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From Juvenile Court to the Adult Criminal Justice System: An Examination of Judicial Waiver

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The University of Southern Mississippi
FROM JUVENILE COURT TO THE ADULT CRIMINAL JUSTICE SYSTEM:
AN EXAMINATION OF JUDICIAL WAIVER

By

Sheri Lu Jenkins Cruz

Abstract of a Dissertation
Submitted to the Graduate Studies Office
of The University of Southern Mississippi
in Partial Fulfillment of the Requirements
for the Degree of Doctor of Philosophy

December 2011

ABSTRACT

FROM JUVENILE COURT TO THE ADULT CRIMINAL JUSTICE SYSTEM:

AN EXAMINATION OF JUDICIAL WAIVER

By Sheri Lu Jenkins Cruz

December 2011

This project was concerned with how extra legal factors impact juvenile court judge's decisions to waive juveniles to the adult criminal court. This study had both a general and a specific purpose. Generally, it sought to identify and examine the perceptions of juvenile court judges regarding judicial waiver based on previous positions held and on the state in which the juvenile judge resides. Specifically, this study sought to examine the relationship between individual characteristics of juvenile court judges and their perceptions regarding judicial waiver. Based on the research questions, ten hypotheses were developed and tested. The population for this study consisted of all juvenile court judges and referees in Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah. Descriptive statistics were used to calculate the means, frequencies, and standard deviations for the demographic information collected from the participants in this study. The data was then analyzed using a Multivariate Analysis of Variance (MANOVA) and Multiple Linear Regression (MLR).

The researcher acknowledges that there are differences in the definitions for the words transfer and waiver; however, to reduce confusion, for the purposes of this study, the word waiver will be used for both.

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A Dissertation
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Approved:

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December 2011

DEDICATION

This work is dedicated to my parents, Robert (Bob) and Martha Jenkins, who listened all these years with patients and encouragement. Thank you for opening your home, your hearts, and your family tree.

To my heart and soul, Kristin and Cameron, I cannot begin to express the love, the joy, and the happiness that you have brought into my life. I love you!

And to those who are not here but continue to inspire me, William and Clarice Jenkins and John and Amelia Jones. You are forever in my heart.

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CHAPTER I

INTRODUCTION

Fifty years ago juvenile justice policy debates focused on issues concerning decriminalization of status offenses, due process for juveniles, deinstitutionalization, and diversion (Bernard, 1992; Howell, 1996; McCord, Widom & Crowell, 2001; Siegel & Welsh, 2009). Currently, juvenile justice policy debates are focused on the question of whether or not serious, violent, and chronic juvenile offenders should remain in the juvenile justice system or be transferred to the adult criminal justice system (Bernard, 1992; Howell, 1996).

Before the 1800s, the United States had no juvenile justice system (Elton & Roybal, 2003; Empey, 1978; Finestone, 1976; Houston & Barton, 2005; Howell, 1997; National Research Council Staff, 2000; Schwartz, 1989). Criminal cases involving juveniles were handled in adult criminal court (Finestone, 1976; Howell, 1997; Schwartz, 1989; Thornton & Voigt, 1992). Juveniles who were convicted of crimes were subject to the same sanctions as adults (Siegel & Welsh, 2009; Thornton & Voigt, 1992).

A separate juvenile justice system was established in the United States in 1899 with the formation of the nation's first juvenile court in Chicago, Illinois (Bernard, 1992; Fox, 1996; Houston & Barton, 2005; Howell, 1997; Ryerson, 1978; Siegel & Welsh, 2009; Schwartz, 1989). The goal of the new juvenile court was to divert juvenile offenders from the harsh punishments of the adult criminal court, and encourage rehabilitation based on the individual needs of the juvenile. This new juvenile court differed from the adult criminal court in several ways. First, the new juvenile court focused on the juvenile as a person in need of assistance, not on the act that brought him

or her before the court. In addition, the new juvenile court was set up as a civil or chancery court intended to serve the best interests of the juvenile offender as opposed to the adult criminal court which focused on the punishment of offenders. Because the new juvenile court was set up as a civil court the proceedings were informal with discretion left to the juvenile court judge. Procedural safeguards available to adults were thought to be unnecessary (Gold, 2007). Furthermore, juvenile court proceedings were closed to the public and juvenile records were to remain confidential. To further distinguish the differences between the new juvenile court and the adult criminal court the very terminology used was changed. Juveniles did not commit crimes, but acts of delinquency. They were not criminals, but delinquents. Juveniles were not arrested, they were taken into custody. They were not detained in jails, but detention centers and shelter care. The juvenile justice system does not have bail hearings, but detention hearings. Adjudicatory hearings take the place of trials. Juveniles are not found guilty, they are adjudicated delinquent. Juveniles do not plead guilty or not guilty, but rather true or not true. The sentencing phase of the adjudicatory hearing in juvenile court is called the disposition hearing. Juveniles are not punished, they are rehabilitated. They are not incarcerated in facilities and programs, but committed to, or placed in, facilities and programs. Finally, juveniles are not sent to prisons, but to training schools and reformatories. Parole is called aftercare (Sanborn & Salerno, 2005).

For the most part, the period between the establishment of the nation's first juvenile court in 1899 and the early 1960s was marked by little change in how juvenile delinquency was defined, or what activities constituted delinquent conduct. The juvenile justice system operated under the medical model (Taylor, Fritsch & Caeti, 2007), and the

goal of a juvenile proceeding was to cure a wayward juvenile. However, as the decades progressed juveniles became increasingly involved in more serious crimes.

In the 1960s, legal and public concern about juvenile delinquency took a sharp turn as delinquency rates rose to alarming levels. Not only were juveniles being arrested for the traditional minor property crimes, mischief, and status offenses, but also for murder, forcible rape, aggravated assault, and robbery (Cook & Laub, 1998; Sickmund, Stahl, Finnegan, Snyder, Poole & Butts, 1998). Alarming statistics helped foster the increasing fear of juveniles among adults. Some states responded with new policies whereby juveniles who posed a serious threat to the community would be treated as adults (McCord et al., 2001).

By the early 1970s, many states had adopted legislation that redefined the noncriminal behavior of juveniles. New statutes were written to clarify the distinctions between status offenses, dependency, and neglect. In 1976, the National Advisory Committee of Criminal Justice Standards and Goals recommended that status offenses be limited to only five specific categories: school truancy, repeated disregard for or misuse of lawful parental authority, repeated running away from home, repeated use of intoxicating beverages, and delinquent acts committed by a juvenile younger than ten years of age (McCord et al., 2001). Similarly, the International Association of Chiefs of Police (IACP) suggested that the term juvenile delinquent be reserved for juveniles who commit criminal offenses and who are in need of supervision or treatment (Armstrong, 1977; Chesney-Lind, 1970; McCord et al., 2001). The IACP suggested that the term unruly child be applied to juveniles who commit status offenses, are ungovernable or

habitually truant from school, and are in need of treatment for those problems (Armstrong, 1977; Chesney-Lind, 1970; McCord et al., 2001).

In the late 1980s and early 1990s, the dramatic rise in juvenile violence generated considerable fear and concern among lawmakers, educators, law enforcement, and the general public, and led to policy changes by federal, state, and local governments (Bennett, Dilulio & Walters, 1996; Blumstein, 1995; Blumstein & Cork, 1996; Blumstein & Rosenfeld, 1998; Fagan & Wilkinson, 1998; Griffin, Addie, Adams & Firestine, 2011; Sickmund, Snyder & Poe-Yamagata, 1997; Zimring, 1998). For example, juvenile violent crime arrest rates increased by more than 60% from 1988 to 1994 (Snyder, 1998), and the murder arrest rate for juveniles rose by more than 100% over this same period (Cook & Laub, 1998; Zimring, 1998). In addition to the rise in violent juvenile crime rates, violent victimization of juveniles was also on the rise. It appeared that juveniles were not only becoming more involved in violent acts, but were also suffering at the hands of their peers. Serious and violent juvenile delinquents started to be labeled “super-predators” (Dilulio, 1995, p. 23), because they were thought to be more dangerous than previous generations of juvenile offenders (Bennett, et al., 1996; Dilulio, 1995),.

As a result of growing public concern about juvenile violence, legislatures and juvenile courts responded with a number of get tough policies and strategies (Taylor, Fritsch & Caeti, 2002). The rise in public concern that led to these get tough policies was fueled by what Samuel Walker (1994), in his book, *Sense and Nonsense about Crime and Drugs A Policy Guide*, called celebrated cases. Walker (1994) proposed a model of justice that divides the criminal justice process into four layers; the layers of a wedding cake, based on the seriousness and notoriety of the crime.

The first layer of Walker's (1994) wedding cake model was made up of the celebrated cases involving the wealthy, the famous, and those cases that were widely reported in the media (Walker, 1994). Cases in the first layer of the wedding cake model usually received the entire muster of criminal justice procedures: competent defense attorneys, expert witnesses, jury trials, and elaborate appeals (Walker, 1994). The mainstream media focuses on level one cases, thus giving the general public the false impression that criminals are sober, intelligent people and victims are members of the upper class (Walker, 1994). The result is that public opinion regarding crime and victimization is formed on the basis of what happened in an atypical case.

The second layer of Walker's (1994) wedding cake model is made up of serious felonies: rape, robbery, and burglary. These crimes are placed on the second level because they are crimes committed by experienced offenders and are routine in our everyday society. The police, prosecutors, and judges all agree that these are serious crimes worthy of the full attention of the criminal justice system. Offenders who commit second layer offenses receive a jury trial and, if convicted, receive prison sentences.

The third layer of Walker's (1994) wedding cake model consists of less serious felonies committed by juveniles, first-time offenders, or involves people who knew each other and or were related. Criminal justice practitioners relegate these cases to the third level because they view them as less important and less deserving of attention. Third layer crimes are dealt with by dismissals, plea bargains, reduced charges, and probationary sentences.

The fourth and final layer of Walker's (1994) wedding cake model consists of millions of misdemeanors: disorderly conduct, shoplifting, public intoxication, etc... The

lower criminal courts handle these cases in assembly-line fashion. In this fourth level, few defendants exercise their constitutional rights because the delay would cost the defendant time and money. The typical penalty for level four crimes is a fine.

In the 1990s, the most popular approach in dealing with violent juvenile crime was for states to make it easier or to require the prosecution of juveniles as adults in criminal court (Griffin et al., 2011; Torbet, Gable, Hurst, Montgomery, Szymanski & Thomas, 1996). Although waiving juveniles to the adult criminal court actually has been in de facto existence since the early 1800s, it was reserved for small numbers of the most serious and violent juvenile offenders. Modern waiver laws sought to change and increase the use of this practice by reducing judicial discretion in juvenile court, enhancing prosecutorial power to file charges directly in adult court, and statutorily excluding certain offenses and offenders from the juvenile court jurisdiction. The underlying rationale was that greater use of juvenile waiver would boost accountability and punishment, and thus would reduce juvenile crime.

Juvenile crime rates have declined steadily since 1994; however, the high visibility of a select number of violent crimes by juveniles has caused public concern and legislative action (McCord et al., 2001; Synder, 2002). Some policymakers have claimed that the declines in juvenile crime rates are a result of the get tough policies and sanctions. Despite the questionable impact of harsher laws and penalties on juvenile offending, providing more severe punishments for serious and violent juvenile offenders continues to receive political and public support, and waiver laws enacted during the 1990s remain in place.

All states and the District of Columbia now use at least one of the three mechanisms that allow juveniles to be waived to the adult criminal justice system (Torbet & Szymanski, 1998; NCJFCJ, 2006). The procedures for waiver vary across states, but usually a combination of factors are considered: the seriousness of the offense, the need to protect the community, whether the offense was committed in an aggressive, violent, premeditated, or willful manner, whether the offense was against a person or property, the merit of the complaint, whether the juvenile's associates will be tried in adult criminal court, the juvenile's sophistication, maturity, record, and previous history, and the reasonable likelihood of rehabilitation (Griffin et al., 1998; NCJFCJ, 2006; Torbet & Szymanski, 1998).

Statement of the Problem

In 2007, nearly fourteen thousand (14,000) juveniles were waived to the adult criminal court (Griffin et al., 2011). Sending juveniles to the adult criminal justice system continues to be a significant mechanism for the increase in accountability for juvenile criminality. Adult time for adult crime legislation was originally enacted to address perceived increases in hard-core juvenile violence. The targets were to be juveniles who had committed violent crimes and repeat offenders who had exhausted the resources of the juvenile justice system. However, some research (Coalition for Juvenile Justice, 2005; NCJJ, 2004; Stahl, Sickmund, Finnegan, Snyder, Pool & Tierney, 1999) suggests that the vast majority of juveniles under the age of eighteen in the adult criminal justice system are non-violent property and drug offenders, many of them first-time offenders. This is particularly true in the states that have lowered the age at which juveniles exit the

juvenile court jurisdiction (Coalition for Juvenile Justice, 2005; NCJJ, 2004; Stahl et al., 1999).

While being waived to the adult criminal court is suitable for some juveniles, the criminality of many juveniles might be the result of factors beyond their control, and should be reconsidered. Risk factors for delinquency can be identified when studying individuals, environments, and communities.

For example, early developmental factors have been shown to be related to juvenile delinquency. Recent research suggests that juveniles who were not given proper prenatal and perinatal care become at risk for delinquency: exposure to drugs, low birth weight, and trauma (McCord et al., 2001). Also, studies suggest that poor language development and lack of empathy may be consequences of parental neglect (Finkelman, 1995; Fox, Long & Langlois, 1998; Rutter, 2006; Wolfe & Wekerle, 1993). A deficiency in language development places a child at risk for school difficulties, failures, and delinquency. In addition, juveniles who do not learn to recognize and control normal physically aggressive behavior at an early age or who are highly physically aggressive are at high risk of becoming involved in juvenile crime. This is also true for juveniles with conduct disorder, and oppositional defiant disorder. Moreover, juveniles who are a product of abusive parenting, poor parenting practices, disorganized families and neighborhood environments are also at high risk of becoming involved in juvenile crime (Henggeler, Melton, Brondino, Scherer & Hanley, 1997; Henggeler, Melton & Smith, 1992; Mulvey, Arthur & Ruppucci, 1993). Furthermore, during early adolescence, peers begin to take on increasing importance. Those who associate with delinquent companions are likely to increase their misbehavior when spending time with those companions. In

addition, contrary to their intentions, schools appear to foster problems among misbehaving children and adolescents through such common practices as tracking, grade retention, suspension, and expulsion. Finally, also contrary to their intentions, research has certainly documented discriminatory patterns throughout all stages of the juvenile justice system. The number of minority juvenile offenders compared with non-minority juvenile offenders waived to the adult criminal court raises the issue of racial discrimination. For example, data gathered from 1994 suggests that African-American juvenile offenders are more likely than non-minority juvenile offenders to be waived to the adult criminal court (Butts, 1997).

Numerous studies have examined the factors that increase the juvenile's likelihood of being waived. This process generally involves examining case files of juvenile offenders already waived to the adult criminal court. These types of studies obtain information on juvenile offenders' age, race, gender, type of crime committed, prior criminal history, and family structure. Although this information is important, and statistical analysis can be conducted to determine the statistical significance of individual variables, these types of studies do not inform a researcher as to how characteristics of juvenile court judges affect their perceptions of the factors they consider in their waiver decisions. Thus, researchers are losing a vital component, i.e. the perceptions of the juvenile court judge by using such methods.

Two questions formed the basis of this study. First, whether there is a difference in the belief about how judicial waiver affects juvenile crime and community safety based on prior position held, and on the state in which the juvenile court judge resides? Secondly, whether any of the following variables; race, age, gender, political party

affiliation, tenure on the bench, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's once and adult/always an adult provision are significantly related to the perceptions and sanctioning ideologies of juvenile court judges regarding judicial waiver.

Purpose of the Study

This study had both a general and a specific purpose. Generally, it sought to identify and examine the perceptions of juvenile court judges regarding judicial waiver based on their previous positions held and on the state in which the juvenile judge resides. This general purpose is framed in the following research question:

Is there a difference in the belief about how a judicial waiver affects juvenile crime and community safety based on prior position held, and on the state in which the juvenile court judge resides?

Specifically, this study sought to examine the relationship between individual characteristics of juvenile court judges and their perceptions regarding judicial waiver. In determining these relationships the analysis sought to answer the following question:

Whether race, age, gender, political party affiliation, tenure on the bench, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's once an adult/always an adult provision are significantly related to the perceptions of juvenile court judges regarding judicial waiver?

Hypotheses

Ho¹: There is a statistically significant difference in the belief about how a judicial waiver affects juvenile crime and community safety based on the previous

position held by the juvenile court judge and on the state in which the juvenile court judge resides.

Ho²: Whether race is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Ho³: Whether age is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Ho⁴: Whether gender is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Ho⁵: Whether political party affiliation is significantly related to the perceptions of juvenile court judge regarding judicial waivers?

Ho⁶: Whether tenure on the bench is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Ho⁷: Whether the way in which the judge acquired his or her position is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Ho⁸: Whether previous position prior to becoming a juvenile court judge is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Ho⁹: Whether jurisdiction (urban, suburban, and rural), is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Ho¹⁰: Whether a state's once an adult/always an adult provision is significantly related to the perceptions of juvenile court judges regarding judicial waivers?

Definitions

The following terms are used throughout this research study and are defined as follows using definitions found in any juvenile justice text/reader; however the researcher used Siegel & Welsh (2009), unless other wise noted. In addition, the researcher acknowledges that there are differences in the definitions for the words transfer and waiver; however, to reduce confusion, for the purposes of this study, the word waiver will be used for both.

1. *Adjudicatory Hearing*: The fact-finding phase wherein the juvenile court determines whether there is sufficient evidence to sustain the allegations in a petition (Siegel & Welsh, 2009).
2. *Aftercare*: Transitional assistance which follows commitment to juveniles to help juveniles adjust to community life; equivalent to adult parole (Siegel & Welsh, 2009).
3. *Best Interests of the Child*: Generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child (Child Welfare Information Gateway, 2011).
4. *Chancery Court*: The traditional name for a court of equity. Its jurisdiction included control over cases involving minors (Webster's New World Law Dictionary, 2010).
5. *Children's Aid Society*: Child saving organization that removed children from the streets of large cities and placed them with farm families on the prairie (Siegel & Welsh, 2009).

6. *Child Savers*: Nineteenth-century reformers who developed programs for troubled youth and influenced legislation creating the juvenile justice system (Siegel & Welsh, 2009).
7. *Deinstitutionalization*: Removing juveniles from adult jails and placing them in community based programs to avoid the stigma attached to these facilities (Siegel & Welsh, 2009).
8. *Detention*: Temporary placement of a child alleged to be delinquent who requires secure custody in physically restricting facilities pending court disposition or execution of a court order (Siegel & Welsh, 2009).
9. *Detention Hearing*: The sentencing stage of the juvenile proceedings. Its purpose is to provide a program of treatment, training, and rehabilitation (Webster's New World Law Dictionary, 2010).
10. *Discretion*: Use of personal decision making and choice in carrying out operations (Siegel & Welsh, 2009).
11. *Disposition*: For juvenile offenders, the equivalent of sentencing for adult offenders (Siegel & Welsh, 2009).
12. *Disposition Hearing*: The social service agency presents its case plan and recommendations for care of the child and treatment of the parents, including incarceration and counseling or other treatment (Siegel & Welsh, 2009).
13. *Diversion*: Official halting or suspending of a formal criminal or juvenile justice proceeding at any legally prescribed processing point after a recorded justice system entry, and referral of that person to a treatment or care program or a recommendation that the person be released (Siegel & Welsh, 2009).

14. *General Deterrence*: Crime control policies that depend on the fear of criminal penalties. The aim is to convince law violators that the pain outweighs the benefit of criminal activity (Siegel & Welsh, 2009).
15. *House of Refuge*: A care facility developed by the child savers to protect potential criminal youths by taking them off the street and providing a family-like environment (Siegel & Welsh, 2009).
16. *in loco parentis*: In the place of the parent. The rights given to social institutions that allows them to assume parental duties to care for juveniles (Siegel & Welsh, 2009).
17. *Juvenile Court Judge*: A judge elected or appointed to preside over juvenile cases (Siegel & Welsh, 2009).
18. *Office of Juvenile Justice and Delinquency Prevention (OJJDP)*: Branch of the United States Justice Department charged with shaping national juvenile justice policy through disbursement of federal aid and research funds (Siegel & Welsh, 2009).
19. *Orphan Trains*: The name for trains in which urban youths were sent west by the Children's Aid Society for adoption with local farm couples (Siegel & Welsh, 2009).
20. *parens patriae*: Power of the state to act on behalf of the child and provide care and protection equivalent to that of a parent (Siegel & Welsh, 2009).
21. *Paternalistic Family*: A family style wherein the father is the final authority on all family matters and exercises complete control over his wife and children (Siegel & Welsh, 2009).

22. *Petition*: Document filed in juvenile court alleging that a juvenile is a delinquent, a status offender, or a dependent and asking that the court assume jurisdiction over the juvenile (Siegel & Welsh, 2009).
23. *Perceptions*: The understanding, knowledge, etc. gotten by perceiving, or a specific idea, concept, impression, etc...” (Webster’s New World Dictionary, 2010).
24. *Petition for writ of habeas corpus*: Judicial order requesting that a person detaining another produce the body of the prisoner and give reasons for his or her capture and detention (Siegel & Welsh, 2009).
25. *Poor Laws*: English statutes that allow the courts to appoint overseers over destitute and neglected children, allowing placement of these children as servants in the homes of the affluent (Siegel & Welsh, 2009).
26. *Referee*: A judicial officer who presides over civil hearings. Referees are usually appointed by the presiding judge. Referees aid the judge by hearing certain matter and making recommendations (Webster’s New World Law Dictionary, 2010).
27. *Reform Schools*: Institutions in which educational and psychological services are used in an effort to improve the conduct of juveniles who are forcibly detained (Siegel & Welsh, 2009).
28. *Shelter Care*: A place for temporary care of children in physically nonrestrictive facilities (Siegel & Welsh, 2009).
29. *Specific Deterrence*: Specific deterrence focuses on the individual offender. The aim is to discourage the criminal from future criminal acts by instilling an

- understanding of the consequences (Webster's New World Law Dictionary, 2010).
30. *Status Offense*: Conduct that is illegal due to the age of the child is under age (Siegel & Welsh, 2009).
 31. *Swaddling*: The practice during the Middle Ages of completely wrapping newborns in long bandage-like clothes in order to restrict their movements and make them easier to manage (Siegel & Welsh, 2009).
 32. *Tracking*: Dividing students into groups according to their ability and achievement levels (Siegel & Welsh, 2009).
 33. *Transfer*: Transfer of jurisdiction over a cases involving a juvenile offender from the jurisdiction of juvenile court to adult criminal court (Siegel & Welsh, 2009).
 34. *Truant*: Being out of school without permission (Siegel & Welsh, 2009).
 35. *Waiver*: Relinquishing jurisdiction of the juvenile court and waiving to the adult court for criminal prosecution (Siegel & Welsh, 2009).
 36. *Widening the Net*: Phenomenon that occurs when programs are created to divert juveniles from the justice system, but actually involve juveniles more deeply in the official process (Siegel & Welsh, 2009).

Limitations

There are several limitations that the author placed on this study. These limitations are as follows.

- a. All participants in this study are currently elected or appointed to the position of juvenile court judge.

- b. All participants in this study are juvenile court judges in one of the following states; Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah.

Assumptions

The author relied on several assumptions when conducting this study. For the purpose of this research, the following assumptions were made. First, the judges who participated in this study took the survey seriously and completed the survey instrument truthfully and completely as possible. Secondly, the judges who participated in this study are representative of all juvenile court judges who are currently on the bench in the survey states at the time the study was conducted; Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah.

Justification

The traditional method of studying sentencing of juvenile offenders has led to important findings. Again, this process generally involves examining case files of juvenile offenders already waived to the adult criminal court. These types of studies obtain information on juvenile offenders' age, race, gender, type of crime committed, prior criminal history, and family structure. As of 2009, thirteen states report their total number of juveniles waived; ten states report some, but not all waiver; fourteen contribute to the National Juvenile Court Data Achieve, but otherwise did not report waiver; and fourteen do not report waiver at all (Griffin et al., 2011). This data is important, and statistical analysis can be conducted to determine the statistical significance of individual variables; however, these types of studies cannot inform a researcher as to how characteristics of the juvenile court judges affect their perceptions of

the factors they consider in their waiver decisions. Thus, researchers are losing a vital component, i.e., the juvenile court judge's attitudes and perceptions, by using such research methods. Therefore, there is a gap in the research literature pertaining to juvenile court judge's consideration of extra-legal factors in their waiver decisions. This project was exploratory in nature and aims at closing the research literature gap.

In addition, more analysis needs to focus on the impact of adult criminal prosecution on juveniles. The current data, including results from studies in Idaho (Jensen & Metsger, 1994), New Jersey (Fagan, 1996), and New York (Glassner et al., 1983; Singer & McDowall, 1988), indicate that expanded waiver provisions over the past twenty years have not deterred juvenile crime. Separate studies in Florida (Bishop, 1996), and Minnesota (Podkopacz & Feld, 1996; Winner et al., 1997), confirm that juveniles waived to adult criminal court have higher recidivism rates than juvenile offenders retained in juvenile court.

Moreover, studies report conflicting findings on whether juveniles receive harsher or longer sentences in adult court. Thus, it is not clear whether waiver policies are serving their intended goal of enhancing punishment and deterring recidivism.

Finally, the literature review in Chapter II presents a historical overview of juvenile justice and the juvenile court. The discussion will include factors associated with the creation and development of the juvenile justice system, along with more recent events that have influenced the current state of juvenile justice system and the practice of waiving juveniles to the adult criminal justice system. In addition, the literature review provides a detailed review of the existing empirical literature on juvenile waiver. Furthermore, the theoretical framework for the study is examined in the literature review.

Next, Chapter III describes the specific methods that were used to conduct the research. Chapter IV presents the quantitative results of the research. The final chapter is devoted to further discussion of the study and the major findings, policy implications, and suggestions for future research.

CHAPTER II

LITERATURE REVIEW

While waiving juvenile offenders to the adult criminal courts continues to be a controversial subject, it is difficult to understand how this policy has developed without first understanding several key events. The first is the historical evolution of the treatment of children. Next are the events leading up to the formation of the first juvenile court in the United States. Third is the prevailing philosophy behind the juvenile justice system. Finally there is the due process revolution which transformed the juvenile justice system into what we have today.

