11.1% of prosecutors agreed that the adult court provides better protection of due process rights than the juvenile court, and more than 44% disagreed with this contention.

The data in Table 4.3 illustrate prosecutors’ views on the arguments that have been offered against transfer of juvenile offenders to the adult court. In general, arguments against juvenile transfer did not receive the strong support seen in the arguments for juvenile transfer. Only three arguments against transfer received a strong degree of support: juvenile offenders get more individualized attention in the juvenile court, juvenile offenders are less mature
than their adult counterparts, and juvenile offenders can be influenced to change
easier than adult offenders. A majority of prosecutors disagreed that juveniles
are less culpable than adults are and that transferring them to the adult system
would compromise juveniles' chances at rehabilitation. The degree of support for
arguments against transfer appears consistent with prosecutors' views on
transfer in general.
Table 4.3: Prosecutors' Support for Arguments Against Transfer

<table>
<thead>
<tr>
<th>Item</th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile offenders are less mature than adult offenders (n=270)</td>
<td>2.2%</td>
<td>6.7%</td>
<td>14.1%</td>
<td>65.6%</td>
<td>11.5%</td>
<td>3.77</td>
</tr>
<tr>
<td>Juvenile offenders get more individualized attention in the juvenile court compared to the adult court (n=271)</td>
<td>1.8%</td>
<td>19.9%</td>
<td>26.9%</td>
<td>42.1%</td>
<td>9.2%</td>
<td>3.37</td>
</tr>
<tr>
<td>Juvenile offenders can be influenced to change easier than adult offenders (n=271)</td>
<td>2.2%</td>
<td>23.2%</td>
<td>30.6%</td>
<td>38.0%</td>
<td>5.9%</td>
<td>3.22</td>
</tr>
<tr>
<td>Transferring youths to the adult court may jeopardize their futures by having a record open to the public rather than a confidential record (n=270)</td>
<td>4.8%</td>
<td>25.6%</td>
<td>28.1%</td>
<td>39.3%</td>
<td>2.2%</td>
<td>3.09</td>
</tr>
<tr>
<td>Juvenile offenders should not be exposed to adult offenders (n=271)</td>
<td>6.6%</td>
<td>31.7%</td>
<td>26.6%</td>
<td>28.8%</td>
<td>6.3%</td>
<td>2.96</td>
</tr>
<tr>
<td>Juvenile offenders cannot get the proper treatment and rehabilitative services they need in the adult system (n=272)</td>
<td>10.3%</td>
<td>57.4%</td>
<td>19.9%</td>
<td>11.0%</td>
<td>1.5%</td>
<td>2.36</td>
</tr>
<tr>
<td>Juvenile offenders are less responsible for their actions than adult offenders (n=270)</td>
<td>18.9%</td>
<td>47.4%</td>
<td>17.4%</td>
<td>13.3%</td>
<td>3.0%</td>
<td>2.34</td>
</tr>
<tr>
<td>Juvenile offenders do not need the same due process protections as adult offenders because the juvenile justice system is not adversarial (n=270)</td>
<td>21.9%</td>
<td>53.3%</td>
<td>15.9%</td>
<td>7.4%</td>
<td>1.5%</td>
<td>2.13</td>
</tr>
</tbody>
</table>
Prosecutors' Views on Mechanisms of Juvenile Transfer

Prosecutors were given a series of statements intended to measure their support for the various mechanisms of juvenile transfer. Specifically, prosecutors were asked about who (judges, prosecutors, or legislature) should make the transfer decisions. Further, prosecutors were asked to respond to several statements about potential benefits and problems with various mechanisms of transfer. Table 4.4 illustrates the responses.

As shown by the results on the first set of items in the table, prosecutors did not support judges being responsible for the transfer decision. Nearly ninety-two percent of respondents strongly disagreed or disagreed with the statement that "judges alone should be responsible for making transfer decisions." Moreover, almost two-thirds opposed a process where prosecutors would recommend transfer but judges would make the final decision. Some insight into the basis for this lack of enthusiasm regarding judicial transfer is provided by the responses to the next three items listed in Table 4.4. As shown in the table, prosecutors indicated strong support for the idea that judges are too inconsistent in their transfer decisions and that judicial waiver is too subjective. One final explanation for this lack of support was that judges are too hesitant to waive youth who are appropriate for the adult court. This perspective only received mild support from prosecutors.
Table 4.4: Prosecutors' Views on Mechanisms of Juvenile Transfer

<table>
<thead>
<tr>
<th>Item</th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges alone should be responsible for making transfer decisions</td>
<td>57.2%</td>
<td>33.2%</td>
<td>7.0%</td>
<td>1.1%</td>
<td>1.5%</td>
<td>1.56</td>
</tr>
<tr>
<td>(n=271)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutors should make the transfer recommendation, but judges</td>
<td>32.3%</td>
<td>33.1%</td>
<td>14.1%</td>
<td>19.3%</td>
<td>1.1%</td>
<td>2.24</td>
</tr>
<tr>
<td>should make the final transfer decision (n=269)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges are inconsistent in their decisions to transfer a juvenile</td>
<td>0.7%</td>
<td>10.0%</td>
<td>50.6%</td>
<td>27.5%</td>
<td>11.2%</td>
<td>3.38</td>
</tr>
<tr>
<td>to the adult court (n=269)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges are too hesitant to waive appropriate juveniles to the adult</td>
<td>1.9%</td>
<td>14.1%</td>
<td>54.4%</td>
<td>21.9%</td>
<td>7.8%</td>
<td>3.20</td>
</tr>
<tr>
<td>court (n=270)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial waiver is too subjective</td>
<td>1.9%</td>
<td>15.3%</td>
<td>53.4%</td>
<td>22.0%</td>
<td>7.5%</td>
<td>3.18</td>
</tr>
<tr>
<td>(n=268)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A judicial waiver hearing promotes protection of youths' due</td>
<td>4.9%</td>
<td>14.9%</td>
<td>55.6%</td>
<td>23.9%</td>
<td>0.7%</td>
<td>3.01</td>
</tr>
<tr>
<td>process rights (n=268)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutors alone should be responsible for making transfer</td>
<td>6.3%</td>
<td>20.7%</td>
<td>12.9%</td>
<td>32.5%</td>
<td>27.7%</td>
<td>3.55</td>
</tr>
<tr>
<td>decisions (n=271)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutorial direct file is influenced by political decisions</td>
<td>21.4%</td>
<td>42.4%</td>
<td>19.2%</td>
<td>15.9%</td>
<td>1.1%</td>
<td>2.33</td>
</tr>
<tr>
<td>(n=271)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutorial direct file leads to abuse of power (n=271)</td>
<td>43.2%</td>
<td>48.3%</td>
<td>7.0%</td>
<td>0.7%</td>
<td>0.7%</td>
<td>1.68</td>
</tr>
<tr>
<td>Mandatory transfer set out by the legislature takes away the</td>
<td>3.7%</td>
<td>15.6%</td>
<td>24.8%</td>
<td>45.2%</td>
<td>10.7%</td>
<td>3.44</td>
</tr>
<tr>
<td>subjective quality of transfer (n=270)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutes mandating transfer are too automatic (n=270)</td>
<td>8.1%</td>
<td>25.2%</td>
<td>36.3%</td>
<td>27.0%</td>
<td>3.3%</td>
<td>2.92</td>
</tr>
</tbody>
</table>

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Not too surprisingly, prosecutors indicated moderate to strong support for prosecutors being the sole decision-makers in transfer decisions (60.2% agreed or strongly agreed). Further, when asked about potential problems with prosecutors making transfer decisions, few respondents believed these were valid concerns. Specifically, almost two-thirds of prosecutors disagreed that prosecutorial direct-file is influenced by political decisions and nearly all of the respondents thought that prosecutorial direct-file does not lead to abuse of power. By and large, prosecutors do not believe that their involvement in transfer decisions is problematic in the ways that others have suggested.

