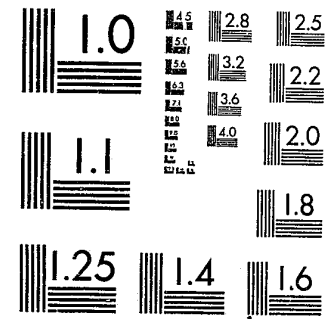


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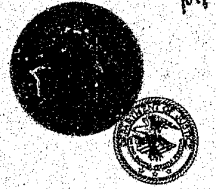
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National Institute for Juvenile Justice and Delinquency Prevention



MAJOR ISSUES IN JUVENILE JUSTICE INFOR- MATION AND TRAINING:

Youth in Adult Courts:
Between Two Worlds

80823

Major Issues in Juvenile Justice Information and Training Project

This volume is one of a series of books and monographs of Project MIJIT, to be published by the Academy for Contemporary Problems in 1981 and 1982.

- The Out-of-State Placement of Children: A National Survey
(State profiles appear in five supplemental volumes.)
- The Out-of-State Placement of Children: A Search for Rights, Boundaries, Services
(Text in master volume; appendixes in Volume 2.)
- Youth in Adult Courts: Between Two Worlds
(State profiles appear in five supplemental volumes.)
- Services to Children in Juvenile Courts: The Judicial-Executive Controversy
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MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING

Youth in Adult Courts: Between Two Worlds

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PREFACE

We have a dilemma in America, one that will not soon be resolved. The objects of our discomfort are teenagers who commit serious and sometimes violent crimes. As a society, we have agonized for 200 years, searching for a just, humane, and effective response to the social threat that juvenile crime represents.

The results are obviously dissatisfying. Whatever laws are passed attract critics who argue either that society is no safer because of the new laws, or that the affected juveniles are no closer to acceptable adulthood through receipt of the prescribed punishments or treatment. So, the laws are changed but the criticism remains unaffected. How can this happen? A clue may lie deeply buried within our own biology.

Human beings are social animals. We live collectively in differing stages of interdependency. We share, along with other social animals, traits that characterize only those forms of life for which the adjective "social" is appropriate. No matter how much we wish to dissociate ourselves from other forms of animal life, the fact is that much of our behavior is determined. Despite our ability to think abstractly and to develop technology to compensate for our physical limitations, we behave very much like bees, ants, wasps, and termites in some very fundamental ways. The similarities are most profound when comparing the ways in which we all approach the matter of survival.

There are two particular adaptive mechanisms which immediately come to mind: social animals possess clearly observable techniques for destroying external threats to their collective survival and they also commit inordinate resources to the protection of their young.

In the former instance, group members, usually those best adapted for such function, seek out and destroy intruders or other outsiders who appear to threaten overall social survival. In fact, there can be said to be a certain nonchalance about even large numbers of deaths that appear to serve survival.

In the case of protecting the young, the implications for social survival are obvious. Without a well-trained generation of youth nurtured into adulthood, there can be no sustaining of the species. Because of society's dependency upon the most vulnerable portion of its population for survival, young members, of whatever type, represent its most valuable and most delicate category of citizens.

The poignancy of the matter is the way in which dangerous juveniles place us in the internal conflict with our own biology. So long as the number of serious offenses by young people are relatively few, the prevailing attitude will likely emphasize our need to train, protect, and socially control offending

youth until they are old enough to take our places. But whenever the frequency or seriousness of such events becomes viewed as a threat to the survival of our society as we know it, chances are good that we will be moved to destroy (or at least extensively incapacitate) the offenders, even though they are our own children. These assaultive youth will be viewed as strangers, not responsive to our mores, not deserving of our protection. As strangers, they can be dealt with effectively. As extreme extensions of ourselves, they represent a dilemma that is intractable: they are too young to destroy, they are too predatory to train or protect, they are too many to ignore.

There continues a neverending search for the right answer, for the response that can again awaken the hope that these teenagers can somehow be made to contribute, as adults, to the preservation of our society. While I hope that such an answer awaits, ready for discovery, something inside me doubts its existence. The search will remain preeminent, as indicators of our perceptions of our young, of our perceived needs for social control, of our desire for survival.

January, 1982

Joseph L. White
Project Director

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We express our appreciation to the state and county officials without whose assistance this report would not have been possible. We are especially grateful to the state court administrators, the state criminal and juvenile justice planners, state juvenile and criminal justice corrections officials, and legislative service personnel who provided data on court and corrections organization and statutory material on how youth are handled in the criminal justice system. In addition, our thanks are extended to the courts and prosecutors in the more than 3,100 counties who answered our survey questions with patience and cooperation.

There are several other groups who deserve our special thanks. In 22 states, private consulting groups, advocacy organizations, or professional organizations assisted in the data collection efforts. In ten states, arrest data on 16 and 17 year old adults were obtained from crime reporting agencies, and in 13 states, aggregated data were provided by state agencies. They are individually acknowledged in the state profiles, but a collective word of thanks is extended to them. Without their help, this report would have been more difficult to produce.

We also express our appreciation to the National Center for Juvenile Justice for allowing us the use of its juvenile population estimates; to Appropriate Solutions, Inc., for their efforts in data reduction, computerization, and programming; and to the Ohio State University Computer Center for the use of its facilities.

PROJECT MIJJIT ADVISORY COMMITTEE

We are very much indebted to the individuals who served as an Advisory Committee to this Project, and to their respective organizations which made their participation possible. Individually and as a group, the Advisory Committee members acquitted themselves with distinction. The meetings were frequent and intensive; the reading material was both technical and voluminous. Through it all, they persevered, motivated by their concerns for children and by their own personal standards. Through this introduction, their contribution to the production of this volume is gratefully acknowledged.

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CHAPTER 1

CHAPTER 1

INTRODUCTION

GROWTH OF A QUANDARY

The criminal acts committed by juveniles cause us great consternation. They leave us torn between the strong and conflicting emotions of fear and compassion. Those "criminals" are, after all, our own troubled children. Yet, some of them can prey upon us with a viciousness equal to that of any adult offender.

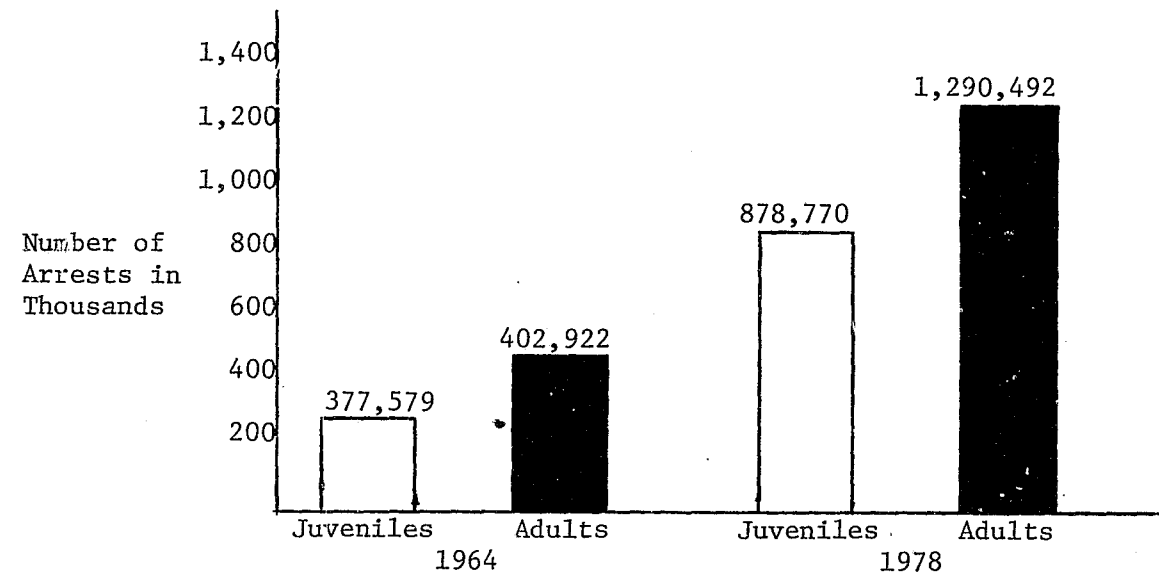
While we may heatedly debate proper sentencing for adults, most of us would agree that an adult offender's fate should be decided in criminal court. With youth, however, we face a more difficult issue. In addition to the question, "What shall be done?", we must also decide, "What type of court is appropriate for the circumstance?"

Although all states have, and have had for many years, statutory provisions allowing the prosecution of juveniles in adult courts, these statutes have come under intense public scrutiny only recently. A variety of factors have contributed to the explosion of interest in this area, and, while the web of causality is quite tangled, certain threads seem prominent. Let us examine some of the more prominent reasons.

The number of serious crimes committed by juveniles has dramatically increased during the past 15 years.¹ While youth from ten through 17 years of age constitute less than 14 percent of our population, they comprise almost one-half (45.5 percent) of those arrested for index crimes and almost one-fourth of those arrested for what are classified as "violent" crimes.² There are now, of course, more juveniles today than there were 15 years ago but, even so, these juveniles participate in serious criminal activity at rates much higher than the rates applicable to earlier generations. From 1964 to 1978, the number of juvenile arrests involving homicide has almost doubled. During the same period, arrests of juveniles for robbery increased almost 350 percent. Since these figures are unadjusted for population changes, they may overstate the increases but, nevertheless, the increases are tangible and persistent.³ As can be seen in the following figures, though not as dramatic as adult arrest rates, juvenile participation in UCR Index crimes, and particularly crimes of violence, have increased markedly.

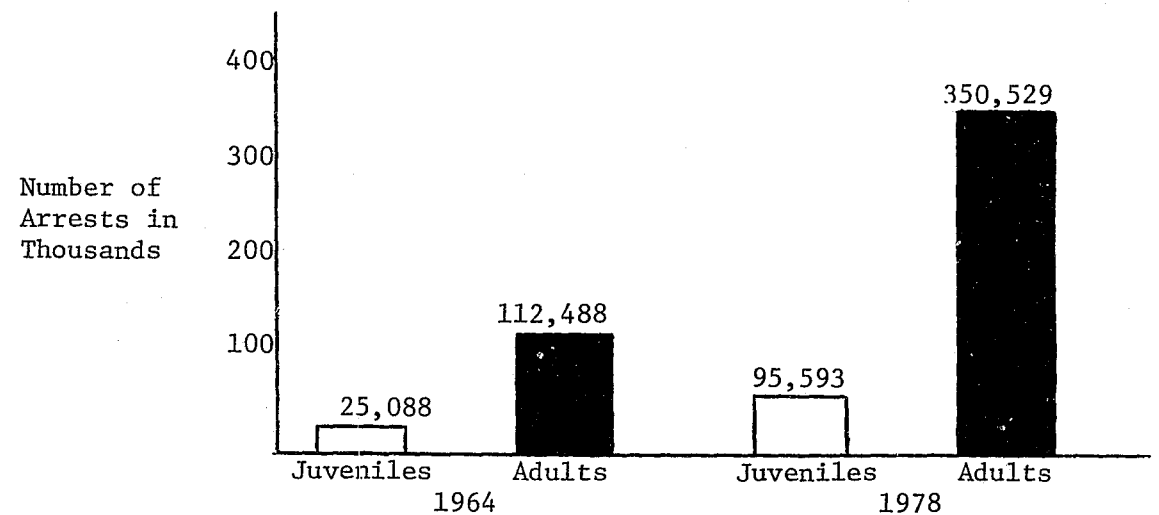
Because the incidence of crimes attributable to juveniles has increased steadily, it sometimes gives rise to what well may be a distorted view that

FIGURE 1. JUVENILE (UNDER AGE 18) AND ADULT ARRESTS IN THE UNITED STATES FOR ALL INDEX CRIMES^a: 1964 AND 1978



a. Index crimes are offenses of murder, forcible rape, robbery, aggravated assault, burglary, larceny/theft, and motor vehicle theft.

FIGURE 2. JUVENILE (UNDER AGE 18) AND ADULT ARRESTS IN THE UNITED STATES FOR VIOLENT CRIMES^a: 1964 AND 1978



a. Violent crimes are offenses of murder, forcible rape, robbery, and aggravated assault.

juveniles are more responsible for serious crimes than are adults. While total adult arrests for serious crimes increased approximately seven percent from 1970 to 1975, juvenile arrests for the same crimes increased only five percent.⁴ The difference of two percent, while small, does suggest that juveniles may be involved in relatively fewer crimes than are adults, particularly in view of the probability that juvenile offenders are more likely to get caught. However, contemporary commentators feel no compunction about discussing the juvenile increases as an "epidemic" or "explosion," even though youth participation fails to show disproportionate increases.

Not only have the rates of criminal participation changed in the past 15 years, but so have our attitudes about treatment. The intellectual and academic worlds have been enmeshed in a painful reassessment of the roles of both juvenile and criminal courts. The rehabilitation model, which lies at the heart of juvenile court philosophy, has come under heavy attack.⁵ It espouses the medical model of diagnosis and cure for delinquents. (The disposition selected by the court is the one believed most suitable to the needs of the child. The child remains under the jurisdiction of the system (indeterminacy) until he is deemed cured.) The public now appears to be looking to the criminal courts and to a punishment model for the means to slow the crime wave by juveniles. The advocacy of this position has emerged from the belief that youngsters are being treated too leniently by the juvenile justice system and are actually getting away with murder. What is sought is a system of punishment that sentences the delinquency and not the delinquent, the crime and not the criminal.

None of this has escaped the media. Lurid accounts of vicious crimes perpetrated by juveniles are now common fare.⁶ Both the higher rates of victimization and the higher visibility of serious juvenile crime have sensitized the public. Television series frequently cast both criminals and courts in the role of villains.

Public officials have responded with a plethora of reform proposals. Many of them directly focus on easing restrictions on the removal of juveniles from the supposedly more benign juvenile court into what is seen as the sterner and more punitive world of the criminal court.

Legislative proposals have included:

- Lowering the initial age of criminal court jurisdiction.
- Mandating transfers of juveniles to criminal courts for expanded categories of crimes.
- Subjecting juvenile delinquents to the same penalties as adult criminals.
- Allowing juvenile records to be introduced into adult court proceedings.

- Allowing fingerprinting and photographing of juvenile offenders.
- Providing either minimum or maximum penalties, or both, for felony offenses in juvenile court.
- Sentencing or permitting the administrative transfer of delinquents to adult prisons.
- Allowing prosecutors more freedom in deciding when juveniles should be tried as adults.
- Developing specialized secure treatment programs and facilities for serious delinquent offenders.

Traditionally, juvenile courts have decided when they should relinquish jurisdiction over cases and transfer it to criminal courts. In 1978, New York reversed this flow: criminal courts may now waive 13 to 15 year olds (who are referred directly to adult courts for serious offenses) to the family courts.⁷ Also, more and more legislatures take under advisement bills that remove larger and larger segments of the juvenile population to adult courts.

The same series of events can be observed in a number of state legislatures. The actors vary from state to state, the measures under consideration differ, but the tone of debate and the issues at stake remain the same. Increasing concern over serious juvenile crime and a decreasing faith in the rehabilitative model have focused intensive legislative attention on juvenile courts. It is clearly a turning point in public policy toward serious juvenile offenders.

A final factor in this amalgam of causes for current interest in juvenile crime has been the role played by the U.S. Supreme Court.

The U.S. Supreme Court, in Kent v. United States, held that waiver of juvenile court jurisdiction was a "critically important" stage in the judicial process.⁸ At this point,

The juvenile stands at the threshold of the criminal justice system, oriented towards punishment and the best interests of society, and the juvenile justice system, oriented towards rehabilitation and the best interests of the youth.

Because it is so critical, the U.S. Supreme Court held that this determination must include minimum requirements of due process and fair treatment required by the fourteenth amendment. The four basic requirements set forth by the Supreme Court were:

- If the juvenile court is considering waiving jurisdiction, the juvenile is entitled to a hearing on the question of waiver.
- The juvenile is entitled to representation by counsel at such hearing.
- The juvenile's attorney must be given access to the juvenile's social history record on request.
- If jurisdiction is waived, the juvenile is entitled to a statement of reasons in support of the waiver order.⁹

Although the Kent decision was initially seen as simply an interpretation of the District of Columbia statutes, the principles stated in Kent have generally been taken to be of constitutional dimensions.¹⁰ The due process requirements and the factors to be considered in waiver cases, presented in the Kent decision, have caused that decision to become a landmark case in the waiver of juveniles to adult courts everywhere in the nation.

In contemporary America, the referral of youth to adult courts represents a watershed for both the juvenile courts and individual juvenile defendants. In both cases, the issues involve the "proper balance" between the dual juvenile court goals of rehabilitating youth and protecting society. These varying perspectives and organizational responses form the issues which this study addresses.

THE PRESENT RESEARCH

Unfortunately, the information now available on youth in adult courts can be best characterized as fragmentary. Special studies of single courts, surveys by a smattering of state agencies, and praiseworthy efforts by a few academic researchers are all that we have to consider.¹¹ From these works, some flavor of the world as it relates to youth in criminal courts can be sampled, but they offer only a taste. Many critical questions, such as the ones appearing below, have remained unanswered for far too long:

- Since the establishment of juvenile courts at the turn of the century, state codes have contained provisions to try certain juveniles as adults. Why have these provisions become a major issue during the past 15 years? Is it solely a response to the increase in violent and serious juvenile crime, or is it also a response to the dissatisfaction with juvenile courts and the rehabilitation model?
- Juveniles may be tried as adults, according to various state laws that place them in criminal courts. Is there a

relationship between the types of referral mechanisms used by states and either the frequency or the characteristics of those youth referred? How is the justice system affected by the various mechanisms for referring juveniles to adult courts?

- Two conflicting assumptions are made about juveniles tried as adults and about the adult system that handles them:
 - (1) If convicted, they are more likely to receive corrections sentences for longer periods of confinement; or
 - (2) They frequently "beat the rap"; i.e., a light sentence or no conviction at all. Which assumption is true? Are there disparities between sentences that juveniles receive as adults and those received by juveniles who are retained in juvenile courts for comparable offenses?
- Is redefining certain juveniles as "adults" an effective method for reducing or controlling violent juvenile crime?
- Since the Kent decision in 1966, most states utilizing judicial waiver and prosecutorial discretion provisions have statutorily itemized factors to be considered in the decision to refer juveniles to criminal courts. What criteria are the most important in the actual decision to transfer? Have these criteria been reordered in the last ten years?
- Since the Kent and Gault decisions, juveniles have been afforded more due process rights in juvenile courts. How do the rights of juveniles in juvenile courts compare to their rights in criminal courts?
- In many states, juveniles can elect to be tried as adults. What factors lead juveniles to elect to be tried in criminal courts, rather than to remain in juvenile courts?
- The jurisdiction of the juvenile courts has been narrowed at both ends: minor and status offenders are increasingly handled by social agencies; more violent and serious offenders are being referred to criminal courts. How is this affecting the direction and relevance of juvenile courts?

To enhance both the quality and quantity of information available to policymakers dealing with this important issue, the Academy conducted a national census of youth who were referred to adult courts in 1978. Through data provided by state agencies, telephone surveys of juvenile and adult courts, and on-site interviews, the staff gathered data from the more than 3,000 counties in the United States. The quantitative data were coupled with statutory and case law analyses for each state. The goal was to provide policymakers with a set of comprehensive, baseline data, compiled from statistical, legal, and opinion research.

The Academy's study of youth in adult courts involved three multifaceted lines of inquiry: an intensive literature and legal review; a national census of juveniles and youth referred to adult courts in 1978, by whatever legal mechanism; and in-depth case studies in the ten states. All of the findings appear in this volume and in a series of companion volumes, the latter containing comprehensive profiles of each state. In addition, a series of policy essays about the key issues relating to youth in adult courts appear in a volume, entitled Readings in Public Policy, which was published by the Academy in 1981.

Appendix A of this volume provides detailed information on the nature and scope of the research. It is intended to provide an understanding of the exact information sought and the strategies used to obtain it. For those readers who wish to know only the findings, the next five chapters are laid out with a minimum of interruptions.

Chapter 2 begins the report with a review of popular, social science, and legal publications. The review traces the treatment of the issue of youth in adult courts over the past 30 years, from 1950 to the present. Both published and unpublished research have been included.

Chapter 3 presents an overview of the results of the legal research. A survey of state statutes documents the use of a variety of procedures for prosecuting youth in adult courts. It reflects that all states use one or more of four legal mechanisms, namely, judicial waivers, concurrent jurisdiction, excluded offenses, or where (as is the case in 12 states) the age of criminal court jurisdiction is below 18.

The inclusion of the last legal mechanism mentioned raised a serious question in designing the present study, namely, whether these 16 and 17 year olds should be defined as "youth." By statutory definition in those 12 states, they are adult offenders in all matters involving criminal responsibility. Yet, they would be juveniles in 38 other states.

A decision was made to include them in the research. State legislators, wrestling with the problem of serious juvenile crime, frequently view lowering the age of criminal court jurisdiction as an attractive policy alternative without having much information about its consequences. If policymakers are to be presented with a complete picture of their alternatives, they must be informed about those 12 states where the age of criminal court jurisdiction is below 18. What occurs in those 12 states may provide valuable information on the usefulness of this alternative.

The four legal mechanisms outlined above are the statutory "building blocks" for creating this American anomaly, namely, the presence of hundreds of thousands of youth in adult courts, despite the existence of juvenile courts in every state in the Union. Since each state has devised its own, slightly unique procedure, a review of these state codes makes fascinating reading for anyone interested in the subject.

Chapter 4 presents a summary of the results of the national census. This chapter indicates the total number of youth prosecuted in adult courts

in 1978. It shows how many youth entered adult courts through each legal mechanism in each state and in each county.

Because of the understandable interest that legislators and other policymakers would have in information pertinent to their districts and because of the significant variation in referral provisions, a report based on scientific sampling was deemed not to be appropriate. In a highly volatile policy area that can literally lead to the forfeiture of childhood for many juveniles, the most extensive data possible was considered most desirable. Therefore, the decision was made to collect the frequency of referrals on a county-by-county basis. In addition, demographic, offense, dispositional and sentence data were sought in a large sample of counties.

Recognizing the enormity of the undertaking, a unique approach was tried. Advocacy and civic organizations, as well as private consulting firms knowledgeable about the juvenile justice system within certain states, were contacted. Contracts were developed engaging these groups to conduct the telephone survey interviews. In 22 states, such organizations as the League of Women Voters, the National Juvenile Law Center and the Kentucky Youth Advocates collected the needed data, after extensive training conducted by Academy staff. Data were obtained in the remainder of the states by Academy staff. This eclectic approach to the data collection effort is one of the most unusual features of this study and could offer an approach to overcoming the enormous costs associated with macroresearch efforts in any number of social science areas.

Chapter 5 summarizes the findings of ten, on-site case studies, the full texts of which may be found in the separate policy volumes mentioned above.

Through investigative on-site interviews with juvenile and criminal justice personnel, elected officials, criminal justice planners, advocates, and other knowledgeable individuals in ten states--California, Colorado, Florida, Massachusetts, Minnesota, Nebraska, New York, Oklahoma, Pennsylvania, and Washington--perceptual responses to many of the questions listed earlier were obtained. These findings have been incorporated into the respective state profiles and provide three types of data unavailable in other segments of the research. First, the history of the transfer mechanism in each case study state is documented. Second, personal interviews, conducted as part of the case studies, offer an insider's view of the effects of trying juveniles in adult courts, as perceived by users of the system. The third feature is the ability to describe recommended changes to improve the process, as advocated by state and local people who know the system best.

The conclusions and policy recommendations are presented in Chapter 6. This chapter synthesizes the findings of the study. It points out a number of important policy questions facing persons concerned with the transfer of juveniles from juvenile to criminal courts.

Five accompanying volumes contain 50 state and two federal profiles, divided according to geographical regions. Each profile outlines the data collection procedures used in that jurisdiction and displays data about youth tried as adults in 1978, in each of that state's counties. The profiles also summarize court structures, emphasizing the position of juvenile courts, and summarizes those statutory provisions and court decisions relating to the prosecution of youth as adults. Readers are encouraged to cross reference between Chapters 4, 5, and 6 and specific profiles so that the data presented in the national summaries might be better understood.

A CONTINUING DIALOGUE

The future is never clear. The lesson of history may well be that it does not repeat itself. Yet, it may be possible to prognosticate that, if left unchecked, certain trends will continue to plague the country.

Juvenile crimes will probably continue to grow at a slower rate than adult crime during the next ten years as a result of a decreasing juvenile population. However, the picture is less hopeful when discussing only violent juvenile crime. Because violent crimes are generally concentrated in socioeconomically depressed urban areas, where demographers project a continuing replacement in adolescent population, violent juvenile crime will probably continue at about the same ratio until at least the mid-1980s.

During the next few years, a number of very important decisions will be made by state legislators and, to some extent, Congress, concerning this very sensitive issue. These decisions will determine future public policy toward juvenile offenders for, perhaps, the rest of this century. It is our hope that this report, and its companion volumes, can contribute to the dialogue preceding those decisions.

FOOTNOTES

1. Franklin E. Zimring, "The Serious Juvenile Offender: Notes on an Unknown Quantity," in The Serious Juvenile Offender: Proceedings of a National Symposium (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1978), p. 15.
2. Federal Bureau of Investigation, Uniform Crime Reports for the United States, 1978 (Washington, D.C.: U.S. Government Printing Office, 1978).
3. Ibid., 1964 and 1978.
4. Ibid., 1970 and 1975.
5. See, Ernst van den Haag, Punishing Criminals: Concerning a Very Old and Painful Question (New York, N.Y.: Basic Books, 1975); and James Q. Wilson, Thinking About Crime (New York, N.Y.: Basic Books, 1975).
6. Ted Morgan, "They Think, 'I Can Kill Because I'm 14,'" New York Times Magazine, January 19, 1975, pp. 9-34; S. Solomon and R. Manning, "Wild in the Streets: Detroit Gang Violence," Newsweek, Vol. 88 (1977), p. 478; and S. Stevens, "The 'Rat Packs' of New York," New York Times Magazine, November 28, 1971, p. 29.
7. State of New York, The Violent Juvenile Offender Bill, September 1, 1978, Chapter 481 of the Laws of 1978.
8. Kent v. U.S., 383 U.S. 541, 556 (1966).
9. Supra, note 9.
10. The importance of the Kent decision was magnified after the landmark case of In re Gault, 387 U.S. 1, 12 (1967).
11. Pennsylvania Joint Council on the Criminal Justice System, The Transfer of Juveniles to Adult Court, 1974-1977 (Harrisburg, PA.: 1978); Supreme Court Juvenile Justice Study Commission, Report to the Minnesota Supreme Court (St. Paul, MN.: 1976); and K. Teilmann and M. Klein, "The Assessment of the Impact of California's 1977 Juvenile Justice Legislation," unpublished. See also the classic research by Marvin Wolfgang, Robert Figlio, and Thorsten Sellin, Delinquency in a Birth Cohort (Chicago, IL: University of Chicago Press, 1972). Wolfgang's speculations about the applicability of his research to juveniles can be found in Wolfgang, "From Boy to Man--From Delinquency to Crime," in The Serious Juvenile Offender: Proceedings of a National Symposium, p. 163-173. A more recent cohort study of great interest is Donna Hamparian, et al., The Violent Few (Lexington, MA.: D.C. Heath and Co., Lexington Books, 1978).

CHAPTER 2

CHAPTER 2

THE LITERATURE

The early legal literature treated the referral of juveniles to criminal courts as only one of several aspects of new juvenile codes. The waiver mechanism wasn't separately analyzed for its innovativeness by early twentieth century commentators. Rather, it was the general philosophy of juvenile codes that captured writers' attention. When it did receive comment, it was mentioned in passing as a mechanism that provided a "compromise", accommodating the beliefs of reformers (who supported the establishment of juvenile courts) and those of traditionalists (who wanted to continue criminal court jurisdiction over children).

Some early articles which explored waiver saw it as emerging out of old common law presumptions that children under seven years of age were conclusively presumed to be unable to commit crimes.¹ At common law, children lacked the requisite legal "ability" to form criminal intent below the age of seven years. Between seven and 14 years of age, children were rebuttably presumed to be able to form criminal intent. Over the age of 14 years, it was no longer a matter of maturation: children were presumed to be competent, subject, of course, to such adult defenses as insanity.² As transformed by juvenile codes and waiver statutes, however, younger children were no longer provided such a defense: if criminal court jurisdiction was inapplicable, the juvenile courts would assume jurisdiction.³

Much of this early literature may be an historical basis for legitimizing the juvenile court. As such, it explained the constitutionality of juvenile courts, despite their social service orientation.⁴ Although the *parens patriae* theory ultimately became the constitutional foundation for juvenile court activities, those early articles offered an interesting alternative theory. It reflected the hybrid nature of the juvenile courts, a blend of English common law and equity traditions, as well as American notions of statutory courts. Because the *parens patriae* doctrine is now falling into some disrepute, it shouldn't be surprising that waiver, with its traditional ties to common law presumptions, should be used as a vehicle for discourse about both the mission and function of juvenile courts. Perhaps this modern trend will revitalize early common law justifications for the creation of juvenile courts.

The literature has developed--fitfully at times--to a point where there are now discussions of a "jurisprudence of waiver" and "philosophies of waiver." Referral is understood to be a broader concept than just a juvenile court's authority to transfer a child to an adult court. Now, such issues as legislated preconditions and prosecutorial discretion regarding the filing of charges are viewed as integral to these discussions.

A new theme appears in more recent articles. It describes waiver as a "warning flag", intended to put the child and his family on notice that something significant is happening. Articles suggesting this kind of sociological significance appeared about the time of the Kent decision and build upon the detailed considerations required by the supreme court in that case. Christine Hogan describes waiver after Kent as requiring "ceremony rather than simple or automatic procedures."⁵ A fuller statement appears in Mortimer J. Stamm's "Transfer of Jurisdiction in Juvenile Court", where he writes that the use of specific language in waiver orders:

. . . informs everyone that a movement is taking place. In this case, a child is being moved from juvenile court into the criminal justice system.⁶

Over time, articles about juvenile court referrals have grown. There is now a sufficient body of literature to permit grouping around (1) who actually decides which juveniles will be referred, (2) how judges or prosecutors decide to waive, and (3) what factors determine whether waivers will occur. The discussion of "who decides" is limited to considerations of the relative merits of judicial, prosecutorial, and legislative decisions in the referral of youth to adult courts.

By far, "how transfers are decided" and "what is decided" have received the greatest attention in the literature. "How waiver is decided" is now largely a discussion of procedural due process.

One supplemental category of articles might be described as "technical studies." These reports focus on single states or they attempt to review waiver provisions for all jurisdictions in the country. Typically, technical studies are descriptive of the historical development of waiver statutes and pertinent case law rulings. Each of these categories will be discussed in turn below.

WHO DECIDES?

The issue of who actually decides to waive has been a topic in the literature almost from the earliest years of the juvenile court movement. Yet, the specific framing of this issue has varied over time.

The early writers framed the question of "who decides" as a matter of conflicting or overlapping jurisdiction between courts, caused by ambiguous statutory and constitutional provisions. Even where prosecutors were involved, the issue of "who decides" focused not on the prosecutor, but on the two courts--adult and juvenile--which laid jurisdictional claim to juvenile proceedings.⁷ Did adult courts have concurrent or exclusive jurisdiction over children accused of crimes? Must a child first be charged in juvenile court, or could an indictment be obtained despite the fact that a child had been

charged in juvenile court? This literature ultimately became obsolete as statutory and constitutional amendments clarified prior ambiguities.

From the vantage point of the 1980s, this literature seems rudimentary. Yet, because it addressed simple issues, without extensive case law, the literature is rich in basic policy considerations regarding both the purposes of juvenile and adult courts and the relationship between them. In its more recent appearance, it is most commonly found as a consideration of a "tri-partite" waiver scheme: i.e., whether these questions are best decided by courts, prosecutors, or legislatures.⁸

A few miscellaneous issues have also appeared, relating to such concerns as the role of federal courts in waiver decisions and the right of a child to select the court in which he will be tried.⁹ A final category of "who decides" articles might include those which advocate abolishment of the juvenile court.¹⁰ Conceptually, these recent articles are related to the early "who decides" articles because they address the question "should an adult or juvenile court handle the trials of youth?". The modern articles, however, are dissimilar to the earlier ones because they are concerned with social policy alone: most state constitutional issues of jurisdiction have long been settled.

In early 1968, Professor F. Thomas Schornhorst published "The Waiver of Juvenile Court Jurisdiction: Kent Revisited" in the Indiana Law Journal.¹¹ In it, he presented the first coherent and comprehensive framework for analyzing the laws of waiver. Schornhorst recognized that legislative decisions concerning age and offense were functionally identical to the waiver decisions of judges and prosecutors in individual cases. He wrote:

The statutes of the several states reflect a wide range of judgments with respect to the persons who will be afforded the special considerations of the juvenile justice system. For purposes of this discussion, these judgments are treated as waiver decisions, and are classified as follows: (1) legislative waiver; (2) judicial waiver; (3) prosecutor's choice; and (4) waiver Texas-style.¹²

Schornhorst used the term "waiver" in a generic sense to describe all of the various mechanisms found in state codes to refer youth to either adult or juvenile courts. Although his use of the term is clear, subsequent literature has refined the term "waiver" to refer only to the judicial mechanism used for referral. Normally, prosecutorial choice statutes are now described as "concurrent jurisdiction" or "direct file provisions." Typically, "legislative waivers" represent judgments made by state legislatures that particular ages (lower age of jurisdiction) and/or offenses (excluded offenses) will be the basis for referring youth to one court or another.

Literature subsequent to Schornhorst has almost uniformly treated Texas-style waiver as an exception, not as a distinct type, and utilized the three other waiver-types as the appropriate analytical construct. Although not acknowledged in the literature, Texas-style waiver is a legislative determination that the age of the offender at time of filing, rather than the age at

the time of offense, is the appropriate age for criminal court jurisdiction.¹³ This failure to recognize Texas-style waiver as simply a variation of other referral mechanisms is the only lapse in Schornhorst's analysis.

Even with the Texas exception, Schornhorst's trifurcation of waiver as a social policy issue is extremely helpful. With this framework, ready comparisons of the various state's waiver provisions were possible. Prior to his articulation of waiver in this fashion, state-by-state comparisons of waiver were either confusing or too limited to be useful. In addition, his analytical construct was so thorough and complete that waiver readily emerged as the distinct social policy issue that it is generally regarded today.

Since the publication of his article, Schornhorst's analysis has been followed almost uniformly, sometimes with attribution, sometimes without. A few attempts have been made to improve upon it, but they have not been widely accepted. An example of an attempt to expand the Schornhorst analysis is found in Charles H. Whitebread and Robert Batey's "Transfer Between Courts: Proposals of the Juvenile Justice Standards Project."¹⁴ They divide Schornhorst's judicial waiver taxonomy into two categories of "adult court waiver" and "juvenile court waiver" and add the null category of "no waiver provision." While precise and more logically complete, their addition and variations have not advanced the analysis of waiver and have not been adopted by other writers.

Although Schornhorst's analysis is straightforward, some legislative and academic proposals have suggested less simple methods of waiver in which decisionmaking authorities become interrelated. An example is found in a 1958 article by Richard Bogatto and Thomas M. Sewell, Jr., where they suggest one of the more complex waiver mechanisms. They recommended a "binding election" by the prosecutor to proceed in either the juvenile or adult criminal court. However, if the prosecutor elected to file in juvenile court, the court could "withdraw its jurisdiction and remove the binding effect of the election in any case in which the child did not respond satisfactorily to his program of reformation."¹⁵ Such a provision, with the decision shared by the court and prosecutor, would make waiver tentative. Constitutional development with respect to former jeopardy likely makes the proposal obsolete, but it is unusual in its complexity.

HOW TRANSFERS ARE DECIDED

As time passed, state constitutional issues of "who" decides became eclipsed by federal constitutional considerations of "how" transfer decisions were being made, reflecting the growing influence of the Fifth and Fourteenth Amendments on the juvenile justice system.

As a standard for evaluating waiver, the federal constitution has been used to determine the adequacy of waiver procedures.

The question has spawned a rich literature explaining or advocating what the due process clause requires for waiver decisions. It is typically premised on the complete bifurcation of the criminal and juvenile justice systems. Conceptually, it is closely related to the early state constitutional articles.

The Literature of the 1940s and 1950s

Discussion of federal constitutional issues in the context of waiver first appeared during the decades of the 1940s and 1950s.¹⁶ What is most interesting of juvenile court literature during this period is that waiver mechanisms received more extensive (federal) constitutional analyses compared to other aspects of juvenile court procedure. The articles of this period focused largely on three issues:

- Right to counsel at waiver hearings;¹⁷
- Double jeopardy problems;¹⁸
- Use of pre-waiver confessions at subsequent trials in adult courts.¹⁹

The three foci of these early articles has proved to be durable. In later decades, the same issues have continued to receive examination.

The Literature of the 1960s

Constitutional issues discussed during the 1960s were primarily concerned with the Kent case and the general matter of waiver criteria.²⁰ Initially, the articles were celebrations of the applicability of due process to juvenile courts.²¹ Following this initial elation and the subsequent Gault decision, the literature still focused on Kent, but detailed exegesis of its meaning followed. These later articles are principally concerned with whether Kent was based upon the federal due process clause or was simply an interpretation of the District of Columbia's waiver statute and, particularly, what substantive standards Kent did require for waiver hearings.²² Interest in the constitutional analyses mentioned above continued throughout the decade. However, the literature reflects no settled conclusion on either issue.

No writer has commented upon the likelihood that the waiver literature of the 1940s and 1950s may have been the catalyst for bringing the federal constitution into juvenile court law. In retrospect, it should not be surprising to constitutional scholars that Kent preceded the Gault decision.

The Literature of the 1970s

The growing emphasis on constitutional issues associated with the transfer process has been reflected in the literature of the 1970s. Much attention has been focused on double jeopardy, with most of the articles discussing the impact of the U.S. Supreme Court decision in Breed v. Jones on jurisdictional hearings. Some articles focus on whether procedures in specific jurisdictions lack protection against double jeopardy.²³ Similarly, the use of pre-waiver confessions at subsequent trials in adult courts has continued to receive a significant amount of attention. Most of this literature is comprised of analysis of specific state and federal appellate court rulings.²⁴ The last of the three major issues raised in the 1940s and 1950s (i.e., right to counsel) appears to have received less attention.²⁵ This issue appears to have been completely laid to rest by the U.S. Supreme Court, for virtually all circumstances.

The admissibility of hearsay evidence in waiver hearings has recently been challenged as a deprivation of a number of procedural and evidentiary safeguards. The most commonly criticized forms of hearsay are the oral testimony by police officers, and the use of social history reports.²⁶

A number of writers have indicated great concern over the findings by many appellate courts with respect to the matter of appeal. Almost uniformly, these courts have defined appeals of judicial waivers as forms of post-conviction relief. In other words, the juvenile must be waived, tried, and found guilty, before an appeal challenging the waiver will be entertained by higher courts.²⁷

Rather than focus on specific issues, many writers are beginning to deal with constitutional issues in a more sweeping manner. One method is to comprehensively review the extension of constitutional issues into all types of juvenile transfers.²⁸ Another method is to continue discussion of major U.S. Supreme Court rulings and their impacts on the juvenile justice system. Lee Bund takes an unusual position in arguing that the Kent and Gault cases have contributed to the uncertainty which envelope juvenile proceedings and have caused an "aura of doubt" on the question of juvenile rights.²⁹

A third group of articles approaches transfer issues in terms of a "right-to-treatment" argument, usually holding that youth have a right to be "treated" within the juvenile justice system and, therefore, they should rarely (if ever) be tried as adults.³⁰ At its simplest level, this right was judicially advanced to require that the state take positive steps to provide necessary services to individuals in its custody. The penalty for failure would be the loss of custody by the state over the individual. In the context of waiver, the right-to-treatment argument had two branches. One derived from federal constitutional principles, the other found its source in state statutory laws. The right-to-treatment theory, as derived from the federal constitution, was essentially phrased in negative terms: it should be used to free an individual from custody if the state does not provide the services which form the basis of the state's custody. Right to treatment, based on state law, has

essentially been seen, at least by authors, as a positive principle: state juvenile codes create substantive rights to treatment, which a delinquent or child in need of services would use to compel officials to act accordingly. In the context of waiver, the right-to-treatment thesis posits a higher standard for justifying the removal of juveniles from the benefits of the juvenile system. This places a heavy burden on the juvenile court and the state to make available the kinds of rehabilitative options necessary to give this principle the substance implied by the legislative appropriation and judicial interpretation of the doctrine of *parens patriae*. Any other interpretation does violence to the institution of juvenile justice and makes it an arbitrary forum where those who are most in need of its care and solicitude can be abandoned at the whim of the court. This is very often the case where transfer of jurisdiction is involved and that is why the right to treatment and the benefits of juvenile court jurisdiction are so important to the child facing a possible trip to the criminal court. If such children do not have a right to claim treatment from the court, then juvenile courts serve little purpose in this age of justice reform.³¹

What is important about the right-to-treatment argument, applied in this narrow context, is that it reawakens the debate about the basic purposes of juvenile courts. It appears to be particularly germane to the critical analysis of recent state code transfer amendments. In examining changes to the North Dakota transfer process, Hogan notes:

This note has proposed that the hard-core youth has a right to the same rehabilitative treatment that is available to all children coming within the jurisdiction of juvenile court. The states should not attempt to exclude the hard-core youth from the juvenile system by statutory schemes which place the waiver decisionmaking power in the hands of the prosecutor. North Dakota should not exclude its hard-core youth by testing their amenability to treatment by an "availability" standard.³²

In a similar vein, Jacqueline Simmons wrote, in responses to amendments to the Indiana code:

However, the effect of these amendments was to broaden rather than limit the grounds for waiver and to make waiver mandatory when a child has been charged with certain offenses regardless of the child's potential for rehabilitation. The result is a serious inconsistency between the stated goals of the juvenile justice system in Indiana and the present waiver law. The inconsistency needs to be rectified either by adopting a new philosophy for our juvenile system or by an amendment to the present waiver law so that it no longer conflicts with the present doctrine, *parens patriae*.³³

The waiver articles which discuss right-to-treatment are, to say the least, unusual. Right-to-treatment is a legal principle found typically in the context of mental health and correctional institutionalization. In this

context, it is being applied to a mechanism that determines a proper forum in which to conduct a trial. To pull right-to-treatment principles out of their normal institutional context, and make them pertinent to waiver, writers have had to emphasize the basic purposes of the juvenile courts, i.e., rehabilitation. Right-to-treatment principles are asserted to be pertinent to waiver because waiver is the mechanism which cuts children off from these rehabilitative services. Whether or not the appellate courts will be disposed to judge waivers by right-to-treatment standards remains to be seen. If it does occur, it will mean that the juvenile court's ability to rehabilitate will be as much a factor in a transfer hearing as is the child's amenability to treatment.³⁴

Taken as a whole, the waiver literature of the 1970s (concerned with federal constitutional issues) has one obvious characteristic: no single point of view or consistent philosophy prevails. In fact, the arguments are based on either of two, mutually exclusive premises:

- The adult criminal justice system is made up of a rigorous, combative trial arena and a horribly brutalizing penal system, both of which will destroy youth caught up in them; or,
- The adult criminal justice system provides a fair trial based on full due process rights and a penalty system which, out of necessity and court overloading, will provide youth with a less harsh regimen than they would otherwise receive in the juvenile system.

In his article, "Wisconsin's New Waiver Statute: When Should We Wave Goodbye to Juvenile Court Protection," John P. Wagner describes the rigors of the adult system:

The waiver of a juvenile into adult court is a grave step because it often results in severe punishment, the loss of confidential proceedings, an arrest record, loss of civil rights, inability to qualify for public employment, decreased opportunities for rehabilitative services, and the likelihood of physical and sexual abuse by adult prisoners.³⁵

On the other side, in John Gasper and Daniel Katkin's "A Rationale For the Abolition of the Juvenile Court's Power to Waive Jurisdiction," the adult system is described as less onerous for youth than the juvenile system:

Yet, there is clear evidence that many waived juveniles are comparatively minor offenders; and there is substantial reason to speculate that many serious offenders are acquitted because of stricter enforcement of due process standards in the criminal courts. In addition, those convicted may be treated leniently as first-time adult offenders, thus actually undermining the safety of the public.³⁶

Variations on these two premises abound. Leonard Edwards, in "The Case for Abolishing Fitness Hearings in Juvenile Courts," writes his impressions of the California system as follows:

It is not true that the juvenile court treats hardened youthful offenders lightly. One need only compare these periods of time (a 16 or 17 year old can be committed to the Youth Authority) to the sentences of the Uniform Determinant Sentencing Act of 1976 to realize that there are few crimes which would result in a longer period of incarceration in the adult system.³⁷ (Parenthetical material added.)

In Michael A. Schroeder's "Constitutional Law: Juvenile Courts and Double Jeopardy--An Opportunity for Change", the following observation is made:

Consequences of a juvenile proceeding are often more harsh than those faced by an adult convicted in a criminal court of the same offense.³⁸

On the other hand, M. Craig Garner, Jr. sees criminal court as something to be avoided:

Due to the more serious consequences that may result from being tried as an adult rather than as a juvenile, this waiver of jurisdiction is of critical importance to the juvenile.³⁹

Stamm contrasts the two systems and philosophically poses the dilemma in a balanced manner, although he concludes by clearly expressing a personal bias:

The transfer law constitutes a line on the other side of which lies the threshold to the criminal justice system. On the juvenile court side of that line, there is an arrangement of individualized justice therapeutically oriented to the best interests of the child. On the other side lies a system of criminal process and sanction predicated, for the most part, on punishment and the best interest of society. . . (Waiver is a) legal and social journey to the human trash pile.⁴⁰ (Parenthetical material added.)

These contradictory opinions are found throughout the literature and ultimately undermine the acceptance of any conclusion based on either premise.

WHAT IS DECIDED: AGE, OFFENSE, AND "KENT" CRITERIA

A common focus of much of the literature is the examination of the specific factors which are or should be involved in waiver decisions. Invariably, age and type of offense are given consideration. Beyond these two elements, the literature explores what might best be called the "Kent" criteria, i.e., those collateral factors which help to ensure that statutory age and offense criteria are applied intelligently and constitutionally.

Looking at the literature produced over the past 30 years, it is obvious that the factor of age has captured the greatest attention and has been subject to the greatest analysis. Only recently has the literature focused attention on the Kent criteria with the same intensity as age has received for several decades, although the treatment of all these factors antedates that 1966 decision.

When the extensive consideration of age, the minor consideration of offense, and the relatively recent consideration of Kent criteria are considered together, it appears that waiver is coming to be viewed as a decision that involves all three considerations. It also suggests that the Kent criteria may embody those earlier considerations which underpinned legislative choices of age and offense. In waiver decisions, judges must consider the same factors that legislatures, in all probability, considered when they created particular waiver mechanisms.

Age of Referral

The literature views the legislative selection of specific ages for criminal court jurisdiction, sometimes apologetically, as expressions of arbitrary policy decisions.⁴¹ Only seldom is the arbitrary nature of such judgments discussed for the light it sheds on how legislatures view youth and crime. Generally speaking, one might reasonably conclude that younger ages for transferring juveniles to criminal courts could be correlated to such factors as fear or moral condemnation of crime, or to perceptions of the nature of childhood. Yet, within the literature, the conclusions are frequently disguised. Discussions are presented as to why a particular age is an appropriate boundary for transfer. These discussions usually attempt to base their conclusions upon scientific evidence or on common-sense experience.

Rationalizations of age restrictions are also predicated upon physiological, psychological, or medical findings.⁴² However, the focus is typically on a single state. No one has compared the scientific rationalizations underlying different choices of age in different states.

Common-sense rationalizations are frequently found in the literature. They reflect general experience professed by the authors and appeal to the

public's common-sense for establishing the appropriateness of a particular age choice. Richard Bogatta and Thomas M. Sewell, Jr. reflect this most commonly held approach to age selection:

Although any classification usually involves some arbitrary delimiting, a maximum near 18 seems realistically sound, because it recognizes that there is a fundamental difference between the problems of, and the offenses committed by, children below 18 and the problems and offenses of older, mature persons.⁴³

Many articles typically respond to changes in juvenile laws and reflect changes in social policies. The emphasis in those articles, which urge lowering age of juvenile court jurisdiction, is usually on crime statistics. Older articles more commonly urged raising age of jurisdiction.⁴⁴

Another body of literature explores the age question from a slightly different angle. Almost uniformly, states created and accepted age at time of offense as the appropriate rule in determining the appropriate forum. Some states, however, expanded criminal court jurisdiction by legislating the so-called "Texas waiver." The use of age at time of trial led to the practice in which prosecutors were reputed to delay filing juvenile complaints until the appropriate birthday, and then treated the cases as adult matters.

