

WHAT A DIFFERENCE A YEAR MAKES: AN EXAMINATION OF PROSECUTORIAL
DECISION-MAKING FOR PERSONS UNDER THE AGE OF 18 IN THE HARRIS
COUNTY, TEXAS ADULT CRIMINAL JUSTICE SYSTEM. PATTERNS AND
PREDICTORS.

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DEDICATION

Dedicated to my mother, Paulette M. Tinder

1944 -2015

We did it Momma!!!

ABSTRACT

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Prior studies have argued that the disparate treatment of racial, ethnic, gender, and age groups is present, either directly or indirectly, at every stage of processing in the United States' juvenile and adult criminal justice systems. Informed by the prior literature suggesting that extralegal factors influence decision-making in cases with adult offenders (see Walker et al., 2012), the purpose of the current study is twofold. First, the study seeks to explore patterns in prosecutorial decision-making involving juvenile offenders in an adult criminal court. Second, guided by a focal concerns perspective, this dissertation will then examine which, if any, legal and extralegal factors influence the decision to prosecute these youth in the adult system. More directly, the latter half of this study seeks to examine if disparities are present in the processing of juveniles in the Harris County, Texas adult criminal court. The study also seeks to examine the possibility of an age penalty being attached to younger juveniles (transferred youth) as compared to 17-year olds. More specifically, the current study will examine whether legal and extralegal factors differentially influence the prosecutors' decision to prosecute to the detriment of transferred youth compared to statutorily excluded (17-year old) juveniles. This study employed a variety of analytical strategies using data from the Neulaw project, which consists of all court cases handled in the Harris County, Texas adult criminal court between the years of 1977-2013 (Ormachea et al., 2015). The results revealed several key patterns in prosecutorial decision-making and the presence of race/ethnicity, gender, and

age effects in prosecutorial decision-making involving juvenile offenders in an adult criminal court.

KEY WORDS: Prosecutorial decision-making; Juvenile justice; Juvenile penalty; Juvenile transfer, Racial disparities

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CHAPTER I

Introduction

Prior studies have argued that the disparate treatment of racial, ethnic, gender, and age groups is present, either directly or indirectly, at every stage of processing in the United States' juvenile and adult criminal justice systems. Such disparities exist from arrest to sentencing and these effects are cumulative (Bishop & Frazier, 1990; Bishop, Frazier, Lanza-Kaduce, & Winner, 1996; Guevara, Boyd, Taylor, & Brown, 2011; Hartley, Maddan, & Spohn, 2007; Leiber & Mack, 2003; Spohn, 2000; Steffensmeier, Ulmer, & Kramer, 1998); meaning that the negative and detrimental effects of extralegal factors such as race, ethnicity, age, gender and socio-economic status on decision-making compound as offenders progress through the system. These findings have spurred great debate related to how extralegal factors may condition the decision-making process, shaping the use of court actors' discretion and ultimately influencing court outcomes.

Discretion is a widely-used tool within the criminal justice system (Bishop & Frazier, 2012; Shook, 2004). One that is exercised through the decision-making of various criminal justice actors and is arguably most exercised at two points: the decision to arrest and the decision to prosecute (Beckett, 2012; Brewer & Heitzeg, 2008). The use of discretion has both advantages and disadvantages. It affords police officers the ability to divert individuals away from the system (Beckett, 2012), and it allows prosecutors to alleviate heavy caseloads (Shook, 2003). Of particular interest to the current study, prosecutors often utilize their discretionary power in deciding whether to prosecute an offender (Spohn, Gruhl, & Welch, 1987). It is probable that the widely unchecked discretionary power afforded to prosecutors may allow for the entrance of bias and

discriminatory practices or attitudes into their decision-making (Rattan, Levine, Dweck, & Eberhardt, 2012; Spohn et al., 1987). The literature on decision-making in the adult criminal justice system is extensive (Albonetti, 1986, 1987; Demuth & Steffensmeier, 2004; Franklin, 2010; Franklin & Fearn, 2008). Prior studies have examined prosecutorial decision-making involving felony cases (Albonetti, 1986; Franklin, 2010), sexual assault cases (Beichner & Spohn, 2005; Spohn, Beichner, & Davis-Frenzel, 2001; Spohn & Holleran, 2001), and the impact of race and ethnicity on decision-making (Spohn, Gruhl, & Welch, 1987). More recently, scholars have begun to examine these relationships within the boundaries of the juvenile justice system (Bridges & Steen, 1998; Guevara et al., 2011; Harris, 2009). However, few studies to date have examined the extent to which legal and extralegal factors influence decision-making involving juvenile offenders in the adult criminal justice system (Jordan, 2014; Kurlychek & Johnson, 2004, 2010). Moreover, studies that have begun to disentangle the issues revolving around the differential treatment of minority youth in the adult system primarily focus on the 'in/out' decision and sentence lengths (Jordan, 2014; Johnson & Kurlychek, 2012). Therefore, considering the suggestions that one can expect disparities to be found at every decision-making stage, it is imperative scholarly attention be given to multiple stages and court actors.

One such decision-making stage that has remained relatively ignored is the prosecutorial decision to prosecute juvenile offenders in the adult system. Estimates suggest that over 200,000 juveniles are transferred and tried in the adult system annually via prosecutorial waivers and exclusionary statutes (Bishop, 2000). However, these numbers do not include the roughly 5,000 juveniles transferred to the adult court via

juvenile judicial transfer annually. Transfer decisions made by juvenile court judges are the most likely to be tracked however, once these juveniles are transferred, tracking ceases. Due to insufficient information and tracking of youth that are automatically removed from the juvenile court's jurisdiction or transferred via prosecutorial discretionary waivers, a more accurate account of how many juveniles are tried in adult courts is lacking. The difficulty in obtaining data on this special sub-population of juvenile offenders has limited the ability to examine what happens to them after they are transferred. Most studies of youth in the adult court focus on the 'trackable,' judicially transferred youth and compare them to similarly situated adult offenders (Deitch, Barstow, Lukens, & Reyan, 2009; Gulstad, 2016; Johnson & Kurlychek, 2012; Jordan, 2014).

Limiting criminal justice decision-making studies to this group and then comparing their treatment and sentencing outcomes to adults is problematic for two reasons. First, by only examining those juveniles who were judicially transferred, the prior literature does not present a diverse or accurate depiction of this sub-population of juvenile offenders. Therefore, studies that compare transferred youths to other juveniles in the adult system are needed. Secondly, by comparing juvenile offenders to adult offenders, we potentially miss the mitigating or aggravating influence of age on prosecutorial decision making. It is probable that the extent to which certain legal and extralegal factors influence prosecutorial decision-making for adults is not the same for juveniles, even when they are similarly situated and processed in the same jurisdiction. Arguably, juvenile offenders may be considered more dangerous as they are committing crime at younger ages and therefore, at higher risk of career criminality (Johnson &

Kurlychek, 2012). On the other hand, the perceived maturity of adult offenders may result in them being considered more culpable and blameworthy for their offenses as compared to juveniles (Albonetti, 1987). Furthermore, due to the limited data specific to prosecutors, we have little understanding of what influences their decision-making.

Purpose of the Study

Informed by the prior literature suggesting that extralegal factors influence decision-making in cases with adult offenders (see Walker et al., 2012), the purpose of the current study is twofold. First, the study seeks to explore patterns in prosecutorial decision-making involving juvenile offenders in an adult criminal court. Second, guided by a focal concerns perspective, this dissertation will then examine which, if any, legal and extralegal factors influence the decision to prosecute these youth in the adult system (Albonetti, 1991; Spohn et al., 2001; Steffensmeier & Demuth, 2006; Steffensmeier et al., 1998). More directly, the latter half of this study seeks to examine if disparities are present in the processing of juveniles in the Harris County, Texas adult criminal court. The study also seeks to examine the possibility of an age penalty being attached to younger juveniles (transferred youth) as compared to 17-year olds. More specifically, the current study will examine whether legal and extralegal factors differentially influence the prosecutors' decision to prosecute to the detriment of transferred youth compared to statutorily excluded (17-year old) juveniles.

The current study will employ a variety of analytical strategies using data from the Neulaw project. The data for the Neulaw project was obtained via a Freedom of Information Act request and consists of all court cases handled in the Harris County, Texas adult criminal court between the years of 1977-2013 (Ormachea et al., 2015). A

series of analyses will be employed to answer the research questions within the framework of the focal concerns theoretical perspective, as applied to prosecutorial decision-making among juvenile offenders. More specifically, the two main research questions and sub-questions that this dissertation will address are:

1. What patterns are evident in prosecutorial decision-making involving persons under the age of 18 in the Harris County, TX adult criminal court from 1980 to 2010?
 - (a) Are minority youth disproportionately represented within the data and cases prosecuted; and
 - (b) Is there differential prosecution based upon offense types?
2. Which, if any, extralegal and legal factors are related to the decision to prosecute persons under the age of 18 in the Harris County, TX adult criminal court;
 - (a) Are there interactive effects of race/ethnicity and gender on the prosecutors' decision to prosecute; and
 - (b) Do younger juveniles (i.e. 10 -16-year olds) receive differential treatment as compared to similarly situated 17-year old juveniles?

Importance of the Study

Gaining a more diversified understanding of the patterns and predictors of the prosecutorial decision of which juvenile offenders to prosecute is necessary. Studies examining how legal and extralegal factors may influence decision-making differently for varying groups (i.e., gender, race/ethnicity, transferred vs. excluded) are critical for several reasons. First, as we do not have an accurate idea of the total number of youth

who are transferred to the adult system on a yearly basis (Bishop, 2000; Bishop et al., 1989; Johnson & Kurlychek, 2012; Shook, 2004), learning more about initial adult court decision-making involving juveniles can inform future practice and policy. As noted by Bishop and colleagues (1989) moving from the status of juvenile to adult can present severe consequences for this population of youthful offenders. The loss of the protective juvenile legal status may result in further criminal socialization and limited opportunity for these youth as they transition back into society (Bishop et al., 1989). Initial prosecution in the adult criminal justice system, regardless of age and conviction status, means that if these youths commit future offenses they will always be processed under the adult criminal court's jurisdiction and are at risk of experiencing hardships such as, ineligibility for government resources and subsidies, living with the 'convict' label, felony disenfranchisement, and loss of employment opportunities (Bishop et al., 1989).

Second, having insight into how the effects of age, race, and gender may influence prosecutors' decision-making involving persons under the age of 18 in the adult system will allow for the discussion of issues such as disproportionate minority contact and age and gender disparities in varying contexts. Third, most studies guided by focal concerns have only examined the latter stages of criminal justice decision-making. Therefore, the current study will add to the literature by expanding our knowledge of focal concerns perspective related to prosecutors' decision to prosecute juvenile offenders in adult criminal court. Finally, and more directly related to the jurisdiction being examined in the current study, recent Texas legislation has passed which will return 17-year old juvenile offenders to the jurisdiction of the juvenile court (TX HB122, 2017).

The findings from the current study may then contribute to a dialogue supporting this change in the age of criminal responsibility in Texas and throughout the United States.

From Juvenility to Adulthood

The process of moving from juvenile status to adulthood (i.e., transfer) in the eyes of the law can occur in one of three ways (Bishop & Frazier, 2012). The first mechanism by which a juvenile can be transferred to the adult court is via statutory exclusion. This occurs when legislation is passed that automatically excludes a youth from the juvenile court's jurisdiction. These types of legislation are usually based on the age of the offender, offense committed, or a combination of the two. Specific to this study, in the state of Texas juveniles who were 17 years-old at the time of their offense are automatically excluded from the juvenile court's jurisdiction. The second mechanism is referred to as a prosecutorial waiver. In some states, once again dependent upon age and offense, the prosecutors have sole discretion in deciding under which jurisdiction the juvenile will be prosecuted. The third and final mechanism is referred to as a judicial waiver. In judicial waivers, the juvenile court judge has the sole discretion in deciding whether or not the offender will be transferred to the adult court's jurisdiction. All states have a cut-off age for the juvenile court's jurisdiction, and the majority have set 17 years as the age of criminal responsibility (Office of Juvenile Justice and Delinquency Provision, 2017). The use of the other two mechanisms vary depending on the state and Texas is a judicial waiver state.

The get-tough era and juvenile transfer. A growing public outcry against the perceived leniency of the juvenile justice system brought about a shift in the philosophy and focus of juvenile court actors and policymakers. This resulted in a more punitive

approach to dealing with juvenile delinquency and crime (Houghtalin & Mays, 1991; Kurlychek & Johnson, 2004; Myers, 2003; Salekin, Rogers, & Ustad, 2001). This shift was fueled and subsequently firmly established during the mid-1980's and early 1990's amid an increase in juvenile crime, public perceptions that the juvenile court was not punitive enough, and a media induced, moral panic and fear of youthful offenders as 'super-predators' (DiIulio, 1995; Shook, 2005).

An aspect of this paradigm shift, into what is known as the get-tough era, was an increased push by legislators to make it easier to transfer juvenile offenders into the adult criminal court system (Gillespie & Norman, 1984; Kurlychek & Johnson, 2004; Shook, 2005). Even though there were always mechanisms in place for the transfer of juveniles to the adult system (Kurlychek & Johnson, 2004), prior to the ideological shift from treatment to punishment, juvenile transfer was a rarity and the process of transferring juvenile offenders was much more difficult (Bortner, 1986; Fox, 1970). Mlyniec (1976) argued that:

While statutes permitting adult treatment may have been meant to deal with the hardened, incorrigible juvenile offender, the traditionally wide latitude given to prosecutors regarding discretionary acts in the criminal justice system creates a serious likelihood that the process may ensnare the wrong child (p. 36).

Although the total number of juvenile offenders who are judicially transferred constitute a relatively small percentage of the total juvenile offender population (approximately 1%), it could be argued that these juveniles represent a failure in the juvenile justice system and policies to achieve the protective and rehabilitative aspects on which it was founded (Shook, 2005; Furdella & Puzanchera, 2015). Additionally, as data on this

special sub-population is limited, the most readily available information only pertains to those who are judicially transferred. As such, the statistics and trends typically shown in studies and reports represent a fraction of the juvenile offenders who are involved with the adult criminal justice system. Therefore, our understanding of what happens to these youth at earlier stages of the adult criminal court process must be widened.

Widening our Understanding of Decision-making

Over the past four decades scholars have consistently noted the presence of racial, ethnic, and gender disparities at various decision-making stages within the United States' juvenile (Bishop, 2000; Leiber & Fox, 2005; Leiber, Johnson, Fox, & Lacks, 2007; Howell & Huto, 2012; Shook, 2013; Spohn, 2000) and adult criminal justice system (Mitchell, 2005; Pratt, 1998; Walker, Spohn, & DeLone, 2012). Within this time frame, transitions in ideologies and rationale behind the purpose of the juvenile court and its ability to handle violent and/or serious juvenile offenders resulted in the creation of legislation and policies allowing for more youth to be transferred to the adult system (Houghtalin & Mays, 1991; Salekin et al., 2001). This shift in ideology has sparked great debate in recent years and spurred an increased number of studies examining this subset of the juvenile offender population (Bishop, 2000; Kurlychek & Johnson, 2004; Spohn, 2000).

In theory, the option of transferring juvenile offenders into the adult criminal justice system was to be reserved for the most dangerous, violent and/or serious youthful offenders that had proven themselves to be unamenable to the treatment options offered in the juvenile system and in need of more punitive treatment (Bishop, 2000; Bishop, Frazier, & Henretta, 1989; D'Angelo, 2007; Deitch, Barstow, Lukens, & Reyna, 2009).

However, studies have found that the use of transfer has not been reserved just for youth who have committed violent, person offenses; but has been extended to include those who have committed property, drug, and public order offenses and who do not represent the ‘worst of the worst’ of offenders (Deitch et al., 2009; Sickmund & Puzzanchera, 2014; Furdella & Puzzanchera, 2015; Hockenberry & Puzzanchera, 2017). The increase of transfers coupled with wide discretionary latitude has exacerbated the already disproportionate number of people of color who come in contact with the juvenile and adult criminal justice systems.

In response to mixed findings regarding harsher treatment of juveniles in the adult system as compared to the juvenile court system, recent studies examined the influence of extralegal and legal factors on court actors’ decision-making involving transferred youth (Carmichael, 2010; Franklin, 2010; Guevara et al., 2011; Jordan, 2014; Steffensmeier & Demuth, 2006). However, as noted by Kurlychek and Johnson (2004) prior studies have heavily relied upon comparisons of transferred youth to youth who remained in the juvenile system. This has limited our understanding of these relationships because the two justice systems operate under differing models of justice (Kupchik, 2006). As such, the treatment options or sentencing outcomes and extralegal disparities associated with these juvenile offender groups would be distinctively different in fundamental ways. For example, the treatment options for juveniles within the adult system are limited as compared to the juvenile court system. Therefore, an underrepresentation of minority youth in adult treatment programs could be more indicative of the limited options and less indicative of disparity in treatment. However, underrepresentation of minority youth

in juvenile justice treatment programs would be more indicative of disparities in treatment than a limitation of treatment options.

Due to these differing models of justice, more recent studies examine the relationships between legal and extralegal factors as related to judicial decision-making and sentencing by comparing these youths to similarly situated young adult offenders (Johnson & Kurlychek, 2012; Jordan, 2004; Kurlychek & Johnson, 2004, 2010; Steiner, 2009). These studies found that juveniles were treated more harshly than adults and suggested that age is a mitigating factor. As one could expect, there are still some gaps in this burgeoning body of literature. Such studies have expanded our understanding of how juveniles in the adult system are being punished and the severity of punishment. Yet, differences in the use of prosecutorial discretion and subsequent decision-making between transferred youth and youth who have been excluded automatically from juvenile court jurisdiction because of age have been ignored. Furthermore, there is still a need for studies that examine disparities in the treatment of juveniles within different adult court jurisdictions and between other minority/majority group members outside of the typical black/white comparisons. Wang & Mears (2010) called for more scholarly works that examine additional minority groups, especially ethnic minorities such as Hispanics. This is particularly due to Hispanics being one of the fastest growing ethnic minority populations in the United States (Wang & Mears, 2010). Studies have shown that negative attitudes about minorities are most prevalent in communities with large minority populations (Carmichael, 2010; Carmichael, Whitten, & Voloudakis, 2005; Oliver & Wong, 2003; Spohn & Holleran, 2000; Wolfe et al., 2011). Due to the large

Hispanic population in Texas, this makes this sample especially suitable for exploring the premises of focal concerns perspective as they relate to prosecutorial decision-making.

As noted by Brewer and Heitzeg (2008) “all communities of color suffer from racism in general and its manifestation in criminal justice” (p. 627). The decision-making of criminal justice actors may have permanent, albeit, unintended negative consequences for juvenile offenders and therefore warrants further examination. Also, where the current body of literature does a great job of informing scholars, practitioners, and policymakers on the effects of legal and extralegal factors on incarceration and sentencing decisions, little is known about these effects at earlier decision-making stages, specifically with juvenile offenders.

This dissertation will explore and examine a key adult criminal court decision-making stage involving persons under the age of 18 that were either judicially transferred into the adult criminal justice system or statutorily excluded from juvenile court jurisdiction. In doing so, it is expected that several gains in knowledge will be made including: (1) filling in the gaps in the current literature regarding the relationships between legal and extralegal factors as they relate to the decision to prosecute juveniles in adult court; (2) extending our knowledge and understanding of what happens to these youths upon initial entry into the adult system; and (3) examining whether or not the decision to prosecute these youths is differentially applied based on minority group membership and juvenile status.

The next chapter will begin by discussing the literature on focal concerns and prosecutorial decision-making. This section of the dissertation will explain how the theoretical precepts may explain the differential treatment and application of justice

involving juveniles within the adult criminal justice system. More directly, how certain factors may influence prosecutorial decision-making involving this special sub-population, and why one might expect to find both direct and interactive effects of extralegal factors. The following section will discuss the wide latitude of discretionary power afforded to prosecutors within the adult criminal justice system, including the relevant changes in philosophy that occurred during the periods of study. Chapter two will then conclude with a discussion of juvenile crime and transfer trends and the juvenile penalty. It is expected that the demonstration of these trends will provide a picture of how these youths end up in the adult criminal justice system and demonstrate how focal concerns based on juvenile status may result in harsher treatment for this group.

Chapter three of this dissertation will detail the data utilized for the study, sample, jurisdiction, and the descriptions of the variables included in the study. Additionally, this chapter will include a discussion of the analytical strategies that were employed and the rationale behind the decisions. In chapter four, the results of the analyses will be presented. This will be followed by the fifth and final chapter of the dissertation which will consist of the discussion, limitations, policy implications, and conclusions drawn from the study, as well as possible future directions for research.

CHAPTER II

Prosecutorial Decision-Making and Focal Concerns Perspective

The issues surrounding the increased reliance on transfer mechanisms and subsequent racial, ethnic, and gender disparities in these decisions cannot be totally explained by trends in juvenile offending patterns. Prior studies have extended our knowledge on how juveniles are transferred and the potential risks associated with trying juveniles in the adult system. However, there is limited information on what happens to juvenile offenders once they are in the adult system. There is a growing body of literature on decision-making at the “in/out” stage and subsequent sentence lengths imposed on juvenile offenders (Jordan, 2014; Kurlychek & Johnson, 2004, 2010). However, we know little of how they are treated at the initial court decision-making stage. This stage represents a point in the process that is primarily guided by the discretionary power of prosecutors. Therefore, the first question addressed in this dissertation asks what patterns are identifiable in prosecutorial decision-making with cases involving juvenile offenders in the adult criminal court over the span of three decades in which the data covers.

As the literature is sparse regarding this decision-making point involving persons under the age of 18 that are processed in the adult criminal justice system, there are limited expectations as to what will be found, and the analyses will be exploratory in nature. However, guided by the focal concerns perspective and the current literature demonstrating disparities in the treatment and outcomes of offenders in the adult system, it is expected that the prosecutorial decision of whether or not to further process these youths will be influenced by both legal (i.e., offense type and offense seriousness) and extralegal factors (i.e. race/ethnicity, age, and gender) The present chapter then is

purposed to review the current literature on the wide-discretionary power given to prosecutors, theoretical arguments provided by focal concerns perspective, prosecutorial decision-making in the adult system, and why disparities are expected to be present within the data.