Finally, prosecutors were asked about their perceptions of mandatory transfer as set out in legislation. A slight majority of prosecutors agreed with the argument that mandatory transfer takes away the subjective quality of transfer decisions (55.9%) and did not seem to perceive mandatory transfer as being too automatic. This somewhat divided response may be indicative of the fact that, while legislation may "mandate" transfer to the adult court, prosecutors ultimately have the authority and discretion to file in adult or juvenile court by deciding on the final charges.

**Correlates of Support for Juvenile Transfer**

In order assess whether the findings support the thirteen hypotheses posed in Chapter 2, bivariate and multivariate analyses were performed. The predictors of transfer decisions focused on the responses of the prosecutors to the juveniles described in the vignettes. As described in the previous chapter,
the factorial vignettes allowed for assessment of the impact of multiple case characteristics on prosecutors' support for transfer. Initially, three bivariate tests were employed to determine associations between the dependent variable, "Chance you would want to transfer this youth," and the independent variables introduced in the hypotheses. This section presents the results of these tests.

Pearson product-moment correlations were utilized to assess the relationship between the dependent variable and three independent variables: vignette offender age, perceived chance of rehabilitation, and perceived threat to society. The correlation coefficients for the measures are presented in Table 4.5.

| Table 4.5 - Pearson Correlations between Likelihood of Transfer Recommendation and Independent Variables |
|----------------------------------------------------------|--------------------------|-----------------|-----------------|-----------------|
|                                                          | n     | M (SD)     | 1     | 2        | 3     | 4     |
| 1 - Likelihood of Transfer Recommendation                 | 269   | 22.11 (29.76)| 1.00  |          |       |       |
| 2 - Vignette Offender Age                                 | 272   | 14.51 (1.71) | .266**| 1.00    |       |       |
| 3 - Chance of Rehabilitation                              | 269   | 3.86 (.76)   | -.321**| -.022  | 1.00  |       |
| 4 - Threat to Society                                     | 270   | 3.10 (2.70)  | .142* | .051    | -.344**| 1.00  |

* p < .05, ** p < .001

Prosecutorial preference for exclusion was significantly related to vignette offender age, perceived chance of rehabilitation, and perceived threat to society. Specifically, prosecutorial preference is positively related to both the offender's age and the degree to which prosecutors think the juvenile poses a future threat
to society. Further, preference for exclusion is negatively related to the degree to which prosecutors believe the juvenile can be rehabilitated.

T-tests were used to test the effects of gender, history of abuse, and family support on prosecutorial preference for exclusion. As shown in Table 4.6, there was no significant difference in prosecutorial preference for transferring males versus females. Further, there was no significant difference in prosecutorial preference for exclusion for those youth who had an established history of family abuse and those who did not. No significant differences in preference for exclusion were detected for those juveniles whose families were willing and able to participate in any special requirements imposed by the court.

Table 4.6 - *T*-test for Dichotomous Variables by Likelihood of Transfer Recommendation

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Mean Likelihood of Transfer Recommendation</th>
<th>t value</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vignette Offender Gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>21.96</td>
<td>-.074</td>
<td>.941</td>
</tr>
<tr>
<td>Male</td>
<td>22.23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior History of Abuse</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Prior History of Abuse</td>
<td>19.36</td>
<td>-1.446</td>
<td>.149</td>
</tr>
<tr>
<td>Prior History of Abuse</td>
<td>24.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Support and Participation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>22.21</td>
<td>.055</td>
<td>.957</td>
</tr>
<tr>
<td>Yes</td>
<td>22.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>History of Prior Juvenile Commitments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>18.73</td>
<td>-2.362</td>
<td>.019</td>
</tr>
<tr>
<td>Yes</td>
<td>27.46</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
A *t* test was also used to test the effect of prior commitment record on prosecutorial preference for exclusion (see Table 4.6), revealing a significant difference in preference for exclusion between the two histories. On average, preference for exclusion was about nine percentage points higher for juveniles who had a prior juvenile commitment.

Prosecutorial preference for exclusion was analyzed on five additional variables using One-Way Analysis of Variance (ANOVA). The results of the analysis are provided in Table 4.7.

A one-way ANOVA revealed no significant differences in prosecutorial preference for exclusion across the three levels of socio-economic status for the juvenile described in the vignette (lower-income family, middle-income family, or upper-income family). Further, no significant differences were found to exist in preference for exclusion across the three levels of youth’s maturity (youth is less mature than same-age peers, youth’s maturity is appropriate to age, or youth is more mature than same-age peers).

ANOVA revealed a significant difference in prosecutorial preference for exclusion across the six levels of offense type. To further assess the differences among the six levels of offense type (battery, assault, breaking and entering, auto theft, marijuana possession, and crack cocaine possession) on the main effect for prosecutorial preference, the Scheffe post hoc procedure was performed. The results indicate that prosecutorial preference for exclusion for battery offenses differs significantly from breaking and entering (*p* = .008), auto theft (*p* = .000), marijuana possession (*p* = .015), and crack cocaine possession
Prosecutorial preference for exclusion for battery did not significantly differ from assault offenses \( (p = .087) \), and there were no other significant differences among the theft, drug, or assault offenses.

Table 4.7 - One-Way Analysis of Variance for Prosecutorial Likelihood of Transfer Recommendation by Independent Variables

<table>
<thead>
<tr>
<th>Correlate</th>
<th>Likelihood of Transfer Recommendation</th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>F</th>
<th>Sig</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Offense Type</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Battery</td>
<td></td>
<td>44.18</td>
<td>37.88</td>
<td>7.613</td>
<td>.000</td>
</tr>
<tr>
<td>Assault</td>
<td></td>
<td>25.78</td>
<td>31.67</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breaking and entering</td>
<td></td>
<td>20.37</td>
<td>28.08</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auto theft</td>
<td></td>
<td>12.23</td>
<td>20.78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana possession</td>
<td></td>
<td>20.52</td>
<td>26.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crack cocaine possession</td>
<td></td>
<td>9.87</td>
<td>18.23</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Prior Offenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No prior adjudication</td>
<td></td>
<td>9.39</td>
<td>21.00</td>
<td>10.880</td>
<td>.000</td>
</tr>
<tr>
<td>One prior adjudication</td>
<td></td>
<td>20.79</td>
<td>30.27</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Three prior adjudications</td>
<td></td>
<td>30.79</td>
<td>30.94</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Ethnicity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td></td>
<td>18.72</td>
<td>28.63</td>
<td>5.697</td>
<td>.004</td>
</tr>
<tr>
<td>Black</td>
<td></td>
<td>17.17</td>
<td>25.83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td></td>
<td>30.92</td>
<td>32.86</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Maturity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>More mature than same-age peers</td>
<td></td>
<td>19.52</td>
<td>27.52</td>
<td>2.323</td>
<td>.100</td>
</tr>
<tr>
<td>Maturity appropriate to age</td>
<td></td>
<td>27.84</td>
<td>33.99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less mature than same-age peers</td>
<td></td>
<td>19.40</td>
<td>27.21</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upper-income family</td>
<td></td>
<td>18.06</td>
<td>28.05</td>
<td>1.273</td>
<td>.282</td>
</tr>
<tr>
<td>Middle-income family</td>
<td></td>
<td>23.00</td>
<td>29.86</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower-income family</td>
<td></td>
<td>24.79</td>
<td>30.96</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ANOVA revealed a significant difference in prosecutorial preference for exclusion by history of prior offenses (no priors, one prior, three priors). Post-hoc
analysis indicates significant differences in prosecutorial preference for exclusion for youth with three priors from youths with no priors (, p = .000) and one prior (p = .044). The chances a prosecutor would want to exclude a youth from the juvenile court were not significantly different when youths with one offense were compared to those with no prior offenses.

Prosecutorial preference for exclusion by ethnicity was also analyzed using one-way ANOVA. Results indicate a significant difference in preference for exclusion by ethnicity. To further assess the differences across race, post hoc procedures were employed. Scheffe analysis indicates that prosecutorial preference for exclusion differs significantly for Hispanic youth from white youth (p = .019) and black youth (p = .011), but preference for transferring whites versus blacks was not significantly different.