The literature exploring this issue mainly resulted from statutory ambiguities in determining jurisdiction.⁴⁵ Recent amendments have clarified the uncertainties and have, thereby, made these articles obsolete, except where legislatures may clearly express their preferences for this manner of determining jurisdiction.

Type of Offense

The criteria necessary for invoking waiver relates, generally, to both age and offense. One of the ironies of the waiver literature is that the choice of age, which is universally agreed to be arbitrary, is repeatedly scrutinized. The second element of the formula--offense--has not received the same detailed examination, even though it is not universally viewed as necessarily arbitrary. There is almost a tacit assumption in the waiver literature that the choice of waivable offenses explains itself. Why "heinous crimes", "crimes of violence", "capital crimes", or "felonies" are appropriate for waiver has not received the detailed criticism that the differences between the ages of 15, 16, and 17 have received. At best, bromides such as "if a child commits an adult offense, he deserves an adult penalty" are about as far as the writers have gone in explaining the reasons for selecting certain offenses for adult prosecution.

Brad Reid, in "Juvenile Waiver: The Inconsistent Standard", provides a typical example:

While age considerations in waiver statutes relate to the culpability of the offender, offense considerations relate both to the policy that the juvenile justice system cannot rehabilitate the "hardened" delinquent and to the notion that the interests of the community are best served by adult penalties for adult crimes.⁴⁶

Kent Criteria

Besides age and offense, waiver decisions have also been recently influenced by the so-called Kent factors or criteria. The Kent criteria find their origins in the U.S. Supreme Court case of Kent v. U.S. That case involved a youth named Morris A. Kent, Jr., whose first contact with the D.C. Juvenile Court occurred in 1959.

At the age of 14 years, Kent was apprehended for several housebreakings and an attempted purse snatching. For these offenses, the juvenile court placed him on probation. Except for routine visits by a probation officer, Kent had no further court contact until 1961 when, on the basis of fingerprints left at the scene of a crime, Kent was apprehended and interrogated by D.C. police for entering a woman's apartment, taking her wallet, and raping her. Following two days of interrogation by police and almost a week in the D.C. Receiving Home, the juvenile court entered an order waiving jurisdiction to adult court where, ultimately, Kent was indicted, tried, and found guilty.

During this period of interrogation and court activity, Kent's attorney moved the juvenile court for a hearing on the issue of waiver. In addition, he recommended that Kent be hospitalized for psychiatric observation, that he (the lawyer) be given access to Kent's social service file, and that he be given an opportunity to prove that Kent was a fit subject for rehabilitation by the juvenile court.

The D.C. Juvenile Court did not rule on any of these requests and held no hearing when it waived Kent to adult court. Throughout the course of subsequent proceedings in the adult court, Kent's attorney kept alive these issues. Upon appeal, the Supreme Court focused on the absence of a hearing when the case ultimately came before it.

The Supreme Court began by outlining some basic requirements for a waiver hearing:

The statute gives the Juvenile Court a substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them, and the conclusion to be reached. It does not confer upon the Juvenile Court a license for arbitrary procedure. The statute does not permit the Juvenile Court to determine in isolation and without the participation or any representation

of the child the "critically important" question whether a child will be deprived of the special protections and provisions of the Juvenile Court Act. It does not authorize the Juvenile Court, in total disregard of a motion for hearing filed by counsel, and without any hearing or statement or reasons, to decide--as in this case--that the child will be taken from the Receiving Home for Children and transferred to jail along with adults, and that he will be exposed to the possibility of a death sentence instead of treatment for a maximum, in Kent's case, of five years, until he is 21. . . .

The net, therefore, is that petitioner--then a boy of 16--was by statute entitled to certain procedures and benefits as a consequence of his statutory right to the "exclusive" jurisdiction of the Juvenile Court. In these circumstances, considering particularly that decision as to waiver of jurisdiction and transfer of the matter to the District Court was potentially as important to petitioner as the difference between five years' confinement and a death sentence, we conclude that, as a condition to a valid waiver order, petitioner was entitled to a hearing, including access by this counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.⁴⁷

These initial requirements are part of "how" the Kent waiver decision should have been made. As to the substance (or "what" must be decided), the court offered direction only in terms of an appendix, attached to its opinion, where it repeated criteria previously developed, ironically, by the D.C. Juvenile Court:

The determinative factors which will be considered by the Judge in deciding whether the Juvenile Court's jurisdiction over such offense will be waived are the following:

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

determined by consultation with the United States Attorney).

5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the Juvenile Court.

It will be the responsibility of any officer of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above. Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a specific case before reaching a conclusion to waive juvenile jurisdiction and transfer the case to the U.S. District Court for the District of Columbia for trial under the adult procedures of that Court.⁴⁸

The Kent decision has been used in the waiver literature to describe "how" waiver decisions are made, and the appendix list has been used to discuss "what" is decided at waiver. Taken together, they have become known as the Kent factors, and are referenced as such in the literature. What is most important about Kent is that it broadened waiver decisions from mere considerations of age and offense to a holistic appraisal of the juvenile's life experiences.

Because the ramifications of Kent were not immediately clear, its use in the waiver literature was concomitantly ambiguous. In turn, those authors relying only on Kent are less specific in their analyses of particular states' waiver provisions.⁴⁹

Testing as an Alternative to Arbitrary Criteria

In 1951, B. J. Rubenstein suggested that any or all of the following criteria might actually be used as a basis for determining juvenile court jurisdiction:

Conceivably, such substantive jurisdiction could be limited by (1) the age of the young offender, (2) the sex of the young offender, (3) the race of the young offender, (4) the marital status of the young offender, (5) the character of the offense, (6) the character of the punishment or treatment to be imposed, (7) the assumption of jurisdiction by one of the other judicial bodies having concurrent jurisdiction, (8) the running of a statute of limitations, (9) the offender's waiver of jurisdiction, or (10) any one of such miscellaneous matters as, imbecility extending into adulthood, the personality of the sovereign offended, the territory where the offense occurred, the absence of the offender from the court, or the statute itself which conferred jurisdiction.⁵⁰

Rubenstein suggested testing as an alternative to fixed chronological age, as a basis for determining juvenile court jurisdiction:

The states now seem to be in a race as to which can make the highest age maximum for juvenile delinquency. Many years ago, insane people were kept in prisons. Some day, all criminals, of whatever age, may be kept in hospitals as are the insane. If we must have an age line of demarcation, then it would seem it should be based on scientific study, and not grow as did Topsy. Perhaps better than age groupings would be individual I.Q. tests, Rorschach tests, Wachsler-Bellevue tests, Murray Thematic Apperception tests, etc.⁵¹

STANDARDS, STATE STUDIES, AND NATIONAL SURVEYS

Although there are several sets of published "standards" concerning waivers, when the unmodified term "Standards" appears in the literature, it usually refers to the standards published jointly by the Institute of Judicial Administration and the American Bar Association (IJA-ABA Standards) in 1977. Although not acknowledged in the Standards, Schornhorst's article affected the IJA-ABA Standards, because his analysis permitted the broad conceptualizations presented there. While Schornhorst determined the method for conceptualizing waiver, IJA-ABA are responsible for creating a scheme which permitted practical evaluation of each state's waiver provisions.

Following their publication, literature comparing individual state waiver provisions with the Standards became frequent.⁵² The Standards effectively provided a yardstick that could be and was used to evaluate state legislation.

The most interesting feature of the IJA-ABA Standards is that, while they purported to reflect constitutional developments in due process theory, they could point to no specific decisions that unambiguously enunciated their substantive provisions. Yet, the Standards undeniably influenced state legislation concerning waiver and other referral practices over the past few years.

State Studies

Technical studies of individual jurisdictions are rich in their compilations of court decisions and legislative changes. In them are also found data on individual state referral practices. The typical data include the numbers and offenses of juveniles waived and surveys of judicial attitudes.

Though limited in applicability, state studies cover a broad range of issues and serve as important sources of data. Two foci for such writers are the due process safeguards and/or the "proper" involvement of the juvenile court judges or prosecutors in the transfer process. The factors considered by judges in practice were the subject of studies by several authors.⁵³ Eigen, in Philadelphia, and Teilmann and Klein, in Los Angeles, conducted studies which included comparisons of conviction rates and sentences for youth processed as adults and those processed as juveniles.⁵⁴ Finally, Clendenen found that youth transferred to adult courts are not necessarily removed from the community, which is the popular argument favoring transfers to adult court jurisdiction.⁵⁵

Most of this type of literature looks only at provisions of juvenile court acts and ignores other provisions that might be in state constitutions, criminal codes, or welfare and corrections codes. While such limited examination in the literature is helpful for simplifying issues, it may distort what actually lurks in the pertinent law of any one state.

A rare example of a report that explores the bureaucratic complexities of referral is Jerome S. Weiss' "Criminals or Delinquents", appearing in a 1953 issue of the Chicago Bar Record. There, Weiss treats waiver as a conceptually complex outgrowth of the political and legal history of Illinois. Labeling the legal situation facing Illinois' youth as a "misdemeanor mess", "parole paradox", "treatment--a hit or miss chance", and the whole process as a "maze", Weiss outlines eight various courts, eight institutions, and three governmental departments that might be involved in a youth's case. He writes:

The wards of the State of Illinois, therefore, receive attention from quite an array of laws, courts, and institutions. They can run afoul of the Juvenile Court Act (now known as the Family Court Act), the Criminal Code of the state or various ordinances of criminal or quasi-criminal character. They may be privileged to be heard by

a circuit court judge sitting in Chancery as a family court judge or by a county judge acting in the same capacity; or by a criminal court judge or by a municipal court judge, or by magistrate or justice of the peace or other minor court. Depending on their age, sex, and the attitude of their local state's attorney, they might ultimately be sent to the Boys' Training School at St. Charles, the Girls' Training School at Geneva, the Sheridan Reformatory for boys, the State Farm at Vandalia for Boys, the Women's Reformatory at Dwight for women, the local jails such as the County Jail or in the City of Chicago the additional facility of the House of Correction. Their stay, treatment, punishment, parole are, in turn, dependent upon the law, court or institution that devoted attention to them.⁵⁶ (Parenthetical material added).

Illinois law has changed since Weiss' article, and the options have been simplified in some respect, but there is no reason to suspect that the complexity of juvenile law is fundamentally different in any other state. An article such as Weiss' is helpful for alerting readers to the potential systematic effects which are often ignored when amendments to waiver provisions are considered.

National Surveys

On first reading, national surveys appear at best to be no more than exercises in legal scholarship.⁵⁷ Because referral is ultimately a pragmatic issue, determined by the facts of individual cases, or a policy issue for individual state legislatures, the practical utility of these articles is sometimes not readily apparent. However, they do serve an important purpose when viewed collectively. The state data compilations, through their distillation, comparisons, and contrasts, laid the foundations for Schornhorst's theoretical work and the development of Standards by the IJA-ABA. Perhaps, more so than individual data that the studies generated, the national surveys are important in the development of waiver as an issue of social policy.

CONCLUSIONS

As is fairly obvious from considering four decades of literature on waiver, virtually the same constitutional issues have consistently been considered. Yet, out of this literature, no shared point of view has developed on the relative characteristics or benefits of the adult and juvenile systems.

Federal appellate courts have only infrequently rendered decisions on transfer procedures that involve constitutional questions. The U.S. Supreme Court, as of this writing, has not clarified questions raised concerning the

basis for the Kent decision as the "law of the land." Because there is no agreement and no shared point of view about what a child faces in either the adult or juvenile systems, the constitutional literature about waiver may be approaching a plateau in its development.

Because of this, it seems likely that further developments in the waiver literature will shift to basic questions of legislative policy. State legislatures are arenas in which the applicability of social control to hypothetical facts can be considered, and where opinions about the relative rigors of the adult and juvenile systems can be compared.

Perhaps because juvenile justice is fundamentally a matter of state law, the impact of professional literature is most prominent in generally shaping state juvenile justice policies, including those that relate to the trial of juveniles as adults. At this level, it is quite apparent that scholars and writers over the past forty years have contributed to major changes in state laws. A common theme in many articles chronicles how waiver policies have been implemented through juvenile code amendments.

By the 1980s, understanding and analysis of waiver has broadened. Waiver is understood as a nexus between juvenility to adulthood: it is broader than the mere procedure used to consider a transfer from one court to another. It is also understood to include prosecutorial discretion and statutes that exclude particular offenses from juvenile court. Even the age of majority, and other distinctions in law, are being considered in light of how waiver affects the rights of juveniles.

One interesting perspective surfaced by some writers and jurists is that waiver is a ceremony which notifies a child that something significant is happening. A theme such as this suggests that writers are less concerned with the historical or legal background for referral mechanisms than with the effect such mechanisms have on the lives of children.

This broadened conceptualization of trying youth as adults has taken it out of a mere technical matter, of concern only to lawyers, and has made it a focal point for evaluating the juvenile justice system. What appears to be emerging in the 1980s are considerations of due process and essential fairness as necessary ingredients. Up to now, waiver had been treated as a safety valve, a procedural mechanism, and as a constitutional issue. Only now has the idea of justice been joined as a "condition precedent" necessary to the waiving of juvenile court jurisdiction.

Besides facilitating a critique of the juvenile justice system, the broadened conceptualization of waiver has also provided the setting for renewed speculations on jurisprudence. In a very real sense, this has brought the juvenile justice literature full circle to the earliest debates that accompanied the creation of the juvenile court.

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CHAPTER 3

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HOW YOUTH ARE REFERRED TO ADULT COURTS: OVERVIEW OF STATE STATUTES

This chapter presents a national overview of statutory provisions which define both juvenile and adult court jurisdiction over individuals below 18 years of age who are charged with criminal offenses. Specifically, the focus is the point at which the juvenile and criminal court jurisdictions intersect or overlap. As will be demonstrated here, the statutory search revealed four major ways of initiating criminal court jurisdiction over such youth: judicial waiver, concurrent jurisdiction between courts, excluded offense provisions, and lower age of jurisdiction.

It should be noted that these legal mechanisms are not necessarily mutually exclusive; two or three of them may be found in a single state. They are examined here in an attempt to discover the full complexity of the laws regarding youth in adult courts. Thus, the patterns of interrelationships presented here are very general in nature. Readers interested in the laws of specific states should refer to the pertinent state profiles in the separate profile volumes.

Analysis focused on the laws in effect during calendar year 1978 in each of the 52 jurisdictions. This was necessitated by the use of 1978 data in the statistical survey. An update on legislative changes between 1978 and 1980 was conducted early in 1981. These changes are summarized at the end of this chapter and in the state profiles in the separate profile volumes.

AGE OF JURISDICTION--A UNIVERSAL CRITERION

The following definitions and explanatory remarks are included at the beginning of this chapter to avoid confusion in the ensuing discussion of age limitations. An initial grouping of statutes was made on the basis of age limitations, since this is the only characteristic common to all statutes which define juvenile court jurisdiction. The term "age of initial criminal court jurisdiction" represents the statutorily defined lower age limit after which all individuals must appear in criminal courts. Figure 3 is a map of the United States which reflects each state's age of initial criminal court jurisdiction. The ages shown in Figure 3 are 16, 17, and 18 (except for Wyoming, which is 19). State statutes normally specify juvenile court jurisdiction as "up to the age" of 16, 17, or 18, respectively. Correlatively, initial criminal court jurisdiction is typically described as beginning at ages 16, 17, or 18.¹ Statutes specifying either a minimum age of juvenile court jurisdiction or the age to which juvenile court jurisdiction (once obtained) can be retained have not been

included in this discussion, since they are not relevant to the age of initial criminal court jurisdiction.

Statutory provisions in 38 states, the District of Columbia, and in the federal code state that the age of initial juvenile court jurisdiction extends to age 18. That is, those juveniles 17 years old or younger are subject to the jurisdiction of the juvenile courts.²

Further, the statutory provisions in most jurisdictions expressly require that the alleged offenses be committed prior to the juvenile's 18th birthdays, in order for juvenile court jurisdiction to attach.³

Between 1970 and 1980, six states increased the age of initial criminal court jurisdiction. Alabama and Oklahoma increased the age of initial criminal court jurisdiction from 16 to 18 years of age; and Florida, Maine, Maryland, and New Hampshire included 17 year olds within juvenile court jurisdiction by raising the age of criminal responsibility to 18.⁴ It is significant to note that no state has lowered its age of initial criminal court jurisdiction in at least the past ten years. For most of the lower-age-of-jurisdiction states, the current age of initial criminal court jurisdiction is the same as it was when their juvenile court acts were first passed.

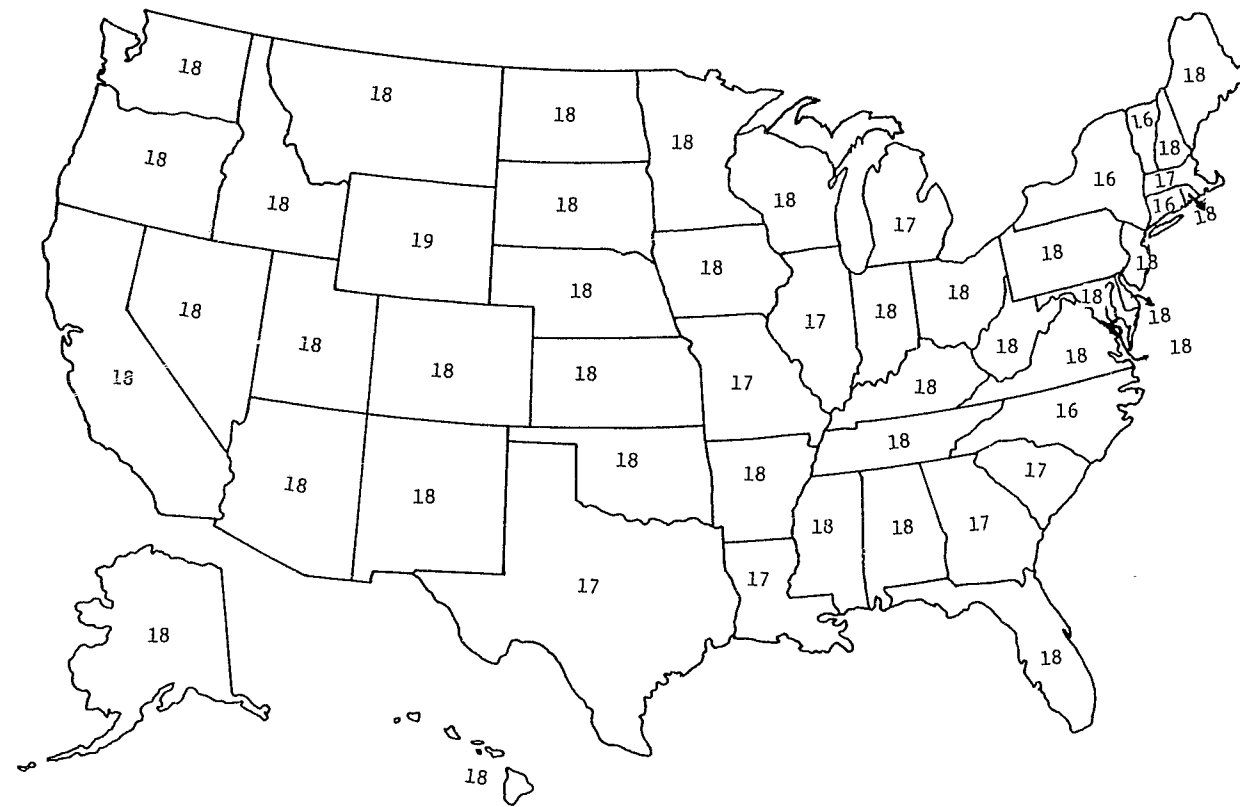
Eight states have established the age of initial criminal court jurisdiction to be 17 years of age.⁵ That is to say, in those eight states, adult court jurisdiction automatically includes anyone 17 years of age or older. Juvenile courts generally exercise initial jurisdiction over individuals 17 years of age and older only if the alleged offenses were committed prior to the individual's 17th birthday. Only four states (Connecticut, New York, North Carolina, and Vermont) have established initial criminal court jurisdiction at age 16.⁶ Vermont, however, permits criminal courts to refer 16 or 17 year olds back to juvenile courts under special circumstances.⁷ (See Vermont profile for 1981 amendments.)

Of course, all of these states have the ability to maintain (once obtained) continuing juvenile court jurisdiction of juveniles who become eligible for criminal court prosecution until a particular birthday, typically 18 or 21, for purposes of probation, confinement, or parole. In Connecticut, where the age of criminal court jurisdiction is 16, the juvenile courts may continue jurisdiction for two years after adjudication, presumably until age 18.⁸

JUDICIAL WAIVER PROVISIONS

In state codes, and in the parochial parlance of many states, judicial waiver provisions are known by a number of terms. Among them are bindover, certification, decline, referral, remand, and transfer. Throughout this report, these terms will be used as synonyms. However, the most commonly used phrase will be judicial waiver.

FIGURE 3. AGE OF INITIAL CRIMINAL COURT JURISDICTION IN 1978



Judicial waiver statutes accord to judges of juvenile courts the discretion to "waive" their jurisdiction, over certain cases, in favor of the criminal courts. Usually, there are a number of restrictions placed by the legislatures upon the right of judges to waive jurisdiction, based upon age, offense, prior record, amenability to treatment, and safety of the community.

In some states, prosecutors must initiate the waiver proceedings. Still, if juvenile court judges possess the authority to make the transfer decisions, they are regarded in this report as states with judicial waiver laws.

An examination of the legal codes of Arkansas, Nebraska, New York, and Vermont reveals that in 1978, none of these states provided a statutory mechanism for waiving juvenile court jurisdiction over individuals normally within those states' definitions of juveniles.⁹ These omissions, however, are the exceptions, since the codes of the other 46 states, the federal courts, and the District of Columbia contain judicial waiver provisions.¹⁰

Statutory provisions differ greatly from state to state concerning the conditions precedent to issuing valid waiver orders. One initial difference is in language which is used to describe the process by which juvenile courts relinquish their jurisdiction. Some of the synonyms for the term "waiver" are mentioned above. The required hearings to determine jurisdiction are designated as "waiver hearings," "fitness hearings," "bindover hearings," "reference hearings," or by several other terms, all of which are intended to describe the same procedure. However designated, the statutory intent is to provide a process somewhat akin to arraignments in adult courts, in which probable cause and nonamenability to treatment as a juvenile can be judicially determined.

A more fundamental difference exists when state waiver laws are examined for minimum age and offense requirements. It is at this point of inquiry where the explication becomes most difficult. Some states will have two or three minimum age criteria, depending upon the offenses charged; others will have highly qualified offenses or conditions as conditions for waiver eligibility. Eleven of the 48 jurisdictions with waiver provisions do not specify minimum age requirements in their judicial waiver statutes.¹¹ Kentucky, West Virginia, Maryland, and South Carolina have no age requirement for waiving juveniles charged with capital crimes, but they have set minimum ages in additional waiver provisions pertaining to lesser offenses. Therefore, in order to obtain an accurate understanding of the applicability of the age factor to judicial waiver provisions, both the age and offense criteria must be examined together.

Four of the 11 states which have no minimum age requirement also have not restricted waivers to certain offenses.¹² Theoretically, in these jurisdictions, an individual of a very young age could be waived to adult courts for a relatively minor offense. Local court rules and relevant statutory provisions in a particular jurisdiction should, however, be examined before such an observation can be viewed as anything other than hypothetical. Generally speaking, statutes in the remaining seven states which have no minimum age requirement do require that the offense charged be a felony.¹³

By far, the most common age at which waiver of juvenile court jurisdiction is statutorily permitted is 16 years. Twenty jurisdictions have statutes which

specify 16 years of age as the minimum age for waiver for certain offenses or under certain conditions.¹⁴ Nine jurisdictions (which specify 16 as the minimum age) permit waiver for any offense whereas the other 11 jurisdictions require that the offenses charged be felonies.¹⁵

Ten of these 20 jurisdictions have additional minimum waiver ages of 14 (Delaware and Indiana); 15 (District of Columbia, New Mexico, and Tennessee) or no age specified (Kentucky, Oklahoma, South Carolina and West Virginia) for either more serious offenses or for crimes committed under special circumstances.¹⁶ The state of Washington also has two other waiver provisions --one specifies 17 years of age for serious felonies and one permits waiver for any offense with no age specified.

The second most common waiver age is 14, with 14 states having statutes prohibiting the transfer of anyone younger to adult courts.¹⁷ Three of these states have not restricted the use of waiver to certain offenses.¹⁸ The other 11 states permit waiver only when juveniles are charged with felonies.¹⁹ In Connecticut, in 1978, a previous adjudication of delinquency for a Class A or Class B felony is a condition precedent to waiver if the present charge is a Class A or B felony, but such a condition is not required if the charge is murder.²⁰ North Carolina has both mandatory and permissive judicial waiver provisions, where the offense charged is a capital crime or any felony, respectively. In Delaware, a 14 year old juvenile can only be transferred if he or she committed a felony offense while AWOL from the Department of Corrections.

Eleven states use the age of 15, for some or all available offenses. Only three jurisdictions permit the waiver of juveniles 15 years of age or older for any offense.²¹ In the remaining jurisdictions which authorize waiver at the age of 15, the crimes charged must be felonies.²² As was previously noted, Maryland law does not require that individuals attain the age of 15 if the offenses charged are capital crimes. Likewise, Georgia permits waiver for a capital crime at 13.

Louisiana law, which permits judicial waiver at the age of 15, provides that an individual without a previous adjudication of delinquency can be waived if the charge is armed robbery or a crime punishable by life imprisonment. If, however, the offenses charged are any other felonies, juveniles must have been previously adjudicated delinquent by virtue of the commission of one of the following offenses: second degree murder, manslaughter, negligent homicide, simple rape, armed robbery, aggravated battery, aggravated burglary, aggravated arson, or aggravated kidnapping, before waiver can occur.²³ (This provision has been changed since 1978. See Louisiana profile in separate profile volume.)

Georgia, Illinois, and Mississippi (1978) permit waiver at age 13, although the offense charged must be a capital crime in Georgia.²⁴

A few states have created unique judicial waiver provisions that merit specific mention. Both California and Oklahoma had, in 1978, statutory provisions that made transfers to adult criminal courts "presumptive" for individuals of certain ages who were charged with specific offenses. Several states have patterned recent amendments to both waiver and excluded offense statutes after these states. The California statute reads in part:

In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he was 16 years of age or older, of one of the following offenses:

1. Murder;
2. Arson of an inhabited building;
3. Robbery while armed with a dangerous or deadly weapon;
4. Rape with force or violence or threat of great bodily harm;
5. Kidnapping for ransom;
6. Kidnapping for the purpose of robbery;
7. Kidnapping with bodily harm;
8. Assault with intent to murder or attempted murder;
9. Assault with a firearm or destructive device;
10. Assault by means of force likely to produce great bodily injury;
11. Discharge of a firearm into an inhabited or occupied building;
12. Any offense described in Section 1203.09 of the Penal Code . . . The juvenile court shall find that the minor is not a fit and proper subject to be dealt with under the juvenile court law unless it concludes that the minor would be amenable to the care, treatment, and training program . . . of the juvenile court.²⁵ (emphasis added)

Similarly, the Oklahoma statute read, in part:

If the court finds that probable cause exists to believe that a 16 or 17 year old defendant is guilty of murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape in the second degree, use of a firearm or other offense weapon while committing a felony, arson in the first degree, burglary in the first degree, burglary with explosives, shooting with intent to kill, manslaughter or nonconsensual sodomy, the child shall be certified as an adult unless it is proven after a proper motion by the defendant, or his parents, guardian or next friend, to the satisfaction of the court that he should remain under the jurisdiction of the juvenile division.²⁶

The Oklahoma statute was declared unconstitutional for vagueness and was replaced with an excluded offense provision covering the same offenses in 1979.²⁷

One of South Carolina's waiver provisions pertains to murder or rape. It provides that whoever files a delinquency petition charging murder or rape may request the family court to transfer the case to the circuit court for criminal prosecution.²⁸ If the family court denies the request, the petitioner may appeal that decision to the circuit court, which may either hear the case or

remand it to the family court. If the circuit court elects to hold the trial on its merits, the family court has no further jurisdiction over the matter.²⁹

The Virginia waiver statute contains a provision which permits the state's attorneys, in certain cases, to move for criminal proceedings in the circuit courts after the juvenile courts have decided to retain jurisdiction. The following conditions must apply before the circuit courts may authorize the state's attorney to pursue an indictment:

- A hearing on the transfer issue must have been held in juvenile court.
- The juvenile court must have ruled to retain jurisdiction.
- The state's attorney must determine that a removal is in the public interest.
- The child must be 15 years of age or older.
- The offense must carry a punishment of at least 20 years, life imprisonment, or death.³⁰

The circuit courts may then enter an order of remand in the juvenile courts authorizing criminal prosecution. This statute is unusual in that the state is afforded an immediate review of the juvenile court's refusal to waive its jurisdiction. Most jurisdictions have no similar statutory provision. To the contrary, most states only permit appeals to challenge juvenile court waiver orders after the youth have been convicted in criminal courts.

Table 1, appearing on the following pages, presents a national overview of state and federal statutory provisions controlling the waiver of juveniles to adult courts. It includes both the ages of criminal responsibility and waivability in each jurisdiction, as well as the offense restrictions. As can be seen quite graphically, there is great diversity in waiver provisions throughout the country.

TABLE 1. STATES WITH JUDICIAL WAIVER PROVISIONS IN 1978
(BY AGE AND BY OFFENSE RESTRICTIONS)^a

State	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
Alabama	18	14	Felony
		14	Any offense while child is already under commitment to an agency, department, or institution as a delinquent.
Alaska	18	Not specified; presumably any age.	Any offense.
Arizona	18	Not specified; presumably any age.	Any offense.
California	18	16	Any offense, except those included in the second waiver type (state must prove unfitness).
		16	Murder; arson of an inhabited building; robbery while armed with a dangerous or deadly weapon; rape with force or violence or threat of great bodily harm; sodomy by force; oral copulation by force; kidnapping for ransom; kidnapping for purpose of robbery; kidnapping with bodily harm; assault with intent to murder or attempted murder; assault with a firearm or destructive device; assault by any means of force likely to produce great bodily injury; and discharge of a firearm into an inhabited or occupied building (juveniles must prove fitness).

TABLE 1. (Continued)

State	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
Colorado	18	14	Any felony.
Connecticut ^b	16	14	Murder
		14	Class A or B felony, provided a previous adjudication for violation of Class A or B felony.
Delaware	18	16	Delinquent act (an act which would constitute a crime).
		16	Murder, 2nd degree; manlaughter; robbery, 1st or 2nd degree; attempted murder, 1st or 2nd degree; burglary, 1st degree; arson, 1st degree (mandatory amenability hearing).
		14	Previously committed to the Department of Corrections because of reported offenses against persons, burglary, or robbery, and during a period of AWOL he is alleged to have committed a felony offense against person or property (mandatory amenability hearing).
District of Columbia	18	15	Felony
		16 and under commitment to an agency or institution as a delinquent.	Any offense.
		18	Any offense committed prior to becoming 18 years of age for individuals over 17 and under 21 years of age.

TABLE 1. (Continued)

State	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
Florida	18	14	Charged with a violation of the law.
		14	Murder; sexual battery; armed or strong-armed robbery; aggravated battery; aggravated assault; following a previous adjudication for one of the above offenses (mandatory transfer hearing).
		Any Age	Since October 1, 1978, juveniles may request transfer, and the court must transfer.
Georgia	17	15	Any offense.
		13	Capital offenses.
Hawaii	18	16	Felony
Idaho ^c	18	15	Any offense.
Illinois	17	13	Any crime.
		13	Juveniles with consent of counsel may request transfer; the court must transfer.
Indiana ^d	18	14	Heinous or aggravated act or part of repetitive pattern of less serious delinquent acts.
		16	Forcible felony shall be waived unless it would be in the best interest of the juvenile and the safety and welfare of the community to remain within the juvenile justice system.

TABLE 1. (Continued)

State	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
Iowa	18	14	Any offense.
Kansas	18	16	Any offense.
Kentucky ^e	18	16	Any felony.
		Under 16	Major felony or capital offense.
Louisiana ^f	17	15	Armed robbery; crime punishable by life imprisonment. The alleged offender may also request transfer.
		15	Any felony (other than above) after previous adjudication for 2nd degree murder, manslaughter; negligent homicide; rape; armed robbery; aggravated burglary; aggravated arson; aggravated kidnapping. The alleged offender may also request transfer.
Maine	18	Any age	Murder; Class A, B or C crime.
Maryland	18	15	Any crime.
		Under 15	Offense punishable by death or life imprisonment.
Massachusetts	17	14	Previously committed to DYS as delinquent and present offense punishable by imprisonment or offenses involving the infliction or threat of serious bodily harm.
		14	Offense involved infliction or threat of serious bodily harm.
Michigan	17	15	Felony

TABLE 1. (Continued)

State	Age of Initial Criminal Court jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
Minnesota ^g	18	14	Any offense. Child may initiate the proceedings.
		No age requirement.	Traffic ^h
Mississippi ⁱ	18	13	Felony
Missouri	17	14	Felony
		14	State or municipal traffic violation or municipal ordinance violation. ^j
		Minor (17-21) over whom the juvenile court has jurisdiction.	Any state law or municipal ordinance violation.
Montana	18	16	Burglary or aggravated burglary; aggravated kidnapping; criminal homicide; arson; aggravated assault; robbery; sexual intercourse without consent; possession of explosives; criminal sale of dangerous drugs for profit.
Nevada	18	16	Felony
New Hampshire	18	Age not specified	Felony
		17	Juvenile may move to be tried as an adult.

TABLE 1. (Continued)

State	Age of Initial Criminal Court jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
New Jersey	18	14	Homicide; treason; offense against the person committed in an aggressive, violent, or willful manner; or violation of Controlled Dangerous Substances Act.
		14	Charged with delinquency. Juvenile may elect to be tried as an adult.
New Mexico	18	15	Murder
	18	16	Assault with intent to commit a violent felony; kidnapping; aggravated battery; dangerous use of explosives; felony criminal sexual penetration; robbery; rape; aggravated burglary; aggravated arson.
		16	Felony (more factors are to be considered than in the above provision)
North Carolina ^k	16	14	Felony
		14	Capital offense (must be transferred if probable cause is established).
North Dakota	18	16	Any crime or public offense.
		17	Juvenile may request transfer for any offense (no hearing is required).
Ohio	18	15	Felony
		15	The juvenile may request trial as an adult (a hearing is required).

TABLE 1. (Continued)

State	Age of Initial Criminal Court jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
Oklahoma	18	Any age	Felony
		16	Murder; kidnapping for purposes of extortion; armed robbery; rape; armed felony; arson; aggravated burglary; shooting with intent to kill; manslaughter; nonconsensual sodomy. (Mandatory transfer, unless juvenile proves amenability.) (Effective October 1, 1978.) (Declared unconstitutional in 1979.) ¹
Oregon	18	16	Any offense, including violation of municipal ordinances. Courts may issue a permanent remand whereby all subsequent offenses are heard in adult courts. In addition a blanket removal order can be issued so that all juveniles accused of traffic, boating, and game law violations in a county will automatically appear in adult courts.
Pennsylvania	18	14	Felony
		14	Transfer hearing may be initiated by the juvenile.
Rhode Island	18	16	Offense that would subject an adult to indictment.
South Carolina ^m	17	16	Misdemeanor or felony
		Any age	Murder or rape. (If Family Court denies transfer, petitioner has the right of appeal.)
South Dakota	18	10	Any offense.

TABLE 1. (Continued)

State	Age of Initial Criminal Court jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions
Tennessee ⁿ	18	16	Any Offense.
		15	Murder, Manslaughter, rape, armed robbery, kidnapping.
Texas	17	15	Felony
Utah	18	14	Felony
Vermont ^o	16	None	
Virginia ^p	18	15	Offense, if committed by an adult, could be punished by imprisonment in penitentiary.
		15	Armed robbery, rape and murder. (The court may certify the case if probable cause is established.)
		15	Offense punishable by life sentence or death. (If the juvenile court declines to transfer, the prosecutor may notify the juvenile court of his intention to remove the case to circuit court; the circuit court, after review, can order case to remain in juvenile court or the prosecutor to seek an indictment before the circuit court.)
		15	The juvenile with written consent of counsel may elect to be tried as an adult for any of the above offenses.
Washington	18	No age specified	Any offense.

TABLE 1. (Continued)

State	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Judicial Is Allowed	Offense Restrictions
Washington (Continued)		16	Class A felony or attempt to commit Class A felony. (Hearing is mandatory.) (Effective July 1, 1978.)
		17	Second degree assault, indecent liberties, kidnapping, rape, robbery, extortion. (Hearing is mandatory.) (Effective July 1, 1978.)
West Virginia	18	No age specified	Treason, murder, armed robbery, kidnapping, arson, sexual assault. 2nd offense of violence which could be a felony when first offense was treated as a delinquency offense. 3rd felony offense when first two were treated as delinquency offenses.
		16	Felony offense of violence.
		16	Second felony offense when first was treated as a delinquency offense.
		16	Juvenile can demand transfer for any offense. (No hearing is required.)
Wisconsin	18	16	State criminal offense or county or municipal ordinances. Changed 11/18/78 to state criminal offense.
Wyoming	19	Any age	Any offense.
Federal Districts	18	16	Felony punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death.
		No age specified	Any juvenile may request to be proceeded against as an adult (hearing in juvenile court is required).

TABLE 1. (Continued)

a. For further details see the appropriate state profile in separate profile volume.

b. Effective July 1, 1980, Connecticut replaced its previous transfer provision with two provisions: presumptive waiver and permissive waiver provisions.

c. Idaho lowered the judicial waiver age to 14 in 1981.

d. Effective October 1, 1979, a juvenile ten years of age or older charged with murder shall be waived unless there is no probable cause or it is not in the best interest of the child and the safety and welfare of the community for the child to remain in the juvenile system. In addition, the previous presumptive waiver for forcible felonies was changed to include all Class A or B felonies. Effective October 1980, the above provision was expanded to include involuntary manslaughter and reckless homicide. In 1981, murder, kidnapping, rape and armed robbery charged against youth 16 years of age or older were excluded from juvenile jurisdiction.

e. Effective July 1, 1982, the transfer provision was replaced with a youthful offender provision with four methods for referring juveniles to criminal court for trial.

f. Effective January 1, 1979, the statute was changed to provide for the judicial waiver of juveniles 15 years of age charged with first or second degree murder, manslaughter, aggravated rape, armed robbery, aggravated burglary, or aggravated kidnapping after a probable cause hearing. Consideration of amenability was not required in cases of juveniles charged with one of the above offenses. This provision was declared unconstitutional by the Louisiana Supreme Court and the judicial waiver provision in effect in 1978 was reinstated. That provision was further amended in the 1980 legislative session to state:

Juveniles 15 years of age or older charged with armed robbery, aggravated burglary, or aggravated kidnapping may be transferred to criminal court for trial after probable cause and nonamenability to juvenile treatment have been established.

In addition, 15 year olds charged with first or second degree murder, manslaughter, or aggravated rape and 16 year olds charged with armed robbery, aggravated burglary, or aggravated kidnapping were excluded from juvenile court jurisdiction.

g. Minnesota added criteria for references to adult court of chronic and violent juveniles, effective August 1, 1980. If youth are charged with serious offenses and/or have a previous specified record, a prima facie case is established; no amenability hearing is required.

TABLE 1. (Continued)

h. Minor traffic violations were excluded from juvenile jurisdiction in 1980.

i. Effective July 1, 1979, offenses for which juveniles can be transferred to adult court were changed from felonies to delinquent acts. At the same time the factors to be considered by the youth court in determining prospects for rehabilitation within the juvenile justice system were enumerated. A year later, the juvenile code was again amended providing that juveniles transferred to criminal court for trial and convicted would thereafter be tried as adults for any subsequent charges.

j. Minor traffic violations were excluded from juvenile jurisdiction in 1980.

k. Effective January 1, 1980, if probable cause is established that a juvenile 14 years of age or older at the time the alleged felony offense was committed the prosecutor or the juvenile may move that the case be transferred for trial in adult court. An amenability hearing is required before transfer occurs if the felony is not a capital offense.

l. In 1979, sixteen and seventeen year olds charged with one of the enumerated offenses were initially excluded from juvenile court jurisdiction.

m. In 1981 a third judicial waiver provision was added, permitting transfer of a juvenile 14 or 15 years of age with two prior delinquency adjudications for specified personal offenses and has been charged with a third such offense.

n. In 1979, Tennessee amended its juvenile code, adding vehicular homicide to the offenses that can be transferred to adult courts. In addition, the circuit courts must now have hearings to accept jurisdiction or to transfer the cases back to juvenile courts.

o. Vermont adopted a judicial waiver provision in 1981. It permits the transfer of juveniles ten to 14 years of age charged with 11 specified felonies including violent offenses and burglary in the night time.

p. In 1980, Virginia provided that juveniles over 15 years of age or older, once tried and convicted in adult courts for felonies, may be judicially waived for subsequent offenses without amenability hearings.

CONCURRENT JURISDICTION PROVISIONS

Concurrent jurisdiction statutes are known by several popular names, such as "direct file" or "prosecutorial choice" provisions. These statutes essentially delegate to prosecuting attorneys the nonappealable discretion to file charges, under certain circumstances, against juveniles in either juvenile or adult courts. The statutory conditions under which charges may be directly filed in adult courts, against youth who would normally be under the jurisdiction of juvenile courts, are quite similar to the statutory requirements for judicial waiver. Generally speaking, prosecutors must determine that the youth are over a prescribed minimum age and that they are charged with felonies. In effect, prosecutors have the prerogative to preclude the intervention of juvenile courts in such cases, by proceeding directly to grand juries or to criminal courts for prosecution.

Statutes providing for the exercise of some type of concurrent jurisdiction by juvenile and adult courts are included within the legal codes of 13 jurisdictions.³¹ In six states, the concurrent jurisdiction provisions concern only traffic, watercraft, or fish and game violations.³² In five of those six states, there is no minimum age requirement: juveniles charged with such offenses routinely appear in adult courts, although prosecutors retain the discretion to try them as juveniles.³³ Massachusetts, however, does require that individuals charged with traffic offenses be at least 16 years of age.³⁴

Table 2 lists the eight states which permit concurrent jurisdiction for criminal offenses other than traffic or other summary offenses. Iowa is not included in the list of states with concurrent jurisdiction, despite the fact that such a provision existed in the juvenile code in 1978. In practice, it was not treated as a concurrent jurisdiction provision, but was interpreted to mean that the criminal court could assume jurisdiction after a judicial waiver.

Table 2 also shows the ranges of age during which juvenile and adult court jurisdiction overlap. In some instances, it extends for two or three years; in other states, prosecutors may directly file on literally any juvenile.

Three states (Arkansas, Nebraska, and Wyoming) provide for the exercise of concurrent jurisdiction over all types of criminal offenses, i.e., felonies and misdemeanors.

In two states, there are no statutorily specified minimum age requirements for criminal prosecution of capital offenses, i.e., offenses punishable by life imprisonment or death (Florida and Georgia). However, the Florida statute specifies 16 as the minimum age when the crimes charged are noncapital offenses. (This latter provision became effective October 1, 1978.) In the District of Columbia, a youth 16 years of age or older may be charged by the U. S. Attorney in criminal court if the alleged offense is murder, forcible rape, first degree burglary, armed robbery or assault with intent to commit one of the above

TABLE 2. STATES WITH CONCURRENT JURISDICTION PROVISIONS IN 1978
(CONCURRENT JURISDICTION OVER ONLY MINOR OFFENSES NOT
INCLUDED) (BY AGE AND BY OFFENSE RESTRICTIONS) ^a

State ^b	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Concurrent Jurisdiction Is Allowed	Offense Restrictions
Arkansas	18	15	All offenses.
Colorado	18	14	Class 1 felonies.
		16	Class 2 or 3 and nonclassified felonies punishable by maximum punishment of death or life imprisonment with previous adjudication for a felony within the past two years.
		14	Class 2 or 3 and nonclassified felonies with previous felony charge that is ultimately waived.
District of Columbia	18	16	Murder, forcible rape, burglary, armed robbery, assault with intent to commit any of the previous offenses, and any offense properly joinable with such an offense.
Florida	18	Any age	Offenses punishable by death or by life imprisonment.
		16	Any offense; upon motion of the youth the case is to be transferred to the juvenile court if it is shown that there had not previously been two findings of delinquency, one of which involved a felony. (Effective October 1, 1978)
Georgia	17	Any age	Offenses punishable by death or life imprisonment.
Iowa ^c	18	Any age	All offenses. Filing of a county attorney's information or grand jury indictment against youth in juvenile court.
Nebraska	18	16	Misdemeanors, other than parking violations.
		Any age	Felonies
		Under 16	Traffic or ordinance violations.
Wyoming	19	Any age	All offenses.

a. For further details see the appropriate state profile in separate profile volume.

b. Vermont added a concurrent jurisdiction provision in 1981. With youth, 16 to 18 years of age, charged with any offense except "specified felonies", the state's attorneys may file charges in juvenile courts or criminal courts. Wisconsin added a concurrent jurisdiction mechanism effective November 18, 1978, which gave jurisdiction over juveniles 16 years of age or older for violations of laws punishable by forfeiture or violations of county, town or municipal ordinances, excluding traffic and boating violations to adult and juvenile courts.

c. The Iowa Supreme Court interpreted this provision to apply only after judicial waiver from juvenile court. In practice, this provision was not treated as a concurrent jurisdiction provision. It is, therefore, not counted as a concurrent jurisdiction provision, although listed on this table. This provision was repealed in 1979.

offenses. If so charged, any other offense properly joined with such offense will also be tried in criminal court.

In addition, Colorado has a rather complicated statutory scheme for concurrent jurisdiction, which provides that individuals 14 years of age or older may be prosecuted as adults for felonies (other than Class I felonies) only if they have been previously waived to adult courts. Individuals 16 years of age or older charged with Class 2 or Class 3 felonies, or nonclassified felonies punishable by a maximum punishment of life imprisonment or death, and who have been adjudicated delinquent within the past two years for an act which would have constituted a felony if committed by an adult, may also be subject to criminal prosecution through prosecutorial discretion.

EXCLUDED OFFENSE PROVISIONS

Another legal mechanism used to refer youth to adult courts occurs when legislatures expressly exclude specific offenses from juvenile court jurisdiction. Under these statutes, trials of youth in adult courts are automatic. All discretion permitted to judges or prosecutors under the two previous legal mechanisms has been precluded by the legislatures.

For the most part, statutes which exclude such offenses focus narrowly upon either very minor crimes, such as traffic or fishing law violations, or upon very serious crimes, such as murder. In either case, however, the legal mechanism employed is the same, designated in this report as an excluded offense.

