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Waiver VF

WAIVING JUVENILES TO ADULT COURT SOME TRENDS AND CONCERNS

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New (1991) county figures on waiver activity were released not long ago.
We take the opportunity to present the data and some current issues.

ACQUISITIONS

WHAT IS WAIVER?

Waiver involves the transfer of jurisdiction over a juvenile case from family (juvenile) court to the adult criminal court. Its basic purposes have been to provide adequate punishment of the most serious and recalcitrant juvenile offenders and to ensure public safety. In New Jersey, the family court judge determines probable cause and decides on whether or not to waive. In doing so, the court must consider the likelihood that a juvenile can be rehabilitated through the resources of the juvenile justice system. One of several revisions of the Juvenile Code in 1983 relative to waiver practices provides that the burden of proof falls on the defense.

Waiver cuts to the philosophical core of the juvenile justice system.

Once waived, the juvenile is treated as an adult, can be held in an adult jail, and if found guilty, is subject to the same penalties as an adult. This loss of the rehabilitative and protective services of the family court makes waiver a controversial issue. Concerns about whether juveniles should be waived, and more commonly which juveniles, cut to the philosophical core of the juvenile system.

WAIVER IN NEW JERSEY

There has been a significant increase in the use of waivers in New Jersey in recent years. Between 1984 and 1990, we experienced a 189% increase in the number of waivers filed by prosecutors, and an increase of 161% in the number of waivers granted. Most increases did not occur until the latter part of the 1980s. The 198 waivers granted in 1990 was a 71% increase in just two years, while the 275 waivers filed was a 22% increase over two years. Somewhat surprisingly, the trend shifted in 1991 despite the addition of new "waivable" offenses during that year. For 1991, waivers filed dropped 7% (to 257); and waivers granted declined 11% (to 177).

Despite the increasing trend in the use of waivers in recent years, the practice continues to be restrained in New Jersey as in most other states. Waiver is utilized

In a very small portion of "waivable" cases, although this varies by type of offense.

COUNTY VARIATION

The use of waivers varies greatly by county. Essex County alone accounted for 58% of all waivers filed and 52% of all waivers granted in 1991. This is partially explained by the fact that Essex County accounts for a large share (25%) of all cases formally prosecuted. Even so, Essex files waivers at a rate four times the average rate for the remaining 20 counties, and grants waivers at three times the rate of the other counties.

It is unlikely that the substantial county variations in the use of waiver are only a reflection of the varied prevalence of "waivable" cases and average seriousness of county offenses. Consequently, the disparate use of waiver across counties presents questions of equity and fairness, as "similar" juveniles are more or less likely to be waived because of where they happen to live. We should note that the recent increases in waivers appear to be only partially due to increases in the number of "waivable" cases.

JUVENILE WAIVER ACTIVITY BY COUNTY, 1991

County	Waivers Sought	Waivers Granted	County	Waivers Sought	Waivers Granted
Atlantic	6	5	Middlesex	10	17 b
Bergen	2	2	Monmouth	1	1
Burlington	5	5	Morris	3	1
Camden	10	2 a	Ocean	6	5
Cape May	0	0	Passaic	25	25
Cumberland	8	6	Salem	1	1
Essex	150	92	Somerset	0	0
Gloucester	5	1	Sussex	1	1
Hudson	9	7	Union	11	3 c
Hunterdon	1	1	Warren	1	0
Mercer	2	2	TOTAL	257	177

a - 3 pending, 2 denied; b - not all filed in same year, 5 pending; c - 5 pending

PLACEMENT ISSUES IN WAIVED CASES

There are also significant placement issues involving juveniles who are waived. Where do we hold waived juveniles prior to disposition of their cases, juvenile detention centers or adult jails? And where do we place juveniles who have been sentenced to incarcerative

terms, juvenile training schools or adult institutions? These issues are controversial because of safety issues as well as other concerns about care.