**Determinants of Juvenile Transfer**

A multiple regression analysis was performed between likelihood of transfer and the independent variables that the bivariate analyses had revealed to be significantly related to preference for exclusion: offense type, age of juvenile, presence of prior offenses, severity of offense, prior commitments, ethnicity of juvenile, threat to society score, likelihood of rehabilitation score, ethnicity of respondent, age of respondent, number of years as a prosecutor, respondent's gender, and whether the respondent has ever been involved in making a transfer decision. Assumptions of regression were tested using normal
probability plots of residuals as well as scatter diagrams of residuals by predicted residuals. No violations of regression assumptions were detected.

Regression analysis revealed that the model significantly predicated likelihood of juvenile transfer, $F (13, 242) = 10.924, p < .001$. $R^2$ for the model was .370, and adjusted was $R^2 .336$. Table 4.8 provides the unstandardized regression coefficients (B) and standardized coefficients ($\beta$).
Table 4.8 - Regression Model for Prosecutorial Preference for Juvenile Transfer

<table>
<thead>
<tr>
<th>Predictor Variable</th>
<th>Coding</th>
<th>B Coefficient</th>
<th>β</th>
<th>t</th>
<th>Sig.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age of Juvenile</td>
<td>4.377</td>
<td>.255</td>
<td>4.913</td>
<td>.000</td>
<td></td>
</tr>
<tr>
<td>Threat to Society Score</td>
<td>6.313</td>
<td>.244</td>
<td>3.886</td>
<td>.000</td>
<td></td>
</tr>
<tr>
<td>Presence of Violent Offense</td>
<td>1 = Violent 0 = Non Violent</td>
<td>10.927</td>
<td>.173</td>
<td>3.048</td>
<td>.003</td>
</tr>
<tr>
<td>Ethnicity of Juvenile</td>
<td>1 = Hispanic 0 = Non Hispanic</td>
<td>9.798</td>
<td>.151</td>
<td>2.867</td>
<td>.005</td>
</tr>
<tr>
<td>Presence of Prior Adjudications</td>
<td>3.620</td>
<td>.146</td>
<td>2.496</td>
<td>.013</td>
<td></td>
</tr>
<tr>
<td>Likelihood of Rehabilitation Score</td>
<td>-4.922</td>
<td>-.128</td>
<td>-2.221</td>
<td>.027</td>
<td></td>
</tr>
<tr>
<td>Severity of Offense</td>
<td>1 = More Severe 0 = Less Severe</td>
<td>6.170</td>
<td>.102</td>
<td>1.873</td>
<td>.062</td>
</tr>
<tr>
<td>Prior Commitments</td>
<td>1 = Priors 0 = No Priors</td>
<td>.307</td>
<td>.005</td>
<td>.090</td>
<td>.928</td>
</tr>
<tr>
<td>Years as a Prosecutor</td>
<td>.415</td>
<td>.122</td>
<td>1.433</td>
<td>.153</td>
<td></td>
</tr>
<tr>
<td>Respondent's Age</td>
<td>-.301</td>
<td>-.112</td>
<td>-1.401</td>
<td>.163</td>
<td></td>
</tr>
<tr>
<td>Respondent's Ethnicity</td>
<td>1 = White 0 = NonWhite</td>
<td>-4.801</td>
<td>-.052</td>
<td>-.969</td>
<td>.334</td>
</tr>
<tr>
<td>Respondent's Gender</td>
<td>1 = Male 0 = Female</td>
<td>-.254</td>
<td>-.004</td>
<td>-.076</td>
<td>.939</td>
</tr>
<tr>
<td>Ever Been Involvement in Transfer Decision</td>
<td>1 = Yes 0 = No</td>
<td>-.182</td>
<td>-.003</td>
<td>-.052</td>
<td>.959</td>
</tr>
</tbody>
</table>
Six variables contributed significantly to prosecutorial preference for exclusion. Most important in the model was in the individual effect of the age of the juvenile. Prosecutorial preference for exclusion rose a predicted 4.4 percentage points for each year of increase in the juvenile’s age. Perceived threat to society was the second most important predictor of prosecutorial preference for transfer; the greater the perceived threat to society, the more likely a prosecutor would prefer transfer to the adult court. For every point higher a juvenile was scored on the five-point threat scale, prosecutorial preference for exclusion rose by 6.3 percentage points. The presence of a violent offense was also a significant predictor of prosecutorial preference. Prosecutorial preference for transfer to the adult court was nearly 11 percentage points higher for youth who were accused of violent offenses (i.e., assault or battery) than for those facing other charges.

The juvenile’s ethnicity also contributed significantly to explaining variations in the preference to exclude a juvenile to the adult court. Preference for transfer to the adult court was 9.8 percentage points higher among prosecutors when they considered a Hispanic rather than a Non-Hispanic youth. Further, the standardized regression coefficient suggests that the ethnicity of the juvenile explained approximately fifteen percent of the variance in prosecutorial preference for juvenile transfer. The presence of a prior offense was also a significant predictor of prosecutorial preference for exclusion. Those juveniles who had prior adjudications were somewhat, though not dramatically, more likely to be recommended for transfer to the adult court. Finally, the perceived
likelihood of rehabilitation contributed to the preference for transfer to the adult court. This negative relationship indicates that prosecutors are less likely to recommend transfer to the adult court for juveniles who they believe are more amenable to treatment. The severity of the vignette offense was not significant in the model at explaining prosecutorial preference for transfer to the adult court.

Prosecutors’ demographics were also included in the regression model. As seen in Table 4.8, none of the prosecutors’ characteristics were significant in the model. Thus, there is no evidence of particular kinds of prosecutors being more or less in favor of transfer to the adult court.

The overall model explains over one-third of the variation in prosecutorial preference for exclusion. While this model explains a moderate amount of variation in the decision to transfer juveniles to the adult court, the fact that a majority of the variation remains unexplained suggests a question for further exploration: What other information would prosecutors use to ultimately make this transfer decision?

Other Factors in Transfer Decisions

Prosecutors were asked to report any additional information, above and beyond that reported in the vignette, would have helped them to make the transfer decision. Most of the respondents (n = 211) provided further insight into factors that influence the decision to transfer a juvenile to the adult court. The two most important factors identified by prosecutors were the nature of the current offense and the nature of any prior offenses.
Nature of Current Offense

Repeatedly, prosecutors indicated that further detail on the nature of the current offense would be helpful in making a transfer determination. For example, if the vignette included a violent crime (battery or assault), prosecutors wanted to know more detail on the events leading up to the offense, the location of the offense (e.g., did offense occur on school property or in the community), and the relationship between the victim and the offender. In vignettes including property offenses, prosecutors wanted greater details on the type of property that was stolen (e.g., guns or clothing). For auto theft property offenses, prosecutors wanted greater detail as to how the auto was stolen. For example, did the offender steal car keys or was the automobile "hot-wired." Prosecutors also indicated that they wanted additional information on the degree of property damage. For drug offenses, many prosecutors indicated concern with how and where the drugs were seized. Across all types of offenses, prosecutors wanted details on the level of sophistication surrounding the crime, whether the offender acted alone or in collusion with other juveniles, and whether there was any indication of premeditation.

Further, prosecutors indicated that input from other criminal justice professionals would be helpful in making the transfer decision regarding the nature of the present offense. Respondents indicated that law enforcement could be a useful source of information when considering transfer. Specifically, prosecutors indicated a need to know whether the juvenile was cooperative with law enforcement and if the juvenile had admitted guilt to law enforcement. The
Department of Juvenile Justice (DJJ) was also mentioned as a criminal justice resource that would be useful in making in the transfer decision. Prosecutors indicated that input from DJJ would be helpful as well as any counselor input.