The Role of the Prosecutor

National agendas such as the war on drugs, get tough era, war on terror, and even immigration reform ushered in a transformation in not only the sentence severity and lengths (Brewer & Heitzeg, 2008), but also in the discretionary power given to certain criminal justice actors, namely, prosecutors (Ulmer et al., 2007). More familiarly referenced as the ‘get tough on crime’ agenda, the criminal justice system, from courts to corrections, was repurposed and redirected from rehabilitation to retribution and punishment. Partially restructured in the form of sentencing schemes that specified mandatory minimums and maximums based upon offense types and criminal history, the process and power related to correcting one’s wrongs to society was increasingly dictated by prosecutors instead of judges (Ulmer et al., 2007). In their examination of prosecutorial decision-making and the imposition of mandatory minimum sentencing, Ulmer and colleagues (2007) note that the change in power from judges to prosecutors reflected both political trends as well as a growing distrust in criminal court judges’ decision-making.

The role of the prosecutor has always been pivotal in the handling of offenders within the adult criminal justice system. Shook (2004, p. 34) notes that “the increase power afforded to prosecutors has always been legally justified through their traditional power to charge; and is only magnified when combined with sentencing guidelines.”

Shook (2004) argued that with the shift in reliance on sentencing guidelines, having the power to decide what charges are brought against an individual ultimately yields to prosecutors. The shift gave prosecutors decision-making power over what sentence would be imposed before the offender fully entered the criminal court process (Shook, 2004). In referencing the great discretionary power afforded to prosecutors, Spohn and colleagues (2001) noted that the “most critical decision-making stage” is the initial decision regarding whether or not to prosecute (p. 206). Surprisingly, even amidst considerable debate, this remains a decision-making stage where the prosecutor’s discretionary power goes relatively unchecked (Franklin, 2010; Spohn et al., 2001). As illustrated by Spohn and colleagues (2001) prosecutors are responsible for “deciding who will be charged, what charges will be filed, who will be offered a plea bargain, and the type of bargain that will be offered (p. 207). In making the decision as to whether or not to prosecute juvenile offenders in adult system, considerations of racial and ethnic stereotypes, false perceptions of offender dangerousness, along with societal and political pressures in combination with legal factors are likely to influence this critical stage in criminal justice court processing (Beichner & Spohn, 2005; Blalock, 1960; Franklin, 2010; Franklin & Fearn, 2008; Ulmer et al., 2007; Wang & Mears, 2010; Wolfe, Pyrooz, & Spohn, 2010). As most district attorneys are elected officials and therefore must maintain publicly acceptable conviction rates, the decision-making involved may be unduly influenced by these factors and result in the disparate treatment of offenders.

As conviction rates are critical to prosecutorial success measurements, the greatest exercise of discretion on the part of prosecutors is likely to be manifested in the prosecution decision-making stage (Shook, 2004; Spohn et al., 2001). In examining the

prosecutorial charging decision involving sexual assault cases, Spohn and colleagues (2001) noted that studies have consistently demonstrated high percentages of case rejections during initial screening. They argued that this decision is almost exclusively motivated by the likelihood of receiving a conviction, and based upon legal factors such as offense severity, the strength of evidence in the case, and extralegal factors (Spohn et al., 2001). Considering the current body of literature on decision-making and the exercising of prosecutorial discretion, it is expected that extralegal factors will exert disparate influence on prosecutorial decision-making in Harris County, Texas' adult criminal court (Steffensmeier & Demuth, 2006; Ulmer et al., 2007; Wang & Mears, 2010). Therefore, this dissertation argues that a focal concerns perspective may best explain how and why extralegal factors are introduced into prosecutorial decision-making.

Theoretical Perspective: Focal Concerns

A variety of theoretical arguments have been made for both why one would expect that juveniles be treated more leniently and why they would be treated more harshly in the adult criminal court system such as, racial/ethnic threat, attitudinal theory, and similarity-leniency bias (D'Angelo, 2007; Farnum & Stevenson, 2013; Kurlychek & Johnson, 2010). Each of the studies that examined the possibility of a juvenile penalty relied in some part on a focal concerns perspective to explain sentencing disparities involving youth transferred to the adult system (Kurlychek & Johnson, 2004, 2010; Steffensmeier et al., 1998; Steiner, 2009). In fact, the focal concerns perspective has become a staple theory for researchers who are evaluating sentencing disparities (Steffensmeier et al., 1998), whether they be race or ethnic disparities (Bridges & Steen,

1998; Harris, 2009; Steen, Engen, & Gainey, 2005), age disparities (Freiburger & Burke, 2011; Kurlychek & Johnson, 2004, 2010; Steiner, 2009), and/or gender disparities (Bishop, 2000, Franklin & Fearn, 2008; Steffensmeier et al., 1998).

Focal concerns perspective suggests that sentencing is a “multifaceted and complex process” in which judges consider both legal and extralegal factors in their sentencing decisions (Kurlychek & Johnson, 2004, p. 490). It posits that sentencing is reflective of “bounded rationality in which court actors make highly consequential decisions with insufficient information, which then produces uncertainty” (Albonetti, 1991; Ulmer & Johnson, 2004, p. 142). Subsequently, court actors make inferences about offenders’ characteristics and likelihood of recidivism (i.e., perceptual shorthand based on stereotypes) and assess them based on three focal concerns: offender blameworthiness, dangerousness and protection of the community, and the practical constraints and consequences of their decision (Franklin, 2010; Hartley et al., 2007; Kurlychek & Johnson, 2004, 2010; Steffensmeier et al., 1998; Steiner, 2009; Ulmer & Johnson, 2004). These inferences or stereotypical ideas about certain offenders, especially minority group members, are created and reinforced by negative media attention, misleading crime statistics, and personal discriminatory biases. Accordingly, stereotypes and attributions based upon extralegal factors (i.e., race, gender, and age) are then introduced into the decision-making process of court actors such as, judges and prosecutors (Harris, 2009; Steen et al., 2005). These misinformed character attributes then inform decisions related to the offenders’ dispositional outcomes as well as, judges’ sentencing decisions. More often than not, these preconceived notions and/or forms of perceptual shorthand result in the harsher treatment (i.e., increased likelihood of imprisonment and lengthier sentences)

of both juvenile offenders and minority group members that are involved in the adult criminal justice system (Bridges & Steen, 1998; Hartley et al., 2007; Steen et al., 2005). In studying the decision-making processes involving juveniles who were eligible for transfer to the adult system, Harris (2009) found that courtroom actors rely on their perceptual shorthand to primarily inform two of the focal concerns: offender blameworthiness and community protection.

Offender blameworthiness is grounded in the philosophy of “retribution as punishment, with emphasis on offender culpability and the degree of injury caused to any victims” (Kurlychek & Johnson, 2004, p. 491). Racially based stereotypes have been promoted through political agendas, the media, and misinterpreted crime statistics; and have subsequently contributed to a public fear of minority group members, especially the young, black or brown, male (Blalock, 1960, 1967; Steffensmeier et al., 1998; Wang & Mears, 2010). Along these lines, it is argued that the negative images of minority groups coupled with power dynamics have been translated into these offenders being deemed more dangerous and crime prone than their white counterparts (Wolfe et al., 2011).

In assessing the blameworthiness of a juvenile offender in the adult court system, age may also serve as an aggravating factor resulting in a stiffer penalty. It is possible that judges and other court actors perceive younger (i.e., 10-16 year-old) youth as more dangerous and have the potential of a longer, increasingly dangerous criminal career. In studying the culpability of juveniles, Burke (2011) noted that violence and crime had been considered as synonymous with youthful offenders for decades. Furthermore, Freiburger and Burke (2011) stated that the court assumes that juveniles are rational in their decision-making and that they consider the consequences. However, studies have

shown that the adolescent brain is not yet fully formed, lessening the culpability of the youthful offender (Freiburger & Burke, 2011). These perceptions combined with other stereotypical ideas based upon extralegal factors such as race and socioeconomic status may then translate into higher perceptions of offender blameworthiness and dangerousness. As such, the end result would be a penalty being attached to juveniles who are transferred into the adult system compared to similarly situated 17 year-olds that are automatically processed in the adult system because of statutory exclusion (Kurlychek & Johnson, 2010; Farnum & Stevenson, 2013).

In relation to the focal concern of protecting the community, as it is argued that transferred youth represent the most dangerous and unamendable juvenile offenders (Harris, 2009; Deitch et al., 2011), this may also serve as another aggravating factor for this offender group. Having the 'transferred' status may reinforce stereotypes and judgments about the offenders' character and therefore, influence the judges' and other court actors' considerations of the juvenile offenders' blameworthiness, dangerousness, and likelihood to recidivate (Kurlychek & Johnson, 2010). As studies have shown (Bishop, 2000; Deitch et al., 2011; Harris, 2009) many transferred youth are first-time offenders and do not have a criminal history for court actors to consider in their decision-making. This gap in information breeds opportunity for the court actors' "past experiences, stereotypes, and prejudices" to inform their decision making (Hartley et al., 2007, p. 60).

Prosecutorial focal concerns. In evaluating the imposition of punishment, sentencing scholars have extended the focal concerns perspective to that of prosecutors (Albonetti, 1986, 1987; Franklin, 2010; Spohn et al., 2001). Similar to that of other

courtroom actors, prosecutors also have certain focal concerns that may guide their decision-making; however, their concerns are slightly different from that of a judge or jury member (Spohn et al., 2001). Albonetti (1986) postulated that prosecutors face an uncertain decision-making environment; and because they want to be perceived as effective in controlling crime, efficient in processing, and to have an influence on subsequent decision-makers they rely more heavily on their 'perceptual shorthand. In developing their perceptual shorthand, prosecutors make assumptions related to offender characteristics and probabilities of re-offending based upon stereotypes (Ulmer et al., 2007). False attributions such as, the young black male is more dangerous and inherently evil (Steffensmeier et al., 1998) or Hispanic males being stereotyped as lazy, irresponsible, and dangerously criminal (Demuth & Steffensmeier, 2004) can then influence prosecutorial decision-making and cause for these individuals to have higher likelihoods of prosecution.

In prosecutorial decision-making, the 'practical constraints and consequences' considered relate to the likelihood of conviction and bring cause for them to consider how the case will be viewed by both judges and jury members (Beichner & Spohn, 2005; Spohn et al., 2001). Furthermore, prosecutors attempt to reduce uncertainty and thereby secure a conviction by relying on their own perceptual shorthand to determine which cases are more likely to produce the desired outcome (Spohn et al., 2001). This is especially important to consider when the cases involve juvenile offenders because as mentioned earlier, prosecutors are driven by conviction rates rather than the permanent ramifications of prosecuting juveniles in the adult system. Beichner and Spohn (2005)

found that prosecutors were more likely to prosecute cases when the defendant was male, unemployed, a minority, and/or if the defendant was black and the victim white.

Theoretically, focal concerns perspective should be applicable to explain disparities in prosecutorial decision-making involving juvenile offenders in an adult criminal court. Negative portrayals of minorities in the media, misleading crime statistics, political agendas, the disproportionate numbers of minorities already involved with the criminal justice system, racial/ethnic societal tensions, and fear of ‘dangerous juvenile offenders’ can foster the creation of, and reliance on, racial stereotypes and negative character attributions (Bishop & Frazier, 2012; Brewer & Heitzeg, 2008; Bridges & Steen, 1998; Franklin, 2010). These negative stereotypes and attributions then manifest into ideas and perceptions of dangerousness, blameworthiness, and an increased use of the criminal justice system as a method of control over minority group members. This dissertation argues that the formation of stereotypes and attributional characteristics of juvenile offenders within society and subsequently by court actors will factor into their decision-making. Once the stereotypes and attributions have been formed, they then may affect, either directly or indirectly, the entrance of extralegal offender characteristics in prosecutorial decision-making.

More recently, scholarly attention has increasingly been given to the influence of social context and social control on criminal justice decision-making (Carmichael, 2010; Hartley et al., 2007; Leiber et al., 2007; Wang & Mears, 2010); and has found jurisdictional effects (Spohn & Holleran, 2000), economic effects (Harris, 2009; Steen, Engen, & Gainey, 2005; Wang & Mears, 2010), and political effects (Carmichael, 2010), which interact with legal and extralegal factors and influence decision-makers. Steen and

colleagues (2005) stated that “a racial stereotype approach to understanding disparity in punishment asserts that global, culturally derived stereotypes about race and ethnicity link certain groups of offenders to notions of dangerousness... and threat of criminality” (p. 437). Arguably, the creation of and current reliance on negative racial and ethnic stereotypes can be interpreted as a mechanism used by majority group members to “reduce the risk” of these groups achieving a ‘power’ status in society (Wang & Mears, 2010, p. 193).

In his examination of juvenile offenders sentenced to adult prisons, Carmichael (2010) noted that blacks are usually treated more harshly than whites and that any opposite findings are largely due to methodological errors. Carmichael (2010) compiled a panel dataset from all 50 states of cases involving juvenile offenders in adult courts between the years of 1983 – 2001. Calling into question what he termed as the ‘legalist argument,’ that racial disparities are present due to differences in offending patterns, Carmichael (2010) noted that if such were true that the effects would dissipate once legal factors were controlled for, however in his study this was not the case. He found that young, black males were sentenced more harshly than their white counterparts, and that females received more lenient treatment, as did younger youth, and that the disparities differed based upon the ideological and political climate of each state (Carmichael, 2010).

Bishop and colleagues (2010) relied on a focal concerns perspective to examine the disproportionate representation of minority youth in the juvenile justice system. They argued that racial stereotypes “abound in our culture...and make it more likely that court officials will perceive certain minority groups as more blameworthy and unamenable to

treatment than their white counterparts” (Bishop et al., 2010, p. 215). The authors noted that juvenile probation officers were more likely to attribute external causes for the offending of white youth and internal causes for black youth; further perpetuating stereotypical exaggerations that influenced the juvenile court judges’ decision making (Bishop et al., 2010). The results indicated that the odds of formal processing were over 50% higher for African Americans than white youth; and 21% higher for males (regardless of race) than females (Bishop et al., 2010). They suggested that white youth are perceived as “more immature, impressionable, and amenable to treatment than African American youth,” (Bishop et al., 2010, p. 217) and this may explain why we see racial and ethnic disparities in dispositional outcomes.

As demonstrated, the wide discretionary latitude afforded to prosecutors and the manner in which their success is defined (conviction rates) makes this an important area of decision-making to study. Moreover, as scholars have done great work in examining the role of the prosecutor with adult samples, few have done so with juvenile offenders in the adult system. This has left us with a gap in the literature that warrants further investigation. Specifically, what extralegal factors influence prosecutor’s decisions to prosecute these youthful offenders when controlling for relevant legal factors? How does race, specifically, condition these decisions? And lastly, do the effects of legal and extralegal factors on the prosecution decision vary by age group status (i.e. transferred vs. statutorily excluded)? This dissertation sets out to explore these questions and potentially shed light on the initial court processing of juvenile offenders who have either been judicially transferred or statutorily excluded from the juvenile court’s jurisdiction. The

following section will discuss the expected predictors of prosecutorial decision-making and disparities in treatment and outcomes.

Tracing the Power Struggle and Racialization of Crime

Historically, the power struggle and delineation of the dominant group versus the subordinate group can be most clearly evidenced in the creation of slavery in the Southern United States and the subsequent degradation of all people of color which followed (Brewer & Heitzeg, 2008; Davis, 2003). In their argument concerning the racialization of criminal justice, Brewer and Heitzeg (2008) recount that the Slave Codes were replaced with Black Codes and laws were quickly established that “echoed the restrictions associated with slavery and criminalized a range of activities if the perpetrator was Black” (p. 632). Furthermore, they noted that once legalized racial discrimination (i.e., segregation and voting restrictions) was dismantled, those in power quickly turned to the criminal justice system as a means of controlling the less powerful (minority group members) in an attempt to limit the amount of social, political, and economic gain achieved by these members of society (Brewer & Heitzeg, 2008). As a result, arguably, we now have a criminal justice system that disproportionately involves people of color at every stage and has crippled the communities in which they reside.

The overrepresentation of people of color in the criminal justice system was amplified in the 1980s and 1990s by way of the war on drugs (Sampson & Lauritsen, 1997). Sampson and Lauritsen (1997) argued that the intersectionality of race, class, and drugs in the 1990s “lead many to charge racially discriminatory practices by the criminal justice system in the processing of drug offenders” (p.360). In support of their claim, Sampson and Lauritsen (1997) explained that data from the 1980s showed a decline in

arrests for drug abuse for white juveniles but an increase for black juveniles; the same was the case for juvenile court referrals and detention. Data such as these lend strength to those who argue that the 'war on drugs' was really a 'war on blacks' (Nunn, 2002). In explaining his argument for how the war on drugs devastated communities of color, Nunn (2002) stated that:

The war on drugs should be understood as a special case of what war has always been -the employment of force and violence against certain communities, and/or their institutions, in order to attain certain political objectives. Race has played an important role over the years in identifying the communities that became the targets of the drug war, consequently exposing their cultural practices and institutions to military-style attack and police control. Although the drug war has certainly sought to eradicate controlled substances and destroy the networks established for their distribution, this is only part of the story. ...[S]tate efforts to control drugs are also a way for dominant groups to express racial power (p. 386).

Obviously, the war on drugs is but one political movement; however, it demonstrates the ways in which the political elite and dominant group members of society can use mechanisms of social control to maintain 'law and order' in society, specifically through heavy, targeted use of the law and criminal justice system. It also demonstrates how such mechanisms of social control result in disproportionate numbers of minorities being under some form of supervision within the criminal justice system, from probation to prison.

Studies have shown that the disparate treatment of minorities, younger youth, and other marginalized group members (i.e., lower socio-economic status and non-citizens)

can be found at a variety of stages or decision-making points in the juvenile justice and adult criminal justice systems (Farnum & Stevenson, 2013; Myers, 2005; Steffensmeier & Demuth, 2000; Stevenson & Bottoms, 2009). Therefore, informed by prior literature and guided by focal concerns perspective, the second research question in this study asks which legal and extralegal factors predict the prosecutor's decision to prosecute juvenile offenders in the Harris County, Texas adult criminal court. As indicated in the literature, it has been consistently noted that legal factors tend to be the strongest predictors of prosecutorial decision-making (Bishop, 2000; Franklin, 2010; Guevara et al., 2011; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006). However, it is expected that extralegal factors such as age, race, gender, and citizenship status will also predict prosecutorial decision-making. Moreover, the current study argues that negative stereotypes of minority group members and younger juveniles will inform the focal concerns of prosecutors and that this will result in: (1) racial and ethnic minority youth having higher likelihoods of being prosecuted as compared to white youth; and (2) younger youth (10-16 year-olds) being more likely to be prosecuted than similarly situated 17-year old offenders in the adult criminal justice system.

Disparate treatment in the criminal justice system. Scholars and policymakers have long since noted that racial, ethnic, and gender disparities are present in the various components of both juvenile and adult justice systems (Bishop, 2000; Carmichael, 2010; Franklin, 2010; Guevara et al., 2011; Mlyniec, 1976; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006). Over the past four decades scholars have sought to better explain why such disparities are present; and policymakers have worked to provide policies and programming that address and/or attempt to limit such disparities (Albonetti,

1986, 1987; Bishop, 2000; Carmichael, 2010; Franklin, 2010; Guevara et al., 2011; Leiber et al., 2007; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006). Within the adult criminal justice system, scholars have examined the effects of race, age, and gender at the prison in/out decision-making and sentencing stages, both at the state and federal level (Franklin, 2013; Mitchell, 2005; Spohn, 2000; Spohn & Cederblom, 1991; Steffensmeier & Demuth, 2000), the probation versus jail versus prison in/out decision and sentencing (Howell & Huto, 2012, Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006; Wang & Mears, 2010), in sentencing guideline departures (Engen, Gainey, Crutchfield, & Weis, 2003; Kramer & Ulmer, 2002; Steffensmeier, Ulmer, & Kramer, 1998), and in prosecutorial decision making (Beichner & Spohn, 2005; Franklin, 2010; Spohn et al., 1987). Within the juvenile justice system these relationships have also been thoroughly examined at a variety of stages, from intake (Bridges & Steen, 1998; Gaarder, Rodriguez, & Zatz, 2004) to the charging decision (Engen, Steen, & Bridges, 2002; Harris, 2007, 2009), diversion decision-making (Leiber & Johnson, 2008; Leiber & Mack, 2003; Sickmund & Puzanchera, 2014) to adjudication and out-of-home placement (Guevara et al., 2011).

As presented, the relationships between disparities and sentencing in the adult and juvenile systems have been examined in multiple contexts. Scholars have examined both the direct and indirect effects of race, age, and gender on key decision-making points, as well as the interactive nature of said effects and various legal factors (Carmichael et al., 2005; Harris, 2009; Jordan & Freiburger, 2010). Studies have consistently shown that while legal factors remain significant predictors in criminal justice decision-making, so do extralegal factors (Bishop, Leiber, & Johnson, 2010; Guevara et al., 2011; Spohn,

2000; Wang & Mears, 2010). In recent years, the literature on sentencing disparities has begun to investigate this relationship as it pertains to juveniles sentenced in the adult system (Beresford, 2000; Bishop, 2000; Farnum & Stevenson, 2013; Jordan & Myers, 2011; Kurlychek & Johnson, 2004, 2010). Most of these studies have focused on racial and gender disparities between sentences or outcomes given to juveniles in the adult system compared to those who remained in the juvenile system (Jordan & Myers, 2011; Kupchik, 2006; Myers, 2003; Steiner, 2009). However, some scholars have shifted their focus and began to examine the differences in outcomes for juvenile offenders compared to similarly situated adult offenders (Jordan, 2014; Kurlychek & Johnson, 2004, 2010; Steiner, 2009).