Thirty-one jurisdictions have statutory provisions excluding certain offenses from juvenile court jurisdiction.³⁵ Twenty jurisdictions exclude only traffic, watercraft, or fish and game violations.³⁶ (See Appendix C for compendium of state juvenile traffic laws.) Ten of these 20 jurisdictions have set no minimum age requirements,³⁷ whereas, in the other ten states, specified minimum age requirements permit juvenile courts to retain jurisdiction over younger offenders.³⁸

The remaining 11 of the 31 jurisdictions, displayed in Table 3, have statutory provisions excluding specified serious offenses from juvenile court jurisdiction.³⁹ Eight of these states also exclude minor traffic, watercraft, or fish and game violations as well.⁴⁰

In four of the 11 states, individuals of any age charged with capital or major felonies are automatically prosecuted in adult courts.⁴¹ Three additional states exclude capital offenses, but the pertinent statutes each contain a minimum age provision of 13, 14, or 15 years of age.⁴²

A New York statute provides that individuals who are 13 years of age or older and charged with murder in the second degree, or 14 years of age or older and charged with the following crimes are automatically tried as adults:

TABLE 3. STATES WITH EXCLUDED SERIOUS OFFENSE PROVISIONS IN 1978
(BY AGE AND BY OFFENSE RESTRICTIONS)

State ^a	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Certain Offenses Are Excluded	Offense Restrictions
Delaware	18	Any age	1st degree murder, rape, kidnapping
Indiana ^b	18	Any age	Murder
Kansas	18	16	Previously adjudicated delinquent or miscreant child confined in a youth training or rehabilitation facility charged with arson or malicious destruction of the institution, assault or battery of staff, or second escape from the institution.
Louisiana ^c	17	15	Capital offense, armed robbery, or attempted aggravated rape
Maryland	18	14	Offense punishable by death or life imprisonment
		16	Armed robbery
Mississippi	18	13	Capital offense or offense punishable by life imprisonment
Nevada	18	Any age	Murder and attempted murder
New Mexico	18	15	Felonious traffic
New York	16	13	Murder in the 2nd degree
		14	First degree - manslaughter, kidnapping, arson, assault, rape, sodomy, burglary, robbery or attempt to commit kidnapping. Second degree - burglary, arson, robbery, or attempt to commit murder.
Pennsylvania	18	Any age	Murder
Rhode Island	18	16	Found delinquent twice for indictable offenses; after the age of 16, all subsequent felonies are excluded from juvenile court jurisdiction.

a. Idaho excluded 14 year olds or older charged with murder, attempted murder, robbery, rape, mayhem, assault or battery with intent to commit any of the above, from juvenile court jurisdiction in 1981. In 1979, Oklahoma added an excluded offense provision. Now, 16 and 17 year olds charged with any of ten serious crimes must be tried initially as adults. Vermont in 1981 excluded juveniles between 14 and 16 years of age from juvenile jurisdiction when charged with one of 11 serious offenses including burglary in the night time.

b. Indiana repealed this provision in 1979. In 1981, Indiana excluded murder, kidnapping, rape, and robbery, while armed with a deadly weapon or if bodily injury results, if committed by juveniles 16 years of age or older.

c. In 1980, 15 and 16 year olds charged with additional, specified felonies were excluded from juvenile court jurisdiction.

- manslaughter in the first degree,
- kidnapping in the first degree,
- arson in the first degree,
- assault in the first degree,
- rape in the first degree,
- sodomy in the first degree,
- burglary in the first degree,
- robbery in the first degree, or
- attempts to commit any of the above,
- kidnapping in the second degree,
- burglary in the second degree,
- arson in the second degree,
- robbery in the second degree, or
- attempts to commit any of the above.

The statute also provides numerous mechanisms for the transfer of the cases back to family courts at any stage of the proceedings.⁴³

Fifteen and 16 year olds in Louisiana who are charged with capital crimes, armed robbery, or attempted aggravated rape are excluded from juvenile court jurisdiction. While quite unusual, this provision is also mentioned in a section of the Louisiana constitution.⁴⁴ In Maryland, youth 16 years old or older charged with armed robbery and youth 14 years old or older charged with capital offenses are excluded from juvenile court jurisdiction.⁴⁵

In Rhode Island, youth twice found delinquent for indictable offenses are, after becoming 16 years of age, excluded from juvenile jurisdiction for subsequent felony charges.⁴⁶ In Kansas, previously adjudicated delinquent or miscreant youth who are 16 years of age or older and confined in a training or rehabilitation facility for youth are automatically tried as adults, when charged with a second escape, aggravated assault of an employee of the institution, or arson of the building.⁴⁷ Finally, in New Mexico, the statutes provide for the exclusion of individuals 15 years of age or older from juvenile court jurisdiction when charged with felonious traffic offenses.⁴⁸

SUMMARY OF LEGAL MECHANISMS

Table 4 summarizes the statutory information concerning the initial age of criminal court jurisdiction, judicial waiver, concurrent jurisdiction, and excluded offense provisions.

Prior to researching the pertinent statutory provisions, the assumption was made that jurisdictions which begin criminal court jurisdiction at age 18 would utilize the concurrent jurisdiction and excluded offense mechanisms more frequently than would states with lower ages of criminal court jurisdiction. The rationale for the assumption was that, since the majority of serious juvenile offenders are older adolescents, there would seem to be less need for additional legal mechanisms for placing these offenders in criminal courts where a lower

maximum age of initial juvenile court jurisdiction already achieved this result. The research has borne this assumption out. Georgia (age 17), Louisiana (age 17), and New York (age 16) are the only states, outside the group of 38 states using the age of 18 for criminal responsibility, which have statutes providing for either concurrent jurisdiction or the exclusion of serious offenses from the jurisdiction of juvenile courts in 1978.

Judicial waiver provisions are the most frequently enacted mechanism for determining which juveniles under specified maximum ages will be tried in adult criminal courts. Only four states in 1978--Arkansas, Nebraska, New York, and Vermont--did not have such provisions in their legal codes. Interestingly enough, two of the states are in the under-18 age group, while the other two are in the under-16 age group. Vermont has since enacted a waiver provision and New York is currently considering a similar amendment.

Although there may be several possible explanations for the overwhelming use of judicial waiver provisions, there is one that immediately comes to mind. The judicial waiver procedure, which focuses on the juvenile's amenability to treatment within the juvenile court system, can more readily accommodate the exceptional cases than can any of the other legislative schemes. That is, two of the other three legal mechanisms sweep juveniles into adult courts on the basis of age or offense alone. Clearly, many youth who are tried as adults could reasonably be considered amenable to juvenile treatment. The third mechanism, concurrent jurisdiction, grants prosecutors the option of forums. While the criteria used by many prosecutors may be the same as those used by juvenile court judges, state legislators may prefer such authority to be in the hands of the judiciary, where successful prosecution is not a consideration.

The heavy legislative reliance on judicial waiver may constitute an expression of confidence or satisfaction with the juvenile court judges as the decisionmakers, as opposed to the prosecuting attorneys or even to the legislatures themselves (lower maximum jurisdictional age and excluded offenses). Whatever the reasons, an examination of the codes of the six states where legislatures have raised the maximum jurisdictional age in the last ten years to 18 reveals that all of these states have judicial waiver provisions.⁴⁹

The excluded offense portion of Table 4 is also interesting, but for other reasons. There appears to be no obvious pattern to the selection of minimum age and offense combinations. While there appear to be no geographic or demographic patterns present, three major eastern metropolitan areas are represented in the excluded offense categories--Maryland (Baltimore), Pennsylvania (Philadelphia), and New York (New York City). However, sparsely populated states, such as Mississippi, Nevada, New Mexico, and Louisiana are also included in the same group. Perhaps the most significant observation is that almost every conceivable scheme has been employed in one state or another, and still there are many unsolved problems within the juvenile justice systems in all of them.

TABLE 4. OVERVIEW OF 52 JURISDICTIONS' STATUTORY PROVISIONS BY AGE OF INITIAL CRIMINAL COURT JURISDICTION AND BY LEGAL MECHANISMS IN 1978

Statutory Age of Criminal Court Jurisdiction					
18		17		16	
Alabama	Kansas	Oklahoma	Georgia	Michigan	Connecticut
Alaska	Kentucky	Oregon	Illinois	Missouri	New York
Arizona	Maine	Pennsylvania	Louisiana	South Carolina	North Carolina
Arkansas	Maryland	Rhode Island	Massachusetts	Texas	Vermont
California	Minnesota	South Dakota			
Colorado	Mississippi	Tennessee			
Delaware	Montana	Utah			
District of Columbia	Nebraska	Virginia			
Florida	Nevada	Washington			
Hawaii	New Hampshire	West Virginia			
Idaho	New Jersey	Wisconsin			
Indiana	New Mexico	Wyoming			
Iowa	North Dakota	United States			
	Ohio				
Jurisdictions with Judicial Waiver Provisions					
18		17		16 ^a	
Alabama	Kansas	Oklahoma	Georgia	Michigan	Connecticut
Alaska	Kentucky	Oregon	Illinois	Missouri	North Carolina
Arizona	Maine	Pennsylvania	Louisiana	South Carolina	
California	Maryland	Rhode Island	Massachusetts	Texas	
Colorado	Minnesota	South Dakota			
Delaware	Mississippi	Tennessee			
District of Columbia	Montana	Utah			
Florida	Nevada	Virginia			
Hawaii	New Hampshire	Washington			
Idaho	New Jersey	West Virginia			
Indiana	New Mexico	Wisconsin			
Iowa	North Dakota	Wyoming			
	Ohio	United States			
Jurisdictions with Concurrent Jurisdiction Provisions (By Age of Initial Criminal Court Jurisdiction and by Special Conditions) ^b					
18		17		16 ^c	
Arkansas	- 15, any offense		Georgia - any age, capital offense		None
Colorado	- 14, major felony				
	16, felony with previous adjudication				
District of Columbia	- 16, major felony				
Florida ^d	- 16, misdemeanor or felony				
	any age, capital offense				
Nebraska	- any age, felony				
	16, misdemeanor				
Wyoming	- any age, any offense				

TABLE 4. (Continued)

Jurisdictions with Excluded Offense Provisions (By Age of Initial Criminal Court Jurisdiction and by Special Conditions) ^e		
18 ^f	17	16 ^g
Delaware - any age, murder, rape, kidnapping	Louisiana ¹ - 15, capital offenses, attempted aggravated rape and armed robbery	New York - 13, murder 14, major felonies
Indiana ^h - any age, murder		
Kansas - 16, institutional offense		
Maryland - 14, capital offense 16, armed robbery		
Mississippi - 13, capital offense		
Nevada - any age, murder and attempted murder		
New Mexico - 15, felonious traffic offense		
Pennsylvania - any age, murder		
Rhode Island - 16, repeat felonies		

- a. Vermont, in 1981, added a judicial waiver provision over youth between ten and 14 years of age for serious felonies.
- b. States with concurrent jurisdiction provisions only over traffic or other minor offenses are not included in this table.
- c. Vermont, in 1981, added a concurrent jurisdiction provision over youth 16 to 18 years of age for all offenses not designated as serious offenses.
- d. Upon motion of the youth the case is to be transferred to the juvenile court if it is shown that there had not previously been two findings of delinquency.
- e. States with excluded offense provisions only over traffic or other minor offenses are not included in this table.
- f. Idaho, in 1981, excluded youth 14 years of age or older charged with major felonies; Oklahoma, in 1979, excluded youth 16 and 17 years of age charged with ten serious crimes.
- g. Vermont excluded youth between 14 and 16 years of age charged with 11 serious offenses.
- h. Repealed, effective October 1, 1979. In 1981, Indiana excluded specific major felonies from juvenile jurisdiction if committed by youth 16 years of age or older.
- i. In 1980, 15 and 16 year olds charged with additional specified serious felonies were excluded from juvenile court jurisdiction.

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Transfers to Juvenile Court

Several states provide for the removal to juvenile court of youth charged with excluded offenses. Maryland provides that any youth excluded from juvenile court jurisdiction may be transferred to the juvenile court if it is believed to be in the "best interest of the child or society." The same factors that are to be considered in the judicial waiver provision,--age, mental and physical condition of the youth, amenability to treatment, the nature of the alleged offense, and the public safety--are to be considered in making a determination to transfer the case to juvenile court.⁵⁰

Youth initially excluded from juvenile court jurisdiction in New York can be removed to juvenile court at virtually any point in the criminal proceeding, even following a jury verdict.⁵¹

Pennsylvania permits the transfer of excluded murder cases to juvenile courts if it appears to the court that the defendant is a child. In addition, if the youth is charged with murder but is convicted of a lesser crime, the case may be transferred for disposition to the juvenile court.⁵²

Louisiana, on the other hand, provides that the criminal court will retain jurisdiction of a case, even though the youth pleads guilty to, or is convicted of, a lesser included offense. A plea to, or conviction of, a lesser included offense does not reconstitute the juvenile court with jurisdiction of such a youth.⁵³

COURT ORGANIZATION

Table 5 reflects the manner in which each jurisdiction's courts are structured, with respect to juvenile jurisdiction. In most of the 52 jurisdictions, juvenile courts are divisions or sessions of the highest trial-level courts in their respective states. In Delaware, New York, Rhode Island, South Carolina, and Virginia, each county has a family court or a juvenile and domestic relations court. In 1978, New Jersey's juvenile and domestic relations courts became divisions of the superior courts in a unified state system.

In addition, specified counties within certain states have created separate family or juvenile courts. This occurs in Alabama, Georgia, Indiana, Louisiana, Massachusetts, Mississippi, Nebraska, and Tennessee.

TABLE 5. OVERVIEW OF COURTS EXERCISING JUVENILE JURISDICTION
IN STATE AND FEDERAL COURTS IN 1978

State	Courts Exercising Juvenile Jurisdiction
Alabama	Nine counties have designated family courts. The remaining counties have juvenile divisions of either circuit or district courts.
Alaska	Juvenile session of superior courts.
Arizona	Juvenile division of superior courts.
Arkansas	Juvenile division of county courts; in three counties, separate juvenile courts.
California	Juvenile session of superior courts.
Colorado	District courts, except in Denver which has a separate juvenile court.
Connecticut	Family court session of superior courts.
Delaware	Unified family courts.
District of Columbia	Family division of the superior courts.
Florida	Juvenile division of circuit courts.
Georgia	As of June 1977, 36 counties had separate juvenile courts. One hundred and twenty-three counties had juvenile courts presided over by superior court judges or by judges appointed by the superior court.
Hawaii	Family division of circuit courts.
Idaho	Magistrate division of district courts or general district courts.
Illinois	Juvenile session of circuit courts.
Indiana	Juvenile jurisdiction is in circuit courts or superior courts in most counties. In Marion County, there is a special juvenile court. In St. Joseph County, juvenile jurisdiction is in the probate court.
Iowa	Juvenile session of district courts.
Kansas	Juvenile sessions is in district courts.
Kentucky	Juvenile session of district courts.
Louisiana	Four parishes have separate juvenile courts. The district courts have juvenile jurisdiction in parishes where juvenile courts have not been established. However, district courts, municipal courts, parish courts, and city courts exercise concurrent juvenile jurisdiction within the range of their venue.
Maine	Juvenile court, session of district courts.
Maryland	Juvenile jurisdiction is in circuit courts, except in Montgomery County where it is in district court.
Massachusetts	Juvenile jurisdiction in district court department, plus four separate juvenile court department.
Michigan	Juvenile division of probate courts
Minnesota	Family court division of county courts, except in Hennepin and Ramsey counties where family courts are divisions of district courts.

TABLE 5. (Continued)

State	Courts Exercising Juvenile Jurisdiction
Mississippi	All county courts, except in Harrison County, hear juvenile cases. In Harrison County, the family court handles all delinquency cases. In counties without county courts, chancery courts hear juvenile cases. In Pearl County, there is no county court. The municipal court exercises juvenile jurisdiction. The court exercising juvenile jurisdiction is referred to as the youth court.
Missouri ^a	Juvenile division of circuit courts. In Hannibal County, the court of common pleas has concurrent jurisdiction with the circuit courts over juvenile matters.
Montana	Youth court division of district courts.
Nebraska	Juvenile jurisdiction is generally exercised by the county courts. However, three counties--Douglas, Lancaster, and Sarpy--have separate juvenile courts.
Nevada	Juvenile court division of district courts.
New Hampshire ^b	Concurrent jurisdiction between municipal courts and district courts over juvenile cases.
New Jersey	The juvenile and domestic relations courts became divisions of the superior courts in December, 1978.
New Mexico	Childrens or family courts division of district courts.
New York	Family courts.
North Carolina	Juvenile jurisdiction is in district courts.
North Dakota	Juvenile jurisdiction is in district courts.
Ohio	In all except two counties, the juvenile court is within the probate or domestic relations division of common pleas courts. In Hamilton and Cuyahoga Counties, the juvenile courts are separate divisions of the common pleas courts.
Oklahoma	Juvenile division of district courts.
Oregon	In most counties, juvenile jurisdiction is in the circuit courts. In seven counties, county courts have juvenile jurisdiction.
Pennsylvania	Juvenile court division of common pleas courts.
Rhode Island	Family courts are unified state courts.
South Carolina	Family courts.
South Dakota	Juvenile session of circuit courts.
Tennessee ^c	In 21 counties, juvenile court jurisdiction was exercised by the general sessions courts. In the remainder of the counties, county judges and county executives act as judges of the juvenile court. Separate juvenile courts or other courts with concurrent jurisdiction exist in 14 counties. In Dyer County, the law and equity judge has juvenile jurisdiction.
Texas	One of the "regular" courts in each county is designated the juvenile court of the court. Generally, it is the district court, but the county court or the county court at law may be so designated.
Utah	Juvenile district courts

TABLE 5. (Continued)

State	Courts Exercising Juvenile Jurisdiction
Vermont	Juvenile division of district courts.
Virginia	Juvenile and domestic relations courts.
Washington	Juvenile department of superior courts.
West Virginia	Juvenile division of circuit courts.
Wisconsin	Juvenile division of circuit courts, unless exclusive jurisdiction is given to another court.
Wyoming	Juvenile division of district courts have nonexclusive jurisdiction of juvenile proceedings.
United States	Federal district courts.

a. Effective January 2, 1979, in all judicial circuits, circuit court judges now designate juvenile divisions and the classes of cases to be assigned to each division.

b. The 1979 Reform Act provided that municipal courts no longer have juvenile jurisdiction. Juvenile jurisdiction is now vested only in the district courts.

c. In March of 1980, the Tennessee Supreme Court ruled that juvenile court judges must be attorneys where there is a possibility of incarceration. This was codified soon after. If the juvenile could be incarcerated if adjudicated, the case is transferred to the appropriate court for trial from the juvenile court having a non-attorney as judge.

CORRECTIONS INFORMATION

Besides data on referral procedures for youth tried as adults, information on the corrections placements of these youth was also gathered. These criminal court placements are very much a part of the rationale for treating youth as adults, since they radically differ from the options available to juvenile courts. Of particular concern were sentencing options that consisted of incarceration. This information was gathered primarily through telephone interviews with state corrections officials, rather than through a review of state statutes.

Table 6 reveals the types of confinement options available to adult courts, when sentencing youth who have been convicted in those courts. In all 12 states where 16 and/or 17 year olds are tried as adults (because of lower ages of criminal responsibility), such youth may only be confined in adult facilities. In an effort to make Table 6 more useful, no references are made to those sentencing practices. For example, New York's correctional practices reported on Table 6 refer only to sentencing "juvenile offenders". Vermont's laws in 1978, had no legal mechanisms other than lower age of criminal court jurisdiction. For more detailed information about specific state practices, consult the separate profile volumes. However, in utilizing the information in Table 6, the reader must carefully read the footnotes, in order to obtain a complete picture of specific states' confinement options.

For example, if one begins with each state's minimum age of criminal responsibility, defining everyone above that age to be "adults", there are 45 jurisdictions which authorize the confinement of youth in adult facilities.⁵⁴ If, on the other hand, one defines "youth" as anyone under the age of 18, then 50 jurisdictions authorize such placements: only two states (Delaware and Kentucky) forbid the placement of anyone under the age of 18 in state adult corrections institutions. Table 6 is organized according to the former definition, in accordance with state law.

In 27 of these jurisdictions, the courts have no option but to place the youth in adult facilities when the sentences specify any type of incarceration.⁵⁵ In 18 jurisdictions, the courts have the option of placing youth in either adult or juvenile corrections facilities, sometimes only under special circumstances.⁵⁶ In Colorado, youth can also be referred back to juvenile court for dispositions as juveniles. In some states, such as Florida, the practice is to send youth to adult facilities, despite the possibility of placement in juvenile facilities. A variation on this basic pattern occurs in Washington, where youth under 16 will be initially referred to the (adult) Department of Corrections and then administratively transferred to juvenile facilities. Upon reaching the age of 16 (or, in some cases, 18), these youth are transferred back to the adult system. Vermont permits 16 and 17 year old "adults" to be referred to juvenile courts for handling as delinquents.

Only six jurisdictions in the country restrict placements of juveniles convicted as adults to state juvenile corrections institutions.⁵⁷ Delaware is an example of this procedure. Generally, youth sentenced in this manner will be

transferred to adult facilities to serve the remainder of their sentences, upon reaching majority.

The corrections options for youth tried as adults in Arizona do not fit well into the adult/juvenile corrections dichotomy. Arizona maintains a special facility, operated by the Department of Corrections, for such youth. The facility is operated separately from both adult and juvenile institutions.

A few states do permit administrative or judicial transfers from adult to juvenile facilities (e.g., Arkansas, Nevada) or from juvenile to adult facilities (e.g., Hawaii), prior to attaining the minimum age of general criminal responsibility. Most commonly, the provision is for transfer from adult to juvenile facilities for such exceptional situations as when youth are not capable of coping with life in adult prison. Respondents in approximately half of the states having such provisions informed us that these provisions were seldom or never used.

As mentioned earlier, in the 12 states where initial criminal court jurisdiction begins at 16 or 17 years of age, youth above these ages are routinely placed in adult corrections facilities, if given incarcerative sentences. In some of these states, as in North Carolina, for example, 16 and 17 year olds are placed in youthful offender facilities operated by adult corrections agencies. Only in Vermont are there provisions for referring such youth to juvenile courts for disposition as a delinquent.

Sentencing provisions may be used to protect very young adults from some of the harshness of the adult corrections system. For example, in New York, 13 to 15 year olds who are convicted as adults will be initially placed in juvenile corrections facilities. However, they may be transferred to adult facilities (by court order) at age 16; administratively transferred at age 18, at the discretion of the state Division for Youth; and they must be transferred at age 21, to fulfill the remainder of their terms of incarceration.

TABLE 6. OVERVIEW OF INSTITUTIONAL PLACEMENT OPTIONS FOR YOUTH CONVICTED AS ADULTS IN STATE AND FEDERAL COURTS IN 1978^a

State	Adult Corrections	Juvenile Corrections
Alabama	X	
Alaska	X	
Arizona	X ^b	
Arkansas	X	
California	X	X
Colorado ^c		X
Connecticut ^d	X	X
Delaware	X	X
District of Columbia		X ^e
Florida	X	X ^f
Georgia ^g		
Hawaii		X ^h
Idaho	X	X
Illinois ^g	X	X
Indiana	X	X ⁱ
Iowa		
Kansas	X	
Kentucky	X	X
Louisiana ^g		X ^j
Maine	X	
Maryland		
Massachusetts ^g	X	
Michigan ^g	X	X ^k
Minnesota	X	
Mississippi	X	
Missouri ^g		X
Montana	X	
Nebraska	X	
Nevada	X ^l	
New Hampshire	X	X
New Jersey		
New Mexico ⁿ	X	X ^m
New York ^d	X	X
North Carolina ^d		X ^o
North Dakota	X	

TABLE 6. (Continued)

State	Adult Corrections	Juvenile Corrections
Ohio	X	
Oklahoma	X	
Oregon	X	
Pennsylvania	X	
Rhode Island	X	
South Carolina		X ^P
South Dakota	X	X
Tennessee	X	
Texas	X	
Utah	X	
Vermont ^Q		
Virginia	X	X
Washington	X ^r	
West Virginia	X	X ^s
Wisconsin	X	
Wyoming	X	X
Federal Districts	X	
Total	45	24

a. Placement options for adult courts sentencing 16 and 17 year old youth in states having lower ages of jurisdiction have been excluded. For more information on the institutional placement options, see the corrections sections of the individual state profiles in the separate profile volumes.

b. A special facility is operated by the Department of Corrections only for youth tried as adults.

c. Youth can also be sent back to juvenile courts for disposition as juveniles.

d. These data apply only to youth under the age of 16. Sixteen and 17 year olds are adults and can only be incarcerated in adult facilities.

e. Offenders committed by adult courts are placed in maximum security juvenile units until the age of 18, at which time they are transferred to adult corrections to serve the remainder of their sentences.

f. The criminal court must stay and withhold the adjudication of guilt and instead adjudge the youth delinquent.

TABLE 6. (Continued)

g. These data apply only to youth under the age of 17. Seventeen year olds are adults and can only be incarcerated in adult facilities.

h. Will be transferred to adult corrections at age 17.

i. May be transferred to adult corrections at age 17.

j. If the youth is under 18 at the time of sentencing and the period of sentence imposed by the verdict would extend beyond the age of 21, the commitment will be to the Department of Human Resources (juvenile corrections) until the age of 21 and then to the custody of the Bureau of Corrections to serve the remainder of the sentence.

k. If the youth is under the age of 18 prior to a finding or plea of guilty, the court may adjudicate the youth as a delinquent child and make any disposition appropriate for a delinquent child. DYS can retain custody of these youth until they attain 21 years of age.

l. Youth under 16 years of age must be isolated if committed to adult facilities.

m. Youth under the age of 16 found guilty of a crime other than murder may be committed to a juvenile facility.

n. For special cases, youth convicted in criminal courts can be sent directly to juvenile facilities through special arrangements made by the judge and the Department of Corrections.

o. Youth may be transferred by court order at 16; administratively transferred at 18 at the discretion of the Division for Youth and must be transferred at 21 years of age to adult corrections.

p. Juveniles certified as adults are not sent to adult facilities for periods exceeding 30 days until after their 17th birthdays. A designated facility for inmates under 17 is operated by the Department of Youth Services. At age 18, juveniles may be transferred to adult institutions if time is remaining on the sentence.

q. Vermont had no provision for trying juveniles under 16 years of age in criminal courts in 1978. However, criminal courts can refer 16 and 17 year old defendants back to juvenile courts, in which case, such youth may be subject to delinquency dispositions.

r. Juveniles under 16 years of age convicted in adult courts and sentenced to incarceration cannot be housed with adult felons and are administratively transferred to a juvenile institution by order of the Secretary of the Department of Social and Health Services. At age 16, they may be moved to an adult institution or may remain in the juvenile facility until age 18 upon the recommendation of the Bureau of Juvenile Rehabilitation.

s. Transferred to adult corrections at age 18.

CONTINUED

1 OF 4

RECENT STATUTORY CHANGES

In the three years following the end of data base year (1978), almost half of the 52 jurisdictions have made one or more changes in their provisions by which youth under 18 are tried as adults. These changes range from totally rewriting the juvenile codes to the amendment of one or more steps in the transfer process. For example, some states have granted more authority to prosecutors to initiate waiver hearings. In addition, some of these states have changed parts of their juvenile codes in 1979 and have changed other parts in 1980. The most radical changes occurred in Vermont in 1981, and affect discussions of all four mechanisms. Because of their complexity, the reader is directed to the Vermont profile in the separate profile volume. An overview of these changes, grouped in terms of the four legal mechanisms, appears below.

Judicial Waiver

The major legislative changes involving the mechanism of judicial waiver have, for the most part, related to the types of offenses subject to judicial waivers.

Connecticut, Indiana, Kentucky, and Tennessee have amended their statutes to expand the specific offenses for which waiver to adult courts may be invoked. In 1979, Tennessee added vehicular homicide to the list of offenses that can be transferred to adult courts.

Indiana has changed its judicial waiver provisions every year for the past four years. The Indiana statute, effective in 1981, includes both permissive and presumptive transfer procedures, the latter representing amendments since 1978. One of these new provisions creates a presumption favoring waiver for juveniles charged with an act which would be a felony if committed by an adult and the juvenile had previously been convicted of a felony or nontraffic misdemeanor.⁵⁸

Effective July 1, 1980, Connecticut replaced its previous transfer procedure with two new amendments. The first provision is a presumptive waiver whereby youth 14 years of age or older must be transferred if probable cause is established. The second provision is a permissive waiver whereby youth 14 years of age or older can be transferred if both probable cause and nonamenability to treatment are established. The distinctions between the two procedures relate mainly to the prior records of the juveniles who are charged with the offenses.⁵⁹

In 1980, Louisiana also amended its judicial waiver provision. It now provides that juveniles 15 years of age or older and charged with armed robbery, aggravated burglary, or aggravated kidnapping (not subject to original jurisdiction of the criminal courts under the [amended 1980] excluded offense

provision), may be transferred to criminal courts for trial where there is probable cause and where the court concludes that there is no "substantial opportunity for rehabilitation through facilities available to the juvenile court."⁶⁰

In 1980, Minnesota added a new reference provision to deal with chronic and violent offenders. A prima facie case that the public safety is not served or that the juvenile is not suitable for treatment will be deemed to have been established if the juvenile at least 16 years of age at the time of the alleged offense:

- (1) is charged with an aggravated felony against the person in a cruel, insensitive manner, or if the offense involved a high degree of criminal sophistication; or
- (2) is charged with murder in the first degree; or
- (3) is charged with one of a specified list of aggravated felonies after having been found delinquent for a felony in the previous two years or is charged with a less serious personal offense following two previous adjudications for felonies in the past two years or has been adjudicated delinquent for three felony offenses within the past two years and is charged with a felony.⁶¹

The Kentucky Unified Code, effective July 1, 1982, will replace the previous referral provisions with a new category of juvenile to be referred to adult courts--youthful offenders. A youthful offender is defined as any person regardless of age transferred to circuit courts for trial. There are four ways juveniles can be referred to circuit courts to be tried as youthful offenders:

- (1) A juvenile over 14 who has been charged with a capital offense, a Class A felony, or a Class B felony.
- (2) A juvenile over 16 who has been charged with a Class C or Class D felony and has on two prior separate occasions been adjudicated delinquent for a felony offense.
- (3) A juvenile previously adjudicated as a youthful offender and charged with the commission of a felony.
- (4) A juvenile who is charged in one above and is also charged with a Class C or Class D felony arising from the same offense. All charges will be included in the same proceeding.⁶²

Idaho, in 1981, lowered the age at which a juvenile can be judicially waived to adult courts. A juvenile can be referred to adult court for trial for any offense at age 14. Mississippi has recently instituted a once-waived, always-waived provision whereby youth, once convicted in adult courts, will be tried in adult courts for subsequent offenses. Ohio, in 1981, passed a similar once-waived always-waived provision. However, automatic waiver to criminal courts only occurs after conviction in criminal courts when youth are subsequently charged with murder, aggravated murder, felony 1 or felony 2. In

Mississippi, the transfer hearing can now be initiated by the courts themselves as well as by the youth court prosecutors. In Iowa, either the county attorney or the juvenile may file a motion requesting the juvenile court to waive jurisdiction.

Six states (Hawaii, Iowa, Maine, Minnesota, Mississippi, and Pennsylvania) have amended their statutes to include specific lists of factors to be considered in waiver hearings. Most have established Kent-like factors, beyond age, probable cause, and nonamenability to treatment as a juvenile, to include such additional factors as seriousness of offense, nature and circumstances of the act, and sophistication and maturity of the juvenile.

In 1979, North Carolina modified its code so that the state would be represented by prosecutors at felony transfer hearings. The amendments also gave juveniles the right to waive these probable cause hearings. In addition, youth tried as adults now have the right to bail.

In Washington, D.C., the juvenile court rules were amended in 1979. The burden of proof at the transfer hearing is now on the government to prove that there are no reasonable prospects of rehabilitation in the juvenile system.

In two states, changes were made concerning the right to appeal. In New Hampshire, juveniles were given the right to appeal waiver decisions without waiting until after conviction in criminal courts. In Hawaii, legislation was passed making waiver nonappealable until after all trials are completed stemming from the charges on which the waiver was based.

Other legislative changes concerning juveniles transferred to adult courts occurred in Tennessee. The adult courts in Tennessee are now required to hold hearings to decide whether to accept jurisdiction over transferred youth or to waive them back to juvenile courts.

Concurrent Jurisdiction

In the area of concurrent jurisdiction, only three changes were noted after the base year of 1978. In Arkansas, the age at which prosecuting attorneys decide the forum on an arrest without warrant was raised from 12 to 15, in order to reconcile the juvenile code with the criminal code. (See Arkansas profile in separate profile volume.)

In Iowa, the concurrent jurisdiction provision was eliminated to clarify that juveniles must first be judicially waived from juvenile courts before they can be prosecuted in criminal courts. The concurrent jurisdiction provision was not applied in practice prior to the legislative change.

In Mississippi, hunting and fishing violations were added to the concurrent jurisdiction provisions relating to traffic. In cases involving youth 13 years of age or older, charged with traffic or fish and game violations, there is

concurrent jurisdiction between the youth courts, municipal, and justice of the peace courts. The adult courts may try certain cases if given permission by the youth courts. The youth courts, however, may assert jurisdiction over the child at any stage in the proceedings.

Excluded Offenses

Several states added excluded offense provisions since 1978 and several others expanded their lists of excluded offenses. Oklahoma added an excluded offense provision by which youth 16 and 17 years of age, charged with murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape in the second degree, use of a firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, shooting with intent to kill, manslaughter in the first degree, or nonconsensual sodomy, shall be considered adults.⁶³ However, once in adult courts, they may be "reverse certified" back to the juvenile courts. This provision was added after a mandatory waiver covering the same offenses was declared unconstitutional.

In 1981, Indiana excluded cases involving 16 and 17 year olds charged with murder, kidnapping, rape, and robbery from juvenile court jurisdiction. For robbery to be treated as an excluded offense, the complaint must charge that it was committed with a deadly weapon or that it resulted in bodily injury.⁶⁴ Once such an individual has been charged with any of the above crimes, the criminal court retains jurisdiction even if the individual is convicted of a lesser offense.

In 1981, Idaho added an excluded offense provision for violent offenses. Youth, age 14 years of age or older, charged with murder or attempted murder, robbery, rape, excluding statutory rape, mayhem, assault or battery with the intent to commit murder, forcible rape, robbery or mayhem must be charged, arrested, and proceeded against as adults. However, the sentencing judge can sentence youth convicted under this provision in accordance with juvenile sentencing options, if the court decides that adult sentencing would be inappropriate.⁶⁵

In 1980, Louisiana added to the list of youth excluded from juvenile court jurisdiction 15 year olds charged with first degree murder, second degree murder, manslaughter, and aggravated rape; and 16 year olds charged with armed robbery, aggravated burglary, or aggravated kidnapping. The criminal courts retain jurisdiction over the cases even though the youth plead guilty or are convicted of lesser offenses.

Since 1978, many states have established or revised provisions excluding minor misdemeanors from juvenile court jurisdiction. For example, Iowa has added possession-of-alcohol to an extended list of minor offenses excluded from juvenile jurisdiction. Washington, in 1979, added fishing, boating and game violations, by youth 16 years of age or older, to traffic, which had been made an excluded offense in 1978. In 1980, the Missouri and Minnesota legislatures

passed legislation excluding traffic offenses from original juvenile court jurisdiction.

In Mississippi, circuit court judges may now, at any stage of the proceedings (prior to the attachment of jeopardy), transfer capital cases begun in criminal courts to youth courts, provided the youth have not previously been transferred to and convicted in circuit courts.

In 1979, New York made two code revisions concerning juveniles excluded from family court jurisdiction in 1978: "juvenile offenders" may now be sentenced as "youthful offenders", and youth cannot be removed to family courts from lower-level trial courts over the objections of the prosecutor.

Age of Jurisdiction

There were no states that raised or lowered the minimum age of initial criminal court jurisdiction since 1978. The only legislative activity in this area occurred in 1979 in Oklahoma, where the statutes were updated to coincide with state case law. In Lamb v. Brown, the U.S. Court of appeals held that the decision defining child to include males under the age of 16 years and females under the age of 18 years was violative of the equal protection clause of the U.S. Constitution. Following Lamb v. Brown, the juvenile court age for both males and females was defined in practice as extending to 18 years of age. The legislature amended the juvenile code in 1979 incorporating this change.

Court Organization

Since 1978, changes in court organization have occurred in three major areas:

- Court jurisdiction.
- Court structure.
- Judicial authority.

In 1979, the Arizona Supreme Court ruled that the juvenile courts lose jurisdiction over juveniles at age 18, rather than age 21. Therefore, individuals in juvenile facilities or placements were "free" when they reached 18 years of age.

Due to New Hampshire's 1979 Reform Act, municipal courts no longer have juvenile jurisdiction. It is now vested only in the district courts.

In Utah, justice of the peace courts now have concurrent jurisdiction with the juvenile courts and city courts over juvenile traffic offenses. In

Wisconsin, municipal courts now handle juvenile traffic and boating ordinance violations as well as civil cases.

A few states have restructured their courts. Kansas and South Carolina established unified state court systems in 1979. In 1980, justice of the peace courts were renamed district justice courts in Pennsylvania.

Judicial authority was changed in two states. Effective January 2, 1979, the presiding circuit court judges in Missouri now designate juvenile divisions and the classes of cases to be assigned to them.

In March, 1980, the Tennessee Supreme Court ruled that only juvenile court judges who are attorneys may hear juvenile cases where there is a possibility of incarceration. Legislation was passed soon after which requires a hearing to determine the likelihood that the youth would be incarcerated if convicted. If it is determined that incarceration is likely, jurisdiction is transferred to general sessions courts; if the judge there is not an attorney, then jurisdiction is transferred to circuit courts. This legislation is to expire or August 31, 1982, by which time the legislature is to have resolved the issue of judicial qualifications in a more permanent manner.

An issue frequently raised, in the context of judicial authority, actually arises as a result of court structure. It occurs where juvenile courts exist as divisions or sessions of higher, trial-level courts. Due process and fairness questions have been raised regarding the possibility that the same judges presiding over waiver hearings may then preside over the adjudicatory hearings in criminal court. Although some state supreme courts have held there to be no conflict of interest in this practice, the issue is by no means considered resolved.

The implications of rotating judges between adult and juvenile sessions have received recent attention by juvenile justice specialists. Two points, among others, might well be made. The likelihood of the same judge hearing both the waiver review and the criminal trial is obviously enhanced. While many judges normally remove themselves from the criminal court hearing in such cases, it may not occur unless prohibited by law. The second point is that the increasing pattern of unifying and consolidating courts has begun to cause the disappearance of juvenile courts and juvenile court judges, as they have been traditionally regarded. While juvenile cases are still handled separately, neither the court staff nor the rotating judges see themselves as exclusively within the juvenile justice system. Thus, a blurring has begun to take place, at a time greater numbers of people question the wisdom of perpetuating juvenile courts as a social institution.

Corrections

Pertinent corrections legislation since 1978 has primarily focused on the issues of sentencing guidelines and placement options. In 1979, the Idaho

legislature passed mandatory minimum sentences of not less than three years for adults who have been convicted of two enumerated felonies within a ten-year period. Juveniles judicially waived and convicted as adults are subject to these provisions.⁶⁶

In Connecticut, in 1979, two provisions were added to juvenile court dispositions.⁶⁷ First, if the delinquent act (for which a juvenile is committed to the Department of Children and Youth Services) is a serious juvenile offense, the court may set a period of time up to six months during which the child shall be placed out of his town of residence. Second, if a juvenile is adjudicated delinquent, as a consequence of a serious juvenile offense which is subject to a mandatory transfer hearing, and is retained by the juvenile court, the court shall impose a maximum period of one year placement out of the juvenile's town of residence.

Presumptive sentencing guidelines based on severity of offense and criminal history became effective in Minnesota for adults in May, 1980 and for juveniles in September, 1980. While the sentencing guidelines are advisory in nature, the legislation provides that whenever a judge imposes or stays a sentence that deviates from the sentencing guideline applicable to the case, the judge must make written findings of fact as to the reasons for such departure. The defendant or the state may appeal any sentence imposed or stayed to the Minnesota Supreme Court. The legislation provides that persons sentenced to prison for felonies, committed on or after May 1, 1980, will serve the sentence given by the judge, reduced by good time. Thus, under the sentencing guidelines, judges, not the Minnesota Corrections Board, now control the term of imprisonment.⁶⁸

Two states have recently established youthful offender provisions. Florida and Kentucky provide alternative corrections placement for younger offenders.

In Florida, youthful offenders are persons under 21 serving their first felony convictions. Services may be provided in an institution designated for youthful offenders or may be given as part of community supervision.⁶⁹

The Kentucky youthful offender provision, which becomes effective in 1982, covers youth 14 to 18 years of age convicted of felonies in criminal courts. It provides for the same sentencing procedures, including probation and conditional discharge, as applied to adults convicted of felonies. However, youthful offenders will serve their sentences in juvenile institutions until they reach the age of 18 or are discharged. At the expiration of the sentence, the sentencing courts release the youthful offenders, place them on probation or conditional discharge, return them to juvenile programs for an additional six months, or incarcerate them in adult institutions. The youth can be ordered to adult facilities by the sentencing courts, on motion of the Department for Human Resources, (juvenile corrections), for crimes, escapes, or violent behavior within juvenile institutions.

Effective in 1982, Kentucky's Department of Human Resources can ask circuit courts to reconsider placements made to DHR if it appears to the department that the youth in question are incapable of benefiting from treatment in its facilities. If the youth were convicted of felonies, circuit courts may commit them to the state penitentiary for the duration of the sentence fixed by the verdict,

allowing credit for such period of time as the youth was in custody of the department.⁷⁰

Illinois, has recently established the category of "habitual juvenile offender" within the juvenile system, as an alternative to judicial waiver.⁷¹ These offenders are juveniles who have twice been adjudicated for felonies. When adjudicated a third time for the commission or attempted commission of one of several defined serious offenses, this provision provides for longer periods of confinement (until the age of 21) and a trial by jury within juvenile courts. The state's attorneys may, however, still request waiver for these youth.

FOOTNOTES

1. There are, however, exceptions to this rule which, although noteworthy, are not applicable to the majority of individuals appearing annually before juvenile courts. The most common exception is found in statutes which specify that juvenile courts can assume jurisdiction over individuals 20 years of age or younger, if the offenses are alleged to have been committed prior to the individual's 18th birthday. See, for example, Mont. Rev. Codes Ann., Sec. 41-5-203(1). Also, the age of jurisdiction in Wyoming is 19 years of age. Wyo. Stat. Ann., Secs. 14-1-101 and 14-6-203(a)(ii).

2. Ala. Code, Sec. 12-15-1(3)(b); Alas. Stat., Sec. 47.10.010(a)(1); Ariz. Rev. Stat. Ann., Sec. 8-201(5), (8), and (9); Ark. Stat. Ann., Secs. 45-403(1) and (2); Calif. Welf. and Instns. Code, Art. 14, Sec. 602; Colo. Rev. Stat. Ann., Sec. 19-1-103(2) and 9(a)(I-III); D.C. Code, Sec. 16-2301(3); Del. Code Ann., Title 10, Sec. 901(3) and (7); Fla. Stat. Ann., Sec. 39.01(7); Hawaii Rev. Stat., Secs. 571-2(5) and 571-11(1); Idaho Code, Ch. 16, Secs. 1802(c) and 1803(1) and (2); Ind. Code Ann., Sec. 37-5-7-4.1; Iowa Code Ann., Sec. 232.2(3) and (12) and 232.63; Kans. Stat. Ann., Sec. 38-802(b); Ky. Rev. Stat. Ann., Sec. 208.020(1); Me. Rev. Stat. Ann., Title 15, Sec. 3003; Ann. Code of Md., Secs. 3-801(d), (k), and (1), 3-805(a), and 3-807(a) and (b); Minn. Stat. Ann., Sec. 260.015(2) and (5); Miss. Code Ann., Secs. 43-21-5 replaced by 43-21-105; Mont. Rev. Codes Ann., Secs. 41-5-103(10), and 41-5-203(1); Neb. Rev. Stat., Sec. 43-202; Nev. Rev. Stat., Secs. 62.020(2); N.H. Rev. Stat. Ann., Secs. 169:2(II); N.J. Rev. Stat. Ann., Secs. 2A:4-43(a), and 4-44; N.M. Stat. Ann., Sec. 32-1-3; N.D. Cent. Code, Secs. 27-20-02(1) and (2), and 27-20-03; Ohio Rev. Code Ann., Sec. 2151.011(B)(1); Okla. Stat. Ann., Title 10, Secs. 1101.(a) and (b); Ore. Rev. Stat., Sec. 419.476(1)(a); Pa. Stat. Ann., Title 42, Sec. 6302; R.I. Gen. Laws Ann., Secs. 14-1-3; S.D. Codified Laws Ann., Sec. 26-8-1(3); Tenn. Code Ann., Sec. 37-202(1) and (3); Utah Code Ann., Secs. 78-3a-2(3); Va. Code Ann., Sec. 16.1-228; Wash. Rev. Code Ann., Secs. 13.04.011(1) and (2), and 13.40.020(10), (11), and (14); W. Va. Code, Sec. 49-5-1(a); Wis. Stat. Ann., Secs. 48.02(2) and (3); Wyo. Stat. Ann., Secs. 14-1-101 and 14-8-104; U.S. Code Ann., Title 18, Sec. 5031.

3. For example, Alabama, California, District of Columbia, Florida, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Pennsylvania, South Dakota, Utah, Virginia, West Virginia, and federal jurisdictions.

4. Levin and Sarri, Juvenile Delinquency: A Study of Juvenile Codes in the U.S., (Ann Arbor, Michigan: National Assessment of Juvenile Corrections, The University of Michigan, June 1974), p. 13. The six states are: Alabama, Florida, Maine, Maryland, New Hampshire, and Oklahoma.

5. Ga. Code Ann., Secs. 24A-401(c) and 24A-301; Ill. Ann. Stat., Ch. 37, Sec. 702-2; La. Rev. Stat. Ann., Sec. 13:1569(3); Mass. Gen. Laws Ann., Ch. 119, Sec. 52; Mich. Comp. Laws Ann., Sec. 27.3178(598.2); Mo. Ann. Stat., Secs. 211.031(2) and 211.021(2); S.C. Code Ann., Sec. 14-21-510(A)(3); Tex. Codes Ann., Fam. Code, Sec. 51.02(1)(B).

6. Conn. Gen. Stat. Ann., Sec. 51-301; N.Y. McKinney's Cons. Laws of N.Y. Ann., Fam. Ct. Act, Book 29A, Part 1, Art. 7, Sec. 712(a); N.C. Gen. Stat., Art. 23, Sec. 7A-278; Vt. Stat. Ann., Title 33, Sec. 632(a)(1).

7. Vermont is an exception due to a reverse waiver provision. Vt. Stat. Ann., Title 33, Sec. 635.

8. Conn. Gen. Stat. Ann., Sec. 51-322.

9. Vermont added a judicial waiver provision effective July 17, 1981, to permit the transfer of juveniles between 10 and 14 years of age for 11 specific offenses. Vt. Stat. Ann., Title 33, Sec. 635a (added).

10. Ala. Code, Sec. 12-15-34(a); Alas. Stat., Sec. 47.10.060; Ariz. Rules of Procedure for Juvenile Court, Rules 12, 13, and 14; Calif. Welf. and Instns. Code, Art. 14, Sec. 707(a), and 707(b); Colo. Rev. Stat. Ann., Sec. 19-1-104(4)(a); Conn. Gen. Stat. Ann., Secs. 51-307 and 308; Del. Code Ann., Title 10, Secs. 921(2)(b), 937(c)(5), and 938; D.C. Code, Sec. 16-2307 and Rule 108(a); Fla. Stat. Ann., Secs. 39.02(5) and 39.09; Ga. Code Ann., Sec. 24A-2501; Hawaii Rev. Stat., Sec. 571-22; Idaho Code, Ch. 16, Sec. 1806; Ill. Ann. Stat., Ch. 37, Sec. 702-7; Ind. Code Ann., Sec. 31-5-7-14; Iowa Code Ann., Sec. 232.72; Kans. Stat. Ann., Sec. 38-808; Ky. Rev. Stat. Ann., Sec. 208.170; La. Rev. Stat. Ann., Sec. 13:1571.1; Maine Rev. Stat. Ann., Title 15, Sec. 3101(4); Ann. Code of Md., Sec. 3-817; Mass. Gen. Laws Ann., Ch. 119, Sec. 61; Mich. Comp. Laws Ann., Sec. 27.3178 (598.4); Minn. Stat. Ann., Sec. 260.125; Miss. Code Ann., Sec. 43-21-31; Mo. Ann. Stat., Sec. 211.071; Mont. Rev. Codes Ann., Sec. 41-5-206; Nev. Rev. Stat., Sec. 62.080; N.H. Rev. Stat. Ann., Sec. 169-21; N.J. Stat. Ann., Secs. 2A:4-48 and 4-49; N.M. Stat. Ann., Secs. 32-1-29 and 30, and N.M. Children's Court Rule 30; N.C. Gen. Stat., Secs. 7A-609(a) and 608; N.D. Cent. Code, Sec. 27-20-34; Ohio Rev. Code Ann., Sec. 2151.26 and Ohio Rules of Juvenile Court, Rule 30; Okla. Stat. Ann., Title 10, Sec. 1112; Ore. Rev. Stat., Sec. 419.533; Pa. Stat. Ann., Title 42, Sec. 6355; R.I. Gen. Laws Ann., Sec. 14-1-7; S.C. Code Ann., Secs. 14-21-540 and 510, and S.C. Family Court Rules, Rule 41; S.D. Codified Laws Ann., Secs. 26-11-4 and 26-8-22.7; Tenn. Code Ann., Sec. 37-234; Tex. Codes Ann., Fam. Code, Sec. 54.02; Utah Code Ann., Sec. 78-3a-25; Va. Code Ann., Sec. 16.1-269 and 270; Wash. Rev. Code Ann., Sec. 13.40.110; W. Va. Code, Sec. 49-5-10; Wis. Stat. Ann., Sec. 48.18; Wyo. Stat. Ann., Sec. 14-6-237; U.S. Code Ann., Title 18, Sec. 5032.