**Nature of Prior Offenses**

The nature of the juvenile's prior involvement in criminal activity was another consideration provided by prosecutors. Prosecutors wanted further detail on the nature of the prior offenses (e.g., violent, drug, or property), the age that the criminal activity was known to begin, whether the juvenile had a history of weapons or violent offenses, and the number of prior arrests (regardless of whether they resulted in a juvenile adjudication). Prosecutors also indicated that the time intervals between criminal justice contacts might be helpful in making the transfer decision. Further, respondents indicated a need to identify whether there was a history of escalating behaviors. For example, if the juvenile began with relatively minor offenses and graduated to more serious offenses, this would weigh heavily on the prosecutor's decision to transfer. This was of particular concern if there was a pattern of violent offenses and if the violent behavior was escalating.

Prosecutors also indicated that prior performance and compliance in the criminal justice system would be helpful in making transfer decisions. Prosecutors wanted to know if the juvenile contested any prior convictions and the level of compliance with any prior sanctions. Specifically, respondents wanted to know how the juvenile performed while under DJJ supervision.
Prior Commitments

In vignettes where the juvenile had a prior commitment to a juvenile facility, prosecutors wanted additional information on the type of facility to which the juvenile was committed. Prosecutors indicated that the level of the commitment facility could influence their transfer decisions. Further, respondents wanted additional details on the length of time from commitments to the current offense. Prosecutors wanted to know if the juvenile was currently on some form of juvenile supervision. Finally, prosecutors wanted additional information on the types of services that were previously offered to the juvenile offender.

Victim Consideration

Prosecutors listed several victim considerations as being influential in making the transfer decision. The age of the victim as well as victim, or victim's family, input would be important components in the decision to transfer. Respondents also wanted additional information on the relationship between the victim and offender (e.g., strangers or classmates).

Educational Factors

Prosecutors identified educational factors as being important considerations for transfer decisions. Specifically, respondents wanted to know whether the juvenile attended school. If the juvenile did regularly attend school, prosecutors wanted to know more information on the juvenile’s grades as well as his or her behavior at school. Respondents also indicated a need to know whether the juvenile was involved with any extra-curricular activities such as organized sports. Finally, prosecutors indicated that input from the educational
professionals with regular contact with the juvenile might be helpful. For example, respondents indicated they wanted to know if the juvenile had any teacher or educational support.

**Family Issues**

Prosecutors cited the family environment as being relevant in making transfer decisions. Respondents wanted additional information on the parents and any siblings in the home. For example, prosecutors wanted to know whether the parents or siblings in the home had any criminal history, particularly for violent offenses, and whether the family had any history of contacts with the Department of Children and Families. Respondents wanted to ensure that the family could provide adequate supervision of the juvenile. For example, several prosecutors wanted to know if the juvenile could benefit from a treatment facility rather than continue to reside in the family environment.

If the vignette provided a history of physical abuse in the home, prosecutors wanted additional information on the type, extent, and duration of the abuse. The overall consideration regarding family factors was whether the parent(s) could provide a safe and stable home environment for the juvenile. Prosecutors indicated a desire for additional information on the immediate neighborhood as well.

**Other Juvenile Issues**

Prosecutors also listed other important considerations when making the decision to transfer a juvenile to the adult court. They wanted to know if the juvenile was known to be in a gang or to affiliate with known gang members.
They wanted to know if the juvenile had a history of drug or alcohol use or abuse. The attitude of the juvenile toward society and the community was well as their attitude in court may also influence a prosecutor's decision to transfer. For example, if the juvenile seems remorseful and willing to change or is willing to cooperate in other prosecutions (e.g., identifying drug sources), some prosecutors indicated they would be less inclined to push for juvenile transfer.

Prosecutors also identified psychological issues as important in their transfer decisions. Specifically, respondents want access to mental health histories, I.Q. tests, and psychological evaluations.

**Juvenile Transfer**

Finally, prosecutors provided some additional issues that may contribute to the decision to transfer juveniles to the adult court. Prosecutors indicated that the preference of the juvenile would determine whether a juvenile is transferred as an adult. For example, several prosecutors indicated that they would give the charged juvenile a choice: plead guilty and remain in the juvenile court or plead not guilty and have an adult trial. Another consideration was whether the juvenile court and the juvenile justice system had exhausted all possible remedies.

Prosecutors also indicated that the availability of an appropriate residential treatment facility might work to keep juveniles in the juvenile court. The respondents suggested that these commitment facilities might be able to provide the individualized services and programs necessary to protect society and ensure that juveniles do not return to the criminal justice system.
Finally, prosecutors identified plausible court sentences or sanctions being a determinant of juvenile transfer. The present study did not ask prosecutors about preferred sanctions or sentences that the juvenile in the vignettes should receive; yet, this concern is clearly a deciding factor when making the transfer decision. Several prosecutors identified the juvenile in their vignettes as being a threat to society. However, these same prosecutors indicated a reluctance to transfer the juvenile to the adult court. Ultimately, concern for public safety appeared to be the deciding factor. These prosecutors all reported that in the juvenile court system, the youth would be placed in an appropriate commitment facility. Respondents indicated that these same juveniles in the adult court, receiving adult sanctions, would merely receive probation with little or no supervision in the community and, therefore, would pose a greater threat to society.
CHAPTER 5: DISCUSSION

Introduction

Prosecutors are important and powerful in the criminal justice system, particularly because of their discretion (Davis, 1969, Walker, 1993). Not only do they have the power to act on behalf of the state, but they also have "negative power" (Davis, 1969, p. 188). Negative power refers to their ability to withhold prosecution (Davis, 1969). This negative and positive discretionary power is particularly important and relevant in the area of juvenile transfer to the adult court. Ultimately, prosecutors will determine the final charges, and in many instances, the court of jurisdiction for juvenile offenders. While there are several mechanisms in Florida by which a juvenile can be transferred to the adult court, each procedure is influenced by prosecutorial decision-making (Klein, 1998; Schiraldi, 1999).

The aim of this research was to address the limitations in the current research regarding juvenile transfer to the adult court. A survey instrument was sent to a random sample of 800 State Attorneys and Assistant State attorneys in Florida. This chapter discusses the findings from the current research, the policy implications of the research, and suggests important and necessary areas of future juvenile justice research. Further, limitations of the current study are presented.
Overview of Research Questions

To begin addressing the limitations in juvenile transfer research, four research questions were examined. Prosecutors were given a series of statements to assess their views on these concepts of juvenile transfer and the role of the juvenile court.

Support for Transfer and the Separate Juvenile Court

The first research question examined was to what extent do prosecutors support the option of transfer generally. Almost ninety-five percent of the respondents agreed or strongly agreed with this criminal justice option.

The second research question examined the extent to which prosecutors would favor abolishing the juvenile court, maintaining it as is with some youths being excluded or handling all juveniles in the juvenile court. Nearly two-thirds of the respondents strongly opposed the abolishing the juvenile court and most others were somewhat opposed. Less than five percent of the prosecutors studied favored trying all juveniles in the adult criminal court. This did not mean, however, that the respondents felt the juvenile court was right for all juvenile defendants. Rather, prosecutors agreed that most juveniles should be handled in the juvenile court, but that some juveniles should be transferred to the adult court. The responses indicate a relatively conservative position by prosecutors on the idea of transfer. While prosecutors are supportive of the idea of transfer generally, this support seems to be contingent on the specific crime and juvenile offender. Most wanted serious, violent youths to be handled by the adult court.
In short, the results revealed here suggest that prosecutors' preferences are largely consistent with current practices. They favor neither of the extreme positions that have been extended - complete abolishment of the juvenile court or full retention of all juveniles in the juvenile justice system. Instead, prosecutors support a system where some discretion can be exercised.

**Arguments For and Against Transfer**

The third research question examined the extent to which prosecutors agreed or disagreed with the arguments found in the literature for and against transfer. The majority of the arguments for transfer of juveniles to the adult court received support from Florida prosecutors. However, prosecutors were more reserved in their attitudes towards the arguments against transfer. The findings suggest that while prosecutors support transfer in general, their support is contingent upon the specific youth, criminal history, and nature of the current offense. Further, responses to the arguments against transfer would suggest that prosecutors are not as influenced by the items found in the arguments against transfer.