Within this growing body of research, there are some gaps pertaining to differences and disparities in outcomes for juvenile offenders as compared to both young and older adults (Jordan, 2014). Additionally, the current literature has limited its scope to the in/out decision and sentencing stages. The current study will then expand upon and add to the current literature by examining predictors of prosecutorial decision-making and differences in the effects of race, age, and gender for transferred youth as compared to similarly situated 17-year olds in the adult system, while controlling for other relevant factors. In providing a foundation for why one might expect disparities and differential treatment to be present at this decision-making stage, it is necessary to provide an illustration of trends in juvenile court processing. It is expected that in doing so, one might have a better understanding of how these youths arrive in the adult court, the typical offenses committed by transferred youth, and the potential for racial/ethnic,

gender, and age disparities to cumulatively disadvantage these youths once they are processed in the adult criminal court system.

Juvenile Court Processing and Transfer Trends

The literature examining the role of race, ethnicity, and gender in outcomes for juveniles in the adult system has been geared towards the jail and prison in/out decision and sentencing. As such, our knowledge of the effects of extralegal factors on other decision-making points involving youth in the adult criminal justice system is sparse. However, as has been consistently demonstrated in the juvenile justice decision-making literature the disparate treatment of racial and ethnic minority group members and gender differences have been found at every stage of processing (Butts & Mitchell, 2000; Dannefer & Schutt, 1982; Leiber & Johnson, 2008; Leiber & Mack, 2003; Males & Macallair, 2000; Piquero, 2008) and the effects of extralegal factors, particularly for race, have been found to be cumulative (Carmichael et al., 2005; Harris, 2009). In considering the limited literature, this portion of the literature review will highlight findings related primarily to juvenile justice processing, as this is the most appropriate body of literature that can speak to why one might expect to find that extralegal factors would predict dispositional outcomes for juveniles in the adult system.

Taking into consideration the literature concerning disparities in the treatment of both juvenile and adult offenders in their respective justice systems, it is beneficial for the current study to provide a picture of the most recent trends in juvenile court processing. These trends will provide a backdrop for why it is expected that extralegal disparities will be present in prosecutorial decision-making, as they are nationally representative and indicate that disproportionate minority contact (DMC) is

still a relative problem within our juvenile system. This also lends to the suggestion that such overrepresentation will be visible within the current data involving juveniles in the adult system.

Race, gender, and age. In 2014, white, non-Hispanic youth made up 56% of the total juvenile population; black youth made up 15%, Hispanic youth made up 23%, American Indian youth made up 1%, and Asian youth made up 5% (Hockenberry & Puzzanchera, 2017). Although white youth committed the majority of offenses, scholars have consistently noted that racial and ethnic disparities were present in juvenile court processing and outcomes (Hockenberry & Fuzzanchera).

Of the 975,000 new cases handled by juvenile courts in 2014, 269,900 of those involved female offenders and the remaining 705,100 cases involved male offenders (Hockenberry & Puzzanchera, 2017). The overall decline in rate of delinquency was similar for males and females between 2005 and 2014, at about 6% (Hockenberry & Puzzanchera, 2017). In regard to the average age of juvenile offenders, 79% of the juveniles referred to the juvenile court in 2014 were between the ages of 10 - 15 years old and this age group accounted for 31% of the violent offenses and 35% of the property offense cases (Furdella & Puzzanchera, 2015). Sixteen-year-olds accounted for 12% of the total cases in 2014 and 17-year-olds accounted for 9% of the delinquency cases. Approximately 22% of the violent offenses were committed by youth ages 16 and older, and this age group committed 34% of the property offenses (Hockenberry & Punachera, 2017).

These statistics demonstrate that juvenile delinquency overall is on the decline and has been for the last decade. However, there is a slight uptick in the number of cases

in 2014 that involved persons between the ages of 10 and 15, with “case rates generally increasing with age for person, drug, and public order offenses” (Hockenberry & Puzzanchera, 2017, p. 23). Furthermore, race, gender, and age trends in juvenile offending have only changed slightly in the past decade. Considering that a great majority of the delinquency cases in 2014 involved juveniles ages 10-16, it is expected that the same trends will present themselves in the cases involving 10-16 year-olds involved in the Harris County, Texas adult criminal court.

Outcome trends. In assessing the rate of juvenile transfer and the overall trends in juvenile delinquency and crime, it is imperative that one also examine the rates at which these young people are receiving various outcomes such as, formal processing and transfer to the adult criminal court. Furdella and Puzzanchera (2015) noted that “there were racial disparities [within the juvenile justice system in 2013] which varied across offense categories and points in the system” (p. 2). They noted that: black youth were referred to the juvenile court at twice the rate of white youth, the rate at which black youth received petitions for formal processing was 20% greater than white youth, and the adjudication rate was 10% less for black youth than white youth (Furdella & Puzzanchera, 2015). Lastly, and directly related to the present study, black youth were waived to criminal court at a 30% greater rate than white youth in 2013 (Furdella & Puzzanchera, 2015). Similarly, Hockenberry and Puzzanchera (2017) noted that formal processing was more likely for cases involving black youth than white and Hispanic youth; and black youth who had committed a drug offense were more likely to be formally petitioned than any other racial group.

Racial disparities are present in juvenile court processing and transfer trends, specifically in the rate at which black youth are waived to criminal court in comparison to white youth. The likelihood of transfer was lower for white youth in 2014 than it was in 2005 and higher for black youth. Furthermore, person and drug offense cases in 2014 involving black youth were more likely to be waived to the adult court than those cases involving White youth (Hockenbery & Puzzanchera, 2017). For both white, non-Hispanic and Hispanic youths the number of delinquency cases that were judicially waived to the adult criminal court was at their lowest levels in 2014. However, this was not the case for black youth. For black youth, the number of cases that were transferred to adult court increased 21% between 2005 and 2008, then dropped 37% to their lowest levels in 2013, but then increased in 2014 (Hockenberry & Puzzanchera, 2017).

Disproportionate Minority Contact

Of particular interest to the current study is the issue of disproportionate minority contact (DMC). In 1992, the Juvenile Justice and Delinquency Prevention (JJDP) Act was revised to include and address, among other things, the disproportionate confinement of minority youth (Leiber, 2002; Piquero, 2008). Recognizing that minority youth were disproportionately represented within our juvenile justice system, the 1992 JJDP Act outlined goals and objectives for the reduction of minority offenders confined in juvenile facilities. They sought to accomplish this goal by offering financial incentives and subsequent reductions in funding for states that effectively reduce the number of minority youth within their systems. After a decade of studies and findings related to disproportionality throughout the juvenile system, in 2002 DMC was revised and the terminology changed from confinement to contact (OJJDP, 2014). In his 2002 analysis of

state and federal efforts to address disproportionate minority contact, Leiber (2002) found that race still matters substantially in the juvenile justice system and its effects could be found in almost every state. In an essay on DMC, Piquero (2008) noted that “the racial differences that begin with juvenile involvement in crime become larger as youth make their way through the different stages of the juvenile justice system...and at every stage of the system, minority representation grows larger and at a faster rate than that of white” (p. 60).

In examining the effects of race and secure detention on juvenile-justice decision-making, Leiber and Fox (2005) found that race had both an indirect and direct effect on juvenile court decision making regarding detention, often resulting in a greater disadvantage for African American youth than White youth. The results of this study indicated that while differential involvement in crime (the idea that African Americans are involved in more crime) does play a role in the decision-making process when controlled for, race effects are still present and problematic for African American youth (Leiber & Fox, 2005). The authors noted that the decision to detain juvenile offenders subsequently influenced later juvenile court decision-making and that race effects were statistically significant predictors of detention (Leiber & Fox, 2005). Additionally, the results of their study indicated that even when controlling for relevant legal and extralegal factors, “African Americans were more likely than were Whites to receive more severe outcomes at detention, initial appearance, and adjudication” (Leiber & Fox, 2005, p. 490).

Gender Differences in Juvenile Justice Processing

In their pivotal study of the intersections of race, age, and gender Steffensmeier and colleagues (1998) found support for their argument that extralegal factors influence sentencing decisions and that race effects may be interrelated with age and gender effects. Each of the identified relationships was in the manner that scholars have come to expect: minorities received harsher treatment than white offenders, young harsher than old, and males harsher than females (Steffensmeier et al., 1998; Spohn & Holleran, 2000). Most notably, they were one of the first to identify the ‘dangers’ of being young, black, and male and involved with the criminal justice system (Steffensmeier et al., 1998). Building upon their study, Spohn & Holleran (2000) evaluated these intersections in three different jurisdictions and included an ethnicity measure. They found that disparities in sentencing are variable dependent upon jurisdiction and that the largest discrepancies in two counties were gender disparities (Spohn & Holleran, 2000). Furthermore, they found that in examining the interaction of age and gender, that the effects were greatest for female offenders (Spohn & Holleran, 2000). Additionally, their results indicated that the odds of females being incarcerated were greater than males in Kansas City, Missouri, and Chicago, Illinois (Spohn & Holleran, 2000). Though these studies contributed greatly to our understanding of the intersectionality of age, race, gender and sentencing there remains a gap in our understanding of these effects with a juvenile population in the adult system.

In evaluating and comparing the influence of legal and extralegal factors on the incarceration decision between juvenile and adult offenders, Jordan (2014) found gender differences in disposition types and sentence lengths. More specifically, he found that

males were more likely to receive a jail sentence than probation compared to female offenders, were more likely to be given a prison sentence, and were given longer sentences than their female counterparts (Jordan, 2014). Jordan's (2014) study added to the literature by including a vast array of age groups and informed our understanding of how race affects sentencing for black and Hispanic offenders. Furthermore, he extended our understanding to include multiple sentencing outcomes, however, the gap in our understanding of the role of extralegal and legal factors at earlier decision points remains.

Due in part to the large number of males who offend in comparison to females and the resulting limited data available on female offenders, our prior understanding of gender differences in juvenile processing has been limited. However, more recent studies have begun to focus in on this gap in the literature (Gaarder et al., 2004). In exploring how probation officers view female juvenile offenders, Gaarder and colleagues (2004) noted that the presence of gender differences are most notably found in cases involving status offenses; and that "the role expectations of women according to race have contributed to differential treatment of both victims and offenders" (p. 549). Looking at the intersectionality of offenders' race, gender, and class and probation officers' perceptions, Gaarder and colleagues (2004) found females were more likely to be perceived as manipulative and in need of improved family structure. Furthermore, the focus of court actors on these two particular aspects of the female offenders' lives inhibited their ability to assess the girls' real needs and provide the appropriate treatment and/or services (Gaarder et al., 2004). Gaarder and colleagues (2004) study began to illustrate gender differences in juvenile processing at earlier stages (probation officer decision-making) in the system, and the current study will then add to the literature by

evaluating gender differences in the prosecutors' decision to prosecute, using a sample of juveniles who were processed in the adult criminal court.

Texas Transfer Trends

Texas is one of the few states that relies solely on judicial transfer to remove youth under the age of 17 from the juvenile court's jurisdiction (Deitch et al., 2011). In general, Texas juvenile court judges have three ways in which to address violent and/or serious juvenile offenders (Deitch et al., 2011). Serious and violent juvenile offenders may be handled under the juvenile delinquency laws, they may be given a determinate sentencing schema, or be transferred to the adult criminal court system (Deitch et al., 2011; Texas Attorney General Office, 2016). Through the determinate sentencing schemata, the juvenile judge can sentence a youth to up to 40 years, with them remaining under the jurisdiction of the Texas Youth Commission until age 19 and then based upon a second hearing, serve the remainder of their sentence in an adult prison (Deitch et al., 2011). Additionally, legislative changes in the mid-1990s increased the number of offenses that qualified for determinate sentencing, extending discretionary decision-making for juvenile court judges (Texas Attorney General's Office, 2016). Considering that this option is available to judges, the use of juvenile transfer and any potential disparities is of increasing interest because these judges have wide-discretionary latitude and can extend the court's jurisdictional influence over juvenile offenders.

Even with the option of determinate sentencing, Deitch and colleagues (2011) found that "the number of youth certified in Texas is 49% greater than the number given determinate sentences" (p.9). They noted that between fiscal years 2005 and 2010 there were almost 1,300 transfers compared to 865 determinant sentences (Deitch et al., 2011).

In their examination of the characteristics of both transferred youth and those who received determinate sentences and remained in the juvenile system, Deitch and colleagues (2011) found few differences between the two groups. In both groups the majority of offenders were 16-years old and male; they were primarily minority group members (at disproportionate rates), and Harris County Texas had “more than twice as many transfer cases than in any other county” (p. 12). Similar to national trends, juveniles within both groups were more likely to have committed a person or property offense (Deitch et al., 2011). Additionally, they reported that both groups were “similarly situated when it came to the number of prior referrals” and that 44% of transferred youths had either never been referred to juvenile court or had only one prior referral” (Deitch et al., 2011, p. 17).

Dispositional outcomes. Noting the difficulty in obtaining data on the population of juveniles that were certified in Texas during the time of their study, Deitch and colleagues (2011) found that most transferred youths were not sentenced to prison. Of those who did receive a prison sentence in fiscal year 2010 (n = 94), the sentences ranged from six months to life, with most offenders receiving 4 -10 years (Deitch et al., 2011). The findings were similar for those youths who received a determinate sentence, with only 10% of the certified youth receiving longer sentences than those who remained in the juvenile justice system (Deitch et al., 2011).

Several important findings come from Deitch and colleagues (2011) study. They found that 89% of transferred youth had never been committed to the Texas Youth Commission, “suggesting that few of them [had] a serious history of delinquency of any kind” and that “most certified youth never had the opportunity to benefit from effective

rehabilitative programs in the juvenile justice system” (Deitch et al., 2011, Executive Summary, p. 2). Additionally, 29% of the transferred youth were first-time offenders and according to the authors, did not represent the *worst of the worst* in Texas (Deitch et al., 2011). Moreover, in finding that significantly more youth are transferred to the adult court rather than given determinate sentencing, the authors noted that in Texas juveniles can be transferred for a range non-violent felonies but that the offense eligibility restrictions were more limited for determinate sentencing (Deitch et al., 2011). Furthermore, they argued that the Texas transfer process was not working and the options of using determinate sentencing to limit the transfer of youths to adult criminal court to the most “heinous crimes and circumstances” is not being exercised appropriately in the juvenile justice system (Deitch et al., 2011, p. XI). The authors suggested that Texas limit the eligibility of transfer as to restore it as a strategy for dealing with the ‘worst of the worst’ and noted that there needs to be an improvement in data collection efforts for this population of juvenile offenders (Deitch et al., 2011). Considering their policy recommendations, the current study will then allow for a more comprehensive study of juveniles who have been transferred to the adult court in the Texas County that had the highest number of transferred juveniles (Harris County). Additionally, as the current study seeks to examine trends and disparities in prosecutorial decision-making as well as the possibility of an age based penalty, it is expected to make a great contribution to the transfer literature in general and more specifically, in Texas.

Juvenile Penalty

Since the legislative enactments that allowed for the easier transfer of juveniles into the adult criminal court, scholars have noted that there is a need to examine the

criminal justice processes and outcomes that involve this subset of the juvenile offender population (Bishop, 2000; Bridges & Steen, 1998; Freiburger & Burke, 2011; Harris, 2009; Kurlychek & Johnson, 2004; Steen, Engen, & Gainey, 2005; Deitch et al., 2011). However, little is known about how these juvenile offenders are handled in the adult system and what dispositional outcomes are received, due in part to the lack of data specifically collected on this population (Bishop, 2000; Kurlychek & Johnson, 2004, 2010; Deitch et al., 2011). Furthermore, few studies have specifically examined differences between juvenile offenders in the adult system and similarly situated young adult offenders; to date, only three such known studies exist (Kurlychek & Johnson, 2004, 2010; Steiner, 2009).

The findings related to juvenile penalties are somewhat mixed. Some have suggested that this special population of offenders within the adult system are treated more leniently than their adult counterparts and/or similarly situated offenders in the juvenile justice system (Beresford, 2000; Butts & Mitchell, 2000; Kupchik, 2006; Kurlychek & Johnson, 2004, 2010; Steiner, 2009; Zimring, 2005); while others have suggested the opposite (Bishop, 2000; Farnum & Stevenson, 2013; Jordan & Myers, 2011; Kupchik, 2006; Fagan, Kupchik, & Liberman, 2003; Kurlychek & Johnson, 2010; Meyers, 2005); and a few have found mixed results dependent upon things such as, jurisdictional variation and political contexts (Carmichael, 2010; Fagan, 1995). However, the extant literature demonstrates that whether treated more leniently or harshly, there is a difference in how juvenile offenders are treated in the adult system compared to their juvenile counterparts in the juvenile justice system; and the outcomes of punishing juveniles in the adult system can have both benefits and consequences (Kupchik, 2006;

Kurlychek & Johnson, 2004, 2010; Farnum & Stevenson, 2013; Gulstad, 2016; Steinberg & Cauffman, 1996).

In their study of criminal court data from the Pennsylvania Commission on Sentencing, Kurlychek and Johnson (2004) examined whether juveniles who were transferred to the adult system were punished more harshly due to their age (i.e., juvenile penalty). They found that “juvenile status interacts with and conditions the effects of other important sentencing factors including offense type, offense severity, and prior criminal record” (Kurlychek & Johnson, 2004, p. 485). More directly, Kurlychek and Johnson (2004) found that a juvenile penalty existed in that, juvenile offenders in the adult court received harsher sentences than similarly situated offenders in the juvenile court system. In fact, they found that juvenile offenders were given sentences that were roughly 80% more severe than their young adult counterparts (Kurlychek & Johnson, 2004). The authors also examined sentencing disparities and provided a theoretical rationale for why such disparities existed (Kurlychek & Johnson, 2004). Guided by a focal concerns perspective, their findings suggested that certified youth were more likely to have committed a violent offense, were more likely to be convicted at a jury trial, have a mandatory sentence applied, and they were more likely to be Black males (Kurlychek & Johnson, 2004). This study lends support to the arguments and hypotheses of the current study suggesting that younger juveniles (ages 10-16) may be penalized for being in the adult system and subsequently more likely to receive harsher treatment than those juveniles who are of the age of criminal responsibility by Texas law (17-year olds). Additionally, it illustrates the potential for racial, ethnic, and gender disparities in the

treatment of both groups, with the possibility of the effects being stronger for younger youth when controlling for legal factors such as offense type and severity.

Kurlychek and Johnson's (2004) findings further suggest that there is a need for a restructuring of how, when, and why juveniles are transferred to the adult system; a better understanding of what the short- and long-term benefits or consequences are; and continued examination of this subset of violent and/or serious juvenile offender population. In consideration of Kurlychek and Johnson's (2004) findings, the present study will add to the existing literature by exploring the possibility of both an age based penalty and disparities in a different jurisdiction and across a time-span of 30 years. In considering prior studies, it is expected that when comparing transferred youth to similarly situated 17 year-olds – versus individuals aged 18 and older – an age based penalty will be attached to those youth who were transferred from the juvenile court's jurisdiction to the adult criminal court system.

Expanding upon Kurlychek & Johnson's (2004) study, Steiner compared the pretrial detention and imprisonment outcomes of transferred juveniles to that of adult offenders aged 29 and younger (Steiner, 2009). The results indicated that there was not a juvenile penalty attached at the pretrial detention stage; but there was a penalty attached at the sentencing stage (Steiner, 2009). Juveniles who had been transferred to the adult system were more likely than their adult counterparts to receive a prison sentence (Steiner, 2009). Steiner (2009) argued that this may be the result of court actors labeling transferred juveniles as "dangerous and perhaps beyond rehabilitative repair" (p. 101). Similar to the arguments made in previous studies that relied on a focal concerns perspective, the author suggested that the status of being a transferred juvenile becomes

an influential factor for court actors in their decision-making processes (Kurlychek & Johnson, 2004; Steffensmeier et al., 1998; Steiner, 2009). Notably, the results indicated that neither race nor ethnicity had an effect on decision making at these two stages (Steiner, 2009). In his suggestions for future research, Steiner (2009) stated that “more studies of multiple decision [points] across the court process are sorely needed,” and that “only after a reliable number of studies evaluating the role of being transferred to criminal court... have been conducted can we gain a better understanding...” (p. 102). The current study will build upon Steiner’s (2009) study by examining whether disparities are present in the prosecution decision and if a penalty is attached to transferred youth in Harris County, TX.

Lastly, in 2010, Kurlychek and Johnson (2010) conducted a subsequent study examining the concept of a juvenile penalty and disparities in which they addressed a limitation of previous studies. Using data from the Maryland State Commission on Criminal Sentencing, they employed propensity score matching to create comparable groups that could then be examined for differences in the punishment given to juvenile offenders as compared to similarly situation young adult offenders (Kurlychek & Johnson, 2010). The groups were matched on a variety of variables key to the study, such as race, gender, mode of conviction, offense type, and offense level (Kurlychek & Johnson, 2010). Similar to the findings of their 2004 study and that of prior studies, the findings indicated that transferred juveniles were treated more harshly in adult court than their young adult counterparts (Kurlychek & Johnson, 2010). In discussing the disparate treatment of juvenile offenders in the adult system, the authors noted that age can be considered as both a mitigating and aggravating factor by criminal court judges and that

this influences their decision-making (Kurlychek & Johnson, 2010). Of particular importance to the current study are their findings regarding the attachment of a juvenile penalty and offense seriousness.

Legislators found support for the increased transfer of juveniles into the adult system partially due to the perception that it would be reserved for those violent/serious offenders that were not amenable to treatment. Over the years, researchers have consistently found that the use of transfer has not been limited to that violent subset of juvenile offenders (Sickmund & Puzzanchera, 2014; Deitch et al., 2011; Hockenberry & Puzzanchera, 2017). Similarly, Kurlychek and Johnson (2010) found that the strongest juvenile penalty effects were not found for a violent offense, but rather for those juveniles who had committed drug offenses. Based upon these findings it appears that although most youths are transferred because of violent or property offenses; if they have committed a drug offense (compared to that of young adult offenders) their age will work against them as an aggravating factor.

Arguably, Texas' policy of limiting transfer decisions to juvenile court judges has both strengths and limitations. A logical strength of this policy is the underlying goal of individualized treatment and decision making that permeates the juvenile justice system. Giving juvenile court judges sole discretion in the transfer decision should limit its application to those who are 'unamendable to treatment' or the "worst of the worst" type of juvenile offenders (Deitch et al., 2011; Shook, 2005). However, as is the case with discretionary power there is the potential for disparate treatment of juvenile offenders based on extra-legal factors that are then carried over into the adult criminal justice system.