11. Alaska, Arizona, Kentucky, Maine, Maryland, New Hampshire, Oklahoma, South Carolina, Washington, West Virginia, and Wyoming. (This does not include provisions allowing juveniles to request transfers. Minnesota's provision for transferring traffic cases is not counted.)

12. Alaska, Arizona, Washington, and Wyoming.

13. See, for example, Ky. Rev. Stat., Sec. 208.170(1) which reads, in part: "that a child . . . was less than 16 years of age but the offense was a Class A felony or a capital offense."

14. California, Delaware, District of Columbia, Hawaii, Indiana, Kansas, Kentucky, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Washington, West Virginia, Wisconsin, and the federal jurisdiction. The Indiana legislature substantially changed the waiver statute in 1979 and 1980. Kentucky has a new transfer provision effective June 1, 1982. Oklahoma's waiver provision, which provided for mandatory transfer of juveniles, 16 years of age or older, for

serious crimes, was declared unconstitutional in 1979. See the state profiles in the separate profile volumes for details.

15. California, Delaware, District of Columbia, Kansas, North Dakota, Oregon, South Carolina, Tennessee, and Wisconsin. The District of Columbia's provision states that the child be 16 or more years of age and already under commitment to an agency or institution as a delinquent child. The District of Columbia has two other transfer provisions in their statutes. The 11 jurisdictions are Hawaii, Indiana, Kentucky, Montana, Nevada, New Mexico, Oklahoma, Rhode Island, Washington, West Virginia, and the federal jurisdictions.

16. In Delaware, the offense must be a felony committed while the individual was an escapee from confinement for a determinate sentence. Indiana law requires a finding that the offense is heinous or aggravated; in the District of Columbia and Tennessee, the offense must simply be a felony. In New Mexico, the charge must be murder; in Oklahoma, one of a specified list of serious felonies; Kentucky, a major felony or capital offense; South Carolina, murder or rape; and West Virginia, a violent offense or a repeat serious offense.

17. Alabama, Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, and Utah. In 1979, Indiana added a judicial waiver for murder, which provided that a juvenile ten years of age or older charged with murder shall be waived unless there is "no probable cause or it is not in the best interest of the child and the safety and welfare of the community for the child to remain in the juvenile system."

18. Florida, Iowa, and Minnesota.

19. Alabama, Colorado, Connecticut, Delaware, Indiana, Massachusetts, Missouri, New Jersey, North Carolina, Pennsylvania, and Utah. Missouri, in 1978, however, permitted judicial waiver for state or municipal traffic violations or municipal ordinance violations.

20. Effective July 1980, Connecticut replaced its previous transfer provision. See the Connecticut profile in the separate profile volume.

21. Georgia, Idaho, and Maryland.

22. District of Columbia, Louisiana, Michigan, New Mexico, Ohio, Tennessee, Texas, and Virginia.

23. La. Rev. Stat. Ann., Sec. 13:1571.1. Effective January 1, 1979, the Louisiana waiver statute was changed and provided for waiver of any child 15 years of age or older and charged with one of the following offenses: first or second degree murder, manslaughter, aggravated rape, armed robbery, aggravated burglary, or aggravated kidnapping, after a probable cause hearing. This provision was declared unconstitutional by the Louisiana Supreme Court and the judicial waiver provision in effect in 1978 was reinstated. It was changed again in 1980 to provide that a juvenile charged with armed robbery, aggravated burglary, or aggravated kidnapping can be transferred to criminal court after a probable cause hearing and a determination that the juvenile cannot be rehabilitated through facilities available to the juvenile court. See the Louisiana profile for more details.

24. Effective July 1, 1979, the felony requirement in Mississippi was repealed and replaced with "charged by petition to be a delinquent child," Miss. Code Ann., Sec. 43-21-157.

25. Calif. Welf. and Instns. Code, Art. 14, Sec. 707. California also has a permissive waiver provision applicable to juveniles charged with lesser offenses; the burden of proof rests with the state.

26. Okla. Stat. Ann., Title 10, Sec. 1112(b). Oklahoma also has a permissive waiver provision applicable to juveniles charged with lesser felonies; the burden of proof rests with the state.

27. Okla. Stat. Ann., Title 10, Sec. 1104.2. The Oklahoma statute was declared unconstitutional in 1979 and was replaced by an excluded offense provision which defines a 16 or 17 year old charged with murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape in the second degree, use of a firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, shooting with intent to kill, manslaughter in the first degree, or nonconsensual sodomy as an adult; however, the youth may be "reverse certified" back to juvenile courts.

28. Under the other transfer provision, a child 16 years of age or older, charged with a misdemeanor or felony, after full investigation and hearing, may be transferred to adult court. In 1981, a third judicial waiver provision went into effect, permitting transfer of juveniles 14 or 15 years of age with two prior delinquency adjudications for specific personal offenses and presently charged with a third such offense.

29. S.C. Code Ann., Sec. 14-21-510(c).

30. Va. Code Ann., Sec. 16.1-269(E).

31. Ark. Stat. Ann., Secs. 45-417 and 418; Colo. Rev. Stat. Ann., Sec. 19-1-104(4)(b) (I-III); D.C. Code, Sec. 16.2301(3); Fla. Stat. Ann., Sec. 39.02(5)(c) and 39.04(2)(e)(4), effective October 1, 1978; Ga. Code Ann., Sec. 24A-301(b); Mass. Gen. Laws Ann., Ch. 119, Secs. 52 and 74; Mont. Rev. Codes Ann., Sec. 41-5-203; Neb. Rev. Stat., Secs. 43-202(3), 43-202.01 and 202.02; Okla. Stat. Ann., Title 10, Sec. 1112; S.C. Code Ann., Sec. 14-21-515; Utah Code Ann., Sec. 78-3a-44, Dimmitt v. City Court of Salt Lake City, 21 U.(2d) 257, 444 P.2d 461 (1978); W. Va. Code, Secs. 49-5-1(a); Wyo. Stat. Ann., Sec. 14-6-203(c).

32. Massachusetts, Montana, Oklahoma, South Carolina, Utah, and West Virginia.

33. Montana, Oklahoma, South Carolina, Utah, and West Virginia.

34. Mass. Gen. Laws Ann., Chap. 119, Secs. 52 and 74.

35. Ala. Code, Sec. 12-15-1(8); Alas. Stat., Sec. 47.10.010(b); Ark. Stat. Ann., Sec. 45-403(2); Colo. Rev. Stat. Ann., Sec. 19-1-103(1); Del. Code Ann., Title 10, Sec. 921(2)(a) and Sec. 927; D.C. Code, Sec. 16-2301(7); Fla. Stat. Ann., Sec. 39.02(1); Ga. Code Ann., Sec. 3101; Idaho Code, Ch. 16, Sec. 1803(2). Idaho excluded murder, attempted murder, robbery, rape, mayhem, assault or battery with the intent to commit one of the above, charged against youth 14 years of age or older from juvenile court jurisdiction in 1981, Sec. 16-1806A; Ill. Ann. Stat., Ch. 37, Sec. 702-7(2); Ind. Code Ann., Sec. 31-5-7-4.1.(a)(1)(A) and (B), effective March 9, 1978 (repealed, effective October 1, 1979, by Acts of 1978, P.L. 136, Sec. 57. Part B became Sec. 31-6-1-2b.) A new excluded offense provision was added in 1981, Sec. 31-6-2-1(9)(d); Iowa Code Ann., Sec. 232.8(1)(b); Kans. Stat. Ann., Secs. 38-806(a), 38-802, and 36-11; Ky. Rev. Stat. Ann., Sec.

208.020(1)(a); La. Rev. Stat. Ann., Sec. 13:1570(A)(5). Fifteen year olds charged with first or second degree murder, manslaughter, aggravated rape, and 16 year olds charged with armed robbery, aggravated burglary or aggravated kidnapping were excluded from juvenile jurisdiction in 1980; Me. Rev. Stat. Ann., Title 15, Sec. 3103; Ann. Code of Md., Sec. 3-804(d)(2)(3); Miss. Code Ann., Secs. 43-21-31 and 43-21-33; Nev. Rev. Stat., Sec. 62.040; N.H. Rev. Stat. Ann., Sec. 169:30(II); N.J. Rev. Stat. Ann., Sec. 2A:4-44; N.M. Stat. Ann., Sec. 32-1-48; McKinney's Cons. Laws of N.Y. Ann., Penal Code, Sec. 30.00; N.D. Cent. Code, Sec. 27-20-02(2) and (10); Pa. Stat. Ann., Title 42, Sec. 6302; R.I. Gen. Laws Ann., Secs. 14-1-3(F) and 14-1-7.1; S.D. Codified Laws Ann., Sec. 26-8-7; Tenn. Code Ann., Sec. 37-202(3); Tex. Codes Ann., Fam. Code, Sec. 51.03(a); Wash. Rev. Code Ann., Sec. 13.04.030(6)(c); Wis. Stat. Ann., Sec. 48.17. Minnesota and Missouri excluded minor traffic from juvenile jurisdiction, effective 1980. In 1979, 16 and 17 year olds charged with one of ten enumerated offenses were initially excluded from juvenile jurisdiction in Oklahoma (Okla. Stat. Ann., Title 10, Art. 1, Section 1101(a)).

36. Alabama, Alaska, Arkansas, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Maine, New Hampshire, New Jersey, North Dakota, South Dakota, Tennessee, Texas, Washington, and Wisconsin.

37. Alaska, Arkansas, Florida, Idaho, Illinois, Iowa, Maine, North Dakota, Tennessee, and Texas.

38. Minimum age of ten years: South Dakota. Minimum age of 14 years: Colorado. Minimum age of 16 years: Alabama, District of Columbia, Georgia, Kentucky, New Hampshire, Washington, and Wisconsin. Minimum age of 17 years: New Jersey.

39. Delaware, Indiana, Kansas, Louisiana, Maryland, Mississippi, Nevada, New Mexico, New York, Pennsylvania, and Rhode Island.

40. Delaware, Indiana, Kansas, Maryland, Nevada, New Mexico, Pennsylvania, and Rhode Island.

41. Delaware, Indiana, Nevada, and Pennsylvania. The Indiana provision excluding first degree murder was repealed effective October 1, 1979. A new offense provision excluding murder, kidnapping, rape or armed robbery, if the youth was 16 years of age or older at the time of the alleged violation, was added in 1981 in Indiana.

42. Louisiana, Maryland, and Mississippi.

43. N. Y. McKinney's Cons. Laws of N.Y. Ann., Penal Code, Secs. 180.75, 190.60, and 190.71.

44. La. Rev. Stat. Ann., Sec. 13:1570(A)(5) and La. Constitution of 1874, Art. 5, Sec. 19. The excluded offense provision was amended in 1980 to read: "a child who, after having become fifteen years of age or older is charged with having committed first degree murder, second degree murder, manslaughter, aggravated rape, or a person who, after becoming sixteen years of age or older is charged with having committed armed robbery, aggravated burglary, or aggravated kidnapping" are excluded from juvenile jurisdiction. Once youth have been charged with such offenses, the adult courts will retain jurisdiction even if the youth plead guilty to, or is convicted of, lesser included offenses.

45. Ann. Code of Md., Secs. 3-804(d) and (e).

46. R.I. Gen. Laws Ann., Sec. 14-1-71.

47. Kans. Stat. Ann., Sec. 38-806(a).

48. N.M. Stat. Ann., Sec. 32-1-48.

49. Alabama, Florida, Maine, Maryland, New Hampshire, and Oklahoma.

50. Ann. Code of Md., Art. 27, Sec. 594A.

51. Salken, Barbara, "Down the Up Staircase: Due Process and Removal from Criminal Court," New York Law School Law Review: Volume XXVI, number 1, 1981.

52. Pa. Stat. Ann., Title 42, Secs. 6322(a) and (b).

53. La. Rev. Stat. Ann., Sec. 13:1570(A)(5).

54. In all states except Delaware, Georgia, Illinois, Kentucky, New York, South Carolina, and Vermont.

55. Alabama, Alaska, Arizona, District of Columbia, Indiana, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, Wisconsin, and the federal courts.

56. Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Iowa, Massachusetts, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, South Dakota, Virginia, West Virginia and Wyoming.

57. Delaware, Georgia, Illinois, Kentucky, New York and South Carolina.

58. Ind. Code Ann., Sec. 31-6-2-1.

59. Conn. Gen. Stat. Ann., Secs. 46b-126 and 46b-127 (1980).

60. La. Rev. Stat. Ann., Sec. 13:1571.1.

61. Minn. Stat. Ann., Sec. 260.125, Subd. 3.

62. Ky. Rev. Stat. Ann., Ch. 208F, Sec. 98.

63. Okla. Stat. Ann., Title 10, Art. 1, Sec. 1101.

64. Ind. Code Ann., Sec. 31-6-2-1.

65. Idaho Code, Ch. 16, Sec. 1806A.

66. Idaho Code, Chap. 16, Sec. 2520.

67. Conn. Gen. Stat. Ann., Sec. 46b-140.

68. Minnesota Sentencing Guidelines Commission, Report to the Legislature, 1980.

69. Fla. Stat. Ann., Sec. 39.111.

70. Ky. Rev. Stat. Ann., Ch. 208F, Sec. 98.

71. Ill. Ann. Stat., Ch. 37, Sec. 5-12.

CHAPTER 4

CHAPTER 4

NATIONAL DATA SUMMARY

The tables accompanying this summary represent the basic information gathered in a census of over 3,100 counties in the United States on the incidence of juveniles referred to adult courts for trial. The tables in this chapter are organized by types of legal mechanisms for trying juveniles described in Chapter 3. Because of differing philosophies among the states, differences in quality of recordkeeping, availability of data, and myriad other factors, the reader is urged to use great care in reaching conclusions about the data. Individual state profiles should be consulted for information on each state's court system, case law, and statutory provisions in order to place these data in proper perspective. Some general comments can be made about the data gathered, however. They appear below, amplified by tables and graphs, and built upon the state and federal profiles to be found in separate profile volumes.

Table 7 presents the total number of youth referred to adult courts, by state and by type of mechanism. Rates were calculated, per 10,000 juveniles who were eight through 17 years of age, for states utilizing judicial waiver provisions. They were not calculated for the other mechanisms, either because the data are not comparable (arrests and court filings) or because state laws are too dissimilar. Even with waiver rates, the reader should resist making comparisons between states until after the appropriate state profile volumes have been consulted.

At the far right of Table 7 appears a column entitled Age of Jurisdiction. The data in that column requires particular understanding on the part of the reader. In the 12 states described earlier as having ages of criminal responsibility below 18, 17 year olds and (in four states) 16 year olds are legally adults for purposes of arrest and prosecution. Pertinent information relating to these two age cohorts, within the general population of criminal defendants, is unavailable from adult court administrators, who regard age as an irrelevant basis for segregating data. Asking for data on 16 year olds presents the same kinds of data retrieval problems that would be created if the Academy were interested in data about 31 year old defendants.

After repeated attempts to obtain court data on these youth, who would be juveniles in the other 38 states, it became evident that only South Carolina had a criminal justice information system that permitted data retrieval according to the ages of defendants. In Vermont, county officials conducted a manual search of all county records for 1978. Therefore, the data in the Age of Jurisdiction column, in the rows designated South Carolina and Vermont, represent actual court filings. In the remaining ten states, however, secondary arrest data were the "best evidence" available.

In nine of those ten states, arrest data collected by law enforcement agencies, and reported for Uniform Crime Report (UCR) purposes, were all that could be found. In the tenth state, Missouri, only felony arrest information could be supplied. Yet, this information is extremely useful, from several standpoints. First of all, law enforcement agencies report arrests by age groups, which allowed the staff to segregate arrests of "adults" defined within this study as "youth." Second, the arrest data also contained sex, race, and offense data, although race data were not available in all states. Perhaps the most significant point is that, in most states, state officials who are responsible for collecting UCR data were able to offer informed estimates as to the relationship between arrests and court filings. In the seven or eight states where these estimates were obtained, they were all similar and consistently high. Estimates ranged from 90 percent to 100 percent. In one state, Louisiana, a recent state-wide study revealed a correlation in 94.6 percent of the arrests. Therefore, there is some basis for believing that high proportions of these arrests resulted in the filing of criminal complaints. This is not to say that 90 percent of the cases are actually tried in criminal courts; only that most youth who were arrested in 1978 were referred to courts in those states. In addition, it is not accurate to consider the "Age-of-Jurisdiction" arrest data to be comparable with court filing data in that column or with the data attributable to other legal mechanisms. Rather, it offers an opportunity, through secondary data, to understand the disparate impacts upon judicial and correctional workloads that occur when the age of criminal responsibility is below the age of 18. With this caveat in mind, the following observations are offered.

- Every state, the District of Columbia, and the federal districts had a judicial waiver provision in 1978 except Arkansas, Nebraska, New York, and Vermont. Some states reported a fairly high level of use--California, Florida, Washington, and Wisconsin--while states like Alaska, Montana and Wyoming used it hardly at all. In part, this variation in usage is related to substantial variations in age and offense categories included in the waiver provisions of the respective states. For example, the age of majority in Connecticut is 16. Therefore, waivers could not apply to either 16 or 17 year olds in that state. In addition, some states permitted waiver only for the more serious offenses, while others waived juveniles for a broad range of offenses.
- Thirteen states permitted concurrent jurisdiction between juvenile courts and adult courts for at least some offenses. The concurrent jurisdiction provisions in seven jurisdictions (Arkansas, Colorado, District of Columbia, Florida, Georgia, Nebraska, and Wyoming) were restricted to serious offenses. In six states, they applied only to traffic, watercraft, or fish and game violations. Data from this latter group of states are not reported on Table 7 or on the subsequent tables in this chapter. See Table 2 for a more graphic breakdown of concurrent jurisdiction states. Of the seven jurisdictions, Arkansas and Nebraska had no other mechanism to refer persons under 18 years of age to adult courts except concurrent jurisdiction. Colorado, District of Columbia, Florida, Georgia, and Wyoming also had judicial waiver provisions.

In Georgia, 17 year olds were automatically referred to adult courts, as a result of that state's lower age of jurisdiction.

- Thirty-one of the 52 jurisdictions had statutory provisions excluding certain offenses from juvenile court jurisdiction in 1978. Eleven states (Delaware, Indiana, Kansas, Louisiana, Maryland, Mississippi, Nevada, New Mexico, New York, Pennsylvania, and Rhode Island) excluded specific offenses from juvenile court jurisdiction (most generally capital offenses). Ten of the 11 states (except New York) had provisions for judicial waiver, and nine of them (except New York and Louisiana) utilized age 18 as the minimum age of criminal court jurisdiction. The remaining 20 of the 31 jurisdictions excluded only traffic, watercraft, fish and game, or other minor misdemeanors. In most instances, these cases are heard in lower courts of limited jurisdiction, and are not included in Table 7.
- Twelve states included either 16 and 17 year olds or just 17 year olds within adult court jurisdiction. Four states (Connecticut, New York, North Carolina and Vermont) established 16 as the age of criminal responsibility many years ago. Eight other states have employed age 17 for equally long periods. Eleven of the 12 states (except Vermont) had at least one other mechanism for referring juveniles to adult courts in 1978. Ten of them (Connecticut, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, North Carolina, South Carolina, and Texas) also had judicial waiver provisions in their state codes. Georgia, New York, and Louisiana had excluded offense provisions in addition to lower ages. In these three states, juveniles will also be tried as adults when charged with specified crimes.

TABLE 7. REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY STATE, LEGAL MECHANISM, AND WAIVER RATE)

State	Juvenile Population (Ages 8-17) ^a	Legal Mechanism			Age of Jurisdiction Cases
		Judicial Waiver Cases	Judicial Waiver Rate ^b	Concurrent Jurisdiction Excluded Offense Cases	
Alabama	661,685	239	3.612		
Alaska	76,949	4	0.520		
Arizona	407,828	93	2.280		
Arkansas ^c	372,961	--	--	762	
California	3,596,506	94 ^d	2.630		

TABLE 7. (Continued)

State	Juvenile Population (Ages 8-17) ^a	Legal Mechanism			Age of Jurisdiction Cases
		Judicial Waiver Cases	Rate ^b	Concurrent Jurisdiction Cases	
Colorado	458,927	41	0.893	26	
Connecticut	547,393	6	0.110		11,877 ^e
Delaware	107,415	17	1.583		4
District of Columbia	110,116	130 ^f	11.806	*	
Florida	1,302,472	965	7.409	108	
Georgia	912,766	70	0.767	45	2,849 ^e
Hawaii	156,075	15	0.961		
Idaho	150,326	28	1.863		
Illinois	1,999,045	120	0.600		41,987 ^e
Indiana	969,543	243 ^g	2.506		*
Iowa	513,516	493	9.600		
Kansas	385,359	60	1.557		1 ^g
Kentucky	608,377	98	1.611		
Louisiana	750,747	9	0.120		14 7,582 ^e
Maine	193,979	74	3.815		
Maryland	764,060	511 ^h	6.688		748 ^e
Massachusetts	1,011,761	33	0.326		12,393 ^e
Michigan	1,727,156	86	0.498		20,313 ^e
Minnesota	735,357	295 ⁱ	4.011		
Mississippi	458,631	295	6.432		13
Missouri	821,912	197 ⁱ	2.297		2,263 ^j
Montana	139,127	1	0.070		
Nebraska	273,888	--	--	1,175	
Nevada	106,780	35	3.278		3
New Hampshire	146,929	25	1.702		
New Jersey	1,289,466	84	0.651		
New Mexico	231,427	21	0.907		** ^g
New York	3,057,031	--	--		517 ^k
North Carolina	965,843	183	1.895		99,595 ^e
North Dakota	119,457	90	7.534		17,624 ^e

TABLE 7. (Continued)

State	Juvenile Population (Ages 8-17) ^a	Legal Mechanism		Concurrent Jurisdiction Cases	Excluded Offense Cases	Age of Jurisdiction Cases
		Judicial Waiver Cases	Rate ^b			
Ohio	1,931,691	236	1.222			
Oklahoma	457,194	181	3.959			
Oregon	387,411	524 ⁱ	13.526			
Pennsylvania	2,007,535	212 ^l	1.056		63 ^e	
Rhode Island	157,073	8	0.509		* ^g	
South Carolina	532,575	60 ^m	1.127			5,428 ^e
South Dakota	125,855	9	0.715			
Tennessee	727,518	215	2.955			
Texas	2,238,412	211	0.943			30,864 ^e
Utah	234,574	8	0.341			
Vermont	87,129	--	--			1,298
Virginia	876,187	509	5.809			
Washington	621,233	684 ⁿ	11.010			
West Virginia	306,646	46	1.500			
Wisconsin	856,192	591 ^o	6.902			
Wyoming	68,835	4	0.581	15		
United States (Federal)	37,744,920	101	--			
Total	37,744,920	9,106	2,412	2,131	1,363	254,073

-- denotes Not Applicable.

* denotes Not Available.

** denotes Not Surveyed.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight through 17 years of age (1978).

c. Includes only direct prosecutorial referrals and excludes juvenile court intake referrals.

d. Contains locally collected data for Los Angeles County. See California profile in separate profile volume.

e. Reported arrest data.

TABLE 7. (Continued)

- f. Contains both juveniles referred through judicial waiver and through concurrent jurisdiction, which could not be separated.
- g. Data on excluded murder cases in Indiana are included in the judicial waiver data; data on excluded offense cases in Kansas, New Mexico, and Rhode Island were not available, although one Kansas case was reported.
- h. Represents multiple charges, not individual cases.
- i. Judicial waivers for traffic offenses appear in Table 34.
- j. Felony arrests only.
- k. These data represent the New York City boroughs only which accounts for 86 percent of the excluded offenses, according to New York sources. The total number for New York State could be estimated at 600 excluded offense cases.
- l. Several data sets from different sources were reviewed and found to be inconsistent. See Pennsylvania profile in separate profile volume.
- m. These waivers resulted in 17 indictments. See South Carolina profile in separate profile volume.
- n. Clark County, Washington data were for only six months. Remainder of data for 12 months.
- o. Contains locally collected data for Milwaukee County. See Wisconsin profile in separate profile volume.

Detailed information (on age, sex, race, types of offenses, judgments, sentences, and sentence lengths) was sought in at least those counties in which five or more juveniles were transferred to adult courts in 1978 and which were within the most populous ten percent (hereafter referred to as Phase II counties). Table 8 reflects the relationship between the incidence of referrals in all counties in the country and the ones that comprise the Phase II sample. The Academy obtained at least partial demographic, offense, and sentencing information on 86.5 percent of the judicial waivers, 94.1 percent of the concurrent jurisdiction cases, and 43.3 percent of the excluded offenses. In the 12 states where 16 and 17 year old youth are routinely tried in adult courts because of age of jurisdiction, a combination of arrest and court data provide demographic and offense information for 98.2 percent of youth involved.

TABLE 8. RELATIONSHIP BETWEEN PHASE I FREQUENCY DATA AND PHASE II DESCRIPTIVE DATA (BY LEGAL MECHANISM) IN 1978

Legal Mechanism	Referrals of Youth to Adult Courts		
	Phase Ia Cases	Phase IIa Cases	Phase II as a Percentage of Phase I Data
Judicial Waiver	9,106	7,881	86.5
Concurrent Jurisdiction	2,131	2,006	94.1
Excluded Offenses	1,363	590	43.3
Age of Jurisdiction	254,073 ^b	249,386 ^b	98.2

a. Contains some estimated data.

b. Consists mainly of arrest data. Arrest data from South Carolina excluded in favor of court filing (indictment) data.

JUDICIAL WAIVER

The following series of tables (9A, 9B, and 9C) display data on juveniles judicially waived from juvenile to adult courts during 1978. The states are categorized into three groups and ranked, according to the age of initial criminal court jurisdictions found among the states. Because Wyoming is the only state which has established criminal court jurisdiction at 19, it has been included in Table 9A.

The variation in rates is primarily a reflection of different philosophies regarding what offenses should be subject to judicial waiver. The states with the lower rates of waiver tend to be ones in which juvenile courts waive only specific serious offenses, whereas the states with the higher rates tend to waive jurisdiction for a broad range of offenses, including public order violations. The states with lower ages of criminal court jurisdictions also tend to have lower rates of judicial waivers, reflecting the fact that 16 and 17 year olds are treated as adults in these states and, hence, there is a smaller waiver-eligible population.

TABLE 9A. JUDICIAL WAIVERS TO ADULT COURTS IN STATES WITH
18 YEAR OLD AGE OF CRIMINAL COURT JURISDICTION
(RANKED BY RATE) IN 1978

Jurisdiction	Total Waivers	Rate Per 10,000 Juvenile Population ^a
1. Oregon	524	13.526
2. District of Columbia ^b	130	11.806
3. Washington	684	11.010
4. Iowa	493	9.600
5. Florida	965	7.409
6. North Dakota	90	7.534
7. Wisconsin	591	6.902
8. Maryland	511	6.688
9. Mississippi	295	6.432
10. Virginia	509	5.809
11. Minnesota	295	4.011
12. Oklahoma	181	3.959
13. Maine	74	3.815
14. Alabama	239	3.612
15. Nevada	35	3.278
16. Tennessee	215	2.955
17. California	946	2.630
18. Indiana ^c	243	2.506
19. Arizona	93	2.280
20. Idaho	28	1.863
21. New Hampshire	25	1.702
22. Kentucky	98	1.611
23. Delaware	17	1.583
24. Kansas	60	1.557
25. West Virginia	46	1.500
26. Ohio	236	1.222
27. Pennsylvania	212	1.056
28. Hawaii	15	0.961
29. New Mexico	21	0.907
30. Colorado	41	0.893
31. South Dakota	9	0.715
32. New Jersey	84	0.651
33. Wyoming ^d	4	0.581
34. Alaska	4	0.520
35. Rhode Island	8	0.509

TABLE 9A. (Continued)

Jurisdiction	Total Waivers	Rate Per 10,000 Juvenile Population ^a
36. Utah	8	0.341
37. Montana	1	0.070
38. United States (Federal)	101	--

-- denotes Not Applicable.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 National Census and the National Cancer Institute 1975 estimated aggregate census.

b. Includes concurrent jurisdiction cases which could not be separated.

c. Includes excluded murder cases which could not be separated.

d. Age of criminal responsibility is 19.

TABLE 9B. JUDICIAL WAIVERS TO ADULT COURTS IN STATES WITH
17 YEAR OLD AGE OF CRIMINAL COURT JURISDICTION
(RANKED BY RATE) IN 1978

State	Total Waivers	Rate Per 10,000 Juvenile Population ^a
1. Missouri	197	2.297
2. South Carolina	60	1.127
3. Texas	211	0.943
4. Georgia	70	0.767
5. Illinois	120	0.600
6. Michigan	86	0.498
7. Massachusetts	33	0.326
8. Louisiana	9	0.120

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 National Census and the National Cancer Institute 1975 estimated aggregate census.

TABLE 9C. JUDICIAL WAIVERS TO ADULT COURTS IN STATES WITH
16 YEAR OLD AGE OF CRIMINAL COURT JURISDICTION
(RANKED BY RATE) IN 1978

State ^a	Total Waivers	Rate Per 10,000 Juvenile Population ^b
1. North Carolina	183	1.895
2. Connecticut	6	0.110

a. New York and Vermont do not have judicial waiver mechanisms (1978).

b. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 National Census and the National Cancer Institute 1975 estimated aggregate census.

Age, Sex, and Race of Youth Judicially Waived

Tables 10, 11, and 12 report on age, sex, race, and offense data for 87.5 percent of the cases judicially waived to adult courts in 1978 (Phase II cases). Tables 13, 14, and 15 provide information on the dispositions and sentences received by these juveniles in adult courts during the same period, to the extent that data were available.

Of those cases where age is known, 70 percent were 17 years old or older, and over eight percent were 15 or younger (see Table 10). Few states judicially waived youth under 16 years of age to adult court and six states do not permit it. However, because 16 year olds are "adults" in North Carolina and Connecticut, nearly all the juveniles waived in North Carolina and all of those in Connecticut were 15 and under. Forty-eight percent of the waiver cases in the federal districts involved juveniles who were under 16.

Over 92 percent of the cases judicially waived where sex was known were males. Few states judicially waived female juveniles. Even though the percent of the female cases waived in Maine (25 percent), North Dakota (16 percent), Minnesota (15 percent), and Mississippi (14 percent) which were proportionately low in those states, they were atypically high for the rest of the country.

For over 17 percent of the cases, race data were unavailable. Of the remaining cases, over 60 percent were reported as white youth and 39 percent as minority youth. Eleven jurisdictions reported a different picture, with over half of the judicially waived youth being minority group members: California (57 percent), Colorado (55 percent), Georgia (58 percent), Hawaii (87 percent), Indiana (59 percent), Maryland (70 percent), Michigan (72 percent), Mississippi (69 percent), New Jersey (55 percent), New Mexico (91 percent), Pennsylvania (61 percent), Texas (56 percent), and federal districts (62 percent).

TABLE 10. JUDICIAL WAIVERS TO ADULT COURTS (BY STATE, AGE,
SEX, AND RACE) IN 1978^a

State	Total Waivers ^b	Age					Sex			Race		
		0-15	16	17	18+	Unknown	Male	Female	Unknown	White	Minority	Unknown
Alabama	183	12	66	94	7	4	155	24	4	90	89	4
Arizona	76	0	4	68	0	4	72	4	0	38	31	7
California ^c	946	18	64	272	589	3	847	97	2	401	523	22
Colorado ^d	24	2	3	14	1	4	20	3	1	9	11	4
Connecticut	6	6	--	--	--	0	6	0	0	*	*	6
Delaware	17	1	3	6	*	7	17	0	0	5	5	7
District of Columbia	130	1	36	92	1	0	118	9	3	*	*	130
Florida	965	146	238	461	111	9	915	50	0	614	345	6
Georgia	40	5	29	2	*	4	36	1	3	14	19	7
Hawaii	15	--	0	15	0	0	14	1	0	2	13	0
Idaho	7	0	3	4	0	0	7	0	0	5	2	0
Illinois	75	18	38	18	1	0	65	9	1	24	15	36
Indiana	177	8	28	115	7	19	166	*	11	73	104	0
Iowa	388	20	36	302	10	20	348	34	6	311	18	59
Kansas	53	--	24	29	0	0	51	1	1	21	4	28
Kentucky	41	2	4	30	*	5	34	2	5	23	13	5
Louisiana	3	*	2	*	*	1	2	*	1	1	1	1
Maine	63	15	11	19	18	0	47	16	0	62	1	0
Maryland	511	36	124	288	55	8	490	21	0	162	349	0
Massachusetts	33	*	*	*	*	33	33	0	0	17	16	0
Michigan	63	14	46	*	*	3	60	*	3	17	43	3
Minnesota	224	16	38	159	10	1	193	31	0	206	17	1
Mississippi	295	48	66	175	3	3	254	41	0	87	195	13
Missouri	134	14	65	33	2	20	130	2	2	62	15	57
Nevada	33	--	3	26	1	3	31	2	0	15	9	9
New Hampshire	14	1	2	11	0	0	14	0	0	14	0	0
New Jersey	84	5	24	27	*	28	46	7	31	25	31	28
New Mexico	11	1	3	7	0	0	11	0	0	1	10	0
North Carolina	117	113	1	*	*	3	112	1	4	44	33	40
North Dakota	69	--	5	64	0	0	56	11	2	63	6	0
Ohio	202	6	36	155	4	1	192	9	1	72	58	72
Oklahoma	181	1	30	150	0	0	164	16	1	125	49	7
Oregon	304	--	105	399	0	0	434	66	4	416	16	72
Pennsylvania ^e	146	6	20	93	26	1	139	6	1	56	89	1
Rhode Island	8	--	0	8	0	0	8	0	0	4	4	0
South Carolina ^f	17	5	12	0	0	0	16	1	0	9	8	0
South Dakota	9	0	1	8	0	0	9	0	0	9	0	0
Tennessee	138	*	25	69	2	42	136	2	0	85	53	0
Texas	154	24	81	4	*	45	117	2	35	40	52	62
Utah	8	0	3	4	1	0	8	0	0	6	2	0
Virginia	452	39	110	238	43	22	421	9	22	257	173	22
Washington	644	*	60	413	*	171	425	25	194	407	57	180
West Virginia	23	0	4	19	0	0	21	*	2	20	3	0
Wisconsin	497	9	74	414	0	0	439	58	0	*	*	497
United States (Federal)	101	48	40	13	0	0	95	6	0	37	60	4
Total	7,881	640	1,567	4,318	892	464	6,974	567	340	3,949	2,542	1,390

* denotes Not Available.

-- denotes Not Applicable.

a. Reported for Phase II counties.

b. Phase II data from Montana and Wyoming were not available. Alaska had no jurisdictions that qualified under Phase II criteria.

c. California records "age" based upon birth year, not birth date; 18 year olds were under 18 at time of offense.

d. Includes concurrent jurisdiction cases from El Paso County which could not be separated.

e. See Pennsylvania profile for data source.

f. Represents indictment data.

Offenses of Youth Judicially Waived

The types of offenses for which juveniles can be judicially waived vary from virtually any offense in some states to only serious, personal offenses in others. In addition, the offenses for which juveniles can be waived may vary within a state, depending on age.

In 1978, personal offenses (see Tables 11 and 12, and Figure 4) were cited in almost 30 percent of the cases judicially waived to adult courts; over two-thirds of them were for violent offenses (murder, rape, robbery, and aggravated assault). Burglary and breaking and entering were the most frequent offenses waived (25 percent). Property offenses, including burglary, accounted for 44 percent of the waivers.

Some jurisdictions frequently waive juveniles for alcohol, drug, and other public order offenses. For example, 35 percent of the judicial waivers in Iowa and North Dakota were for public order offenses, as were 46 percent in Minnesota, 27 percent in Mississippi, and 43 percent in Oregon and West Virginia. On the other end of the continuum, some states primarily waive youth charged with serious, personal offenses: Connecticut and Louisiana, 100 percent (six and two cases, respectively); Illinois, 79 percent; Michigan, 76 percent; New Jersey, 88 percent; and New Mexico, 82 percent. All of these states which waived high proportions of youth for personal offenses had rates of judicial waiver below one per 10,000 juveniles.

Judgments for Youth Judicially Waived

Tables 13 and 14 reflect the judgments imposed by criminal courts upon judicially waived youth. Maryland and Wisconsin reported partial local data but were excluded because they were so limited. As Tables 13 and 14 indicate, most juveniles judicially waived from juvenile courts and tried in adult courts were convicted or found guilty. Excluding "Unknown" and "Other" cases, over 90 percent (2,827 youth) were found guilty or adjudicated to be "youthful offenders." Just over one percent of the youth were found not guilty, less than eight percent were dismissed, and one percent of all waived youth were referred back to juvenile courts.

TABLE 11. JUDICIAL WAIVERS TO ADULT COURTS (BY STATE AND TYPE OF OFFENSE) IN 1978^a

State	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggra- vated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Alabama	183	7	7	42	3	3	4	61	40	9	3	4
Arizona	76	3	3	12	3	7	*	22	2	*	*	24
California	946	63	20	155	146 ^b	0	49	178	128	138	69	0
Colorado	24	4	1	1	1	2	*	9	2	*	*	4
Connecticut	6	5	*	*	*	*	*	*	*	*	*	1
Delaware	17	2	1	2	*	1	2	7	*	*	*	2
District of Columbia	130	10	3	49	13	3	3	23	15	10	1	0
Florida	965	14	14	100	14	27	25	355	178	172	66	0
Georgia	40	2	1	10	*	10	2	6	6	*	1	2
Hawaii	15	0	1	6	0	0	0	7	1	0	0	0
Idaho	7	2	0	2	0	1	0	0	0	0	0	0
Illinois	75	13	5	25	6	6	4	2	0	0	0	0
Indiana	177	11	5	34	2	1	16	48	24	7	*	29
Iowa	388	9	3	14	9	7	6	85	81	135	6	33
Kansas	53	1	2	4	2	2	2	9	3	*	*	28
Kentucky	41	6	2	3	4	*	2	8	9	2	*	5
Louisiana	3	*	*	1	*	*	1	*	*	*	*	1
Maine	63	1	*	6	*	3	2	15	4	3	*	29
Maryland	511	0	0	43	88	0	17	134	148	53	28	0
Michigan ^c	74	31	1	16	*	6	*	6	1	9	1	3
Minnesota	224	3	4	14	4	3	3	20	61	104	8	0
Mississippi	295	3	8	10	21	15	4	53	80	81	14	6
Missouri	134	12	4	17	9	10	10	20	10	9	21	12
Nevada	33	4	*	3	*	1	4	10	3	3	*	5
New Hampshire	14	1	*	3	*	*	*	5	*	1	*	4
New Jersey	84	21	6	14	6	25	1	5	1	3	1	1
New Mexico	11	2	2	4	0	1	0	2	0	0	0	0
North Carolina	117	5	4	6	*	2	5	14	79	*	*	2
North Dakota	69	*	1	1	*	*	*	22	11	19	*	15
Ohio	202	29	12	56	*	8	15	51	28	2	*	1
Oklahoma	181	6	6	37	0	15	7	48	53	9	0	0
Oregon	504	5	4	15	15	7	7	95	104	218	8	26
Pennsylvania	146	8	17	38	1	25	1	40	10	5	*	1
Rhode Island	8	1	*	*	*	1	1	2	2	*	*	1
South Carolina	17	3	0	3	0	1	2	1	6	0	1	0
South Dakota	9	0	1	0	0	0	0	6	2	0	0	0
Tennessee	138	17	23	38	11	3	4	22	16	*	*	4
Texas	154	28	13	28	4	3	5	10	6	1	*	56
Utah	8	0	0	1	0	4	0	2	1	0	0	0
Virginia ^d	453	13	6	49	17	*	11	172	125	29	6	25
Washington	644	6	1	24	12	4	2	154	60	152	21	208
West Virginia	23	2	0	7	1	0	0	3	0	10	0	0
Wisconsin	497	2	5	26	18	6	5	92	106	56	171	10
United States (Federal)	101	2	3	4	1	8	2	28	21	5	27	0
Total	7,860	357	189	923	411	221	224	1,855	1,429	1,256	453	542

* denotes Not Available.

a. Reported for Phase II counties.

b. Includes aggravated assaults.

c. Wayne County reported 51 charges against 40 judicially waived youth.

d. One county reported charges instead of cases.

TABLE 12. JUDICIAL WAIVERS (BY CONSOLIDATED TYPE AND FREQUENCY OF OFFENSE) IN 1978^a

Types of Offenses	Violent Offenses	Offense Categories	Total Waivers
PERSONAL OFFENSES			2,325
Violent Offenses:		1,690	
Murder/Manslaughter	357		
Rape	189		
Robbery	923		
Aggravated Assault	221		
Assault/Battery		411 ^b	
Other Personal		224 ^c	
PROPERTY OFFENSES			3,284
Burglary		1,855	
Other Property		1,429 ^d	
PUBLIC ORDER OFFENSES			1,256 ^e
OTHER GENERAL OFFENSES			453 ^f
UNKNOWN			542
TOTAL			7,860

a. Reported for Phase II counties.

b. Aggravated assaults in California could not be separated from assault and battery and, therefore, are included in the latter category.

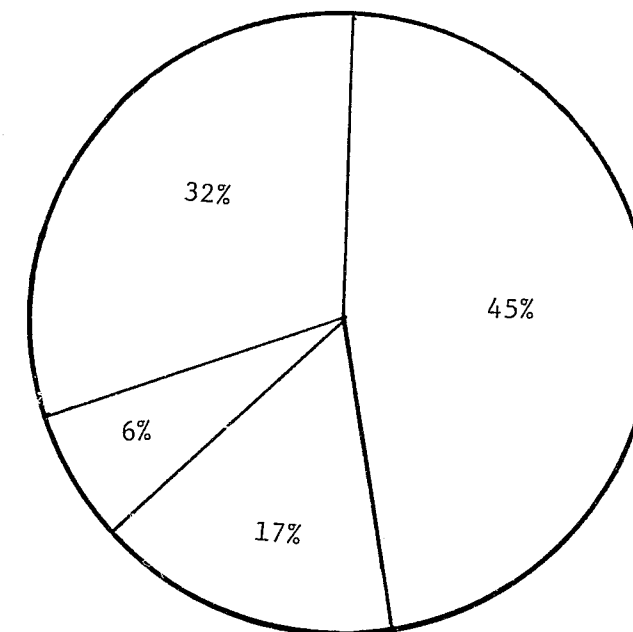
c. Escape, intimidation, kidnapping, arson, weapons violations, and other sex offenses.

d. Larceny, theft, auto theft, trespassing, bad checks, receiving or possessing stolen property, embezzlement, and shoplifting.

e. Disorderly conduct, gambling, prostitution, suspicious persons, false alarm, criminal mischief, resisting arrest, vagrancy, pandering, disturbing the peace, malicious destruction, drug and alcohol offenses.

f. Traffic, contempt of court, other.

FIGURE 4. JUDICIAL WAIVERS (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	32%
Property	45%
Public Order	17%
Other General	6%

N= 7,318 (excluding "Unknown" category)

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 22 percent of all offenses in Phase II counties.

TABLE 13. JUDICIAL WAIVERS TO ADULT COURTS (BY STATE AND JUDGMENT TYPE) IN 1978^a

State	Total Waivers ^b	Not Guilty	Dismissed	Referred to Juvenile Court	Youthful Offender Judgments	Guilty	Other ^c	Unknown
Alabama	183	1	3	--	24	94	12	49
Arizona	76	*	4	--	--	45	15	12
Colorado	24	1	2	*	--	13	4	4
Connecticut	6	0	1	--	0	5	0	0
Delaware	17	*	2	2	--	9	2	2
District of Columbia	130	2	26	8	--	58	23	13
Georgia	40	*	3	--	16	17	2	2
Hawaii	15	2	0	--	--	13	0	0
Idaho	7	0	0	--	--	7	0	0
Illinois	75	*	1	--	--	37	1	36
Indiana	177	1	20	--	--	128	10	18
Iowa	388	1	16	1	--	244	14	112
Kansas	53	*	*	--	--	25	*	28
Kentucky	41	*	*	2	--	16	3	20
Maine	63	2	10	1	--	28	17	5
Michigan	63	*	1	--	--	44	7	11
Minnesota	224	1	3	0	--	199	21	0
Mississippi	295	1	14	--	--	239	5	36
Missouri	134	1	1	1	--	10	5	116
Nevada	33	1	3	--	--	19	1	9
New Hampshire	14	0	0	1	--	11	2	0
New Jersey	84	*	2	1	--	43	10	28
New Mexico	11	0	1	0	--	8	2	0
North Carolina	117	*	*	3	48	33	*	33
North Dakota	69	2	5	--	--	45	3	14
Ohio	202	3	9	3	--	83	27	77
Oklahoma	181	*	39	*	--	94	28	20
Oregon	504	13	36	*	--	373	27	55
Pennsylvania	146	5	8	1	6	112	13	1
Rhode Island	8	0	2	0	--	2	4	0
South Carolina	17	0	1	0	5	8	3	0
South Dakota	9	0	0	0	--	9	0	0
Tennessee	138	1	6	4	--	112	12	3
Texas	154	*	1	2	--	53	5	93
Utah	2	0	0	0	0	2	0	0
Washington	644	2	18	--	--	369	2	253
West Virginia	23	0	1	2	2	18	0	0
United States (Federal)	101	0	0	--	--	101	0	0
Total	4,468	40	239	32	101	2,726	280	1,050

* denotes Not Available.

-- denotes Not Applicable.

a. Reported for Phase II counties.

b. Only partial local data available for Maryland and Wisconsin.

c. Represents primarily cases pending.

TABLE 14. ADULT COURT JUDGMENTS RESULTING FROM JUDICIAL WAIVERS (BY STATE AND PERCENTAGE) IN 1978^a

State	Total Judgments	Percent Not Guilty/Dismissed	Percent Convicted/Guilty	Percent Referred to Juvenile Court
Alabama	122	3.3	96.7	
Arizona	49	8.2	91.8	
Colorado	16	18.8	81.3	
Connecticut	6	16.7	83.3	
Delaware	13	15.4	69.2	15.4
District of Columbia	94	29.8	61.7	8.5
Georgia	36	8.3	91.7	
Hawaii	15	13.3	86.7	
Idaho	7		100.0	
Illinois	38	2.6	97.4	
Indiana	149	14.1	85.9	
Iowa	262	6.5	93.1	0.4
Kansas	25		100.0	
Kentucky	18		88.9	11.1
Maine	41	29.3	68.3	2.4
Michigan	45	2.2	97.8	
Minnesota	203	2.0	98.0	
Mississippi	254	5.9	94.1	
Missouri	13	15.4	76.9	7.7
Nevada	23	17.4	82.6	
New Hampshire	12		91.7	8.3
New Jersey	46	4.3	93.5	2.2
New Mexico	9	11.1	88.9	
North Carolina	84		96.4	3.6
North Dakota	52	13.5	86.5	
Ohio	98	12.2	84.7	3.1
Oklahoma	133		100.0	
Oregon	422	11.6	88.4	
Pennsylvania	132	9.8	89.4	0.8
Rhode Island	4	50.0	50.0	
South Carolina	14	7.1	92.9	
South Dakota	9		100.0	
Tennessee	123	5.7	91.1	3.3
Texas	56	1.8	94.6	3.6
Utah	2		100.0	

TABLE 14. (Continued)

State	Total Judgments	Percent Not Guilty/Dismissed	Percent Convicted/Guilty	Percent Referred to Juvenile Court
Washington	389	5.1	94.9	
West Virginia	23	4.3	87.0	8.7
United States (Federal)	101		100.0	
Total	3,138	8.5	90.5	1.0

a. This compilation excludes "unknown" and "other" cases in Table 13.