**Mechanisms of Transfer**

The final research question examined the extent to which prosecutors support or oppose the various mechanisms of transfer. Not surprisingly, the mechanism of transfer that received the strongest support was where prosecutors alone make the transfer decision. Further, most prosecutors did not
agree with any mechanism of juvenile transfer where the decision to transfer is
determined solely by the judiciary. Prosecutors did, however, give moderate
support to a mechanism of transfer in which prosecutors recommend transfer
and judges make the final decision.

**Overview of Hypotheses Tests**

Thirteen hypotheses were tested in this research. In order to test these
hypotheses, each prosecutor received a hypothetical case summary on a
juvenile offender. Prosecutors were then asked to rate or score the likelihood
that the current juvenile could be rehabilitated and the threat that the youth posed
to society. Finally, prosecutors were asked to provide the chance that they would
want to transfer that juvenile to the adult court. The following presents the
summary of the level of support for each of the hypotheses tested in this
research.

**Age of the Offender**

Hypothesis 1 predicted that prosecutorial preference for exclusion would
be positively related to the youth's age. A Pearson Correlation revealed a
significant difference between the age of the offender in the vignette and
prosecutorial preference for exclusion. Older juveniles were significantly more
likely to be recommended for transfer to the adult court ($r = .266, p < .001$). This
significant relationship was confirmed in regression analysis. The age of the
juvenile was one of the strongest predictors of prosecutorial preference for
exclusion. Based on the regression model prediction, the preference for excluding a seventeen year old youth was nearly 22 percentage points higher than for a twelve year old youth. The salience of the juvenile's age is consistent with past research showing that people generally favor harsher handling of older juveniles (Applegate & Davis, 2006; Moon, Wright, Cullen & Pealer, 2000; Vogel & Vogel, 2003).

**Maturity of Youth**

Hypothesis 2 predicted that prosecutorial preference for exclusion would be positively related to the perceived maturity of a youth. A One-way ANOVA was run to determine the relationship between maturity and likelihood of transfer. Analysis revealed no significant relationship between the juvenile's maturity and likelihood of transfer. Based on the bivariate analysis, maturity of youth was not included in the regression analysis.

**Likelihood of Rehabilitation**

Hypothesis 3 predicted that prosecutorial preference for exclusion would be negatively related to the perceived likelihood of rehabilitation. A Pearson Correlation revealed a significant inverse relationship between these two variables ($r = .321, p<.001$). That is, prosecutorial preference for exclusion was significantly lower for those juveniles who were viewed as being more amenable to rehabilitation. Similar results were seen in the regression analysis, where a one-point increase on the likelihood of rehabilitation scale produced a nearly five-
percentage point decrease in preference for transfer. Notably, the use of rehabilitation potential in decisions about transfer is consistent with legal mandates (Kent v. US; Fla Stat. §985.226).

**Presence of a Violent Offense**

Hypothesis 4 predicted that prosecutorial preference for exclusion would be positively related to the presence of a violent offense. A One-Way ANOVA was run to determine the relationship between offense type and preference for transfer. This bivariate analysis indicated that offense type was significantly related to prosecutorial preference for transfer ($F = 7.613$, $p<.001$). Post hoc analysis revealed that preference for exclusion was significantly different for cases in which the offense was a violent crime. Based on these analyses, this variable was recoded into a dichotomous variable ($1 =$ violent offense, $0 =$ non-violent offense). This recoded variable was entered into the regression. Results indicated a significant increase in preference for transfer when the juvenile was accused of a violent offense.

These results indicate that prosecutorial preferences regarding what offenses are most deserving of transfer to the adult court are more or less in line with public views. Prior research has indicated that the public favors transfer of juveniles that commit serious, violent crimes (Bouley & Wells, 2001; King-Davis et al., 2003; Schwartz, 1992; and Wu, 2000).
Severity of Offense

Hypothesis 5 predicted that prosecutorial preference for exclusion would be positively related to the severity of the offense charged. In order to test this hypothesis, a new dichotomous variable was created for offense severity (1 = more severe, 0 = less severe). This new variable was entered into the regression analysis. With all other variables in the regression model held constant, severity of offense was not a significant predictor of prosecutorial preference for exclusion. Thus, Hypothesis 5 was not supported by the data.

Threat to Society

Hypothesis 6 predicted that prosecutorial preference for exclusion would be greater when the youth was perceived as a threat to society. A Pearson Correlation was run to examine the relationship between these two variables. Results indicated a significant, moderate relationship ($r = .344$, $p<.001$). Prosecutorial preference for exclusion was significantly higher for those youths that were perceived as being a greater threat to society. Further regression analysis yielded similar results. The threat to society was significant in the regression model and explained nearly one-quarter of the variance in preference for transfer. Prosecutors' personal preferences, therefore, support statutes and case law that require consideration of dangerousness in making transfer decisions (Kent v. US; Fla. Stat. §985.226).
Prior Record of Adjudication

Hypothesis 7 predicted that prosecutorial preference for exclusion would be greater for youth with a record of prior adjudications in the juvenile court. A One-Way Anova was run to examine the relationship between prior adjudications and prosecutorial preference for transfer. Analysis revealed a significant relationship between prior offenses and transfer. Specifically, juveniles having one or three prior adjudications were significantly more likely to be preferred for transfer to the adult court compared to those with no priors. Further, juveniles with three adjudications were significantly more likely than were juveniles with one prior to be transferred to the adult court. To further examine the impact of prior adjudications on prosecutorial preference for transfer, the present variable was recoded into a continuous variable (0, 1, and 3 priors). Prior adjudications was significant in the regression model, explaining approximately 15% of the variance in preference for transfer.

Prior Commitment Record

Hypothesis 8 predicted that prosecutorial preference for exclusion would be positively related to prior commitment to a residential facility. A t-test was utilized to examine the bivariate relationship between prior commitments and preference for transfer to the adult court. Results indicated a significant difference for prosecutorial preference for transfer for juveniles with a history of one prior commitment to a residential facility (p<.019). Yet, when controlling for all other variables in the regression, prior commitments was not significant in
explaining the variance in the dependent variable. Thus, Hypothesis 8 was not supported.

**Family Support**

Hypothesis 9 predicted that prosecutorial preference for exclusion would be greater for youths whose families were not supportive than for youths with supportive families. A t-test revealed no significant relationship between family support and preference for transfer to the adult court. It should be noted, however, that as discussed in Chapter 4, prosecutors often mentioned other family issues as important considerations in transfer. For example, prosecutors wanted additional information on criminal history on family members.

**Ethnicity**

Hypothesis 10 predicted that prosecutorial preference for exclusion would be greater for minority youth than for non-minority youth. A One-Way ANOVA was run to examine the relationship between ethnicity and preference for transfer. Analysis revealed a significant relationship between ethnicity and prosecutorial preference for transfer. However, post-hoc analysis revealed that this significant relationship did not apply to all minorities. Preference for transfer was higher for Hispanic juveniles, but was not significantly different between black and white youths. Based on the bivariate analysis, ethnicity was recoded into a dichotomous variable for entry into the multiple regression (1 = Hispanic, 0 = Non-Hispanic). Ethnicity was significant in the regression model, where, net of
the other characteristics in the model, being Hispanic increased preference for transfer by more than nine percentage points. Thus, the hypothesis is only partially supported. The condition of being a minority was not uniformly significant, but the condition of being Hispanic was supported.

**Gender**

Hypothesis 11 predicted that prosecutorial preference for exclusion would be greater for male youth than for female youth. A t-test was run to examine this relationship. Analysis indicated no significant relationship between gender and prosecutorial preference for transfer. Thus, gender is not a significant predictor of preference for exclusion.