In summary, similar to that of adult offending patterns, juvenile males are more likely than females to commit an offense and come into contact with the juvenile court system. The number of younger juveniles (ages 10-15) involved in the juvenile court system is far greater than that of older youth (16 and 17 year-olds), which lends support to the age-crime curve argument and suggests that our preventative efforts must be targeted at these age groups. Additionally, racial and ethnic disparities are glaringly consistent in juvenile court processing trends from intake to adjudication and in the transfer decision-making process. In considering that these disparities are apparent at every stage of juvenile court processing, one could argue that the effects of race are cumulative and compounding. Therefore, it is expected that racial and ethnic disparities will be present in the current data and the cumulative and compounding effects of race on juvenile court decision-making may carry over into the adult criminal court cases involving said youth (Howell & Huto, 2012; Leiber et al., 2007; Leiber & Fox, 2005; Shook, 2013; Spohn, 2000). Informed by the work of Spohn and colleagues (2001) and similar studies which have identified the influence of both legal and extralegal factors on prosecutorial decision-making (Albonetti, 1986,1987; Beichner & Spohn, 2005; Kurlychek & Johnson, 2004, 2010; Spohn et al., 1987; Ulmer et al., 2007) and guided by focal concerns perspective, it is expected that legal and extralegal offender characteristics will influence prosecutorial decision-making involving juvenile offenders in Harris County, Texas' adult criminal court.

Contributions of the Current Study

It is important to note that most of the literature examining disparities from a focal concerns perspective is directed towards the sentencing stage of the adult court decision-

making process and does not parcel out transferred juveniles in their samples. Guided by focal concerns perspective, the current study then adds to the literature by examining the initial decision-making point in adult criminal court processing; and by doing so with a sample that includes both juveniles who were judicially transferred to the adult court and those whose age automatically removed them from juvenile court jurisdiction. It is important to examine multiple decision-making points involving juveniles in the adult system. Especially, points in the process that come before sentencing, as the literature suggests that disparities are most often present at earlier stages of decision-making such as, at the arrest decision (Harris, 2009), the intake decision (Leiber & Mack, 2003), pre-trial detention (Leiber & Fox, 2005; Steiner, 2009), and the diversion decision (Leiber et al., 2007; Sickmund & Puzzanchera, 2014). Not only are disparities more pronounced at these earlier stages, but the effects of extralegal factors can be cumulative (Leiber, 2002) and are variable dependent upon case type and circumstances (Steen et al., 2005). Therefore, it is expected that the current study will find that the focal concerns of prosecutors will be influenced by extralegal factors resulting in disparities in prosecution; and that such disparities might be more or less evident dependent upon the racial/ethnic and gender group being studied. Furthermore, it is expected that stereotypes of the dangerousness and criminality of young, minority group members will result in a disproportionate number of these juveniles in the adult system and a harsher penalty for these youth as compared to their 17 year-old counterparts.

Whether direct or indirect, extralegal factors have been shown to contribute to criminal justice decision-making. Most commonly, the consideration of things such as race/ethnicity, gender, age, and citizenship status results in discriminatory bias and

unequal treatment within the U.S. criminal justice system (Mitchell, 2005; Pratt, 1998; Walker, Spohn, & DeLone, 2012). Scholars have relied upon a variety of theoretical explanations to explore these effects and, to their credit, have influenced policymakers and practitioners to place greater importance on reducing the effects of extralegal factors and the disproportionality of minority group members within our criminal justice system. Although great strides have been taken to lessen the unfair treatment of these groups within the system – and although we have seen a decline in the overall rates of crime within our nation since the mid-1990s – the disparity in treatment and sentencing of minorities, males, younger, and low-income offenders is still prevalent. Even when controlling for legal factors and differential involvement in crime, extralegal factors have consistently been found to predict criminal justice outcomes (Mitchell, 2005; Pratt, 1998; Walker, Spohn, & DeLone, 2012).

As scholarly attempts to understand these societal issues have progressed over time, there is still a considerable lack in our understanding of the decision-making processes within both the juvenile and adult criminal justice systems. More directly, little is known concerning the applicability of focal concerns perspective on juvenile offenders who are in the adult system; and whether the effects of legal and extralegal factors on prosecutorial decision-making differ based on age groups. In today's political climate and as our country grows increasingly diverse, the way we handle this special sub-population of juvenile offenders warrants increased attention. Considering this, the current study then intends to add to our understanding of these phenomena by examining a key decision-making stage in the processing of juvenile offenders in adult court. Furthermore, our current understanding is somewhat limited in that, due to data limitations the typical

analysis only examines black/white comparisons or juvenile versus adult court outcomes. Therefore, the current study will attempt to fill in the gaps in our knowledge by examining these relationships and using a relatively large and diverse sample of juveniles who were processed in an adult court in a large, southern jurisdiction over the span of 30 years. Specifically, this dissertation asks:

1. What patterns are evident in prosecutorial decision-making involving persons under the age of 18 in the Harris County, TX adult criminal court from 1980 to 2010?
 - (a) Are minority youth disproportionately represented within the data and cases prosecuted; and
 - (b) Is there differential prosecution based upon offense types?
2. Which, if any, extralegal and legal factors are related to the decision to prosecute persons under the age of 18 in the Harris County, TX adult criminal court;
 - (a) Are there interactive effects of race/ethnicity and gender on the prosecutors' decision to prosecute; and
 - (b) Do younger juveniles (i.e. 10 -16-year olds) receive differential treatment as compared to similarly situated 17-year old juveniles?

CHAPTER III

Methods

This chapter outlines the methods used for this dissertation. First, the purpose of the study and research questions are presented. The next section will then discuss the data collection, sampling methods, and measures included in the analysis. The chapter will then conclude with a discussion of the analytical strategies that will be used. This dissertation examines all adult criminal court cases involving persons under the age of 18 that were handled within the jurisdiction of Harris County, Texas between the years of 1980 and 2010. The goal of the current study is to explore patterns in prosecutorial decisions involving first time juvenile offenders in the adult system, and to examine what factors predict the decision to prosecute these youths. Specifically, this dissertation examines the differences between effects of legal and extralegal factors conditioned by race, age, and gender at this critical decision-making stage, while controlling for factors such as the decades in which the cases were processed, citizenship status, and offense severity; and seeks to identify whether disparities are present.

Data

The current study uses data obtained from the Neulaw Criminal Record Database (NCRD), which is an open-source database of criminal court records from three separate jurisdictions in the United States: Harris County, TX; Miami-Dade County, FL; and New York City, NY (Ormachea, Haarsma, Davenport, & Eaglemen, 2015). All court records included in the data were obtained through Freedom of Information Act requests (Ormachea et al., 2015). The Harris County, Texas data consists of over three million records, which were obtained from the Harris County District Clerks Office in September

of 2013. Harris County is the most populated county in Texas, and the third most populated county in the United States, with a total population of 4,092,459 (U.S. Census Bureau, 2010). Furthermore, the state of Texas is ideal for obtaining racially and ethnically diverse data given that it is a southern state in close proximity to the Mexican border and has a large Hispanic population.

Sample

For the purposes of this dissertation, the first step in obtaining the final sample involved identifying those persons who were under the age of 18 years-old when their first case was filed in the Harris County, Texas adult criminal court; all cases involving persons 18 years and older were excluded. This resulted in 80,595 persons under the age of 18. An additional 5,851 cases were deleted due to missing information on the offenders' citizenship, which resulted in a sample size of 74,744 juvenile offenders. Originally, the data included 805 cases involving persons racially categorized as "other" and 358 additional cases that were missing data on race. Due to the broad categorization of individuals in the "other" category and their relatively small representation within the data, the decision was made to delete these cases from the sample in addition to those with missing data. As previously demonstrated in the literature, the majority of minorities involved in the criminal justice system are black and/or Hispanic, therefore reducing the sample allows for the current study to examine those most likely to experience disparate treatment; and be consistent with the literature concerning adult offenders and prosecutorial decision-making (Brewer & Heitzeg, 2008; Spohn et al., 2001; Spohn & Holleran, 2000). As such, this reduced the final sample to 73,581 cases. Missing data analyses were conducted prior to each step of deletion, which evidenced no significant

differences on the key variables. Persons ages 10 – 16 constituted 4.3% of the total sample (n = 3,182) and 17 year-olds constituted 95.7% of the total sample (n = 70,399). See table 1 for the sample characteristics.

The original dataset included all cases for each individual over the 35 year time period. This meant that if the offender has repeat offenses, these cases were also included within the data. The original structure of the data had all charges listed separately for each individual and matched to a unique identifier and case number. The first step in structuring the data for the purposes of this study was to group each charge by its corresponding case number, grouped by the unique identifier. After which, the next step was to aggregate the charges up to the case number so that the charges in each case were grouped together. The next step was to aggregate the case numbers to the unique identifier. Based on the chronological order of the cases, the data were structured so that only the first case presented in the court was included. In order to establish if a penalty was attached to transferred youth as compared to 17 year-olds, the data needed to capture how these youths were treated at their first appearance (i.e. upon initial transfer into the adult system) in the adult system therefore, only first-time offenders were kept in the data.

Additionally, the most serious offense was isolated for examination in the current study. Upon initial examination, only six percent of the cases in the sample had multiple offenses. As the decision to judicially transfer juvenile offenders is primarily based upon and justified by the severity of the offense (Brannen, Salekin, Zapf, Salekin, Kubak, & DeCoster, 2006; Steiner, 2009; Zane, Welsh, & Drakulich, 2016), only the most serious offense for each case was retained. Taking only the most serious offense creates a

limitation, as prosecutors may consider the lesser offense in conjunction when making their decision. Therefore, additional examination of those cases with multiple charges ($n = 4,780$) was warranted. Of those cases with multiple charges, the majority had two charges ($n = 4,170$); and of those cases, only 465 involved different offense types. While not the most ideal measure, due to the nature in which the original data was coded, as well as, the nature of the charges and how similar issues have been addressed in prior literature (Mitchell, 2005; Pratt, 1998; Spohn & Cederblum, 1991; Steen et al., 2005; Walker, Spohn, & DeLone, 2012), this method of measurement was deemed appropriate.

Demographics. The sample demographics on the extralegal factors are presented in Table 1. Within the total sample, males constituted approximately 83% of the sample and females accounted for 17%. The sample was racially and ethnically diverse, consisting of 38% Black, 27% Hispanic; and 35% White juvenile offenders. A total of 93% of the individuals within the sample were United States citizens and 7% were not citizens. Finally, 17.4% of the sample consisted of cases that were processed in the 1980s; roughly 34% were processed in the 1990s; and 48% of the cases were processed in the 2000s (2000-2010).

Table 1

Sample Demographic Characteristics (n = 73,581)

Variable	N	%	Mean(SD)	Range
Age			16.9(.362)	10 - 17
Black	27,733	37.7		
Hispanic	20,187	27.4		
White	25,661	34.9		
Male	60,734	82.5		
Female	12,847	17.5		
U.S. Citizen	68,691	93.4		
Non-U.S. Citizen	4,890	6.6		
Decade Processed				

1980s	12,831	17.4
1990s	25,233	34.3
2000s	35,517	48.3

Transferred youth. Table 2 presents the sample characteristics broken down by transfer status (i.e., 10-16 year-olds and 17 year-olds). Within the sample of transferred youth (ages 10-16) males accounted for 85% of the sample and females accounted for 15%. Black youth comprised 48% of the transferred sample, Hispanic youth comprised 32% of the sample; and White youth comprised 20% of sample. Like that of the total sample, the majority of the transferred sample (86%) were U.S. Citizens compared to non-citizens who made up 14% of the sample. Finally, 28% of the cases involving 10 – 16 year-olds were processed in the 1980s; 45% in the 1990s; and 27% of the cases were processed in the early 2000s.

Statutorily excluded youth. Within the statutorily excluded sample (17 year-olds), males constituted 82% of the sample (n = 60,649) and females constituted 18% (n = 12,717). Black youth accounted for 37% of the sample; Hispanic youth 27%; and White youth made up 36% of the sample. The overwhelming majority of the sample, 94%, were U.S. Citizens. Lastly, 17% of the cases involving 17 year-olds were processed in the 1980s; 34% in the 1990s; and 49% were processed in the early 2000s.

Table 2

Sample Characteristics by Status (Age Group)

Variable	Transferred Youth (10-16) (n = 3,182)		Statutorily Excluded Youth (17 year olds) (n = 70,399)	
	Mean(SD)		Mean(SD)	
Age	15.5(.94)		17(.00)	
	N	%	N	%
Black	1,539	48.4	26,194	37.2

Hispanic	1,003	31.5	19,184	27.3
White	640	20.1	25,021	35.5
Male	2,694	84.7	58,040	82.4
Female	488	15.3	12,359	17.6
U.S. Citizen	2,741	86.1	65,950	93.7
Non-U.S. Citizen	441	13.9	4,449	6.3
Decade Processed				
1980s	897	28.2	11,934	17
1990s	1,437	45.2	23,796	33.8
2000s	848	26.6	34,669	49.2

Prosecution, conviction, and offense characteristics. Table 3 presents the descriptive statistics of prosecution, conviction, and offense type for the entire sample. Within the full sample and each of the reduced samples, most of the cases studied were prosecuted. Approximately 64% of the cases in the full sample were prosecuted and 36% of the cases were not. The total sample included individuals with a wide variety of offenses that were coded into one of five mutually exclusive offense categories (drug, violent, property, weapon, or other), representing only the most serious offense that the juvenile was charged with. Within the total sample, 27% were charged with a drug offense, 15% were charged with a violent offense, 39% were charged with a property offense, less than 4% had been charged with a weapon offense, and 15% had been charged with an offense that was categorized as other. Regarding offense seriousness, 67% of the sample were charged with a misdemeanor offense and 33% were felonies. Most individuals (94%) had only one charge, whereas approximately 6% of the cases consisted of two or more charges. Lastly, there was a total of 872 various offenses which created a wide variety of specific offenses within the offense type categories (i.e. person, property). To control for this variation, an offense severity scale was created based on the

Federal Sentencing Guidelines which ranged from a score of 1 to 46. The mean for the scale was 9.11 with a standard deviation of 6.91.

Transferred youth. Within the 10-16 year-old population, the majority of cases (62%) were prosecuted; and approximately 62% of the total sample cases resulted in conviction. Additionally, 17% were charged with a drug offense; 40% were charged with a violent offense; 27% for a property offense; 3% for a weapon offense; and 13% of the sample were charged with an offense categorized as ‘other.’ Approximately 61% of the 10-16 year-olds were charged with a felony offense while 39% were charged with misdemeanors. Similar to that of the full sample, 84% of the sample had only one charge. Transferred youths’ severity scores ranged from 1 to 43, with a mean of 16.01 (SD = 10.87).

Statutorily excluded youth. In the cases involving statutorily excluded youth (17 year-olds), 65% were prosecuted; and approximately 64% of the cases in the total sample resulted in a conviction. Twenty seven percent of the 17 year-olds had been charged with a drug offense; 15% a violent offense; 39% a property offense; less than 4% were charged with a weapons offense; and 15% were charged with an ‘other’ offense. Within the 17-year old sample, 69% were charged with a misdemeanor and 31% with a felony. Approximately, 94% of the sample were charged with only one offense. The offense severity scores for this group ranged from 1 to 46, with a mean score of 8.80 (SD = 6.51).

Table 3

Descriptives for Prosecution and Offense Characteristics

	Full Sample (n = 73,581)	Transferred Youth (n = 3,182)	Stat. Excluded Youth (n = 70,399)
Variables			

	N	%	N	%	N	%
Prosecuted						
No	26,741	36.3	1,201	7.7	25,540	36.3
Yes	46,840	63.7	1,981	2.3	44,859	63.7
Convicted						
No	26,892	36.5	1,209	8.0	25,683	36.5
Yes	46,689	63.5	1,973	2.0	44,716	63.5
Drug						
Violent	19,623	26.7	526	6.5	19,097	27.1
Property	11,550	15.7	1,276	0.1	10,274	14.6
Weapon	28,617	38.9	862	27.1	27,755	39.4
Other	2,700	3.7	92	2.9	2,608	3.7
Misdemeanor						
Felony	11,091	15.1	426	13.4	10,665	15.1
Single Charge	49,588	67.4	1,242	39.0	48,346	68.7
Multiple	23,993	32.6	1,940	61.0	22,053	31.3
Charges						
Offense Severity Scale	Mean(SD)	Range	Mean(SD)	Range	Mean(SD)	Range
	9.11(6.91)	1- 46	16.01(10.87)	1 – 43	8.80(6.51)	1 – 46

Variables in the Analysis

Dependent variable. The purpose of this study is to examine the initial prosecutorial decision-making stage involving persons under the age of 18 in Harris County, Texas adult court. For this reason, the dependent variable is measuring whether the prosecutor decided to prosecute the juvenile and is dichotomously coded (0 = no; 1 = yes). Each of the cases that the prosecutor decided to move forward with were categorized as ‘yes’ and those cases that were diverted or dismissed were categorized as “no.” As such, the dependent variable reflects the initial case screening decision of the prosecutor.

Legal factors. Included in the analyses are seven legal variables: offense type (drug, property, weapons, and other); offense seriousness (felony, misdemeanor); an offense seriousness scale; and whether the case included a single charge or multiple charges. Each offense type is a dichotomous (0 = no, 1 = yes) and mutually exclusive

measure. The drug offense measure includes offenses such as driving while intoxicated, possession of control substances, and delivery of controlled substances. The violent offense measure includes offenses such as assault, robbery, sexual assault, manslaughter, capital murder, and terroristic threats. Within the property category, the offenses include arson, burglary, theft, credit card fraud, motor vehicle theft, and criminal mischief. The weapons measure includes offenses such as the unlawful carrying of guns and unlawful possession or conduct. Lastly, the 'other' category includes broad offenses such as, attempted crime against children, disorderly conduct, evading arrest, and obstruction of justice. Offense seriousness is also a dichotomous (0 = misdemeanor; 1 = felony) and mutually exclusive measure capturing whether the current offense was a felony or misdemeanor). To control for variation within offense types, an offense seriousness scale was created. The scale is a continuous measure, and the scores ranged from 1 to 46. The scale was adapted from the Federal Sentencing Guidelines, with a score of 1 being the least serious and 46 being the most serious. The first step in creating the scale required the identification of 872 different offenses within the data. After identifying the offenses, the next step was to find the offenses within the sentencing guidelines handbook and assign a score to each of the offenses (Orrick & Piquero, 2014). As one might expect, not all offenses in the data were listed in the offense guidelines handbook (e.g., possession of illegal fireworks, use of criminal instrument, driving while intoxicated, etc.). Therefore, for parsimony and consistency, if the offense was not listed in the guidelines and was a misdemeanor it was assigned a score of 1; if the offense was not listed and was a felony, it was scored as a 4 as this was the lowest base offense level for a felony under the Federal Sentencing Guidelines. After calculating the scores, the scale was created by

recoding the literal offenses into the guideline scores. The offense type variables and offense severity score were then tested for multicollinearity issues. No issues were found, with all VIF values falling within acceptable ranges. Due to the variable being skewed, a log transformed version of the variable was used in the analysis. Lastly, an initial limitation of the study warrants some explanation. The study is limited in that there is no measure for evidentiary strength in the data. Although prior studies have found that racial differences may dissipate when controlling for evidentiary strength (Franklin, 2010; Free, 2002); our understanding of the effects of evidentiary strength on prosecutorial decision-making is limited by the small number of studies that include such a measure. As noted by Free (2002) it would be ill-advised to dismiss findings of racial differences in studies with this limitation as the total number of studies that include a measure of evidentiary strength are small and therefore warrant a cautious interpretation; for example, even when controlling for evidentiary strength, Spohn et al. (1987) still found race/ethnicity and gender effects on prosecutorial decision-making.

Extralegal factors. There are ten extralegal variables used in the analyses (age, age group status, race, ethnicity, gender, citizenship, decade processed and year). Age is a continuous measure and represents the juvenile's age at the time charges were filed. Juveniles in the sample ranged in age from 10 -17 years-old, with a mean age of 16.9 years-old (SD = .380). The age group status measure is a dichotomous variable indicating whether the juvenile was transferred from the juvenile court or statutorily excluded (0= statutorily excluded; 1 = transferred) and will be used in the age based penalty analyses. The race and ethnicity variables are dummy indicators (i.e. 0 = not White; 1 = white). Regarding ethnicity within the original dataset, some jurisdictions only identified persons

as being black or white (Ormachea et al., 2015). For this reason, an algorithm was used to estimate Hispanic ethnicity from the individual's surname (Ormachea et al., 2015; Perkins, 1993). The algorithm imputed values and placed the results in a new field, separate from the race data (Ormachea et al., 2015; Perkins, 1993). This is the same methodology that is used by the U.S. Census Bureau and is "considered to have minimal false positives" (Ormachea et al., 2015, p.9). Like that of the race variables, ethnicity was also coded as a dummy indicator (0 = not Hispanic, 1 = Hispanic). The fourth offender characteristic variable, gender, is a dichotomous measure (0 = female, 1 = male), as is the citizenship variable (0 = US Citizen; 1 = non-US Citizen). To control for each of the decades included in the data collection time frame, a dummy indicator was coded to represent if the case was processed during that year span. The dummy coded decades serve as a control measure as the data ranges across a time span of 30 years. For example, if the case was processed in the 1980s a variable named 1980s was created and coded as 0 = not processed between 1980 and 1989; and 1 = processed between 1980 and 1989. Lastly, the year measurement is a continuous measure controlling for the year that the case was processed; this variable will be used to further explore any differences in outcomes between decades.

Interaction terms. Prior studies have indicated that factors such as race, ethnicity, age, and gender may interact with one another to produce greater disparity in criminal justice decision-making, especially for young, black or Hispanic males (Spohn, 2000; Spohn et al., 1987; Spohn & Holleran, 2000; Steffensmeier et al., 1998). However, studies specifically examining the interactive effects of age, ethnicity, race, and gender on prosecutorial decision-making have been limited in number and had mixed results (see

Franklin, 2010). When considering a focal concerns framework, it is possible that the interaction of extralegal factors may also influence the prosecutor's perceptions of the offenders' blameworthiness, culpability, and probability of obtaining a conviction. One aspect of the current study is to assess if race and ethnicity moderate the effect of gender on the prosecution decision. To accomplish this goal dummy indicator variables were created for race/ethnicity and gender groups; and then multiplicative interaction terms were created. Two race/ethnicity gender interaction variables were created in the analysis (black male and Hispanic male).