Sentences of Convicted Youth Judicially Waived

Table 15 reflects the information obtained relating to sentences meted out to youth by adult court judges. Excluding unknown data, 54 percent (1,398) of youth judicially waived and convicted in adult courts were placed on probation or were fined, and 46 percent (1,210) received corrections sentences--12 percent, jail; 32 percent, adult corrections facilities; and two percent, juvenile corrections. The variation between states was significant, however. Some states, such as Idaho (100 percent), Maine (77 percent), Michigan (82 percent), Nevada (63 percent), New Jersey (90 percent), New Mexico (100 percent), Rhode Island (100 percent), South Carolina (88 percent), Utah (100 percent), and West Virginia (83 percent), seldom used fines or probation for youth judicially waived, but sentenced almost all of them to adult corrections facilities or to juvenile institutions. On the other hand, Iowa (78 percent), Mississippi (73 percent), Missouri (90 percent), North Dakota (98 percent), Oregon (76 percent), and Washington (76 percent) sentenced at least three-fourths of those youth judicially waived to fines or probation. There seems to be a direct correlation between low percentage of personal offenses waived and high proportion of community dispositions (as opposed to incarceration).

TABLE 15. SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY STATE AND SENTENCE TYPE) IN 1978^a

State	Total Convictions ^b	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other	Unknown
Alabama	118	1	31	25	43	1	*	17
Arizona	45	0	3	26	16	--	0	0
Colorado	13	1	2	*	8	*	1	1
Connecticut	5	0	1	0	1	3	0	0
Delaware	9	1	3	2	2	1	0	0
Georgia	33	1	5	0	25	2	0	0
Hawaii	13	0	7	0	5	0	1	0
Idaho	7	0	0	0	7	0	0	0
Illinois	37	0	12	0	7	17	1	0
Indiana	128	3	19	4	91	10	1	0
Iowa	244	103	89	15	26	9	2	0
Kansas	25	0	15	0	10	--	0	0
Kentucky	16	1	1	6	8	0	0	0
Maine	28	*	2	2	7	1	1	15
Michigan	44	*	1	*	31	--	4	8
Minnesota	199	98	13	61	17	--	6	4
Mississippi	239	104	71	32	32	0	0	0
Missouri	10	0	9	0	1	--	0	0
Nevada	19	0	7	0	6	6	0	0
New Hampshire	11	*	5	*	*	--	0	6
New Jersey	43	*	3	1	25	*	*	14
New Mexico	8	0	0	0	8	0	0	0
North Carolina	81	*	35	*	37	*	*	9
North Dakota	45	17	22	*	1	*	*	5
Ohio	83	0	8	6	65	--	4	0
Oklahoma	94	31	*	4	57	*	*	2
Oregon	373	206	74	45	42	2 ^c	1	3
Pennsylvania	118	0	20	31	66	0	1	0
Rhode Island	2	0	0	0	2	--	0	0
South Carolina	13	*	1	1	6	*	*	5 ^d

TABLE 15. (Continued)

State ^a	Total Convictions ^b	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other	Unknown
South Dakota	9	0	6	0	3	0	0	0
Tennessee	112	*	14	1	68	5	*	24
Texas	53	*	7	*	40	--	3	3
Utah	2	0	0	0	2	0	0	0
Washington	369	114	168	49	22	6	10	0
West Virginia	20	*	1	6	4	*	1	8
United States (Federal)	101	0	62	0	39	--	0	0
Total	2,769	681	717	317	830	63	37	124

* denotes Not Available.

-- denotes Not Applicable.

a. Reported for Phase II counties.

b. Includes "youthful offender" judgments and "guilty" convictions from Table 13; excludes convictions from District of Columbia for which sentence data were unavailable.

c. No such disposition appears to be statutorily permitted. See Oregon profile in separate profile volume.

d. All cases involving youthful offender judgments.

Sentence Lengths of Convicted Youth Judicially Waived

Tables 16 and 17 and Figure 5 display the maximum sentence lengths that youth who were convicted in adult courts and sentenced to corrections facilities received. In many cases, time actually served might be considerably less than what is reflected below. However, the lengths of time actually served constituted data beyond the scope of this research. Of the 1,086 known cases, over one-fourth of them received confinement sentences of one year or less, more than 40 percent received maximum sentences of one to five years, over 15 percent were sentenced to maximum lengths of five to ten years, and over 13 percent received maximum sentences of over ten years. Twenty-three youth were sentenced to life terms. None were given the death penalty in 1978. Since most sentences are subject to early release for good behavior, it is a reasonable speculation that at least half of the 1,147 defendants served less than 18 months in jails or adult corrections facilities.

TABLE 16. LENGTHS OF CONFINEMENT REPORTED FOR SENTENCES
ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS
(BY STATE AND MAXIMUM SENTENCE) IN 1978^a

State	Total Confinements ^b	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeter- minate	Life	Death	Un- known
Alabama	69	2	25	6	17	13	*	2	*	4
Arizona	42	12	25	5	0	0	0	0	0	0
Colorado	8	0	2	2	1	0	2	1	0	0
Connecticut	4	0	0	0	0	0	3	1	0	0
Delaware	5	0	4	1	0	0	0	0	0	0
Georgia	27	4	3	1	12	1	*	*	*	6
Hawaii	5	*	*	*	1	1	*	*	*	3
Idaho	7	2	0	2	1	2	0	0	0	0
Illinois	24	*	*	7	10	3	*	*	*	4
Indiana	105	20	15	38	29	*	*	*	*	3
Iowa	50	22	3	4	15	1	*	3	*	2
Kansas	10	0	0	2	5	3	0	0	0	0
Kentucky	14	4	6	1	*	1	*	1	*	1
Maine	10	1	3	*	*	*	*	*	*	6
Michigan ^c	35	2	3	2	8	16	*	2	*	2
Minnesota	78	62	3	7	2	4	0	0	0	0
Mississippi	64	22	13	5	6	3	*	1	*	14
Missouri	1	0	1	0	0	0	0	0	0	0
Nevada	12	0	2	1	2	1	6	0	0	0
New Jersey	26	1	*	*	1	4	7	1	*	12
New Mexico	8	0	0	2	1	5	0	0	0	0
North Carolina	37	*	23	6	2	2	2	*	*	2
North Dakota	1	0	0	0	1	0	0	0	0	0
Ohio	71	5	1	9	9	40	2	4	*	1
Oklahoma	61	10	24	17	6	4	0	0	0	0

TABLE 16. (Continued)

State	Total Confinements ^b	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Oregon ^d	90	47	0	28	5	7	0	3	0	0
Pennsylvania	97	5	48	9	18	5	8	2	*	2
Rhode Island	2	1	0	0	0	1	0	0	0	0
South Carolina	7	1	0	1	1	4	0	0	0	0
South Dakota	3	0	3	0	0	0	0	0	0	0
Tennessee	74	7	11	10	*	6	*	*	*	40
Texas	40	1	7	7	5	16	*	1	*	3
Utah	2	0	0	0	0	1	0	1	0	0
Washington	77	48	2	1	10	4	*	*	*	12
West Virginia	10	1	3	1	*	*	*	*	*	5
¹¹⁶ United States (Federal)	39	11	15	5	1	*	*	*	*	7
Total	1,215	291	245	180	169	148	30	23	0	129

* denotes Not Available.

a. May contain estimated data.

b. Includes jail, state adult corrections facilities and state juvenile corrections facilities from Table 15.

c. Four "other" sentences are included, where types of facilities could not be determined. See Table 15.

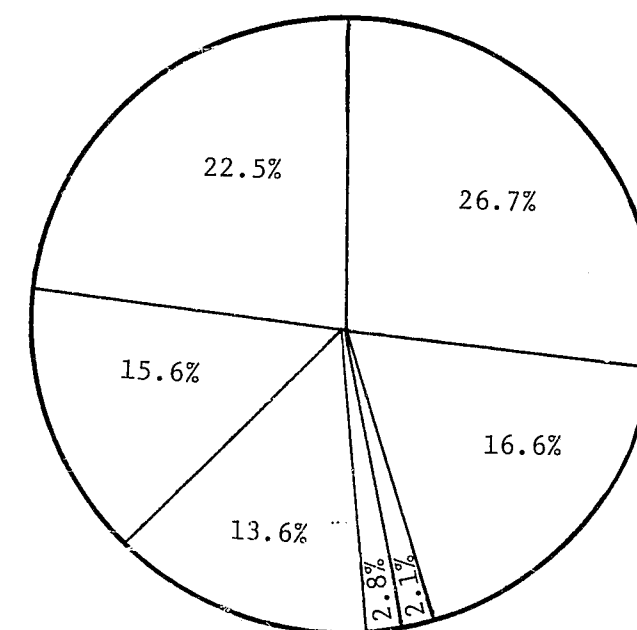
d. One "other" sentence is included. See Table 15.

TABLE 17. CONFINEMENTS RESULTING FROM JUDICIAL WAIVERS (BY MAXIMUM SENTENCE LENGTH AND PERCENTAGE) IN 1978

Maximum Sentence Length	Total Confinements ^a	Percentage
One year or less	291	26.7
One+ to 3 years	245	22.5
3+ to 5 years	180	16.6
5+ to 10 years	169	15.6
Over 10 years	148	13.6
Indeterminate	30	2.8
Life	23	2.1
Total	1,086	99.9

a. Excluding 129 "unknown" cases. See Table 16.

FIGURE 5. JUDICIAL WAIVER PHASE II CASES (BY MAXIMUM SENTENCE LENGTH PERCENTAGE) IN 1978^a



Offenses

One year or less	26.7%
One+ to 3 years	22.5%
3+ to 5 years	16.6%
5+ to 10 years	15.6%
Over 10 years	13.6%
Indeterminate	2.8%
Life	2.1%

N= 1,086

a. Excluding "unknown" cases. 117

CONCURRENT JURISDICTION

Statutes providing for the exercise of some type of concurrent jurisdiction by juvenile and adult courts are included within the legal codes of 13 jurisdictions. In six states, the concurrent jurisdiction provisions concern only traffic, watercraft, or fish and game violations. Initial efforts were made to obtain data from these jurisdictions. Data on minor offenses referred to adult courts are presented in a later section of this chapter.

Of the remaining seven jurisdictions (Arkansas, Colorado, District of Columbia, Florida, Georgia, Nebraska, and Wyoming), Nebraska and Wyoming provide for the exercise of concurrent jurisdiction between adult and juvenile courts over all offenses. Wyoming is the only one of this group not to have a statutorily specified minimum age for concurrent jurisdiction. In Nebraska, there is no specified minimum age for felonies or traffic violations, although adult trials for misdemeanors is limited to persons over the age of 16. Arkansas law prohibits the criminal prosecution of any individual under the age of 15, and excludes traffic cases from juvenile courts.

The five other states limit concurrent jurisdiction to specific, nontraffic offenses. Florida provides for concurrent jurisdiction at any age for capital offenses and at 16 years of age for repeat offenders. Because this latter provision went into effect October 1, 1978, data were not collected relative to repeaters. Colorado (at age 14) and District of Columbia (at age 16) have concurrent jurisdiction over major felonies. In Georgia, at any age, adult and juvenile courts share jurisdiction over capital offenses. All seven jurisdictions, except Georgia, have set the maximum age of initial juvenile court jurisdiction up to 18 years. Arkansas and Nebraska have no other mechanism for referring youth to adult court except through these prosecutorial referral provisions: the remaining jurisdictions have judicial waiver provisions. In addition, 17 year olds in Georgia are in the adult system.

Table 18 shows the concurrent jurisdiction cases for the six states in which prosecutors make the decision where to file and for which data were available. There is a significant variation in the rate of referral, at least partially determined by the offenses included in the concurrent jurisdiction statutes. States with concurrent jurisdiction over traffic or other minor offenses are discussed later in the chapter.

TABLE 18. PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY STATE) IN 1978

State ^a	Juvenile Population (Ages 8-17) ^b	Total Referrals ^c
Arkansas	372,961	762 ^d
Colorado	458,927	26
Florida	1,302,472	108

TABLE 18. (Continued)

State ^a	Juvenile Population (Ages 8-17) ^b	Total Referrals ^c
Georgia	912,766	45
Nebraska	273,888	1,175 ^e
Wyoming	68,835	15 ^e
Total	3,389,849	2,131

a. The data for the District of Columbia could not be separated from judicial waivers and are presented in the judicial waiver tables.

b. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 National Census and the National Cancer Institute 1975 estimated aggregate census.

c. Count may contain estimated data. Data do not include routine traffic cases.

d. Includes only direct prosecutorial referrals and excludes juvenile court intake referrals.

e. Data for Nebraska and Wyoming are incomplete. In many counties, four or five different types of courts heard cases against youth and many of them could not report such cases.

Age, Sex, Race in Concurrent Jurisdiction Cases

Table 19 reflects the breakdown by age, sex, and race, for cases in the Phase II sample. The youth were predominantly 17 years of age and over (65 percent), males (95 percent), and white (72 percent). These percentages are based upon the data remaining after excluding the unknown column and are aggregated.

TABLE 19. PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY STATE, AGE, SEX, AND RACE) IN 1978^a

State ^b	Total Referrals ^c	Age					Sex			Race		
		0-15	16	17	18+	Unknown	Male	Female	Unknown	White	Minority	Unknown
Arkansas	717	35	133	441	*	108	611	*	106	409	237	71
Colorado ^d	23	0	7	16	0	0	23	*	0	1	*	22
Florida	108	21	36	38	12	1	96	12	0	67	41	0
Georgia	27	8	10	*	*	9	17	1	9	12	6	9
Nebraska	1,120	5	101	156	*	858	209	*	911	236	28	856
Wyoming	11	*	*	*	*	11	5	*	6	5	*	6
Total	2,006	69	287	651	12	987	961	13	1,032	730	312	964

* denotes Not Available.

a. Reported for Phase II counties. See Table 8.

b. The data for the District of Columbia could not be separated from judicial waivers and are presented in the judicial waiver tables.

c. Includes estimated data. Also, states with concurrent jurisdiction provisions applicable to routinely handled traffic and other minor offenses are not included in this table. Refer to Table 34 for a national summary of this type of information.

d. Excludes three cases from El Paso County which could not be separated from waiver cases. See Tables 10-16, above.

Offenses Charged in Concurrent Jurisdiction Cases

Table 20 reflects the offenses for which youth were charged directly in adult courts. Of the cases where charges are known, personal offenses accounted for 40.7 percent of the offenses for which youth were tried in adult courts as a result of prosecutorial referrals. Property offenses accounted for 46 percent and public order for nine percent. Burglary was the most frequent charge, accounting for 32.8 percent of the known charges. The reader is reminded that the range of offenses for which concurrent jurisdiction exists varies considerably from state to state. For example, among the six states for which information is available, prosecutorial referrals for property and public order offenses mainly occurred in Arkansas and Nebraska, which grant very broad discretion to prosecutors in their choice of courts.

Figure 6 presents a graphic illustration of the relationship of personal offenses charged to all other types of offenses for the six states appearing in Table 20.

TABLE 20. PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO
 CONCURRENT JURISDICTION (BY STATE AND OFFENSE
 TYPE) IN 1978^a

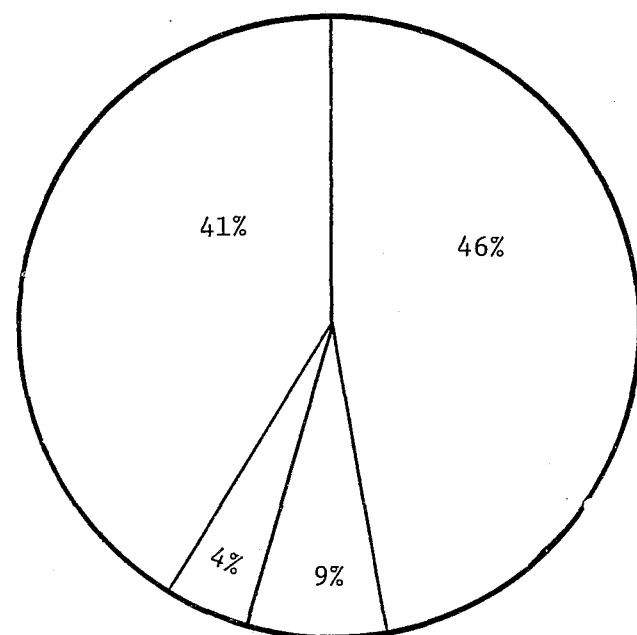
State	Total Referrals ^b	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Un- known
Arkansas	717	16	25	71	92	63	1	240	41	39	27	102
Colorado	23	1	4	4	0	1	0	13	0	0	0	0
Florida	108	17	5	48	0	1	4	17	8	0	8	0
Georgia	27	2	1	14	*	*	*	*	1	*	*	9
Nebraska	1,120	3	4	14	24	*	2	70	85	55	10	353
Wyoming	11	*	*	5	*	*	*	*	*	*	*	6
Total	2,006	39	39	156	116	65	7	340	135	94	45	970

* denotes Not Available.

a. In Phase II counties.

b. Only most serious offense included.

FIGURE 6. PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION (BY OFFENSE CATEGORY) IN 1978a



Offenses ^a	
Personal ^b	41%
Property	46%
Public Order	9%
Other General	4%
Total	100%

N= 1,036^c

- a. Reported for Phase II counties.
- b. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 23.7 percent of all offenses in the Phase II counties.
- c. Excluding unknown cases.

Judgments in Concurrent Jurisdiction Cases

Table 21 reflects what happened to such youth in adult courts. Again, the data from many Arkansas and Nebraska courts were irretrievable. There was an additional problem in Arkansas because of two, slightly dissimilar, provisions. See the Arkansas profile in the separate profile volume for greater detail. The data on Tables 21, 22, and 23 for Arkansas reflect only those cases that resulted from warrants.

Almost all youth tried in adult courts under concurrent jurisdiction provisions were convicted (856 out of the 929 cases where judgments were known). Very few of the cases were dismissed by the courts or prosecutors, or were adjudicated not guilty. Just over one percent of the total sample of concurrent jurisdiction cases resulted in referrals back to juvenile courts for adjudication and/or disposition, or two percent of the known cases.

TABLE 21. PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY STATE AND JUDGMENT TYPE) IN 1978a

State ^b	Total Judgments		Not Guilty/Dismissed		Guilty		Referred to Juvenile Court		Other/Unknown	
	Cases	Per- cent	Cases	Per- cent	Cases	Per- cent	Cases	Per- cent	Cases	Per- cent
Arkansas	717	100.0	51	7.1	563	78.5	0	0	103	14.4
Colorado	23	100.0	0	0	23	100.0	0	0	0	0
Georgia	27	100.0	0	0	17	63.0	--	0	10	37.0
Nebraska	1,120	100.0	3	0.0	248	22.1	13	0.1	856	76.4
Wyoming	11	100.0	0	0	5	45.4	6	54.5	0	0
Total	1,898	100.0	54	2.8	856	45.1	19	1.0	969	51.1

-- denotes Not Applicable.

a. Reported for Phase II counties.

b. Conviction data were unavailable for Florida.

Sentences in Concurrent Jurisdiction Cases

Table 22 shows how those youth who were found guilty were sentenced.

Over 41 percent of the youth who were convicted in adult courts (856) were given fines or probation; 39 percent were either sentenced to jail or to state adult or juvenile corrections facilities. It is instructive to note the state-to-state variations in sentencing practices. Colorado, Georgia, and Wyoming did not use fines, while Arkansas used fines in 21 percent of the cases. Colorado and Nebraska placed 48 percent and 65 percent, respectively, of the convicted youth on probation. When compared with the state-specific offense data on Table 20, a correlation between the high incidence of prosecutorial referrals in these states for property offenses and the equally high incidence of non-confinement sentencing options becomes evident. Further, when the "other/unknown" category is removed, over 52 percent of the convictions resulted in fines or probation.

TABLE 22. SENTENCES REPORTED FOR CONVICTIONS ARISING FROM PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY STATE AND SENTENCE TYPE) IN 1978^a

State	Total Convictions ^b	Fined	Probation	Percent Fined and Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Percent Confined	Other/Unknown	Percent Other/Unknown
Arkansas	563	119	160	50.0	44	229	4	49.2	7	1.2
Colorado	23	0	11	47.8	0	12	0	52.2	0	0
Georgia	17	0	1	5.9	0	6	10	94.1	0	0
Nebraska	248	7	58	26.2	11	11	2	9.7	159	64.1
Wyoming	5	0	0	0	0	0	5	100.0	0	0
Total	856	126	230	41.6	55	258	21	39.0	166	19.4

a. Reported for Phase II counties.

b. Sentence data were unavailable for Florida.

Sentence Lengths in Concurrent Jurisdiction Cases

Table 23 reflects reported data on sentence lengths in concurrent jurisdiction. The data corresponds to the number of confinements reported on Table 22, and is presented in terms of maximum sentence lengths ordered by the courts.

Excluding data from the Unknown category, 21 percent of the youth sentenced to corrections facilities received maximum sentences of one year or less. The falloff after five years is quite marked. Only 11 youth were assigned to corrections facilities for maximum sentences of over ten years; however, seven of these sentences were for life terms.

TABLE 23. LENGTHS OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY STATE AND MAXIMUM SENTENCE) IN 1978^a

State	Total Confinements		Maximum Sentence Lengths													
			One Year or Less		1+ to 5 Years		5+ to 10 Years		Over 10 Years		Indeterminate		Life		Unknown	
	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent
Arkansas	277	100.0	47	17.0	202	73.0	7	2.5	2	0.1	*	*	4	1.4	15	5.4
Colorado	12	100.0	0	0	0	0	1	8.3	1	8.3	10	83.3	0	0	0	0
Georgia	16	100.0	0	0	12	75.0	2	12.5	0	0	0	0	2	12.5	0	0
Nebraska	24	100.0	13	54.2	2	8.3	*	*	1	4.1	*	*	1	4.1	7	29.2
Wyoming	5	100.0	5	100.0	0	0	0	0	0	0	0	0	0	0	0	0
Total	334	100.0	65	19.5	216	64.7	10	3.0	4	1.2	10	3.0	7	2.1	22	6.6

* denotes Not Available.
a. Reported for Phase II counties.

Concurrent jurisdiction provisions, as can be seen from the tabular summaries, are used in disparate ways by prosecuting attorneys, sometimes attributable to variations in state codes and sometimes to local practices. While juvenile court data are not presented in this report, it should nevertheless be apparent that large numbers of juveniles in these six states, who could have been charged in criminal courts, are, in fact, being handled in juvenile courts. What is perhaps more surprising, given the very limited usage of this particular legal mechanism, is the fact that only a third of the referrals were for offenses against persons. Equally remarkable is the fact that, while findings of guilt occurred in over 90 percent of the cases where the outcomes were known, over half of these defendants received fines or probation, i.e., they served no time in confinement.

EXCLUDED OFFENSES

Thirty-one of the 52 jurisdictions (the 50 states, plus the District of Columbia and the federal court system) had statutory provisions excluding certain offenses from juvenile court jurisdiction in 1978. Twenty jurisdictions excluded only traffic, watercraft, fish and game, or minor misdemeanors.

Eleven states excluded specified serious offenses from juvenile court jurisdiction (Delaware, Indiana, Kansas, Louisiana, Maryland, Mississippi, Nevada, New Mexico, New York, Pennsylvania, and Rhode Island). In four of the 11 states, an individual of any age who is charged with a capital or major felony offense (where these are excluded) is automatically prosecuted in adult court. The pertinent excluded offense statutes in each of the other seven jurisdictions contain minimum age provisions, the lowest set at 13 years of age.

Data for these offenses were generally not available, in most cases not collected by age by any jurisdiction, court, county, or state. A few counties in a small number of states provided estimates, which appear in Table 24 (for serious offenses) and in Table 34 (for lesser offenses).

The following information requires additional explanation. Indiana's 1978 code excluded murder from juvenile court jurisdiction. These cases, however, were handled as judicial waivers and are recorded in the judicial waiver data. In New Mexico, data were not surveyed, even though that state did exclude felonious traffic offenses committed by juveniles 14 years of age and older. In Kansas, only 16 or 17 year olds committed to state institutions who commit certain offenses (burning a building, aggravated assault on an employee of the institution, etc.) are automatically prosecuted as adults. Data on these excluded offense cases were collected. In Rhode Island, youth found delinquent twice for indictable offenses are excluded from juvenile jurisdiction on all subsequent felonies. These data were not available.

The remaining seven states from which data were sought were Delaware, Louisiana, Maryland, Mississippi, Nevada, New York, and Pennsylvania.

Table 24 reflects the rather limited retrieved data sets relative to offenses excluded from juvenile court jurisdiction. In five of the states, the figures represent complete data sets for the states. Maryland contains some estimated data. Only New York City statistics were obtainable in the state of New York; however, there is good reason to believe that they may represent 85 to 90 percent of the incidence in the state, according to the New York Division of Criminal Justice Services. Because Table 24 requires so many footnotes, the reader is advised to consult the pertinent state profiles in the separate profile volumes, in order to obtain a better understanding of the information presented here.

TABLE 24. EXCLUDED OFFENSES (BY STATE) IN 1978

State ^a	Youth Population (Ages 8-17) ^b	Excluded Offenses ^c
Delaware ^d	107,415	4
Louisiana ^d	750,747	14
Maryland ^e	764,060	748
Mississippi ^f	458,631	13
Nevada	106,780	3
New York City ^g	1,114,092	517
Pennsylvania ^e	2,007,535	63
Total	5,309,260	1,363

a. Kansas reported one case (estimated) of an institutional offense but could provide no further information.

b. 1978 population estimates were developed by the National Center for Juvenile Justice, using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

c. Includes estimated data.

d. Data unavailable from principal county. See state profiles in separate profile volumes.

e. Reported arrest data.

f. Only Phase II waiver counties were contacted.

g. New York statewide data were not available.

Demographic and offense data were available for only three states and New York City. Judgment data were available from New York City and Pennsylvania only, and sentence data were available only from Pennsylvania. The following tables present the data that were available. Caution is urged because of the limited nature of the information.

Age, Sex, and Race in Excluded Offense Cases

Table 25 presents the demographic data available in Louisiana, Mississippi, Nevada, Pennsylvania, and for the five borough's of New York City. When compared with Table 24, it can be seen that Louisiana includes only 4 of the 14 cases reported, and Pennsylvania's 63 arrests actually resulted in 53 locally reported cases of court filings. In addition, most of the age, sex, and race data in Mississippi were unknown.

Recognizing the incompleteness of the data set, certain observations might nevertheless be made. There is significant variation among states in the age of youth initially excluded from juvenile court jurisdiction. In the Phase II counties, 75 percent of the youth in Louisiana were 16 years of age, the last year before initial criminal court jurisdiction in that state (17). Seventy percent of the youth in Mississippi were 17 years of age, again the last year before initial criminal court jurisdiction (18). A similar pattern appears in New York City; 16 year olds are adults in New York and it naturally follows that all the youth facing excluded offense charges were 15 years of age or younger. The pattern is slightly different in Pennsylvania, where 42 percent of these youth were 17 years of age or older, while 28 percent were 16, and 30 percent were 15 or younger.

Almost all youth initially excluded from juvenile jurisdiction in 1978 were male; this ranged from a high of 100 percent in Louisiana to a low of 92 percent in New York City.

Minority youth are overrepresented in all states where data were available. Minority youth participation in excluded offenses ranged from 51 percent in Pennsylvania to 75 percent in Louisiana. Descriptive studies have indicated that minority youth are also overrepresented in arrests for serious or violent crimes. Whether bias exists in arresting or charging procedures or whether the overrepresentation is attributable to disproportionate minority participation in serious crimes remains an open question. The explanation of this data requires more detailed data than this study permitted.

TABLE 25. EXCLUDED OFFENSES (BY STATE, AGE, SEX, AND RACE)
IN 1978^a

State ^b	Total Referrals	Age					Sex			Race		
		0-15	16	17	18+	Unknown	Male	Female	Unknown	White	Minority	Unknown
Louisiana	4	1	3	0	0	0	4	0	0	1	3	0
Mississippi	13	*	1	3	*	9	6	*	7	*	6	7
Nevada	3	1	*	*	*	2	1	*	2	1	*	2
New York City	517	517	0	0	0	0	476	41	0	138	379	0
Pennsylvania ^c	53	16	15	21	1	0	50	3	0	26	27	0
¹²⁹ Total	590	535	19	24	1	11	537	44	9	166	415	9

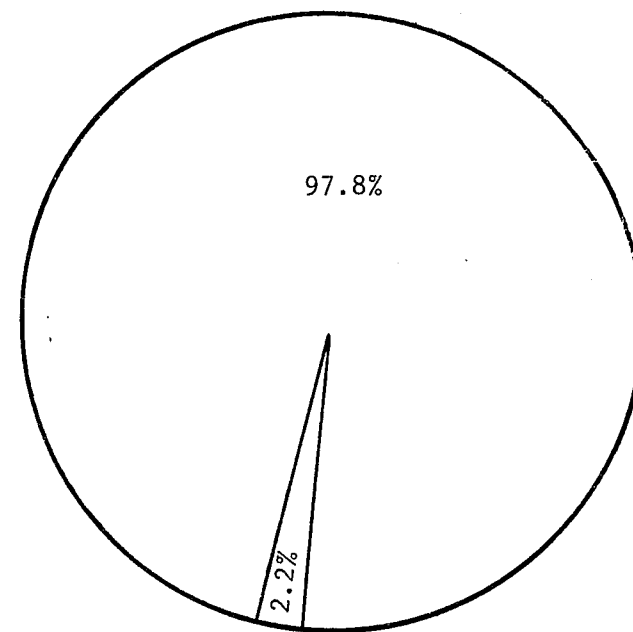
* denotes Not Available.

- a. Reported for Phase II counties. See Table 8.
- b. Data were unavailable from Delaware and Maryland.
- c. Reported court filing data.

Offenses in Excluded Offense Cases

Figure 7 and Table 26 present the types and categories of offenses excluded from juvenile court jurisdiction for which charges were filed in 1978. Very few property offenses constitute excluded crimes. Almost without exception, the excluded offenses are crimes against persons. Note that although Mississippi excludes only capital offenses, an unusually broad range of offenses can be prosecuted as capital offenses. Figure 7 graphically reveals the high percentage (96.8) of referrals to adult courts for personal offenses which were excluded, in 1978, from juvenile court jurisdiction.

FIGURE 7. EXCLUDED OFFENSES (BY OFFENSE CATEGORY) IN 1978^a



Offenses^a

Personal	97.8%
Property	2.2%
Public Order	0
Other General	0
Total	100.0%

N= 590

a. Data were unavailable for Delaware and Maryland.

TABLE 26. EXCLUDED OFFENSES (BY STATE AND OFFENSE TYPE)
IN 1978^a

State ^b	Total Referrals	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Un- known
Louisiana	4	4	0	0	0	0	0	0	0	0	0	0
Mississippi	13	2	2	9	0	0	0	0	0	0	0	0
Nevada	3	3	0	0	0	0	0	0	0	0	0	0
New York City	517	26	10	415	0	27	26	10	0	0	3	0
Pennsylvania	53	53	0	0	0	0	0	0	0	0	0	0
Total	590	88	12	424	0	27	26	10	0	0	3	0

a. Reporting Phase II counties.

b. Data were unavailable for Delaware and Maryland.

Judgments in Excluded Offense Cases

Data on judgments received in adult court by youth initially excluded from juvenile jurisdiction were available from New York City and Pennsylvania only. In New York City, at the end of the first year of operation of the Juvenile Offender Act (September 1, 1979), the information available indicated that for the first three months--September 1 through November 30, 1978--34 percent of the cases were dismissed, or the prosecutor refused to prosecute them; 39 percent were referred back to New York City's family courts; and 25 percent were indicted but no judgment in criminal court has been rendered. Two were found guilty.

In Pennsylvania, of the 53 youth excluded from juvenile court jurisdiction for murder, local officials could report outcomes in 46 cases. Of known judgments, two were not guilty and three were dismissed (eleven percent); 12 (26 percent) were referred back to juvenile courts; 29 (63 percent) were convicted; and seven cases were being held open.

Sentences in Excluded Offense Cases

Sentence data were only retrievable from Pennsylvania. Of the 29 youth convicted in adult courts in Pennsylvania, two (6.9 percent) were placed on probation; 18 (62 percent) were sent to adult corrections facilities; one was placed in a private facility; three youth were awaiting sentencing; one case was under appeal; and the sentences in four cases were unknown.

The sentence lengths for the 18 youth committed to adult corrections facilities or private placements in Pennsylvania are presented in Table 27. The periods of confinement ordered in 76 percent of the sentences exceeded ten years. These sentences all relate to youth charged with murder.

TABLE 27. LENGTHS OF CONFINEMENT IN EXCLUDED OFFENSE (PHASE II) CASES IN PENNSYLVANIA (BY MAXIMUM SENTENCE LENGTHS) IN 1978

Total Confinements	One+ 3 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Unknown
18	2	1	8	1	5	1

AGE-OF-JURISDICTION CASES

The data which appear in this section require more explanation than the data presented in earlier sections of this chapter. The very inclusion of the following information is, itself, remarkable because of the respect normally accorded by researchers to the effects of federalism on juvenile justice data. Without reiterating any more of Chapter 1 (Introduction) and Appendix A (Methodology) than is necessary, the reader should understand the following key points:

- In 12 states in the Union, the age of criminal responsibility is either 16 or 17. Despite this fact, the Academy consciously chose to define "youth" as persons under the age of 18, without regard to their states of residence.
- That decision not only increased the magnitude of the research to be conducted, but it also increased several-fold the level of complexity of the data retrieval and collection process. County prosecutors and court clerks would be asked to divide their entire adult, criminal caseloads for 1978 by age, and to report data pertinent only to 17 year old defendants and, in four states, to 16 year olds, as well.
- This task was beyond the capabilities of most local officials to comply, despite their willingness to cooperate. In South Carolina, state officials were able to supply such data in addition to arrest data, from their statewide criminal justice information system. In a burst of extraordinary hospitality, Vermont officials manually retrieved the requested information to the extent that it was accessible.
- In the remaining ten states, all of the data which appear in this section consist of arrest information collected by state agencies responsible for reporting Uniform Crime Report data. In Missouri, only felony arrest data were available, so property and public order offenses for that state may be underrepresented.
- State officials in Connecticut, Georgia, Massachusetts, Michigan, Missouri, New York, and North Carolina estimated that very high percentages (between 90 and 100 percent) of such arrests are referred to adult courts or to prosecutors. In Georgia, Louisiana, and Texas, local studies resulted in very similar estimates for the statewide arrest data. Since the South Carolina and Vermont statistics are based on court filings, no attempts were made to obtain arrest data. It should be noted, however, that South Carolina provided arrest data and indictment data, which explains the large dropoff in number.

So long as these points are understood, the following information can serve as useful indicators of the effects of lowering the ages of jurisdiction for

juvenile and adult courts in other states which may be faced with such a decision.

In eight states 17 year olds and in four states 16 and 17 year olds are routinely handled as adults for any violation of criminal law, no matter how minor. Only in Vermont (in 1978) can 16 or 17 year old youth be referred back to the juvenile courts; in the other 11 states, they are, without exception, arrested, detained, tried, and sentenced as adult offenders. All of the 12 states, except Vermont (in 1978), have at least one other mechanism for referring youth to adult courts. That is to say, judicial waivers, concurrent jurisdiction, and/or excluded offenses could be invoked to refer juveniles under the ages of 16 or 17 to adult courts.

Age and Sex in Age-of-Jurisdiction Cases

Table 28 lists both arrest and court filing data, for the 12 states in which 17 or 16 and 17 year olds are legally considered adults.

It is not at all surprising that 76 percent of the youth were 17 years of age. In Connecticut, data on 16 and 17 year olds could not be separated and were, therefore, included in the "unknown" age column.

Eighty-six percent of the youth were males, and 14 percent were females. The higher representation of females in this category than are found in judicial waiver, excluded offenses, or in concurrent jurisdiction can probably be attributed to either less serious offenses being included in this legal mechanism, or to the inability of criminal justice system officials to exercise any discretion in the selection of the appropriate judicial forum. Prosecutors, for instance, frequently refer younger females to juvenile courts by selecting the charges to be filed in particular cases where exclusive jurisdiction is operative.

Race in Age-of-Jurisdiction Cases

The 1978 data on race were available only for youth in Georgia, Illinois, and South Carolina, all of which utilize 17 as the age of initial criminal court jurisdiction. In Georgia, 67 percent of the 17 year olds arrested in 1978 were white; in Illinois, whites constituted 60 percent; and in South Carolina, 62 percent.

TABLE 28. YOUTH ARRESTS AND COURT FILINGS AS ADULTS DUE TO AGE OF JURISDICTION (BY STATE, AGE, AND SEX) IN 1978

State	Total Cases	Age			Sex		
		16	17	Unknown	Male	Female	Unknown
<u>Arrests^a</u>							
Connecticut	11,877	*	*	11,877 ^b	10,192	1,685	0
Georgia	2,849	--	2,823	26	2,199	650	0
Illinois	41,987	--	41,987	0	36,588	5,399	0
Louisiana	7,582	--	7,582	0	6,454	1,128	0
Massachusetts	12,393	--	12,393	0	11,267	1,126	0
Michigan	20,313	--	20,313	0	17,350	2,963	0
Missouri ^c	2,263	--	2,263	0	*	*	2,263
New York	99,595	51,263	48,332	0	87,695	11,761	139
North Carolina	17,624	7,948	9,676	0	14,572	3,052	0
South Carolina ^d	(5,428)	--	(5,428)	0	(4,636)	(792)	0
Texas	30,864	--	30,864	0	26,666	4,186	12
<u>Court Filings</u>							
South Carolina ^d	741	--	741	0	636	83	22
Vermont	1,298	381	714	203	977	119	202 ^e
Total	249,386	59,592	177,688	12,106	214,596	32,152	2,638

* denotes Not Available.
 -- denotes Not Applicable.

a. Arrest data (Uniform Crime Reports) provided by state agency.

b. Data on 16 and 17 year olds could not be separated and, therefore, are included in the unknown subtotal.

c. Felony arrests only.

d. Both arrest and court filing (indictment) data were available, in terms of frequency. Only court filing data are counted above.

e. Includes 191 cases where records have been expunged.

TABLE 29. YOUTH ARRESTS AND COURT FILINGS AS ADULTS DUE TO AGE OF JURISDICTION (BY STATE AND RACE) IN 1978

State ^a	Total Cases	White	Minority	Unknown
Georgia ^b	2,849	1,905	944	0
Illinois ^b	41,987	25,260	16,727	0
South Carolina ^c	741	457	244	40
Total	45,577	27,622	17,915	40

a. Race data were unavailable from other age-of-jurisdiction states.

b. Arrest data.

c. Court filing (indictment) data.

Offenses in Age-of-Jurisdiction Cases

Tables 30A and 30B present the offenses represented in the arrests or court filings, depending on the state, for these 12 states, based upon the most serious charge filed in each case. Using the categories of personal offenses; property offenses; drug and alcohol violations, and other public order offenses; and the "other general" category, a more consolidated picture is presented in Figure 8. Two graphs are used, in order to reduce the difficulties in comparing crime statistics among states in which there are different minimum ages of criminal court jurisdiction.

The most common offenses for which 16 and 17 year olds are arrested and referred to adult courts are "public order" offenses, i.e., liquor and drug violations. Further, this pattern is generally consistent in most of the states.

The most striking fact is the relatively low percentage of violent crimes in total arrests of all 16 and 17 year olds, especially since this is the age group generally understood to be among the individuals most involved in such crimes. Even in Missouri, which reported only felony arrests, the violent crimes comprise just over 22 percent of the total arrests. Overall, about one arrest in 20, within these two birth cohorts, is for a violent crime.

TABLE 30A. YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION
(BY STATE AND OFFENSE TYPE) IN 1978

State	Total Arrests	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General ^d	Un- known
Connecticut	11,877	6	10	273	191	658	272	1,396	3,317	3,543	2,211	0
Georgia	2,849	8	19	77	120	116	176	215	834	1,202	79	3
Illinois	41,987	78	89	802	1,714	428	1,289	2,441	6,561	18,914	9,671	0
Louisiana	7,582	24	31	202	311	0	0	935	1,753	668	3,658	0
Massachusetts	12,393	7	27	258	315	438	146	1,226	2,176	5,988	1,812	0
Michigan	20,313	36	71	344	424	344	544	1,752	4,762	8,230	3,806	0
Missouri	2,263	33	33	256	0	185	165	917	547	59	68	0
New York	99,595	105	243	4,370	2,920	2,338	1,499	9,567	18,568	20,771	39,214	0
North Carolina	17,624	31	71	184	925	607	305	2,572	4,930	4,813	3,186	0
Texas	30,864	76	94	486	626	401	632	2,529	6,034	15,727	4,257	2
Total	247,347	404	688	7,252	7,546	5,515	5,028	23,550	49,482	79,915	67,962	5

a. Definitions may vary from state to state.

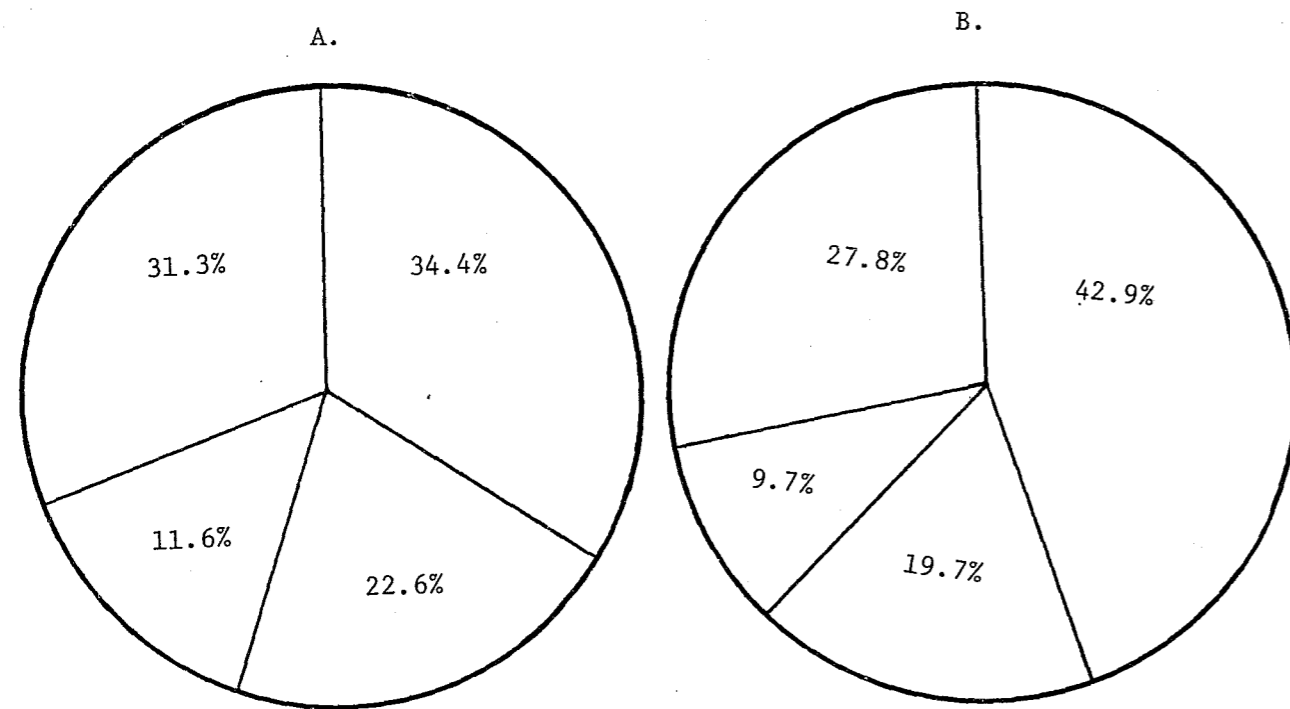
TABLE 30B. YOUTH COURT FILINGS AS ADULTS DUE TO AGE OF JURISDICTION
IN SOUTH CAROLINA AND VERMONT (BY OFFENSE TYPE) IN 1978

State	Total Court Filings	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Un- known
South Carolina	741	7	0	54	3	31	22	42	333	186	63	0
Vermont	1,298	*	*	1	44	16	25	115	330	330	246	191 ^a
Total	2,039	7	0	55	47	47	47	157	663	516	309	191

* denotes Not Available.

a. Cases which were expunged.

FIGURE 8. YOUTH ARRESTS AND COURT FILINGS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY AND AGE OF JURISDICTION) IN 1978



Offenses ^a	A. Percent 16 Year Old Arrests/Court Filings	B. Percent 17 Year Old Arrests/Court Filings
Personal	11.6	9.7
Property	31.3	27.8
Public Order	22.6	42.9
Other General	34.4	19.7
Total	99.9	100.1

N= 130,394

118,992

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 5.6 percent of all offenses.

Judgments in Age-of-Jurisdiction Cases

Data were only available on judgments, sentences, and sentence lengths in adult courts for 17 year olds from South Carolina and 16 and 17 year olds from Vermont, respectively. The information appears in Table 31. These data cannot be perceived as representative of the cases in the other ten states with ages of initial criminal court jurisdiction of 17 or 16. However, for these two states, the information appears to be accurate and virtually complete.

In these two states, excluding "unknown" and "other" cases, 15.6 percent (308) of the cases were found not guilty or were dismissed. About 17 percent (216) of Vermont's cases were referred back to juvenile courts (Vermont is the only one of these 12 states that permits referrals to juvenile courts). Over 72 percent (1,431) of the cases in both states resulted in guilty verdicts although 235 of those verdicts were under a South Carolina youthful offender statute.

TABLE 31. ADULT COURT JUDGMENTS RESULTING FROM AGE-OF-JURISDICTION CASES IN SOUTH CAROLINA AND VERMONT (BY JUDGMENT TYPE) IN 1978

State	Total Judgments ^a		Not Guilty/Dismissed		Guilty		Referred to Juvenile Courts	
	Number	Per- cent	Number	Per- cent	Number	Per- cent	Number	Per- cent
South Carolina	679	100.0	31	4.6	648 ^b	95.4	--	--
Vermont	1,276	100.0	277	21.7	783	61.3	216	16.9
Total	1,955	100.0	308	15.8	1,431	73.2	216	11.0

a. Excluding "Other" and "Unknown" cases.

b. Includes 235 Youthful Offender Judgments.

Sentences in Age-of-Jurisdiction Cases

Table 32 presents information as to the sentences imposed upon these 16 and 17 year old youth who were found guilty in adult courts. Of the 1,431 youth found guilty in South Carolina and Vermont, 36 percent received fines, 19 percent

were placed on probation, 25 percent received jail or corrections sentences, and 19 percent received other types of sentences or the sentences were not available.

There is significant variation between the two states in the use of different types of sentences. South Carolina primarily used probation and jail for the 17 year old adults, while Vermont relied on fines and probation for the 16 and 17 year olds. When fines and probation are both viewed as forms of nonincarcerative sentences, over 55 percent of the sentences could be so classified. It would be safe to assume that there would also be similar differences among the sentences of 16 and 17 year old adults in the other ten states.

Sentence Length in Age-of-Jurisdiction Cases

Table 33 displays the sentence length of 16 and 17 year olds sentenced to jail or corrections facilities in 1978 in South Carolina and Vermont. Of the known sentences, about 80 percent (287) of the youth received sentences of one year or less. This is obviously the result of a high percentage of jail sentences, where sentences typically run from 30 days to six months. Twenty-seven youth (eight percent) received maximum sentences of more than five years. No one was sentenced to either life terms, to death, or to indeterminate sentences.

There is some variation between the two states--a higher percentage of youth in South Carolina received maximum sentences of over five years, ten percent, contrasted with two percent in Vermont. However, since correlations with offense data are not possible, the differences must remain unexplained.

TABLE 32. ADULT COURT SENTENCES RESULTING FROM AGE-OF-JURISDICTION
 CASES IN SOUTH CAROLINA AND VERMONT (BY SENTENCE TYPE)
 IN 1978

State	Total Convictions	Fined	Probation	Percent Fined and Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Percent Confined	Other/ Unknown	Percent Other/ Unknown
South Carolina	648	17	139	24.1	188	48	0	36.4	256	39.5
Vermont	783	505	133	81.5	0	124 ^a	0	15.8	21	1.5
Total	1,431	522	272	55.5	188	172	0	25.2	277	19.4

a. Includes jail sentences.

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TABLE 33. LENGTHS OF CONFINEMENT RESULTING FROM AGE-OF-JURISDICTION
 CASES IN SOUTH CAROLINA AND VERMONT IN 1978

State	Total Confinements		One Year or Less		1+ to 5 Years		5+ to 10 Years		Over 10 Years		Indeterminat-		Unknown	
	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent
South Carolina	236	100.0	194	82.2	14	5.9	12	5.1	12	5.1	*	*	4	1.7
Vermont	124	100.0	93	75.0	25	20.2	3	2.4	*	*	*	*	3	2.4
Total	360	100.0	287	79.7	39	10.8	15	4.2	12	3.3	*	*	7	1.9

* denotes Not Available.