**History of Family Abuse**

Hypothesis 12 predicted that prosecutorial preference for exclusion would be greater for youth that have not been abused than for those who have. A t-test was run to examine the relationship between history of abuse by a family member and prosecutorial preference for transfer. While analysis revealed no significant relationship between abuse and preference for transfer, prosecutors often indicated a desire to have more information where history of abuse was present. For example, respondents often wanted to know greater detail on the duration and nature of the abuse. Thus, while the hypothesis was not supported, some prosecutors’ open-ended responses indicated that this might contribute to
the overall decision to seek more individualized treatment options in the juvenile court.

**Socio-Economic Status**

Hypothesis 13 predicted that prosecutorial preference for exclusion would be negatively related to socio-economic status. One-Way ANOVA indicated that while the mean of preference for transfer was lower for upper-income juveniles, this relationship was not significantly different. Thus, Hypothesis 13 was not supported by the data.

**Policy Implications and Recommendations**

Based on the findings of the current research several important areas of juvenile transfer policy must be considered. As addressed in Chapter 2, prosecutors have a great deal of discretion in juvenile transfer. They ultimately have the authority to determine the charges for which the juvenile will stand trial and, as provided in Florida statutes, have considerable discretion in determining the court of jurisdiction for this criminal process. Because of this power, it is imperative to gain a better understanding of prosecutors’ views on the role of the juvenile court as well as the process of juvenile transfer. The research questions in this dissertation were designed to better understand their perspectives. Generally, prosecutors support the idea of transfer of juveniles to the adult court. However, their responses to the items addressing the research questions yield several important policy considerations.
First, prosecutors appear to support transfer in isolated circumstances. Prosecutors seem to be somewhat restrained in their support for transfer, supporting transfer in those isolated circumstances where the juvenile's criminal history or current offense warrants this process. This restraint may be fueled by the recognition that transfer to the adult court can have significant consequences for the transferred juvenile. Further, they disagreed with the notion of abolishing the juvenile court, indicating their recognition of the value of this separate court. Second, and not surprisingly, prosecutors strongly support prosecutorial direct file as a mechanism of transfer. However, they also support a process by which prosecutors make a recommendation for transfer and judges make the final determination. These responses also indicate some degree of restraint on their discretionary power to transfer a juvenile to the adult court.

The vignette portion of the survey also yielded some important policy considerations. The preference for transfer to the adult court ($M = 22.11$) was consistent with the responses to the items addressing the research questions. That is, most prosecutors were quite conservative in their estimates of the chance that they would want to transfer the youth described in the vignette. Most important in these decisions were the age of the youth, the potential threat to society, and the presence of a violent offense. The fact that the age of the youth was a significant predictor in the preference for transfer may reflect two considerations. First, prosecutors may attribute other characteristics to a youth when reading the age. For example, an older youth may be associated with
greater maturity\textsuperscript{27}, greater accountability, or greater criminal sophistication. The long-standing justification for a separate juvenile justice system is the relative immaturity and diminished culpability of most juveniles (Bernard, 1992). Second, the results reported here may reflect Bishop et al.'s (1989) finding that prosecutors prefer to transfer older juveniles because they realize such youths will soon age out of the juvenile court jurisdiction. Transfer to the adult system may allow for much longer terms of supervision by justice agencies.

Most troubling in the results is the role of ethnicity in the preference for transfer. Ethnicity explained fifteen percent of the variance in prosecutorial preference for transfer. Hispanic youths were significantly more likely to be preferred for transfer than were whites or blacks. These findings are not consistent with Florida's rate of waiver of youth by race presented in Chapter 2. The Florida data revealed that blacks, at a rate of nearly 3.5%, are more likely to be transferred to the adult court than whites. Further, the Florida data revealed that all other ethnicities (Asian and Other) are more likely to be transferred. Prior research has generated similar findings to Florida's data (Barnes & Franz, 1989; Podkopacz & Feld, 1995; Puzzanchera, 2000; Snyder et al., 2000; Thomas & Bilichick, 1985). However, not all prior research has isolated the ethnic effect on transfer, but rather the effect of race with Hispanics being categorized as white. The current research did test the effect of ethnicity and found a significant relationship to transfer preference. This relationship to preference for transfer is

\textsuperscript{27} While the maturity of the juvenile was not a significant predictor of preference for transfer, the initial bivariate test did approach significance ($F=2.343$, $p=.100$).
particularly important due to the large Hispanic population in Florida. This disparity in preference for transfer needs to be further explored.

Based on the findings, this research would make the following recommendations. First, the juvenile justice system should be maintained as it is, with most juvenile offenders being handled in the juvenile court and relatively few juvenile offenders being transferred to the adult court. All of the juveniles described in the vignettes were eligible under Florida law to be excluded from the juvenile court. Notably, however, the overall likelihood of transfer in the current study was 22%, suggesting that prosecutors seem to view exclusion as the appropriate response in only some cases. Moreover, they appeared to make rational decisions, removing the most serious, dangerous, and least likely to be rehabilitated offenders from the juvenile court. This approach helps preserve the nature of juvenile justice for the remainder of juvenile offenders. Further, there were no significant differences in prosecutorial preference for transfer by prosecutor characteristics, suggesting that there are no "camps" into which prosecutors are divided.

Second, the current structuring of prosecutorial discretion for juvenile transfer should remain. With the exception of ethnicity, decisions are based on appropriate, legal criteria. This suggests that, mostly, there is a legitimate foundation for the preference to transfer. However, further research must be conducted to gain a better understanding of the role that ethnicity plays in the process of juvenile transfer to the adult court.
Limitations of Current Research

There are limitations to the current research that must be acknowledged when considering the findings and policy implications. First, the policy issues discussed are based solely on the observations of 272 State Attorneys and Assistant State Attorneys in Florida. Unique characteristics of Florida prosecutors as well as Florida law regarding transfer may limit the generalizability of the findings to prosecutors in other states.

Second, nonresponse error may have occurred. There were three instances where a large portion of an entire judicial district's prosecutors did not respond to the survey. While the pre-notice letter was intended to foster a mutual relationship between the researcher and State Attorney, as well as detail the importance of the current study, the reaction to the letter may have been counter-productive. In one judicial district, upon receiving the pre-notice letter, the State Attorney instructed prosecutors not to respond to the survey until he had time to review it. Unfortunately, all of the surveys were returned with a letter indicating that none of the prosecutors would be completing the survey.

While the initial phase of the study yielded a modest response rate, prosecutors informed me during the second phase that they had been instructed by their superiors not to complete and return the survey. In addition, several prosecutors contacted this researcher to indicate a general loathing of social science research in the juvenile justice field as well as to express suspicion for the current research goals. In these instances, the prosecutors were convinced of some sort of bias by this researcher against prosecutors and juvenile transfer.
While assured that this was not the case, many of these prosecutors could not be convinced of the value of their responses and the ultimate contribution of their efforts.

Finally, some prosecutors indicated that it would not be appropriate for them to complete the survey instrument. This group of non-respondents believed that they work at the pleasure of the State Attorney and should not express their own opinions, as they might be inconsistent with their State Attorney.

Unfortunately, the prosecutors described above may be important and different from those who responded to the survey, particularly if they make juvenile transfer decisions.

One final limitation concerns the survey instrument. Based on the open-ended questions, some additional, contextual detail could have provided greater insight into the factors that affect the decision to transfer juveniles to the adult court. Specifically, greater vignette detail regarding the nature of the prior offenses and the nature of the current offense were continually cited as being influential. Unfortunately, while this information was said to be important by prosecutors, the impact of this additional information is unknown.

**Future Research**

This research was implemented to gain a better understanding of the factors affecting the decision to transfer a juvenile to the adult court and prosecutors views on transfer. Based on the findings, it is recommended that several areas of future research be explored. First, this research should be
replicated in different states. Looking at data from other states, with laws similar to Florida's laws, may yield important information. Specifically, replication may provide greater insight on the issue of race. Second, additional research should be conducted utilizing an updated survey instrument. Specifically, additional information should be provided to prosecutors on the nature of the prior offenses as well as changes to the maturity variable. Further, each prosecutor should receive three vignettes - one for each offense category (violent crime, property crime, and drug crime. The current research indicated that the presence of a violent offense was a significant predictor of transfer preference. However, this finding is not consistent with what we know about Florida's rate of transfer by crime category. Drug offenses yielded a higher rate of transfer than did violent offenses as described in Chapter 2. Having prosecutors respond to three vignettes, each involving a different type of offense, would allow for examination of whether other factors differentially affect preferences for transfer within each crime type.