Historical Perspective of the Treatment of Children

From ancient times through medieval times, children were treated as property. Children were chattel to be disposed of at the whim of the family patriarch. Children could be bought, sold, kept living, left to die, or even killed. The child's fate was left to the family's patriarch; the oldest living blood-kin male (Mays & Winfree, 2000; Watson, 1970).

The first correctional institution for the control of juvenile delinquency in the United States was the New York House of Refuge (1825); however, specialized treatment of wayward juveniles has a much longer history (Bernard, 1992; Bilick, 2004; Howell, 1997; Krisberg, 2004; Pickett, 1969; Wines, 1970). Children have been committing delinquent acts since the beginning of time and while approaches to dealing with such behaviors were not systematically codified until the nineteenth century one can find early forms of punishment for juvenile delinquency. For example, the Biblical recommendation for responding to a stubborn and rebellious son is stoning.

If any man has a stubborn and rebellious son who will not obey his father or his mother, and when they chastise him, he will not even listen to them, then his father and mother shall seize him, and bring him out to the elders of his city at the gateway of his hometown. They shall say to the elders of his city, 'This son of ours is stubborn and rebellious, he will not obey us, he is a glutton and a drunkard.' "Then all the men of his city shall stone him to death; so you shall remove the evil from your midst, and all Israel will hear of it and fear (Deuteronomy 21: 18-21).

Ancient Babylon

Approximately 4,000 years ago, around 1750 B.C., King Hammurabi of Babylon in Sumeria presided over the first state known to be governed by a written legal code. The Code of Hammurabi is one of the oldest known sets of written laws (Lawrence & Hemmens, 2008; Martin, 2005; Regoli & Hewitt, 2006). Hammurabi ruled Babylon from 1792 to 1750 B.C (Regoli & Hewitt, 2006). He created over 200 rules for the kingdom, each accompanied by an exact punishment (Regoli & Hewitt, 2006). Many of the rules prescribed severe penalties, applying the dictum “an eye for an eye” (Leviticus 24:19-20).

The Code of Hammurabi also incorporated complex provisions for marriage, fidelity, and family solidarity (Lawrence & Hemmens, 2008; Martin, 2005; Regoli & Hewitt, 2006). It did so by designating the husband at the unquestioned head of the household. Children were treated as little more than property. Children, defined during this time as the offspring from a freeman’s wife, concubine, and slave, were under the father’s control until emancipated by marriage (Martin, 2005). Children were an extension of their father. The father could hire out a child’s labor. Children could be

indentured to others for their father's debts, or he could sell them (Lawrence & Hemmens, 2008; Martin, 2005; Regoli & Hewitt, 2006). Girls could be given by fathers to serve the gods in temples, or given away as concubines, with no choice in the matter (Martin, 2005). Boys were required to be obedient and respectful to the father on pain of extreme physical punishment such as amputation (Martin, 2005). For example,

If a son strikes his father, his hands shall be cut off (Rule 195).

The code also established a special set of rules for adopted children. For instance,

If an adopted child says to his father or mother 'You are not my father or my mother,' his tongue shall be cut off (Rule 192).

In addition, the code goes on to say,

If an adopted son returned to their biological parents then his eyes would be plucked out (Rule 193).

Juvenile delinquency was viewed as rebellion against the father, and the law brutally enforced respect for and fear of paternal authority (Lawrence & Hemmens, 2008; Martin, 2005; Regoli & Hewitt, 2006).

The Greeks

The Greek Empire covered the years between the sixth and third centuries (500-300 B.C.). Juvenile delinquency was considered to be a serious problem in Greek society. The Greek culture responded to delinquency by passing laws that held parents responsible for the behavior of their children. Scholars (Cox, Allen, Hanser & Conrad, 2008; Cherry, 1890; Martin, 2005; Regoli & Hewitt, 2006; Lawrence & Hemmens, 2008) suggest that these are likely the first parental liability laws; the first parent liability laws

in the United States are found in the Massachusetts Stubborn Child Law of 1646 (Regoli & Hewitt, 2006).

The Romans

Roman law had a direct influence on modern European legal codes. Roman jurisprudence was derived from two sources; the Code of Justinian and the Twelve Tables. The Code of Justinian was a code of laws written during the reign of Justinian, Emperor of the Eastern Empire. It was originally promulgated in 529 B.C., and was comprised of twelve books. It became one of four compilations of Roman law known collectively as the *Corpus Juris Civilis* (Cox et al., 2008; Cherry, 1890; Martin, 2005).

The earliest known laws of the Roman people are comprised in the code of the Twelve Tables which was compiled by the Decemvirs about the year 450 B.C. (Cox et al., 2008; Cherry, 1890; Martin, 2005). The Twelve Tables made it clear that children were criminally responsible for violations of law, and were to be dealt with by the criminal justice system (Cox et al., 2008; Lawrence & Hemmens, 2008; Nyquist, 1960). Originally, children who were incapable of speech were spared under Roman law, but eventually, as the law came to reflect an increasing recognition of childhood, immunity was afforded to all children under the age of seven.

The Roman city-state embraced the philosophy that viewed children as having little to no social status; often lower than even the slaves (Mays & Winfree, 2000; Martin, 2005). This status was codified in the *patrai potestas*, (Mays & Winfree, 2000; Martin, 2005) literally power of the father, a part of the *paterfamilias* doctrine, whereby the father was the head of the family. This legal dictum placed the child under the father's absolute control as long as the father lived, but the father could emancipate the child if he so

wished. The Code in the Twelve Tables specified sanctions for children who were deformed, caught stealing, or who otherwise displeased their fathers (Ludwig, 1955; Martin, 2005). For Example,

Monstrous or deformed offspring may be put to death by the father (Table 4.1).

A father shall have the right of life and death over his son born in lawful marriage, and shall also have the power to render him independent, after he has been sold three times (Table 4.1).

The father shall, during his whole life, have absolute power over his children. He may imprison his son, or scourge him, or keep him working in the fields in fetters, or put him to death, even if the son held the highest offices of state (Table 4.2).

While the father was bound by practical limits as to what he could or would do to his children, the legal code remained largely unchanged until the fourth century. In 374 A.D., a law forbade the exposure of infants to the elements, a common method of disposing of unwanted children, mostly daughters. At about the same time, the writings of early Christian philosophers, including St. Augustine, helped quiet the *patria potestas* in favor of the more benevolent *paterna pietas*, or fatherly love (Martin, 2005; Mounteer, 1984). In spite of the changes in the fourth and fifth centuries, *patria potestas* remained a central theme in Roman law though its last great revision by the Byzantine emperor Justinian I in the sixth century (Jolowicz, 1957; Martin, 2005).

The collapse of the Roman Empire in the fifth century marked the beginning of the Middle Ages. The sociopolitical power of Christianity had evolved to the point that

the belief in the immortal soul of all humans meant that children suffered less brutish treatment than in earlier times. Childhood was viewed as a time for inculcation of Christian beliefs (Martin, 2005; McLaughlin, 1975). The Roman Catholic Church even helped define the age of culpability for children; seven (Ozment, 1983). Moreover, during this period of growing church power in the affairs of society, the father's power declined.

Medieval life generally was nasty, brutish, and short (Hobbes, 1668). Given the growth of cities and the poor sanitary standards of the day, deadly diseases were rampant. Plague, smallpox, whooping cough, scarlet fever, diphtheria, and measles often took more lives than they spared, the children were at particular risk for dying (Thornton & Voigt, 1992). The parents love for a child was ill-advised in a time when so many died so young. As Aries (1962) has observed,

In medieval society the idea of childhood did not exist; this is not to suggest that children were neglected, forsaken or despised. The idea of childhood is not to be confused with affection for children: it corresponds to an awareness of the particular nature of childhood, that particular nature which distinguishes the child from the adult, even the young adult. In medieval society this awareness was lacking (Aries, 1962, p. 128).

Aries' (1962) conclusions have been criticized; however, it is important to observe that medieval Europe lacked separate institutions for the socialization of children (Binder, Gilbert & Dickson, 1988; Martin, 2005; Thornton & Voigt, 1992). Children learned their roles and expectations by wandering through the world of adults. They

played adult games, performed adult jobs, dressed like adults, and basically led adult lives from a very early age (Mays & Winfree, 2000; Thornton & Voigt, 1992).

England

Roman and canon (church) law undoubtedly influenced early Anglo-Saxon common law; law based on custom or use, which emerged in England during the 11th and 12th centuries. The distinctions made between adult and juvenile offenders in England at this time are most significant. Under common law, children under the age of seven were presumed to be incapable of forming criminal intent, and were not subject to criminal sanctions unless it could be demonstrated that they could distinguish right from wrong (Blackstone, 1803; Cox et al., 2008; Lawrence & Hemmens, 2008; Martin, 2005).

Children over the age of fourteen were treated the same as adults.

Another important step in the history of juvenile justice occurred during the 15th century when chancery or equity courts were created by the King of England. Chancery courts, under the guidance of the king's chancellor, were created to consider petitions of those who were in need of special aid or intervention, such as women and children left in need of protection and aid by reason of divorce, death of a spouse, or abandonment (Cox et al., 2008; Lawrence & Hemmens, 2008; Martin, 2005). Through the chancery courts, the king exercised the right of *parens patriae* or parent of the country by enabling these courts to act *in loco parentis* or in the place of parents to provide necessary services for the benefit of women and children (Bynum & Thompson, 1992; Cox et al., 2008; Lawrence & Hemmens, 2008; Martin, 2005; Siegel & Welsh, 2009).

In the 16th and 17th Centuries life in Europe was in flux economically, religiously, and politically (Krisberg, 2004). First, the economy was transforming from a rural and

agricultural society with its small towns into an urban and industrial society with its rapidly growing inhabitation, increasingly chaotic streets, and different racial and ethnic groups (Krisberg, 2004). Next, religious turmoil took the form of the reformation (Krisberg, 2004). Finally, political power was being concentrated in the hands of a few, thus creating a strong centralized government (Krisberg, 2004). The standard of living of the general population dropped sharply forcing mass migration to the cities. The workers and artisans of these cities believed that the growing migrant population would drive down work wages. In addition, these cities were also experiencing increasing crime rates (Krisberg, 2004).

To control the threat of this new “dangerous class,” (Brace, 1872; Krisberg, 2004; Shelden, 2001) the leaders of these cities enacted laws to discourage migration: Elizabethan Statute of Artificers (1562) and poor laws (1601) (Cox et al., 2008; Rendleman, 1974). Both of these statutes allowed children of poor families to be involuntarily separated from their parents and bound out as indentured servants; apprentice (Brace, 1872; Cox et al., 2008; Krisberg, 2004; Rendleman, 1974; Shelden, 2001). In addition, these statutes prevented new migrants from obtaining citizenship, restricting their membership in guilds, and often closing the city gates to them (Brace, 1872; Cox et al., 2008; Krisberg, 2004; Shelden, 2001). Both statutes were based on the belief that the state has a primary interest in the welfare of children and the right to ensure such welfare (Cox et al., 2008). Vagrancy laws were also enacted to control and punish those who threatened the social order.

Urbanization continued despite all attempts to squash (Krisberg & Austin, 1993). Social institutions such as the church, the community, and the family, began to weaken

under the pressure of social change. Children were abandoned or released from traditional community restraints and groups of juveniles roamed the cities at night engaging in forms of deviance (Krisberg, 2004; Sanders, 1970).

As the problem of urban poverty increased, the traditional ways of dealing with delinquent and destitute juveniles became strained. Some localities constructed institutions to control juveniles. The Bridewell (1555) in London is considered the first juvenile institution specifically designed to control juveniles (Brace, 1872; Krisberg, 2004; Sellin, 1944). In 1576 the English Parliament passed a law establishing similar institutions throughout England (Brace, 1872; Krisberg, 2004; Sellin, 1944). The most celebrated of these early institutions was the Amsterdam House of Corrections (1595) (Krisberg, 2004; Sellin, 1944). These houses of correction combined the principles of the poorhouse, the workhouse, and the penal institution (Garland, 1990). Juveniles were forced to work; thus developing habits of industriousness (Krisberg, 2004). The founders of such institutions hoped to provide a cheap source of labor to local industries, so many of the juveniles were hired out to private contractors (Krisberg, 2004).

The early houses of correction accepted all types of juveniles including the destitute, the infirmed, and the needy. In some cases, parents placed their children in these institutions (Krisberg, 1993; 2004; Shelden, 2001; Rusche & Kirchheimer, 1939). The French correctional institutions were called *hospitiaux generaux*. Some authors (Krisberg, 2004; Shelden, 2001; Rusche & Kirchheimer, 1939) argue that these early correctional institutions were solely motivated by economics. Rusche and Kirchheimer (1939) in their book, *Punishment and Social Structure*, argued that, “The institution of the house of correction in such a society was not the result of brotherly love or of an

official sense of obligation to the distressed. It was part of the development of capitalism” (p. 50).

The United States

The social, political, and economic dislocation taking place in Europe provided a major push toward colonization of the Americas. People immigrated to the new world for many reasons; some wanted to get rich, some wanted to escape political or religious oppression, and some simply had nothing to lose. These different motivations for immigrating to the new world influenced settlement patterns, and were responsible for the varied forms of community life. For example, in the Massachusetts Bay Colony the Puritans attempted to establish a deeply religious community. The Puritans brought whole families with them and making provisions for the care and control of juveniles. In contrast, the settlement of Virginia was tied to economic considerations. There were persistent labor shortages, and the need for labor prompted orders for juveniles to be sent over from Europe. Juveniles were sent over by Spirits. Spirits were the agents of merchants or ship owners (Lawrence & Hemmens, 2008), and persuaded juveniles to immigrate to America often promising tremendous wealth and happiness (Lawrence & Hemmens, 2008). The juveniles typically agreed to work a specific term, usually four years, in compensation for passage across the Atlantic and for services rendered during the trip (Krisberg, 2004; Lawrence & Hemmens, 2008). These agreements of service were then sold to colonist. Spirits were often accused of kidnapping, contractual fraud, and deception (Krisberg, 2004; Lawrence & Hemmens, 2008).

Other children coming to the Americas were clearly coerced. It became an integral part of penal practice in the early part of the 18th century to transport prisoners to

colonial area. Juveniles held in the overcrowded Bridewells and poorhouses of England were brought to the Americans as indentured servants, and after working a specified number of years as servants or laborers, the children were able to win their freedom (Krisberg, 2004). In the early 1600s, the colony of Virginia and England formulated an agreement for the shipment of orphans and destitute children from England (Durant & Knottnerus, 1999; Krisberg & Austin, 1993; Stampp, 1956; Yetman, 1970). Africans made their first appearance in the Virginia Colony in 1619 (Durant & Knottnerus, 1999; Stampp, 1956; Yetman, 1970). According to Yetman (2000) studies conducted on slavery neglect to mention the fact that most slaves were children. Slave traders thought children would bring higher prices (Durant & Knottnerus, 1999; Stampp, 1956; Yetman, 2000; 1970). Children were always a high proportion of the total slave population, because slave owners encouraged their slave to have children; thus, increased slave owners capital (Durant & Knottnerus, 1999; Krisberg, 2004; Stampp, 1956; Yetman, 2000; 1970). African babies were seen as a commodity to be exploited similarly to that of land, animals, and natural resources (Durant & Knottnerus, 1999; Stampp, 1956; Yetman, 2000; 1970).

In 1609 officials of the Virginia Company were authorized to kidnap Native American children (Krisberg, 2004; Krisberg & Austin, 1993). The stolen children were to be trained in the religion, language, and customs of the colonists (Krisberg, 2004). The early Native American schools resembled penal institutions; emphasis on work, Bible study, and religious worship (Krisberg, 2004).

In the early years of colonization, family control was the dominant model for disciplining children. The family was also the central unit of economic production. Even

in situations where children were apprenticed or indentured, the family still served as the model for discipline. The dominant form of poor relief at this time was placing the needy with other families in the community (Krisberg, 2004; Krisberg & Austin, 1993; Rothman, 1971). A tradition of family government evolved in which the father was empowered with absolute authority over all affairs of the family (Krisberg and Austin, 1993). Wives and children were expected to obey the family patriarch.

The idea of family government was supported and defended in a number of colonial laws (Krisberg & Austin, 1993). The earliest laws concerning juvenile delinquency prescribed the death penalty for children who disobeyed their parents (Bilick, 2004; Hawes, 1971; Hess, 2010; Krisberg, 2004). The family was the central economic unit of colonial America. Home based industry took place on the family farm or in a home workshop. Children were considered an important source of family income. So much so, that the decision of the father as to where the child was to be apprenticed was vitally important not only for the family, but the child's future as well. (Krisberg, 2004; Krisberg & Austin, 1993; Lawrence & Hemmens, 2008). The apprenticeship system was to be the stepping stone into a skilled craft, but this was only for children of the privileged classes. Children of poor families were bound out as indentured servants. The term of apprenticeship was generally seven years. The child was expected to regard his master with the same obedience due their natural parents (Krisberg, 2004). The master was responsible for the education and training of the young apprentice and he acted in *loco parentis*. *Loco Parentis* is a Latin term meaning acting in the place of the parent (Oran, 2000). By acting in *loco parentis*, the master was assuming complete responsibility for the child's welfare. Apprenticeships were voluntary for the wealthier

juveniles; however, for the wayward or destitute juveniles they were unavoidable. The use of compulsory apprenticeship was an important form of social control exercised by cities officials upon juveniles perceived as troublesome (Bremner, 1970; Krisberg, 2004).

The industrial revolution in the United States began at the end of the 18th century. The economy was transforming from a rural agricultural society into an urban industrial society. The industrial revolution forced family units from the family farm into large cities for survival. Child labor in industrial settings replaced the apprenticeship system and family ties weakened because work days were long (Krisberg, 2004; Krisberg & Austin, 1993). As migration, emigration and industrialization continued, the streets of these large cities became chaotic and conditions of poverty began to spread. As economic instability increased the traditional forms of social control decreased and Americans began to fear the growth of the “dangerous class” (Brace, 1872; Krisberg, 2004; Sheldon, 2001)

The Creation of Juvenile Justice

Before the 1800s the United States had no juvenile justice system (Empey, 1978; Elton & Roybal, 2003; Finestone, 1976; Houston & Barton, 2005; Howell, 1997; National Research Council Staff, 2000; Schwartz, 1989). Criminal cases involving juveniles were processed through the adult criminal courts (Finestone, 1976; Howell, 1997; Schwartz, 1989; Thornton & Voigt, 1992). Juveniles who were convicted of crimes were subject to the same sanctions as adults, were incarcerated in facilities with adults, and were even executed like adults (Siegel & Welsh, 2009; Thornton & Voigt, 1992). There is no record of the numbers of juveniles confined in adult prisons in the United States either during the Colonial Era or during the American Industrial Revolution.

As alluded to before, the United States inherited from England and other European countries a disregard for children, and it was not until the end of the Middle Ages that a handful of moral philosophers in Europe began to question the customary treatment of children (Empey, 1978; Finestone, 1976; Krisberg, 2004). Over a period of the next two or three centuries, the age-old tendencies; infanticide, abandonment, wet nursing, swaddling, economic and sexual exploitation of children, were replaced with a concern for their moral welfare (Empey, 1978; Finestone, 1976; Krisberg, 2004; Schwartz, 1989). Parental care for children became a sacred duty. School attendance laws replaced the apprenticeship system as the second most important child rearing institution (Empey, 1978; Finestone, 1976; Schwartz, 1989). Childhood became a transitional period in which protection from adult activities became the norm. It is out of this process that the modern concepts of childhood, adulthood, and old age grew. Childhood is a concept stressing the idea that children have value in their own right and that because of their innocence they require a careful preparation from the harshness and sinfulness of an adult world (Empey, 1978; Finestone, 1976; Schwartz, 1989). Furthermore, it was only after all of these things occurred, only after childhood became a special status in the life cycle, that the establishment of special courts and incarceration facilities occurred, along with Kindergarten, child labor laws, mandatory education, school lunches, and vocational education; all aimed at enhancing optimal child development in the industrial city (National Research Council Staff, 2000). It was not until the beginning of the 20th century and the creation of the juvenile court that these terms were developed and used in delinquency prevention and control policies (Empey, 1978; Finestone, 1976; Howell, 1997; Schwartz, 1989).

There were three events that led to the creation of correctional institutions especially for juveniles; the emergence of pauperism, the development of prisons (e.g., the creation of Auburn (New York) State Prison in 1819; Sing Sing (Ossining, New York) in 1825; Wethersfield (Connecticut) State Prison in 1827; and the Eastern State Penitentiary (Philadelphia) in 1829, and the work of the “gentleman reformers” (Finestone, 1976) and the “child savers” (Platt, 1969) (Bernard, 1992; Howell, 1997; Pickett, 1969; Platt, 1969; Siegel & Welsh, 2009).

The term juvenile delinquency was first used two hundred years ago (Empey, 1978; Bernard, 1992) in a report examining the increase of juvenile delinquency which came out in London in 1816 (Bernard, 1992; Sanders, 1970). The term juvenile delinquency describes minors who have committed an offense punishable by criminal processes, but who are under the statutory age for criminal responsibility (Griffin et al., 2011). When a juvenile commits a criminal act, it is considered an act of juvenile delinquency (Bernard, 1992; Griffin et al., 2011).

During the 1800s in the United States, society was being led by a group of moralist advocates whom Finestone (1976) called “gentleman reformers.” These gentlemen reformers were largely white Anglo-Saxon Protestants, although a few were Quakers, middle to upper class, cosmopolitan men who kept up with reforms abroad (Finestone, 1976; Howell, 1997; Pickett, 1969). They were a very active group guided by the 18th century Enlightenment. They were lead by humanitarian, idealism, moralism, and rationalism. Having concluded that pauperism or poverty undermined society, the gentleman reformers set out to eliminate its effects (Finestone, 1976; Howell, 1997; Pickett, 1969).

In 1817, a meeting was convened by prominent New Yorkers to consider cures for pauperism and crime (Howell, 1997). This meeting led to the formation of the Society for the Prevention of Pauperism in New York City (Howell, 1997; Siegel & Welsh, 2009). Although they primarily concerned themselves with shutting down taverns, brothels, and gambling parlors, they were also concerned that the moral training of children of the lower classes (Siegel & Welsh, 2009). The Society for the Prevention of Pauperism was shocked to find children confined with thieves, prostitutes, and lunatics in unsanitary quarters (Dean & Reppucci, 1974). In 1822, the Society for the Prevention of Pauperism called public attention to the corruption of children by locking them up with adult criminals. The society called for the rescue of children from a future of crime and degradation (Howell, 1997). In 1823, the Society for the Prevention of Pauperism reconstituted itself as the Society for the Reformation of Juvenile Delinquents, as juveniles became its target for reform (Bernard, 1992; Finestone, 1976; Howell, 1997).

House of Refuge

The idea of creating the House of Refuge in New York City did not happen overnight. The Reverend John Stanford raised the subject as early as 1815, and the idea had shifted back and forth between Stanford and the city government for almost a decade (Pickett, 1969). Stanford was angry at the number of juveniles in the city's prisons. For many years he had urged the city authorities to remove the juveniles from the city's prisons, and place them in separate institution (Pickett, 1969). Stanford developed a plan for an asylum which would house two types of juveniles; "little wanderers" and "criminals" (Pickett, 1969, p.21). "Little Wanderers" (Pickett, 1969, p.21), were juveniles who had been either abandoned or who had run away from their parents. The other part

of the asylum would house juveniles who had been tried and convicted in the courts; criminals (Pickett, 1969). Stanford suggested work, education, and religion as the prime means to alter deviant behavior (Pickett, 1969). Part of the juvenile's time would be spent in learning manufacturing skills while the remainder would be spent in learning elementary academic subjects. Stanford gave a very high priority to religion (Pickett, 1969). Stanford's idea was rejected by those in power; later, the idea was put forward successfully by others who had more influence (Pickett, 1969).

Ten years later, members of the Society for the Reformation of Juvenile Delinquents advocated that the laws must change in order to address societal conditions caused by the transformation of America from a rural and agricultural society with its small towns into an urban and industrial society with its rapidly growing inhabitation, increasingly chaotic streets, and different racial and ethnic groups (Krisberg, 2004; Tanenhaus, 2000). The view of societal conditions being the potential cause of criminal behavior is consistent with the development of positive criminology during the 1800s and the Progressive movement (Howell, 1997; Empey, 1978; Finestone, 1976; Schwartz, 1989; Siegel & Welsh, 2009). Positive criminology sought to determine the impact of outside forces such as social, economic, biological, and psychological forces on individual behavior (Adler, Mueller & Laufer, 1995; Barlow, 1990; Cao, 2004; Cullen & Agnew, 2006; Siegel, 2004; Vold, Bernard & Snipes, 1998). In addition, this period also witnessed growing interest in the scientific approach to the social problems and in the belief that the social sciences would provide answers to these problems. This influenced reformers to advocate for non-punitive measures and an emphasis on individualized diagnosis and treatment of juveniles based on the medical model, a concept more

popularly known as the rehabilitative ideal (Schwartz, 1989). These developments lead to the belief that in order to reduce crime, the law had to grant states the necessary powers to address these societal conditions (Tanenhaus, 2000).

As a result of this new focus and the passage of a law (Fox, 1996) by the New York legislature in 1824 authorizing the opening of the New York House of Refuge, the New York City Mayor, Cadwallader D. Colden (1769-1834), John Griscom (1774-1852), a Professor of Chemistry and natural Philosophy and eventually principal of New York City's Chief secondary school, Thomas Eddy (1757-1827), a Banker, Hugh Maxwell, James W. Gerard, and the Society for the Reformation of Juvenile Delinquents developed and established the New York House of Refuge in 1825 (Bernard, 1992; Hawes, 1971; Howell, 1997; Krisberg, 2004; Mennel, 1973; Pickett, 1969; Thornton & Voigt, 1992; Wines, 1970). The Society for the Reformation of Juvenile Delinquents believed that there were three possible causes of pauperism and crime: weak and criminal parents, the temptations of the street, and the weakness of the juvenile's moral nature (Bernard, 1992; Howell, 1997; Pickett, 1969; Platt, 1969). The Society believed that the House of Refuge addressed all three of these problems by removing the children from their parents and the street, and placing them in the House of Refuge to rehabilitate their weak moral natures (Bernard, 1992; Empey, 1978; Finestone, 1976; Howell, 1997; Pickett, 1969; Platt, 1969; Schwartz, 1989; Thornton & Voigt, 1992). These reformers believed that the House of Refuge would successfully cure delinquency.