JUVENILES IN ADULT COURT FOR TRAFFIC AND OTHER MINOR OFFENSES

The major objective of undertaking this study was to determine the frequency with which juveniles and youth were referred to adult courts for serious offenses. While the perception of seriousness varies from one state to another, it was a relatively simple matter to distinguish such offenses as traffic, fish and game (conservation), boating, and similar, lesser violations of law. These latter offenses are excluded from juvenile courts for reasons far different than the ones associated with serious offenses. Rather than predicating adult court jurisdiction on rationalizations of public safety or the inability of juvenile courts to rehabilitate, traffic and other minor offenders are tried in adult courts because they have achieved some of the trappings of adulthood. For example, most states will issue driving licenses and hunting permits to 16 year old juveniles. Since they have received these adult privileges, so the theory goes, there exists no reason for distinguishing between them and adults.

At the same time, the practice is by no means uniform. About two fifths of the states handle juvenile traffic offenses exclusively in juvenile courts. Three of those states, Minnesota, Missouri, and Oregon utilized abbreviated forms of judicial waiver procedures to transfer juvenile traffic offenders to adult courts. See the state profiles in separate profile volumes for more state-specific information on these statutory provisions.

Despite the fact that these types of offenses are relatively minor and tangential to the research objectives within this study, the Academy attempted, wherever possible, to collect information about them. Generally speaking, inquiries were made during the survey of Phase I agencies. This step was followed up, in Phase II counties, with questions concerning traffic and other minor offenses. However, because of the complexity of court structures and because of limited records, very little data were retrievable. In all, some statistical information on youth traffic offenses was collected in 19 states, while data on other minor offenses were collected in four states. Because of the overlap, the combined data reflects some success at data retrieval in 20 states.

Table 34 represents the fragmentary data collected about referrals to adult courts for these minor criminal violations. The data, in practically all states, consist of statistics reported by self-selected counties on an as-available basis. About 16 percent of the nation's youth population live within the reporting counties' borders. Based upon this scanty piece of information, it is possible to conclude that the number of juveniles and youth tried as adults for traffic and other minor misdemeanors is quite large, perhaps exceeding 1,000,000 persons a year.

TABLE 34. YOUTH REFERRALS TO ADULT COURTS FOR TRAFFIC, CONSERVATION, ALCOHOL, AND OTHER MINOR MISDEMEANORS (BY STATE AND TYPES OF MINOR OFFENSES) IN 1978

State	Legal Mechanism	Types of Minor Offenses			
		Traffic	Conservation	Alcohol	Other
Alaska	E	4,859	366		
Colorado	E	5,198 est			
Idaho	E	3,765 est			
Indiana	E	7,491 est			
Kansas	E	12,410 est			
Kentucky	E	27,928			
Minnesota ^a	W	2,201 est			
Missouri	W	2,143			
Montana	C	5,307 est	2,013 est	700 est	
Nebraska	C	8,949 est			
New Mexico	E	9,445 est			
North Dakota	E	1,158 est			
Oklahoma	C	114	15	34	53
Oregon ^b	W	7,384 est			
Rhode Island	E	5,913			
Tennessee	E	7,538 est			
Texas	E	10,453 est			
Wyoming	C	347 est		86	
Total		122,593 est	2,394 est	820 est	53

C denotes Concurrent Jurisdiction Cases.

E denotes Excluded Offense Cases.

W denotes Judicial Waiver Cases.

a. Includes water violations.

b. Includes conservation violations.

CHAPTER 5

CHAPTER 5

CASE STUDY SUMMARIES

What are the effects of particular referral legislation on the juvenile and criminal justice systems, the offender and the public? What are the legislative and administrative trends in the trial of youth as adults? What is perceived as the ideal system? These and other questions were asked in ten states to gather additional first-hand information that could not be collected using other research techniques.

The technique employed for assessing these public policy issues is known as the case study approach. It was chosen as a means by which to develop a more intensive analysis of youth tried as adults than was possible from either the literature or the national census. These case studies include more detailed information on the processes by which youth are tried as adults and on the institutions involved in the processes. Perspectives were also expressed by interviewees on how well the processes are meeting the goals for which they were designed, and how current legal procedures might be improved in the respective states.

The guiding principle in case study state selection was to find a group of states diverse enough so that the major types of social environment, legal provisions, and service organization would be represented. Hence, the following set of criteria was applied to assure such diversity:

- No more than one state from each federal region.
- Mix of urban and rural states.
- Mix of large and small states, based both on geographic size as well as total population.
- Juvenile jurisdiction within the highest trial level, juvenile jurisdiction within lesser courts, and independent juvenile courts.
- Different transfer procedures.
- Different minimum ages of criminal court jurisdiction.

On these bases, these states were selected:

- | | |
|------------------|-----------------|
| 1. California | 6. Nebraska |
| 2. Colorado | 7. New York |
| 3. Florida | 8. Oklahoma |
| 4. Massachusetts | 9. Pennsylvania |
| 5. Minnesota | 10. Washington |

Six of the selected states have considered legislative changes that are significant and, in some ways, highly original approaches to the trial of youth as adults. In addition, several of these states--perhaps most notably New York--have served as models for other states' legislative efforts. The states considering changes are "balanced" by the inclusion of four states where there is little or no legislative activity around the issue of trying youth as adults. Thus, the goal of the legislative-activity criterion was less to be "typical" than to include states that appear either to be stable or to be at the forefront of this period of change.

Teams of three to six Academy staff members spent periods of roughly one week on-site in each of the case study states. The field trips began with New York in November, 1979, and ended with Nebraska in April, 1980. Consistent with the study design and reflecting the emphasis on diversifying locations, interviews were conducted in three or four counties in each state, including (1) the state capital, (2) the largest city, (3) a representative county from the lower third of the counties (in population), and (4) a county of interest due to some peculiarity of programs, rate of referral, or demography.

Interviews were conducted with judges, juvenile court personnel, county prosecutors, public defenders, state legislative staff, state juvenile and adult correctional administrators, juvenile justice advocates, juvenile justice researchers, and law enforcement officers. A standard interview format was utilized which directed the interviewees to respond to the relative advantages and disadvantages of trying youth in adult courts. Additional questions were asked concerning proposed or needed changes in the juvenile and criminal codes, dispositional outcomes of youth tried as adults, and trends and influences in the state affecting the transfer issue. Interviewees were encouraged to provide additional reports, documents, and data which related to the issue.

A brief review of the 1978 census in these states on youth tried as adults is also highlighted. For detailed comparative data for all states, the reader is referred to Chapter 4, which contains the national data summary, and to five companion volumes, each of which contains approximately ten state or federal profiles. These five volumes present the profiles in such a way as to enable the reader to focus upon five different parts of the country, namely, western, north central, south central, northeast, and southeastern states.

What appear below are synopses of case study findings in the ten states identified earlier.

CALIFORNIA CASE STUDY SUMMARY

California, in federal administrative region 9, is the most populous state in the union and has a tradition of leadership and innovation in social policy.

Juvenile and criminal court jurisdiction are both located within the highest trial level court, the superior court, allowing the same judges in some rural counties to remand juveniles to criminal courts for trial and then hear the criminal cases. In addition, youth convicted in criminal courts can be sentenced to either juvenile or adult corrections. Juvenile traffic cases are under the jurisdiction of the juvenile courts.

In 1976, California passed a new remand provision applicable to 16 and 17 year olds charged with serious felonies. This provision clearly reflects altered legislative policy in that the burden of proof was shifted to the juveniles to demonstrate their "fitness" for treatment within the juvenile justice system. The amendment thus rejected the previous requirement for these juveniles that the state prove unfitness before waivers could be ordered.

Procedures for Trying Youth as Adults in 1978

In California, the minimum age of initial criminal court jurisdiction has been 18 years of age since 1909, except for special provisions relating to some 18 to 21 year olds. A judicial certification of unfitness by the juvenile session is the only mechanism by which juveniles may be tried in the adult session of superior courts. In some of the smaller counties in California, the same judge may preside at both hearings.

There are two basic certification procedures, each requiring a hearing to determine the "fitness" of a juvenile to be treated as a juvenile. First, 16 and 17 year olds charged with any offense may be transferred to adult courts after a finding of unfitness within juvenile courts. Juvenile court hearings must be held, at which the courts may find the youth "unfit" for juvenile rehabilitation, based on a consideration of the following factors:

- degree of criminal sophistication;
- previous delinquency record;
- previous attempts to rehabilitate;
- the circumstances of the offense;

- the likelihood that rehabilitation can occur during the remaining legal period of the jurisdiction of the juvenile court.

Sixteen and 17 year olds charged with one of eleven serious crimes (e.g., murder, kidnapping, forcible rape) are "presumed" to be unfit to be tried in juvenile courts, placing the burden of proof on those juveniles to prove their amenability to treatment as juveniles. When the current act became law in 1976, it was only necessary for juveniles to demonstrate their fitness under one of the five criteria enumerated above. This provision was amended in 1979 to require that they prove their "fitness" under each of the criteria. It is extremely unlikely that juvenile courts will retain jurisdiction over many such cases in the future, since the judges must make and recite findings of fitness for all criteria.

Youth convicted as adults may be placed on probation or sentenced to state or local corrections facilities. However, there are some restrictions on the various confinement options. For example, if a weapon was used or bodily harm inflicted, convicted youth must be sentenced to the Department of Corrections (DOC) or the Department of the Youth Authority (CYA). If sentenced to the CYA, youth may be transferred to DOC institutions if either their CYA mandatory discharge dates occur prior to the end of their sentences or if the Youthful Offender Parole Board determines that they are incapable of reformation within the CYA. The latter transfers require that sentencing courts resentence the youth to the DOC facilities.

State Data Summary

The Academy's 1978 census reflected that 946 youth were certified to adult courts. Los Angeles and San Diego counties together accounted for nearly half of this number. Almost all of the youth were males and 17 years of age; slightly over half were minorities. Overall, 46 percent of those certified were charged with personal offenses, 32 percent with property offenses, and 15 percent with public order violations. However, there was great variation among counties in the frequency of certification and in the types of cases certified to adult courts. For example, in Los Angeles County, 74 percent of the youth certified were charged with personal offenses; in San Diego County, 35 percent. On the other hand, 17 percent in San Diego were charged with public order violations as compared to four percent in Los Angeles. Sentencing data were not available except for Los Angeles County.

The data suggest that there is little relationship between number of arrests for serious crimes and number of remands of juveniles from juvenile to criminal courts. Other factors such as perceptions about juvenile crime and previous record of the juvenile may be more important in courts' decisions to remand juveniles to criminal courts for trial.

Results of On-Site Interviews

Perceptions held by various knowledgeable persons in California are important to a fuller understanding of past and present remand (judicial waiver) practices in the state. Even when some of these perceptions do not coincide with empirical findings, their existence helps to illuminate some of the issues encountered in that state.

It appears that public attention on juvenile justice in California has shifted away from the issue of remand since the passage of the presumptive remand provision in 1976. Except for an occasional sensational case involving a juvenile, most of the media and legislative attention focused, at the time of the interviews in February, 1980, on juvenile court proceedings. Particularly, jury trials and standard of proof within juvenile courts appeared to attract much legislative and judicial interest at that time.

When interviewees were questioned about the relative advantages and disadvantages of trying youth as adults, most interviewees stated that judicial remands permitted the juvenile courts to remove youth who could not benefit from juvenile treatment. In their opinion, remands allowed the juvenile justice system to expend its limited resources on juveniles for whom such services are most appropriate. Further, most respondents felt that youth were held more accountable for their behavior when tried in criminal courts.

One noted advantage to the adult courts was that the remand procedure allows codefendants, who are under and over 18 years of age, to be tried together.

Disadvantages to the courts were also cited. These included:

- Increased criminal court case loads.
- Longer periods of time between arrest and judgment.
- Delays which make prosecution of these cases more difficult due, mainly, to the loss of witnesses.

Remands had little effect on adult corrections facilities, according to persons interviewed, because of the small number of cases each year. Many respondents expressed concerns about physical and sexual abuse of youth by older and more mature inmates in adult institutions. The problem was viewed in two distinct ways: the devastating effects on the youth themselves, and the administrative difficulties and costs associated with attempts to prevent such assaults.

Youth in adult courts are generally regarded as having greater due process protections than they have in juvenile courts. The majority of

respondents identified the availability of jury trials as the most important advantage of criminal trials to remanded offenders. Other advantages that were less frequently mentioned included:

- Greater procedural due process.
- Greater chance of acquittal.
- The availability of bail or bond.
- The likelihood of less severe sentences for many offenses.

The disadvantages to the youth included the problems of incarcerating young offenders in adult corrections facilities, previously mentioned, and the establishment of permanent felony records.

The respondents were less unanimous on the effect that trying youth as adults had on the general public. Some argued that the public was safer and felt better as a result of remands. Others noted that youth may not, in fact, receive harsher adult sentences, evidenced by the number of "adults" confined in California Youth Authority facilities. Several respondents agreed that the public perception of greater safety was mistaken; that the remand process has little impact, for a variety of reasons, on the rates of juvenile crime. Most interviewees felt that there were no immediate disadvantages to the public from the remand process, although a few did state that the public would suffer in the long run. Because of the commingling of young offenders with hardened criminals, it was felt that society was encouraging subsequent criminal sophistication.

Over half of the people interviewed felt that the present juvenile justice system, particularly the remand process, was satisfactory and could recommend no changes. There were several suggestions for making juvenile court proceedings more like those in adult courts. These included:

- Increasing the role of district attorneys within juvenile courts.
- Pre-screening of cases by prosecutors, (now a function of probation officers).
- Providing jury trials within juvenile courts.
- Increasing the standard of proof in juvenile court cases.
- Requiring public hearings in the juvenile courts.

They argued that public trials would enhance the accountability of juveniles for criminal behavior.

Conclusions

There are two categories of juveniles in California who are being referred to adult courts for trial: youth charged with serious offenses and older youth, primarily 17 year olds, charged with property and public order offenses, who probably have long juvenile records. Relatively few youth, either in terms of delinquency filings or as a percentage of juveniles in the general population, are referred to adult courts for trial. This number remained stable during the late 1970s.

There is general satisfaction with the remand process. The issue of trying youth as adults does not appear to be a threat to the legitimacy of the juvenile court function in California, as it seems to be in some states. Major concerns in California, at the time of the interviews, centered upon juvenile court procedural safeguards.

COLORADO CASE STUDY SUMMARY

Colorado was chosen as the case study state representing federal administrative region 8. A medium-size state ranking 28th in population, Colorado has a low population density, except for Denver, its capital and principal municipality. Colorado utilizes both judicial waiver and concurrent jurisdiction mechanisms to try juveniles charged with serious or repeated offenses as adults, as well as excluded offenses for juveniles charged with minor traffic violations. It is especially notable that the judicial waiver and concurrent jurisdiction mechanisms overlap with respect to juveniles 14 years of age charged with serious felonies. That is, such 14 year olds may either be judicially waived to adult courts or may be directly prosecuted there by the district attorneys. Juvenile jurisdiction is located in district courts, the highest trial level courts, except in Denver. A separate juvenile court exists there, one of the first juvenile courts established in the United States.

Procedures for Trying Youth As Adults

The initial age of juvenile court jurisdiction in Colorado extends to 18 years of age. Youth, 14 years of age or older, charged with having committed felonies can be judicially transferred to the criminal division of district courts, following a transfer hearing in the juvenile division or in

the Denver juvenile court. (The juvenile division of district courts and the Denver juvenile court will, hereafter, be referred to as juvenile courts.)

Statutes require that the juvenile courts base transfer decisions on probable cause and the interests of the youth and the community. Factors detailed in the Kent decision are to be considered. However, a record of two or more delinquency adjudications (for felonies) establishes prima facie evidence that retention of jurisdiction is contrary to the best interests of the youth or the community.

In addition, juvenile courts and district courts have concurrent jurisdiction over certain proceedings. Youth 14 years of age or older and charged with Class 1 felonies, or youth 16 years of age or older and charged with lesser or nonclassified felonies but having previous records of felony adjudications within the last two years, can be tried initially in adult courts. Also, individuals 14 years of age or older and charged with lesser or nonclassified felonies, while already facing felony charges for which they have been waived to adult court, can be initially tried in adult courts. In these cases, the district attorneys determine where to proceed with the case.

Prior to 1973, Colorado excluded crimes of violence punishable by death or life imprisonment when the accused was 16 years of age or older from juvenile jurisdiction. This may partially account for the confusion expressed by some respondents about the present concurrent jurisdiction provisions, as to whether such cases could or must be filed in criminal courts.

Youth convicted as adults may receive any sentence available for adult offenders or any disposition available to the juvenile justice system for placement. In addition, youth may be referred back to juvenile courts for disposition as delinquents. Finally, it is important to note that Colorado law does not permit administrative transfers of offenders between adult and juvenile corrections facilities.

State Data Summary

According to the 1978 census data, few juveniles are referred to adult courts through either the judicial transfer or concurrent jurisdiction mechanisms in Colorado. Seventy-five percent of the counties reported no judicial transfer or direct prosecutorial referrals. Sixty percent of the referrals occurred in three jurisdictions: Adams, Denver and Jefferson. Viewed comparatively with other states, both the frequency and the rate for both mechanisms were low.

In Phase II counties, most of the 67 juveniles referred were 17 years of age or older; they were predominantly male; and more minority youth were judicially transferred than white youth. Burglary and other property offenses were the most frequent charges against referred youth under both legal mechanisms. Personal offenses accounted for 38 percent of judicial transfers and 43 percent of the direct file cases. Almost all of the cases resulted in convictions. Sixty-seven percent of those convicted in criminal courts after being judicially transferred, and 52 percent of those convicted after direct filings, resulted in incarceration in adult corrections facilities. However, 33 percent of youth convicted in criminal courts after judicial waiver received sentences of fines or probation; 48 percent of youth charged directly in criminal courts received one of several community sentences, including fines and probation.

Results of On-Site Interviews

The respondents agreed that trying youth in adult courts in Colorado is having little effect on case loads or operational costs for the courts or corrections agencies. It does not greatly affect the case loads of the district attorneys either. Less than two-tenths of one percent of juveniles arrested are referred to adult courts for trial and less than one percent of delinquency cases are judicially transferred to criminal courts.

The major problem that the Department of Corrections faces is in isolating those few, younger individuals from the rest of the inmate population and in providing special programs for their special needs. At the same time, many interviewees felt that getting these few "hardened youth" out of juvenile facilities gave the remaining juveniles a greater chance for rehabilitation.

Greater due process, better legal representation, the possibility of bail, a slightly greater chance of not being institutionalized (particularly for first offenders) and more lenient probation were all cited as advantages to youth tried in criminal courts. On the other hand, the most frequently mentioned disadvantages for youth tried in adult courts included potentially harsher sentences for serious offenders found guilty, the threat of physical or sexual abuse in adult corrections facilities, and few rehabilitative services in such facilities. In other words, while there were greater safeguards reported for criminal defendants, when compared with offenders in juvenile courts, the adult corrections system was seen as distinctly inferior to available juvenile facilities.

Advantages to the public of trying youth in adult courts most often mentioned were enhanced public safety through longer periods of incarceration. It was expressed that the public perceives an increase in safety when youth are tried and treated as adults. Disadvantages cited were the negative

long-term effects on youth and (subsequently) the public, resulting from incarceration of youth with hardened criminals.

Few respondents felt that changes were necessary in the transfer mechanisms. For most respondents, the ideal system for trying youth as adults in Colorado would be similar to that which presently exists. Some people thought that the concurrent jurisdiction provisions should be eliminated because they give district attorneys too much discretion, because its usage is neither uniform nor predictable, and because the judicial transfer provision could be used to refer the same juveniles to criminal courts. Other respondents, however, thought the direct file provision preferable because it is rarely used: when invoked, it is used only for the most serious offenses.

The most generally agreed upon change recommended for the Colorado system was the need for greater dispositional alternatives in both juvenile and criminal courts. Some interviewees thought that youth tried as adults should be placed in juvenile facilities until they reached 21 years of age and then be transferred to adult facilities to serve the remainder of their sentences.

Conclusions

Serious juvenile crime and the referral of youth to criminal courts are not high priority concerns of the criminal and juvenile justice systems in Colorado. Few juveniles are referred to criminal court for trial. Most of these youth are special cases--either youth charged with very serious, violent crimes or youth with long records of prior juvenile court appearances. Most of the youth are subsequently convicted in criminal courts and are most likely to be committed to adult corrections facilities.

It appears that most of the juveniles referred under the prosecutor's choice provision could also have been judicially waived. Although this overlap occurs under state law in Colorado, there does not appear to be any strong sentiment expressed for eliminating either of the two legal mechanisms for referring youth to criminal courts.

FLORIDA CASE STUDY SUMMARY

Florida was selected as the case study state from federal administrative region 4. A rapidly growing state of the American "sunbelt", Florida has experienced continuous legislative activity in the area of juvenile justice for more than a decade. The state currently utilizes judicial transfer,

concurrent jurisdiction, and excluded minor offenses as legal mechanisms for trying youth as adults.

Florida has more specific provisions for referring youth to criminal courts than any other state in the Union. For this reason alone, it is an especially valuable state for investigation. There are other reasons as well, however. Florida is one of the few states in the country to experiment with its across-the-board age of jurisdiction for purposes of criminal prosecution.

Procedures for Trying Youth As Adults

Florida's minimum age of initial criminal court jurisdiction has extended to 18 years of age since 1974. Seventeen year olds were defined as adults between 1951 and 1974. In 1978, the legislature passed a bill again lowering the initial age of criminal jurisdiction to 17. The governor vetoed the bill, but there are continuing efforts to enact this change.

There are three legal mechanisms by which juveniles may be referred to adult courts--judicial transfer (waiver), concurrent jurisdiction (direct file), and excluded offenses.

There are two judicial transfer provisions in Florida. Juveniles 14 years of age or older at the time the alleged offense is committed, charged with any offense, may be judicially transferred from the juvenile division of circuit courts to the criminal division. There is also a mandatory waiver hearing for youth 14 years of age or older, previously adjudicated delinquent, for a violent personal offense, and currently charged with a second such offense. Prosecutors have responsibility for filing motions requesting transfer to criminal courts. In both types of cases, the courts must hold transfer hearings at which the courts must consider factors patterned after those outlined in the Kent decision.

The Florida constitution mandates that all cases which carry penalties of death or life imprisonment be indicted before the grand jury. Therefore, there is concurrent jurisdiction which allows the state's attorney to take to the grand jury youth of any age who are charged with capital offenses and to prosecute them as adults. However, prosecutors may file delinquency charges in juvenile court, thereby avoiding this constitutionally mandated procedure. In addition, the state's attorney may file bills of information directly in adult courts on 16 or 17 year olds when, in the state's attorney's judgment, the public interest require that adult sanctions be imposed. Upon motion of the youth, the case is to be transferred to juvenile court for adjudicatory proceedings if it is shown by the youth that there has not previously been two findings of delinquency, one of which involved a felony. This new prosecutorial option became effective on October 1, 1978.

Juveniles (charged with felonies) who demand in writing to be tried in adult courts must be transferred to criminal courts prior to adjudication in juvenile courts. Youth convicted in adult courts are thereafter treated as adults for all subsequent offenses, constituting a "once waived, always waived" procedure. Finally, lesser traffic offenses are excluded from juvenile jurisdiction and are routinely tried in adult courts. Traffic courts in 1978 could transfer youth, convicted of two traffic offenses in six months, to juvenile courts.

Youth convicted in adult courts can receive any sentence provided for adults, including commitment to the Florida Department of Corrections. Since the passage of the 1978 Juvenile Justice Act, criminal courts must consider the suitability of adult sanctions before sentencing convicted youth. The suitability determination process must consider five criteria (similar to the Kent factors). Decisions to impose adult sanctions must be in writing, showing conformity with each of the criteria. Such youth would then most likely be placed in an institution within the youthful offender program of the Department of Corrections. Youthful offenders may be committed for sentences not to exceed six years or to community control programs for not more than two years. This latter program encourages assignments where appropriate to probation programs and to restitution centers.

Youth convicted as adults may also be committed to the Department of Health and Rehabilitative Services (DHRS) for treatment in its juvenile program. Under these circumstances, the court must stay the conviction and adjudge the defendant to have committed a delinquent act. If such youth prove to be unsuitable for a juvenile program, the courts can revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sentence permitted under Florida law.

In addition, youth under 18 years of age sentenced to the Department of Corrections can be administratively transferred to juvenile facilities operated by DHRS if the youth cannot cope with adult prison.

State Data Summary

In fiscal year 1978, 965 youth were judicially transferred to adult courts and 108 youth were tried as adults after grand jury indictments. The direct file provision was not in effect during fiscal year 1978. The medium-sized counties accounted for over half of the judicial transfers and had generally higher rates of transfer than the largest counties. A similar picture occurred with the concurrent jurisdiction cases (grand jury indictments): the seven largest counties accounted for a smaller proportion of the cases than the percentage of their juvenile populations. For 1978, one percent of all juvenile delinquency cases resulted in judicial transfers.

Youth judicially transferred were 17 years of age or older (60 percent), male (95 percent), and primarily white (64 percent). Over half of them (55 percent) were transferred to adult courts for property offenses (most of these were burglaries); only 20 percent of these referrals were for offenses against the person (about half of the personal offenses were robberies). Cases transferred from larger counties were more likely to be for personal offenses than those transferred in smaller counties, but property offenses accounted for the largest offense category in both larger and smaller counties, 65 and 44 percent, respectively.

The youth tried in criminal courts following grand jury indictments were very similar in demographic characteristics, except for age. There was a higher percentage of youth younger than 17 years of age. Eighty-nine percent were male and 62 percent were white. The offenses resulting in grand jury indictment referrals were primarily crimes against the person: almost half (44 percent) of the referrals were for robbery.

Findings from two other statewide studies should be mentioned to more fully address the issue. The Youth Services Program of DHRS reports that, in 1979, based on a stratified random sample in 12 counties, 56 percent of youth tried as adults were processed through the judicial transfer mechanism and 44 percent were processed through the concurrent jurisdiction provisions (indictments and direct files). In 1978, 90 percent of the cases referred to criminal courts were judicial transfers. Most of the shift in 1979 appears to be direct file cases which previously would have been judicially transferred. Further, the study reports that 83 percent of the youth were convicted in criminal courts and of those convicted, 54 percent were sentenced to the Department of Corrections and 20 percent were sentenced to county jails. The dispositional option of sentencing such youth to DHRS was seldom used (three percent).

A final study of interest examines the highly debated issue in Florida of the most preferable age of initial criminal court jurisdiction. The supporters of a lowered age of criminal jurisdiction (17) generally argue for the need for more stringent sanctions, particularly confinement, available in the adult courts. Based on data compiled by the Florida Center for Children and Youth, Inc., it appears that extending the maximum age of jurisdiction from 17 to 18 years in 1974 actually resulted in more commitments of 17 year olds to institutions, primarily juvenile facilities.

Results of On-Site Interviews

Trying youth in adult courts was generally felt to be having little impact on the system itself, that is, on the courts or corrections agencies in Florida. Respondents pointed to the fact that both the juvenile and criminal courts are part of the state circuit court system in which a single judge frequently fulfills both judicial responsibilities. Ironically,

transfer cases appear to require more juvenile court time than the cases retained under juvenile court jurisdiction.

In 1978, individuals under 18 years of age comprised a very small proportion of the total incarcerated population of the Florida Department of Corrections. However, there is some indication that the number of youth has been increasing since 1978, as a result of increasing numbers of youth being tried as adults and subsequently sentenced to the Department of Corrections. The Department of Corrections estimated that 50 additional admissions annually, serving average two-year sentences, would require an additional \$33 million in per diem and construction costs over a four-year period.

Interviewees mentioned several advantages to youth who are tried in criminal courts. These include greater due process, greater likelihood of successful appeal, and release on bail while awaiting trial. The likelihood of receiving a prison sentence was the primary disadvantage to the youth, according to those interviewed. They indicated that youth sentenced by adult courts to prisons would serve considerably longer terms than would juvenile delinquents committed by juvenile courts to DHRS facilities. Prison sentences are also more specific in adult courts with minimum and maximum lengths of stay clearly stated.

It was generally felt that the longer periods of incapacitation provided greater public safety. Many interviewees saw no disadvantages to the public associated with trying youth as adults. Yet, some interviewees indicated that increased costs, higher rates of dismissal, and the long-term effects on incarcerated youth all had negative effects on the public.

Most respondents thought that the ideal system for trying youth as adults would closely resemble the system in Florida prior to the adoption of the direct file provision in 1978. This included a separate juvenile court system and judicial transfer mechanism; an age of initial criminal jurisdiction of 18; and provision for grand jury indictments for serious offenses. In order for such a system to be more effective in dealing with juveniles within the juvenile system, more and better juvenile justice alternatives had to be available. If adequate alternatives to transfer and incarceration existed at the juvenile court level, the need for adult prosecution and sanctions would be unnecessary for most youth now being tried as adults, according to the interviewees.

Conclusions

The trying of youth as adults has been a topic of much controversy in Florida for many years. The belief that more juveniles should be tried as adults is apparently in response to increasing juvenile crime, particularly violent crime, in Florida. Florida's certification rate in 1978 was one of

the highest in the country. In addition, Florida's initial age of criminal jurisdiction has changed from 18 to 17 several times during the last 50 years. It was raised to 18 in 1974, with continuing legislative attempts to lower it back to 17.

The 1978 legislation encouraged the use of juvenile facilities for youth convicted in criminal courts. The 1979 data does not reflect an increase in the use of such facilities for this category of youth. It appears that most youth convicted as adults are being sent to an already overcrowded adult prison system.

Florida's entire juvenile justice system seems to be highly unstable, from a political standpoint. There appears to be little reason to expect this situation to resolve itself in the near future.

MASSACHUSETTS CASE STUDY SUMMARY

Massachusetts was selected as the case study state representing federal administrative region 1. It is the tenth largest state in the country with an extremely dense, urban population.

One reason Massachusetts was of interest as a case study state was that, in the early 1970s, all juvenile corrections facilities, except for a few secure detention units, were closed. Since that time, concern over the handling of serious juvenile offenders resulted in the establishment of several task forces to study violent and serious juvenile offenders. Their recommendations have led to the development of several secure treatment units. One assumption made by Academy staff was that the closing of the juvenile corrections institutions and the concern expressed about serious juvenile offenders would have an effect on the frequency of the youth referrals to criminal courts.

Massachusetts is also of interest in that there are three mechanisms through which youth under 18 years of age can be tried in adult courts: 17 year olds are automatically tried as adults; 14, 15, and 16 year olds may be judicially transferred (waived) to criminal courts under certain circumstances; and adult courts have concurrent jurisdiction with juvenile courts over 16 year olds charged with minor traffic violations.

Procedures for Trying Youth As Adults

The initial age of criminal court jurisdiction in Massachusetts begins at 17 years of age. This has been true since the passage of the first

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comprehensive juvenile code in 1906. Juveniles 14 years of age or older may be judicially transferred from juvenile courts to superior courts. This can occur in two circumstances:

- If previously committed to the Department of Youth Services as delinquents and subsequently charged with offenses which, if committed by adults, would be punishable by imprisonment; or
- If charged with offenses involving the infliction or threat of serious bodily harm.

In either case, juvenile (district or separate juvenile) courts must hold transfer hearings to determine if there is probable cause to believe the juvenile committed the offense, that the juvenile presents significant danger to the public, and that the juvenile is not amenable to rehabilitation as a juvenile. Kent factors, namely, the seriousness of the alleged offense; the juvenile's family, school, and social history; the previous delinquency record; protection of the public; the nature of past treatment efforts; and the likelihood of rehabilitation of the juvenile, must be considered in the amenability hearing. If all of these factors indicate nonamenability, the juvenile court may transfer (bind over) the case to criminal court.

If the juvenile court transfers the juvenile, it dismisses the delinquency complaint, arraigns the youth on the adult complaint, sets bail, and the matter is then referred to the grand jury, as is the routine practice in Massachusetts. On the other hand, if the court decides to try the juvenile as a juvenile, the court proceeds to an adjudicatory hearing in juvenile court. The judge who conducted the transfer hearing is barred from hearing any subsequent proceeding arising out of facts alleged in the delinquency complaint, unless waived by the juvenile through counsel.

Youth judicially transferred to adult courts and subsequently convicted can receive sentences of probation, incarceration within the Department of Corrections or any disposition appropriate for a delinquent, including commitment to the Department of Youth Services, if under 18 years of age at the time of the conviction. In addition, with the consent of the Department of Youth Services, the Commissioner of Corrections can transfer youth under 17 years of age from either Massachusetts reformatory to alternative programs within the juvenile justice system.

Seventeen year olds, defined as adults in Massachusetts, are generally tried and sentenced as adults.

State Data Summary

Two sets of data were sought in Massachusetts. The first one related to youth 14, 15, and 16 years of age, judicially transferred from juvenile courts to criminal courts. The second set related to youth 17 years of age subject to prosecution in adult courts due to lower age of criminal jurisdiction. As it turned out, both data sets were problematic.

Data from state and local sources were quite different. The state sources reported 33 judicial transfers for 1978 and county sources reported 57. State sources reported that the average age of the 33 youth was over 16 and that all were males. Slightly more than half of the youth were white, while 11 of the 16 minority youth were black, the remainder being hispanic.

The office of the Commissioner of Probation provided frequency, demographic, offense and sentencing information on youth judicially transferred to adult courts in 1979. All of the 45 youth referred were males; the majority were 16 years of age and most were white. Judicial transfer was reserved for youth charged with serious personal offenses (80 percent) or chronic offenders. Nearly all of the transferred youth (where judgments were known) were found guilty (90 percent). Of those convicted, 68 percent were incarcerated in state adult corrections facilities (46 percent), juvenile facilities (18 percent), or jail (one youth). Thirty-two percent received supervision in the community, including probation.

Data regarding court filings against 17 year olds could not be obtained. However, arrest data, containing aggregated frequency, age, sex, race, and offense information were all that were available.

Of the 12,393 arrests of 17 year olds in 1978, 90 percent were males. Property offenses represented 27 percent and personal offenses accounted for ten percent of the charges. Forty-eight percent of the charges against arrested 17 year olds were for public order violations, primarily drug and alcohol offenses. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represented six percent of the total arrests of 17 year olds.

It was reported by state sources that almost all arrests result in court filings.

Results of On-Site Interviews

There was consensus among the respondents in Massachusetts that there were no significant effects on the criminal courts resulting from trying transferred youth as adults because of the small number of cases per year. There were several different perceptions, however, about the effects on the juvenile courts. Some respondents felt that, because the juvenile transfer cases frequently take months to complete and include many hearings, the effects on the court resources far exceed the resources to try the same number of cases in juvenile courts. In addition, a few respondents pointed out that there are several times the number of cases being considered for judicial transfer than are actually transferred. Finally, a serious issue was raised in terms of the use of juvenile detention bedspace for juveniles awaiting transfer hearings.

DYS officials report increasing judicial pressure to develop more secure treatment facilities beyond what it considers necessary. They note that the pressure is most evident by observing the increased number of detention beds being occupied by juveniles awaiting transfer hearings and the staff resources being expended in preparing analyses for judicial consideration at transfer hearings. They also concede that the courts are much more involved in secure placement decisions than the law mandates. There was also a strong suggestion that the large number of denials of judicial transfer requests are evidence that judges really want more secure placements in the juvenile system.

Respondents felt that judicial transfers had little effect on the adult corrections system because most juveniles bound over and convicted in criminal courts were placed in DYS secure treatment programs. Despite the fact that the 1979 Probation report does not support this perception, the number of youth placed in adult facilities is so small that the argument that judicial transfer is having little effect on the corrections system is supported.

While few youth are judicially transferred to adult courts for trial, it is true that several times as many juveniles were detained and underwent transfer hearings. For these individuals, whether they are eventually tried as juveniles or adults, the stay in detention may be as long or longer than the time which would be spent in a treatment program after adjudication. Several respondents felt that these periods of detention seem to satisfy the public demand for protection and punishment; it also allows the Department of Youth Services time to find placements to keep the juveniles in the juvenile system. However, many respondents condemned the lengthy periods of detention during which the juveniles are not receiving rehabilitative services.

Overall, very few respondents thought that any youth should be sent to adult prisons. They expressed concerns about the danger of physical and sexual abuse, association with older, more sophisticated adult criminals,

the lack of appropriate services, and the creation of adult criminal records. It was suggested that six months to a year spent in secure detention may be an acceptable trade-off to the avoidance of a prison sentence.

A few respondents indicated that there are more legal protections in adult courts and that this is an advantage for youth who are ultimately tried there. It is notable that the addition of jury trials and the right to bail in juvenile courts in Massachusetts have minimized the differences in the procedures in the two courts.

Among the case study respondents there were mixed perceptions about the incidence of serious juvenile crime. Some thought it was increasing in Massachusetts while others insisted it was not. Nevertheless, there was consensus among the respondents that the public was disenchanted with the juvenile justice system. The perception was expressed that the public thinks the juvenile justice system fails to make a moral impression on juveniles.

Almost all of the interviewees felt that juvenile courts should remain as separate courts in Massachusetts (even though they are technically only divisions of the district courts in most jurisdictions). They also believed that serious and violent juvenile offenders should be the juvenile courts' first priority. A few respondents did question the necessity of separate juvenile courts, particularly with the addition of jury trials and bail as rights within juvenile court.

Secure facilities for juveniles was another main concern. Suggestions were made for a 30 bed juvenile prison for the "few who need it" or "an educational jail" to educate and rehabilitate serious juvenile offenders.

A few suggested excluding violent offenses from juvenile jurisdiction. Overall, however, judicial transfer was thought to be the most acceptable legal mechanism for dealing with youth not amenable to treatment as juveniles.

Conclusions

Massachusetts has always treated 17 year olds as adults. No one interviewed could perceive of 17 year olds being handled by the juvenile system. Changing the handling of 17 year olds is clearly not an issue in Massachusetts.

The key issue appears to be framed in terms of what should be done with violent juvenile offenders within the juvenile justice system. The "threat of bindover" has been used to facilitate the development of more secure treatment beds available through the Department of Youth Services and to allow juvenile courts to designate those youth who need to be placed in

secure juvenile facilities. Despite the rhetoric and the reports of the large number of bindover hearings that do not result in referral to criminal court, the fact is that few youth under 17 are being tried in adult courts. The number of youth seems to be decreasing, not increasing, and the number of secure treatment beds within DYS has not sharply increased.

Some youth have spent extended stays in detention, while the courts and the DYS resolve the juvenile placement issue. Perhaps it is a choice between extended periods of detention during the bindover process or increased numbers of juveniles referred to criminal courts for trial. It is difficult to determine whether judicial discretion is being used to expand juvenile resources or whether DYS is simply zealously seeking to protect these juveniles from exposure to the adult system.

MINNESOTA CASE STUDY SUMMARY

Minnesota was selected as the case study state representing federal administrative region 5, because of the high level of interest in evidence over the issue of serious juvenile crime. The state has had several task forces appointed, over the past ten years, to address the subject. Its supreme court has decided several noteworthy cases since 1975 which deal with questions surrounding youth referrals to adult courts.

In 1980, the state legislature adopted a new and unique reference procedure, following long and heated debates. Minnesota also adopted new sentencing guidelines for both adults and juveniles in 1980. While these events occurred after the decision was made to select Minnesota as a case study state, it was clear in 1979 that changes were to be forthcoming from the state legislature.

Procedures for Trying Youth As Adults

The initial age of criminal court jurisdiction in Minnesota has been 18 years of age since 1917. In 1978, there were two judicial reference (waiver) provisions. First, juveniles 14 years of age and over, charged with violating any state law or local ordinance, could be referenced from juvenile courts to adult courts for trial. The juvenile courts could order reference only if the courts found that the juveniles were not amenable to treatment as juveniles or that the public safety was not served by handling such cases within the juvenile system. Courts were to consider the type of offense, the juvenile's prior record and the suitability of

juvenile programs. Reference hearings could be initiated by the prosecutors, the juvenile courts, or by the juveniles themselves. The second judicial reference provision applied to juveniles charged with highway or water traffic offenses. Reference hearings were required, but amenability factors were not considered. The juvenile courts simply determined whether public safety would be better served under the laws controlling similar adult violators.

The 1980 laws created profound changes in this procedure. The changes amounted to a fundamental shift in the goals of the Minnesota juvenile justice system away from rehabilitation and toward public safety. The new statutory purpose section provides:

The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for law behavior.

In line with this stated purpose, the legislature adopted an additional reference procedure by which prima facie cases of nonamenability and dangerousness are established in individual cases of 16 or 17 year olds charged with criminal offenses. Factors to be considered are the seriousness of the current offense charged and the juvenile's prior record. Aggravated felonies require no prior record to establish a prima facie case. On the other hand, arson in the 1st degree requires two prior delinquency adjudications for felony-type offenses within the previous 24 months for such a determination.

Another addition to the code in 1980, that may affect the frequency of judicial references, permits juvenile courts to assess fines up to \$500 in cases involving delinquency adjudications. This option was not available in 1978 and it appeared that many youth were being referenced for minor offenses, and subsequently fined in adult courts. These juveniles can now receive fines as dispositions in juvenile courts. Interestingly enough, the 1980 amendments also excluded 16 and 17 year old traffic offenders from juvenile court jurisdiction.

Youth who are tried and convicted in criminal courts are subject to any dispositional options available to adult offenders. These include fines, probation and commitment to prison or to a workhouse. According to state sources, youth convicted as adults cannot be placed in juvenile institutions either judicially or administratively.

Presumptive sentencing guidelines for adults, based on the severity of offense, criminal history and other "risk factors" also went into effect May, 1980. Under the new sentencing guidelines, judges, and not the Minnesota Corrections Board, control the length of prison terms for felons. This would clearly apply to youth convicted as adults.

State Data Summary

The 1978 census showed that 295 juveniles were referenced to adult courts for trial in 1978. (These data do not include youth referenced to adult courts for minor traffic violations.) Although there were significant variations in the rates of reference among counties, the average rate was about four cases for every 10,000 juveniles in the state.

Youth referenced to criminal courts in Phase II counties were primarily 17 years of age (88 percent), white (92 percent), and males (86 percent). They were six times as likely to have been referenced for property crimes or public order offenses (87 percent) than for crimes against persons (14 percent). When a comparison was made between the largest ten percent (by population) of the counties and the smaller counties, the categories of offenses that brought youth into criminal courts showed significantly different patterns. In the larger counties, over half of the cases (56 percent) were referenced for property offenses and 28 percent were for personal offenses; in the smaller counties the majority of references were for public order violations (69 percent) and only six percent were for personal offenses.

Almost all (89 percent) of the referenced youth were convicted in criminal courts. Of those convicted, 40 percent were sentenced to jail or state adult corrections facilities, 50 percent were fined and seven percent were placed on probation. The differences in types of offenses referenced are reflected in the differences in sentences reported in the ten percent most populous counties and the smaller counties. In the larger counties, 71 percent of those youth found guilty were sentenced to state adult corrections facilities or to jail; in the smaller counties, 20 percent were so sentenced. On the other hand, in the smaller counties, 72 percent were fined, while only 13 percent were fined in the larger counties.

Of the youth sentenced to confinement in 1978, 79 percent received sentences of one year or less. Four youth (five percent) received maximum sentences over ten years. In other words, almost 90 percent of the youth found guilty in criminal courts were either fined, given probation, or given sentences of up to a year's confinement.

There were two additional pieces of data collected in Minnesota on judicial reference practices. In fourteen counties, where data were available, one-third of the references resulted from youth requesting references to criminal court. In 27 counties, where data were available, about 72 percent of all the reference hearings (214 out of 298) resulted in referrals to adult courts. Given the nature of the sentences, the motivation for such requests becomes apparent.

Results of On-Site Interviews

Reference of youth to adult courts affects both the juvenile and the criminal justice systems, according to respondents interviewed for the case study. Most of the interviewees agreed that trying youth as adults assists local juvenile courts by allowing them to concentrate their efforts and resources on fewer youth who are more amenable to treatment. On the other hand, respondents thought that adult courts would face increased operational costs and larger case loads as a result of the new legislation. It was assumed that the 1980 amendments would increase the number of references.

One of the primary reasons stated by legislators and other policy-makers for referring youth to adult courts is to subject them to the more serious sanctions available to adult court judges. Many respondents thought that, as more youth charged with serious felonies are referenced (an assumption that has not yet been substantiated), overcrowding in adult institutions may result and an additional prison may be needed. Some interviewees further felt that retraining of the institutional staffs will be required to deal with the needs of younger offenders.

Several respondents expressed a need for a facility for serious juvenile offenders. This has been an issue in Minnesota for several years. The new reference legislation is seen as an alternative to such a facility. Apparently, the theory is that if more serious juvenile offenders are referred to criminal courts, the need within the juvenile justice system for services to this group is lessened. Fewer juveniles committed to state training schools was suggested as one effect of trying youth as adults.

There was general agreement among respondents that, due to greater public visibility, youth in Minnesota receive greater constitutional safeguards when tried as adults. Better legal representation, the possibility of jury trials and bail, and more specific sentencing were frequently cited as advantages to juveniles of being tried as adults. The disadvantages most frequently cited included the likelihood of harsher sentencing, the threat of physical or sexual abuse in adult corrections facilities and the negative effects of associating with hardened criminals. Most respondents felt that the disadvantages far outweighed the advantages. The prevailing sentiment appeared to favor juvenile court retention of as many of these cases as possible.

Many interviewees stated that trying youth in adult courts had a positive impact on public safety by providing longer periods of incarceration for serious juvenile offenders. More accountability in adult procedures, such as public trials, was also frequently cited as an advantage of trying youth in adult courts.

On the other hand, some respondents cited increased costs and the possible long-term effects of incarcerating juveniles with hardened criminals as disadvantages to the public. The argument was made that young offenders become more criminal by being placed in adult prisons.

Respondents were asked for changes which they thought were needed to improve the present procedures for trying youth as adults. The 1980 changes were in their final hearings at the time of the interviews and the features of the Bills dominated the interviewees' thoughts. Nearly one-third of the interviewees criticized all or parts of the 1980 changes. Two aspects were especially noted. First, several respondents pointed out that the changes overlap with the then-current reference provisions. It was felt that 16 and 17 year olds could be referenced under the 1978 procedures and the new provisions were unnecessary. Second, a couple of respondents criticized the shift in goals of the juvenile code from rehabilitation to a more punitive focus. They argued that concern for juvenile rehabilitation should be reconciled with punishment.

Apart from discussions of the 1980 changes, much interest was expressed over whether the state should build a new secure juvenile institution. The building of such a facility was supported by a three-to-one margin among those interviewees responding to the question.

Conclusions

The foremost justice system concern in Minnesota for several years has been how to deal with particularly serious juvenile offenders. The general perception is that they are not receiving enough controls in the juvenile justice system. The legislation that went into effect in 1980 was an attempt to eliminate some of the judicial discretion in the handling of serious juvenile cases and to make reference to criminal courts more certain. The new reference procedure seems to be a compromise between two philosophical perspectives--one which favors maintaining or increasing the discretion of juvenile court judges, and the other which prefers automatic exclusion of certain offenders from juvenile courts.

There is some question as to how many additional youth will be referenced for serious offenses. Since the new legislation does not require that serious offenders be invariably referred to criminal courts, there is no sure way of predicting that greater numbers of serious offenders will be removed from juvenile court jurisdiction. It is also difficult to measure, at this time, the effects of either the juvenile court authority to impose fines or the exclusion of traffic offenders upon juvenile court workloads.

A major concern expressed by interviewees in 1980 was the lack of dispositional alternatives within the juvenile justice system for dealing with serious juvenile offenders. It appears that, if these juveniles are to be handled by the juvenile justice system, a secure facility would be necessary to satisfy critics of current juvenile court dispositions.

The trend in the state is clearly toward more emphasis on making the punishment fit the crime. If juveniles charged with repeated serious offenses are not dealt with more harshly, there will probably continue to be more legislative activity. Should this outcome result, legislative efforts would probably be directed toward reducing juvenile court discretion to reference and overall judicial discretion to sentence. At the same time, it seems fair to say that a separate juvenile court system for most juvenile offenders will continue to be viewed as an essential part of the Minnesota justice system.