Analytical Strategies

The research questions presented in this dissertation are framed around the theoretical concepts of the focal concerns perspective. The first research question in this study seeks to examine patterns within prosecutors' decision-making involving whether to prosecute juvenile offenders in the adult criminal court. The second research question examines the influence of extralegal and legal factors on prosecutorial decision-making. More specifically, it is expected that the likelihood of prosecution will be conditioned by extralegal factors. Along this vein, the dissertation also seeks to examine if a penalty is attached to transferred youths, as compared to statutorily excluded youths.

Research question 1. For the purposes of this dissertation, a series of analytical strategies will be used. To answer the first research question, an exploratory, descriptive approach will be taken to illustrate prosecutorial decision-making patterns in the data. To accomplish this goal, a series tables and figures will be created and presented for discussion.

Research question 2. Due to the dichotomous nature of the dependent variable, a series of binary logistic regression analyses were conducted to examine the effects of the legal and extralegal variables on the dependent variable (prosecution). For the purposes of this dissertation there are a total of 6 models: the first model includes only the year measures, followed by a model with only the legal factors, a third model which includes the previous measures and the extralegal factors, and the fourth model includes each of the legal and extralegal factors and two race/ethnicity and gender interaction terms. The final two models are split by age group status, one for 10 – 16 year-olds and one for 17 year-olds. The age-graded reduced models are used to assess if a penalty has been attached to those youths who were transferred into the adult criminal court system as compared to those who are in the adult court via statutory exclusion.

CHAPTER IV

Analyses & Results

The purpose of this dissertation is twofold. First, the dissertation seeks to explore patterns in the decision to prosecute juveniles who have been transferred to the adult criminal court in Harris County, Texas. The second part of this dissertation then seeks to examine which legal and extralegal factors predict the prosecution decision, by analyzing four stepwise fashioned models and two age-graded split models¹. The present chapter presents the results of the analyses examining these relationships. The chapter will begin with the results associated with the first research question and conclude with the results from the seven binary logistic regression models that were analyzed to answer the second research question. Once again, the research questions are:

1. What patterns are evident in prosecutorial decision-making involving persons under the age of 18 in the Harris County, TX adult criminal court from 1980 to 2010?
 - (a) Are minority youth disproportionately represented within the data and cases prosecuted; and
 - (b) Is there differential prosecution based upon offense types?
2. Which, if any, extralegal and legal factors are related to the decision to prosecute persons under the age of 18 in the Harris County, TX adult criminal court;
 - (a) Are there interactive effects of race/ethnicity and gender on the prosecutors' decision to prosecute; and
 - (b) Do younger juveniles (i.e. 10 -16-year olds) receive differential treatment as compared to similarly situated 17-year old juveniles?

¹ Prior to analyses, a bivariate Pearson's *r* correlation analysis was used to examine the relationships between each of the independent variables and between the dependent and independent variables. All of the correlations were within acceptable ranges.

Research Question 1: Patterns in Prosecutorial Decision-making

To examine patterns in prosecutorial decision-making the first research question asked: what, if any, patterns are present in prosecutorial decision-making involving whether to prosecute juveniles in the adult criminal justice system. Several key patterns emerged in the data. The first pattern that was immediately evident was disproportionality in the number of youth within each racial/ethnic group that were processed in the Harris County, Texas adult criminal court and prosecuted (See Table 4 for the racial/ethnic differences in the total number prosecuted by decade). Although black individuals accounted for approximately 19% of the population in Harris County (U.S. Census Bureau, 1980, 1990, 2000, 2010) on average, they comprised over 37% of the juveniles within the sample. Hispanic individuals accounted for approximately 31% of the population on average and comprised 28% of the sample. On average, white individuals accounted for 37% of the total population however, white youth only comprised 20% of the total sample. In the 1980s prosecutors decided to prosecute 3,739 cases involving black youth, 1,796 cases involving Hispanic youth, and 3,568 cases involving white youth. As illustrated in figure 2, as the decades progressed, the total number of cases prosecuted for each racial/ethnic group increased. Between 1980 and 1990, the rate of prosecution increased 92% for black youth, 137% for Hispanic youth, and 23% for white youth. Between the 1990s and early 2000s, the rate of prosecution increased 18% for black youth, 70% for Hispanic youth, and 41% for white youth. A one-way Anova was conducted to determine if the between group differences in the rate of prosecution were significant. The results indicated that the rates of prosecution were statistically significantly different between racial/ethnic groups [$F(2,73,578) = 672.85, p$

< .01). A Tukey post hoc test revealed that the differences between each racial/ethnic combination (i.e. white/black, white/Hispanic) was statistically significant.

Table 4

Racial/Ethnic Differences in Number of Cases Prosecuted by Decade

	1980s		1990s		2000s	
	N	% Increase	N	% Increase	N	% Increase
Black	3,739	---	7196	92	8,475	18
Hispanic	1,796	---	4,248	137	7,233	70
White	3,568	---	4,387	23	6,198	41
Total	9,103	---	15,831	74	21,906	38

To further examine the initial differences in prosecuted cases, the subsequent figures examine the total number of cases prosecuted by year. The second pattern that became apparent was related to the total number of cases prosecuted for each racial and ethnic group. In examining the total numbers of prosecution per year, differences in the rate of growth between racial and ethnic groups were evident. Figure 1 presents a graphic representation of the total number of cases prosecuted in each year of study, broken down by racial/ethnic categories. For white youth, the number of cases between the 1980s and 1990s gradually decreased overall. The total number of cases prosecuted for white youth slightly increased between 1980 and 1981 but then decreases from 1981 to 1989. For black youth the total number of cases prosecuted between 1980 and 1990 increased each year, with the most drastic increase occurring between 1987 and 1989. Of the three racial/ethnic groups Hispanic youth experienced the most dramatic increases in total number of cases prosecuted between 1980 and 1990, with a consistent increase each year. Each group experienced an increase in prosecution between the 1990s and 2000s.

However, between 1994 and 1998, Hispanic youth experienced the largest increase, followed by white youth, and then black youth.

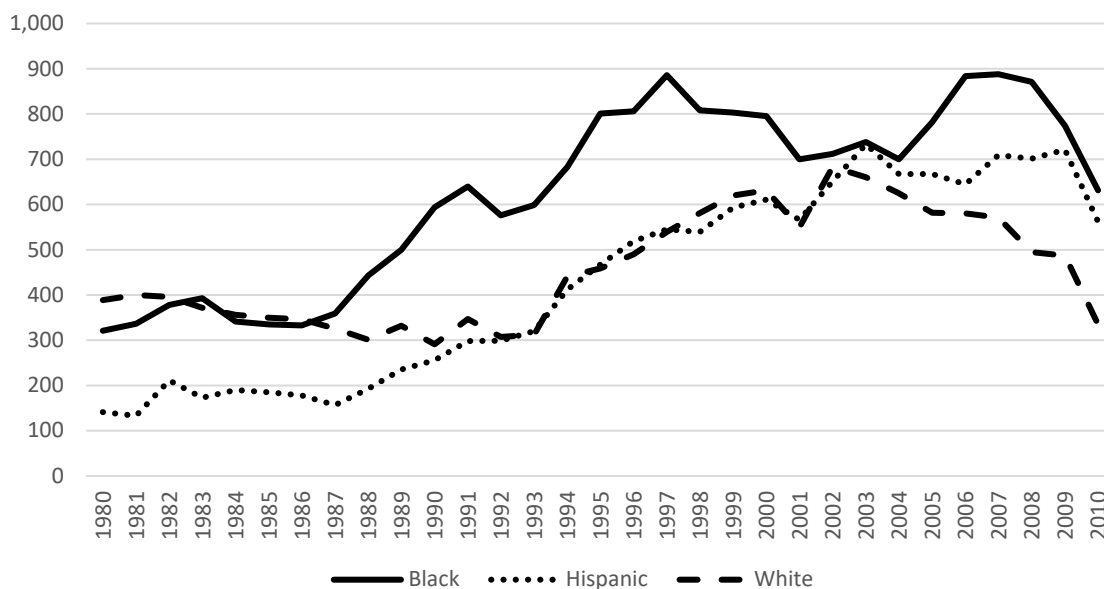


Figure 1. Total Number of Cases Prosecuted per Year, by Race/Ethnicity.

A third observation within the data was the differences in prosecution for cases involving male and female offenders. Figure 2 depicts the total cases prosecuted per year, broken down by gender. For females, prosecution increased gradually across the years and as such, for ease of discussion, the decade changes are discussed. A total of 1,034 cases involving females were prosecuted during the 1980s. The rate of prosecution increased 64% between the 1980s and 1990s ($n = 1,705$), and then increased 95% between the 1990s and 2000s ($n = 3,325$). For males, there was a gradual increase in the number of cases that were prosecuted between the 1980s and 1990s. A total of 727 cases involving males were prosecuted in 1980 and a total of 1,076 cases involving males were prosecuted in 1990. In 1991 a total of 1,189 cases were prosecuted and across the decade the number of cases prosecuted consistently increased. In 1999, there were 1,754 cases prosecuted involving male offenders. Between 2000 and 2004 the total number of cases

increased, before declining between 2005 and 2010. In the 1980s prosecutors decided to prosecute a total of 8,069 cases involving male offenders, followed by a total of 14,126 cases during the 1990s, and lastly, 18,581 cases between 2000 and 2010.

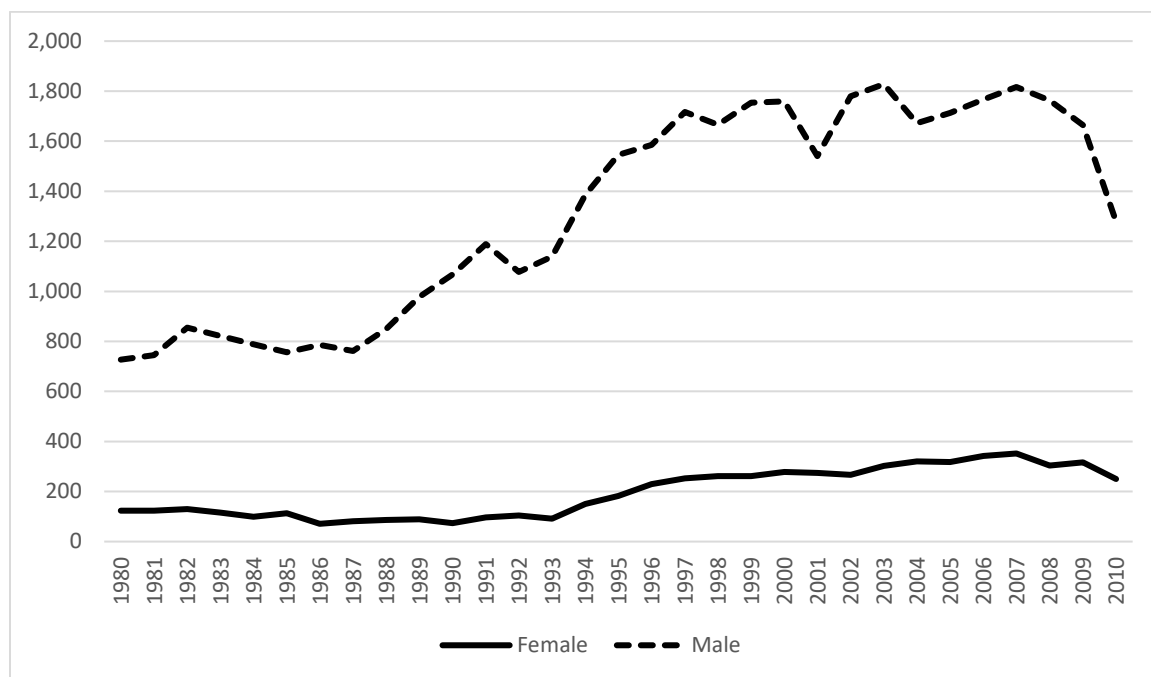


Figure 2. Total Number of Cases Prosecuted per year, by Gender.

When examining the data an additional pattern that emerged was in relation to the differences in prosecution by age group. Figure 3 depicts the total number of cases prosecuted per year, broken down by age group status. During the 1980s, prosecutors decided to prosecute a total of 549 cases involving transferred youth (10 -16 year-olds); the total number of cases prosecuted in the 1990s increased by 50% ($n = 826$), before decreasing by 27% between the 1990s and 2000s ($n = 606$). Regarding the statutorily excluded youth (17 year-olds), a total of 8,554 cases were prosecuted between 1980 and 1989. The number of cases prosecuted then dramatically increased by 75% ($n = 15,005$) between the 1980s and 1990s, and then increased 42% between the 1990s and 2000s ($n = 21,300$).

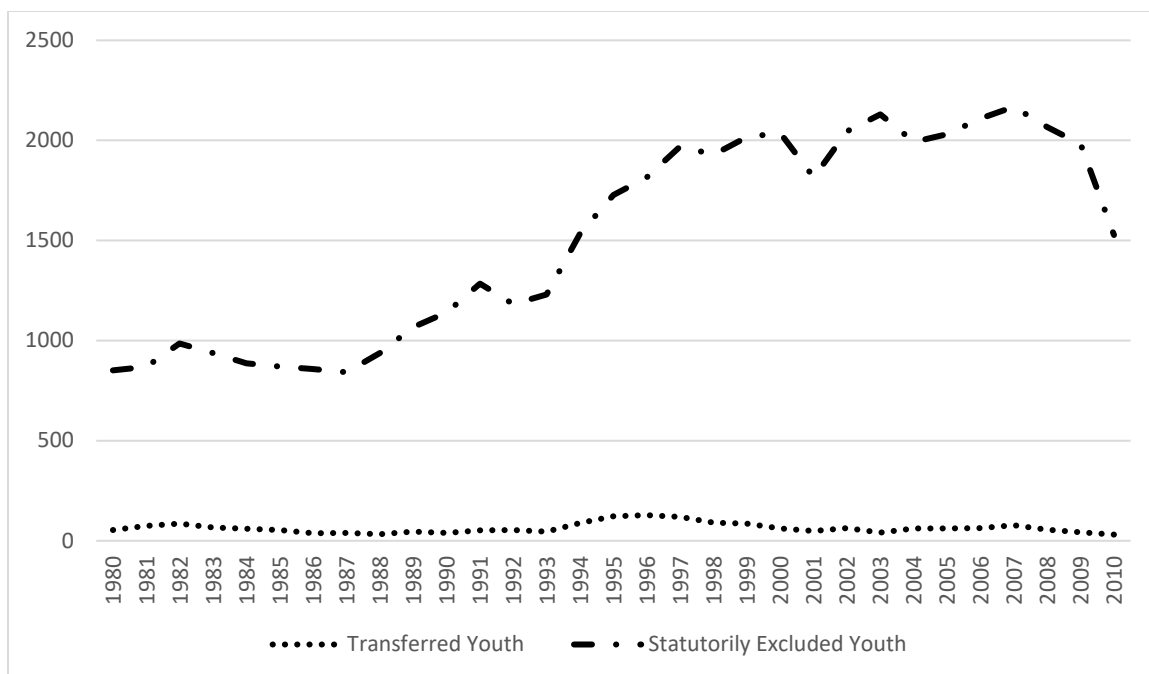


Figure 3. Total Number of Cases Prosecuted per Year, by Age Group Status.

A final pattern emerged in relation to the percentage of cases processed (see Table 3) and prosecuted involving certain offense types (see Table 5). In the full sample, the largest percentage of cases involving juveniles in the Harris County, Texas adult court were for property offenses (39%) and property offenses accounted for 35% of the prosecuted cases within the full sample. The second most prevalent offense type was drug offenses, which accounted for 27% of the total sample and 29% of the prosecuted cases. This was followed by violent offenses which constituted 15% of the cases processed and prosecuted. Offenses categorized as ‘other’ accounted for 15% of the cases processed and 16% of the total cases prosecuted within the full sample. Lastly, weapon offenses constituted approximately 4% of the total number of cases processed and prosecuted.

For transferred youth, most of the cases processed were for violent offenses (40%), and this offense type accounted for almost half of the cases the prosecutor decided to prosecute (49%). This was followed by property offenses, which accounted for 27% of

the total transferred cases and 21% of the total cases prosecuted. Within this age group, drug offenses were the third largest percent of cases processed (17%) and prosecuted (14%). Offenses categorized as ‘other’ constituted 13% of the total number of cases processed and prosecuted. Finally, weapon offenses accounted for 3% of the cases processed and prosecuted involving 10 -16 year-olds.

Regarding statutorily excluded youth, the majority total and prosecuted cases were for property offenses, representing 40% and 36% of the sample, respectively. This was followed by drug offenses, representing 27% and 30%, respectively. Offenses categorized as ‘other’ were the third largest offense category for cases involving 17 year-olds. These cases represented 15% of the total number of cases processed and 16% of the prosecuted cases. Violent offenses constituted 15% of the cases processed and 14% of those prosecuted within the sample; and finally, weapon offenses constituted 4% of both the processed and prosecuted cases involving statutorily excluded youth.

Table 5

Percentage of Cases Prosecuted by Offense Type

Offense	Full Sample (n = 46,840)		Transferred Youth (n = 1,981)		Stat. Excluded Youth (n = 44,859)	
	N	% Prosecuted	N	% Prosecuted	N	% Prosecuted
Drug	13,576	29.0	272	13.7	13,304	29.7
Violent	7,228	15.4	977	49.3	6,251	13.9
Property	16,458	35.1	421	21.3	16,037	35.7
Weapon	1,917	4.1	52	2.6	1,865	4.2
Other	7,661	16.4	259	13.1	7,402	16.5

Research Question 2: Legal and Extralegal Predictors of Prosecutorial Decision-Making

This dissertation examines prosecutorial decision-making involving juveniles processed in the Harris County, Texas adult criminal court between the years of 1980 and 2010. The dissertation is exploratory in nature, as there have been no studies to date that have explored the effects of legal and extralegal factors on the decision to prosecute juveniles who are processed in an adult court. The first research question sought to explore patterns in prosecutors' decision to prosecute juveniles in an adult court, and was addressed in the previous section. The current section will examine the second research question, which was informed by focal concerns perspective. More specifically, the second research question asked: (1) which legal and extralegal factors predict prosecution, (1a) how do race/ethnicity and gender interact to condition the prosecution decision; and (1b) if younger youths receive differential treatment as compared to 17 year-olds.

To answer the research question and sub-questions a series of binary logistic regression analyses were conducted. In total, six separate models were run in a stepwise fashion to examine the effects of extralegal factors on the decision to prosecute, while controlling for relevant legal factors. The first model examined the relationship between the decade that the case was processed in and the decision to prosecute. The second model added the relevant legal factors, and the third model included important extralegal factors. The fourth model then introduced the interaction terms between race and gender and ethnicity and gender, specifically to capture the expected differential likelihood of

prosecution for black males and Hispanic males. Informed by prior literature and a focal concerns perspective, it is expected that racial/ethnic, gender, and age disparities will be present in the decision to prosecute juveniles in the adult criminal court, and that these effects will persist even when controlling for relevant legal factors. Additionally, it is expected that offender characteristics (i.e., race/ethnicity and gender) will interact with each other and impact the decision to prosecute. Lastly, prior studies have found a juvenile penalty attached to juveniles in the adult criminal justice system as compared to similarly situated adult offenders. Therefore, it is expected that age may differentially interact with relevant legal and extralegal factors and result in a penalty being attached to younger youths (10-16 year-olds) as compared to similarly situated, statutorily excluded 17 year-olds. To examine if age group status differentially effects prosecution, two age group split models will be analyzed.

Predictors of Prosecution: Decade effect. To answer the primary component of the second question, separate models were analyzed in a stepwise fashion to determine which legal and extralegal factors predict the decision to prosecute cases involving juvenile offenders in an adult criminal court. The results of the models ($n = 773,581$) are presented in Table 6. The first model was restricted to just the decades in which the cases were processed. Overall model was statistically significant ($\chi^2(2) = 373.58, p < .001$) and correctly classified 64% of the cases. For this model, cases processed in the 1980s served as the reference category. Both remaining decades were statistically significant predictors and negatively associated with prosecution. As compared to cases processed in the 1980s, cases processed in both the 1990s and 2000s were less likely to be prosecuted, when holding all else constant.

Effect of legal factors. The next model included the decade measures with the addition of the legal factors. The overall model was statistically significant and correctly classified 64% of the cases ($\chi^2(9) = 2032.03$, $p < .001$). Model fit indices indicate that the legal factor model is an improvement upon the original model (Nagelkerke $R^2 = .03$). Within this model, each of the predictor variables were statistically significant. Similar to the first model, the two decade variables were negatively associated with prosecution, as compared to the 1980s, when holding all else constant. For the purposes of this model, violent offenses served as the reference group. Compared to those individuals charged with a violent offense, having a drug charge increased the likelihood of prosecution, holding all else constant. Similarly, having a weapon or 'other' charge was also positively associated with prosecution, compared to violent charges, holding all else constant. However, having a property charge was negatively associated with prosecution, as compared to a case involving a violent charge, holding all else constant. The results also indicated that being charged with a felony offense and having multiple charges were positively associated with prosecution. If the individual was charged with a felony, as compared to a misdemeanor the likelihood of prosecution increased, when holding all other variables constant. Furthermore, those individuals who presented with multiple charges as compared to a single charge, had an increased likelihood of prosecution when holding all else constant. Lastly, the results indicated that the offense severity scale was negatively associated with prosecution.