The majority of the children committed to the new House of Refuge were status offenders. Juveniles were placed in the House of Refuge by court order, and often times over the parents' objections. The juveniles' length of stay depended on need, age, and

skill (Siegel & Welsh, 2009). Emphasis was placed on work, education, and morality. The House of Refuge became family substitutes for juveniles who were defined as a problem: the runaways, the disobedient, the defiant and the vagrant, all of whom were in danger of falling prey to loose women, taverns, gambling halls, and the theater (Howell, 1997). Only those who could still be rescued were sent to the House of Refuge by the court (Howell, 1997). Major juvenile offenders were left in the adult criminal system (Howell, 1997), thus creating an unspoken juvenile transfer mechanism from the beginning.

Critics of the House of Refuge complained that the institution was run like a prison, i.e., the Auburn congregate model and the Elmira Reformatory for Adults, with strict discipline, mixed education, income-generating labor, and absolute separation of the genders (Bernard, 1992; Howell, 1997; Siegel & Welsh, 2009). Despite the harsh conditions and the high rates of running away the (Ryerson, 1978) House of Refuge concept quickly spread to other cities; Boston (1826) and Philadelphia (1828).

In Boston, Mayor Josiah Quincy (1772-1864) was responsible for founding the local house of reformation. His work was supported by his successors, notably Theodor Lyman, Jr. (1792-1849), mayor of Boston from 1831 to 1835 (Mennel, 1973). The Philadelphia House of Refuge resulted from the efforts of a group of reformers whose plans were given shape by Isaac Collins, who moved from New York to Philadelphia in 1828. Among the managers of the Philadelphia Refuge was Robert Vaux (1786-1836), a leader of the Philadelphia Society for Alleviating the Miseries of the Public Prisons, Alexander Henry (1766-1847), the first President of the American Sunday School Union, and Paul Beck, Jr., Thomas P. Cope, and Robert Ralston, all of whom were active in the

American Sunday School Union. John Sergeant (1779-1852), a congressman and advocate of the United States Bank, was the first president of the refuge. Sarah Grimke (1792-1873), an abolitionist and feminist served on the Ladies Committee.

Later, these juvenile facilities were called reform schools and a number of preventive agencies were created (Mennel, 1973). The most prominent of these preventive agencies was the Children's Mission to the Children of the Destitute (1849), the Five Points Mission (1850), the New York Juvenile Asylum (1851), and the New York Children's Aid Society (1853) (Mennel, 1973). When the name reform schools became objectionable, the school idea was given prominence, and they came to be called industrial or training schools (Dean & Reppucci, 1974; Howell, 1997; Mennel, 1973). In 1835, a farm-school was opened for orphans and poor children on Thompson's Island in the harbor of Boston (Wines, 1970). The State reform-school was established at Westborough, Massachusetts, in 1847, and eight years later in 1855 the first girls' reformatory was founded at Lancaster, Massachusetts (Wines, 1970).

Placing Out

As an alternative to secure correctional facilities, New York philanthropist Charles Loring Brace helped develop the Children's Aid Society (1853)(Holt, 1992; Siegel & Welsh, 2009). Brace's idea for dealing with juvenile delinquents was to rescue them from the harsh conditions of the street and provide them with temporary shelter. Upon realizing that the number of children in need was too great, Brace created what he called his placing-out plan (Holt, 1992; Siegel & Welsh, 2009). The placing-out plan comprised of sending juveniles to western families where they could live and be cared for. Juveniles were placed on orphan trains, which made preannounced stops in western

communities. Families wishing to take in children would meet the train, be introduced to the juveniles, and then leave with one of them. Brace's plan was activated in 1854 and shortly became the norm. After 1854 and the placing-out plan the House of Refuge became nothing more than holding stations for poor children until they could be placed on trains heading west to be indentured out for service until they reached their twenty-first birthdays (Holt, 1992; Siegel & Welsh, 2009). The parents of these juveniles were not told where the child had ended up, nor were they allowed to have any further contact with the child since they were usually seen as the original source of the problem (Bernard, 1992; Holt, 1992). Many children were never heard from again. Many of the juveniles sent out west to their new homes became problems due to the terrible conditions under which they lived. By 1930, opposition to Brace's placing-out plan, the negative effects of the economic depression, and many western states passing laws forbidding the practice, brought an end to the orphan trains (Bernard, 1992; Holt, 1992; Siegel & Welsh, 2009).

As stated before, the idea of the House of Refuge spread quickly; New York (1825), Boston (1826), Philadelphia (1828) and subsequently in other cities. With the development of the Houses of Refuge came laws enacted to justify their existence and more importantly the actions of their administrators. In 1831, the case of *Commonwealth v M'Keagy* became one of the first to question the state's power to commit juveniles to reform schools (Bilick, 2004; *Commonwealth v. M'Keagy* 1 Ashmead (PA) 248 (1831); Gold, 2007).

The case involved a Pennsylvania boy, Lewis L. Joseph. Joseph had been committed to the Philadelphia House of Refuge on the testimony of his father for being

an idle and disorderly person. Joseph's attorney filed a petition for a writ of *habeas corpus* and the Court of Common Pleas ordered Joseph released. The court found that Joseph had broken no law. While allowing the reform school to retain the power to commit juveniles, the court ruled that the reasons for commitment must be based on law. Idleness, the court declared, was not a good enough reason to deprive a juvenile of freedom. While affirming the right of the state, the court found in this instance, the juvenile's commitment was wrong.

In the mid-1800s, the question of whether parental rights were violated by involuntary refuge commitments was reviewed in *Ex parte Crouse* (1838) (Bilick, 2004). Mary Ann Crouse was a poor child whose only crime was growing up poor and being in danger of becoming a pauper. Mary Ann's mother brought her into the court and committed her to the House of Refuge against her father's wishes. Crouse's father objected to this involuntary commitment of his daughter and filed a writ of *habeas corpus*. Mary Ann's father raised the issue that committing his daughter for being poor was punishment without a crime. In 1838, the Pennsylvania Supreme Court rejected the father's arguments. The Court held that sending Mary Ann to the House of Refuge was legal. The Court held that Mary Ann was being helped, not punished, viewed the House of Refuge as a charitable school, not a prison, and that the House of Refuge was going to save Mary Ann from the terrible fate of being a pauper. The Crouse case affirmed the right of the state and the concept of *parens patriae*; the state as parent, allowing the state, acting in the best interests of the child to pick up and hold juveniles. It was not until the case of Daniel O'Connell, forty-five years later, that issues raised in the Mary Ann Crouse case would be revisited.

Massachusetts built the first state-supported institutions for juveniles; the Lyman School for Boys in Westborough in 1847, and the School for Girls in Lancaster in 1854 (Howell, 1997). These reform schools were modeled after the earlier Houses of Refuge, European boarding schools, and Sunday Schools that provided moral and academic instruction as well as the adult prison in New York, Pennsylvania, and Massachusetts (Miller & Ohlin, 1985). The Chicago Reform School was established in 1856 (Howell, 1997). The Chicago Reform School housed boys convicted of any noncapital offense, including juveniles convicted in adult criminal courts (Howell, 1997). Emphasis was placed on small facilities. Juveniles were to be protected, not punished for their actions. Emphasis was placed on creating a family life for these juveniles (Fox, 1970). By the middle of the 19th century, establishment of correctional institutions for poor, wayward, and delinquent juveniles were well established. .

Throughout the 19th century, juvenile reform schools were involved in repeated scandals, overcrowding, abusive discipline, reforms and renewed regimentation (Bremner, 1970; Hawes, 1971; Howell, 1997; Holl, 1971; Mennel, 1973; Pickett, 1969; Platt, 1969; Schlossman, 1977). Family style cottages in rural setting that resembled school campuses, patterned after the Elmira New York reformatory for adults emerged in the 1850s and 1860s. These family style cottage settings were also characterized by extreme disciplinary measures, excessive regimentation, and overcrowding. Although treatment was the goal, the custodial needs of the juvenile institutions prevailed, dominated by maintenance of order and discipline as preconditions for treatment (Miller & Ohlin, 1985).

Juvenile reform schools did not become what the reformers envisioned. Rather than an institution of first resort, juvenile reformatories became an institution of last resort. They had turned into prisons, providing custody rather than treatment. Gradually, they became acceptable as the choice for confinement of lower-class and minority juveniles (Howell, 1997). In 1860, the administration of juvenile facilities became the purview of the state and local governments. By 1876, there were 51 refuges or reform schools in the United States. Problems persisted and grew. Repeated violence in the reformatories became public knowledge and a series of investigations was conducted (Wines, 1970) that produced further efforts to improve juvenile reform schools.

In another important case, *People v. Turner* (1870), the right of the state to intervene in the lives of juveniles was challenged again. Daniel O'Connell, like Mary Ann Crouse, was placed in the Chicago House of Refuge until his twenty-first birthday not for committing any criminal offense other than being in danger of growing up poor. O'Connell's parents, like Crouse's father objected, and the Illinois Supreme Court ordered O'Connell released. The Illinois Supreme Court held that O'Connell was being punished. The Court weighted the harsh conditions of the House of Refuge to the good intentions of O'Connell's parents, and rejected the states' rights under the *parens patriae* doctrine.

People v. Turner (1870) was seen as an obstacle to the efforts of reformers to help and control juveniles. The court's ruling led reformers in Chicago to consider other mechanism by which their aims might be achieved. There were several other court decisions that questioned the lack of procedural safeguards and the quasi-penal character of juvenile institutions, including the *State v. Ray* (1886), and *Ex parte Becknell* (1897).

Society for the Prevention of Cruelty to Children

In 1874, New York City established the first Society for the Prevention of Cruelty to Children. This organization was given the power to remove children from their homes, arrest anyone who interfered, and assisted the court in making placement decisions. . They also assisted the state legislature in passing statues protecting children from cruelty and neglect at home and at school (Fox, 1996; Gordon, 1988; Pleck, 1989; 1987; Siegel & Welsh, 2009). By 1890, the society controlled the intake and disposition of an annual average of 15,000 poor and neglected children (Fox, 1996; Gordon, 1988; Pleck, 1987; 1989; Siegel and Welsh, 2009). By 1900, there were three hundred such societies in the United States (Fox, 1996; Gordon, 1988; Pleck, 1987; 1989; Siegel & Welsh, 2009).

The First Juvenile Court

The first juvenile court was established seventy-five years after the New York House of Refuge was opened in 1825. The Illinois Juvenile Court Act of 1899 established the nation's first independent juvenile court (Bernard, 1992; Bilick, 2004; Davis, 1979; Fox, 1996; Houston & Barton, 2005; Howell, 1997; Ryerson, 1978; Schwartz, 1989; Siegel & Welsh, 2009). The first juvenile court was created in Chicago, Illinois in 1899 and established juvenile delinquency as a legal concept. The court's jurisdiction covered all manner of juveniles be they delinquent, dependent, or neglected. Additionally, the use of probation was established as the primary way of monitoring the wayward juvenile (Ryerson, 1978; Siegel & Welsh, 2009). The hallmark of the new juvenile courts was relatively simple; children, even children who broke the law, differ from adults (Bernard, 1992; Howell, 1997; Ryerson, 1978; Schwartz, 1989). They required not only separate but different treatment before the law (Bernard, 1992; Bilick, 2004; Howell, 1997;

Ryerson, 1978; Schwartz, 1989; Siegel & Welch, 2009). The state acting through this new juvenile court must treat juveniles, not as responsible moral agents subject to the condemnation of the community, but as wards in need of care (Bernard, 1992; Finestone, 1976; Howell, 1997; Ryerson, 1978; Schwartz, 1989). The Illinois legislature decided that this special court for juveniles should be of civil jurisdiction, with flexible procedures adapted to diagnosing and preventing as well as to curing delinquency (Bernard, 1992; Ryerson, 1978).

The new juvenile court was founded on the concept of *parens patriae*; the state as parent, with the idea of individualized justice. The court's process was paternalistic rather than adversarial. The traditional rights afforded to adults were not in effect due to the specialized nature of the juvenile and their special needs (Moore & Wakeling, 1997; Siegel & Welsh, 2009)

Following the passage of the Illinois Juvenile Court Act (1899), and drawing on Chicago's juvenile court model, similar legislation was enacted and juvenile courts established throughout the nation. By 1912, twenty-two states had passed juvenile court laws, and by 1925, all but two states had done so (Bernard, 1992; Krisberg & Austin, 1993; Myers, 2005; Siegel & Welsh, 2009; Thomas & Bilchik, 1985). In 1945, Wyoming became the last state to establish a juvenile court (Binder, Geis & Dickson, 2001; Myers, 2005).

As juvenile courts were being established throughout the country they all held to the same basic principle; juveniles are different than adults and should not be held to the same standards of accountability or have the same constitutional rights as adults. The major functions of the juvenile justice system were to prevent juvenile crime and to

rehabilitate juvenile offenders. The roles of the judge and probation staff were to diagnose the juvenile's condition and prescribe programs to rehabilitate the juvenile.

Pennsylvania was one of a large number of states that quickly followed in establishing its own juvenile court. In 1905, a decision by the Pennsylvania Supreme Court in the case of Frank Fisher reflected the optimistic way in which juvenile courts were viewed in the early 1900s (Bernard, 1992; Myers, 2005).

Frank Fisher was a 14 year-old boy who had been indicted for larceny in Philadelphia. His case was sent to this newly established juvenile court. He was sent to the same House of Refuge that had received Mary Ann Crouse sixty years earlier. Like Mary Ann Crouse's and Daniel O'Connell's father, Fisher's father objected and filed a writ of *habeus corpus* in an attempt to obtain Fisher's release. Fisher has been charged with, not convicted of larceny, a criminal offense, so the "no punishment without a crime" issue raised in the *Crouse* and *O'Connell* cases did not apply. But a closely related principle was that, when a crime was committed, the punishment should be proportionate to the seriousness of the offense. Fisher had committed a minor offense, but could be held in the House of Refuge until his twenty-first birthday, a total of seven years. This was much longer than he would have received in adult criminal court, and seemed disproportionate to the seriousness of his offense.

The case went to the Pennsylvania Supreme Court, which had also heard the Mary Ann Crouse case sixty years earlier. As it did before, it rejected the arguments of Fisher's father. The court's rationale contained all of the same essential points found in the earlier *Crouse* decision. First, the court asserted that Fisher was being helped, not punished, by being confined in the Philadelphia House of Refuge. Second, the court focused on the

good intentions of the state, especially in comparison to the poor actual performance of Fisher's parents. Third, the court argued that helping Fisher was legal because of the *parens patriae* power of the state. Finally, because Fisher was being helped and not punished, the court held that Fisher had no need for due process protections (Bernard, 1992; Krisberg & Austin, 1993; Myers, 2005).

By the 1920s, noncriminal or status offenses were added to the jurisdiction of juvenile court systems. (Odem & Schlossman, 1991). Programs of all kinds, including individualized counseling and institutional care were used to cure juvenile delinquency.

By the mid 1920s, juvenile courts existed in nearly every jurisdiction of every state (Fox, 1996); however, the implementation of these juvenile courts was not uniform (Fox, 1996). Some jurisdictions established elaborate juvenile court systems with trained juvenile court judges, probation departments, and numerous services, while others had non-lawyers and untrained probation personnel. In 1926, a United States Children's Bureau survey found that only 16 percent of these new juvenile courts held separate calendars for juvenile cases, had officially established probation services, and recorded social information about the children coming through the courts (Fox, 1996). It was also reported that five out of six of these courts in the United States failed to meet the minimum standards of the Children's Bureau (Fox 1996).

The Due Process Revolution

From its inception through the 1960s, the juvenile court system denied due process rights available to adult offenders. These due process rights included the following: representation by counsel, jury trial, freedom from self-incrimination, and freedom from unreasonable search and seizure. The policies and practices of the juvenile

court went unchallenged for the first sixty-seven years following its origin and development. The stated purpose of the juvenile court was for treatment rather than punishment. It resembled an informal civil proceeding more than a criminal trial, and the most severe sanctions for adjudicated delinquents were less than one year in a residential facility. This began to change in the 1960s (Bartollas & Miller, 2008; Bernard, 1992; Bilick, 2004; Champion & Mays, 1991; Davis, 1979; Elrod & Ryder, 2005; Gold, 2007; Houston & Barton, 2005; Ketcham & Paulsen, 1967; National Research Council Staff, 2000; Siegel & Tracy, 2008; Taylor, Fritsch & Caeti, 2007; Thornton & Voigt, 1992). *Kent v. United States*, 383 U.S. 541 (1966)

Kent v. United States (1966) was the first juvenile case to be heard by the United States Supreme Court. The *Crouse* (1938) and *Fisher* (1905) cases had gone to the Pennsylvania Supreme Court and *O'Connell* (1870) had gone to the Illinois Supreme Court. The acceptance of this case by the United States Supreme Court revealed its intention to apply constitutional protections to the juvenile court process and by the time *Breed v. Jones* (1975) was handed down juveniles enjoyed a majority of the due process rights adults have in adult criminal court.

In 1959, 14 year old Morris A. Kent, Jr. was arrested and charged with several housebreakings and an attempted purse snatching. He was placed on probation and returned to the custody of his mother. Juvenile court officials interviewed Kent from time to time during the probation period and accumulated a social service file.

On September 2, 1961, Kent, now 16, broke into a woman's apartment, raped her, and stole her wallet. Upon being apprehended, Kent was interrogated from about 3:00 p.m. to 10:00 p.m. and then all the next day by police officers. Kent admitted his

involvement in the offenses. The record did not show when his mother became aware that Kent was in custody but shortly after 2:00 p.m. on September 6, 1961, the day following Kent's apprehension, she retained counsel.

There were two decisions that had been handed down by the Court of Appeals between Kent's crime and trial. The *Watkins (1964)* decision ruled that a juvenile's lawyer should have access to social service files in waiver cases (*Watkins v. United States*, 343 F.2d 278, 282 (1964)), and the *Black* decision in 1965 held a juvenile was entitled to a lawyer in a waiver hearing (*Black v. United States*, 355 F.2d. 104, (1965)). The United States Supreme Court affirmed these two lower court decisions.

In *Kent v. United States*, 383 U.S. 541 (1966), the United States Supreme Court ruled that the waiver without a hearing was invalid, and that Kent's attorney should have had access to all records involved in the waiver, along with a written statement of the reasons for the waiver. *Kent* is significant because it was the first Supreme Court case to modify the long standing belief that juveniles did not require the same due process protections as adults, because the intent of the juvenile court was treatment, not punishment. The majority opinion of the court noted that juveniles may receive the "worst of both worlds," "neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children" (383 U.S. 541 (1966)). This decision served notice that the United States Supreme Court would consider cases involving the juvenile justice system.

In re Gault, 387 U.S. 1, S.Ct. 1428 (1967)

Gerald Gault, a 15-year-old boy who lived in Gila County, Arizona, had been on probation for about three months for being in the company of another boy who had stolen

a wallet from a purse. On June 8, 1964, he and his friend Ronald Lewis called their neighbor, Mrs. Cook, and asked her, “Do you give any?” (387 U.S. 1, S.Ct. 1428 (1967)) “Are your cherries ripe today?” (387 U.S. 1, S.Ct. 1428 (1967)) and “Do you have big bombers?” (387 U.S. 1, S.Ct. 1428 (1967)), Mrs. Cook called the sheriff, who arrested the boys and placed them in detention. Gault’s parents were not notified until the next day. At his court hearing Gault was not represented by counsel, no record was kept, the victim was not present, and no evidence was presented regarding the charge. The judge stated that Gault admitted making the obscene remarks, whereas the Gaults said that Gerald only admitted dialing the phone. The judge said he would take it under advisement and Gault was released from detention two or three day later until a new hearing could be held.

A second hearing was held on June 15, 1964, with both Gault’s mother and father attending. No record was kept of the hearing and Mrs. Cook did not appear. Mrs. Gault asked that Mrs. Cook identify which boy made the remakes, but the judge said it was not necessary. The judge then committed Gault to the State Industrial School for Boys until his twenty-first birthday; six years. The Gaults then retained a lawyer, who filed a writ of *habeas corpus*, demanding that the state justify holding Gault.

On appeal, the United States Supreme Court found that Gault’s constitutional due process rights had been violated; it ruled that in hearings that could result in commitment to an institution, juveniles have the right to notice and counsel, to question witnesses, and to protection against self-incrimination (387 U.S. 1, S.Ct. 1428 (1967)).

The *Gault* (1967) case is the fourth of an alternating series of cases that began with Mary Ann Crouse in 1838. The crucial element of each decision is whether the

United States Supreme Court focused on the good intentions or actual performance of the juvenile justice system. The *Crouse* (1838) case was heard thirteen years after the founding of the first juvenile institution and the Court was still optimistic about how well those institutions would work. The *O'Connell* (1870) case was heard thirty years later when the actual performance of the juvenile institutions was much more apparent. The optimism was renewed by the establishment of the first juvenile court in 1899 and was reflected in the *Fisher* (1905) case six years later. Sixty-two years later, the *Gault* (1967) decision affirmed an awareness of the failures of juvenile court system.

In re Winship, 387 U.S. 358 (1970)

In 1967, Samuel Winship, age 12, was accused of stealing \$112.00 from a purse in a furniture store in the Bronx. A store employee stated that Winship was seen running from the store just before the money was reported missing, but others in the store disputed that account, noting that the employee was not in a position to see the money actually being taken. At the juvenile court hearing, the judge agreed with Winship's attorney that there was some reasonable doubt of Winship's guilt, but New York juvenile courts, like those in most states, operated under the civil law standard of preponderance of evidence. Winship was adjudicated delinquent and committed to a New York training school for an initial period of 18 months, subject to annual extensions for up to six years. Winship's attorney appealed the case on the issue of the burden of proof required in juvenile court. The United States Supreme Court ruled that the standard of evidence for adjudication of delinquency should be "proof beyond reasonable doubt" (387 U.S. 358 (1970)).

The legal issue in this case was whether proof beyond a reasonable doubt is among the essentials of due process and fair treatment required during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult. The Supreme Court held that the same proof required for adults in their trials, should be the standard for juveniles in their adjudication proceedings for delinquent offenses. Status offenses maintained the preponderance of the evidence standard. Two years later, the Supreme Court made the *Winship* (1970) decision retroactive. Juveniles who had been adjudicated on a preponderance of the evidence would either have to be released from institutions or re-adjudicated by evidence that was beyond a reasonable doubt. This was unusual because normally decisions only apply after they are announced. This unusual move indicated how important the *Winship* (1970) decision was. The beyond a reasonable doubt standard is used to assure that when the court finds that someone has committed a criminal act, that finding is accurate. Adjudications based on a preponderance of the evidence were held to be not accurate enough to warrant continuing to keep an individual in an institution. This same focus on accurate fact-finding reappears in the next case, where it involved the right to a jury trial.

McKeiver v. Pennsylvania, 403 U.S. 528 (1971)

In 1968, Joseph McKeiver, age sixteen of Philadelphia was charged with robbery, larceny, and receiving stolen goods. These three felony charges arose from an incident in which McKeiver and twenty plus other juveniles chased three younger teenagers and took 25 cents from them. McKeiver had never been arrested, was doing well in school, and was gainfully employed. The testimony of two of the three witnesses against him was described by the juvenile court judge as somewhat inconsistent and weak.

At the beginning of the hearing, McKeiver's lawyer said he had never met McKeiver before and was just interviewing him. The judge allowed five minutes for the interview. The lawyer then requested a jury trial, which the judge refused, and McKeiver was adjudicated and placed on probation. The case was appealed to the Pennsylvania Supreme Court, where it was joined to another juvenile case in which a jury trial had been requested.

Edward Terry, age fifteen and also from Philadelphia, hit a police officer with his fists and with a stick when the officer attempted to break up a fight Terry was watching. After denying a jury trial, the judge adjudicated Terry and committed him to an institution. These two cases were appealed to the United States Supreme Court, where they were consolidated with two North Carolina cases that also involved juveniles requesting jury trials (*In re Terry*, 265 A.2d 350 (1970)).

Barbara Burris and about forty-five other black children between the ages of 11 and 15 had been arrested and charged with obstructing traffic as the result of a march protesting racial discrimination in the county schools. They refused to get off the paved portion of the highway when told to do so by police. In a separate incident arising out of the same protest, James Howard and some fifteen other juveniles created a disturbance in a principal's office. He was charged with being disorderly and defacing school property. The judge adjudicated all these juveniles and committed them to institutions. The judge then suspended the commitments and placed them on probation for terms ranging from 12 to 24 months (*In re Barbara Burrus* 169 S.E.2nd 879 (1969)).

The United States Supreme Court argued that juries would not enhance the accuracy of the adjudication process, and could adversely affect the informal atmosphere

of the non-adversarial juvenile court hearing process. The significance of *McKeiver* (1971) is that it is the only one of the five cases in which the United States Supreme Court did not rule that juveniles must receive all the same due process rights as adults in criminal court (*McKeiver v. Pennsylvania* 403 U.S. 528 (1971)).

Breed v. Jones, 421 U.S. 519 (1975)

On February 8, 1970, 17 year old Gary Jones committed an armed robbery in Los Angeles with a loaded gun. He was arrested and placed in detention that same day. On March 1, 1970, Jones was adjudicated a delinquent on that charge, along with two other charges involving robberies with a loaded gun. The case was continued for two weeks so the probation officer could prepare a social history and recommend a disposition, and Jones was returned to detention.

On March 15, 1970, the court reconvened for the disposition hearing, but the judge announced instead that he would waive jurisdiction to the criminal court. Jones' lawyer expressed surprise and requested a continuance in order to prepare argument about the proposed waiver. The court continued the case for another week, then heard argument on the waiver issue and ordered Jones tried as an adult.

Jones' lawyer filed a writ of *habeas corpus* alleging Jones had already been tried in the juvenile court for this offense, and could not be tried again in criminal court without violating the double jeopardy clause of the Fifth Amendment to the Constitution, which holds that no person shall be subject for the same offense to be twice put in jeopardy of life or limb.

This petition was denied because the court held that a juvenile adjudication was not a criminal trial, so that Jones had not been placed in jeopardy of life or limb at it.

Jones was tried and convicted in adult criminal court and sentenced to prison. The case was appealed to the United States Supreme Court where the Justices ruled that adjudication is equivalent to a trial, because a juvenile is found to have violated a criminal statute. Jones' double jeopardy rights had therefore been violated, and the Court ruled that double jeopardy applies at the adjudication hearing as soon as any evidence is presented. A juvenile court waiver hearing must therefore take place before or in place of adjudication hearing (*Breed v. Jones* 421 U.S. 519, 95 S.Ct. 1779 [1975]).