NEBRASKA CASE STUDY SUMMARY

Nebraska was selected as the case study state from federal administrative region 7 due to several unique provisions in its juvenile code. In Nebraska, concurrent jurisdiction exists between juvenile and adult courts over all felony cases, irrespective of age. It also extends to 16 and 17 year olds charged with misdemeanors. County attorneys have the sole discretion to determine whether to file criminal charges in adult courts against such juveniles or to file petitions in juvenile courts. Nebraska is one of three states where the county attorneys determine the judicial forum over practically all categories of offenses by juveniles. In addition, Nebraska is primarily a rural state, thirty-fifth in population in the United States, with a very large number of counties (93).

Procedures for Trying Youth As Adults

The initial age of criminal court jurisdiction has been 18 years of age since 1907. In 1974, the present concurrent jurisdiction provisions were adopted: county courts have juvenile jurisdiction except where separate juvenile courts exist; district courts have concurrent jurisdiction, with juvenile courts, over juveniles under age 18 charged with felonies; and municipal courts share concurrent jurisdiction with juvenile courts over 16 and 17 year olds charged with misdemeanor offenses. The 1974 revision gave the county attorneys discretion to determine whether juvenile or adult charges should be filed against juveniles under the above provisions and to

present evidence as to why the case should not be transferred to juvenile court. The youth were permitted to provide evidence as to why they should be treated as juveniles and waived to juvenile courts. Eight criteria, similar to the Kent factors, were established to be considered by the county attorneys in determining whether to file juvenile or criminal charges. In 1975, the law was amended to its present form.

The present statute grants concurrent jurisdiction to juvenile and district courts over juveniles charged with felonies; and to juvenile, district, county, and municipal courts over 16 and 17 year olds charged with misdemeanors and alleged traffic offenders under 16 years of age. It also provides that youth charged in adult courts must be advised that they can file motions for waiver to juvenile courts. In deciding such motions, the courts must find that a "sound basis" exists for retaining jurisdiction. A ninth criterion was added to the eight criteria enumerated in the 1974 legislation.

Youth tried and convicted of felonies in district courts may be committed to either the Adult or Juvenile Divisions of the Department of Correctional Services. Youth under 16 years of age, if sentenced to the Adult Division, must be isolated from the adult population. Youth 16 or 17 years of age convicted of misdemeanors can only receive adult sentences, including probation, fines, community service, restitution, or local incarcerative sentence. In Omaha or Lincoln, however, confinement sentences would probably be served in juvenile detention centers. In the remainder of the state, where there are no separate juvenile detention facilities, the sentences ordering confinement would probably be served in county jails.

Statutes prevent the administrative transfer of juveniles to adult facilities or adults to juvenile facilities. If a determination is made by the Department of Correctional Services that a juvenile can best be handled in an adult facility, a petition may be filed with the court of original jurisdiction requesting that a judicial order be issued authorizing the transfer. If so ordered, juveniles can be transferred between divisions of the department.

State Data Summary

In the 1978 census conducted by the Academy, data were sought from all 93 counties in Nebraska. Because juveniles can be tried in several adult courts in each county and their records were not kept separately by age, the census data do not include all juveniles tried as adults. When arrests of persons under 18 years of age are compared with juvenile court filings, it is evident that many juvenile cases are either informally diverted prior to court filing or that many more juveniles are handled as adults than the census data indicate.

In 1978, 1,175 juveniles were reported to have been tried in adult courts. Even so, the state referral rate of 42.9 per 10,000 juvenile population was the highest in the nation. Seventy-two percent of the referrals were reported from Douglas County (846). In addition, based on available data, it can be estimated that 15,000 to 20,000 youth appeared in adult traffic courts in 1978.

To the extent that data were available, the profile that emerges of youth tried as adults is a 17 year old, white, male offender, most frequently charged with a property offense (58 percent). Personal offenses were charged in 18 percent of the cases directly referred to adult courts. Most youth (94 percent) were convicted in adult courts. Of those convicted, where data were available, 65 percent received probation; eight percent were fined, and 27 percent were sentenced to incarceration. Seventy-six percent of youth sentenced to incarceration received terms of one year or less. In other words, of those youth convicted as adults, over 93 percent were given fines, probation, or sentences of confinement of up to a year. It is necessary to reiterate that many counties could not provide these data.

Results of On-Site Interviews

Most of the people interviewed in Nebraska felt that there were no major effects on the courts and corrections systems as a result of trying youth in adult courts, because of the small number of youth involved in most counties. Most interviewees indicated that trying some youth as adults removed those persons who are less amenable to treatment from the juvenile system, thus allowing juvenile courts to spend resources on more appropriate juveniles.

Although few youth, according to respondents, are tried as adults, overcrowding in adult correctional facilities was still seen as a disadvantage of trying youth as adults. Respondents noted that more potential abuse exists in adult facilities. On the other hand, removing hardened youth from state juvenile facilities, ostensibly away from juveniles who have greater vulnerability, was an argument offered in favor of trying youth as adults.

Almost all respondents stated that there were disadvantages to offenders themselves in being tried as adults. Harsher sentencing and lack of rehabilitative services were the most frequently mentioned drawbacks. Where advantages to youth were cited, they were usually described as increased measures of due process, through the availability of jury trials in criminal courts.

The belief that trying youth as adults is an unfortunate necessity was reflected in most respondents' comments. Many interviewees felt that direct filings were appropriate vehicles for ensuring that young wrongdoers would

NEW YORK CASE STUDY SUMMARY

be properly punished. This procedure, they believed, would result in increased periods of incapacitation. While several respondents stated that the public gained a sense of greater community safety, they all stated that, due to the inconsistency of sentencing practices, this was probably a misperception. Several of the respondents commented that direct files resulted in the ultimate loss of juveniles as good citizens and the erosion of the rehabilitative purpose of the juvenile courts.

Most interviewees expressed, interestingly enough, a high level of satisfaction with the present system of concurrent jurisdiction. Comments on the current system indicated the belief that the discretion of prosecutors was effectively checked through judicial review and waiver procedures to juvenile courts. Although a few respondents commented about the potential for abuse of discretion by prosecutors making what were felt to be judicial decisions, the overall opinion expressed was that there was no need to change the current procedures.

Some sentiment was expressed for the establishment of a judicial waiver mechanism in Nebraska, but other respondents were highly opposed to introducing this mechanism into the state, citing either the likelihood that juvenile court judges would abuse their discretion, or that judicial waivers involve more time-consuming hearings and are less efficient than the present system.

Conclusions

Trying juveniles as adults is not one of the most important juvenile justice issues for the key informants in Nebraska. Probably because of the perception of infrequency of its use, as well as the declining rates of juvenile arrests, there seems to be general agreement that the present system of concurrent jurisdiction is adequate to handle serious juvenile offenders. It is interesting, however, to note that Nebraska's direct file provision shows the highest rates of referral to adult courts of any state. Yet, there seemed to be the same apprehension about the ability of the juvenile courts to handle certain offenders as was seen in other states.

Data on juveniles filed on directly in adult courts are fragmented, unclear and generally unavailable. The census data suggests that 1,175 cases were referred to adult court. It is hard to assess whether this number is accurate, but everything points to a substantial undercount. Until more accurate information is made available, it is doubtful that anyone will know just how many youth are being handled in adult courts in Nebraska.

New York was chosen as the case study state from federal administrative region 2. It is the nation's second most populous state and contains a mix of urban and rural counties. More important, New York was selected for study because of the uniqueness of its juvenile justice system. It is one of only four states in the United States where the minimum age of initial criminal court jurisdiction is 16 (in 1978) and one of only four states (in 1978) having no provision for judicially waiving cases from family to adult courts. New York is also unique because of its highly publicized juvenile justice legislation over the past few years. The first of these legislative changes, in 1976, authorized minimum periods of secure and residential confinement for juveniles convicted in family courts for "designated felonies". Two years later, the Omnibus Crime Bill established a class of 13 to 15 year old youth to be tried, at least initially, in adult courts with "reverse waiver" to family courts possible at any stage of the proceedings. The 1978 legislation has been considered by several states' legislatures in considering ways to deal with serious juvenile offenders.

Procedures for Trying Youth As Adults

Procedures in New York have become increasingly complicated in the past five or six years. Both the enactments and statutory terminology offer numerous opportunities for the reader to form erroneous ideas about the state of the current law. Three terms of art are of particular importance: juvenile offenders, youthful offenders, and designated felons. The former two categories apply to criminal defendants, the latter term to certain juvenile delinquents in family courts.

The initial age of criminal court jurisdiction in New York has been 16 years of age since the enactment of the original Children's Court Act in 1922. In addition, New York excluded certain offenses from family court jurisdiction almost continually between 1920 and 1967. The 1978 Omnibus Crime Bill marked a return to the use of excluded offenses for serious "juvenile offenders".

Juvenile offenders are defined as 13 year old youth who are charged with murder in the second degree and 14 or 15 year old youth who are charged with any one or more of the following crimes:

- Murder, second degree
- Kidnapping, first degree
- Manslaughter, first degree
- Arson, first or second degree
- Assault, first degree
- Rape, first degree
- Sodomy, first degree
- Robbery, first or second degree
- Burglary, first or second degree
- Attempt to commit kidnapping
- Attempt to commit murder

Juvenile offenders must be charged in criminal courts and are considered "adults" so long as they remain in the criminal courts. At any time in the process of grand jury investigation or trial, including the period beyond conviction but before sentencing, criminal courts may remove such cases to the family courts. If this event takes place, these "juvenile offenders" become subject to laws pertaining to juvenile delinquency, and are normally tried under "designated felony" provisions. They then become "juveniles" again and are subject to dispositions available to family courts.

The 1976 and 1978 acts provided that juveniles 13 to 16 years of age charged in family courts with any one of the same 14 designated felonies listed above would be subject, if adjudicated delinquent, to determinate confinement. Similar jeopardy was attached to any juvenile over seven years of age who had been adjudicated delinquent for prior felonies and was subsequently charged with a "designated felony."

The courts need not order restrictive placements, except where complainants over 62 years of age incurred serious physical injury. However, if juveniles are found to need such placements, they must be placed for an initial period of five years (the first 12 months must be in a secure facility and the second 12 months in a residential facility) if the offense charged was a class A designated felony. The remaining period is left to the discretion of the Division for Youth. For all other designated felonies, if confinement is ordered, the restrictive placements must be for three years, with a minimum of six months in a secure facility. Under the Juvenile Justice Reform Act, designated felons are placed in Division for Youth facilities and cannot be transferred to the adult Department of Correctional Services (DOCS) facilities.

Juvenile offenders found guilty in adult courts for excluded offenses are subject to sentencing provisions which are separate from the normal adult court sentencing structures. While the sentences are less than those imposed on adults for the same crimes, the criminal courts must still impose sentences with specific minimum and maximum sentence lengths, to be served in secure facilities run by the Division for Youth (DFY), at least until age 16.

While juvenile offenders under age 16 cannot be sent to DOCS by criminal courts, they may end up there through a combination of administrative and judicial decisions. The DFY may request the criminal court to transfer a juvenile offender to an adult prison after his or her 16th birthday to serve the remainder of the original sentence. The court must grant a hearing and may order the transfer, if it determines that juvenile services will not benefit the youth. When the juvenile offender reaches the age of 18, DFY

may transfer the case to DOCS, without judicial approval. If the juvenile offender is still under DYF jurisdiction at age 21, the case is automatically transferred to DOCS.

Persons between the ages of 14 and 19 who are tried in criminal courts may, upon conviction be treated as youthful offenders. Normally, the conviction is vacated, a youthful offender finding is made, and probation is ordered. However, short-term or intermittent confinement is also possible. As can be seen by the stated age range, the potential category of youthful offenders is intended to include both juvenile offenders and young adults, most of whom would be eligible for juvenile court jurisdiction in other states. The applicability of youthful offender treatment to juvenile offenders--a seeming contradiction in terms--occurred in 1979.

State Data Summary

Two categories of persons under 18 years of age are included in the 1978 census of youth tried as adults: 16 and 17 year olds who are defined as adults in New York, and 13, 14, and 15 year olds charged with excluded serious offenses. The excluded offenses provision became effective September 1, 1978. Therefore, census data represent the four month period in which it was in effect during the census year. Further, excluded offense data for the four months of 1978 were only available for the five New York City boroughs. However, supplemental data for the first year of the operation of the law showed that 86 percent of all juvenile offender cases in the state occurred in New York City. There were 517 reported cases during 1978. On the basis of 1979 data, it could be assumed that another 84 cases occurred in the 57 counties outside New York City. Demographic data on the known cases showed that 92 percent were male and 73 percent were reported as minority group members. Offense data reflected that 80 percent of all charges were for robbery. During the period of September 1, 1978 to December 31, 1978, about 59 percent of the referrals were removed to family courts, dismissed, or prosecutors refused to prosecute.

Supplemental data from the state Division for Criminal Justice Services for the first 28 months of operation of the juvenile offender legislation report a similar pattern. There were 3,738 youth arrested statewide for "juvenile offenses" (an average of 133.5 per month). Over 85 percent of those arrests occurred in New York City. During the same period, 1,074 indictments were handed down by grand juries, 897 of them in New York City. Of the New York City cases, 1,069 were removed to family courts, 412 dismissed and, in 406 cases, prosecutors declined to prosecute. In 424 cases, the outcomes were unknown or pending at the time of the report.

To reiterate a point made earlier, 16 and 17 year olds are subject to prosecution in adult courts in New York, due to the lower age of criminal

jurisdiction. In 1978, there were 99,595 arrests of 16 and 17 year olds. (State officials advised that practically all arrests result in court referrals in New York). Out of the approximately 100,000 arrests, slightly more offenders were 16 than 17 years of age. Almost nine out of ten of the arrestees were male.

The largest category of offenses for which 16 and 17 year olds were arrested were "other general". Traffic offenses and local ordinance violations accounted for 39 percent of the arrests. The second largest category was property offenses (28 percent). Twenty-one percent were arrested for public order violations, which included drug and alcohol offenses, malicious destruction, and disorderly conduct. Twelve percent were arrested for personal offenses. While New York City accounts for 36 percent of the state's juvenile population, it accounted for 64 percent of the arrests of 16 and 17 year olds for personal offenses in the state. This includes 81 percent of the murder and manslaughter charges, and 83 percent of the robberies. Even so, it is useful to note that 12 percent of all 16 and 17 year old arrests were for crimes against persons,--seven percent of all arrests were for violent crimes (homicide, rape, robbery, and aggravated assault).

Results of On-Site Interviews

It should be pointed out, at the beginning, that while most respondents were very knowledgeable about the laws and events in New York, few of them could objectively relate them to practices in other parts of the country. For example, it was extremely difficult for most interviewees to even think hypothetically about treating 16 and 17 year olds as juveniles.

Respondents to the survey felt that the juvenile offender legislation had significant effects on both juvenile courts and juvenile corrections agencies. Much less impact on adult courts and adult corrections was noted.

Even though the number of juvenile offenders convicted in adult courts is small, since most of them are either dismissed or removed to juvenile courts, the whole court system is being affected by the 1978 legislation. Plea bargaining has become the rule under the juvenile offender provisions. Interviewees felt that it is difficult to prosecute "children" in criminal courts. The effect juvenile offenders have upon jurors makes it difficult to get witnesses and victims to appear, even when they do not "get lost".

The relatively low number of juvenile offenders eventually prosecuted in the adult courts was generally viewed as having little impact on either the lower-level trial courts or on the supreme courts. However, several interviewees pointed out the additional costs of administering the juvenile

offender provision, because of the high percentage of cases referred back to juvenile courts. Instead of creating a more efficient way of dealing with youth accused of serious crimes, the legislature succeeded, according to these interviewees, in guaranteeing two trials instead of one.

Several respondents held the belief that the situation since the 1978 and 1979 amendments has actually been better for the juvenile courts. By removing the cases of violent crimes by older juveniles (aged 13, 14, and 15) from the original jurisdiction of juvenile courts, public attacks on juvenile courts have lessened. They felt that these courts could now return to the work of juvenile rehabilitation by focusing on juveniles more amenable to change, in a more tolerant public environment.

The role of the prosecutors has obviously taken on new dimensions due to the fact that they and the police determine the charges which, in turn, determines the forum for many 14 and 15 year olds. Generally, weak cases will be referred to juvenile courts rather than being dismissed at the adult court level. This results from the general recognition that cases must be better prepared at the adult court level in order to gain convictions. District attorneys indicated that they are filing only their better cases against juvenile offenders in adult courts.

In the adult system, there are thousands more young people than would be found in states having an 18 year age of criminal responsibility. However, that was not viewed as an unusual burden, probably due to the fact that 16 and 17 year olds have been in the adult system in New York since 1922. The absence of significant numbers of convictions of juvenile offenders has meant, as a result, no real impact on adult corrections. The real difficulties have been felt in the juvenile justice system.

In 1979, juvenile corrections agencies, such as DFY, had to provide institutional care and programming for four legally distinct groups:

- Juvenile Delinquents
- Designated Felons
- Juvenile Offenders
- Youthful Offenders

While the vast majority of commitments originated from the juvenile courts, the bureaucratic complexity of serving both court systems is very evident in DYS planning. Sentence length, administrative transfer procedures, "good time", moving "through levels", and parole are but a few of the decisions that must be applied discriminately, according to the types of commitment. For DFY, the new system means, also, the likelihood of:

- Larger populations in confinement;
- Increased lengths of confinement;
- Increased legal work;
- The need for more long-term programs;
- More segregation of populations by legal status; and
- The need for more facilities.

The consensus of respondents regarding the 1978 and 1979 changes was that the law was not intended to do anything for the youth. The law was passed to benefit the public. Even so, there may be some side benefits for the youth. A number of respondents cited advantages to youth being tried in adult courts which, they felt, would occur unevenly across the state:

- Higher levels of legal protection, including jury trials and bail;
- Credit for jail time;
- Judges and defense attorneys are "better trained", especially in areas outside New York City where juvenile delinquents do not enjoy representation comparable to New York City's Legal Aid Society;
- Decisions made in accordance with legal principles; and
- Shock value resulting from the formal processing in adult courts.

For many respondents, however, the disadvantages to the youth far outweighed the benefits. They cited two features of the adult system that they felt were particularly harmful:

- Sentencing can result in longer periods of incarceration, with far fewer available services, at least at certain periods of their confinement; and
- Labeling youth as criminals occurs at much earlier periods in their lives, particularly since the arrests and trials of juvenile offenders receive much media coverage.

The advantages of the juvenile offender provisions that seem to inure to the public are greater public safety, more accountability, longer incapacitation, likelihood of dismissal of inappropriate cases, and, above all, the perception that "something is being done." "It has increased the public's confidence in the administration of justice," reported several interviewees.

There were three distinct perspectives on how juveniles should be handled in New York.

- A few interviewees felt that the juvenile offender provisions with the possibility of removal to juvenile courts, was a desirable process. Outside of New York City, it was felt that this gave the district attorneys and adult courts another option that will only be used in rare, heinous cases, and it may act as a deterrent for some youth. Besides, most youth (under 16) would have been charged under designated felony laws in juvenile courts if the juvenile offender laws didn't exist.

- Most people felt that a judicial waiver provision, allowing the juvenile courts to remove to adult courts the few youngsters inappropriate for juvenile court, was the preferred approach. The present method increases duplication and, therefore, can be very expensive in both court time and resources. Advocates of judicial waiver thought that, in the waiver decision, consideration should be given to aggravating factors about both the offense and the actor. They also tended to feel that those waived should be sentenced under a youthful offender-type provision. There was very limited feeling expressed that the maximum age of initial juvenile court jurisdiction should extend to 18, with the waiver age for murder at age 15.
- The third perspective stated was that it does not matter where juveniles are tried. By the time they are 13, they know right from wrong. The consideration should be to provide, for example, educational and psychological services for them. What are needed are facilities and treatment resources to deal with serious juvenile offenders. This view was particularly prevalent in New York City.

Conclusions

The New York juvenile justice system, characterized by its lower age of criminal jurisdiction (16 years), its utilization of excluded offenses rather than a judicial waiver mechanism, the possibility of removal to family court, and the applicability of designated felony provisions once there, is of great interest as a unique means of dealing with juvenile crime.

The present New York system seems to be a highly charged political response to widespread attacks that the juvenile courts were not stopping a perceived rising tide of juvenile crime, most notably in the New York City area. The present system, however, faces the severe criticisms that it is wasteful, is needlessly exposing many youth to the adult system, and that it is not accomplishing what it was intended to do (especially given the large number of youth receiving community sentences).

Indeed, the most striking aspect of data collected by the Academy during 1978 is the very large number of youth in New York City who are becoming involved in the adult courts and subsequently removed to family courts. In addition, the present process has presented many problems in regard to corrections and has placed a great deal of additional work on the district attorneys. Finally, the large number of juvenile offenders removed from adult courts to family courts has markedly diminished the intended relief in the case loads of the family courts.

There seems to be a high level of dissatisfaction with the present system for referring juveniles charged with serious offenses to criminal courts. Despite the fact that there has been three major legislative changes in the past five years, additional legislative activity in this area is very likely.

OKLAHOMA CASE STUDY SUMMARY

Oklahoma was chosen as the case study state representing federal administrative region 6, for several reasons. Oklahoma is composed of a large number of small, mostly rural counties. The minimum age of initial criminal court jurisdiction is age 18, the most common age nationwide. Oklahoma is also of interest as a state which presently utilizes three mechanisms for referral of youth to adult courts. In addition, at the time of the case study selection, the Oklahoma Supreme Court had just declared a second certification provision unconstitutionally vague, which the legislature then replaced with an excluded offense provision.

Procedures for Trying Youth As Adults

During the base year of the study, Oklahoma statutorily defined the age of criminal responsibility at 16 years of age for boys and 18 years of age for girls. However, the U.S. Court of Appeals, in Lamb v. Brown, declared that this provision violated the equal protection clause of the U.S. Constitution. As a result, in practice, the maximum age was considered 18 for both sexes. The statute was amended in 1979 to reflect current practice.

Prior to October 1, 1978, juveniles could be referred to adult courts in two ways. First, concurrent jurisdiction existed between juvenile, district, and municipal courts over violations of state or municipal traffic laws. Second, juveniles of any age charged with felonies could be judicially certified (waived) from the juvenile sessions to criminal sessions of district courts. Eight factors, including seriousness of the offense, probable cause, sophistication and maturity of the juvenile, previous delinquency history, and the likelihood of rehabilitation as a juvenile were to be considered.

It was possible, in 1978, for juvenile cases to be "pended" after the prosecutive merit (probable cause) hearing. If subsequently charged with another offense, further investigation and a hearing were held and the cases would be combined and certified to the adult courts. If the juvenile had no further contact with the courts, the case would be dismissed.

Once youth are certified and convicted in criminal courts, they are no longer subject to juvenile court jurisdiction in any future proceedings.

On October 1, 1978, a second certification procedure became effective, applicable to juveniles 16 or 17 years of age who are charged with one of ten specified serious felonies. Upon the finding of probable cause, juveniles were to be certified to criminal sessions as adults unless it was proven that they should remain under the jurisdiction of the juvenile sessions. The provision was struck down by the Oklahoma Court of Criminal Appeals as unconstitutionally vague. It was replaced in 1979 by an excluded offense statute that essentially contained the same provisions, with respect to age and offense requirements which were found in the certification mechanism passed the year before. Apparently, the vagueness found by the court in the 1978 statute was eliminated by simply placing all such offenders in the criminal sessions. The statute does contain a "reverse waiver" procedure, under which youth may be certified back to juvenile courts. Adult courts must consider the factors listed in the judicial certification mechanism which are germane to the question of amenability to treatment as a juvenile.

Juveniles 16 or 17 years old charged with one of the excluded offenses are detained, pending trial, in adult jails, segregated from persons 18 years of age or older. Juveniles, judicially certified, if held, are detained in juvenile detention facilities.

Youth convicted in adult courts are treated as adults for all purposes and, once assigned to an adult facility, cannot be transferred to juvenile corrections programs.

State Data Summary

In 1978, 181 youth under 18 years of age were certified to adult courts for felonies, according to the Oklahoma Crime Commission. Thirty-two counties (42 percent) of the 77 in the state were determined to have made no certifications in 1978. Of those youth certified, nearly all were 17 years of age (83 percent), male (91 percent), and white (72 percent). Most of the offenses charged against certified youth were property offenses, representing 56 percent of the cases. Personal offenses accounted for 39 percent of the certifications.

The majority of youth were convicted in criminal courts after certification. Of youth convicted, 65 percent received sentences of incarceration. Over 25 percent of these sentences, however, were suspended in whole or in part. Thirty-three percent of the convicted youth were given informal sentences.

When the certifications in counties with juvenile populations over 15,000 were compared to counties with juvenile populations under 15,000, some interesting differences were revealed. Personal offenses were charged against 61 percent of the youth certified in larger counties; personal offenses were charged against 25 percent of the youth from smaller counties. Robbery cases appeared to account for the differences. Conversely, property offenses were the most serious charge for 70 percent of certified youth from smaller counties and for 34 percent of certified youth from larger counties. It appears that certification is more likely to be used for property offenses in smaller counties and for personal offenses in larger counties. The sentences received by certified youth in larger and smaller counties also reflect this difference. About two and a half times more youth received informal sentences in the smaller counties. About one and a half times more large-county youth received correctional sentences.

The data reported for traffic or other misdemeanor offenses indicate that, in 1978, 216 youth appeared in adult courts for such offenses. It is apparent from the small numbers that, despite concurrent jurisdiction, most juveniles were referred to juvenile courts for minor offenses.

Results of On-Site Interviews

When interviewees were asked about the effects of trying youth as adults, no clear consensus emerged.

While several interviewees thought that trying youth as adults resulted in no advantages to the juvenile courts, many stated that the Oklahoma system allowed the juvenile courts to concentrate efforts and resources on fewer juveniles by removing those juveniles who would not be amenable to juvenile treatment. Some also praised the new excluded offense mechanism for expediting certain serious juvenile offenses, thus reducing the case load. As to disadvantages to the juvenile courts, a few respondents said that the courts were losing some of their power and that the certification process was an admission that the juvenile courts had failed. Several interviewees cited the lack of secure juvenile facilities and programs as limiting the dispositional options available to juvenile courts to deal with more serious juvenile offenders.

In regard to the implications for the adult system, most respondents said that these cases were more difficult to prosecute in adult courts. In the smaller counties, where one judge may hear both juvenile and adult cases, there was little comment on the problems this may cause for the chances of having a fair trial. Some respondents in other parts of the state, however, stated their concern over an abuse of judicial discretion in the smaller counties where judges who conduct the certification hearings in juvenile court could hear the same cases in criminal courts.

Most Oklahoma respondents thought there were advantages in judicial certification to state juvenile corrections agencies. These included removing "hardened" youth from contact with more amenable juveniles. A reduction of the number of juveniles in institutions was also cited as a way in which the juvenile justice system benefits from losing certain offenders to the adult system.

Of the few disadvantages to state juvenile corrections cited, the one most frequently mentioned was a decreasing budget resulting from fewer commitments. Other respondents stated there was decreasing justification for juvenile institutions.

In contrast, most interviewees indicated few advantages to state adult corrections. However, perceptions of disadvantages abounded. The major ones mentioned were the greater potential for physical abuse, increasing problems of segregating youth from adults, and overcrowding. Some indicated management problems related to retraining staff to deal with youth, and the lack of appropriate treatment programs as additional drawbacks.

Responses of interviewees were fairly evenly divided between the advantages and disadvantages to youth being tried in adult courts. The advantages to the youth included guarantees of legal representation and better protection of due process rights. The possibility of suspended, deferred, or non-institutional sentences were also mentioned as advantages to the younger offenders.

Little or no consideration for providing rehabilitative services within the adult system was the most frequently mentioned disadvantage to the certified youth. Harsher sentencing and a permanent criminal record were also frequently mentioned. A few interviewees cited the negative effects of interaction with "hardened" criminals and threats of physical or sexual abuse in adult corrections facilities.

Almost all of those interviewed in Oklahoma said the public felt safer by having some youth tried as adults. Interviewees said that the public's need for retribution is satisfied through longer periods of incarceration and that longer periods of incarceration could only result from trials in criminal courts.

There was no agreement on needed changes in the Oklahoma transfer procedures. While some respondents were totally satisfied with the current system, many wanted to eliminate excluded offenses and the reverse certification process. A bifurcated system was proposed, whereby the adjudicatory process would be the same for juveniles and adults, and only the dispositional phase would be segregated. There were proposals to limit the excluded offense list to a very few heinous crimes, as well as proposals to expand the list. It was also charged that the current list of excluded crimes and its immediate predecessor were the product of political negotiations which emphasized considerations other than creating the best system for trying

youth as adults. Several respondents proposed more extensive, secure juvenile facilities, in order to give more dispositional alternatives to the juvenile courts and, thus, to diminish the number of youth who are tried as adults.

Conclusions

The Oklahoma processes whereby youth may be tried as adults were viewed by our respondents to be generally appropriate and effective in achieving the goal of longer sentences for youth convicted of serious offenses. There was clear consensus that youth convicted of serious offenses should be incarcerated for relatively lengthy sentences, although there were disagreements as to whether the sentences should be served in juvenile or adult facilities. In general, it was felt that youth tried as adults would be more likely to receive longer sentences, but a need was also expressed for secure juvenile facilities to reduce the use of certification. It is interesting that, unlike in other case study states, the need for longer sentences (within the juvenile justice system) was not linked to an expressed need for more juvenile justice services.

The trying of youth as adults is still very much a "live" issue in Oklahoma; several members of the state legislature are still investigating additional solutions to juvenile crime. While it is not yet clear how this controversy will be resolved, it is clear that the goal pursued will be longer terms of incarceration for more serious offenders.

PENNSYLVANIA CASE STUDY SUMMARY

Pennsylvania was selected as the case study state from federal administrative region 3 for a number of reasons. It is a very large state, reflecting a marked distinction, demographically, between its two major cities and its many rural counties. Its referral procedures also represent an interesting mix. The least serious (summary offenses) and the most serious (murder) crimes are both excluded initially from juvenile court jurisdiction. In addition, felonies committed by juveniles 14 years of age or older can be judicially transferred (waived) under specified conditions. These factors, coupled with other social and legal characteristics, made Pennsylvania both typical in some regards and unique in others.

Procedures for Trying Youth As Adults

Pennsylvania's laws regarding the referral of youth to adult courts, while somewhat complicated, have remained amazingly stable for half a century. The initial age of criminal court jurisdiction has begun at 18 years of age since 1939. Murder, however, has been excluded from juvenile court jurisdiction since 1903, the date of the first juvenile justice legislation in Pennsylvania. Youth charged with murder may be referred back to juvenile courts, if the criminal courts decide that they should be tried as juveniles, or for dispositions if convicted of lesser crimes.

Youth charged with summary offenses are also excluded from juvenile court jurisdiction, unless traffic fines remain unpaid. These cases then can be certified to juvenile courts.

Likewise, there has been a judicial waiver procedure since 1923, which originally provided that juveniles over 14 years of age charged with offenses punishable by imprisonment in a state penitentiary could be transferred to criminal courts under certain conditions. The conditions have been modified several times since the original enactment, the most significant one being the expansion of judicial transfers to all felony cases. At the hearing, the courts must find that there are reasonable grounds to believe all of the following:

- a prima facie case has been established;
- the offense charged would be a felony if committed by an adult;
- the child is not amenable to treatment, supervision, or rehabilitation as a juvenile through available facilities. In determining this, the court may consider age, mental capacity, maturity, previous record, and probation or institutional reports;
- the child is not committable to an institution for the mentally retarded or mentally ill; and
- the interests of the community require that the child be placed under legal restraint or discipline or that the offense is one which would carry a sentence of more than three years if committed by an adult.

In Pennsylvania, any person, including accused juveniles, may request transfer hearings. If granted, the normal procedures related to judicial transfer apply.

In 1980, amendments clarified the necessary conditions prior to transfer. A juvenile can now be transferred even though there may not have been a prior adjudication of delinquency. The Kent factors were also codified.

Youth convicted in criminal courts can receive any adult sentence, including probation or sentence to adult institutions operated by the state Department of Justice, Bureau of Corrections. They may be treated as youthful offenders, generally placed at Camp Hill Correctional Institution, and sentenced to indeterminate sentences up to the statutory maximum for the offense or six years, whichever is less. Youth convicted in criminal courts cannot be sentenced or administratively transferred to juvenile corrections facilities or to the Department of Public Welfare, Bureau of Youth Services.

State Data Summary

Data for two categories of juveniles tried as adults in 1978 were collected: youth 14 years of age or older judicially certified to criminal courts and cases of youth referred directly to criminal courts for murder.

In the 1978 calendar year, 212 youth were judicially transferred to criminal courts, according to the Pennsylvania Joint Council on the Criminal Justice System, Inc. Local sources in 15 counties (Phase II counties) reported that most youth were 17 years of age or older (82 percent), male (96 percent), and minority youth (61 percent). Almost 90 percent of the minority youth were reported from Philadelphia. Personal offenses represented 62 percent of the total number of known offenses for which youth were judicially transferred. Property offenses accounted for 34 percent. Robbery and burglary were the most serious charges against over 50 percent of the youth transferred. Eighty-nine percent of these youth, where data were available, were convicted in criminal courts. Of those youth convicted, 82 percent of them were sentenced to confinement. More than half (56 percent) of the youth sentenced to confinement received maximum sentences of three years or less, where sentences were known. Two youth were sentenced to life imprisonment.

Fifty-three cases of murder were filed in adult courts against youth under 18 years of age in 1978. Philadelphia reported 22 of the 53 cases. Almost all of the cases involved males (94 percent) and about half of the youth were white. Unlike judicial transfers, over 58 percent of these criminal defendants were under the age of 17, e.g., mostly 15 and 16 year olds. Excluding seven cases pending, 63 percent were found guilty and 26 percent were referred to the juvenile courts. The remainder were either dismissed or found not guilty. Of those youth convicted, 72 percent were sentenced to adult corrections facilities, two youth were placed on probation, one youth was placed in a private treatment facility. The remainder were under appeal or awaiting sentencing. Eight out of 18 cases (44 percent) received maximum sentences over 10 years, including five youth who received life sentences.

Supplemental data from state sources in Pennsylvania showed that juvenile arrests for Part 1 offenses remained relatively constant between 1976 and 1978, juvenile arrests for murder and rape decreased dramatically and arrests for robbery and aggravated assault increased slightly. During the same time period, judicial waivers to adult courts declined.

Results of On-Site Interviews

Interviewees were asked their opinions about the effects of judicial transfers and excluded offenses on the courts and corrections systems, on the public and on the juveniles themselves. Other questions probed the deficiencies of the present system and proposals for change.

The effect of trying youth as adults most frequently mentioned with approval was the removal of tougher cases from juvenile court jurisdiction. The opinion expressed was that the youth who were going to criminal courts were the youth least likely to benefit from juvenile court services.

Most respondents stated that there were no disadvantages to juvenile courts as a result of transferring youth to adult courts. Despite the prevailing opinion, there were some respondents who mentioned several disadvantages:

- Juvenile courts lost control of a great number of youth, thereby decreasing their power.
- Parents are frequently inadequately prepared to cope with the adversarial process of the criminal court.
- For juvenile court judges, who typically operate from a treatment philosophy rather than one of retribution, it is distracting to single out certain juveniles for punishment.

No advantages for the adult courts were cited by any respondent. In fact, several respondents indicated that there were no disadvantages either, suggesting that interviewees felt that, considering the relatively small number who are actually transferred, their presence in the adult system had virtually no impact. Other respondents mentioned a rather lengthy list of disadvantages to the adult courts, including:

- Increased case load.
- Limited judicial experience with sentencing youth.
- Limited rehabilitative services in the adult system.
- Increased possibility of acquittal or probation.

- Increased costs through the double (juvenile/criminal court) hearing provisions.

All respondents indicated that the state adult corrections system did not benefit in any way from the placement of juveniles into the adult system. In fact, many disadvantages were itemized. The three most frequent responses were the problems of segregating youth from adults, overcrowding, and the increased potential for physical and sexual abuse.

Conversely, the juvenile corrections system was seen to derive several benefits. The benefit most frequently mentioned was that it removes the influence of hardened youth from affecting other juveniles. The perception is that since many serious offenders are removed, this also allows more concentration of efforts and resources upon those youth who are more likely to benefit. At the same time, some interviewees argued that certifications symbolized the lack of adequately secure facilities in the juvenile system. The thesis is that more secure beds in the juvenile system would translate into fewer youth in the adult system.

The most frequently mentioned advantages to youth tried as adults related to the availability of legal safeguards, such as increased due process, use of jury trial, guaranteed legal representation and availability of bail/bond. Also mentioned were the more frequent use of fines and probation in lieu of commitments to state correctional institutions.

Quite a few disadvantages to the youth were mentioned by a few respondents. The lack of rehabilitation services for youth in the adult system was mentioned most often. Other disadvantages frequently mentioned included:

- Physical and sexual abuse in adult institutions.
- Association with hardened criminals.
- Permanent criminal record.
- Negative effects of probable segregation and possible isolation in adult institutions.
- The increased trial time involved in adult courts.
- The negative effect of jail time, often referred to as "dead time."

Overall, youth were perceived as being better off in adult courts during the trial phase but worse off if incarceration in adult corrections institutions was ordered.

It was generally believed by most respondents that the public would feel safer if serious juvenile offenders were tried in adult courts. While

many respondents believed that there would be no actual effect on public safety, the consensus was that it would appear that something was being done about juveniles who committed violent crimes.

Several respondents stated that it might be less expensive to incarcerate a juvenile in adult facilities, rather than juvenile institutions. However, there may be social costs to consider. While the immediate effect of long-term incapacitation would remove serious juvenile offenders from the community, the ultimate outcome is believed by some to be negative, resulting in greater recidivism and profound negative effects on the youth themselves, thereby producing higher crime rates in the long run.

People knowledgeable about juvenile justice in Pennsylvania are clearly divided into two opposing camps: (1) those who believe that the juvenile justice system is inadequate and has a history of leniency which contributes to serious juvenile crime, and (2) those who believe that the juvenile justice system, with all of its inadequacies, is far superior to the criminal justice system in deterring criminality. This dichotomy is readily apparent in legislative proposals which were introduced to reform the juvenile justice system.

At one extreme are bills, introduced by law enforcement officials and prosecutors, calling for more excluded offenses, lower age for criminal prosecution, certification of first offenders, use of fingerprinting and photographs for retail thefts and other offenses, more discretion by the district attorneys in the juvenile court process, and a mandated number of beds in secure facilities for juveniles. Opposition from child advocacy groups and public defenders, while acknowledging many weaknesses in the current system, call for a more expansive juvenile justice system, rather than increasing the use of the criminal courts for juvenile offenders.

Somewhere in the middle are juvenile court personnel who maintain that the juvenile courts are the place for most delinquents, but cite a need for more options to be available to them. Specifically suggested was a long-term secure juvenile institutional care, which might obviate the transfer of many juveniles. Also suggested was mandatory education for detained juveniles, more rigorous detention standards, more community-based programs, more funds for diversion, more restitution programs, and provision for more time and personnel to deal with youth in juvenile courts. The result has been a legislative stalemate on the basic questions.

Conclusions

The issue of transfer of juveniles from juvenile courts to criminal courts was the major juvenile justice issue in the state at the time of the study. Judicial transfer as a means to address serious juvenile crime has engendered major controversy between "law and order" proponents and "child

care" advocates, resulting in polarized and highly publicized positions. Open discussion in the legislature and the press has generated great public interest in this issue. While the basic framework of referral appears secure, changes are occurring in secondary areas, such as fingerprinting of juveniles. The debate occurs at a time when serious and violent crime in Pennsylvania has apparently decreased or at the least has plateaued. Despite the high level of concern, the judicial transfer provision is used very sparingly, primarily for youth charged with serious offenses. However, the number of transfer hearings requested is not known. It is possible that many more hearings occur but do not result in referral to criminal courts, indicating disagreement between the prosecutors and juvenile court judges as to which juveniles should be transferred.

Based on the available data, it seems safe to conclude that youth in Pennsylvania are likely to receive longer incarcerative sentences than comparable juveniles handled by the juvenile courts, when tried as adults. It also seems clear that juvenile courts are reluctant to transfer juveniles into an environment of jeopardy.

WASHINGTON CASE STUDY SUMMARY

Washington was selected from federal administrative region 10 for case study because it uses several unusual provisions relative to the transfer of youth to criminal courts. Many of these variations result from a major revision of the state's juvenile code which occurred in 1977. The 1977 juvenile code established four basic categories of offenders--youth who must be diverted, minor or first offenders, middle offenders, and serious offenders. Each class of offender carries with it certain prosecutorial and dispositional limitations. Washington now requires that the least serious cases be diverted while, at the same time, requiring waiver (declination) hearings for 16 and 17 year olds charged with serious crimes. The amendments also require mandatory confinement for serious offenders who are handled in the juvenile courts.

In addition to mandated declination hearings for certain juveniles, Washington has a permissive declination procedure by which juveniles of any age, charged with any offense, can be referred to the criminal courts.

Procedures for Trying Youth As Adults

The initial age of criminal court jurisdiction in Washington has been 18 years of age since 1909.

The first "decline" statute was enacted in 1913 and remained basically the same until its repeal in 1977, coinciding with the adoption of the current decline provisions. The Juvenile Justice Act of 1977 provided for two types of declines--permissive and presumptive. Decline of juvenile jurisdiction is permitted for any juvenile of any age charged with any offense similar to the earlier provision. The request to decline jurisdiction may come from the prosecutor, the court upon its own motion, or the juvenile or his counsel.

The presumptive provision applies to the category of juveniles designated "serious offenders". When charges are filed alleging specified offenses, decline hearings are mandatory, unless waived by the court and the parties. If the decline hearing is waived or if, after the hearing, a declination is ordered, the case will be filed in the adult courts.

All cases against youth who have previously been transferred for prosecution to adult courts are thereafter automatically prosecuted for future arrests in adult courts. This includes misdemeanors and ordinance violations as well as felonies. "Once declined, always declined", or "once an adult, always an adult", is the rule.

Declined youth, if found guilty of felonies in criminal courts may receive any sentence available for convicted adults. If sentenced to incarceration, youth will be committed to an institution under the Department of Social and Health Services (DSHS), Adult Corrections Division. In the case of youth under age 16, they may not be housed with adult felons. They are, instead, administratively transferred to juvenile institutions (operated by the DSHS Juvenile Rehabilitation Division) by order of the secretary of DSHS. They remain in juvenile facilities until age 16, at which time they may either be moved to adult institutions or may remain in juvenile facilities until age 18.

Youth 16 years of age or older convicted of misdemeanors may be sentenced to adult jails. Since July 1, 1978, youth 16 years of age and older charged with traffic violations are routinely handled by the adult traffic courts.

State Data Summary

Initial information on frequencies of youth declined to adult courts in 1978 were obtained from local juvenile court personnel. Data was sought for three categories of youth declined during 1978: youth charged with felonies; youth charged with misdemeanors, including traffic and possession of alcohol offenses; and youth transferred under the "once declined, always declined" provision.

There were 684 (670 declines and 14 automatic transfers reported under the "once waived, always waived provisions") declines reported for 1978. One quarter of the cases were reported from King County (Seattle), which contains over 30 percent of the juvenile population in the state.

A demographic breakdown in Phase II counties of youth judicially declined showed that 87 percent of the youth were 17 years old and 13 percent were 16. Males accounted for 94 percent of the cases, where data were available, and white youth represented 88 percent of the group. Public order offenses, including drug and alcohol violations, accounted for 35 percent of the declinations--much higher than in most states. Eleven percent were personal offenses. Property offenses represented 49 percent of the known total declinations. There were also 21 traffic cases declined.

Counties having larger juvenile populations tended to refer more youth for property offenses and many fewer youth for public order violations. It is also interesting to note that 53 percent of the declinations occurred in counties with less than 50,000 juveniles. This pattern is also different from most other states with judicial waiver provisions, where most of the judicial waivers occur in large population centers.

Based on known data, 95 percent of the youth declined were convicted in adult courts. Of those convicted, 77 percent received either fines or probation, and 21 percent were sentenced to confinement.

The larger/smaller county comparison reveals very slight differences in the use of confinement for youth convicted in adult courts, although there is an increased reliance upon the use of jails in the larger counties. Even greater variance can be seen between the two groups of counties in the use of fines and probation. Smaller counties reported a far greater percentage of fines, while larger counties relied more heavily on probation. Where youth were convicted and sentenced to incarceration, 74 percent received maximum terms of one year or less. In other words, about 93 percent of the convicted youth received sentences of fines, probation, or incarceration for periods of one year or less.

Results of On-Site Interviews

A standard interview format was used, in which interviewees were asked their opinions about the relative impacts of declination procedures on the criminal and juvenile justice systems, the public, and the juveniles involved. Other questions probed for deficiencies in the current system and proposals for change.

Consistently, respondents in Washington indicated that declinations removed those young offenders who were the least likely to benefit from the

options available to juvenile courts. Many of the youth declined in Washington in 1978 were referred because "they had adopted an adult life-style, primarily youth involved in alcohol, drug abuse, or prostitution, and the juvenile services would not change their way of life." By removing them, most interviewees believed that more concentration of resources was permitted for those who remained. They described the effect as positive, saying that it prevented the juvenile system from being "loaded" with failures and allowed more services to go to younger, less sophisticated offenders presumed to be more amenable to treatment. Yet, some persons viewed declines as an admission of failure of the juvenile system.

Declines of serious juvenile offenders apparently enhances the courts image as a dispenser of justice. "It appears that the court is doing something with the serious youths," said one public defender, "even though it's quite possible that the juvenile might not be treated as severely in the adult system." (The number of youth declined for personal offenses was very low in 1978 (49 cases).) The most frequent disadvantage mentioned was the loss of these youth as juveniles. Declines were view as "giving up".

Since declines frequently remove juveniles who would very likely be placed in juvenile institutions, several advantages were reported for juvenile detention and corrections services, by a few of the respondents, as a result of the certification procedure.

- A reduction in the overall population of state juvenile institutions and local detention facilities.
- Removal of hardened youth who are likely to be more difficult to work with and are apt to exert unfavorable influences on other youth.
- Reduction in cost, thus allowing resources to be directed toward fewer youth who can be potentially rehabilitated.

Disadvantages mentioned were primarily for adult corrections:

- The presence of younger offenders in adult facilities presents problems in administration, regardless of number.
- Protection of juveniles from physical and sexual abuse by older inmates is difficult.
- Increased costs of providing programs aimed at younger populations.
- Retraining of personnel because of their unfamiliarity with techniques for control and working with younger offenders.

Most respondents answered at length on the impact of declines on the juveniles themselves. The overall reaction was that juveniles generally did not fare as well in the adult system as they might have fared if juvenile jurisdiction had been retained. They offered a variety of reasons:

- For such youth, "hard time" and longer sentences were a higher probability, if found guilty.
- The threat of physical abuse in adult institutions.
- The acquisition of permanent criminal records.
- Less standardization in adult sentencing results in uneven sentencing.
- Lack of appropriate programs and facilities for youth in adult facilities, particularly in jails.

Some exceptions were stressed, however, particularly in the case of public order offenses. It was generally believed that youth would receive lighter sentences, or deferred or suspended sentences, for most misdemeanors. First offenders, for example, might draw very short jail terms or fines in adult courts. In juvenile court, the same offenses could result in strict and rigorously enforced probation for fairly long periods of time. In addition, several respondents stated that, assuming all other factors are controlled, youth will do more time as a result of juvenile court dispositions, for several reasons. The point system in juvenile court, with its presumptive sentencing, specifies sentence length. In adult court, judges have a great deal of discretion to defer, suspend, or otherwise avoid confinement, particularly with young, first-time offenders. Criminal court sentences are largely symbolic, with offenders actually serving lesser periods (good behavior, community work release, parole board minimum sentences). The juvenile court sentences are more certain because of the standard range of dispositions.

Sentences vary from crime to crime. For example, youth charged with homicide will do more time in the adult system than if retained by juvenile courts. Youth charged with auto theft, on the other hand, will have longer periods of confinement if adjudicated by juvenile courts. Sentences generally would be less severe in the criminal courts, unless weapons were involved.

While admissible in criminal court sentencing hearings, juvenile records of prior offenses are generally disregarded so that declined youth are sentenced as first offenders.

Even though the options for fines or probation are frequently used for youth who are declined, the perception of interviewees was that the public felt safer when serious offenders are transferred to criminal courts. The possibility of harsher sentences which might be imposed contribute to the

belief that juveniles are held more accountable for their crimes than juvenile courts seem willing or able to impose. In addition, there are fewer escapes from adult institutions.

Several negative effects were also noted, specifically increased costs associated with the adjudication process, increased costs of long-term incarceration in adult institutions, and the potential negative effects on juveniles due to incarceration with hardened adult criminals.