Effect of extralegal factors. The third model analyzed was a full model that included each of the legal and extralegal factors. The model was statistically significant ($\chi^2(14) = 4688.71$, $p < .001$) and correctly classified 66% of the cases. This model was

statistically significant improvement upon the previous models (Nagelkerke $R^2 = .08$). When extralegal factors were introduced into the model, having been charged with a property offense lost its significance however, all other legal factors remained statistically significant. Within this model, each of the legal factors were statistically significant and positively associated with prosecution. The results indicated that older youth were more likely to be prosecuted than younger juveniles, holding all else constant. Additionally, black and Hispanic youth were more likely to be prosecuted as compared to white youth, when holding all other variables constant. If the case involved a male juvenile, they were more likely to be prosecuted as compared to females; and non-U.S. citizens had an increased likelihood of prosecution as compared to those juveniles who were U.S. citizens, holding all else constant.

Race/ethnicity and gender interactions. The fourth model in this study examined how race/ethnicity moderate the effect of gender on prosecution for males, while controlling for all other relevant factors. Overall, the model was statistically significant and correctly classified 66% of the cases ($\chi^2(16) = 4725.23, p < .001$). The model fit indices indicate that this is the best fitting model for the data (Nagelkerke $R^2 = .09$). Model four included each of the legal and extralegal factors in addition to the two interaction terms (black male and Hispanic male). In their study of racial differences in the internal and external attributions related to juvenile offending, Bridges & Steen (1998) noted that negative internal attributes had the strongest influence on case outcomes for juvenile offenders, and that white youth were less likely to receive negative internal attributions as an explanation for their offending. For white youth, their criminal behavior was attributed more so to external factors (i.e. poor family structure), which had

less of a negative effect on outcomes (Bridges & Steen, 1998). Considering the work of Bridges and Steen (1998), in conjunction with consistent findings that white males are treated more leniently in adult court (Steffensmeier & Demuth, 2006), white males served as the reference group for this model. Each of the predictor variables in the model, except for property offenses, were statistically significant. Consistent with previous models, compared to the 1980s, cases processed in the 1990s and 2000s were less likely to be prosecuted, holding all else constant. If the individual was charged with a drug, weapon, or 'other' offense, the case was more likely to be prosecuted as compared to violent charges, holding all else constant. Furthermore, cases involving felony charges were more likely to be prosecuted than those involving a misdemeanor offense; and cases that involved multiple charges had a greater likelihood of prosecution than those with a single charge, holding all else constant. The effects of offense severity in this model was consistent with previous models, a one percent increase in the offense severity scale was associated with a decrease in the likelihood of prosecution, holding all else constant.

In examining the relationships between the extralegal factors and prosecution, age was positively associated with prosecution, when holding all else constant. For cases that involved older juveniles the likelihood of prosecution increased slightly by 10%. If the case involved a black or Hispanic juvenile it was more likely to be prosecuted as compared to involving a white juvenile. The results indicated that the odds of prosecution increased 77% for black youth and 17% for Hispanic youth compared to similarly situated white juveniles, holding all else constant. Consistent with prior studies, the results indicated that males had a greater likelihood of prosecution than females, when holding all else constant. In addition, non-citizens were more likely to be prosecuted than

citizens, when holding all else constant. Regarding the interaction terms, the results indicated that cases involving black and Hispanic males were more likely to be prosecuted than those involving white males, holding all else constant. Black males were almost 3 times more likely to be prosecuted compared to white males; and Hispanic males were 2.5 times more likely to be prosecuted. This supports the conclusion that the likelihood of prosecution varies by race/ethnicity and gender, and minority males are more likely to be prosecuted.

Table 6

Predictors of Prosecution Decision (n = 73,581)

Variable	Model 1 (Decades)		Model 2 (Legal Factors)		Model 3 (Extralegal)		Model 4 (Race/Male)	
	β (SE)	Exp(B)	β (SE)	Exp(B)	β (SE)	Exp(B)	β (SE)	Exp(B)
Drug ^b	---	---	.518(.032)***	1.68	.529(.033)***	1.70	.526(.033)***	1.70
Property	---	---	-.082(.029)***	.921	.018(.030)	1.02	.020(.030)	1.02
Weapon	---	---	.632(.053)***	1.88	.500(.054)***	1.65	.497(.054)***	1.64
Other	---	---	.562(.034)***	1.75	.512(.035)***	1.67	.509(.035)***	1.66
Felony	---	---	.261(.018)***	1.30	.104(.019)***	1.11	.101(.019)***	1.11
Multiple Charges	---	---	.519(.035)***	1.68	.496(.035)***	1.64	.494(.035)***	1.64
Offense Severity	---	---	-.162(.026)***	.850	-.147(.027)***	.864	-.146(.027)***	.86
Age	---	---	---	---	.100(.022)***	1.11	.100(.022)***	1.11
Black ^a	---	---	---	---	.703(.019)***	2.02	.576(.041)***	1.78
Hispanic ^a	---	---	---	---	.415(.020)***	1.52	.155(.048)***	1.17
Male	---	---	---	---	.660(.021)***	1.93	.525(.033)***	1.69
Non-U.S. Citizen	---	---	---	---	.546(.035)***	1.72	.544(.035)***	1.72
Black Male	---	---	---	---	---	---	.157(.046)***	1.17
Hispanic Male	---	---	---	---	---	---	.316(.053)***	1.37
1990s	-.372(.023)***	.690	-.408(.024)***	.665	-.445(.024)***	.64	-.446(.024)***	.64
2000s	-.417(.022)***	.659	-.464(.023)***	.629	-.473(.024)***	.62	-.474(.024)***	.62
Model	$\chi^2(2) = 373.58***$		$\chi^2(9) = 2032.02***$		$\chi^2(14) = 4688.71***$		$\chi^2(16) = 4725.22***$	
Diagnostics	-2LL = 96070.81		-2LL = 94412.37		-2LL = 91755.67		-2LL = 91719.16	
	Nagelkerke R2 = .007		Nagelkerke R2 = .03		Nagelkerke R2 = .08		Nagelkerke R2 = .09	

^a. White is the reference category; ^b Violent offense is the reference category; * p < .05; *** p < .01.

Differential treatment between age groups (age based penalty). The final sub question in this dissertation asked if transferred youth, ages 10 -16, receive differential treatment as compared to statutorily excluded youth (17 year-olds). Prior studies have examined whether a juvenile penalty was attached to younger youth as compared to similarly situated adults, and their findings indicated that in the adult court, juveniles were treated more harshly at the in/out and sentencing decision-making stages (Jordan, 2014; Kurlychek & Johnson, 2004, 2010). However, the current study seeks to examine if the negative attributions of ‘transferred status’ were applicable when comparing transferred youth to similarly situated 17 year-olds that were automatically excluded from juvenile court jurisdiction. Therefore, it is expected that when comparing transferred youth to their similarly situated 17 year-old counterparts, that younger juveniles will be treated more harshly in the adult system because of their transferred status and its suggestive power of increased dangerousness and culpability. To explore these relationships, three binary logistic regression models were analyzed: a full model that replaced the age variable with a transferred status indicator (0 = 17 year-olds; 1 = 10-16 year-olds); a transferred status model and a statutorily excluded juvenile model. The results of these models are presented in table 7.

Full model. The full model included all cases processed in the Harris County, Texas adult criminal court involving persons under the age of 18 (n = 73,581). The model was statistically significant ($\chi^2(14) = 4739.57, p < .001$) and correctly classified 66% of the cases. Within this model, the age of the offender was replaced with the age-group status measure. The results of the analysis indicate that with the exception of property offenses, all other legal factors were statistically significant predictors of prosecution. Having been charged with a drug, weapon, or ‘other’ offense was positively associated with prosecution. Those cases involving a

drug charge were 1.7 times more likely to be prosecuted compared to those with a violent charge, holding all else constant. In deciding to prosecute cases involving a weapons charge, this group was 1.6 times more likely to be prosecuted as compared to those with violent charges; and cases involving charges for 'other' offenses were 1.7 times more likely to be prosecuted compared to violent charges, holding all else constant. Similarly, juveniles who were charged with a felony offense compared to misdemeanors and those who presented with multiple charges compared to having a single charge, were also more likely to be prosecuted, when holding all else constant.

In examining the effects of extralegal factors, each of the legal factors were statistically significant predictors of prosecution when the age group status was included in the model. The results indicated that youths who were transferred into the adult system were less likely to be prosecuted as compared to youths that were statutorily excluded from the juvenile court's jurisdiction. This finding suggests that older youths (17 year-olds) are treated more harshly than similarly situated 10-16 year-olds. More directly, the likelihood of prosecution decreased 29% for 10-16 year-olds as compared to 17 year-olds, holding all else constant. Within the full model, black youth and Hispanic youth were more likely to be prosecuted compared to white youth, holding all else constant; as were males compared to females. Cases involving youths who were not U.S. citizens were 1.8 times more likely to be prosecuted compared to cases involving citizens, when holding all else constant; and cases processed in the 1990s and 2000s remained less likely to be prosecuted as compared to those processed in the 1980s, when holding all else constant.

Transferred model. This model included only those cases involving juveniles ages 10 – 16 that were processed in the Harris County, Texas adult criminal court between 1980 and 2010. A total of 3,182 cases were analyzed. The model was statistically significant ($\chi^2(14) = 341.16$, p

< .001) and correctly classified 68% of the cases. For cases involving transferred youths, each of the legal factors were statistically significant predictors of the prosecution decision, except for the offense severity scale. Within the model, each of the four offense types (drug, property, weapon, and other) were negatively associated with prosecution. As compared to being charged with a violent offense, being charged with any of the four offense types decreased the likelihood of prosecution for 10 – 16 year-olds, when holding all else constant. If the case involved a felony offense, the individual was less likely to be prosecuted as compared to a misdemeanor offense, holding all else constant. Furthermore, if the youth presented with multiple charges the case was more likely to be prosecuted compared to having a single charge, when holding all else constant.

Looking now at the effects of the extralegal factors on the prosecution decision involving transferred youth, four out of the seven predictors were statistically significant (having a case processed in the 1990s, age, being male, and non-citizenship). If the case was processed in the 1990s, the likelihood of prosecution decreased compared to those processed in the 1980s, when holding all else constant. Within the transferred group of offenders, younger juveniles were more likely to be prosecuted than older youths, when holding all else constant. In other words, a 10 year-old whose case was processed in the adult court was more likely to be prosecuted than a 16 year-old. Additionally, transferred males were more likely to be prosecuted as compared to transferred females, when holding all else constant; and non-U.S. citizens were more likely to be prosecuted compared to U.S. citizens, holding all else constant.

Statutorily excluded model. The final model in the analyses consisted of only cases involving 17 year-olds who were processed in the adult criminal court. A total of 70,399 cases were analyzed in the model which was statistically significant ($\chi^2(13) = 4838.26, p < .001$) and correctly classified 66% of the cases. As this was a homogenous sample in regard to age, that

variable was removed from the analysis. Within the 17 year-old model, each of the legal predictors were statistically significant and each of the offense types (drug, property, weapon, and other) were positively associated with prosecution. Regardless of offense type, for this age group the likelihood of prosecution increased as compared to those who committed a violent offense, when holding all else constant. If the case involved a felony offense as compared to a misdemeanor, there was an increased likelihood of prosecution, holding all else constant; and if the youth presented with multiple charges the case was more likely to be prosecuted as compared to youths with only one charge, holding all other variables constant. Finally, for each one percent increase in offense severity the likelihood of prosecution decreased.

In examining the relationships between extralegal factors and prosecution in cases involving statutorily excluded youth, each of the variables were statistically significant predictors of prosecution. Compared to cases processed in the 1980s, those that were handled in the 1990s and 2000s were less likely to be prosecuted, when holding all other variables constant. Each of the remaining extralegal predictors (Black, Hispanic, male, and non-citizenship) were positively associated with prosecution. For black and Hispanic 17 year-olds, the likelihood of prosecution increased as compared to white 17 year-olds, holding all else constant. Black youth were two times more likely to be prosecuted as compared to white youth; and Hispanic youth were one and a half times more likely to be prosecuted. Similarly, males were two times more likely to be prosecuted than similarly situated 17 year-old females, when holding all else constant. In regard to citizenship status, cases involving statutorily excluded youths that were not U.S. citizens were more likely to be prosecuted than those involving citizens, holding all else constant.

Table 7

Predictors of Prosecution by Age Group Status

Variable	Full Sample (n = 73,581)			Transferred Youth (n = 3,182)			Statutorily Excluded (n = 70,399)		
	β	SE	Exp(B)	β	SE	Exp(B)	β	SE	Exp(B)
Drug ^a	.518***	.033	1.68	-	.147	.25	.631***	.034	1.88
Property	.003	.030	1.00	-	.132	.24	.098***	.031	1.10
Weapon	.491***	.054	1.63	-	.262	.23	.597***	.056	1.82
Other	.504***	.035	1.66	-	.169	.32	.597***	.036	1.82
Felony	.113***	.019	1.12	-	.105	.52	.117***	.019	1.13
Multiple Charges	.510***	.035	1.67	.469***	.119	1.60	.486***	.037	1.63
Offense Severity	.148***	.027	.86	.011	.100	1.01	-	.028	.86
Transferred	.337***	.040	.71	---	---	---	---	---	---
Age	---	---	---	-.226***	.044	.80	---	---	---
Black ^b	.708***	.019	2.03	.030	.104	1.03	.741***	.019	2.10
Hispanic	.419***	.020	1.52	.136	.113	1.15	.426***	.021	1.53
Male	.657***	.021	1.93	.351***	.113	1.42	.665***	.022	1.95
Non-U.S. Citizen	.557***	.035	1.75	.246*	.127	1.30	.593***	.037	1.81
1990s	.448***	.024	.64	-.352***	.094	.70	-	.025	.63
2000s	.481***	.024	.62	.099	.111	1.10	-.460***	.024	.60
Model	$\chi^2(14) = 4739.57***$			$\chi^2(14) = 341.16***$			$\chi^2(13) = 4838.26***$		
Diagnostics	-2LL = 91704.81			-2LL = 3876.86			-2LL = 87385.29		
	Nagelkerke R2 = .08			Nagelkerke R2 = .14			Nagelkerke R2 = .09		

^a Violent offense is the reference category; ^b White is the reference category. * p < .05; *** p < .01.

Summary of Analyses

The purpose of this dissertation was twofold: first, I sought to examine patterns in prosecutorial decision making in cases that involved persons under the age of 18 in the Harris County, Texas adult criminal court; and second, I sought to examine the effects of legal and extralegal factors as well as, race/ethnicity and gender interactions, and the possibility of a penalty being attached to transferred youth as compared to statutorily excluded youth. Several key findings emerged from the exploratory analysis of patterns in the prosecution decision such as, differences in the volume of cases prosecuted, evidence of disproportionate minority contact, and a pattern illustrating the importance of conviction certainty in prosecutorial decision-making.

The latter half of the dissertation was guided by a focal concerns perspective and explored if the relationships demonstrated in prior studies of prosecutorial decision making involving adults were also evident in cases involving juveniles in the adult court. To this end, the findings of the current study are consistent with the extant literature. More directly, even when controlling for relevant legal factors and the decades in which the cases were processed, extralegal factors such as age, race/ethnicity, and gender were statistically significant predictors of the prosecution decision. Furthermore, minority male youth were treated more harshly than white youth; and when the interactive effects of race/ethnicity and gender were included, this finding held, while controlling for all other factors.

The final question addressed in this dissertation asked if the juveniles that were transferred into the adult system via the juvenile court were treated differently than 17 year-olds who were automatically processed in the adult criminal court. Previous studies had found that when comparing juveniles to adult offenders at the in/out and sentencing stages, juveniles were treated more harshly due to their transfer status. Therefore, it was expected that 10 – 16 year-olds

who were being processed in an adult criminal court would receive harsher treatment however, the results indicated that this was not the case. In examining a full model which included a measure of whether the case involved transferred youth or statutorily excluded youth, the findings of this study are that 17 year-olds received harsher treatment than similarly situated 10-16 year olds in the Harris County, Texas adult criminal court. This finding along with the previously mentioned findings will be further discussed in the final chapter.

CHAPTER V

Discussion

The current study utilized data from the Neulaw project (Ormachea et al., 2015), which consisted of all cases processed in the Harris County, Texas adult criminal court between the years of 1977 and 2013. Overall, the goal of this study was to explore patterns in prosecutorial decision-making; and examine if legal and extralegal factors predicted the decision to prosecute in cases involving persons under the age of 18. Additionally, this dissertation sought to examine if any racial, ethnic, gender, and age group disparities were present; and to assess whether focal concerns perspective could be applied to this key initial decision-making stage involving a subpopulation of juvenile offenders in adult court. To accomplish this goal, an exploratory analysis of the sample was conducted, which included a descriptive evaluation of patterns in the data and examining a series of binary logistic regression models. The results of these analyses were presented in chapter four. The current chapter will then consist of a discussion of the results, policy implications, limitations of the current study, and directions for future research. This dissertation sought to answer two main research questions and sub-questions:

1. What patterns are evident in prosecutorial decision-making involving persons under the age of 18 in the Harris County, TX adult criminal court from 1980 to 2010?
 - (a) Are minority youth disproportionately represented within the data and cases prosecuted; and
 - (b) Is there differential prosecution based upon offense types?

2. Which, if any, extralegal and legal factors are related to the decision to prosecute persons under the age of 18 in the Harris County, TX adult criminal court;
 - (a) Are there interactive effects of race/ethnicity and gender on the prosecutors' decision to prosecute; and
 - (b) Do younger juveniles (i.e. 10 -16-year olds) receive differential treatment as compared to similarly situated 17-year old juveniles?

Research Findings

The first main research question in this dissertation was exploratory with the goal of identifying patterns in prosecutors' decision-making involving juveniles who were being processed in an adult criminal court. Previous studies examining prosecutorial decision-making have primarily focused on the 'in/out' and sentencing decision-making points, and have relied on adult only samples (Albonetti, 1986, 1987; Demuth & Steffensmeier, 2004; Franklin, 2010; Franklin & Fearn, 2008). As such, our understanding of prosecutorial decision-making, as well as, any disparities that are present is limited. Therefore, the current study will add to the literature by examining prosecutorial decision-making at the initial stage of court processing and using a juvenile offender population.

Patterns in Prosecutorial Decision-Making. Upon initial examination, several interesting patterns emerged from the data. The first pattern was that black and Hispanic youths were processed in the adult criminal court at disproportionate rates. The demographics of the total sample are somewhat different from national estimates and evidence racial and ethnic disproportionality. According to the U.S. Census' 2016 estimates, Blacks constituted 13.3% of the total population; Hispanics (of any race) 17.8%; and Whites made 76.9% (U.S. Census Quick Facts, 2017). There is a greater difference between national estimates for gender and the sample

make-up; nationally, women made up almost 51% of the total population (U.S. Census Quick Facts, 2017). The sample more closely resembles the Harris County, Texas demographics for race and ethnicity, but not gender. Black individuals make up 19.7% of the total population in Harris County, Hispanics 40%, White, non-Hispanic individuals make up 33%, and women comprise 50.3% of the population (U.S. Census Quick Facts, 2017). Compared to their representation within the total population of Harris County, Texas, black youth disproportionately comprise almost 38% of the sample of juveniles processed in the adult criminal court. Although the disproportionality of minority group members is still evident when looking within each age group, the racial/ethnic breakdown of the statutorily excluded (17-year old) group is more evenly distributed.

Between 1980 and 2010, on average, black individuals accounted for 19.5% of the Harris County, Texas population. However, they accounted for almost 40% of the cases processed in the adult criminal court and the majority of cases prosecuted (41.2%) involving juveniles. Even as their total percentage of the population decreased, black youths were increasingly processed in the adult criminal court. Hispanic individuals accounted for 20.4% of the population on average during those years, but accounted for 26.9% of the cases processed and 27.2% of the cases prosecuted. As demonstrated in Figure 2, the number of cases prosecuted increased for all racial/ethnic groups between 1980 and 2010. However, for white youths, the increase was gradual compared to sharp increases for black and Hispanic youths which remained constant throughout the decades examined. Over the 30 years that these data span, minority youth were disproportionately processed in the adult court, and prosecutors decided to prosecute these youths at alarmingly disproportionate rates.

When one considers that the disproportionately of minority groups in the criminal justice system cannot be totally explained by differences in offending patterns, this pattern in decision-making is indicative of a larger problem. From a focal concerns perspective, this pattern can be interpreted as a demonstration of how influential negative racial/ethnic stereotypes can be in the prosecution decision. White youth make up the majority of the juvenile population and consistently make up the majority of offenders (Furdella & Puzzanchera, 2015) however, less than a quarter of the cases handled in the data involved white youths. Such patterns demonstrate the importance of studies that examine the effects of race/ethnicity on decision-making while also providing support for why a reduction in the number of minority youths involved in our criminal justice system is necessary.

In addition to evidence of DMC in case processing, patterns related to the number of cases prosecuted and convicted also emerged. Within the full sample, 64% (n = 46,840) of the cases were prosecuted; and 99.7% of those cases resulted in conviction. This distribution held for both the transferred sample (10 – 16 year olds) with 62% of the sample being prosecuted (n = 1,981) and 99.6% of those individuals being convicted (n = 1,973); and the 17-year old sample with 64% being prosecuted (n = 44,859) and 99.7% of those individuals were convicted (n = 44,716). Consistent with the literature regarding conviction certainty as a prosecutorial focal concern (Albonetti, 1987; Beichner & Spohn, 2005), these patterns suggest that prosecutors may choose to prosecute only those cases in which they are certain of attaining a conviction. This decision may be driven by things such as evidentiary strength, offender characteristics, and offense characteristics. However, it is equally likely that prosecutors go after cases where they are confident in securing conviction because their job security is directly related to their

conviction rates. Therefore, gaining an understanding of what factors are considered in this decision-making process is imperative.