These United States Supreme Court cases profoundly affected the legal process and procedures in juvenile courts throughout the United States. The overall purposes of the juvenile court remained the same, but court personnel were now required to inform the juvenile and their parents of due process rights. State legislation quickly followed to amend juvenile court procedures in accordance with these Supreme Court rulings.

Extra-Legal Considerations

In the 1960s, the President's Commission on Law Enforcement and Administration of Justice, made the first comprehensive assessment of the United States juvenile justice system. The Commission focused in particular on the juvenile court, declaring it to be ineffective. The Task Force on Juvenile Delinquency (1967) concluded "that the great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of juvenile criminality, or in bringing justice and compassion to the child offender" (p.25). The Commission saw little promise in rehabilitation through treatment because it believed that the juvenile court unnecessarily stigmatized juveniles by labeling them delinquent, thus diminishing chances of rehabilitation.

On the issue of waivers, the Commission recommended that:

To be waived, a youth should be over a certain age (perhaps 16); the alleged offenses should be relatively grave (the equivalent of a felony, at least); the youth's prior offense record should be of a certain seriousness; the youth's treatment record discouraging. Waived youth would then be dealt with other than cursorily by the criminal court, and the juvenile court's action in waiving them would be based on an honest and open assessment of individual suitability. (Task Force on Juvenile Delinquency, 1967, p. 25)

Next, model waiver statutes were developed. The 1968 Uniform Juvenile Court Act and the legislative Guide for Drafting Family and Juvenile Court Acts were the most used and influential model statutes. Both of these model acts incorporated certain restrictions on judicial waiver suggested by the Supreme Court in its *Kent* decision.

Just deserts reformers concentrated their efforts in the Juvenile Justice Standards Project initiated in 1971 by the Institute of Judicial Administration at New York University and later cosponsored by the American Bar Association. These came to be known as the IJA-ABA Standards. The IJA-ABA Standards urged increased judicial waiver but recommended that, to be eligible for waiver, the juvenile must be charged with an offense punishable in adult criminal court by a least 20 years imprisonment, which the waiver decision maker finds is "serious" (IJA-ABA, 1980, Secs. 1.1B, 2.2A, and 2.2C).

Third, in 1974, the Juvenile Justice Delinquency Prevention Act (JJDPA) established guidelines for set rules about delinquents in court. The 1974 Juvenile Justice

Delinquency Act also established the Office of Juvenile Justice; now the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The Office of Juvenile Justice and Delinquency Prevention is located within the United States Department of Justice (DOJ) (Bilick, 2004; DePrato & Hammer, 2002).

In addition, the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders also conducted its own review of available data and research on criminal and juvenile justice system policies governing the handling of serious and violent juvenile offenders, and took the position that waiver should be confined to serious, violent crime cases, involving juveniles past their mid-teens, where the minimum punishment necessary is substantially larger than that available to the juvenile court. They went on to say that all waiver decisions would be reviewed by an appellate tribunal. A sentencing structure for juveniles in criminal court was recommended, guided by the principle that the maximum sentencing options be significantly lower for violent young offenders than those for adults convicted of comparable crimes.

Positions taken by the Twentieth Century Fund soon were overshadowed by the just deserts philosophy originally provided by the American Friends Service Committee in its report on crime and punishment in America. It concluded that the individualized treatment model was theoretically faulty, systematically discriminatory in administration, and inconsistent with some of our most basic concepts of justice. Just deserts advocates initially directed their reforms at the criminal justice system having been provided impetus by the war on crime during the later 1960s and early 1970s. They quickly expanded their focus on the juvenile justice system.

Just deserts philosophy and practice grew in the 1980s and 1990 because of the rising crime, prison overcrowding, and disenchantment with the prospects of successful treatment programs. Considerable impetus was provided by reviews of program evaluations that found few rehabilitation programs to be effective. The most influential among these was the comprehensive review conducted by Martinson and his colleagues, published initially by Martinson. The general conclusion of these reviews was that nothing works (Martinson, 1974), thus, strong support was provided for the just deserts philosophy. The growth of juvenile violence in the 1980s and 1990s provided further justification for the waiver of juveniles to the adult criminal justice system.

In response to the increase in violent crime in the 1980 and 1990s, state legal reforms in juvenile justice, particularly those that deal with serious offenses, stressed punitiveness, accountability, and a concern for public safety, rejecting traditional concerns for diversion and rehabilitation in favor for a get-tough approach to juvenile crime and punishment. This shift in emphasis from a focus on rehabilitating the individual to punishing the act is exemplified by the seventeen states that redefined the purpose clause of their juvenile courts to emphasize public safety, certainty of sanctions, and offender accountability (Torbet & Szymanski, 1998). Inherent in this change in focus is the belief that the juvenile justice system is too soft on delinquents who are thought to be potentially as much a threat to public safety as their adult criminal counterparts.

Juvenile Waiver

In response to the rise in violent crime by juveniles during the late 1980s and early 1990s, states around the country made changes to their waiver provisions (Griffin et al., 2011). These changes mainly involved the modification and increased use of juvenile

waiver, changing sentencing structures, and modifying or removing traditional confidentiality provisions (Griffin et al., 1998, 2001; Redding, 2008; Torbet & Szymanski, 1998). Between 1992 and 1997, forty-seven states and the District of Columbia changed their laws in at least one of these ways (National Research Council, 2000; Torbet & Szymanski, 1998).

Determining which juveniles belong in juvenile court has been an issue since its inception of the juvenile court (Tanenhaus, 2000). The court's founders recognized that not all juveniles should come within the juvenile court's jurisdiction, and so various mechanisms of waiving the juvenile to the adult criminal court were created (Griffin, Torbet & Szymanski, 1998).

From the inception of the juvenile court, judges have had the discretion to waive jurisdiction to the adult criminal court. Juveniles waived to the adult criminal court via judicial waiver generally fit one of three case types: serious offense, extensive juvenile record, or juvenile near the age limit. In the serious offense case, the offense with which the juvenile is charged is so serious that the sanctions available to the juvenile court are felt to be insufficient. These cases usually involve violent crimes, most often murder. The second types of case, extensive juvenile record, involve juveniles with extensive histories of arrest and juvenile court sanctions who are deemed unable to benefit from juvenile court. In the third type of case, the juvenile is very close to the age limit of the juvenile court's jurisdiction. These cases are waived because the juvenile court would not have jurisdiction over the particular juvenile for a long enough period of time or because the juvenile is thought to be appropriate for adult criminal court (Zimring, 1998).

A judicial waiver occurs when a juvenile court relinquishes their right to prosecute the juvenile offender. When this right to prosecute is relinquished then the juvenile can be certified, and tried as an adult (Burrow, 2008; Moore, 1996; Torbet & Szymanski, 1998).

In response to the perceived rise in violent juvenile crime, state legislatures began chipping away at the jurisdiction of the juvenile court, identifying more and more offenses better addressed in the adult court. Additionally many legislatures lowered the age at which juveniles could be waived (Griffin, 2003; Moore, 1996; Redding, 2008; Torbet & Szymanski, 1998). Due to these legislative changes, the number of juveniles convicted of felonies in criminal courts and incarcerated in adult correctional facilities has increased (Redding, 2008). In 1999, juveniles convicted in adult criminal court represented one percent of the new prison commitments (Snyder & Sickmund, 1999).

Prior to this movement, a waiver was handled on a case-by-case basis. The most important case guiding juvenile waiver is *Kent v. United States* (1966). In *Kent v. United States* (1966) the United States Supreme Court ruled that juveniles are entitled to due process procedures in waiver proceedings, that a hearing be held on waiver cases, that the juvenile have the right to representation by counsel at the hearing, that the juvenile's attorney be provided access to all information used by the judge in deciding on waiver, and that the juvenile court's waiver decision be supported by a statement of reasons. Another cases related to juvenile waiver is *Breed v. Jones* (1975). The case of *Breed v. Jones* (1975) addressed the idea of a juvenile first being adjudicated a delinquent in juvenile court, and then being waived and tried as an adult; a violation of the double jeopardy clause of the Fifth Amendment.

Today, the majority of waivers are required, and most states have lowered the minimum age for waiver (Griffin et al., 2011). The minimum age at which a juvenile may be tried as an adult varies (Puzzanchera, 2001; Torbet & Szymanski, 1998). Some states have no minimum at all (Puzzanchera, 2001; Torbet & Szymanski, 1998). Others specify minimums as young as ten.

Waiver laws vary from state to state. Almost all states; however, use at least one of three waiver methods, and some states use a combination of two or three (Griffin et al., 2011; Puzzanchera, 2001; Sickmund, 1994; Torbet & Szymanski, 1998). The three methods in which cases can be waived include: judicial waiver, direct file, and statutory exclusion (Griffin et al., 2011; NCJFCJ, 2006; Puzzanchera, 2001; Sickmund, 1994; Torbet & Szymanski, 1998).

Judicial Waiver

The three types of judicial waiver are discretionary, presumptive, and mandatory (Griffin et al., 2011). In discretionary waiver, juvenile court judges have the discretion to waive the case to the adult criminal court. At the end of 2009, there were 45 states that had the discretionary waiver mechanism (Griffin et al., 2011). In presumptive waiver, laws define which types of cases are presumed appropriate to waive from juvenile court to adult criminal court (Griffin et al., 2011). The decision is in the hands of the judge; however, waiver is presumed (Griffin et al., 2011). In presumptive waiver, the juvenile assumes the burden of proof to demonstrate why they should not be waived to the adult criminal court (Griffin et al., 2011). In addition, in some states the presumption is applied against juveniles with certain kinds of histories, and with any offense committed with a firearm (Griffin et al., 2011). At the end of 2009, there were 15 states that had the

presumptive waiver mechanism (Griffin et al., 2011). Mandatory waiver applies to situations in which cases that meet certain criteria are waived to the adult criminal court. With mandatory waiver, a fitness hearing is conducted to determine whether the juvenile is amenable to treatment in the juvenile justice system (NCJFCJ, 2006; Torbet & Szymanski, 1998). At the end of 2009, there were 15 states that had the mandatory waiver mechanism (Griffin et al., 2011)

The most popular method of waiver is discretionary, which exists in forty-seven states and the District of Columbia. Juvenile court judges weigh a variety of factors in determining whether to waive a juvenile. All states have incorporated the constitutionally required factors enumerated by the U.S. Supreme Court (Podkopacz & Feld, 1996). Griffin et al., (1998, 2011), NCJFCJ, (2006), and Torbet and Szymanski, (1998) list the constitutional requirements as the following:

- the seriousness of the offense
- the need to protect the community
- whether the offense was committed in an aggressive violent, premeditated, or willful manner
- whether the offense was against a person or property
- the merit of the complaint
- whether the juvenile's associates will be tried in adult criminal court
- the juvenile's sophistication, maturity, record, and previous history, and
- the reasonable likelihood of rehabilitation

Direct File

The second method for waiving juveniles to the adult criminal court is called direct file (also known as prosecutorial waiver). As the general public, policy makers, and the courts determined that judicial hearings were not effective, they enacted alternative ways to waive juveniles from the juvenile court to the adult criminal court. For certain ages and offenses, direct file allows the prosecutor to choose the jurisdiction; juvenile or adult court. Unlike with judicial waiver, no hearing is held and there are no statutory factors to be considered. The decision to waive is left entirely to the prosecutor's discretion and it cannot be appealed. Many states use a combination of different waiver provisions, thus spreading the decision-making authority among the various agents of the court (Griffin et al., 1998, 2011; NCJFCJ, 2006; Torbet & Szymanski, 1998). Few states report data on cases waived by direct file (Griffin et al., 2011).

Statutory Exclusion

The third method a juvenile can be tried as an adult is through statutory exclusion; also known as mandatory waiver. In statutory exclusion, the state legislature establishes by law the age in which a juvenile offender is to be moved to the adult criminal court (Logan, 1998). Both the age and the crime (s) allegedly committed by the juvenile can be the subject of such law (Kole, 2001; Parent, Dunworth, McDonald & Rhodes, 1997).

In the 1980s and 1990s waiver legislation has undergone major change with the get tough on crime movement. Many jurisdictions have passed statutory exclusion provisions that require the automatic waiver of certain juveniles into the adult criminal justice system. These statutory exclusion provisions apply to juveniles over a certain age charged with serious or violent felonies. The increasing waiver of juveniles into the adult

criminal justice system is based on the desire to get tough with young offenders (Griffin et al., 1998; NCJFCJ, 2006; Torbet & Szymanski, 1998).

Whether legislative waiver is effective or not has been the subject of much debate (Jensen & Metsger, 1994; Risler, Sweatman & Nackerud, 1998; Singer & McDowell, 1998). Opponents suggest that legislative waiver cast a wide net, fail to take into consideration the juvenile's criminal background, (Kole, 2001; McCarthy, 1994) and the general belief that juveniles are young and immature and thus less blame worthy than their adult counterparts (Scott & Steinberg, 2003). Like direct file, few states report data on cases waived by statutory exclusion (Griffin et al., 2011).

Exception to the Once Waived, Always waived Practice/Policies

In order to restore balance and to allow for appropriate dispositions of some amenable, younger offenders, many states; approximately, roughly twenty-three, allow judges to reverse waive or waiver back to juvenile court cases that originated in the adult criminal court either as a result of excluded offense or prosecutorial direct file decisions. About half of the prosecutors use direct file, and excluded offense jurisdictions allow an adult criminal court judge either to return a juvenile to juvenile court for trial or sentencing, or to impose a juvenile or youthful offender sentence in lieu of an adult criminal sentence. In some states, offense exclusion or direct file laws that place a juvenile initially in adult criminal court, create a presumption of unfitness and shift the burden of proof to the juvenile to demonstrate why they should be returned to juvenile court for trial or disposition. In other excluded offense jurisdictions, the prosecutor may make a reverse waiver decision. In most states, however, a criminal court judge makes

the waiver back decision to sentence a youth as a juvenile (Feld, 2009; Griffin et al., 1998, 2011; NCJFCJ, 2006; Torbet & Szymanski, 1998).

An evaluation of reverse waiver decisions suggest that younger offenders; those who had fewer prior convictions and less previous exposure to correctional services are returned to the juvenile court rather than remaining in the adult system (Griffin et al., 1998, 2011; Feld, 2009; NCJFCJ, 2006; Torbet & Szymanski, 1998). This is similar to juvenile court judicial waiver (Griffin et al., 1998, 2011; Feld, 2009; NCJFCJ, 2006; Torbet & Szymanski, 1998).

Once an Adult/Always an Adult

A special waiver provision has been created in thirty-four states for juveniles who, having once been prosecuted as adults, are subsequently prosecuted in the adult criminal court on any new offenses (Griffin et al., 2011). Most states with once and adult always an adult provisions imply required criminal prosecution of all such subsequent offenses by either a blanket exclusion or an automatic waiver mechanism (Griffin et al., 1998, 2011). Nearly all once and adult always and adult provisions stipulate that the juvenile involved must have been convicted of the offense that triggered the adult prosecution (Griffin et al., 1998, 2011). In Iowa, California, and Oregon however, this is not always necessary. A subsequent charge that would ordinarily require a fitness hearing in juvenile court may be filed directly in criminal court if the juvenile involved was previously declared unfit for juvenile handling and waived to criminal court (Griffin et al., 2011); even if no conviction followed the original waiver. Likewise, in Delaware, the law does not require a conviction in the original case, provided a court had the opportunity to make a determination regarding the juvenile's amenability to rehabilitative

processes of the juvenile court. Idaho requires adult prosecution of a juvenile who has already been convicted as an adult, even if the original conviction was for a lesser offense that would not have been excluded from juvenile court jurisdiction. Mississippi requires no conviction on the first adult prosecuted offense if the juvenile is subsequently accused of a felony.

Waiver in Use

Judicial Waiver

All of the waiver mechanisms are accompanied by a host of strengths and weaknesses. For example, the literature reflects many concerns about judicial waiver, including the belief that judges are vested with too much discretion, and the belief that race influences the waiver decision (Burrow, 2008; Clarke, 1996; Fagan, Forest & Vivona, 1987). Some research suggests similarly situated juvenile offenders receiving “adult time” (Burrow, 2008, p.34), vary for a variety of reasons (Burrow, 2008; Kurlycheck & Johnson, 2004; Myers, 2003; van Vleet, 1999).

Judicial waiver have been tracked for several years, but cases waived by prosecutorial direct file or statutory exclusion are not systematically examined (Griffin et al., 2011; McCord et al., 2001; Fagan, 2008). Waivers by juvenile judges have remained fairly constant between 1986 to 1996, representing between 1% and 1.6% of all petitioned cases (Lawrence & Hemmens, 2008; McCord et al., 2001; Sickmund et al., 1998; Snyder & Sickmund, 1999; Stahl, Finnegan & Kang, 2007; 2002). There is some evidence that a similar percentage of cases were waived in the early years of the juvenile court (McCord et al., 2001). About 1% of cases were waived by the Milwaukee Juvenile Court in the early twentieth century (Schlossman, 1977). In a study of the Chicago

juvenile court, Jeter (1922) reported that the percentage of boys waived to adult criminal court per year was usually less than 1%.

Some evidence suggests that at least as many if not more juveniles are sent into the adult criminal justice system via these other two methods (Bilchik, 1999, 1998; Butts & Harrell, 1998; Fagan, 2008; Lawrence & Hemmens, 2008). In 1995, Florida waived close to 7,000 juveniles to the adult criminal court; the bulk of these juveniles were waived using direct file (Jordan & Freiburg, 2010; Jordan & Myers, 2011; Lawrence & Hemmens, 2008; Mears, 2003; Mears & Butts, 2008). In that same year, 9,700 juveniles were waived to the adult criminal court via judicial waiver; thus Florida's non-judicial waiver alone almost matched the nation's total number of judicial waiver (Sickmund, et al., 1998).

In 2007, data reported to the National Juvenile Court Data Archive indicated that 8,500 juveniles were waived using the judicial waiver (Griffin et al., 2011). Arizona, California, Florida, Michigan, Oregon, and Washington reported an additional 5,096 non-judicial waiver cases (Griffin et al., 2011).

Despite some stability in the overall proportion of cases waived via judicial waiver, there is variety by type of offense. Between 1986 and 1996, cases involving crimes against persons; homicide, rape, robbery, aggravated assault, simple assault, and other violent sex offense were the most likely to be sent to the adult criminal court by juvenile court judges; about 2% of person offense cases resulted in judicial waiver (Sickmund et al., 1998; Stahl, et al., 1999). In the late 1980s, there was a dramatic increase in waiver for drug offense cases, which increased from 1.2% in 1986 to 4.1% in 1991 (McCord et al., 2001). By the mid 1990, the percentage of drug offenses waived

dropped back down to 1.2% (McCord et al., 2001). The peak occurred during the height of the war on drugs which led to a rise in youth violence (McCord et al., 2001). Waiver decisions may have been influenced by the general antidrug campaign of the period.

In an analysis of judicial waiver decisions in Boston, Detroit, Newark, and Phoenix between 1981 and 1984, Fagan, Forst and Vivona (1987) found that age at the time of offense was committed, age of delinquency onset, and seriousness of offense were the factors that most influenced juvenile judges' decisions to waive a case to criminal court. As one might expect, juveniles who are waived to the adult criminal court tend to be older and charged with serious violent offenses, most usually homicide.

Studies in Virginia (Poulos & Orchowsky, 1994) and New Mexico (Houghtalin & Mays, 1991) examined the factors influencing judicial waiver between 1988 and 1990. They found that the factors most important to juvenile judges' decisions to waive a case included current offense, prior record, and age. Most likely to be waived were juveniles who were charged with homicide, rape, drug sales, older juveniles, juveniles who used a gun in committing the offense, and those with prior felony person or drug adjudications or prior commitment to a residential juvenile correctional facility. Judges in larger cities were less likely to waive cases than were those in rural counties.

Podkopacz and Feld (1996) analyzed judicial waiver motions filed between 1986 and 1992 in Hennepin County, Minnesota, and determined that in addition to age, present offense, and weapon use, the recommendation of probation officers and clinical evaluators significantly affected the judicial waiver decision. They also found prior correctional interventions to be significant. Juveniles with no prior program placements

and those with only a few; one to three, were less likely to be waived to the adult criminal court than juveniles with four or more placements.

Direct File

National data on the number of cases waived through direct file are not available (National Research Council, 2000) and there is far less research on direct file (Bishop, 2000; Bishop & Frazier, 1991, 1996; Burrow, 2008; Thomas & Bilchik, 1985). Direct file allows the prosecutors to determine where the juvenile will be prosecuted, i.e. juvenile court or adult criminal court (Griffin et al., 2011). This charging discretion is important for two reasons. First, prosecutors are not required to consider the best interest of the child (Burrow, 2008; Feld, 1991). Second, public safety becomes the dominant concern (Bishop, Frazier & Henretta, 1989). Nonetheless, a number of questions have been raised about direct file.

In contrast to the findings regarding judicial waiver, Bishop and Frazier (1991) found that juveniles waived via direct file in Florida from 1979 to 1981 were not violent or chronic offenders; 55% of those waived were felony property offenses and only 29% were felony person offense.

McCarthy (1994) focused on whether direct file is necessary to avoid extreme outcomes in case processing. Similarly, Davis, (2000) suggested that direct file may largely be an overreaction to a “phantom menace.” Other concerns have focused on the fact that the charging decisions of prosecutors are not reviewable it unclear whether the most serious offenders are being charged and whether some offenders should be charged as adults at all (Feld, 2004; Sabo, 1996; Sanborn, 2003). Although the research shows that there are differences of opinion with respect to the efficacy of direct file, there is

mounting evidence that it may be the least favored method of addressing serious juvenile offending (Bishop, 2004; Bishop, Lanza-Kaduce & Frazier, 1998; Boyce, 1994; Burrow, 2008; Cintron, 1996).

The 1994 National Survey of Prosecutors (DeFrances & Strom, 1997) conducted by the Bureau of Justice Statistics sampled 308 chief prosecutors nationwide from the 2,343 who try felony cases in state courts. Among prosecutors' offices nationwide, 94% reported handling one or more types of juvenile cases. Over 80% of all offices handled juvenile delinquency cases and requests to waive juveniles to adult criminal court. Among offices handling juvenile cases, 63% reported they had waived at least one juvenile case to adult criminal court in 1994. Ninety-six percent of large full-time offices reported handling waiver to adult criminal court, compared to 67% of small, full-time offices, and 48% of part-time offices. Among offices handling juvenile cases, about 19% had a specialized unit that dealt with juvenile cases waived to adult criminal court. These specialized units were most often found in large, full-time offices; 61%. The types of cases waived varied by type of office. In full-time offices in large jurisdictions, 80% of the offices reported that at least one murder case was waived and 72% reported at least one robbery case. Sixty percent of part-time offices handling juvenile cases waived to adult criminal court reported that at least one burglary case was waived.

A study by the United States General Accounting Office (1995) based on data from five states and the District of Columbia found that the percentage of cases sent to adult criminal court by prosecutorial direct file ranged from less than 1 % (Utah) 10% (Florida) to 13% (Arkansas). In some states, the change to prosecutorial direct file has

increased the number of juveniles that have been sent to the adult criminal court (McCord et al., 2001).

Statutory Exclusion

Recent changes in statutory exclusion laws have generally increased the population of juveniles potentially subject to waive to the adult criminal courts, but no national data are currently available to determine the actual number of juveniles affected by exclusion laws, the characteristics of such juveniles, or the offenses for which they are waived. A 1985 study of twelve jurisdictions reported that juveniles waived by statutory exclusion tended to be younger and to have fewer prior arrests and placements than juveniles waived by other means (Gragg, 1986).

Clarke (1996), in a study of statutory exclusion waiver in Cook County, Illinois, from 1992 to 1994, found that 39% of the waiver were for drug or weapon offense, 25% were for murder, and 22% were for armed robbery. The proportion of waiver cases for murder had dropped from nearly half of those waived by judicial waiver from 1975 to 1981 to a quarter under statutory exclusion. Clarke (1996) concluded that Illinois's statutory exclusion provisions failed to identify and therefore protect the public against serious violent juvenile offenders. Instead, they prosecuted and stigmatized many juveniles who did not represent a threat to public safety and who could benefit from the more rehabilitative programs of the juvenile court.

The Effects of Waiver

Juveniles waived to the adult criminal court are more likely to be convicted of both the target charge and reduced charges than juveniles processed in juvenile court (Coalition for Juvenile Justice, 2005; Lanza-Kaduce et al., 2005). The processing of a

juvenile who has been waived to the adult criminal court from time of waiver to the sentencing phase takes more than twice as long as the adjudication process in juvenile court and those who are incarcerated experience longer periods of confinement (Coalition for Juvenile Justice, 2005). There are fewer treatment opportunities; schooling vocational training, and mental health, for juveniles who are incarcerated in the adult facilities verses those juveniles who are held in juvenile correctional facilities (Coalition for Juvenile Justice, 2005; Podkopacz & Feld, 1996). Juveniles waived to the adult criminal court are more likely to recidivate, with more serious offenses, and with a shorter survival rate than juveniles who are prosecuted through the juvenile court system (Coalition for Juvenile Justice, 2005; Myers, 2003, 2005; Podkopacz & Feld, 1996). Juveniles who are incarcerated in adult prisons face high rates of victimization, particularly violence and sexual assault, than juveniles who are sent to juvenile facilities (Coalition for Juvenile Justice, 2005). The following research bears this out.

Deterrence

During the past thirty-five years, policymakers, driven by the public concerns and fears of crime, have supported various get tough strategies. The more popular approaches have included three strikes and you're out, truth in sentencing provisions, expanded use of the death penalty, boot camps, juvenile waiver, and stricter law enforcement. The foundation of these measures is a belief in the value of increased retribution and incapacitation. They are also supported based on the idea that punishment deters criminal and delinquent behavior.

Waiving juveniles to the adult criminal court corresponds well with this view. Supporters of this practice contend that adult criminal court is the appropriate place for

juvenile offenders who exhibit serious and violent criminal behavior (Fagan, 1996; Myers, 2003). It is asserted that in adult criminal court a message can be sent that lenient treatment of the juvenile system is no longer an option (Bishop, Frazier, Lanza-Kaduce & Winner, 1996; Myers, 2003; 2005). Instead, harsh adult criminal court sanctions will be imposed, which will increase public safety and reduce motivations to commit future crimes. In sum, adult criminal court is believed to provide stronger punishment and deterrence. These underlying beliefs suggest that the effectiveness of treating juvenile offenders as adults is based on the nature of the punishment it produces; certain, severe, and swift (Beccaria, 1764; Butts & Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2005; Redding, 2008).