Finally, qualitative research should be employed to provide greater detail to the process of transfer of juvenile offenders to the adult court. Two methods are most appropriate. First, semi-structured interviews should be conducted with prosecutors in Florida who currently work in their respective Juvenile Divisions. This method would provide greater insight into how discretion is exercised and why the decisions are made. Prosecutors in the current study often indicated that the ultimate sentence or disposition possibilities for juveniles would be a critical factor in their decisions to transfer to the adult court. Interviews would
provide the forum to better understand the degree to which this issue, among other known predictors, contributes to the transfer process. Further, these interviews would allow the researcher to ask for greater details on issues of the process of transfer. Specifically, the researcher would be able to identify other social and political factors that may influence the prosecutors' decisions. Finally, these interviews would allow the researcher to further clarify who is making the transfer decision.

The second qualitative research approach is far less intrusive. The use of social artifacts could be an invaluable tool in better understanding transfer of juvenile offenders to the adult court. While state data provides quantitative information on the juveniles being transferred, accessing the casefiles of transferred juveniles could potentially provide other contextually important information that is not provided by the state or that can not be captured in a survey.

Conclusion

Discretion is a critical component of the criminal justice system. Throughout the system discretion is utilized by gatekeepers to ensure the continual criminal justice process. Without it, the system would be overtaxed and fail to function. This dissertation provides a modest empirical contribution to the area of juvenile transfer research. Specifically, this research contributes to our understanding of the factors affecting transfer of youth to the adult court as well
as a better perspective of the attitudes of prosecutors upon whose discretion we rely.

The hypotheses tests reveal that prosecutors are greatly influenced by the juvenile offender as well as the offense in making transfer decisions. These findings are consistent with their responses to the research question items, indicating that while transfer is viewed as an important criminal justice component, it should be used sparingly. At least from prosecutors, the future of the juvenile court is safe.
APPENDIX A: SURVEY CORRESPONDENCE
Prenotice Letter

June XX, 2004

State Attorney Name
State Attorneys Office
Nth Judicial District
City, State 30000

Dear State Attorney Name:

A few days from now, prosecutors within your judicial district will receive in the mail a request to fill out a brief questionnaire for an important research project being conducted by the University of Central Florida. These prosecutors were randomly selected from a list of Florida's State Attorneys and Assistant State Attorneys.

This questionnaire concerns the certification of juveniles to the adult court and the role of the juvenile court in Florida. We are asking prosecutors for their opinions regarding these issues. I am writing in advance because I am sure that you would like to be notified ahead of time of the correspondence between us and your attorneys. I am also writing in advance to ask you to support your prosecutors' participation in this study. Their intimate knowledge of the judicial system is invaluable. This is the first study to try to understand the certification process from the perspective of prosecutors.

Once this study has been completed, we will send you a copy of our findings, and we hope that you will share them with others who may be interested.

It is only with the help of you and your office that our research can be successful. Thank you for your time and consideration.

Sincerely,

Robin King Davis
Project Director
June XX, 2004

Dear Mr. _________ or Ms. ___________:

I am writing to ask for your help in a study being conducted by the University of Central Florida. You were one of several hundred state attorneys randomly selected to be included in this study. The objective of our study is to understand the process of certification of juveniles to the adult criminal justice system from the prosecutor's perspective. Regardless of your current position in the State Attorney's Office, we are asking for your participation. As a prosecutor in Florida, you have invaluable knowledge and insight into this issue.

Please fill out the enclosed questionnaire. Your answers are completely confidential and demographic information will be used for statistical purposes only. Also included is a self-addressed stamped envelope for your convenience once you have completed the survey. When you return your questionnaire, your name will be deleted from our mailing list and database and will not be connected to your responses in any way. Participation in this study is completely voluntary. However, I would like to stress the importance of your participation in this study. While previous studies have looked to rates of certification as a means to explain juvenile transfer, no study has surveyed state attorneys to understand their unique perspective and experience regarding this issue. If for some reason you choose not to participate in this study, please let me know by returning the blank questionnaire in the enclosed stamped envelope.

If you have any questions or comments about this study, I would be happy to speak with you. I can be reached at the address on this letterhead, by telephone at (407) 823-3739, or by e-mail at ro770882@pegasus.cc.ucf.edu.

Thank you for your participation and time.
Sincerely,

Robin King Davis
Project Director
Thank You/Reminder Post Card

Last week we mailed you Florida State Attorney Survey, seeking your views about the juvenile court and certification of youthful offenders. Your response is very important to us.

If you have already completed and returned the survey to us, please accept our sincere thanks. If not, please do so today. Participation in this study is voluntary, but because we sent the questionnaire to only a small but representative sample of State Attorneys, it is extremely important that you also be included in the study if the results are to accurately represent the views of prosecutors in Florida.

If by some chance you did not receive the questionnaire, or it got misplaced, please call right now (407-823-3739) and I will get another one in the mail to you immediately.

Sincerely,

Robin King Davis
Project Director
June xx, 2004

Dear Mr. _______ or Ms. ________:

About three weeks ago, I sent a questionnaire to you that asked for your views on the juvenile court and certification of youthful offenders. To the best of our knowledge it has not yet been returned.

The comments of the State Attorneys who have already responded include a wide variety of opinions about the juvenile court and certification of youthful offenders. We think the results will be useful to practitioners and researchers.

We are writing again because of the importance that your own views have for helping us to get accurate results. Although we sent questionnaires to prosecutors throughout the state, it's only by hearing from nearly everyone in the sample that we can be sure the results truly represent Florida State Attorneys.

A few prosecutors have contacted us to say that they should not have received the survey because they do not currently work in a position where they have any role in juvenile court or juvenile certification. As we have told them, this survey hopes to collect the opinions of all types of prosecutors - experienced and newer prosecutors, male and female, felony and misdemeanor attorneys, and those who play a role in certification as well as those who do not.

As we noted in our first letter, participation in this study is completely voluntary and greatly appreciated. To assure your privacy is maintained, a code number is written on the enclosed return envelope so that we may remove your name from our mailing list when you send back your survey. To protect your privacy, your name only appears on our mailing list and will not be associated with your answers in any way. In other words, you can be assured that your responses will be completely confidential.

Your views are very important to us. We hope that you will fill out and return the questionnaire soon. If you have any concerns or difficulties completing the survey, please call me at (407) 823-3739. If I am not in the office, please leave a message and I will return your call. Thank you again for taking your time to participate in our survey.

Sincerely,

Robin King Davis, M.CJ.
Project Director
Recently, we mailed you the Statewide Survey of Florida State Attorneys, seeking your views about the juvenile court and certification of youthful offenders. We are getting close to ending our data collection efforts and have yet to receive your completed survey.

We would greatly appreciate your participation in our research. If you would like another copy of the survey, please call (407-823-3739) or e-mail (ro770882@pegasus.cc.ucf.edu) me, and I will get another survey to you in the mail immediately. Thank you for your time and consideration.

Sincerely,

Robin King Davis
Project Director
APPENDIX B: SURVEY INSTRUMENT
Youthful Offenders in Court

Statewide Survey of Florida State Attorneys

by the

University of Central Florida
Please return completed surveys to:

Robin King Davis, Director of Survey Projects
University of Central Florida, Department of Criminal Justice and Legal Studies, PO Box 161600, Orlando, FL 32816
PART I. We would like to begin by asking for your thoughts about the role of the juvenile court. Below are several statements about the appropriate role and domain of the juvenile court. Some state attorneys would agree with them. Others would disagree. We would like to know what you think about the juvenile court.