Additionally, a second pattern emerged that demonstrated racial and ethnic differences in the total number of cases prosecuted. Prosecutors consistently chose to prosecute black youth at higher rates than white and Hispanic youth across each decade. The prosecution of cases involving black youths increased 92% between the 1980s and 1990s and 18% between the 1990s and 2000s. This pattern also supports prior arguments concerning the cumulative effects of race on criminal justice decision making. As previously discussed, black youths were disproportionately represented in the cases processed in Harris County. It appears that not only does their race work against them in relation to their cases being handled in the adult system, but it then compounds as they progress to other decision-making stages such as, prosecution and conviction. Within the full sample black youths also had the highest number of convictions, at 19,346 compared to Hispanic (13,253) and white youth (14,090). The examination of racial/ethnic differences also demonstrated that the number of Hispanic youth that were prosecuted increased across decades. The largest increase for this group was between the 1980s and 1990s. Between those decades the rate of prosecution increased an alarming 137% for Hispanic youth, followed by a 70% increase between the 1990s and 2000s. Interestingly, cases involving Hispanic youth represented the fewest number prosecuted in the 1980s and 1990s, but then represented the second highest number in the 2000s. The increase in prosecution for this ethnic group is most likely the by-product of prosecutorial political pressures and concerns, as issues and discussions surrounding illegal immigrants and immigration reform became increasingly common during the latter decades of study.

The next pattern identified was the gender of juvenile offenders that were processed in the adult criminal court. Consistent with prior studies, males constituted the majority of the sample and majority of cases prosecuted. Not surprisingly, males represented 82% of the total sample and 87% of the cases prosecuted. The overwhelming presence of males in the sample is also disproportionate to their representation in the Harris County, Texas population. According to the U.S. Census report (2010), males made up 50% of the population. Considering that males typically offend at higher rates than females (Mazerolle, Brame, Paternoster, Piquero, & Dean, 2000) it is probable that this trend is just a reflection of gendered offending patterns, therefore, this pattern should be interpreted with caution.

The fourth pattern that emerged involved the type of offenses that juveniles were processed and prosecuted for within Harris County, Texas' adult criminal court. The majority of individuals within the full sample had committed a property offense and prosecutors primarily prosecuted cases involving property offenses. Interestingly, the majority of cases prosecuted that involved 10-16 year-olds were for violent offenses, while for 17 year-olds the majority of prosecuted cases were for property offenses. It appears that for younger youths, prosecutors were more apt to decide to prosecute if they were transferred to the adult court for a violent offense. This pattern suggests that prosecutors were less lenient with younger juveniles who had committed violent offenses as compared to 17 year-olds. It is probable that prosecutors either (1) considered younger youths who had committed violent offenses as more dangerous to society than similarly situated 17 year-olds; (2) that they assumed that younger youth would re-offend and used prosecution as a deterrent; or it may be representative of prosecutorial focal concerns related to how the decision to prosecute younger youth may be later interpreted by judges and juries. Prosecutors may reserve prosecution for violent transferred youth as a method of

conviction certainty because subsequent court actors may be more likely to impose punishment on this younger group of offenders as compared to property or drug offenders.

Each of the patterns that emerged from the data indicate that race/ethnicity, gender, and age matter to some extent in prosecutorial decision-making involving persons under the age of 18; and suggest that further examination of the data are warranted. When examining them from the context of race and ethnicity, minority youth appear to be treated more harshly and are a prominent representation in the overall number of cases in Harris County, both transferred and statutorily excluded, which leads the researcher to infer that negative stereotypes of these groups is prosecutorial fueling decision-making to a certain degree. As such, the next section moves into the discussion of the findings related to the second research question and sub-questions presented in this dissertation.

Legal and Extralegal Predictors of Prosecution Decision

After the initial exploratory evaluation of patterns in Harris County, Texas prosecutors' decision-making involving juveniles tried in adult court, the latter of half of this dissertation sought to examine the effects of legal and extralegal factors on decision-making from a focal concerns perspective. More specifically, the second research question asked what legal and extralegal factors predicted prosecutorial decision-making and if these decisions were directly or indirectly affected by offender characteristics (age, race/ethnicity, and gender). To answer this question a series of six binary logistic regression models were conducted and analyzed. The first three models examined the main effects of legal and extralegal factors on the prosecution decision, the fourth model examined the interactive effects of race/ethnicity and gender while controlling for the main effects of all legal and extralegal factors, and the final two models examined the differential treatment of juveniles based upon age group status.

Main effects model. To examine the relationships between extralegal (age, race/ethnicity, gender, citizenship status, and the decade the case was processed) and legal (drug, property, weapon, 'other offenses,' felony charges, multiple charges, and the offense severity scale) factors and the prosecution decision, three separate logistic regression models were ran in a stepwise fashion and then analyzed. These models examined the effects of key independent variables (age, race, ethnicity, and gender) while controlling for relevant legal factors within the full sample (n = 73,581) of cases processed in Harris County, Texas's adult criminal court that involved persons under the age of 18 between 1980 and 2010. The results of the analysis indicated that each of the extralegal factors was a statistically significant predictor of the prosecution decision, even when controlling for legally relevant variables.

The initial model included on the effects of the decade in which the cases were processed and the results indicated that as compared to the 1980s, cases that were processed in the 1990s and 2000s were less likely to be prosecuted. Prior studies have noted that a major uptick in juvenile crime occurred in the mid-1970s (Finn, 2001; Shook, 2004; Zimring, 1998), as such, the response of the criminal justice system and court actors may have been most direct and less forgiving during the 1980s. Although the raw number of cases processed increased over the decade it is likely that the ratio of total cases processed to the total number of cases prosecuted was greater in the 1980s as compared to the other decades. The data in this study may be capturing the prosecutors' initial reactions, in that the initial 'shock' resulted in increased prosecution but as time progressed, this shock wore off and the process of handling juvenile offenders in the adult system became a matter of 'business as usual.'

Legal factors. The initial model also served as a baseline control for the effects of legal and extralegal factors; and as such, each of the seven legal factors (drug, property, property, and

'other' offenses; whether the case was for a felony offense, had multiple charges, and the offense severity measure) were then introduced into the second model. When controlling for the decade of case processing, each of the legal factors were statistically significant predictors of the prosecution decision; and apart from property offenses – as compared to violent offenses and the offense severity measure – each of the legal factors were positively associated with prosecution. Consistent with the prior literature, prosecutorial decisions are based, in part, on legal factors. Although having a felony offense was positively associated with prosecution, the results indicated that as the percentage of severity increased, the likelihood of prosecution decreased. This may be indicative of prosecutorial 'practical constraints' regarding the use of resources. Due to the increasing number of cases handled involving property offenses, and in an attempt to manage heavy caseloads, prosecutors may be less inclined to prosecute these youths. However, considering that property offenses constituted the majority of charges in the full sample and yet were less likely to be prosecuted, these findings might be the result of handling higher rates of property cases that do not necessarily constitute higher severity. However, considering that having a felony offense and/or multiple charges were positively associated with prosecution, this means that to some degree prosecutors considered both the severity and number of charges in conjunction with the offense type when making their decisions. Juveniles who presented in the adult court with a felony or multiple charges were possibly considered as being more dangerous, more likely to reoffend, and easier to convict, which led prosecutors to treat them more harshly, even when they were first-time offenders.

Individuals charged with a drug, weapon, or 'other' offense were more likely to be prosecuted compared to those with a violent offense charge. Prosecutors may have been more likely to prosecute these groups as the result of their perceptual shorthand. An aspect of focal

concerns argues that prosecutors rely on past experiences to create a perceptual shorthand that assists them in speedier processing and conviction certainty. Violent offenses are typically considered more severe than drug, weapon possession, or offenses categorized as ‘other.’ As such, the penalties attached to violent offenses are more likely to include some confinement and therefore, immediate re-offending is not likely. However, this may not always be the case with the other offense types, which may then reinforce prosecutors’ stereotypical attributions of these offenders having a higher probability of immediate recidivism. This would then manifest as these groups being more likely to be prosecuted.

Extralegal factors. In continuing with the stepwise introduction of variables into the analyses, the next model then introduced the extralegal factors to examine if they predicted prosecution while controlling for the decade, legal factors, and citizenship status. Each of the key extralegal factors were statistically significant and positively associated with prosecution. When extralegal factors were introduced into the model, property offenses were no longer a significant predictor of prosecution. Even though the majority of cases in the sample had involved youth charged with a property offense and such charges were negatively associated with prosecution, once race, ethnicity, age, and gender enter the decision-making process of prosecutors appear to be less lenient in this regard. Additionally, the lack of significance for property offenses also suggests that when extralegal factors are considered at this stage, these offenders are treated no differently than those who commit violent offenses, who are expected to receive the harshest treatment.

The results indicated that within Harris County, Texas prosecutors were more likely to prosecute older youths, racial/ethnic minorities, males, and non-citizens. The findings suggest that over the 30-year span of the data, prosecutors decided to prosecute males at almost twice the

rate of females and black youths at slightly over twice the rate of white youths. Within the model, race and gender exhibited the strongest, positive relationships to prosecution. The ethnicity of the offender was also a factor in prosecutorial decision-making. However, this relationship was moderate and Hispanic youth were 1.5 times more likely to be prosecuted as compared to white youth. In line with the theoretical perspective and suggestions of prior studies (Albonetti, 1986, 1987; Demuth & Steffensmeier, 2004) stereotypes of young, black and brown males as being more dangerous and crime-prone seem to have heavily influenced prosecutorial decision-making. The findings of the current study suggest that the effects of age, race, ethnicity, gender status directly affect the prosecution decision involving juveniles tried in the adult system, even when controlling for relevant legal factors; and provide context to the patterns identified in the data. In deciding whether to prosecute persons under the age of 18 in the Harris County, Texas adult criminal court, it appears that extralegal factors matter and these youths receive disparate treatment because of their membership statuses, even when controlling for legal factors.

Although not a key independent variable in the current study, the finding related to citizenship status is worthy of mention, non-U.S. citizens were also treated more harshly by prosecutors. If the individual was not a U.S. citizen, they were 1.7 times more likely to be prosecuted. This also coincides with the perception that immigrants are more crime prone and dangerous (Espenshade & Belnger, 1998; Hagan & Palloni, 1999; Simon, 1985; Wolfe et al., 2011). Arguably, juvenile offenders who are not U.S. citizens might be treated more harshly by prosecutors due to stereotypes of dangerousness and false public perceptions of immigrants being more crime-prone (Espenshade & Belnger, 1998; Hagan & Palloni, 1999; Simon, 1985). Hagan and Palloni (1999) argued that “sociological knowledge of crime is fragmented and

ineffective in challenging and correcting mistaken public perceptions” and such perceptions are “perpetuated by government reports of growing numbers of Hispanic immigrants in U.S. prisons” (p. 617). In their study of Hispanic immigration and crime, Hagan and Palloni (1999) highlight that policies addressing the issues of immigration and criminal justice create a bias towards this group and false perceptions of immigrants as being highly involved in criminal activities. In their examination of felony cases in El Paso and San Diego, Hagan and Palloni (1999) found that Mexican immigrants were at greater risk of negative outcomes (i.e., pre-trial detention, conviction, and imprisonment) than other similarly situated groups, even though their actual involvement in crime is low relative to that of U.S. citizens.

Scholars have noted that the debate surrounding immigration and crime has been occurring for the past century (Espenshade & Belanger, 1998; Hagan & Palloni, 1999; Martinez & Lee, 2000). In their study on crime and immigration, Martinez and Lee (2000) demonstrated that although there are several theoretical reasons to believe that immigrants would be heavily involved in crime, the empirical studies have found that “immigrants are usually underrepresented in criminal statistics” (p. 515). Contrary to public perceptions, studies are more likely to report that immigration does not create or increase crime but rather stabilizes neighborhoods by creating a “buffer to further decline” (Martinez & Lee, 2000, p. 515). Lastly, in discussing how false public perceptions are formed, Martinez and Lee (2000) note that focusing our criminological studies on immigrants as related to gangs and crime “promote the impression that immigrants are a crime-prone group” (p. 516). They suggest that these false perceptions then translate into disproportionate arrest and incarceration rates for non-U.S. citizens. Once again, though outside of the purview of the current study, this finding provides

support towards the overarching argument that many extralegal factors exhibit varying degrees of influence on prosecutorial decision-making involving juveniles in the adult system.

Interactive effects of race/ethnicity and gender. Informed by prior studies and the subsequent findings of the full model, further investigation was warranted to more directly examine if and how the offender's race/ethnicity, and gender combined to condition prosecutorial decision-making. To do so, a fourth binary logistic regression model was assessed, which examined the effects of being a black or Hispanic male on the prosecution outcomes while controlling for all other legal and extralegal factors included in the previous models. Consistent with the full model, when the interactions were introduced, property offenses remained insignificant, however, all other legal and extralegal factors remained statistically significant predictors of prosecution.

Previous studies have consistently demonstrated that young, black males are treated more harshly in both the adult and juvenile system (Franklin, 2013; Guevara et al., 2011; Leiber & Mack, 2003; Mitchell, 2005; Spohn, 2000; Spohn & Cederblom, 1991; Steffensmeier & Demuth, 2000); and the results of this study provide support for the overall argument that race/ethnicity and gender moderate the effects of other extralegal and relevant legal factors on the decision to prosecute juveniles who are processed in an adult criminal court. The results indicated that odds of prosecution increased 17% for cases involving black males and 37% for Hispanic males as compared to all other race/ethnicity and gender groupings of offenders. From a focal concerns perspective, these findings suggest that not only do prosecutors consider the race/ethnicity and gender of juvenile offenders separately in their decision-making, but these factors also combine and have additional effects on the prosecution decision.

Additionally, the findings suggest that even when controlling for the other relevant factors, including interactions of race and gender, black youth receive less leniency from prosecutors as compared to both white and Hispanic youth. However, in respect to the interactions between race and ethnicity and gender in juvenile cases, it appears that young Hispanic males have replaced young black males as ‘public enemy #1,’ and are now receiving the harshest and most disparate treatment in this adult criminal court. The consistent increase in the Hispanic population in Harris County in conjunction with negative stereotypes associated with this minority group such as, them being more crime prone and dangerous, appears to be working to the detriment of these youths once they enter the adult criminal justice system. The ways in which ethnicity and gender interactively effect prosecution within this sample of juvenile offenders in the adult court mirror the relationships found in recent studies involving adult offenders (Mitchell, 2005; Mustard, 2001; Schlesinger, 2005). Criminal justice actors are increasingly treating Hispanic individuals more harshly than any other racial/ethnic group and it is highly probable that such disparate treatment will only get worse as time progresses.

Is an Age Based Penalty Attached to Transferred Youth?

Overall, the analyses of patterns and predictors of the prosecution decision have revealed several interesting findings which demonstrate that racial, ethnic, and gender disparities are not only present, but prevalent, in Harris County, Texas’ prosecutors’ decision-making. Moving from racial/ethnic and gender disparities, an additional question presented in the current study asked whether an age based penalty was attached to transferred youth in the adult criminal court as compared to 17 year-old statutorily excluded. Recent studies have found that compared to similarly situated adult offenders, juveniles are treated more harshly by criminal court actors (Jordan, 2014; Kurlychek & Johnson, 2004, 2010); however, these studies focused on the latter

stages of decision-making. Therefore, an additional purpose of the current study was to examine if a penalty was attached to transferred youth (10-16 year-olds) at the initial adult court processing stage and if such penalties are present when comparing these youths to their 17 year-old counterparts.

Transferred youths. There was a total of 3,182 cases processed in the Harris County, Texas adult criminal court involving juveniles who were transferred to the adult criminal court between the years of 1980 and 2010. Of these cases, prosecutors decided to prosecute in over 60% of the cases (n= 1,981). Between juveniles aged 10 -16, younger youth were treated more harshly than similarly situated older youths. In other words, the likelihood of prosecution decreased as the age of the juvenile increased. It is likely that the youngness of these offenders caused for prosecutors to view them as more dangerous to society and more likely to re-offend. Also, transferred male offenders were more likely to be prosecuted than their female counterparts, and this is consistent with both prior studies and the findings of the current study. Even when handling cases involving young juveniles, prosecutors are less likely to prosecute females. When prosecutors were deciding whether to prosecute transferred youths, the race and ethnicity of the offender did not matter; and only cases processed in the 1990s were statistically significant and negatively associated with prosecution. It is probable that when the cases involved transferred youth, prosecutors were aware of age possibly being a mitigating factor in subsequent decision-making and therefore, were more inclined to primarily rely on legal factors in their decision-making. This would provide prosecutors with an increased certainty of conviction, especially when coupled with reserving prosecution for violent offense cases.

For transferred youth, legal factors were the strongest predictors of prosecutorial decision-making in the model. Five out of the seven legal factors were statistically significant

and negatively associated with prosecution (drug, property, weapon, 'other,' and felony offenses); and presenting with multiple charges was also statistically significant but positively associated with prosecution. When the juvenile offenders are young, prosecutors tend to rely more on offense characteristics in their decision-making process than offender characteristics. However, juveniles who committed drug, property, weapon, or 'other' offenses were less likely to be prosecuted as compared to violent offenders. This suggests that prosecutors were more likely to reserve prosecution for the 'worst of the worst' of this special sub-population of juvenile offenders. Interestingly and indicative of a practical constraints focal concern, prosecutors were more lenient with transferred youth who had committed a felony than those who had committed a misdemeanor. This group represents a small percentage of the cases involving juveniles, and in the larger scheme, juveniles represent a relatively small percentage of the cases processed in the Harris County, Texas adult criminal court. Therefore, prosecutors may be more inclined to reserve the state and courts resources for the prosecution of older felony offenders. Especially, considering that the adult correctional system is not adequately prepared to handle the special needs of juvenile offenders. In addition, prosecutors were less lenient with transferred youth who had multiple charges. The increased likelihood of prosecution for these offenders is most likely the result of increased perceptions of dangerousness. Lastly, the severity of the offense as measured with the offense severity scale, was not a statistically significant predictor of prosecution for transferred youth.

Statutorily excluded youth. The vast majority of juvenile cases handled by the Harris County, Texas adult criminal court involved 17 year-olds who were automatically excluded from the juvenile court's jurisdiction by law. Prosecutors handled 70,399 cases involving these youths between 1980 and 2010, and decided to prosecute in 44,859 of those cases. Because this age

group is homogenous, age was not included in the model. For cases involving 17 year-olds, each of the extralegal factors included in the model were statistically significant predictors of prosecution. When handling cases involving older juveniles, prosecutors also rely on extralegal factors in addition to legal factors. Racial, ethnic, and gender disparities were present within the statutorily excluded model. Black youths were over two times more likely to be prosecuted compared to similarly situated white 17 year-olds; and Hispanic youths were 1.5 times more likely to be prosecuted compared to white youth however, the strength of the relationship was moderate. In addition, statutorily excluded males were more likely to be prosecuted compared to their female counterparts. Consistent with most of the other models, when controlling for age, prosecutors still treated non-U.S. citizens more harshly than citizens.

In examining the effects of legal factors on prosecutorial decision-making involving 17 year-olds, all legal factors were statistically significant predictors of prosecution; and with the exception of the offense severity measure, were positively associated with prosecution. For this age group, being charged with any of the four offense types resulted in an increased likelihood of prosecution as compared to person offenders. The strongest relationship was between having committed a drug offense and prosecution, these youths were 1.8 times more likely to be prosecuted compared to person offenders of the same age. In considering that more of the 17 year-olds in the sample were charged with drug offenses than violent offenses, this finding suggests that prosecutors may be relying on perceptual shorthand based on stereotypical attributions and past experiences when considering prosecuting these offenders.

Contrary to the findings of studies investigating a juvenile penalty between transferred youth and similarly situated adult offenders (Jordan, 2014; Kurlychek & Johnson, 2004, 2010), within the current data, regardless of offense type, 17 year-olds were treated more harshly than

transferred youth. For 10-16 year-olds there was an inverse relationship between offense types and prosecution; however, for statutorily excluded youths, the relationships were positively associated. In line, with the previous focal concerns argument, the correctional systems were more likely prepared for and able to handle older juveniles, and thus prosecutors were more willing to funnel them through the adult criminal court. Similarly, having committed a felony as a 17 year-old was positively associated with prosecution whereas, it was negatively associated with prosecution for transferred youth; and this difference between age groups further solidifies the argument that a penalty is actually being attached to older juveniles in comparison to 10-16 year-olds. Also similar to previous findings, having multiple charges resulted in prosecutors being more likely to prosecute 17 year-olds.

Finally, the most surprising finding in regard to differential treatment between age groups surfaced in the effects of race and ethnicity. When deciding cases involving transferred youth, prosecutors appear not to consider the race and ethnicity of the juvenile in favor of relying on legal factors, but not when deciding to prosecute older youths. In other words, black and Hispanic youth are not treated any different than white youth if they have been transferred into the adult system; however, if they are in the adult system via statutory exclusion, their race and ethnicity matter and result in increased likelihood of prosecution. In terms of decision-making, 17 year-olds may be considered more ‘adult-like’ and culpable for the offenses they are charged with. In this respect, their age may work against them as they present less of a challenge for prosecutors when they are considering how the cases will be received by subsequent court actors. The age of the offender coupled with the large number of 17 year-olds processed in the adult court are likely forcing prosecutors to rely on their perceptual shorthand to efficiently handle these cases.

In conclusion, when prosecutors are deciding to prosecute transferred youth, they rely primarily on legal factors. However, when the prosecution decision revolves around statutorily excluded youths, prosecutors rely more on extralegal factors. It is highly probable that prosecutors are predicting that it will be more difficult to convince judges and/or jury members to prosecute younger juveniles. As such, they are ensuring that they have a strong, legal case to present in support of their decision to prosecute these juveniles. However, this may not be the case with older juveniles, and this then allows prosecutors more 'wiggle' room in what factors are considered in their decision-making process. The findings of this study are in contradiction to that of prior studies, and as such, support the argument that scholarly attention must be given to each area of criminal justice decision-making. First, when examining the key initial adult criminal court processing stage, it is older juveniles that are treated more harshly than similarly situated younger youth who have been transferred from the juvenile court's jurisdiction. This finding lends support for the current legislative debate surrounding the decision to move 17 year-olds back under the jurisdiction of the juvenile court. This is especially important when considering that the majority of the 17 year-olds in the sample had been charged with property offenses and the resources allocated to handling these cases in the adult court could be better utilized in the adult population.

Secondly, the finding that race and ethnicity matter for 17-year-olds and not 10-16 year-olds is also worthy of consideration. As demonstrated in the literature review racial, ethnic, and gender disparities have been found at every stage of juvenile and adult criminal justice processing. However, it appears that transferred youth are less likely to be treated discriminatorily at the initial prosecution decision-making stage in the adult court. In other words, these youths fare better in the adult system than in the juvenile system. Finally, this

finding also illustrates the importance of comparing transferred youth to individuals that are closer to them in age. It appears that the penalty attached to these youths because of focal concerns related to their 'transfer status' dissipates when compared to similarly situated 17 year-olds.