New Jersey's approach with regard to the predispositional question is unique. We currently handle some juveniles in detention centers and some in adult jails -- at the discretion of the judge. And the practice varies from county to county. Statewide, waived youths are split almost evenly between county jails and juvenile detention centers. Typically, juveniles on waiver status remain in juvenile detention centers for about a year, even though these are meant to be short-term facilities, with only short-term programming provisions. Essex County has the only county jail with a separate juvenile wing.

Waived juveniles who must serve an institutional sentence are also handled in two different ways. They may be placed in either adult or juvenile facilities. Initially, juveniles are committed as adults to the Garden State Reception and Youth Correctional Facility (Yardville). While most remain at Yardville, a small number are transferred to juvenile reception at the N.J. Training School For Boys, based on recommendations of the Special Classification Committee (SCC). Most of these cases are then transferred to the Juvenile Medium Security Facility at Bordentown.

WHAT SENTENCES DO WAIVED JUVENILES GET?

Whether or not youths waived to adult criminal court receive more punitive sentences than similar youths who remain in juvenile court has been the topic of much debate nationally. Research findings have been contradictory. It does appear, though, that at least for the more serious and, especially, violent cases, waived juveniles are more likely to be incarcerated and for longer periods of time.

An analysis by the Essex County Prosecutor's Office provides some useful information on sentencing patterns in Essex County's waived cases. Waived cases between 1989 and mid 1992 were disposed of in the following manner: 65% received an incarceration sentence of 5 years or more from the adult criminal court; a large majority (89%) of the waived cases received some incarceration time from the adult court. The remaining cases were either dismissed or found not guilty. Waived cases typically involve first or second degree offenses, usually murder, aggravated assault or armed robbery, and cases of rape when there are "aggravating" circumstances. Juveniles waived on lesser charges tend to have extensive prior offense histories.

It seems very likely that these juveniles would have received, on average, lesser sentences in family court. Relatively few juveniles receive incarceration dispositions, even for the more serious types of offenses or repeated offending. Critics of the system point out that the Juvenile Code provides shorter maximum terms of

incarceration than does the adult system. For example, while an adult can receive up to 10 years for a second degree offense, juveniles can receive no more than 3 years.

Waived juveniles seem more likely to be incarcerated and for longer periods of time.

It is important to note, however, that New Jersey's juvenile system does provide for more lengthy incarceration terms for juveniles than do many other states; and juveniles are held well beyond their "majority" unlike many other states. The Juvenile Code, for example, provides for a maximum sentence of 20 years incarceration in murder cases; and the maximum is utilized.

The bottom line is that waived juveniles do appear to frequently receive harsher penalties, and are "incapacitated" in institutions more frequently, at the hands of the adult system in New Jersey.

SOME FINAL THOUGHTS

There continue to be serious concerns about the use of waiver. Several bills currently before the legislature call for mandatory waiver of juveniles under certain circumstances (e.g., when there has been a prior adjudication of delinquency on a "waivable" offense; in auto theft cases, when there has been a prior auto theft adjudication; or when a stolen auto is used to commit certain serious offenses.) In addition, some prosecutors favor the practice of certain states of placing select serious offenses automatically under the jurisdiction of the adult system. For some, the actual response to many serious cases by the juvenile system is found wanting.

While philosophical or political perspectives will influence opinions on the use of waiver, a better understanding of the long-term impact of waiver on future recidivism would contribute to informed policy decisions. One useful piece of research would compare subsequent law breaking among waived vs. similar non-waived juveniles. For example, while the public may be free of concern during the time juveniles are "incapacitated" in adult prisons for five years, are those juveniles ultimately more, less or just as likely to continue offending as similar juveniles handled by the juvenile system. This is clearly one important question to answer.

1. In early 1991, death by auto (while under the influence of illegal drugs or alcohol) and auto theft were added to the existing list of specifically delineated "waivable" offenses (i.e., criminal homicide (other than death by auto), strict liability for drug induced deaths, first degree robbery, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping, arson and select drug offenses).