The research on the deterrent effects of waiving juveniles to the adult criminal court is decidedly mixed. Some studies identify lower recidivism rates, some higher, and some no difference (Griffin et al., 2011; Mears, 2003). The idea that waiver can actually result in greater rates of recidivism generates a concern because such an outcome clearly suggests a problem with the use of waiver (Mears, 2003). Some studies (Bishop et al., 1996; Fagan, 1995; Podkopacz & Feld, 1996; Winner et al., 1997) suggest that recidivism rates are higher among juveniles who have been waived to the adult criminal court. These studies (Bishop et al., 1996; Fagan, 1995; Podkopacz & Feld, 1996; Winner et al., 1997) suggest a number of reasons for the higher recidivism rates, including the correct identification of juveniles likely to recidivate, increased vigilance by law enforcement to juveniles with adult records, and being incarcerated with adults may have encouraged further criminality.

Before the widespread expansion of waiver laws, Glassner, Ksander, Berg and Johnson (1983) reported the results of interviews with juvenile offenders in New York. These juvenile offenders indicated they had decided to stop offending once they reached the age at which they knew they could be tried as adults.

Studies from New York (Singer & McDowall, 1988) and Idaho (Jensen & Metsger, 1994) suggest waiving juveniles to the adult criminal court does not have a deterrent effect on violent juvenile crime. Singer and McDowall (1988) evaluated New York's statutory exclusion law. The statutory exclusion law became effective in 1978, and lowered the age at which juveniles could be waived to 13 for murder and 14 for assault, arson, burglary, kidnapping, and rape. Using Philadelphia data for comparison purposes, the authors conducted trend analysis of monthly juvenile violent crime arrest rates during the period of 1974 to 1984. Singer and McDowall (1988) found that the new statutory exclusion law did not produce the expected deterrent effect.

In Idaho, Jensen and Metsger (1994), evaluated their state's statutory exclusion law (1981) that required violent juvenile offenders from age 14 to 18 to be sent to the adult criminal court. Jensen and Mesger (1994) used Montana and Wyoming as comparison states. Jensen and Metsger (1994) found that the statutory exclusion law had no deterrent effect on violent juvenile crime.

Similar results were found by Bishop (1996) et al., in their Florida study with the additional finding that in some cases recidivism of juvenile waived to the adult criminal court involved more serious crimes; 93% of waived juveniles who were rearrested were charged with a felony, while 85% of the retained juveniles who were rearrested were

charged with a felony. In a six year follow-up to the Florida study researchers found that waiving juveniles to the adult criminal court led to more recidivism (Winner et al., 1997).

In their study of juveniles considered for waiver in Hennepin County, Minnesota, Podkopacz and Feld (1996) also failed to find evidence of greater deterrence in waiving juveniles to the adult criminal court. During a two-year follow-up period, 58% of the waived offenders were convicted of a new crime in contrast to only 42% of the retained juveniles. The authors offered three possible explanations for the lower juvenile court recidivism rate. First, through an emphasis on prior offending, the juvenile court succeeded in waiving the most serious and frequent offenders who had a greater probability of recidivism. Next, treatment services were more effective in the juvenile correctional system. Finally, the adult criminal system better trained rather than deterred further criminality than did the juvenile system.

Risler, Sweatman, and Nackerud (1998) subsequently assessed the general deterrent effects of Georgia's 1994 legislative waiver law. Juvenile arrest rates were again compared before and after implementation of the new law. Analysis of the 1992 to 1995 data indicated that there were no significant reductions in arrest rates for the specified waiver offenses, suggesting that the law did not reduce serious juvenile crime.

Levitt (1998), in his study examined the punitiveness of the juvenile court and adult criminal court on arrest rates. Levitt (1998) found that in states in which the adult criminal court was more punitive than the juvenile court, violent crime rates decreased at the age of majority. This suggests that the punitiveness of the state adult criminal court rather than waiver reduces recidivism.

Myers (2003, 2005) and Myers and Kiehl (2001) in their research on 557 violent juvenile offenders processed in Pennsylvania juvenile and adult criminal courts in 1994 found evidence of greater recidivism among waived juveniles during both the pre-dispositional and post-dispositional states of processing. Of the 224 offenders who were released from pre-dispositional secure custody, those in adult court were more likely to be rearrested and also exhibited more serious pre-dispositional recidivism compared with their counterparts in juvenile court. Similarly, during an eighteen month post-dispositional follow-up period, the waived juveniles displayed greater, more serious, and faster recidivism than did offenders retained in juvenile court, while controlling for a variety of offense and offender characteristics. These findings support those of previous studies that found no evidence of a deterrent effect from juvenile waiver to adult criminal court.

In Georgia, Redding and Fuller (2004) interviewed juvenile offenders who had been charged with murder or armed robbery, and had automatically been tried as adults. Redding and Fuller (2004) found that despite increased publicity on the new automatic waiver law juveniles were not deterred. Many of the juveniles reported thinking they would only get light sentences from the juvenile court such as probation, boot camp, several months in juvenile detention.

In Florida between 1989 and 2002, Lee and McCrary (2005), evaluated the effects of turning eighteen on criminal offending. They found that juveniles did not lower their offending rates upon turning eighteen. This suggests that the prospect of adult criminal court sanctions was not a deterrent.

Macan and Rees (2005) examined delinquency data for drug selling, assault, robbery, burglary and theft from the 1995 National Longitudinal Study of Adolescent Health. They found that the arrest rate had only a general deterrent effect on the crimes of drug dealing and assault.

Steiner and Wright (2006) examined the effects of prosecutorial waiver laws in fourteen states. The study found that the prosecutorial waiver law had no general deterrent effect on juvenile crime.

Griffin et al., (2011) warn in their article that blanket statements about waiver deterring juvenile crime should be read with caution. Furthermore, they assert that several decades of research has generally failed to establish that waiver laws deter juvenile crime and or reduce further criminal behavior (Griffin et al., 2011).

Recidivism

There have been several major studies that have been conducted to examine whether the waiving of a juvenile to the adult criminal court reduces individual recidivism; specific deterrence. These studies indicate that juveniles tried in adult criminal court have greater recidivism rates after release than those tried in juvenile court. Prior to these major studies research was mixed on rates of recidivism for juvenile offenders. For example, Smith and Gartin (1989) found that being arrested reduced recidivism among first time, male offenders.

Fagan (1996) examined the recidivism rates of juvenile offenders charged with robbery or burglary in New Jersey and New York. The study found that adult criminal court processing produces a higher recidivism rate. Mason and Chang (2001) in their

study found similar findings; processing juveniles through the adult criminal court had a substantially higher recidivism rate than juveniles processed through the juvenile court.

In Florida, Bishop, et al., (1996) compared recidivism rates juvenile offenders waived to adult criminal court. Researchers found that the re-arrest rates were higher, and the average time to re-offend shorter among waived juveniles.

A seven year follow-up study by Winner, et al., (1997) found that the re-arrest rates were higher and the time to re-offending shorter among juveniles who had been waived to the adult criminal court; the exception was waived property felons.

Bishop and Frazier (2000) found that juveniles processed in the adult system view the waiver experience as punitive, uncaring, and unfair, whereas juveniles processed in the juvenile justice system typically feel that various court actors care about and are fair in their treatment of them. These perceptions of unfairness might potentially contribute to increased recidivism (Sherman & Weisberg, 1995). It also is possible that experiences in adult prisons, including poorer adjustment and a greater risk of victimization than would occur in juvenile facilities, may affect subsequent criminal behavior (Maitland & Sluder, 1998; McShane & Williams, 1989).

In Pennsylvania, Myers (2001) examined the recidivism rates of juvenile offenders charged with robbery or aggravated assault. Researchers found that juveniles who were judicially waived to the adult criminal court were more likely to be rearrested, and in a shorter amount of time.

In Colorado, Cohen, Glackman & Odgers (2003) studied serious juveniles offenders incarcerated in a maximum security facility. The researchers found a negative relationship between the juveniles' sentence severity and self-reported intent to re-offend.

In addition, the researchers found a positive correlation between their self-report intent to re-offend, and the number of offenses they actually committed after their release.

Lanza-Kaduce, Lane, Bishop, and Frazier (2005) conducted a study in Florida that included young adult offenders; half of the offenders had been prosecutorial waived and the other half had remained in the juvenile court. The researchers found that waived juvenile were significantly more likely to reoffend. Lanza-Kaduce et al., (2005) stated the following conclusion:

Overall, 49% of the waived juvenile offenders reoffended, compared with 35% of the retained offenders. For violent offenses, 24% of the waived offenders reoffended, compared with 16% of the retained offenders. For drug offenses, 11% of the waived offenders reoffended, compared with 9% of the retained offender and for property offenses, 14% of the waived offenders reoffended, compared with 10% of the retained offenders. The results were virtually identical for the subset of 315 best matched pairs.

(Lanza-Kaduce et al., 2005, p.136)

Increased Victimization

Juveniles who receive the punishment of incarceration in the adult criminal court usually serve their sentences in adult prisons and jails. More than 6500 juveniles were being held in adult jails as of June 1998 (Fagan & Vivona, 1989). Juveniles in adult correctional facilities suffer higher rates of physical abuse, sexual abuse, and suicide (Fagan & Vivona, 1989; Young & Gainsborough, 2000). In a study conducted by Fagan and Vivona (1989) the researchers found that compared to those held in juvenile detention centers, juveniles held in adult jails are “7.7 times more likely to commit

suicide, 5 times more likely to be sexually assaulted, 2 times more likely to be beaten by correctional staff, and 50% more likely to be attacked with a weapon” (p. 56).

Similarly, studies by McShane and Williams (1989) and Maitland and Sluder (1998) also reveal that juveniles in adult prisons are more likely to be victimized and to experience more difficult transitions to incarceration.

The victimization of juveniles waived to the adult criminal court is an undesirable outcome. Lawrence and Hemmens (2008) note that juvenile victimization in adult correctional facilities has a potentially negative effect on prison control and successful transitions back into society. They also note that the physical abuse, sexual abuse, and suicide as well as other additional concerns; once an adult always an adult statutes, conviction a matter of public record, disclosure of past criminal activity to future employers, voting rights, and right to serve in the military, to have been largely unaddressed by waiver research (Lawrence & Hemmens, 2008).

Net Widening

Net widening is used to describe the effects of providing alternatives to incarceration; i.e., diversion programs, to direct juvenile offenders away from juvenile court. While diversion programs were originally intended to reduce the numbers of juveniles in lock up facilities and/or reduce the numbers going to juvenile court, scholars suggest that what has happened instead is that the total numbers of offenders under the control of the state have increased. Clearly net widening has occurred (Butts & Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2001).

Few researchers have examined the extent to which net widening results from waiver laws because waiver is typically thought of as being used for the more serious,

chronic, and violent offenders (Butts & Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2001). However, in contrast to the stated goals in many state statutes, waivers are frequently used for less serious property and drug offenders. Applied such cases, net widening becomes a very real possibility (Butts and Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2001).

Net widening also occurs due to the effect of policies. For Example, Mears and Field (2000) describe a policy in one large urban jurisdiction where the prosecutors automatically sought judicial waiver in all eligible cases. This is not to say that such policies are not legal; i.e. allowed. However, it could suggest that some juvenile offenders are being waived simply as a result of policy without regard to their individual situations or needs. Such a policy creates considerable room for net widening (Butts & Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2001).

Howell's (1996) review of judicial waiver studies found that on average, 42% of waived juveniles were serious property offenders and 47% were violent offenders. These findings suggest those judicial waivers generally are reserved for serious offenses. Howell (1996) also found that these percentages varied greatly across jurisdictions. In some, waiver cases consisted primarily of serious and violent offenders, whereas in others, they consisted primarily of less serious offenders. Few studies have systematically examined non-judicial waiver, among those that have, similar patterns and variations have been identified (Bishop, Frazier & Henretta, 1989; Singer, 1996).

Sentencing

Despite the stated goals in many state statutes to increase punishment, studies of waiver show that a juvenile waived to the adult criminal court can result in less tough

punishments: dismissals, plea bargains, diversion programs, and probation (Butts & Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2001). However, Howell (1996) stated that “virtually every study has found that serious and violent juvenile offenders receive longer sentences in adult criminal court than in juvenile court” (Howell, 1996, p. 49). Griffin et al., (2011), on the other hand, states that their attempts to answer the question whether convicted juveniles are sanctioned more severely in the adult system is difficult to answer because the various studies have yielded inconsistent results.

Explanations for why juveniles receive the lesser punishment vary and regardless of the reason, existing research suggest that waiver may be effective in producing greater punishment than would occur in juvenile court but only for the most serious juvenile offenders, and may result in less severe punishment for less serious offenders.

Brown and Langan (1998) conducted a national study on juveniles waived to the adult criminal court. The study found that juveniles waived had higher rates of incarceration; 63% sentenced to prison and 16% to jail terms, and the average prison sentences was 9.25 years. Twenty-one percent were given probation.

A study in New Jersey and New York by Fagan (1995) found that processing juveniles in the adult criminal court resulted in higher rates of incarceration; however, not lengthier sentences. Fagan (1995) also found higher rates of re-arrest and re-incarceration among juveniles processed in the adult criminal court.

In St. Louis, Kinder, Verneziano, Fichter and Azuma (1995) found that waived juveniles did not receive greater punishment. The United States General Accounting Office (1995) study of juveniles waived to the adult criminal court found great variability in incarceration rates by state. For example, in Vermont, 33% of juveniles convicted of

violent crimes, property crimes, and drug crimes in adult criminal court were incarcerated. Minnesota incarcerated 9 out of 10 of the waived juveniles convicted of those three types of crimes. Pennsylvania, like Minnesota, incarcerated 9 out 10 juveniles waived for violent crimes. Pennsylvania only incarcerated 1 out of 10 transferred juveniles for property crimes.

Research indicates that the meaning and use of waiver can vary dramatically among jurisdictions (Feld, 1999; Howell, 1996; Singer, 1996). This variation makes comparison difficult discover as to what if anything occurs to/for the juvenile across jurisdictions. Sanborn (1994) documented that in the three court settings he studied, waiver were viewed by court actors in quite different ways. In the rural and suburban court settings, probation officers played a more prominent role in the waiver process. There also was greater agreement among court actors about the appropriate use of waiver; belief that the waiver was appropriate to remove juveniles who were beyond rehabilitation and threatened the rehabilitation of others. By contrast, court actors in the urban setting viewed the use of the waiver differently from one another. There was much less trust among them, creating a power struggle over how cases were handled. Such variation may dilute the chances that the intended effects of waiving can be achieved. As important, it largely undermines the legitimacy of the waiver by creating a form of “justice by geography” (Feld, 1991, p.156), where waiving to the adult criminal court depends almost entirely on where a juvenile commits an offense.

Disproportionate Minority Contact

A disproportionate number of minority youth are prosecuted as adults. The latest statistics from the Department of Justice (2009) show that 67% of all juvenile defendants

in the adult criminal courts are African American. In addition, 77% of all juveniles sent to adult prison are minorities; 60% African American, 15% Hispanic, 1% American Indian, and 1% Asian. Furthermore, despite minorities using drugs at a lower rate than Caucasian, juveniles charged in adult court for drug related crimes are disproportionate; 75% are African American (National Household Survey on Drug Abuse, 1997). Ninety-five percent of all juveniles sentenced to prison for drug offenses are minorities.

In Cook County, Illinois, Clarke (1996) found a high proportion of the juveniles waived to adult criminal court were minorities; African American and Hispanics made up 94.7% of those waived. In New Mexico, Hispanics and American Indians represent 67% of judicially waived cases (Houghtalin & Mays, 1991). The high percentage of minorities among waived juveniles may be explained in part by the fact that minorities are disproportionately arrested for serious crimes.

However, in the Fagan, Forst, and Vivona (1987) analysis, the effects of race on the judicial waiver decision were found to be indirect.

Theoretical Perspective

Traditionally, there are four theories of punishment: deterrence, incapacitation, rehabilitation, and retribution or just deserts. When the juvenile justice system was first conceived by the child saving organizations in the late 1800s, the stated purpose was to rehabilitate juveniles rather than punish them (Bernard, 1992; Platt, 1969). Platt (1969) argues in, *The Child Savers: The Invention of Juvenile Delinquency*, that early attempts to intervene in the best interests of wayward children often produced numerous unintended; i.e., negative, consequences. Seen by many as a panacea for the woes of massive

immigration, urbanization, and industrialization of American society the juvenile court spread rapidly throughout the United States (Howell, 1997; Bernard, 1992).

In the 1960s and 1970s, critics of the rehabilitation model began to publicly challenge its basic premises. Studies showed that few treatment efforts actually worked (Lipton, 1975; Martinson, 1974; Murray & Cox, 1979). The rising crime rates allowed critics (Wilson, 1975) to challenge the way juvenile delinquents were handled. The rehabilitation ideal has lost many supporters during the last forty years because of their skepticism in the rehabilitative ideals and effectiveness and the perceived need to return a morality based sentencing strategy; however, this philosophy still plays a role in the juvenile justice system.

Deterrence

Deterrence theory can be traced to the development of the classical school of criminology in the latter half of the eighteenth century. According to classical criminology, humans are rational beings who are guided by their own free will. Therefore, both criminal and law abiding behavior results from conscious choice. Based on this underlying belief, Beccaria (1738-1794) (1764) proposed a more rational system of justice in his influential work, *On Crimes and Punishment*. In reaction to the often arbitrary and cruel systems of justice that were in place during the 1700s, Beccaria (1764) presented a series of criminal justice reforms. His proposals covered such topics as making laws public and simple to understand, eliminating the torture of suspects, a presumption of innocence until proven guilty, equality under the law, and abolishing the death penalty. Furthermore, he stressed that the key purpose of punishment should be

deterrence and that to achieve maximum deterrence; punishment should be based on the principles of certainty, severity, and swiftness.

Although deterrence theory is more than 200 years old, its propositions have been tested empirically only during the past few decades (Cohen & Felson, 1979; Nagin, 1998; Paternoster, 1987; Pogarsky, 2002; Sherman & Weisburg, 1995; Stafford & Warr, 1993; Tittle & Rowe, 1974; Zimring & Hawkins, 1973). First, specific, or special deterrence pertains to the effect of punishment on the behavior of the individual who is sanctioned. In other words, when someone is deterred in the future by the actual experience of punishment this constitutes specific deterrence (Andenaes, 1968). In contrast, general deterrence refers to the effect of punishment on potential offenders in the greater community or an instance in which sanction are imposed on one person in order to demonstrate to everyone else the expected costs of crime and thereby discourage criminal and delinquent behavior among the general population (Nagin, 1978). Overall, specific deterrence has been thought to impact offenders who have been caught and punished, while general deterrence has been applied to those in the general public who have not yet offended or experienced punishment.

Incapacitation

The theory behind incapacitation research is a simple one. If the prisoner is not on the street, he or she cannot be committing crimes. While incapacitation always has been one of the primary goals of the prison system, it has received increased consideration in more recent years due to the work of Wilson (1975) and Van de Haag (1974).

Traditional juvenile justice philosophy stresses community treatment and rehabilitation rather than incarceration. The current approach to juvenile delinquency has

resulted in the widespread use of secure incarceration for juvenile offenders, increased use in transfers to the adult criminal court and heated debates over the fate of the juvenile justice system itself.

Rehabilitation

As a sentencing strategy, rehabilitation is based on the premise that through correctional intervention, education, vocational training, and psychotherapeutic programs, an offender may be changed and returned to society as a productive citizen. Roberts (1998) argues that imprisoning violent juveniles in traditional facilities exposes them to physical and sexual abuse. Roberts' (1998) argument is that juvenile offenders are coming out worse than when they went in. Weaver (1989) also argues that violent juveniles are coming out of incarceration more violent.

The overall thrust of Bernard's (1992) book, *The Cycle of Juvenile Justice*, is that stable juvenile justice policies and a stable juvenile justice system can be established, but only after the breaking out of the circular "cycle of juvenile justice" (Bernard, 1992, p.4). He is an advocate of a kinder, gentler, but firmer juvenile justice system, and strongly believes that the cruel and harsh policies favored today are only one stage in the cycle of juvenile justice.

Juveniles always have committed more than their share of crime and the lessons of history suggest that this will not change. Thus, there is a sense in which the problem of juvenile delinquency cannot be solved because, in one way or another, it is a permanent and unchanging product of human nature. (Bernard, 1992, p. 46)

Solving the problem cannot be accomplished merely by introducing a new juvenile justice policy. Rather, it requires changing the larger social conditions that gave rise to the problem in the first place. (Bernard, 1992, p.136)

Just Deserts

Due to the perceived failure of rehabilitation, the perceived rise in violent juvenile crime, and the wide differences in sentences for like crimes, scholars such as Von Hirsch (1976) and Singer (1979), and others began to promote a return to retribution called just deserts. The just desert position has been most clearly spelled out by criminologist Von Hirsch (1976) in his book, *Doing Justice*.

Von Hirsch (1976) suggests the concept of desert as a theoretical model to guide justice policy. This utilitarian view argues that punishment should be commensurate with the seriousness of the crime. Von Hirsch's (1976) views can be summarized in three statements. First, those who violate others' rights deserve to be punished. Second, we should not deliberately add to human suffering; punishment makes those punished suffer. Finally, punishment may prevent more misery than it inflicts; this conclusion reestablished the need for desert-based punishment. The underlying concept of just deserts is the notion that the punishment must be based on the gravity of the offense and the culpability of the perpetrator.

Feld (1999) is a Professor of Law at the University of Minnesota Law School. He has written six books and more than three dozen law reviews and criminology articles on various aspects of juvenile justice administration. Feld (1999) in his *The Honest Politician's Guide to Juvenile Justice in the Twenty-First Century*, asserts that the

juvenile courts' underlying idea is fundamentally flawed. Feld (1999) suggest that when the founders of the juvenile court combined social welfare and penal social control in one agency, they set up a juvenile justice system in conflict from within because welfare and social control functions have irreconcilable contradictions. Feld (1999) also suggests that if a state separates social welfare goals from criminal social control functions, then there is no need for a separate juvenile court. He contends that the state could try all offenders in one integrated criminal justice system giving juveniles a "youth discount" (Feld, 1999, p.10), or assess their behavior on a sliding scale for criminal responsibility because juveniles have not quite learned to be responsible or developed fully the capacity for self control.

Kramer (1992) argues in her advocacy for just deserts that a significant number of boys arrested for violent crimes are out on parole at the time of the arrest. She goes on by saying that we owe it the law-abiding citizens who share the streets and schools with the violent few to protect the rights of the community.

Barr (1992), like Kramer (1992), contends violent juveniles should be punished as adults. Barr's argument even goes as far as to say there is no reason why adequate juvenile criminal history records should not be kept and even shared with other parts of the criminal justice system. Further, there are some (Barr 1992; Kramer, 1992) on the just deserts side of the argument believes that the death penalty should be imposed on juvenile murderers.

A variety of theories have been suggested to explain punishment of juvenile offenders. Prior to the 1800s, punishment policies in the United States, regardless of status, were based on retribution. Since that time, punishment of juvenile offenders has

shifted from retribution to rehabilitation and back again. Currently, the purpose of punishment of juvenile offenders seems to be deterrence and retribution, resulting in an increase in the number of juvenile offenders being waived to the adult criminal justice system.

Although statistics suggest that juvenile crime decreased in the late 1990s, it is estimated that the total number of juvenile offenders waived to the adult criminal court has increased (Snyder & Sickmund, 1999). What statistic does not show is the explanation for the increase in the number of juvenile offenders being waived to the adult criminal court via judicial waiver. Thus, it is appropriate to ask how juvenile court judges form their decision on whether to waive juvenile offenders to adult criminal court. Do juvenile court judges base their waiver decisions on legal factors such as the type of crime committed, prior record, age of the offender, or do they unconsciously consider extra-legal factor such as an offender's gender, race, and socio-economic status? More importantly and the purpose of this study, do individual characteristics, i.e., race, age, gender, political party affiliation, tenure on the bench, of the juvenile court judges' affect their perceptions and sanctioning ideologies with regard to waiver decisions?

Attitudinal Theory

Despite several decades of social science research (Atkins, 1974; Atkins & Green, 1976; Atkins & Zavonia, 1974; Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; Curtis, 1991; D'Angelo, 2000, 2007; Feld, 1991; Fishbein & Ajzen, 1975; Freedman, Carlsmith & Sears, 1974; Gibson, 1978; Goldman, 1975; Gruhl, Spohn & Welch, 1981; Howard, 1981; Johnson & Scheuble, 1991; Kritzer & Uhlman, 1977; Myers, 1988; Myers & Talaricco, 1986; Nagel, 1961; Pennington, 1986; Penrod, 1986; Schubert, 1974;

Schwartz, Shenyan & Kerbs, 1993; Smith & Wright, 1992; Spaeth, 1963; Tanenhaus, 1966; Taylor, 1989; Welch, Combs & Gruhl, 1988; White & Booth, 1978; Wrightsman, 1999) on judicial decision making the literature is still incomplete. In particular, the impact of two variables are poorly understood; judges' perceptions and sanctioning ideologies (Gibson, 1978). While there is research (Brigham & Wrightsman, 1999; Gibson, 1978; Pennington, 1986) to suggest that perceptions or attitudes and sanctioning ideologies are important predictors of behavior, no research has been successful in developing a single model incorporating perceptions or attitudes, sanctioning ideologies and judges' decision-making behavior.