Once again, the current study sought to examine if a penalty was attached to transferred youth as compared to similarly situated 17 year-olds. Guided by focal concerns perspective, it was expected that the early onset of offending within the group of younger youths would work against them. More specifically, because transferred youths were committing crimes at a younger age and because they were deemed unamenable to treatment by the juvenile court, it was expected that prosecutors would consider them as being more dangerous and more likely to reoffend. This perception would then translate into harsher penalties being attached to this group of juvenile offenders. However, the findings of the current study contradict this argument. Prior studies had compared transferred youth to similarly situated adult offenders and found support for this argument. However, when both groups of offenders are persons under the age of 18, it is the older set of juveniles who are being penalized more harshly.

Limitations and Future Research

The current study adds to the existing literature by examining the main and interactive effects of race, ethnicity, gender, and age on prosecutorial decision-making, while controlling for other relevant extralegal (case disposition decade and citizenship status) and legal factors (offense type, offense severity, and number of charges) involving persons under the age of 18 in an adult criminal court over the span of three decades. Guided by focal concerns perspective and informed by prior studies examining these relationships with adult offender samples, the results of the study indicated that prosecutorial decision-making in Harris County, Texas is influenced

by the age, race/ethnicity, and gender of the offenders and these key factors also indirectly conditioned the effects of other extralegal factors (citizenship status and the decade in which the case was processed) as well as, legal factors such as, the offense type and severity. However, there are some limitations to the study which should be considered when interpreting the results, and which future studies may improve upon.

First, this study examined this decision-making point based on the most serious offense. It is possible that prosecutors are deciding not to prosecute on the offender's most serious offense in favor of prosecuting them on a less serious offense. Since transfer decisions are primarily based on the seriousness of the offense and there was a small percentage of individuals with more than one charge, the decision was made to restrict the analyses to the most serious offense. This decision is also supported by prior studies that have also limited their analyses to the most serious offense (Demuth & Steffensmeier, 2004; Spohn et al., 1987). Nonetheless, future studies may benefit from parceling out those individuals with multiple charges to examine how prosecutors handle those cases.

A second limitation of the study concerns omitted variable bias. None of the models within the study explained a great deal of the variance within the data. Although the study used every relevant variable in the data, it is possible that the inclusion of other factors may have increased the explanatory power of the models. If possible, other factors such as socio-economic status (Farnum & Stevenson, 2013), coming from a single versus dual parent household (D'Angelo, 2007), evidentiary strength (Franklin, 2010) and educational attainment (Carmichael et al., 2005) should be used in future studies. It is likely that these other factors influence criminal justice actors' decision-making which successively influences prosecutorial decision-making at the initial stage of adult criminal court processing.

Along this vein, an additional limitation of the current study is related to a lack of information on the offenders' prior juvenile or adult criminal history. Obviously, gaining access to a juvenile's court records is nearly impossible for researchers, however, such information may be readily available to prosecutors and would likely inform their decision of whether to prosecute juveniles in an adult court. Additionally, it is possible that the individuals in the dataset could have committed an offense and/or subsequently been prosecuted within another court's jurisdiction, which would also influence prosecutorial decision-making (Demuth & Steffensmeier, 2004; Steen et al., 2005). Although having such information would add greatly to the strength of the current study's findings, its lack does not necessarily invalidate the findings. Prior studies that have controlled for criminal history have found age, race/ethnicity, and gender effects on various outcomes in juvenile and adult courts (Demuth & Steffensmeier, 2004; Steen et al., 2005; Ulmer et al., 2007; Walker et al., 2012; Wang & Mears, 2010) therefore, suggesting that the findings of the current study are relevant and provide a contribution to the advancement of the literature.

Another limitation of the study is related to the absence of direct measures of the practical constraints of prosecutors. More directly, the literature suggests that prosecutorial decision-making may be influenced by practical constraints such as, conviction certainty, how the offender will be perceived by judges and jurors, as well as housing and treatment limitations (Beichner & Spohn, 2005; Franklin, 2010; Hartley et al., 2007; Kurlychek & Johnson, 2004, 2010; Steffensmeier et al., 1998; Steiner, 2009; Ulmer & Johnson, 2004). The data used for the current study did not include prosecutor's notes or rationale for their decision-making, which limited the testability of this theoretical component. Furthermore, information regarding prison populations or the availability of correctional units to house juveniles were not readily available

for the time span of the data and therefore, could not be included in the models. Although access to prosecutor's case notes is difficult to obtain, future quantitative studies would greatly benefit our understanding of the subject matter. Although the current study does not directly measure the practical constraints aspect of prosecutorial focal concerns, it does examine conviction certainty via the examination of total cases prosecuted and convicted. Despite this limitation, the current study still contributes to our understanding of how focal concerns perspective predicts prosecutorial decision-making involving juveniles prosecuted in an adult criminal court.

Implications

Even when considering the above limitations of the study, several policy implications can be derived. The results of the current study indicate that racial/ethnic, gender, and citizenship status disparities are present in prosecutorial decision-making. Minority group members, males, and non-U.S. citizens are prosecuted at higher rates and disproportionate to their representation within the population. As such, practitioners and policymakers may benefit from increased preventative programming that targets these youths and lowers the likelihood of their becoming involved in the juvenile and/or adult criminal justice system, such as mentoring and/or after school programs. Furthermore, more attention and funding must be given to these larger jurisdictions that aim to reduce disproportionate minority contact. The overrepresentation of minority youth in the adult system is problematic and results in a variety of negative and permanent consequences for these youths. It is imperative that measures be set in place that discourage all criminal justice actors from engaging in biased and discriminatory practices when handling minority youth and adults. When considering the potential weight of practical constraints on decision-making and the state budgetary allocations to the criminal justice system; if legislators were to decrease funding for jurisdictions with extreme DMC, it might serve as a

deterrence for such heavy reliance on extralegal factors. The disproportionality of minorities and males at this decision-making stage cannot be totally explained by offending patterns and thus warrants further investigation and remedy.

Additionally, the findings that extralegal factors were consistent predictors across models suggest these courtroom actors may benefit from diversity within the office, as well as, diversity training that may dispel some of the long-held myths and stereotypes related to these minority groups. Furthermore, the need for diversity extends beyond that of prosecutors' offices, from law enforcement to correctional officers and community corrections. By increasing the racial and ethnic diversity within the criminal justice system, it is possible that the amount of discriminatory and negative treatment and attitudes towards people of color will begin to lessen. Especially, considering that this is a jurisdiction within a southern state. If prosecutors and other criminal justice actors begin to increasingly see people of color in a more positive light, it may disrupt negative stereotypes and ideas related to them being more dangerous, unamendable to treatment, and a greater risk to society.

Finally, greater strides must be taken to get studies such as this into the hands of practitioners and policymakers. The gap between academia and those in the field limits our abilities to promote change and dispel myths. Studies have consistently shown that disparities are present in the treatment of minority group members at almost every stage of the juvenile and adult system (Bishop & Frazier, 1990; Bishop et al., 1996; Guevara et al., 2011; Hartley et al., 2007; Leiber & Mack, 2003; Spohn, 2000; Steffensmeier et al., 1998) however, limited attention has been given to these findings beyond academia. This disconnect increases the inequalities that are present in how we handle minorities, males, and illegal immigrants within our justice systems. More directly, the fallacy that we are in a post-racial era and that institutionalized 'isms

(i.e., sexism and racism) are not present is in direct contrast to the research and ultimately results in the harsher treatment of these individuals in comparison to similarly situated majority members. Evidence-based practices and policy must become the norm for the disparate treatment of racial/ethnic, gender, and citizenship status groups to dissipate.

Conclusion

In closing, the current study used a relatively large sample whose composition was comparable to national population characteristics and therefore, can be considered more generalizable. The current study examined prosecutorial decision-making involving persons under the age of 18 in Harris County, Texas' adult criminal court. As such, it adds to the current body of literature in several ways. Previous studies have examined decision-making at later stages in the criminal court process and have limited our understanding of the effects of extralegal factors to only the 'in/out' and sentencing phase. The present study examined the direct effect of legal factors as well as, the direct and interactive effects of key extralegal factors at the key, initial criminal court stage where the decision is made concerning whether to prosecute these youths. In recent years studies have found that a juvenile penalty was attached to transferred youths in the adult criminal court when compared to similarly situated adult offenders. The current study then sought to explore whether such penalties were imposed on transferred youth compared to similarly situated 17 year-old offenders. Interestingly, the results of the current study indicate that when both groups are comprised of juvenile offenders, it is the older youth (17 year-olds) who are penalized more harshly.

This dissertation had two main research questions: (1) What, if any, trends are present in the prosecutorial decision-making involving whether or not to prosecute juveniles in the adult criminal justice system; and (2) Which legal and extralegal factors predict the prosecutors'

decision to prosecute juveniles in the adult system? Informed by prior literature and focal concerns perspective, this study sought to determine if theoretical premises, and previously identified patterns and predictors in the decision-making involving adult offenders similarly applied to the treatment of juvenile offenders. As such, this study contributes to the current body of literature on decision-making involving juveniles processed in adult criminal courts, and theoretical explanations for why disparities may be present in criminal justice court actors' decision-making. Several key findings emerged from the study.

First, in attempting to answer the initial research question, the study identified some trends in prosecutorial decision-making in Harris County, Texas. Prosecutors tend to prosecute only those cases that they are most confident in obtaining a conviction. Within the data, prosecutors obtained a conviction in over 99% of the cases that they chose to prosecute. This finding coincides with suggestions from prior studies that one prosecutorial focal concern is the likelihood of conviction, which translates to job security. Second, the results indicate that black and Hispanic youth are disproportionately represented in the Harris County, Texas adult criminal court. This was especially the case with black youth. Black individuals comprised less than 20% of the total population, yet they constituted almost 38% of the total sample. Overall, these findings demonstrate that disproportionate minority contact is still an issue within our criminal justice systems. Lastly, trends in the data illustrate that persons under the age of 18 are most likely to be processed and prosecuted in the adult criminal court for property offenses. However, these trends are masking age group differences in the types of offenses prosecuted. Whereas, statutorily excluded youth are more likely to be processed and prosecuted in the adult system for property offenses, transferred youth are most likely to be processed and prosecuted for violent offenses. This suggests that prosecutors are disproportionately prosecuting 10-16 year-olds for

violent offenses to persuade subsequent court actors that they are indeed the ‘worst of the worst’ and therefore deserving of punishment.

The second research question sought to test the focal concerns perspective while examining if legal and extralegal factors predicted prosecutorial decision-making. The results of these analyses provide support for focal concerns perspective. In general, when deciding if to prosecute juvenile offenders in an adult court, it appears that prosecutorial decision-making is influenced by extralegal factors. When controlling for relevant legal factors, age, gender, and race/ethnicity disparities were present. Moreover, prosecutors are relying on their perceptual shorthand, which is more than likely based on a combination of past experiences and stereotypical attributions, in their decision-making. The results indicated that in addition to focal concerns regarding the culpability, dangerousness, and odds of recidivating of offenders, prosecutors are also concerned with practical constraints such as housing and treatment issues. As such, prosecutors were more lenient with felony offenders, which is indicative of them being concerned with things such as, jail and prison overcrowding and the allocation of state funding and resources to house, treat, and/or rehabilitate these first-time juvenile offenders within the adult correctional system. Additionally, prosecutors were concerned with having certainty surrounding the probabilities of securing a conviction and are only prosecuting those cases deemed less risky and highly likely to be convicted. To this end, prosecutors are taking into consideration not only their personal bias or discriminatory ideologies, but also that of subsequent court actors; in as much as, knowing how cases involving certain offender groups will be perceived by judges and jurors dictates the type of cases and offenders that further penetrate the criminal court system.

Overall, the major finding of the study is that extralegal factors were the most consistent predictors of prosecutorial decision-making. This may be due to the age of the offenders within the sample. It is probable that when the cases involve first-time offenders who are persons under the age of 18, prosecutors are more inclined to consider extralegal factors. Especially considering that prior criminal history cannot be factored into the decision-making process. Race/ethnicity and gender exhibited effects on prosecutorial decision-making and result in the disparate treatment of people of color, males, and those who are not U.S. citizens. This further illustrates a need for more diversified courtroom actors and a need for prosecutorial oversight. The wide range of discretionary latitude afforded to prosecutors is creating discriminatory and harsher treatment of black and Hispanic youths, particularly those that are male offenders. More effort must be made to remedy and reduce the effects of extralegal factors on prosecutorial decision-making, especially considering the population of study and the consequences associated with having an adult criminal record.

Finally, the current study also examined if a penalty was attached to juveniles who were transferred into the adult criminal justice system via the juvenile system as compared to those that were statutorily excluded from the juvenile system. Prior studies had found such penalties being attached when comparing these youths to similarly situated adult offenders (Jordan, 2014; Kurlychek & Johnson, 2004, 2010). However, the results of the current study indicated that when comparing transferred youth to similarly situated 17 year-old who were automatically excluded from the juvenile court's jurisdiction, transferred youth receive more lenient treatment than their 17 year-old counterparts. Even though younger youths were more likely to be processed for violent offenses, they were less likely to be prosecuted. However, transferred youth made up a relatively small percentage of the cases processed and therefore, more research is needed in this

area. Nonetheless, these findings provide support for the legislative changes that will return 17 year-olds to the juvenile court's jurisdiction in Texas.

In closing, regardless of whether juveniles are transferred into the adult system via judicial transfer or automatically excluded from the juvenile court's jurisdiction, how they are treated in the adult system is of great importance. Especially considering the negative consequences and outcomes associated with having a permanent criminal record. When considered with the wide discretionary latitude afforded to prosecutors, it is imperative that researchers, policy makers, and court actors keep a more accurate account of how they are handled in the adult criminal justice system. These youths represent the future of our society and as such, special attention should be given to their involvement in the criminal justice system. More directly, when these youths' poor decision-making results in them violating the law, our criminal justice actors must ensure that the decision-making processes, regardless of the stage in the system, be based on the relevant, legal factors surrounding the case and not the irrelevant, extralegal offender characteristics and negative stereotypes.

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Zimring, F. E. (2005). *American juvenile justice*. New York, NY: Oxford University Press.

VITA

Maisha N. Cooper

Curriculum Vitae

Sam Houston State University

College of Criminal Justice

Department of Criminal Justice and Criminology

Education

Sam Houston State University, Huntsville, Texas

Ph.D. in Criminal Justice: August 2018

Dissertation title: What a difference a year makes: An examination of prosecutorial decision-making for persons under the age of 18 in the Harris County, Texas adult criminal justice system. Patterns and predictors.

Chair: Dr. Erin Orrick

University of Central Missouri, Warrensburg, Missouri

Master of Science in Criminal Justice: December 2013

Thesis title: From theory to application: Is religiosity a factor in criminal behavior and juvenile delinquency?.

Chair: Dr. Randa Matusiak

University of Central Missouri, Warrensburg, Missouri

Bachelor of Science in Criminal Justice, Cum Laude: December 2011

Academic Employment

Aug. 2016 – May 2018: Doctoral Teaching Fellow for the College of Criminal Justice, Department of Criminal Justice and Criminology, Sam Houston State University

Aug. 2015–Aug. 2016: Graduate Teaching Assistant, College of Criminal Justice, Department of Criminal Justice and Criminology, Sam Houston State University.
CRIJ 2362 – Criminology (Fall, 2015 & Spring, 2016)

Aug. 2014 – May 2018: Doctoral Research Assistant for the Correctional Management Institute of Texas (CMIT), College of Criminal Justice, Department of Criminal Justice and Criminology Sam Houston State University. Research focused on juvenile and adult corrections and program evaluations. Under: Dr. Jeffrey Bouffard and Dr. Erin Orrick.

Jan. 2012–Dec. 2013: Graduate Research Assistant for the Department of Criminal Justice, University of Central Missouri. Assisted the Criminal Justice faculty with various research activities and projects. Under: Dr. Randa Matusiak

Peer-Reviewed Publications

Cooper, M. N., Updegrove, A. H., & Bouffard, J. A. (2018). Predictors of criminal justice undergraduates' intentions to pursue graduate education in criminology or criminal justice. *Journal of Criminal Justice Education*, 1-25.

Updegrove, A. H., Cooper, M. N., & Greene, H. T. (2017). Room for all? Comparing criminology and sociology completion rates across sex, race, and degree level. *Journal of Criminal Justice Education*, 1-23.

Bouffard, J., Cooper, M., & Bergseth, K. (2017). The effectiveness of various restorative justice interventions on recidivism outcomes among juvenile offenders. *Youth Violence and Juvenile Justice*, 15(4), 465-480.

Cooper, M. & Urban, L. S. (2012). Factors affecting juvenile waiver to adult court in a large Midwestern jurisdiction. *Institute of Justice & International Studies*, 12, 43-58.

Other Publications

Cooper, M. (2010). Factors affecting juvenile certification in St. Louis, Missouri. *The McNair Journal*, University of Central Missouri, 19, 14-17.

Manuscripts Under Review

Cooper, M. N. & Bouffard, J. (Under Review). Exploring the relative influence of religiosity on male and female felony offenders' intentions to offend.

Cooper, M. N. (Under Review). College prep not prison prep: Disparities in juvenile justice diversion decision-making.

Manuscripts in Progress

Cooper, M. N. & Muftić, L. (In Progress). Outcome assessment: Sam Houston State University's criminal justice learning communities.

Funded Research

Sam Houston State University Assessment Mini-Grant. **Principal Investigator**. Impact Evaluation: Sam Houston State University's Criminal Justice Learning and Living Learning Communities. (2017, \$1,000).

Government/Technical Reports

Bouffard, J. & Cooper, M. (2015). Bell/Lampasas County, Texas Drug Court Program: Process and Outcome Evaluation Final Report. Correctional Management Institute of Texas, Sam Houston State University, Huntsville, TX.

Presentations

- March 2017: The Academy of Criminal Justice Sciences 54th Annual Meeting: Kansas City, MO.
Presentation: College prep not prison prep: Disparities in juvenile justice diversion decision-making.
- February 2017: 3MT: Sam Houston State University, Huntsville, TX.
Presentation: Religiosity across the life course: Does the religiosity/crime relationship change?.
- November 2016: The American Society of Criminology 72nd Annual Meeting: New Orleans, LA.
Presentation: Religiosity across the life course: Does the religiosity/crime relationship change?.
- April 2016: The Woodlands Research Symposium: The Woodlands, TX.
Presentation: Exploring the relative influence of religiosity on male and female felony offenders' intention to offend.
- November 2015: The American Society of Criminology 71st Annual Meeting: Washington, D.C. Presentation: Exploring the relative influence of religiosity on male and female felony offenders' intention to offend.
- November 2013: The American Society of Criminology 69th Annual Meeting: Atlanta, GA
Presentation: From theory to application: is religiosity a factor in criminal behavior and juvenile delinquency?
- November 2012: The American Society of Criminology 68th Annual Meeting: Chicago, IL
Presentation: Faith-Based Programs: A comparative review of the United States, England, South Korea, and Japan
- September 2011: Honors Symposium: University of Central Missouri, Warrensburg, MO
Presentation: Factors affecting juvenile certification in St. Louis, MO
- September 2010: 14th Annual MKN McNair Heartland, Conference: Kansas City, MO
Presentation: Factors affecting juvenile certification in St. Louis, MO

September 2010: 17th Annual McNair Research Symposium: University of Central Missouri, Warrensburg, MO
 Presentation: Factors affecting juvenile certification in St. Louis, MO

Internships/Fellowships

May 2016 – October 2016: Summer Research Fellowship – College of Criminal Justice, Sam Houston State University

May 2015 – October 2015: Summer Research Fellowship – College of Criminal Justice, Sam Houston State University

May 2013 – August 9 2013: Summer Intern – Beyond the Fences, Ministries of Restorative Justice apart of the United Methodist Church Social Justice Team

May 2010 – September 2010: McNair Summer Research Internship – University of Central Missouri

Teaching Experience

AE 1400: Freshman Seminar. Fall, 2013
 University of Central Missouri, Warrensburg, Texas

CRIJ 3396: Juvenile Delinquency and Juvenile Justice (Writing Enhanced). Fall, 2016

CRIJ 3396: Juvenile Delinquency and Juvenile Justice. Spring, 2017

CRIJ 4385: Criminal Justice and Social Diversity. Summer, 2017

CRIJ 4385: Criminal Justice and Social Diversity (Online). Fall, 2017

Service

Peer Mentor: 2016/2017 Academic Year, Sam Houston State University, Huntsville, Texas

Peer Mentor: 2015/2016 Academic Year, Sam Houston State University, Huntsville, Texas

Graduate Council: 2013 University of Central Missouri

Editor: January 2012 – December 2013, UCM CJ Chronicle

Journals Reviewed for:

Corrections: Policy, Practice and Research

Crime & Delinquency

International Journal of Offender Therapy and Comparative Criminology

Honors and Awards

2016	Nominated for Outstanding Teaching Assistant Award
2016	Nominated for P.E.O. Scholars Award. Nominated by Dr. Danielle Boisvert, Sam Houston State University, Huntsville, Texas
2016	Excellence in Writing Recognition, Sam Houston State University, Huntsville, Texas
2016	Graduate Studies Scholarship, Sam Houston State University
2013	Allen Sapp Criminal Justice Graduate Student Scholarship, University of Central Missouri
2010	Third Place McNair Research Internship Paper Award
2010	McNair Scholar, Ronald E. McNair Post-baccalaureate Achievement Program, University of Central Missouri

Professional/Academic Membership

American Society of Criminology

Academy of Criminal Justice Sciences

National Society of Collegiate Scholars

Missouri Restorative Justice Coalition

Professional Development

2017	SHSU Teaching Conference
2016	Teaching Assistant Certification Series
2016	SHSU Online Teaching Conference
2016	SHSU Online Teaching Certification
2015	SHSU CJ GSO Statistics Workshop
2014	SHSU CJ GSO Statistics Refresher Workshop