Please indicate your response by circling your choice.

1. All youthful offenders age 17 and under should be adjudicated in a separate juvenile court, not in the adult court
   1 2 3 4 5

2. Most juvenile offenders should stay under the jurisdiction of the juvenile court
   1 2 3 4 5

3. In general, I support certifying some youths to the adult court
   1 2 3 4 5

4. Serious, violent youthful offenders should be certified to the adult court
   1 2 3 4 5

5. Certain juvenile offenders' sentences should continue in the adult criminal justice system after the youth reaches the age of majority
   1 2 3 4 5

6. The juvenile court should be abolished
   1 2 3 4 5

7. If a youth is tried in the adult court, his or her age should be used as a mitigating factor in sentencing decisions
   1 2 3 4 5

8. Some youths are beyond the rehabilitation capacities of the juvenile justice system
   1 2 3 4 5

9. For the protection of society, it is necessary to certify some youths to the adult court
   1 2 3 4 5

10. Some offenses are serious enough to warrant certification to the adult court
    1 2 3 4 5

11. Resources in the juvenile justice system are too scarce to warrant spending them on youthful offenders who are chronically delinquent
    1 2 3 4 5

12. Certifying certain youths to the adult court will deter other juveniles from committing crime
    1 2 3 4 5

13. Serious juvenile offenders have a significant negative influence on other youth in the juvenile justice system
    1 2 3 4 5

14. Chronic juvenile offenders have a significant negative influence on other youth in the juvenile justice system
    1 2 3 4 5

15. Protection of due process rights for juvenile offenders is more certain in the adult court
    1 2 3 4 5

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<tbody>
<tr>
<td>16.</td>
<td>Juvenile offenders get more individualized attention in the juvenile court compared to the adult court</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>17.</td>
<td>Transferring youths to the adult court may jeopardize their futures by having a criminal rather than a sealed record</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
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<td>18.</td>
<td>Juvenile offenders should not be exposed to adult offenders</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>19.</td>
<td>Juvenile offenders can not get the proper treatment and rehabilitative services they need in the adult system</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>20.</td>
<td>Juvenile offenders can be influenced to change easier than adult offenders</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>21.</td>
<td>Juvenile offenders do not need the same due process protections as adult offenders because the juvenile justice system is not adversarial</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>22.</td>
<td>Juvenile offenders are less responsible for their actions than adult offenders</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>23.</td>
<td>Juvenile offenders are less mature than adult offenders</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>24.</td>
<td>Judges alone should be responsible for making certification decisions</td>
<td>1</td>
<td>2</td>
<td>3</td>
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</tr>
<tr>
<td>25.</td>
<td>Prosecutors alone should be responsible for making certification decisions</td>
<td>1</td>
<td>2</td>
<td>3</td>
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</tr>
<tr>
<td>26.</td>
<td>Prosecutors should make the certification recommendation, but judges should make the final certification decision</td>
<td>1</td>
<td>2</td>
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<tr>
<td>27.</td>
<td>Judicial waiver promotes protections of youths’ due process rights</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>28.</td>
<td>Legislative certification takes away the subjective quality of certification</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
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<tr>
<td>29.</td>
<td>Judges are inconsistent in their certification decisions</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>30.</td>
<td>Judicial waiver is too subjective</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>31.</td>
<td>Judges are too hesitant to waive appropriate candidates for certification</td>
<td>1</td>
<td>2</td>
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<td>4</td>
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<tr>
<td>32.</td>
<td>Prosecutorial waiver is influenced by political decisions</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
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<tr>
<td>33.</td>
<td>Prosecutorial waiver leads to abuse of power</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
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<tr>
<td>34.</td>
<td>Statutory exclusions are too automatic</td>
<td>1</td>
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Please continue on the next page
PART II. We are nearly at the end of this survey, but would like to get your views on a specific case. Please read the following offender and offense description and answer the questions below.

OFFENDER-OFFENSE DESCRIPTION SHEET 428

GENDER: Male AGE: 16 ETHNICITY: Hispanic

CURRENT OFFENSE:
> The youth is accused of threatening to beat up a young girl unless she gave up her money. The victim gave up $20 and was not physically harmed

DELINQUENT HISTORY:
> No prior adjudications in the juvenile court
> No prior commitments to a state facility

SOCIAL HISTORY:
> No prior history of abuse by family members
> Middle-income family
> Family appears willing to participate in any special requirements imposed by the court
> Youth is more mature than same-age peers

Regardless of your current position or experience within the State Attorney's Office, we would like to know your opinion regarding the present offender and offense.

Please indicate the degree to which you agree or disagree with the following two statements.

35. Given the proper care and treatment, this youth can change for the better
36. This youth poses a significant threat to society

37. Regardless of what the law currently allows, we would like to know your own views on the best way to handle this juvenile's case.

Based on the information provided, what are the chances that you would want to certify this youth to the adult court? %

0% means the youth would stay in the juvenile court, and 100% means the youth would go to the adult court. You can also choose any number in between.

38. What, if any, other information would help you decide whether this youth should be certified to the adult court?

__________________________________________

please continue on the back of this page
PART III. Finally, we would like to ask you a few questions about yourself that will help us to interpret the results. We will use this information only to group you with others who are like you to see whether your answers are similar. This information will not be used to identify any individual respondent.

39. How old are you? __________

40. What race are you? (check one)
   - White
   - Asian or Pacific Islander
   - Black
   - American Indian
   - Hispanic
   - Other

41. What is your gender? (check one)
   - Male
   - Female

42. In what division of the State Attorney's Office do you currently work? (check one)
   - Felony
   - Misdemeanor
   - Other

43. Have you ever been involved in making a decision to certify a youth to the adult court? (check one)
   - Yes
   - No

44. To the best of your recollection, how many years and months have you been a prosecutor?
   Years ___________   Months ___________

45. To the best of your knowledge does your jurisdiction currently have a written policy that provides specific guidelines regarding which juveniles should be certified to the adult court? (check one)
   - Yes
   - No
   - I don’t know

Do you believe your jurisdiction needs a written policy specifying which juveniles should be certified to the adult court? (check one)
   - Yes, developed by the state attorney’s office
   - Yes, developed by the judiciary
   - Yes, developed by ______________________

Thank you for participating in this study.

Should you have any additional comments that you feel are important to better understanding certification to the adult court, please detail them on the back of the cover page or on a separate sheet.
PRINCIPAL INVESTIGATOR(S): Robin Davis

PROJECT TITLE: Transferring Juveniles to the Adult Court: A Statewide Study of Florida Prosecutors

[X] New project submission  [ ] Resubmission of lapsed project #
[ ] Continuing review of lapsed project #  [ ] Continuing review of #
[ ] Study expired  [ ] Initial submission was approved by expedited review
[ ] Initial submission was approved by full board review but continuing review can be expedited
[ ] Suspension of enrollment email sent to PI, entered on spreadsheet, administration notified

Chair
[X] Expedited Approval
   Dated: 21 April 2006
   Cite how qualifies for expedited review:
   minimal risk and #7

[ ] Exempt
   Dated:
   Cite how qualifies for exempt status:
   minimal risk and

[ ] Expiration
   Date: 20 April 2006

IRB Co-Chairs:
[ ] Waiver of documentation of consent approved
[ ] Waiver of consent approved

NOTES FROM IRB CHAIR (IF APPLICABLE): SENSITIVE INFORMATION.
clarify how researcher will know the name of the participant on the return to delete the name from data base. Clarify.

Need to re-submit all letters to waiver consent. All letters to process waiver of documented consent must have contact information for researcher and IRB. Also, to waive consent letter must say your completion and return of this study constitutes your informed consent. Also, clarify that return envelope was either coded or has their name in
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Fla. Stat. § 985.226

Fla. Stat. § 985.227


*In re Gault.* (387 U.S. 1)

*In re Winship.* (397 U.S. 358)


*Kent v. United States.* (383 U.S. 541)


McKeiver v. Pennsylvania. (403 U.S. 528)


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