Attitudinal theory asserts that an individual's attitudes are shaped by their beliefs and values, and are formed by their cumulative life experiences (Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; D'Angelo 2007a; Fishbein & Ajzen, 1975; Freedman, Carlsmith & Sear, 1974; Pennington, 1986; Penrold, 1986) Attitudinal theory is defined as the physical expression of an emotion (Atkins, 1974; Atkins & Green, 1976; Atkins & Zavonia, 1974; Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; Curtis, 1991; Fishbein & Ajzen, 1975; Freedman, Carlsmith & Sears, 1974; Gibson, 1978; Goldman, 1975; Kritzer & Uhlman, 1977; Schubert, 1974; Spaeth, 1963; Tanenhaus, 1966; White & Booth, 1978). In 1934, LaPierre's study of hotel and restaurant personnel brought attitudinal theory to the forefront. There have been numerous studies conducted since the 1930s using attitudinal theory to show that individuals' behaviors can be predicted based on their attitudes and these cognitive social psychologist believed that people with positive attitudes should behave positively toward the attitude object (Atkins, 1974; Atkins & Green, 1976; Atkins & Zavonia, 1974; Ajzen & Fishbein, 1977; Brigham &

Wrightsman, 1982; Curtis, 1991; D'Angelo, 2000, 2007; Feld, 1991; Fishbein & Ajzen, 1975; Freedman, Carlsmith & Sears, 1974; Gibson, 1978; Goldman, 1975; Gruhl, Spohn & Welch, 1981; Howard, 1981; Johnson & Scheuble, 1991; Kritzer & Uhlman, 1977; Myers, 1988; Myers & Talaricco, 1986; Nagel, 1961; Pennington, 1986; Penrod, 1986; Schubert, 1974; Schwartz, Shenyan & Kerbs, 1993; Smith & Wright, 1992; Spaeth, 1963; Tanenhaus, 1966; Taylor, 1989; Welch, Combs & Gruhl, 1988; White & Booth, 1978; Wrightsman, 1999).

Researchers (Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; Fishbein & Ajzen, 1975; Freedman, Carlsmith & Sears, 1974, Gibson, 1978; Pennington, 1986; Penrod, 1986) tend to agree that attitudes/perceptions are learned and differ according to an individual's life experiences and cultural environment. It is these attitudes and perceptions then that give rise to an individual's intentions and determine an individual's behavior (Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; D'Angelo, 2000, 2007; Fishbein & Ajzen, 1975; Freedman, et al., 1974, Gibson, 1978; Pennington, 1986; Penrod, 1986). Social Psychologists (Pennington, 1986) assert that attitudes and perceptions are extremely important because they are the key component in developing a complete understanding of an individual's behavior.

There have been several studies (Atkins, 1974; Atkins & Green, 1976; Atkins & Zavonia, 1974; Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; Fishbein & Ajzen, 1975; Freedman, et al., 1974; Gibson, 1978; Goldman, 1975; Howard, 1981; Pennington, 1986; Penrod, 1986; Schubert, 1974; Spaeth, 1963; Tanenhaus, 1966; Wrightsman, 1982) conducted using attitudinal theory to predict judges' decision making process. However, this research primary focuses on the Federal Court System and Federal

Court judges. These studies suggested that although individual attitudes and perceptions of the judges may influence their decisions, there are many other factors involved as well. Individual Supreme Court Justices consider the opinions of other members of the Court prior to making their decisions. This research does not apply to juvenile court judges' decision making with regard to judicial waiver; thus there is no further need to review such literature. However, there is research (D'Angelo, 2000, 2007; Myers, 1988; Schwartz, et al., 1993) that has examined how particular characteristics; age, race, gender, political party, and jurisdiction, of the court judges affect their decisions making process.

First, age has been suggested to affect an individual's decision making process. Attitudinal theory asserts as an individual ages they accumulate life experiences. It is these life experiences that shape the individual's perceptions, attitudes, and behaviors. Following this logic then, one could hypothesize that younger juvenile court judges have different life experiences than those who have been on the bench longer. Younger, i.e. newer, juvenile court judges would likely maintain different attitudes and perceptions than older juvenile court judges regarding judicial waiver and punishment philosophies. As an individual grows older he or she may adopt a more cynical attitude toward juvenile offenders (Schwartz et al., 1993). However, Myers (1988) reported just the opposite. He found that older judges handed down more lenient sentences than younger judges.

D'Angelo (2000) in her dissertation, *Juvenile court judges' perceptions of what factor affects juvenile offenders' likelihood of rehabilitation* found that both male and non-minority judges perceive that extra-legal characteristics of juvenile delinquents: gender, race, social-economic status, location of residence, and family structure, affected

efforts at rehabilitation. In addition, D'Angelo (2000) found that a larger percentage of Democrats and Republican judges ranked socio-economic status as a very important factor for rehabilitation success. Furthermore, according to D'Angelo (2000) all judges seem to believe that family structure and prior record are almost equally important. Finally, given these findings, D'Angelo (2000) concluded that although juvenile court judges consider legal factors, they also include criteria that are not permitted by law in their waiver decisions.

D'Angelo (2007a) in her article *Juvenile Court Judges' Attitudes Toward Waiver Decisions in Indiana* looked at gender and age as well as where the juvenile court was located to see what if any affects this may have on juvenile court judges' perceptions of the factors they believed should be used in their waiver decisions. There was no statistical significance between gender and the factors judges perceived to be important in making the decision to waive (D'Angelo, 2007a). In addition, there was no statistical significance between age and the factors judges perceived to be important in making the decision to waive; however, there was a statistically significant relationship between the location of the juvenile court and judges perceptions of factors they consider in their waiver decisions. D'Angelo (2007a) did not include race in her analysis due to the lack of non-minority judges.

D'Angelo (2007b) in her article, *The complex nature of juvenile court judges' transfer decisions: A Study of Judicial Attitudes* looked at offender characteristics: age, gender, race, gang membership, family structure, type of abuse, and severity of abuse with respect to judicial waiver. She found that 58 percent of juvenile judges believe that age, gang membership, and a two parent household are factors in the rehabilitation of

juvenile offenders (D'Angelo, 2007b). Furthermore, a substantial number of judges believe that juveniles who dropped out of school had less chance for success than those who graduated. This is consistent with other finds.

Similarly, race has been suggested to affect an individual's perceptions, attitudes, and behaviors. Attitudinal theory asserts that non-minority juvenile court judges would have different life experiences than minority juvenile court judges. Therefore, non-minority juvenile court judges would likely maintain different attitudes and perceptions than minority juvenile court judges. Following this logic then, one could hypothesize that non-minority and minority juvenile court judges would likely maintain different perceptions and sanctioning ideologies with regard to judicial waiver. Welch, et al., (1988) found in his study that African-American judges tend to hold more liberal views and therefore are more lenient than non-minority judges.

In addition, gender has been suggested to affect an individual's perceptions, attitudes, and behaviors. Attitudinal theory asserts that male juvenile court judges would have different life experiences than female juvenile court judges. Therefore, male juvenile court judges would likely maintain different attitudes and perceptions than female juvenile court judges. Following this logic then, one could hypothesize that males and female juvenile court judges would likely maintain different perceptions and sanctioning ideologies with regard to judicial waiver. Research (Diamond, 1977; Erikson & Luttbeg, 1973) has shown that women are more liberal in their beliefs, attitudes, and perceptions. Furthermore, with respect to the issue of crime control, studies (Gruhl et al., 1981; Kritzer & Uhlman, 1977) show that female judges are more lenient compared with male judges.

A large majority of research (Curtis, 1991; Gibson, 1978; Goldman, 1975; Nagel, 1961; Smith & Wright, 1992) has focused on the relationship between political party affiliation and judges' decision making process. Attitudinal theory would suggest that Republican and Democrat judges' perceptions, attitudes, and sanctioning ideologies differ because they are likely to maintain different life experiences. Curtis (1991) found that conservative judges tend to be more punitive than liberal judges. Other studies (Smith & Wright, 1992; Taylor, 1989) found that 82 percent of the Republican judges supported get tough punishment policies whereas only 50 percent of Democrat judges supported such policies. Scholars (Gibson, 1978; Nagel, 1961) suggest that Democrats tend to be more working class oriented in their perceptions, attitudes, values, and behavior than Republicans. Therefore, scholars (Gibson, 1978; Nagel, 1961) suggest that Democrat judges are more sympathetic to the plight of the lower and working class resulting in more lenient sentences.

Finally, cultural environment has been suggested to affect an individual's decision making process. Research (Feld, 1991; Johnson & Scheuble, 1991; Myers & Talaricco, 1986; White & Booth, 1978) found a relationship between the jurisdiction (i.e., rural v. urban) of the judges' court and punishment severity. They (Feld, 1991; Johnson & Scheuble, 1991; Myers & Talaricco, 1986; White & Booth, 1978) suggested that the culture of the surrounding area leads to differing perceptions, attitudes, and sanctioning ideologies between judges from rural and urban areas. In other words, the beliefs that shape an individual's attitudes differ according to where he or she resides. Researchers (Feld, 1991; Johnson & Scheuble, 1991; Myers & Talarico, 1986; White & Booth, 1978) found that judges from rural areas will impose more punitive penalties on female

offenders than male offenders as compared with judges from urban areas. Such research suggests that rural areas maintain more traditional attitudes towards men and women's roles in society. Following this logic then, one could hypothesize that judges in jurisdictions that are rural have different life experiences than judges in jurisdictions that are more urban. Therefore, juvenile court judges in jurisdictions that are rural have different attitudes, perceptions, and sanctioning ideologies than juvenile court judges in jurisdictions that are more urban.

Chapter Summary

Fifty years ago, juvenile justice policy debates focused issues of decriminalization of status offenses, due process for juveniles, deinstitutionalization, and diversion (Bernard, 1992; McCord et al., 2001; Siegel & Welsh, 2009). Recently, policy debates are focused on the question of whether or not serious, violent, and chronic juvenile offenders should remain in the juvenile justice system or be waived to the adult criminal justice system (Bernard, 1992).

Traditionally, the most popular method to waive has been the judicial waiver, which exists in forty-seven states and the District of Columbia (Podkopacz & Feld, 1996). Juvenile court judges weigh a variety of factors in determining whether to waive a juvenile to the adult criminal court; however, the criteria for waiver are still not completely standardized because states have the ability to set age, offense, and other criteria governing the waiver of juveniles (Griffin et al. 1998, 2003, 2011, 1998; NCJFCJ, 2006; Torbet & Szymanski, 1998).

There is conflicting empirical support for the deterrence theory, particularly when examining juvenile waiver. Overall, the research literature has elaborated on many of the

concerns that are typically expressed about judicial waiver, including the belief that judges are vested with too much discretion, the belief that race influences the waiver decision; minorities are waived at a higher rate, that gender influences the waiver decision; males are waived at a higher rate, and that age influences the waiver decision; older juveniles are waived at a higher rate. Most studies would seem to suggest that waiving juveniles to the adult criminal court increases recidivism rather than reducing it (Bishop et al., 1996; Bishop & Frazier, 2000; Corrado, Cohen, Glackman & Odger, 2003; Lanza-Kaduce et al., 2005; Maitland & Sluder, 1998; Mason & Chang, 2001; McShane & Williams, 1989; Myers, 2001, 2003; Winner et al., 1997). In addition, these studies indicate that juveniles in adult correctional facilities suffer higher rates of physical abuse, sexual abuse, and suicide (Fagan & Vivona, 1989; Lawrence & Hemmens, 2008). Furthermore, studies indicate that juveniles are being waived to the adult criminal court for less serious property and drug offenses thus making net widening a very real possibility (Butts & Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2001). Finally, studies indicate that juveniles waived to the adult criminal court can result in less punitive punishment; i.e., dismissals, plea bargains, diversion programs, and probation.

A review of the waiver literature and in particular judicial waiver reveals that it is not as well developed as the juvenile justice sentencing literature. The judicial waiver literature tends to narrowly focus on the legal factors associated with juvenile waiver such as the seriousness of the offense, the need to protect the community, whether the offense was committed in an aggressive, violent, premeditated, or willful manner, whether the offense was against a person or property, the merit of the complaint, whether the juvenile's associates will be tried in adult criminal court, the juvenile's sophistication,

maturity, record, and previous history, and the reasonable likelihood of rehabilitation. In addition, other extra-legal factors have been looked at such as the defendant's age, race, gender, education status, family structure, and socio-economic status. What has not been examined are the judges' perceptions, attitudes, and sanctioning ideologies with regard to judicial waiver or if there are an difference in the belief about how a judicial waiver affects juvenile crime based on individual characteristics of the juvenile court judges themselves.

The next chapter sets forth the quantitative methods used in current research to identify and examine the perceptions of juvenile court judges and juvenile court referees. It also attempts to determine whether extralegal factors; i.e., political affiliation, tenure on the bench, gender, age, race, and jurisdiction are significantly related to the perceptions of juvenile court judges regarding judicial waiver. Finally, the next chapter details the procedures that were employed to determine whether a relationship exists.

CHAPTER III

METHODOLOGY

Overview

The goals of the juvenile justice system have always been multiple. These include rehabilitation, due process, just deserts, protecting public safety, and accountability.

This study had both a general and a specific purpose. Generally, it sought to identify and examine the perceptions of juvenile court judges regarding judicial waiver based on their previous positions held and on the state in which the juvenile judge resides. This general purpose is framed in the following research question:

Is there a difference in the belief about how a judicial waiver affects juvenile crime and community safety based on the position the juvenile court judge held prior to being a juvenile court judge and on the state in which the juvenile court judge resides?

Specifically, this study sought to examine the relationship between individual characteristics of juvenile court judges and their perceptions regarding judicial waiver. In determining these relationships the analysis sought to answer the following question:

Whether race, age, gender, political party affiliation, tenure on the bench, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's "once an adult/always an adult" provision are significantly related to the perceptions of juvenile court judges regarding judicial waiver?

This study was exploratory in nature. Multivariate Analysis of Variance (MANOVA) and Multiple Linear Regression (MLR) models were employed for data analysis. In this chapter the author presents the hypothesis, the research design, the sample selection, and the processes used to collect and analyze data.

*Research Design**Quantitative Hypotheses*

- Ho¹: There is a difference in the belief about how a judicial waiver affects juvenile crime and the belief about how a judicial waiver affects community safety based on the previous position held by the juvenile court judge and on the state in which the juvenile court judge resides.
- Ho²: Whether race is significantly related to the perceptions of juvenile court judges regarding judicial waiver?
- Ho³: Whether age is significantly related to the perceptions of juvenile court judges regarding judicial waiver?
- Ho⁴: Whether gender is significantly related to the perceptions of juvenile court judges regarding judicial waiver?
- Ho⁵: Whether political party affiliation is significantly related to the perceptions of juvenile court judge regarding judicial waiver?
- Ho⁶: Whether tenure on the bench is significantly related to the perceptions of juvenile court judges regarding judicial waiver?
- Ho⁷: Whether the way in which the judge acquired his or her position is significantly related to the perceptions of juvenile court judges regarding judicial waiver?
- Ho⁸: Whether previous position prior to becoming a juvenile court judge is significantly related to the perceptions of juvenile court judges regarding judicial waiver?
- Ho⁹: Whether jurisdiction (urban, suburban, and rural), is significantly related to the perceptions of juvenile court judges regarding judicial waiver?

Ho¹⁰: Whether a state's once an adult/always an adult provision is significantly related to the perceptions of juvenile court judges regarding judicial waiver?

Qualitative Strategy Questions

General questions the researcher asked juvenile court judges through qualitative strategy are as follows:

1. What, if any, problems exist with the use of judicial waiver?
2. In your opinion, what are the strengths of the judicial waiver procedures?
3. In your opinion, what are the weaknesses of the judicial waiver procedures?
4. Do you have any additional comments on judicial waiver or deterring juvenile crime?

Given that there have been few prior studies on juvenile court judges' perceptions and sanctioning ideologies regarding judicial waiver this study was exploratory. This study was quantitative (e.g. use forced-choice questions) in nature; yet employed qualitative strategies. Participants were given the opportunity to provide their own comments regarding the juvenile justice system and the juvenile waiver process in their jurisdiction.

The independent variables for Ho¹ are the previous position held by the juvenile court judge and the state in which the juvenile court judge resides. The dependent variables for Ho¹ are the belief about how a judicial waiver affects juvenile crime and the belief about how a judicial waiver affects community safety. The independent variable "previous position held" was divided into three categories; prosecutor, defense attorney, and other, and the independent variable, "state in which the juvenile court judge resides" was divided into eight categories; Alabama, Colorado, Illinois, Mississippi, Missouri, New

Jersey, Pennsylvania, and Utah. The dependent variables “the belief about how a judicial waiver affects juvenile crime” and “the belief about how a judicial waiver affects community safety” were divided into five levels; Completely Agree, Agree, No Opinion, Disagree, and Completely Disagree.

The independent variables for H_0^{2-10} are race, age, gender, political party affiliation, tenure on the bench, the way in which the judge acquired his or her position, previous position, jurisdiction, and the state’s “once an adult/always an adult provision”. The dependent variable for H_0^{2-10} is “juvenile court judges perceptions regarding judicial waiver”. The independent variable “Political party affiliation” was divided into three categories; Democrat, Republican, and Independent. “Tenure on the bench” was assessed in years. The “way in which the judge acquired his or her position” was divided into three categories; elected, appointed, and other. “Previous Position” was divided into three categories; prosecutor, defense attorney, and other. Age was assessed in years. Gender was dichotomized; male and female. Race was divided into five categories; White, not of Hispanic origin, Black, not of Hispanic origin, Hispanic, American Indian or Alaskan Native, and Asian or Pacific Islander. Jurisdiction was divided into three categories; urban, suburban, and rural. The variable “once an adult always an adult” was dichotomized; yes and no. The dependent variable “juvenile court judges perception regarding judicial waiver” was divided into five levels; Completely Agree, Agree, No Opinion, Disagree, and Completely Disagree.

Participants

The population for this study consisted of all juvenile court judges and referees in Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah.

The nonrandom sampling technique used to select this population was purposive sampling; selected for some particular reason. . For this study, the researcher sought to examine the perceptions of juvenile court judges regarding judicial waiver.

These states were chosen for several reasons. First these states were chosen because they adequately represent the census regions and divisions of the United States; West (Utah and Colorado), South (Alabama and Mississippi), Mid-West (Missouri and Illinois), and North East (Pennsylvania and New Jersey). In addition, these states were chosen based on their political party affiliation in the 2008 presidential elections; Alabama (R), Colorado (D), Illinois (D), Mississippi (D), Missouri (R), New Jersey (D), Pennsylvania (D), and Utah (R). Finally, these states were chosen because they all utilize judicial waiver. The estimated total population for this study was 583. The expected rate of return for this study was set at 30 percent (n = 175).

The researcher came to this minimum acceptable return rate after reviewing literature on judicial return rates. First, there was a series of six statewide surveys investigating the attitudes and opinions of judges between the years 1987 to 1989 that revealed the following judicial return rate results. In the Oregon study 52 of 90 judges returned usable surveys for an overall response rate of 58 percent (Hays and Graham, 1993). In the Washington study 61 of 107 judges returned usable surveys for an overall response rate of 57 percent (Hays & Graham, 1993). In the Iowa study 68 of 106 judges returned usable surveys for an overall response rate of 64 percent (Hays & Graham, 1993). In the Florida study 133 of 250 judges returned usable surveys for an overall response rate of 53 percent (Hays & Graham, 1993), In the Indiana study 191 of 294 judges returned usable surveys for an overall response rate of 65 percent (Hays &

Graham, 1993). In the South Carolina study 18 of 54 judges returned usable surveys for an overall response rate of 33 percent (Hays & Graham, 1993).

In addition, a study was conducted during March and April 1998 consisting of all Alabama juvenile court judges and referees. Of the total population (N=79), 32 judges and referees returned usable questionnaires for an overall response rate of 40 percent (Cruz, 1998).

Finally, D'Angelo (2000) conducted a survey of juvenile court judges in all fifty states and had a overall response rate of 42 percent. Specifically, D'Angelo (2000) had 4 out of 5 judges in Alabama return usable surveys for an overall response rate of 80 percent. Four out of 7 juvenile court judges in Arkansas returned usable surveys for an overall response rate of 57 percent (D'Angelo, 2000). In Louisiana, D'Angelo (2000) had 33 out of 102 juvenile court judges returned usable surveys for an overall response rate of 32 percent. Three out of 6 juvenile court judges returned usable surveys in Mississippi for an overall return rate of 50 percent (D'Angelo, 2000). In Tennessee 19 out of 54 juvenile court judges returned usable surveys for an overall response rate of 35 percent (D'Angelo, 2000).

Instrumentation

The researcher designed the survey instrument for this study to assess judicial perceptions with regard to judicial waiver; a copy of the survey instrument appears as Appendix A. The researcher developed the survey instrument based upon previous literature (Cruz, 1998; D'Angelo, 2000) and input from other criminal justice and statistical professionals. A panel of experts, comprised of committee members and professionals, was consulted to assess the construct and face validity of the survey

instrument that was used in this study. At this time there were some adjustments to the instrument to ensure clarity, validity, and comprehensiveness. A pilot study will be conducted to further evaluate the survey instrument for reliability and validity prior to running data analysis. Reliability of the survey instrument will be determined using Cronbach's alpha.

The instrument consisted of four sections; court information, sanctioning and disposition issues, demographic information, and qualitative strategy questions. The first section of the survey instrument posed demographic questions that were used for the purposes of reporting descriptive statistics, and conducting statistical analyses. The first section was comprised of four questions. This section of the survey asked the participants for information about the juvenile court to which they were assigned. This section included questions such as: (1) Is your jurisdiction urban, suburban, or rural? (2) What types of cases generally are waived through judicial waiver? (3) Does your state have a once an adult/always an adult provision? (4) Does your state have a reverse waiver provision (the ability to petition to be waived back to juvenile court)?.

The second section of the survey instrument was comprised of nine statements and one question. The first nine items posed to the participants measured their perceptions about how a judicial waiver affects juvenile crime. Statements one through nine were on a scale from "completely agree" to "completely disagree." The nine statements were (1) The primary goal of the juvenile justice system is rehabilitation. (2) Waiving juveniles to the adult criminal justice system deters crime. (3) Judicial waiver ensure community safety. (4) Juvenile court judges consider public opinion in their decision to waive. (5) Juvenile court judges consider their state's once an adult, always an

adult provision in their decision to waive. (6) Rates of re-arrest are higher for juveniles who are waived to the adult system when compared to juveniles who remain in the juvenile justice system. (7) Juvenile court judges consider the recommendation of the juvenile probation officer in their decision to waive. (8) Juveniles who are waived to adult court have the higher likelihood of conviction than those who remain in juvenile court. (9) Juveniles who are waived to adult court have a greater chance of incarceration than those adjudicated in juvenile court. Question ten asked the participants to rank factors used in making a decision to waive a juvenile offender to adult criminal court on a scale of one to six (one being least important and six being most important) when making a decision to waive a juvenile offender. The six factors were (1) By law, the type of crime committed is what determines my waiver decision. (2) The recommendation of the probation officer is what determines my waiver decision. (3) The “best interest of the child” is what determines my waiver decision. (4) Community safety is what determines my waiver decision. (5) Exhausting the resources of the juvenile justice system is what determines my waiver decision. (6) My state’s once and adult/always and adult provision determines my waiver decision.

The third section of the survey instrument was comprised of nine demographic questions. This section included demographic question such as: (1) What state do you reside in? (2) What is your gender? (3) What is your age? (4) What is your ethnicity? (5) What is your political party affiliation? (6) What is your title? (7) How long have you served as a juvenile court judge? (8) How were you selected as a juvenile court judge? and (9) What was the previous position held prior to becoming a juvenile court judge?.

The final section of the survey instrument was comprised of four open-ended questions. This section included basic opinion questions such as: (1) What, if any, problems exist with the use of judicial waiver? (2) In your opinion, what are the strengths of the judicial waiver procedures? (3) In your opinion, what are the weaknesses of the judicial waiver procedures? (4) Do you have any additional comments on judicial waiver or deterring juvenile crime?

Procedures

For this study, a survey was mailed out to the juvenile court judges in Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah. The questions were developed and pre-tested with the aid of local juvenile court judges. All survey responses were considered confidential and no individual identifiers were used. All surveys were destroyed once the analysis was completed. The survey instrument and research protocols were reviewed and approved by The University of Southern Mississippi (see Appendix B) and the University of Oklahoma's (see Appendix C) Institutional Review Boards.

The survey was accompanied by a letter of explanation, an information sheet for consent to participate in a research study, and a self-addressed stamped envelope was provided to the participants. Participants were given the opportunity to receive via email a copy of the executive summary by responding to the email provided in the letter of explanation. If potential participants had not returned their questionnaires after two weeks, a follow-up letter was mailed to the non-respondents reminding them that their participation was greatly appreciated. This follow-up letter was accompanied by an additional copy of the original survey and a self-addressed stamped envelope. If potential

participants had still not returned their questionnaires after two weeks, a third and final follow-up letter was mailed to the non-respondents. This third and final follow-up letter was accompanied by an additional copy of the original survey and a self addressed stamped envelope.

This study was exploratory and (e.g. use forced-choice questions) in nature; yet employed qualitative strategies. Participants were given the opportunity to provide their own comments regarding the juvenile justice system and the juvenile waiver process in their jurisdiction.

Limitations

The researcher has imposed limitations on this study which produced consequent limitations on the findings of this study. The limitations are: (1) The study was limited in that it only assessed the current perceptions and sanctioning ideologies held by judges who were on the bench in juvenile courts within the states of Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah at the time of the study therefore the findings cannot be generalized to judges outside these states. (2) The study was limited, to some degree, in that it employed quasi-experimental procedures. Participants were not assigned to experimental and control groups and separating the time of measurement from the time of occurrence of the variables. Experimental design requires that membership in the experimental and control groups are determined before the experiment begins so that differences between the two groups can be controlled through matching or random assignment. This was not done in this study and was not feasible given the constraints of time and access to judges. (3) This study was limited in that it employed a questionnaire. As a result, there are potential disadvantages. First, the

researcher had to assume that the participants were all literate and both willing and able to report the desired information. A further limitation of a survey is that respondents may misinterpret some of the questions asked, and the researcher may misinterpret the meaning of some of the responses. Another potential disadvantage of a survey is poor response rates. Low response rates also present data analysis and interpretation problems for the researcher because there may be important differences between those who did respond and those who did not. (4) The survey instrument was designed to ensure that completion of the instrument could occur in fifteen to twenty minutes or less. As a result, other potentially important issues such as myth perception and other influences on waiver decisions were omitted.

Data Analysis

The researcher entered all of the data derived from the survey instruments into SPSS. The data collected for this study was analyzed using version 16.0 of SPSS for Windows. Descriptive statistics were used to calculate the means, frequencies, and standard deviations for the demographic information collected from the participants in this study. The data was then analyzed using Multivariate Analysis of Variance (MANOVA) and Multiple Linear Regression (MLR).

MANOVA is an extension of analysis of variance (ANOVA) designed to accommodate more than one dependent variable. Like the analysis of variance (ANOVA), the multivariate analysis of variance (MANOVA) has variations. The one-way MANOVA contains a single factor (independent variable) distinguishing participants into groups and two or more quantitative dependent variables (Green & Salkind, 2003; Leech, Barrett & Morgan, 2005). One could do three separate one-way

ANOVAs; however, using MANOVA, allows the researcher to see how the combination of the three variables distinguishes the groups, in one analysis (Green & Salkind, 2003; Leech et al., 2005). Multivariate analysis of variance (MANOVA) is a dependence technique that measures the differences for at least two metric dependent variables and at least two independent variables. MANOVA is concerned with differences between groups (Green & Salkind, 2003; Hair et al., 2006; Leech et al., 2005). A MANOVA was used for H_0^1 to determine differences in the two dependent variables based on the two independent variables. The dependent variables were “the belief about how a judicial waiver affects juvenile crime” and “the belief about how a judicial waiver affects community safety”. The independent variables were “the position the juvenile court judge held prior to being a juvenile court judge” and “the state in which the juvenile court judge/referee resides”. The researcher used MANOVA to answer the following question:

Is there a difference in the belief about how a judicial waiver affects juvenile crime and community safety based on the position the juvenile court judge held prior to being a juvenile court judge and on the state in which the juvenile court judge resides?

If the MANOVA is significant, the researcher will determine whether there is a significant interaction between the independent variables. If there is, that interaction will be plotted and interpreted. If there is no interaction, the main effects will be inspected. If either or both are significant, post hoc tests for multiple comparisons of observed means will be used to determine which groups of judges from the five states are significantly different from the others and/or which positions the juvenile court judges held prior to being a juvenile court judge are significantly different from the others.

Finally, the assumptions for a MANOVA will be assessed prior to analysis. For the multivariate test procedure of MANOVA to be valid, three assumptions must be met. First, observations must be independent. Second, variance-covariance matrices must be equal for all treatment groups. Third, the set of dependent variable must follow a multivariate norm distribution (i.e., any linear combination of the dependent variables must follow a normal distribution). In addition to the strict statistical assumptions, the researcher must also consider several issues that influence the possible effects; namely, the linearity and multicollinearity of the variate of dependent variables (Hair, et al., 2006).

The general purpose of Multiple Linear Regression (MLR) is to learn more about the relationship between several independent or predictor variables and a dependent or criterion variable. There are three types of Multiple Linear Regression; simultaneous multiple regression, sequential multiple regression, and stepwise multiple regression. The researcher will be employing simultaneous multiple regression. Simultaneous multiple regression is probably the most useful of the three regression approaches because of the ability to focus on both the overall effect of all variables and the independent effects of each variable (Keith, 2006).

Since race, gender, political party affiliation, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's once an adult/always an adult provision were categorical variables, the variables were effect-coded. Effect coding is another method of coding categorical variables so that they can be analyzed in multiple linear regression (Keith, 2006). Finally, the assumptions for a multiple linear regression (MLR) will be assessed prior to analysis. These assumptions include linearity, normality,

homoscedasticity, and multicollinearity. The assumptions regarding linearity will be assessed using a scatter plot. The assumptions regarding normality will be assessed using a histogram. The assumptions regarding homoscedasticity will be assessed using box plots. The assumptions regarding multicollinearity will be assessed using a correlation matrix.

The researcher used Multiple Linear Regression (MLR) to answer the following question:

Whether race, age, gender, political party affiliation, tenure on the bench, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's once an adult/always an adult provision are significantly related to the perceptions of juvenile court judges regarding judicial waiver?

The alpha level for this study was set at .05. Statistical significance is the probability that an experimental result happened by chance (McBurney, 1994). The probability of making a type I error is known as alpha. Alpha is the probability of deciding that the null hypothesis is false when it is actually true. Usually, social scientists prefer to make alpha a fairly small number, such as .05. The reason is that social scientists believe that to decide that an experimental finding is true, when it is not, is a more serious error than it is to miss a true finding (McBurney, 1994). Alpha is also called the level of significance of an effect, or the statistical significance. It is common to say that a certain experimental result was significant at the .05 level. This means that the effect was large enough that the probability that it happened purely by chance was .05, or 1 in 20 (McBurney, 1994).

The researcher acknowledges that there are differences in the definitions for the words transfer and waiver; however, to reduce confusion, for the purposes of this study, the word waiver will be used for both. The results of these analyses and their associated tables are presented in the following chapter.

CHAPTER IV
ANALYSIS OF DATA

Reliability Measures

A pilot study was conducted to evaluate the survey instrument for reliability and validity. The pilot study involved nine juvenile court judges from the state of Oklahoma. Reliability of the instrument was determined using Cronbach's Alpha (see Table 1).

Table 1

Reliability Analysis – Scale (Alpha)

Reliability Coefficients

N of Cases = 9

N of Items = 8

Alpha = .568

In this sample, the reliability coefficient is 0.568. Cronk (2004) asserts that numbers close to 1.00 are very good, but numbers close to 0.00 represent poor internal consistency. Sweet and Grace-Martin (2003) assert that as a rule of thumb, an alpha score of .70 or higher on an index of four or more indicators indicates good reliability. However, Schmitt (1996) argues in his article, *Uses and Abuses of Coefficient Alpha*, that there is no sacred level of acceptable or unacceptable level of alpha and in some cases, low levels of alpha may still be quite useful. The researcher does, however, acknowledge that the mid-range Alpha level may be due to the low numbers of participants (N= 9) and indicators (8) included in the analysis. Dillman (2007) asserts that a sample of 100 to 200 respondents is generally drawn, but it may be larger if resources allow. Resources did not allow.

Descriptives

The population for this study consisted of juvenile court judges and referees in Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah (N=583). Of the total population (N=583), 136 judges and referees returned usable questionnaires for an overall response rate of 23 percent (see Table 2).

Table 2

State Participation

State	Population	Respondents	Percentage
Alabama	108	22	20%
Colorado	84	17	20%
Illinois	50	4	8%
Mississippi	97	18	18.5%
Missouri	114	35	30.7%
New Jersey	15	0	0%
Pennsylvania	87	28	32%
Utah	28	12	42.8%
Total	583	136	23.3%

Of the individual states, Utah (N=28) had the highest response rate of 42.8 percent. New Jersey (N=15) had the lowest response rate of zero percent (see Table 2).

The 136 respondents ranged in age from 33 to 71. The mean age of the respondents was 56.69 with a standard deviation of 7.95 years. The descriptive statistics for the demographic questions are provided below in Table 3.

Table 3

Descriptive statistics for the sample population

Variable	n	%
Gender		
Male	113	83.08
Female	23	16.91
Ethnicity		
White, not of Hispanic origin	126	92.64
Black, not of Hispanic Origin	6	4.41
Hispanic	4	2.94
American Indian/Alaskan Native	0	0
Asian or Pacific Islander	0	0
Political Party Affiliation		
Democrat	60	44.11
Republican	38	27.94
Independent	26	19.11
Selection to the Bench		
Elected	67	49.26
Appointed	52	38.23
Other	17	12.50
Previous Position		
Prosecutor	29	21.32
Defense Attorney	31	22.79
Other	76	55.88

This sample consisted of more males than females. Of the total population (N=136), 113 were male (83%) and 23 were female (16%). With regard to ethnicity, 126 respondents were white, not of Hispanic origin (92%), 6 were Black, not of Hispanic origin (4%), and four were Hispanic (2.94%). Of the 136 respondents, 60 were Democrat

(44%), 38 were Republican (27%), 26 were Independent (19%), and 12 did not indicate political party affiliation (8%). Of the 136 respondents, 118 were judge (86%), 16 were referees (11%), and two were other (1%). The newest judge in the group had been on the bench for one year. The judge with the greatest tenure in juvenile court had thirty-three years of experience. Of the 136 respondents, 67 were elected to their current post of juvenile court judge or referee (49%), 52 were appointed (38%), and 17 were other (12%). Finally, of the 136 respondents, 31 were defense attorneys (22%) prior to becoming juvenile court judges or referees, 29 were prosecutors (21%), and 76 were other (55%). The descriptive statistics for the demographic questions by state are provided below.

Alabama

Of the total population for Alabama (N=108), 22 judges and referees returned usable questionnaires for an overall response rate of percent 20 percent (see Table 2). The 22 respondents ranged in age from 34 to 63. The mean age of the respondents was 52.48 with a standard deviation of 8.92. The descriptive statistics for the demographic question are provided below in Table 4.

This state sample, like the overall sample, consisted of more males than females. Of the total population (N=22), 18 were male (81%) and four were female (18%). With regard to ethnicity, 20 respondents were white, not of Hispanic origin (90%), two were Black, not of Hispanic origin (9%).

Table 4

Descriptive statistics for the state of Alabama (N=22)

Variable	n	%
Gender		
Male	18	81.81
Female	4	18.18
Ethnicity		
White, not of Hispanic origin	20	90.90
Black, not of Hispanic Origin	2	9.09
Political Party Affiliation		
Democrat	14	63.63
Republican	6	27.27
Independent	2	9.09
Selection to the Bench		
Elected	17	77.27
Appointed	5	22.72
Other	0	0
Previous Position		
Prosecutor	3	13.63
Defense Attorney	9	40.90
Other	10	45.45

Of the 22 respondents, 14 were Democrat (63%), six were Republican (27%), and two were independent (9%). This is interesting in that Alabama in the 2008 Presidential Elections supported the Republican Party candidate (Jones, 2009). Of the 22 respondents, 19 were judges (86%), and three were referees (13%). The newest judge in the group had been on the bench for one year. The judge with the greatest tenure in juvenile court had

thirty-three years of experience. Of the 22 respondents, 17 were elected (77%) and five were appointed (22%). Finally, of the 22 respondents, three were prosecutors (13%) prior to becoming juvenile court judges or referees, 9 were defense attorneys (40%) and 10 were other (45%). Some examples of other previous positions held prior to becoming a juvenile court judge were civil litigator, private practice, probate judge, and real estate attorney.

Colorado

Of the total population for Colorado (N=84), 17 judges and referees returned usable questionnaires for an overall response rate of percent 20 percent (see Table 2). The 17 respondents ranged in age from 41 to 71. The mean age of the respondents was 57.53 with a standard deviation of 7.60. The descriptive statistics for the demographic question are provided below in Table 5.

This state sample consisted of more males than females. Of the total population (N=17), 82 percent were male (n=14) and 17 percent were female (n=3). Eight-two percent of the respondents were white, not of Hispanic origin (n=14), five percent were Black, not of Hispanic origin (n=1), and 11 percent were Hispanic (n=2). Of the 17 respondents, nine were Democrat (52%), two were Republican (11%), four were Independent (23%), two left the question blank (11%). The political party affiliation appears to be in line with state affiliation in the 2008 Presidential Elections (Jones, 2009). Colorado supported the Democrat candidate in the 2008 Presidential elections (Jones, 2009). Of the 17 respondents, 15 were judges (88.23%) and two were other (11.76%). There were three judges in the group that had been on the bench for one year. The judge with the greatest tenure in juvenile court had twenty-three years of experience. Of the 17

respondents, none were elected to their current post of juvenile court judge or referee, 12 were appointed (70%), and five were other (29%).

Table 5

Descriptive statistics for the state of Colorado (N=17)

Variable	n	%
Gender		
Male	14	82.35
Female	3	17.64
Ethnicity		
White, not of Hispanic origin	14	82.35
Black, not of Hispanic Origin	1	5.88
Hispanic	2	11.76
American Indian/Alaskan Native	0	0
Asian or Pacific Islander	0	0
Political Party Affiliation		
Democrat	9	52.94
Republican	2	11.76
Independent	4	23.52
Unspecified	2	11.76
Selection to the Bench		
Elected	0	0
Appointed	12	70.58
Other	5	29.41
Previous Position		
Prosecutor	3	17.64
Defense Attorney	2	11.76
Other	12	70.58

Finally, of the 17 respondents, three were prosecutors (17%) prior to becoming juvenile court judges or referees, two were defense attorneys (11%), and 12 were other

(70%). Some examples of other previous positions held prior to becoming a juvenile court judge were county court judge, private practice, professor, and warrant judge.

Illinois

Of the total population for the state of Illinois (N=50), four judges and referees returned usable questionnaires for an overall response rate of percent eight percent (see Table 2). The four respondents ranged in age from 59 to 67. The mean age of the respondents was 61.50 with a standard deviation of 3.69. The descriptive statistics for the demographic question are provided below in Table 6.

Table 6

Descriptive statistics for the state of Illinois (N=4)

Variable	n	%
Gender		
Male	4	100
Ethnicity		
White, not of Hispanic origin	4	100
Political Party Affiliation		
Democrat	4	100
Selection to the Bench		
Elected	3	75
Appointed	0	0
Other	1	25
Previous Position		
Defense Attorney	4	100

This state sample consisted of all White, not of Hispanic origin, democrat males. The political party affiliation seems to be in line with state party affiliation in the 2008 Presidential elections (Jones, 2009). Illinois supported the Democrat candidate in the

2008 Presidential elections (Jones, 2009). Three of the four judges were elected (75%) and one was other (25%). All held the title of judge. The newest judge in the group had been on the bench for ten years. The judge with the greatest tenure in juvenile court had nineteen years of experience. Three of the judges were elected (75%) and one was other (25%). Finally, all four judges were defense attorneys prior to being juvenile court judges.

Mississippi

Of the total population for the state of Mississippi (N=97), 18 judges and referees returned usable questionnaires for an overall response rate of percent 18.5percent (see Table 2). The 18 respondents ranged in age from 33 to 69. The mean age of the respondents was 57.78 with a standard deviation of 10.70. The descriptive statistics for the demographic question are provided below in Table 7.

This state sample consisted of more males than females. Of the total population (N=18), 16 were male (88%) and two were female (11%). All of the respondents were white, not of Hispanic origin. Of the 18 respondents, three were Democrat (16%), one was Republican (5%), 11 were Independent (61%), and three did not indicate political party affiliation (16%). This political party break down does not seem to be in line with the state's political party affiliation in the 2008 Presidential election. The state of Mississippi in the 2008 Presidential election had a 51 percent support rate for the Democrat Party (Jones, 2009). The newest judge in the group had been on the bench for one year. The judge with the greatest tenure in juvenile court had thirty-two years of experience. Of the 18 respondents, 12 were referees (66%) and 6 were judges (33%). Of the 18 respondent, four were elected (22%) and 14 were appointed (77%). Finally, of the

18 respondents, four were prosecutors (22%) prior to becoming juvenile court judges or referees, six were defense attorney (33%) and eight were other (44%). Some examples of other previous positions held prior to becoming a juvenile court judge were civil attorney, private practice, and school teacher.

Table 7

Descriptive statistics for the state of Mississippi (N=18)

Variable	n	%
Gender		
Male	16	88.88
Female	2	11.11
Ethnicity		
White, not of Hispanic origin	18	100
Political Party Affiliation		
Democrat	3	16.66
Republican	1	5.55
Independent	11	61.11
Unspecified	3	16.66
Selection to the Bench		
Elected	4	22.22
Appointed	14	77.77
Previous Position		
Prosecutor	4	22.22
Defense Attorney	6	33.33
Other	8	44.44

Missouri

Of the total population for the state of Missouri (N=114), 35 judges and referees returned usable questionnaires for an overall response rate of percent 30.7 percent (see

Table 2). The 35 respondents ranged in age from 35 to 67. The mean age of the respondents was 55.83 with a standard deviation of 7.62. The descriptive statistics for the demographic question are provided below in Table 8.

Table 8

Descriptive statistics for the state of Missouri (N=35)

Variable	n	%
Gender		
Male	30	85.71
Female	5	14.28
Ethnicity		
White, not of Hispanic origin	34	97.14
Hispanic	1	2.85
Political Party Affiliation		
Democrat	15	42.85
Republican	16	45.71
Independent	3	8.57
Unspecified	1	2.85
Selection to the Bench		
Elected	21	60
Appointed	9	25.71
Other	5	14.28
Previous Position		
Prosecutor	8	22.85
Defense Attorney	4	11.42
Other	23	65.71

This state sample consisted of more males than females. Of the total population (N=35), 30 were male (85%) and five were female (14%). Ninety-seven percent of the respondents were White, not of Hispanic origin (n=34) and two percent were Hispanic (n=1). Of the 35 respondents, 15 were Democrat (42%), 16 were Republican (45%), three

were Independent (8%), and one did not indicate political party affiliation (2%). This is in line with the state's political party affiliation in the 2008 Presidential elections. The state of Missouri supported the Republican candidate in the 2008 Presidential election (Jones, 2009). Thirty-four of the respondents were judges (97%) and one was a referee (2%). The newest judge in the group had been on the bench one year. The judge with the greatest tenure in juvenile court had twenty-eight years of experience. Of the 35 respondents, 21 were elected (60%) to their current post of juvenile court judge or referee, nine were appointed (25%), and five were other (14%). Finally, of the 35 respondents, eight were prosecutors (22%) prior to becoming juvenile court judges or referees, four were defense attorneys (11%), and 23 were other (65%). Some examples of other previous positions held prior to becoming a juvenile court judge were civil judge, circuit court judge, and private practice attorney.

Pennsylvania

Of the total population for the state of Pennsylvania (N=87), 28 judges and referees returned usable questionnaires for an overall response rate of percent 32 percent (see Table 2). The 28 respondents ranged in age from 47 to 71. The mean age of the respondents was 58.30 with a standard deviation of 5.81. The descriptive statistics for the demographic question are provided below in Table 9. Of the total population (N=28), 23 were males (82%) and five were female (17%). Twenty-five of the respondents were white, not of Hispanic origin (89%), and three were Black, not of Hispanic origin (10%).

Table 9

Descriptive statistics for the state of Pennsylvania (N=28)

Variable	n	%
Gender		
Male	23	82.14
Female	5	17.85
Ethnicity		
White, not of Hispanic origin	25	89.28
Black, not of Hispanic origin	3	10.71
Political Party Affiliation		
Democrat	14	50
Republican	12	42.85
Independent	1	3.57
Unspecified	1	3.57
Selection to the Bench		
Elected	22	78.57
Appointed	0	0
Other	6	21.42
Previous Position		
Prosecutor	6	21.42
Defense Attorney	6	21.42
Other	16	57.14

Of the 28 respondents, 14 were Democrat (50%), 12 were Republican (42%), one was Independent (3%), and one did not indicate a political party affiliation (3%). The state of Pennsylvania supported the Democrat candidate in the 2008 Presidential elections (Jones, 2009). All 28 respondents held the title of judge. The newest judge in the group

had been on the bench for three years. The judge with the greatest tenure in juvenile court had twenty-four years of experience. Of the 28 respondents, 22 were elected (78%) to their current post of juvenile court judge and six were other (21%). Finally, of the 28 respondents, six were prosecutors (21%) prior to becoming juvenile court judges, six were defense attorneys (21%), and 16 other (57%). Some examples of other previous positions held prior to becoming a juvenile court judge were magisterial district judge, general private practice, and family law attorney.

Utah

Of the total population for the state of Utah (N=28), 12 judges and referees returned usable questionnaires for an overall response rate of percent 42.8 percent (see Table 2). The 12 respondents ranged in age from 56 to 68. The mean age of the respondents was 55.33 with a standard deviation of 6.344. The descriptive statistics for the demographic question are provided below in Table 10.

This state sample consisted of twice as many females as males. Of the total population (N=12), eight were male (66%) and four were female (33%). Ninety-one percent of the respondents (n=11) were White, not of Hispanic origin and one was Hispanic (8%). Of the 12 respondents one was Democrat (8%), one was Republican (8%), five were Independent (41%), and five did not indicate a political party affiliation (41%). The state of Utah supported the Republican candidate in the 2008 Presidential elections (Jones, 2009). All of the respondents held the title of judge. The newest judge in the group had been on the bench for three years. The judge with the greatest tenure in juvenile court had twenty-five years of experience. All of the respondents were appointed to their current positions of juvenile court judge. Finally, of the 12 respondents, five were

prosecutors (41%) prior to becoming juvenile court judges, and seven were other (58%). Some examples of other previous positions held prior to becoming a juvenile court judge were civil attorney, guardian ad litem, and general private practice.

Table 10

Descriptive statistics for the state of Utah (N=12)

Variable	n	%
Gender		
Male	8	66.66
Female	4	33.33
Ethnicity		
White, not of Hispanic origin	11	91.66
Hispanic	1	8.33
Political Party Affiliation		
Democrat	1	8.33
Republican	1	8.33
Independent	5	41.66
Unspecified	5	41.66
Selection to the Bench		
Elected	0	0
Appointed	12	100
Other	0	0
Previous Position		
Prosecutor	5	41.66
Defense Attorney	0	0
Other	7	58.33

Statistical Results

The researcher addressed two research questions in this study. The decisions based upon statistical analysis are explained below. The researcher applied a Multivariate

Analysis of Variance (MANOVA) to the first research question. The second research questions were analyzed using Multiple Linear Regression (MLR).

Research Question 1: Is there a difference in the belief about how a judicial waiver affects juvenile crime and community safety based on the prior position held, and on the state in which the juvenile court judge resides?

Research Hypothesis 1: There is a difference in the belief about how a judicial waiver affects juvenile crime and community safety based on the previous position held by the juvenile court judge and on the state in which the juvenile court judge resides.

Decision 1: A MANOVA was calculated examining the effect of previous position held and on the state in which the juvenile court judge resides on the belief about how and judicial waiver affects juvenile crime and on the belief about how a judicial waiver affects community safety. No significant effect was found ($\lambda (18, 234) = .857, p > .05$). Neither the belief about how a judicial waiver affects juvenile crime nor the belief about how a judicial waiver affects community safety was influenced by previous position held or the state in which the juvenile court judge resides (see Table 11).

Table 11

MANOVA Results

Effect		Value	F	Hypothesis		Sig.
				df	Error df	
Intercept	Pillai's Trace	.756	181.1	2.000	117.000	.000
	Wilks' Lambda	.244	181.1	2.000	117.000	.000
	Hotelling's Trace	3.096	181.1	2.000	117.000	.000
	Roy's Largest Root	3.096	181.1	2.000	117.000	.000
Previous_position	Pillai's Trace	.074	2.274	4.000	236.000	.062
	Wilks' Lambda	.926	2.277 ^a	4.000	234.000	.062
	Hotelling's Trace	.079	2.279	4.000	232.000	.062
	Roy's Largest Root	.067	3.959 ^b	2.000	118.000	.022
State_reside	Pillai's Trace	.157	1.673	12.000	236.000	.073
	Wilks' Lambda	.849	1.667 ^a	12.000	234.000	.075
	Hotelling's Trace	.172	1.660	12.000	232.000	.077
	Roy's Largest Root	.115	2.257 ^b	6.000	118.000	.042
Previous_position * State_reside	Pillai's Trace	.148	1.045	18.000	236.000	.410
	Wilks' Lambda	.857	1.039 ^a	18.000	234.000	.417
	Hotelling's Trace	.160	1.033	18.000	232.000	.424
	Roy's Largest Root	.101	1.330 ^b	9.000	118.000	.229

Research Question 2: Whether race, age, gender, political party affiliation, tenure on the bench, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's "once an adult/always an adult" provision are significantly related to perceptions of juvenile court judges regarding judicial waiver?

Research Hypothesis 2: Whether race, age, gender, political party affiliation, tenure on the bench, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's "once an adult/always an adult" provision are significantly related to the perceptions of juvenile court judges regarding judicial waiver?

Decision 2: A multiple linear regression was calculated predicting subject's perceptions regarding judicial waiver based on their race, age, gender, political party affiliation, tenure on the bench, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's "once an adult/always an adult" provision. Since race, gender, political party affiliation, way in which the judge acquired his or her position, previous position, jurisdiction, and a state's "once an adult/always an adult" provision were categorical variables, the variables were effect-coded. Evaluations of linearity, normality, homoscedasticity, and multicollinearity showed that the assumptions were met within acceptable limits. The overall regression equation was not significant ($F(15, 94) = 1.094, p. > .05$) with an R^2 of .149 (see Tables 12 and 13).

Table 12

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.386 ^a	.149	.013	1.035	1.655

- a. Predictors: (Constant), yes, Democrat, male, rural, prosecutor, White, What is your age?, appointed, defense_attorney, suburban, How long have your served as a juvenile court judge?, Republican, Black, elected, urban
 b. Dependent Variable: Waiving juveniles to the adult criminal justice system deters crime.

For Multiple Linear Regression (MLR), there are three components of the output of interest. The first is the Model Summary (see Table 12). *R* Squared, also called the coefficient of determination, indicates the proportion of the variance in the dependent variable (perceptions of juvenile court judges regarding judicial waiver) that can be explained by variation in the independent variables (race, age, gender, political party, tenure on the bench, way in which the judge acquired position, previous position jurisdiction, and a state's once an adult/always an adult provision). Thus, 14.9% of the variation in juvenile court judge's perception regarding judicial waiver can be explained by differences in race, age, gender, political party, tenure on the bench, way in which the judge acquired position, previous position, jurisdiction, and a state's once an adult/always an adult provision. The Standard Error of the Estimate indicates the margin of error for the prediction equation.

Finally, the researcher selected the Durbin-Watson statistic (see Table 12). This statistic indicates whether the assumption of independent errors is tenable. As a conservative rule values less than one or greater than three should definitely raise alarm. According to Field (2005), the closer to two that the Durbin-Watson value is the better it is. For this data, the Durbin-Watson value is 1.655 and falls within the range of acceptability (Field 2005).

The second part of the output that is of interest is the ANOVA summary table (see Table 13). If the significance level is less than .05, then there is a significant linear regression. If it is larger than .05 then there is not a significant linear regression. As stated in decision 2 there is not a significant linear regression.

Table 13

ANOVA Results

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	17.596	15	1.173	1.094	.372 ^a
	Residual	100.767	94	1.072		
	Total	118.364	109			

- a. Predictors: (Constant), yes, Democrat, male, rural, prosecutor, White, What is your age?, appointed, defense_attorney, suburban, How long have your served as a juvenile court judge?, Republican, Black, elected, urban
 b. Dependent Variable: Waiving juveniles to the adult criminal justice system deters crime.

In addition, with multiple regression, the researcher must also consider the significance level of each independent variable. This brings us to the third and final section of output which the researcher is interested; the table of coefficients (see Table 14). This is where the actual prediction equation can be found. For Multiple Linear Regression (MLR), the equation changes to $Y' = B_0 + B_1X_1 + B_2X_2 + \dots + B_zX_z$; where z is the number of independent variables. Y' is the dependent variable, and X_s are the independent variables. The B_s are listed in a column (see Table 14).

The t -tests measures whether the predictor (independent) variable is making a significant contribution to the model. Therefore, if the t -test associated with a b -value is significant, then the predictor (independent) variable is making a significant contribution to the model. The larger the value of t , the greater the contribution of that predictor (independent) variable. For this model, political party affiliation ($t(94) = -2.325, p < .05$)

is the only significant predictor (independent) variable of the perceptions of juvenile court judges regarding judicial waiver.

Table 14

Coefficients Results

Model	Unstandardized Coefficients		t	Sig.	95% Confidence Interval for B		Collinearity Statistics	
	B	Std. Error			Lower Bound	Upper Bound	Tolerance	VIF
(Constant)	2.713	.862	3.147	.002	1.001	4.424		
Race								
<i>Other*</i>								
<i>Black</i>	-.157	.406	-.386	.700	-.963	.649	.341	2.935
<i>White</i>	-.239	.325	-.737	.463	-.885	.406	.342	2.924
Age	-.014	.016	-.888	.377	-.047	.018	.566	1.768
Gender								
<i>Female*</i>								
<i>Male</i>	.135	.168	.806	.422	-.198	.469	.829	1.206
Political Party								
<i>Independent*</i>								
<i>Republican</i>	-.211	.161	-1.309	.194	-.530	.109	.434	2.304
<i>Democrat</i>	-.372	.160	-2.325	.022	-.690	-.054	.382	2.621
Tenure on bench	.001	.017	.046	.964	-.033	.034	.448	2.233
Acquired position								
<i>Other*</i>								
<i>Appointed</i>	.194	.170	1.138	.258	-.144	.531	.382	2.615
<i>Elected</i>	.120	.173	.696	.488	-.223	.464	.327	3.062
Prior position								
<i>Other*</i>								
<i>Defense attorney</i>	.031	.143	.214	.831	-.253	.314	.647	1.547
<i>Prosecutor</i>	.188	.136	1.381	.171	-.082	.457	.774	1.292
Jurisdiction								
<i>Other*</i>								
<i>Urban</i>	-.124	.224	-.555	.580	-.569	.321	.294	3.407
<i>Suburban</i>	.133	.236	.562	.575	-.337	.602	.370	2.703
<i>Rural</i>	-.078	.207	-.377	.707	-.488	.332	.234	4.267
Once an adult provision								
<i>No*</i>								
<i>Yes</i>	-.013	.115	-.114	.910	-.242	.216	.790	1.265

a. Dependent Variable: Waiving juveniles to the adult criminal justice system deters crime.

b. * — reference category

Ancillary Findings

This study was quantitative (e.g. use forced-choice questions) in nature; yet employed qualitative strategies. Participants were given the opportunity to provide their own comments regarding the juvenile justice system and the juvenile waiver process in their jurisdiction. Although 61 percent of the respondents left the qualitative strategies questions blank, the researcher still was able to obtain valuable answers and comments with regard to judicial waiver and juvenile crime.

First, when the respondents were asked if, in their opinion, were there any problems that exist with the use of judicial waiver the following responses were recorded.

1. Juveniles erroneously request to be waiver to the adult system because they believe it will not require a long period of supervision.
2. Failure to acknowledge that the juvenile system can and is the best place to rehabilitate serious youthful offenders.
3. When a youth is waived to the adult system, district court judges tend to treat them as first time offenders and given them a light sentence. This is understandable when a young person appears in adult court for the first time and is compared to the rest of the district judge's docket. However, it is usually not rehabilitative. Time actually served is usually less in the adult system. Secondly, the adult system is more likely than the juvenile system to solve state budget problems by short sentences and reduced intervention. The Board of Pardons, not the judge, determines when to release from prison. That decision is often affected by budget constraints.

4. They are not scientifically based; rather, the offenses for which the juveniles are waived are chosen by the state legislature, and are based on current hot issues or emotional factors. The better way would be to use statistics that show which juveniles with which offenses, and which prior records, and other proven factors are least likely to succeed if kept in the juvenile system.
5. Lack of programs in the adult system. Lack of supervision in the adult system.
6. The public and victim expectations that every violent act should be waived into adult court, even when it is clearly inappropriate.
7. Political considerations are too often determining factors in making the decision to waiver.
8. Higher court can remand.
9. The problem in our jurisdiction is that they are not used. Most cases are direct filed by the DA without any judicial review.

In addition, when the respondents were asked if, in their opinion, what are the strengths of the judicial waiver procedures the following was recorded:

1. Removes incorrigibles from the juvenile justice system.
2. The strengths, when we did waiver hearings, are that there was the opportunity to review the child's entire history; treatment, education, etc... and fewer kids ended up in adult facilities.
3. Gets them out of the juvenile justice system so the juvenile probation officer can devote time to those who show promise for rehabilitation.
4. Helps ensure that scarce resources of the juvenile justice system are appropriately applied to those juveniles most amenable to treatment.

5. Giving the public the perception that juvenile courts are “tough” on juvenile crime.
6. Sometimes a juvenile has exhausted all the alternative consequences available in the juvenile system and continues to commit serious crimes. Any further juvenile sanctions would be ineffective. Sometimes juveniles commit crimes so serious that any juvenile consequence would be inappropriately too lenient. In these cases sending a message to the youth and the public becomes more important than rehabilitation. Sometimes a youth is so bad that he or she needs to be removed from the juvenile population. Public safety always trumps rehabilitation.
7. Waivers make the public feel good. It is important for the public to feel like crime is being dealt with, and this is one small way to do that.

Finally, when the respondents if they had any additional comments on judicial waiver or deterring juvenile crime the following was recorded:

1. If used more the public would have more respect for the juvenile court system?
2. “The more discretion a judge has in deciding waiver the better.
3. In Missouri, we have the option of dual jurisdiction to allow treatment in juvenile facilities until age of majority, and then transferring to an adult correctional system. This is a good resource used to help the offender get more suitable treatment.
4. Instead of employing a judicial waiver, in most instances, it is best to send the juvenile offender to secure care.
5. Detering juvenile crime is related to early intervention and treatment not judicial waivers.

6. The public needs to be better educated on the effects of judicial waivers, i.e. in which system the juvenile is really more likely to be locked up, in which system the juvenile is more likely to be rehabilitated, and what really happens to those juveniles waived to the adult criminal court.
7. While there may be some deterrent effect, the literature and my own experience do not support this. If a child is redeemable, that isn't going to happen in the adult criminal court system.
8. Unfortunately, juvenile court has become more of mental health court as opposed to a delinquency court due to societal changes and the reluctance of communities and schools to adequately address mental health issues. We need a stronger non-delinquency and non-criminal commitment to these issues.
9. States need to put more money into preventive programs for juveniles. If more innovative programs are not found and funded then the adult penal system will continue to burst at the seams. Continued high illegitimate births without supportive programs, pre-school and after school, only allows the children to grow up raising themselves, some with bad consequences. There needs to be more parent accountability as well.

In summary, although 61 percent of the respondents left the qualitative strategies questions blank, the researcher still was able to glean some general conclusions about juvenile judges' perceptions with regard to judicial waiver and juvenile crime. For this study, the juvenile judges made several assertions with regard to judicial waiver. First, the juvenile court judges did not appear to be opposed to the use of judicial waiver or in waiving juveniles to the adult criminal court. However, the judges asserted that juveniles

should only be waived after there was the opportunity to review the youth's entire history. The judges repeatedly asserted that this individual judicial review and or oversight rested with them; not the prosecutor or legislation. The judges, at least in this study, perceived the use of direct file and statutory exclusion to be employed based on current hot issues or emotional factors not statistics that show which juveniles, with which offenses, and with which prior records, are least likely to succeed if kept in the juvenile justice system. In addition, the juvenile judges asserted that the juvenile justice system can and is the best place to rehabilitate, even serious youthful offenders, and that waiving a juvenile to the adult criminal court was not punitive or rehabilitative because many juveniles are treated as first time offenders and given lighter sentences. Finally, the juvenile judges asserted that deterring juvenile crime is related to early intervention and treatment; not judicial waiver.

CHAPTER V

DISCUSSION

Summary

Historically, the most popular mechanism of waiving juvenile to the adult criminal court was judicial waiver, (Podkopacz & Feld, 1996) which exists in forty-seven states and the District of Columbia. Juvenile court judges weigh a variety of factors in determining whether to waive a juvenile to adult criminal court. All states have incorporated the constitutionally required factors enumerated by the U.S. Supreme Court. According to Griffin et al., (1998), NCJFCJ (2006), and Torbet and Szymanski (1998) these factors include seriousness of the offense, the need to protect the community, whether the offense was committed in an aggressive violent, premeditated, or willful manner, whether the offense was against a person or property, the merit of the complaint, whether the juvenile's associates will be tried in adult criminal court, the juvenile's sophistication, maturity, record, and previous history, and the likelihood of rehabilitation. The criteria for waiving juveniles to the adult criminal court are still not standardized from state to state (Griffin et al., 1998; NCJFCJ, 2006; Torbet & Szymanski, 1998).

When examining the deterrent effects of juvenile waiver there is conflicting empirical support. Overall, the research literature has elaborated on many of the concerns that are typically expressed about judicial waiver, including the belief that judges are given too much discretion, the belief that race of the juvenile influences the waiver decision, that gender of the juvenile influences the waiver decision, and that age influences the waiver decision. In addition, there have been several major studies that have been conducted to examine the deterrence effects of juvenile waiver. These large-

scale studies indicate that juveniles tried in adult criminal court generally have greater recidivism rates upon release than those juveniles tried in juvenile court (Bishop et al., 1996; Bishop & Frazier, 2000; Corrado et al., 2003; Lanza-Kaduce et al., 2005; Maitland & Sluder, 1998; McShane & Williams, 1989; Mason & Chang, 2001; Myers, 2001, 2003; Winner et al., 1997). In addition, these studies indicate that juveniles in adult correctional facilities suffer higher rates of physical abuse, sexual abuse, and suicide (Fagan & Vivona, 1989; Lawrence & Hemmens, 2008). Furthermore, studies indicate that juveniles are being waived to the adult criminal court for less serious property and drug offenses thus making net widening a very real possibility (Butts & Mitchell, 2000; Lawrence & Hemmens, 2008; Myers, 2001). Finally, studies indicate that juveniles waived to the adult criminal court can result in less punitive punishment; i.e., dismissals, plea bargains, diversion programs, and probation.

A review of the waiver literature and in particular judicial waiver reveals that it is not as well developed as the juvenile justice sentencing literature. The judicial waiver literature tends to narrowly focus on the legal factors associated with juvenile waiver such as the seriousness of the offense, the need to protect the community, whether the offense was committed in an aggressive, violent, premeditated, or willful manner, whether the offense was against a person or property, the merit of the complaint, whether the juvenile's associates will be tried in adult criminal court, the juvenile's sophistication, maturity, record, and previous history, and the reasonable likelihood of rehabilitation. In addition, other extra-legal factors have been looked at such as the defendant's age, race, gender, education status, family structure, and socio-economic status. What has not been examined and was the rationale for this study was the judges' perceptions regarding the

use of judicial waiver and if there are any difference in the belief about how a judicial waiver affects juvenile crime based on individual characteristics of the juvenile court judges themselves.

Conclusions and Discussion

The results of this study did not confirm most of the assertions made in previous literature. The previous literature (D'Angelo, 2000, 2007; Myers, 1988; Schwartz, et al., 1993) examined how particular characteristics such as age, race, gender, political party, and jurisdiction, of the court judges affect their decision-making process.

First, age has been suggested to affect an individual's decision making process. Attitudinal theory asserts as an individual ages they accumulate life experiences. It is these life experiences that shape the individual's perceptions, attitudes, and behaviors. Following this logic then, one could hypothesis that younger juvenile court judges have different life experiences than older juvenile court judges. Therefore, younger juvenile court judges would likely maintain different attitudes and perceptions than older juvenile court judges regarding judicial waiver. As an individual grows older he or she may adopt a more cynical attitude toward juvenile offenders (Schwartz et al., 1993). However, Myers (1988) reported just the opposite. He found that older judges handed down more lenient sentences than younger judges.

The researcher hypothesized that age was significantly related to the perceptions of juvenile court judges regarding judicial waives. The researcher was unable to confirm this hypothesis and found that for this data age could was not significantly related to the perceptions of juvenile court judges regarding judicial waiver.

Similarly, race has been suggested to affect an individual's perceptions, attitudes, and behaviors. Attitudinal theory asserts that non-minority juvenile court judges would have different life experiences than minority juvenile court judges. Therefore, non-minority juvenile court judges would likely maintain different attitudes and perceptions than minority juvenile court judges. Following this logic then, one could hypothesis that non-minority and minority juvenile court judges would likely maintain different perceptions with regard to judicial waiver.

Welch, Combs & Gruhl (1988) found in his study that African-American judges tend to hold more liberal views and therefore are more lenient than non-minority judges. This researcher hypothesized that race is significantly related to the perceptions of juvenile court judges regarding judicial waiver. The researcher was unable to confirm this hypothesis and found that for this data race was not significantly related to the perceptions of juvenile court judges regarding judicial waiver.

In addition, gender has been suggested to affect an individual's perceptions, attitudes, and behaviors. Attitudinal theory asserts that male juvenile court judges would have different life experiences than female juvenile court judges. Therefore, male juvenile court judges would likely maintain different attitudes and perceptions than female juvenile court judges. Following this logic then, one could hypothesis that males and female juvenile court judges would likely maintain different perceptions with regard to judicial waiver.

Research (Diamond, 1977; Erikson & Luttbeg, 1973) has shown that women are more liberal in their beliefs, attitudes, and perceptions. Furthermore, with respect to the issue of crime control, studies (Gruhl, et al., 1981; Kritzer & Uhlman, 1977) show that

female judges are more lenient compared with male judges. This researcher hypothesized that gender is significantly related to the perceptions of juvenile court judges regarding judicial waivers. The researcher was unable to confirm this hypothesis and found that for this data gender could not be used to statistically predict the perceptions of juvenile court judges regarding judicial waiver.

A large majority of research (Curtis, 1991; Gibson, 1978; Goldman, 1975; Nagel, 1961; Smith & Wright, 1992) has focused on the relationship between political party affiliation and judges' decision making process. Attitudinal theory would suggest that Republican and Democrat judges' perceptions, attitudes, and sanctioning ideologies differ because they are likely to maintain different life experiences.

Curtis (1991) found that conservative judges tend to be more punitive than liberal judges. Other studies (Smith & Wright, 1992; Taylor, 1989) found that 82 percent of the Republican judges supported get tough punishment policies whereas only 50 percent of Democrat judges supported such policies. Scholars (Gibson, 1978; Nagel, 1963) suggest that Democrats tend to be more working class oriented in their perceptions, attitudes, values, and behavior than Republicans. Scholars (Gibson, 1978; Nagel, 1963) suggest that Democrat judges are more sympathetic to the plight of the lower and working class resulting in more lenient sentences. This researcher hypothesized that political party is significantly related to the perceptions of juvenile court judges regarding judicial waiver. The researcher was unable to confirm this hypothesis in the overall regression equation.

Next, cultural environment has been suggested to affect an individual's decision making process. Research (Feld, 1991; Johnson & Scheuble, 1991; Myers & Talaricco, 1986; White & Booth, 1978) found a relationship between the jurisdiction (i.e., rural v.

urban) of the judges' court and punishment severity. They (Feld, 1991; Johnson & Scheuble, 1991; Myers & Talaricco, 1986; White & Booth, 1978) suggested that the culture of the surrounding area leads to differing perceptions, attitudes, and sanctioning ideologies between judges from rural and urban areas. In other words, the beliefs that shape an individual's attitudes differ according to where he or she resides. Researchers (Feld, 1991; Johnson & Scheuble, 1991; Myers & Talaricco, 1986; White & Booth, 1978) found that judges from rural areas will impose more punitive penalties on female offenders than male offenders as compared with judges from urban areas. Such research suggests that individuals from rural areas maintain more traditional attitudes towards men and women's roles in society. Following this logic then, one could hypothesize that judges in jurisdictions that are rural have different life experiences than judges in jurisdictions that are more urban. Therefore, juvenile court judges in jurisdictions that are rural have different attitudes, perceptions, and sanctioning ideologies than juvenile court judges in jurisdictions that are more urban. This researcher hypothesized that jurisdiction of the court (urban, suburban, and rural) is significantly related to the perceptions of juvenile court judges regarding judicial waiver. The researcher was unable to confirm this hypothesis and found that for this data, jurisdiction was not significantly related to the perceptions of juvenile court judges regarding judicial waiver.

Finally, the researcher added additional variables, tenure on the bench, way in which the judge acquired his or her position, previous position, and a state's once an adult/always an adult provision in the analysis. The researcher was unable to find evidence that these independent variables are significantly related to the perceptions of juvenile court judges regarding judicial waiver.

Recommendations for Policy or Practice

The fact that this researcher found no significantly relationships is important. First, this study found that there is no difference in the belief about how a judicial waiver affects juvenile crime and in the belief about how a judicial waiver affects community safety based on the position the juvenile court judge held prior to being a juvenile court judge and on the state in which the juvenile court judge resides. Furthermore, this study revealed that, in the states that were surveyed; Alabama, Colorado, Illinois, Mississippi, Missouri, New Jersey, Pennsylvania, and Utah, that juvenile court judges reported that they are not influenced by extra-legal factors such as their race, age, gender, political party affiliation, tenure on the bench, way in which they acquired their position, previous positions, jurisdiction, and their state's once an adult/always an adult provision to influence their perceptions with regard to judicial waiver and their ability to deter juvenile crime. This would suggest that juvenile court judges are in fact following the constitutionally required factors enumerated by the U.S. Supreme Court.

These findings provide some evidence that juvenile court judges are not ignoring or bending (belief that judges are vested with too much discretion) the due process requirements of the Fourteen Amendment as previous literature (Clarke, 1996; Fagan, Forest & Vivona, 1987) suggest, but are in fact being objective in their use of judicial waiver. The results from this analysis indicate that juvenile court judges report that they are not influenced by extra legal factors and make their decisions based on legally appropriate considerations suggesting that they are in the best positions to decide whether or not to waive juveniles to the adult criminal court; not the District Attorney or the Legislatures. Further analysis is needed to confirm this assertion.

Recommendations for Future Research

The researcher makes several suggests for future research. First, the researcher suggests that additional states be included. Adding states within each of the regions would allow for more comparison within state, between state, and between regions. The results of such a study would be more beneficial in terms of generalization.

In addition, a follow-up study should be conducted using scenarios. The researcher suggests that scenarios be created or found and given to juvenile court judges. The juvenile court judges should be asked for their course of action to include the use of judicial waiver. This type of study would allow for between study comparisons and for a better understanding of juvenile court judge's perceptions with regard to the use and deterring effect of judicial waiver. Furthermore, the researcher suggest that future research involve the replication and expansion of existing literature that suggest age, race, ethnicity, and gender of the juvenile are predictors in the use of judicial waiver. Finally, the researcher suggest that future research be conducted to capture variables such as the types of crimes being waived, sentencing structure, levels of abuse in adult correctional facilities, and recidivism rates.

APPENDIX A

LETTER OF EXPLANATION AND SURVEY INSTRUMENT

Date:

Judge's Address

Dear Judge (Last Name):

Hello, my name is Sheri Jenkins Cruz and I am a doctoral candidate at The University of Southern Mississippi. I am currently conducting my dissertation research and would like to ask for your participation. My area of interest is juvenile justice and my dissertation seeks to examine juvenile court judges' perceptions regarding judicial waivers. I have developed a survey instrument to measure these perceptions. The survey instrument consists of four sections; background information, court information, sanctioning and disposition issues, and qualitative questions. Your perceptions are extremely important and your participation would be greatly appreciated; however, your decision to participate in this research project is completely voluntary and you may stop participating at anytime.

The attached survey instrument has been designed to ensure your responses are not only confidential but also be anonymous meaning your identity will be unknown. The completed survey instruments will be housed in the researcher's office and will be destroyed once the analysis is completed.

Finally, you will be given the opportunity to receive, via e-mail, a copy of the executive summary by responding to the email provided in this letter of explanation. I would be happy to answer any questions that you might have. Please feel free to contact me by e-mail scruz@cameron.edu, or by telephone (580) 581-2951.

This project and this consent form have been reviewed by the Human Subjects Protection Review Committee, which ensures that research projects involving human subjects follow federal regulations. Any questions or concerns about rights as a research participant should be directed to the Chair of the Institutional Review Board, The University of Southern Mississippi, 118 College Drive #5147, Hattiesburg, MS 39406-0001, (601) 266-6820.

Respectfully,

Sheri Jenkins Cruz
Ph.D. Candidate
The University of Southern Mississippi

7. Juvenile court judges consider the recommendation of the juvenile probation officer in their decision to waive.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Juveniles who are waived to adult court have a higher likelihood of conviction than those who remain in juvenile court.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Juveniles who are waived to adult court have a greater chance of incarceration than those adjudicated in juvenile court.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Rank the following factors on a scale of 1 to 6 (1-least important and 6-most important) in making a decision to waive a juvenile offender.

_____ The type of crime alleged to have been committed determines my decision to waive a juvenile to adult court.

_____ The recommendation of the probation officer influences my decision to waive a juvenile to adult court.

_____ The "best interest of the child" is what influences my decision to waive a juvenile to adult court.

_____ Community safety influences my decision to waive a juvenile to adult court.

_____ Whether the juveniles is "amenable to treatment" in the juvenile system influences my decision to waive a juvenile to adult court.

_____ My state's 'once an adult, always an adult' provision influences my decision to waive a juvenile to adult court.

Demographic Information

Check the response that most accurately reflects your individual characteristics.

1. Which state do you reside in?

- | | | |
|-----------------------------------|--------------------------------------|---------------------------------------|
| <input type="checkbox"/> Alabama | <input type="checkbox"/> Mississippi | <input type="checkbox"/> Pennsylvania |
| <input type="checkbox"/> Colorado | <input type="checkbox"/> Missouri | <input type="checkbox"/> Utah |
| <input type="checkbox"/> Illinois | <input type="checkbox"/> New Jersey | |

2. What is your gender?

- Male Female

3. What is your age? _____

4. What is your ethnicity?

- | | |
|--|--|
| <input type="checkbox"/> White, not of Hispanic origin | <input type="checkbox"/> American Indian/ Alaskan Native |
| <input type="checkbox"/> Black, not of Hispanic origin | <input type="checkbox"/> Asian or Pacific Islander |
| <input type="checkbox"/> Hispanic | |

5. What is your political party affiliation?

- Democratic Republican Independent

6. What is your title?

- Judge Referee Other

7. How long have you served as a juvenile court judge? _____

8. How were you selected as a juvenile court judge?

- Elected Other: _____
- Appointed

9. What was your previous position before becoming a juvenile court judge?

- Prosecutor Defense Attorney Other: _____

Please answer the following questions.

1. What, if any, problems exist with the use of judicial waiver?
2. In your opinion, what are the strengths of the judicial waiver procedures?
3. In your opinion, what are the weakness of the judicial waiver procedures?
4. Do you have any additional comments on judicial waivers or deterring juvenile crime?

Please know the work you do for children and families in your community is appreciated. Also, all results will be treated as confidential and no individual identifiers will be connected with your comments.

APPENDIX B

IRB APPROVAL THE UNIVERSITY OF SOUTHERN MISSISSIPPI



THE UNIVERSITY OF SOUTHERN MISSISSIPPI

Institutional Review Board

118 College Drive #5147
Hattiesburg, MS 39406-0001
Tel: 601.266.6820
Fax: 601.266.5509
www.usm.edu/irb

TO: Sheri Lu Jenkins Cruz
4618 S.E. Brighton Drive
Lawton, OK 73501

FROM: Lawrence A. Hosman, Ph.D.
HSPRC Chair

PROTOCOL NUMBER: 29100501
PROJECT TITLE: From Juvenile Court to the Adult Criminal Justice System: An
Examination of Judicial Waivers

Enclosed is The University of Southern Mississippi Human Subjects Protection
Review Committee Notice of Committee Action taken on the above referenced
project proposal. If I can be of further assistance, contact me at (601) 266-4279,
FAX at (601) 266-4275, or you can e-mail me at Lawrence.Hosman@usm.edu.
Good luck with your research.

APPENDIX C

IRB APPROVAL THE UNIVERSITY OF OKLAHOMA



The University of Oklahoma

OFFICE FOR HUMAN RESEARCH PARTICIPANT PROTECTION

IRB Number: 12734
Approval Date: November 09, 2009

November 10, 2009

Sheri Jenkins Cruz
Cameron University School of Liberal Arts
2800 West Gore Boulevard, NB 2083
Lawton, OK 73505

RE: From Juvenile Court to the Adult Criminal Justice System: An Examination of Judicial Waivers

Dear Ms. Cruz:

On behalf of the Institutional Review Board (IRB), I have reviewed and granted expedited approval of the above-referenced research study. This study meets the criteria for expedited approval category 7. It is my judgment as Chairperson of the IRB that the rights and welfare of individuals who may be asked to participate in this study will be respected; that the proposed research, including the process of obtaining informed consent, will be conducted in a manner consistent with the requirements of 45 CFR 46 as amended; and that the research involves no more than minimal risk to participants.

This letter documents approval to conduct the research as described:

Consent form - Other Dated: November 06, 2009 Information Sheet - Revised
Other Dated: October 21, 2009 IRB Appl Ltr - Univ. of Southern Mississippi
IRB Application Dated: October 01, 2009 Revised
Survey Instrument Dated: September 22, 2009
Other Dated: September 22, 2009 Recruitment Letter
Other Dated: September 22, 2009 Project Narrative
Protocol Dated: September 22, 2009

As principal investigator of this protocol, it is your responsibility to make sure that this study is conducted as approved. Any modifications to the protocol or consent form, initiated by you or by the sponsor, will require prior approval, which you may request by completing a protocol modification form. All study records, including copies of signed consent forms, must be retained for three (3) years after termination of the study.

The approval granted expires on November 08, 2010. Should you wish to maintain this protocol in an active status beyond that date, you will need to provide the IRB with an IRB Application for Continuing Review (Progress Report) summarizing study results to date. The IRB will request an IRB Application for Continuing Review from you approximately two months before the anniversary date of your current approval.

If you have questions about these procedures, or need any additional assistance from the IRB, please call the IRB office at (405) 325-8110 or send an email to irb@ou.edu.

Cordially,


Lynn Davenport, Ph.D.
Chair, Institutional Review Board



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