While the revamped juvenile code of 1977 has brought about many fundamental and procedural changes in the processing of juvenile offenders, it has also engendered almost universal dissatisfaction on one or more points among those interviewed. Only four respondents indicated that no changes were needed.

Conclusions

H.B. 371 (the 1977 juvenile code revision) was supposed to make the juvenile justice system more accountable. For some, it meant that juveniles would be more consistently charged and sentenced as adults. For others, it apparently meant that less offenders would do time. This ambiguity probably contributed to its passage. At the time of the interviews, more youth were being diverted from the court, fewer were declined, and fewer were being committed to juvenile corrections facilities.

Despite these incongruous results, almost everybody generally approved the new approach but disliked some aspect of the current juvenile justice code. The most universal dislike was with the presumptive sentencing model. There was 100 percent dissatisfaction among the interviewed judges, court personnel, prosecutors, and public defenders. In fact, it is difficult to say who did like it. The mandatory sentencing model remains the juvenile justice issue of greatest controversy in the state.

"Decline" is viewed as being an important issue, primarily because it relates to the overall issue of credibility of the juvenile court. By establishing presumptive juvenile dispositions of confinement and declines, the discretion and, indeed, the jurisdiction of the juvenile courts have been greatly reduced.

The declination procedure in 1978 was being used, at least in King County, to deal with a different category of youth than in most states. Youth who were viewed as having adopted adult lifestyles, teenage prostitutes, for example, were being declined to criminal courts. The high

percentage of fines and probation sentences received by these youth in criminal courts suggest that neither confinement nor treatment are viewed as useful. The apparent feeling is that it is easier for adult courts to implement such a sentencing philosophy.

Several interviewees stated that declines would not be a major issue in the state in the near future. The real issue at the heart of the decline provision is not who should or should not be declined; rather, it is the "integrity of the juvenile court". Can the people have confidence that justice will be administered in juvenile courts? Likely expressions will be legislation regarding juvenile court jurisdiction, discretion, and general authority.

CHAPTER 6

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

This final chapter will be divided into two basic segments. The first part will recapitulate the findings of the study, which are contained in Chapters 2 through 5. Some conclusions will be offered as to what all the information attempts to say. The second part will present recommendations which are based upon the research effort. They will be divided into policy recommendations and recommendations for future research.

SUMMARY OF FINDINGS

This report is organized according to the lines of research pursued. Chapters 2 and 3 present the results of literature and statutory reviews primarily conducted in libraries and secondarily validated through telephone and personal interviews around the country. Chapter 4 reflects the findings of the Academy's statistical survey of 52 state and federal jurisdictions. The material is organized by state, broken down by the 3,100 plus counties in the country. Chapter 5 offers synopses of ten state case studies, where on-site interviews supplemented the statistical data collection efforts. Accompanying this report are five companion volumes, which contain the 51 state profiles, arranged according to the following regional breakdown:

YOUTH IN ADULT COURTS:
BETWEEN TWO WORLDS
(Regional Volumes)

<u>West</u>	<u>North Central</u>	<u>South Central</u>	<u>Northeast</u>	<u>Southeast</u>
Alaska	Illinois	Arkansas	Connecticut	Alabama
Arizona	Indiana	Colorado	Delaware	District of
California	Iowa	Kansas	Maine	Columbia
Hawaii	Michigan	Louisiana	Massachusetts	Florida
Idaho	Minnesota	Mississippi	New Hampshire	Georgia
Montana	Nebraska	Missouri	New Jersey	Kentucky
Nevada	North Dakota	New Mexico	New York	Maryland
Oregon	Ohio	Oklahoma	Pennsylvania	North Carolina
Utah	South Dakota	Texas	Rhode Island	South Carolina
Washington	Wisconsin		Vermont	Tennessee
Wyoming				Virginia
				West Virginia

The Federal court profile appears as Appendix D in this present volume.

Readers who wish to obtain one or more of the regional supplemental volumes should follow the instructions on the inside back cover of this volume.

Literature Review

A review of over 175 articles, books, and reports revealed that, while comparatively small, the literature surrounding the referral issue can be categorized both chronologically and substantively. The early literature tended to treat the legal mechanism of judicial waiver as simply a compromise between reformers and traditionalists who were actively involved in the debates surrounding the development of the then-innovative juvenile court.

Over time, the literature reflected a growing sophistication toward judicial waiver as an integral issue. Questions relating to the respective roles of judges and prosecutors in initiating waivers and the complexities of minimum age requirements began to attract the interest of legal scholars and practitioners. Over the past 40 years, concerns have become increasingly focused. In the 1940s and 1950s, due process issues began to emerge. They concentrated, for the most part, on the right to counsel, double jeopardy, and the use of pre-waiver confessions.

By far, the most critical phenomenon affecting the literature was the case of Kent v. U.S., decided by the U.S. Supreme Court in 1966. In a clearly precedent-setting opinion, the Court laid out criteria and procedures which the District of Columbia juvenile court should have considered prior to ordering a judicial waiver in the case in question. These so-called "Kent factors" are widely used today, due either to judicial practice or court rules, or because they have been enacted into state codes.

The late 1960s and the 1970s have spawned a body of literature that reflects both the Kent decision and social events of that period. The post-Kent literature has one obvious characteristic: no single philosophy prevails. Writers tend to either argue that adult courts destroy youth caught up in them or that youth receive more due process and less severe penalties in the adult system. Whatever the view of the adult courts, writers agree that three key criteria must be more closely examined in identifying youth for whom judicial waiver is at least legalistically proper. These factors are age, the seriousness of the offense, and the Kent factors. Much criticism has centered on the considerable discretion allowed in determining the application of such factors as nonamenability to treatment as a juvenile.

Another interesting phenomenon of the 1970s was the emergence of juvenile justice standards, state studies, and national surveys. In one way or other, they all addressed the need for clearer guidelines and limitations on judicial discretion, before juvenile court jurisdiction is waived.

By the 1980s, understanding and analysis of waiver had broadened: it now is understood as a nexus between juvenility and adulthood. A theme such as this suggests that writers are less concerned with legal mechanisms than they are with the effect such mechanisms have on the lives of children. In a very real sense, the literature has come full circle to the earliest debates that accompanied the creation of the juvenile court.

Overview of State Statutes

Codes in all 50 states were examined, as well as those for the federal government and the District of Columbia. The statutory search revealed that every jurisdiction has at least one legal mechanism for trying youth (individuals under the age of 18) in criminal courts. The statutory search revealed that all of these statutes could be grouped into four legal mechanisms: judicial waiver, concurrent jurisdiction, excluded offenses, and lower age of jurisdiction. In many states, two or three legal mechanisms are simultaneously in effect, differentially applied to youth according to age or offense, or according to such other criteria as prior record.

By far, age is the most common factor through which the statutes may be analyzed. Thirty-eight jurisdictions had established (in 1978) 18 as the age of criminal responsibility. Of the remaining twelve states, eight used age 17 and four used age 16.

Of the 48 jurisdictions where judicial waivers were permitted in 1978, 20 of them had established 16 as the minimum age for transferring juveniles to adult courts, at least for some offenses. Fourteen states had established 14, and 11 states used 15 as the minimum age for permitting judicial waivers, again at least for some offenses. A number of states have enacted offense-specific ages; other states have never established age minimums. In the latter groups of states, very young people could presumably be tried as adults for certain crimes.

There are 13 states which provide for concurrent jurisdiction between courts over persons under the age of criminal responsibility. In these states, the forums for trial are determined at the prosecutors' discretion. That is to say, prosecutors may either treat the matter as a delinquency and proceed in the juvenile court, or criminally prosecute the youth in the adult court.

In six of these states, concurrent jurisdiction only applies to traffic or other minor violations. In the remaining seven states, this discretion is applicable to all offenses, as in Nebraska and Wyoming, or to most serious offenses committed by older juveniles.

Most state codes, 31 to be precise, exclude certain crimes from juvenile court jurisdiction. Again, as in the case of concurrent jurisdiction statutes, the only exclusions are traffic and other minor misdemeanors in 20 of the 31 jurisdictions. The remaining eleven states exclude very serious crimes, usually murder and other capital offenses, from juvenile court jurisdiction. While four of these states have no minimum age set for initiating criminal court jurisdiction, seven states have established minimum ages of 13 to 16, under which such youth will be referred to juvenile courts despite the fact that they are charged with those particular offenses.

Chapter 3 also reviews statutes permitting removal of youth from criminal courts to juvenile courts. This procedure is normally found in states which use either concurrent jurisdiction or excluded offense mechanisms. Under these provisions, youth who are initially charged in criminal courts may be certified to juvenile courts, sometimes for adjudication and disposition. In some states, dispositional orders may be the only part of the judicial process which would be served by the so-called "reverse waiver".

Other interesting facets of the information presented in Chapter 3 have to do with the ways in which states have organized their judicial and corrections systems. Table 5 reflects the enormous diversity in court organization in this country, as applied to juveniles. Table 6 reveals that in 27 states and federal jurisdictions, convicted youth must be sentenced (if confined) to adult facilities. In 18 states, there can be sentences ordered in juvenile corrections facilities as well. In only six states, youth (other than those above the minimum age of criminal jurisdiction) must be sentenced (if confined) to juvenile facilities. As a final note, Chapter 3 presents a statutory update for laws passed between 1978 and 1981, and offers some speculations concerning the trends that emerge from analyzing the changes.

National Data Summary

In 1978, the base year for data collection, the Academy determined that there were over 9,000 juveniles judicially waived to adult courts, over 2,000 youth prosecuted for serious offenses in adult courts due to concurrent jurisdiction provisions, over 1,300 youth prosecuted as adults because of excluded offense provisions, and a quarter-of-a-million 16 and 17 year olds arrested and referred to adult courts due to lower ages of jurisdiction in 12 states. The majority of youth referred to adult courts were 17 years of age, male, and white.

It is clear that, for many jurisdictions, their reported cases represent an undercount. In addition, based upon a self-selected sample of counties around the country, it is estimated that over 1,000,000 youth were tried in adult courts in 1978 for traffic and other minor offenses.

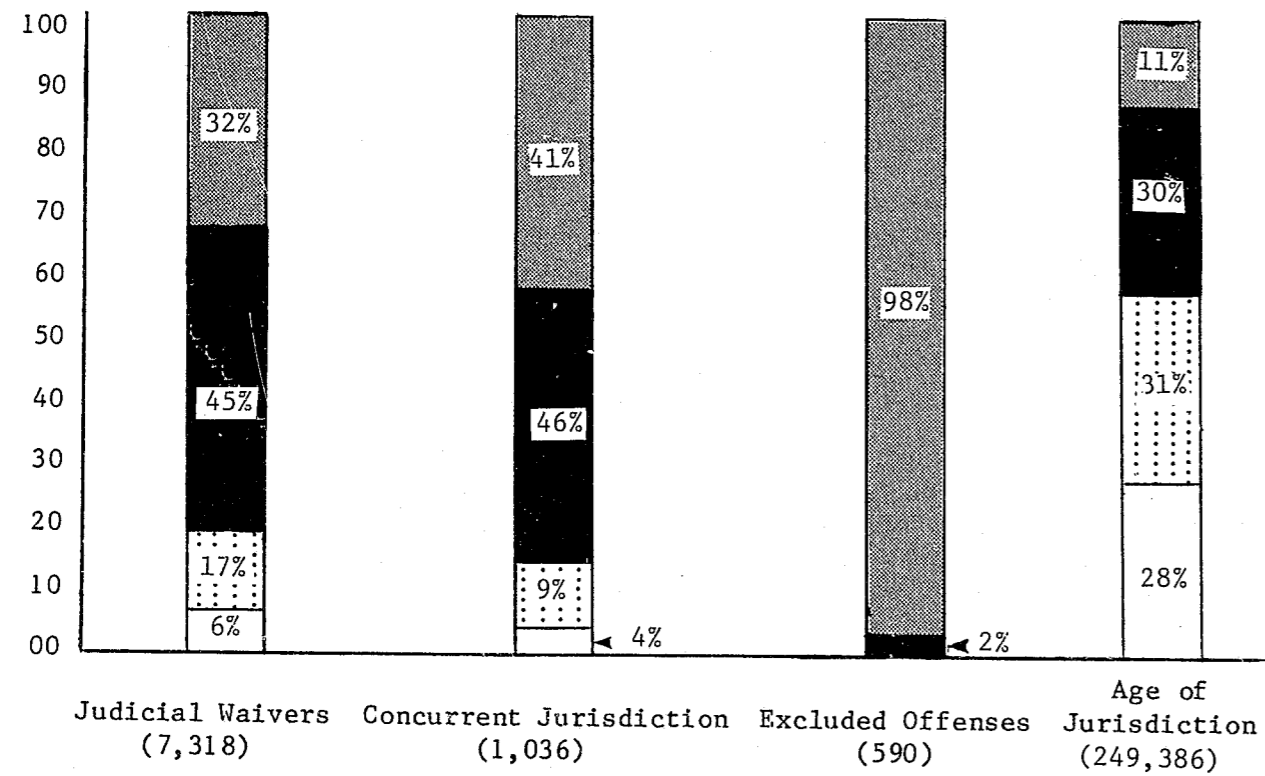
There are significant state-to-state variations on rates of referral of youth to adult courts. The rate of judicial waiver varies among states from less than one per 10,000 juveniles in the general population to over 13 per 10,000. Almost all of the 12 states with ages of initial criminal court jurisdiction of 16 or 17 years of age where judicial waiver provisions also exist have waiver rates of less than two per 10,000 juveniles; the higher rates occur from states where 16 or 17 year olds are regularly subject to juvenile court jurisdiction and, hence, to waiver, and where states tend to use this legal mechanism for a broad range of offenses, including minor public order offenses. Regardless, the variation in rates appears to be primarily a reflection of different philosophies regarding what offenses should be subject to adult court jurisdiction.

Most juveniles referred to adult courts for trial were not charged with personal offenses. This was true for all mechanisms with the obvious exception of excluded offenses, where state legislatures single out serious personal offenses for adult court referral. Property offenses resulted in the most referrals--45 percent of the judicial waiver, 46 percent of the concurrent jurisdiction cases, and 30 percent of the age of jurisdiction cases. Offenses against persons represented smaller percentages of the offenses resulting in referral: 32 percent in the judicial waiver states; 41 percent in concurrent jurisdiction states; and 11 percent for age-of-jurisdiction states. When the statistics on personal offenses are further analyzed, referrals for violent offenses, i.e., murder, manslaughter, rape, robbery, and aggravated assault, the numbers become even smaller. Violent offenses accounted for less than one-fourth of the judicial and prosecutorial referrals and almost one-twentieth of the arrests of 16 and 17 year old youth in the 12 age-of-jurisdiction states.

Public order offenses accounted for 17 percent of the judicial waivers, nine percent of the prosecutorial direct filings; and 27 percent of the age-of-jurisdiction cases. Some states judicially waived a large percentage of public order cases; other states never waive such offenses. Of course, statutory language restricts who can be referred to adult courts.

Figure 9 presents, in bar chart form, the types of offenses which resulted in referrals to adult courts nationwide, according to the legal mechanisms utilized.

FIGURE 9. TYPES OF OFFENSES COMMITTED BY YOUTH REFERRED TO ADULT COURTS (BY LEGAL MECHANISM AND PERCENTAGE) IN 1978^a



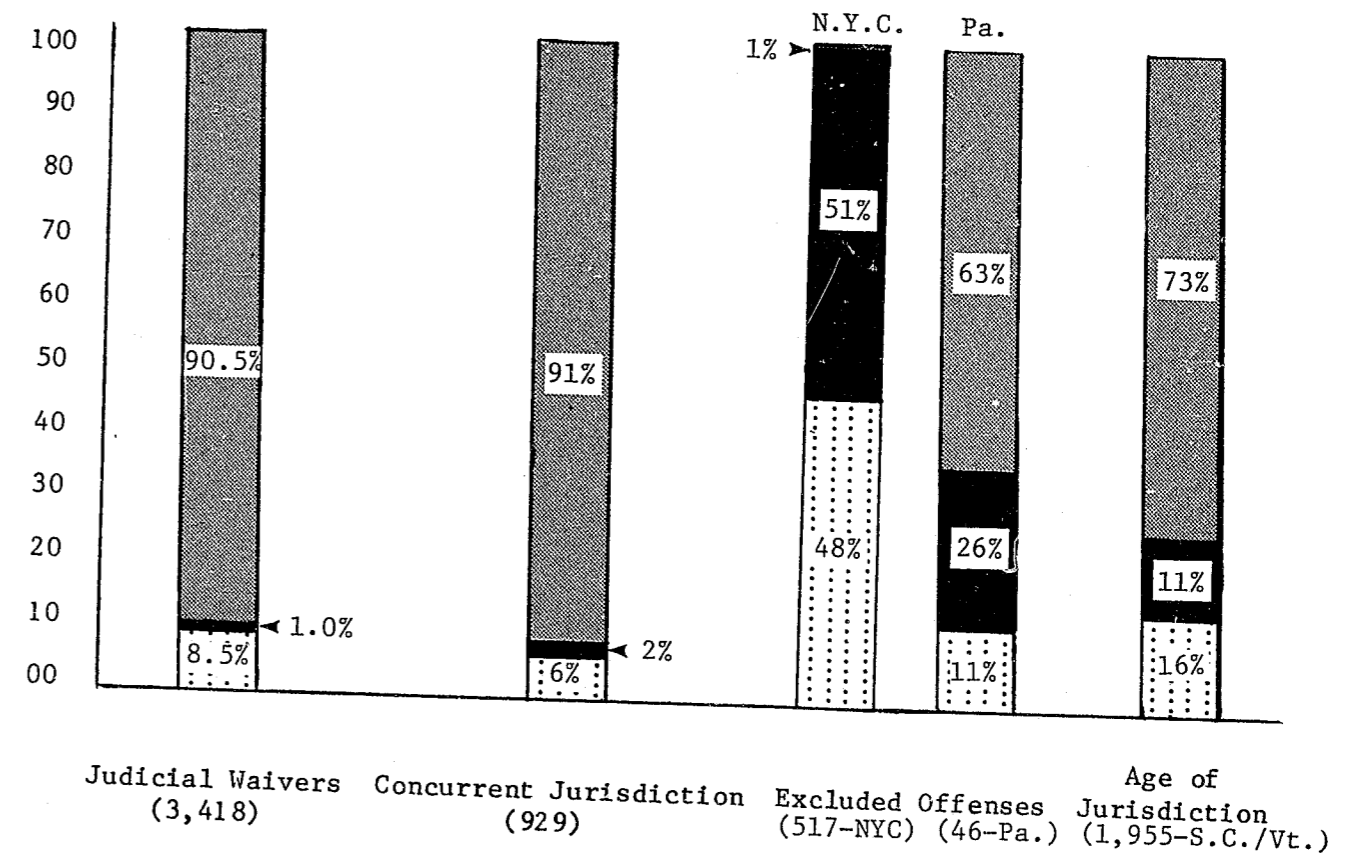
a. Instances where the nature of the offenses were "Unknown" have been excluded.

- = personal offenses
- = property offenses
- = public order offenses
- = "other" offenses

N= (#)

• Most of the youth tried in adult courts are convicted or plead guilty. In New York City and in Pennsylvania, where excluded offense provisions predetermine the referral of many youth to adult courts, the use of "reverse waiver" provisions is noticeably larger. The same was true in Vermont, where about ten percent of the 16 and 17 year old (age-of-jurisdiction) youth were sent to juvenile courts for hearings and/or dispositions. For youth in this category, the result is two trials, (or at least the preparation of two defenses) instead of one.

FIGURE 10. JUDGMENTS OF YOUTH REFERRED TO ADULT COURTS (BY LEGAL MECHANISM AND PERCENTAGE) IN 1978^a



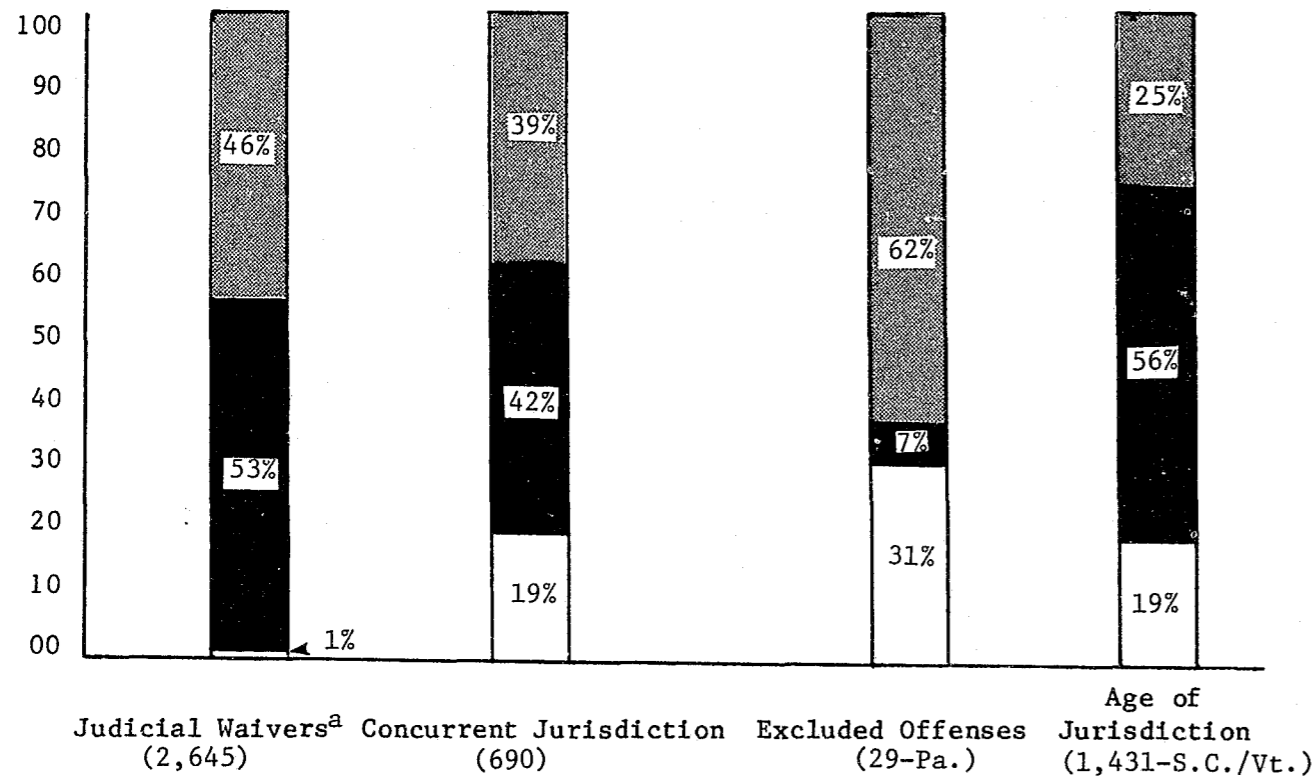
a. Instances where the nature of the offenses were "Unknown" and pending have been excluded.

- = Convicted, Guilty
- = Referred to Juvenile Court
- = Dismissed Not Guilty

N= (#)

- Youth are more likely to receive community sentences (probation or fine) than corrections sentences (jail, or adult or juvenile corrections facilities) except for the excluded offense category. In those states with a high frequency of public order waivers, a high proportion of sentences of fines are imposed.

FIGURE 11. SENTENCES OF YOUTH CONVICTED IN ADULT COURTS (BY LEGAL MECHANISM AND PERCENTAGE) IN 1978



a. Instances where the nature of the offenses were "Unknown" have been excluded.

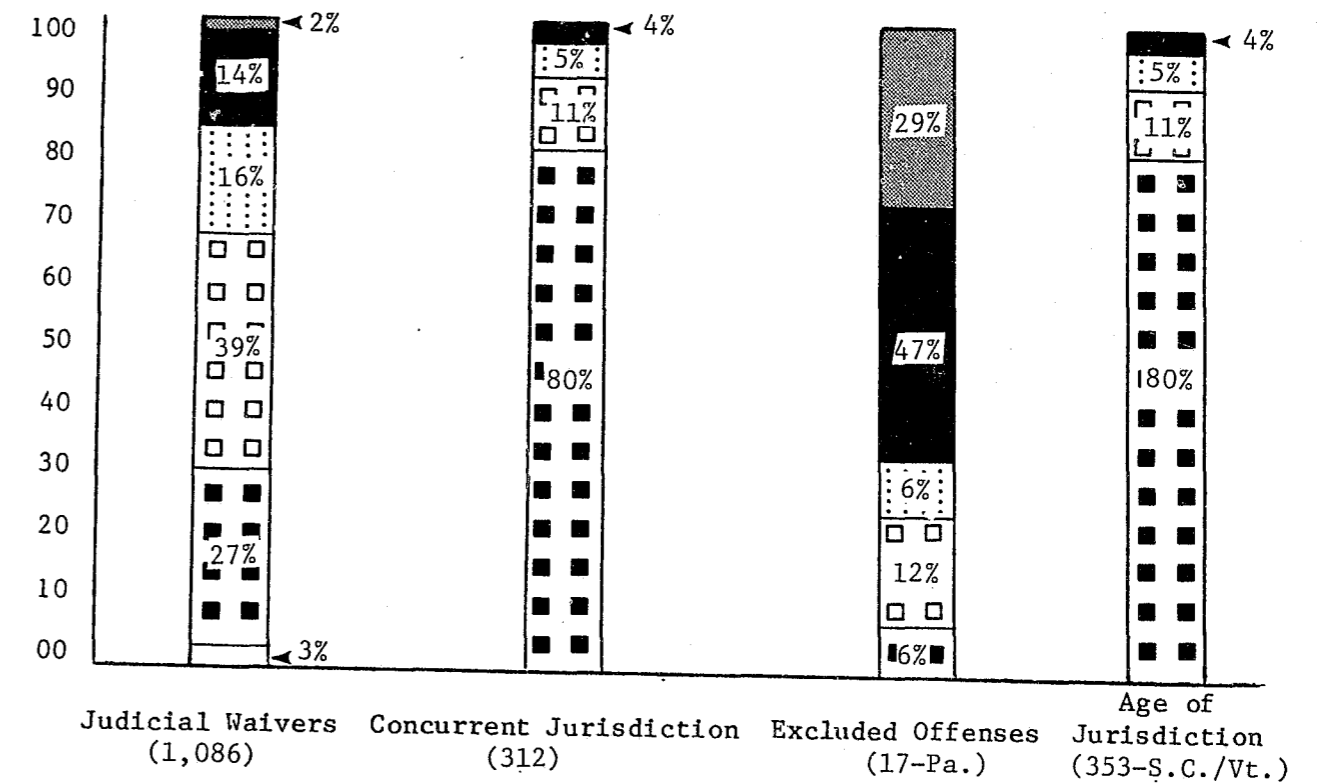
- = Confined
- = Probation/Fined
- = "Other"

N= (#)

- Youth convicted as adults and sentenced to adult corrections facilities can probably expect to do more time than they would under juvenile dispositions, according to the aggregated data presented in Figure 12. Again, the exception is in the age-of-jurisdiction category.

Unfortunately, data were only available in Vermont and South Carolina on dispositions and sentences for the age-of-jurisdiction category.

FIGURE 12. LENGTHS OF CONFINEMENT OF YOUTH SENTENCED IN ADULT COURTS (BY LEGAL MECHANISM AND PERCENTAGE) IN 1978



a. Instances where the nature of the offenses were "Unknown" have been excluded.

- = life
- = over 10 years
- = 5+ to 10 years
- = one+ to 5 years
- = one year or less
- = indeterminate

N= (#)

Relatively few juveniles are referred to adult courts for trial through the discretionary decisions of judges or prosecutors, whether the measure is the percentage of the juvenile population or the percentage of eligible delinquency cases being heard in juvenile courts.

No state has lowered its initial age of criminal court jurisdiction in the past seven years. Further, all twelve states utilizing lower ages of criminal jurisdiction have done so for decades. However, there have been states that have raised the age to 18 over the past decade. Therefore, the fact that 18 is the most common age used for establishing criminal responsibility is probably truer now than it has ever been in our history.

Case Study Synopses

On-site interviews were conducted with approximately 250 people in ten states. The purpose of these meetings was to determine the perceptions of key informants regarding the effects of referral procedures in their respective states. Judges, prosecutors, public defenders, legislators, enforcement and corrections officials, and youth advocates were all included in the interview schedules. The states singled out for study were:

- | | |
|------------------|-----------------|
| 1. California | 6. Nebraska |
| 2. Colorado | 7. New York |
| 3. Florida | 8. Oklahoma |
| 4. Massachusetts | 9. Pennsylvania |
| 5. Minnesota | 10. Washington |

The results of the individual state case studies may be found in Chapter 5, in highly abbreviated forms. The full reports are included in the separate profile volumes described above.

When the findings from all ten states are assessed, certain commonalities begin to emerge. Despite statutory and demographic differences, the motivations for treating certain juveniles as adults appears to be rooted in some very basic notions of crime and punishment. Where differences do occur among state respondents, they appear to be strongly linked either to disparate views of childhood or of their state criminal justice systems.

There are at least seven reasons for the use of judicial waiver, concurrent jurisdiction or excluded offenses for referring youth to adult courts:

- To remove juvenile offenders charged with heinous, violent offenses that frequently generate media and community pressure.
- To remove chronic offenders who have exhausted the resources and the patience of the juvenile justice system.

- To remove minor offenders where the perceived appropriate penalty is a fine or short jail sentence that is not available or utilized within the juvenile court system.
- To remove minor offenders, in order to reduce pressure on juvenile court dockets.
- To refer juveniles who exhibit adult life styles that would remain unaffected after imposing juvenile justice services.
- To impose longer potential sentences than are available within the juvenile justice system.
- To obtain less severe penalties or greater likelihood of acquittals, where it is perceived that the juvenile courts would be harsher than the adult system. This last reason is reflected in requests made by juveniles to be tried as adults.

The most important factors in the decision to refer youth to adult courts for trial are the seriousness of the offenses, the extent of prior delinquency records, and the results of previous treatment efforts within the juvenile justice system.

Much legislative activity has erupted over the past five years, in response to growing public concerns about serious and violent crimes. The effects suggest certain directions that will probably persist for a few more years. While the age of jurisdiction has not been lowered, bills are being passed which exclude more crimes, create presumptive referrals or grant more powers to prosecutors. Once passed, public interest in the transfer issue appears to subside rather quickly. At the same time, there are a number of states, both urban and rural, that have not changed their legislation for many years. These different legislative behaviors appear to be responsive to factors other than crimes by juveniles or even crime rates in general.

Attitudes of interviewees reflect an awareness that, across the nation, the goal of the juvenile justice system is moving, at least rhetorically, toward public safety and away from juvenile rehabilitation. Equally apparent was the perception that youth in adult courts had more procedural safeguards and constitutional protections than are available in juvenile courts. While these concerns appear, on the surface, to be inconsistent, it may well be that there is a tacit assumption, in American criminal jurisprudence, that due process is the legitimizing basis for punishment. If true, adult courts may well have more appropriate qualifications for meting out punishment than are possessed by juvenile courts.

It is also interesting to note that, because so relatively few juveniles (outside the 12 states with lower ages of criminal jurisdiction) are referred to adult courts, most respondents saw no particular criminal justice systems problems except for corrections institutional programming, resulting from these referrals. However, the effects upon the juvenile justice system were viewed in remarkably different ways. Responses ranged from satisfaction with their current procedures to fears of budgetary loss as a result of the removal of referred youth from the juvenile courts. Many interviewees expressed opinions that referrals to adult courts represented the juvenile justice system's failures. They argued that if available services were more extensive, referrals to adult courts would be less necessary. One service gap frequently mentioned was the lack of long-term, secure facilities for dealing with juveniles who had committed serious or violent offenses.

Public perceptions of governmental responses to crime appeared to be uppermost in many respondents' comments. There was an overwhelming belief expressed that trying youth in adult courts made the public feel safer in the knowledge that firm steps were being taken to control young offenders. However, there was an equally universal belief expressed that public perceptions lacked credence in the "real world". Most youth convicted in adult courts do not receive the long prison sentences that the public apparently associates with criminal court convictions.

The most poignant concerns expressed related to youth who were referred, convicted, and sent to adult corrections facilities. While statistically small, the number belies the human tragedy expressed by respondents. Fears of physical and sexual abuse, association with hardened criminals, and the lack of rehabilitative programs were all offered as disadvantages to the youth themselves, presumably implying the preferability to retaining them in the juvenile system. In most of the ten states visited, the debates surrounding the referral of youth to adult courts, when fully understood, had little to do with the two judicial systems themselves. Rather, respondents expressed opinions that centered on public outrage over crime rates or that focused upon the very different effects of criminal and juvenile court jurisdiction upon correctional options.

RECOMMENDATIONS FOR PUBLIC POLICY

After all the research has been reduced to the preceding chapters and companion profile volumes, "facts" become more questionable while "feelings" become stronger. What began as a simple study of a narrow issue has become an extremely broad and complex set of public policy questions. The trial of youth as adults symbolizes many public perceptions about crime, and how best to stop it. It also signifies a great number of social perceptions about American jurisprudence, public administration, and the rites of passage.

Throughout this report, the authors have attempted to present large quantities of information intelligibly and objectively. Where editorial comments were inserted, they were intended to reflect the meaning of the information obtained. Our intention was to allow the data to flow directly to the reader, to be used as bases for policy decisions.

In this final section, recommendations are offered which sometimes exceed merely reflecting the data. Impressions and conclusions have formed in the authors' minds over the past three years which appear, at least to us, to be worth sharing. This is not to say that the recommendations are contrary to the findings. In fact, the reverse is clearly the case. The only point here is that these recommendations are in part reflective of views which go beyond the data presented.

It should be evident from what precedes these comments that we are dealing with a very complicated social phenomenon. The confusion of divergent laws and parochial terminology, the dissimilar local practices and erratic legislative activity, all attest to both the emotional character and unstable nature of the public policy responses. In order to at least approach this final section in some systematic way, the comments will be divided according to (1) the legislative process, (2) the judicial process, and (3) the corrections process.

The Legislative Process

One of the first anomalies that confronts serious students of the transfer issue is the profusion of words used in statutes to mean the same thing. A number of examples may be found throughout the report. A greater peculiarity, perhaps, is the fact that all state and federal statutes define youth in adult courts as "adults". When the word is fully understood in this context, the problem with using it as a legislative term of art becomes obvious: they are not adults except for purposes of criminal responsibility. Adults are persons who have achieved majority. They may vote, marry, form contracts, and miss college classes without being considered truant. By using this term to define criminal responsibility, it is extremely easy for society to ignore the fact that youth who are designated as "adults" are children for every other facet of their lives. It distorts public perceptions of other, related issues. For example, the trend in America is clearly to remove juveniles from jails and lockups. However, the thrust of this change in detention policy excludes, in most states, 13 year olds awaiting trials in adult courts. Since they are adults and not juveniles, they are properly held in such facilities. This legal fiction creates similar philosophical distinctions which have only come into question in the past 15 years.

Another preliminary point: current legislative proposals in many states appear to be responsive to public fears of crime. The reaction is under-

standable, but some of the enactments are difficult to reconcile with professed public policies. For example, excluding certain violent offenders from juvenile court jurisdiction and then reducing sentences through the use of youthful offender treatment in adult courts appears to be the expression of two policies working at cross purposes. If the crimes are too heinous to justify dispositions available to the juvenile courts, it would seem that youthful offender treatment in adult courts would hardly merit profound exclusions from the juvenile code. Correlatively, permitting very young offenders to be tried in adult courts makes little sense if the prescribed sentence is a term in state prison. Judges cannot be reasonably expected to impose such sentences.

The following legislative recommendations are based upon a recognition that some cases against youth might best be handled in adult courts. At the same time, some of the pitfalls of developing a rational referral policy might be avoided, if these recommendations are used as a starting point.

Using Goals as a Basis for Procedures

The idea of using goals to establish policy or to delimit practices is not new. Yet, it may have heretofore unused applicability to the transfer issue. That is to say, the question may not at all be related to which court hears particular cases; it may have more to do with what outcomes legislatures are trying to achieve. The establishment of specific goals has surprisingly different effects on the question of who hears the case. A few examples may illustrate the point.

If the goal is to substantially reduce juvenile court workloads so that limited resources can be devoted to fewer juveniles, then the ones who could most efficiently be excluded would be individuals charged with traffic, fish and game, watercraft, and other minor criminal offenses. The crimes are minor, the incidence is enormous, and there are other (frequently specialized) courts to deal with the problems. In addition, many of these offenses occur in connection with the gradual process in this society of granting adulthood. A driving license is such an example, where a privilege of adulthood is given earlier than statutory majority. By excluding such cases from juvenile court jurisdiction, literally thousands of hours and millions of dollars would be freed up in the juvenile system, even after compensating adult courts for their increased case loads. The major question here is whether juveniles who commit these offenses are now handled "better" by juvenile courts than they would be handled in adult courts. Recidivism would appear to be an appropriate measure for determining relative success or failure.

If the goal is to confine perpetrators of certain violent or serious crimes, the forum for trying such cases may be less important than the institutions available, within the adult and juvenile corrections systems, to receive the offenders. If both systems are overcrowded, there is probably a greater likelihood that juvenile courts would order confinement for their most serious cases than a likelihood that adult courts would order confinement for their youngest defendants.

If the goal is to ensure that perpetrators of certain violent offenses be confined for long periods specified by the legislature, such as five or more years, then it is apparent that only adult courts can effectively grant such sentences. In a number of states, this goal results in an adult court trial, a sentence to a juvenile institution until the youth achieves majority, and a subsequent transfer to an adult institution for the remainder of the sentence.

If the goal is to increase public confidence in government's ability to deal with crime, then the exclusion of murder, with the possibility of waiver to juvenile courts, may be more effective than allowing these cases to begin in juvenile courts and be waived to adult courts.

The examples above are intended to suggest that goals should be used to determine functions and procedures, not the other way around. They also reflect a recognition that various states will consider different goals to be paramount. The problem, as we found in this study, is that states have tinkered so much, through enactments and amendments, that it is difficult to determine what the current legislation is really trying to achieve.

One thing should be clear to everyone by this time: passing laws won't stop crime. If this is the goal toward which legislatures are moving, they would be well advised to consider the reactive character of the entire criminal justice system, and the attendant implications for crime control.

An Argument for Certain Transfer Mechanisms

It might be useful to look at those states whose laws have remained remarkably stable over the past decade and ask: why have they not changed their laws, despite the ubiquitous fear of crime in this country?

Ohio and Pennsylvania are cases in point. They are the sixth and fourth most populous states in America, respectively, with urban centers that exceed a million people and high crime rates, consistent with their urban populations. Yet the legal mechanisms for the referral of youth to adult courts have remained the same over a long period of time. Both states extend initial juvenile court jurisdiction to age 18. The major distinction between them is that Pennsylvania excludes murder (with the possibility of reverse waiver), while Ohio relies entirely on the waiver mechanism.

In contrast, New York and Vermont, both states with criminal responsibility set at age 16 (and without waiver mechanisms in 1978), have undergone major transformations in the laws affecting the criminal responsibilities of youth ages 15 and under. There appears to be a certain incongruity between the way in which 10 to 15 year old youth are viewed in states like Ohio and Pennsylvania and perceptions of them in states like New York and Vermont. In the former, "dangerous juveniles" are generally perceived to be 16 and 17 year olds; in the latter, the same group is generally defined as 13 to 15

year olds. Obviously, the markedly different perceptions result from the differences in the ages of criminal responsibility but, at a deeper level, the relatively few violent crimes charged against 13, 14, and 15 year olds appears to take on a more sinister importance in states where 16 year olds are already in adult, criminal courts. As a result, New York and Vermont appear to be struggling for some better way to deal with crimes committed by very young people, despite the fact that 100,000 youth, aged 16 and 17 are already tried each year as adults in those two states.

On the basis of both theory and practice, it occurs to us that the best way for legislatures to construct appropriate legal mechanisms for the referral of youth to adult courts is through the use of judicial waiver. Only this legal device offers a method by which:

- Both prosecutorial and judicial discretion may be exercised and controlled through motions, court orders, and appeals;
- Juveniles who can be effectively handled by juvenile courts are spared needless contacts with the criminal court system, and the unnecessary duplication of defense costs; and
- The judicial machinery is spared the strain of unnecessary delays in order to transfer juveniles to the courts where their cases will ultimately be tried.

There may be some justification for supplementing the judicial waiver mechanism with the exclusion of such crimes as murder, as is the case in Pennsylvania. The major advantage to this type of arrangement is that public outrage (over particularly savage crimes by juveniles) does not lead to precipitous legislative changes. This type of overreactive response can be noted in states where either judicial waiver did not exist at the time of the crime or was not exercised by the presiding juvenile court judge in the particular case.

At the same time, certain limits ought to be placed upon this mechanism, despite its public appeal. For example, the possibility of waiving youth back to juvenile courts, mentioned earlier, should be permitted. In addition, three other restraints ought to legislatively accompany any excluded offense enactment. The first one is that the kinds of offenses excluded for initial juvenile court jurisdiction should be extremely limited. While a strong case might be made for excluding murder, for instance, the same arguments weaken when applied to other (even other violent) offenses. When one considers the fact that over one-fourth of youth's murder cases in Pennsylvania were referred to juvenile courts, it is apparent that many lesser crimes would also be handled in the same manner. In New York, for example, over one-half of the excluded offense cases are referred to family courts. Therefore, starting them out in criminal court is wasteful to the point of counter-productivity.

There are a number of reasons for referring youth charged with excluded offenses to juvenile courts, reflecting judicial reactions to either the

circumstances of the crime or the immaturity of the youth themselves. One reason that has attracted virtually no attention to date needs to be mentioned here. Some interviewees in the case study states suggested that certain prosecutors overcharge juveniles in order to file on them in criminal courts. The apparent objective is to create a situation where, through plea bargaining, convictions for lesser offenses are obtained without going to trial. Whether or not this practice actually occurs is unknown. It could easily be an unwarranted perception based upon the outcomes of particular cases. Whether true or not, there is a way to prevent overcharging from occurring or to prevent plea-bargaining as appearing to stem from overcharging. The means by which this can be controlled is through the adoption of a provision, similar to that found in Pennsylvania, that restricts adult court sentencing to only convictions for the excluded offense. That is to say, if a youth is charged with murder in criminal court, and is subsequently found guilty of manslaughter, he or she must be referred to juvenile court for disposition as a delinquent. In this situation, there is no prosecutorial advantage to overcharging, since the outcome would be the same as if the youth had been charged with manslaughter in juvenile court in the first place.

The final point, with respect to excluded offenses, focuses on the minimum age requirements for exclusion. As mentioned earlier, four states which exclude serious crimes have established no minimum age requirements for excluded offenders; the other seven states have established ages 13 to 16, under which such youth will be referred to juvenile courts, despite the fact that they are charged with those particular offenses. In our judgment, there is no valid reason for referring any youth under age 15, by whatever mechanism, to the criminal justice system. Beyond the obvious arguments relating to the meaning of childhood and the role of juvenile courts, there are other compelling reasons to restrict referrals by age.

In 27 of the 52 jurisdictions investigated, youth convicted in criminal courts must be sentenced to adult corrections facilities when confinement is ordered. In 18 states, juvenile facilities may be used by adult courts; in six states, they must be used for youth below the age of initial criminal court jurisdiction. Given what is known about criminal court behavior in cases involving very young defendants, one of two sentences are pragmatically predictable in such cases: these defendants will either be sentenced to adult probation or to juvenile confinement. Adult court judges are simply not going to sentence 13 or 14 year olds to prison. The first outcome would appear to be inferior to dispositional options available to juvenile courts; the latter would be the same as those available to juvenile courts. The only situation where adult court handling would surpass juvenile court jurisdiction would occur where youth would be given sentences of over five years, which would eventually require transfer of these youth from juvenile to adult institutions. The question has to be asked: how often would a 13 or 14 year old be given a five year sentence? Since the data on 1978 suggests that less than 400 youth in the country received sentences of that length (excluding youth in adult courts by virtue of lower ages of jurisdiction), the likelihood that any of them were under 15 is extremely slight. We know statistically that most of them were age 17. For the handful of cases where 10 to 14 year olds are guilty of murder, for example, there seems to be no

justification for establishing legal vehicles whereby they could be subject to adult court sanctions. It is difficult to accept, as some advocates argue, that even murderers are beyond redemption at the age of 13 or 14. A uniform, minimum age of referral at age 15 would appear to have many more socially positive than negative features.

The Age-of-Jurisdiction Issue

Today, more than ever, the age of 18 has become the age of majority for all aspects of social life. In the area of criminal responsibility, it has now been adopted in 38 states, the District of Columbia, and the federal code. In 12 states, either age 16 or 17 persists in defining criminal court jurisdiction. Some scholars have urged adoption of a nationally uniform age of 18, basing their arguments on either an "essential fairness" doctrine or an "equal protection" argument. While their proposals have merit, we believe that the pursuit of such an objective would be fruitless. Short of a decision by the U.S. Supreme Court holding such statutes to be unconstitutional, an event we consider to be highly improbable, the 12 states in question will continue to defend their somewhat atypical practices as preferred standards. Interviews in Massachusetts and New York, as well as conversations with officials in other age-of-jurisdiction states, clearly indicated no body of sentiment for bringing their laws into conformity with the rest of the country. Officials understand that their laws are dissimilar and they seem to like it that way. We do not believe that any degree of lobbying is going to cause legislatures in those states to raise the established age of criminal responsibility to 18. As a consequence, it appears, at least for the foreseeable future, to be a non-issue.

Youthful Offender Legislation

What does appear to be worth pursuing is a greater and more regularized adoption of youthful offender provisions. At present, a number of states have enacted legislation intended to deal with what are called "youthful offenders". However, on close examination, they apply to different age groups of criminal defendants in different ways. In a very limited number of states, such as California, youthful offenders are sentenced to facilities which are administered by state juvenile corrections agencies. In other states, North Carolina, for example, they are sentenced to separate facilities operated by adult corrections agencies. In the majority of states where youthful offender legislation is found, separate sentencing structures have been established, which are generally applied to first-time offenders and carry lighter penalties than sentences for other adult defendants. They are shorter in duration, less severe in terms of incapacitation, and more oriented toward rehabilitation. The term "youthful offender" is obviously used in different ways around the country.

Yet, the idea of separating youthful offenders, for sentencing purposes, from both juvenile delinquents and older criminals offers a way out of some of our current dilemmas. While community-based treatment may be no more acceptable for young, serious offenders than confinement in state penitentiaries, there is still value in treating 15 or 20 year old offenders in ways that take into account both their ages and the gravity of their offenses. Current research did not carry us to a point where responsible legislative proposals can be offered; yet the idea presented is clearly supported by our findings.

The Judicial Process

The following comments deal directly with both the aspects of referring juveniles and of trying and sentencing youth as adults. It will be obvious that most of the recommendations can only be enforced through legislative enactment. Nevertheless, they are separated from the recommendations above. In so doing, it is hoped that the reader's attention can be better focused upon the issues underlying the suggested changes.

The research uncovered a number of practices which warrant comment here, relating to both judicial and prosecutorial behavior. Some of them apparently stem from the understandable limitations experienced by rural and suburban courts. Others apply more broadly to the entire field. The comments below will be stated generally with the understanding that the assumptions will be invalid for specific jurisdictions. Readers must determine for themselves whether these recommendations are relevant to the communities in which they are interested.

Guaranteeing Impartial Triers of Fact

However small the bench in a particular county, a judge should be forbidden from conducting juvenile court waiver hearings and the subsequent criminal trials. The reverse is also true. Criminal court judges should not decide to transfer youth to juvenile courts and then hear the delinquency petitions. The frequency with which such practices occur is unknown, but it was reported by respondents in more than one state. Reasons for the recommendation should be obvious: judges should be protected from charges of bias; defendants should be guaranteed impartial trials of the fact. Equally obvious is the fact that both the proscription and the solution are beyond the powers of local judges. Legislative action is needed. In addition, state supreme courts must ensure, through assignment, that other judges are made available.

Who Should Move for Waiver?

Courts, on their own motion, should not be allowed to initiate waiver proceedings. There was a time, before the full impact of Kent and Gault were felt, that sua sponte motions were necessary and even desirable. Today, this practice has probably outlived its usefulness. With the expanded presence of prosecutors in juvenile delinquency cases, there is a responsible official to whom this discretion can be entrusted. Judges are then freer to decide waiver motions on their merits, without trying to forget the reasons which led to the requests.

Juveniles should be permitted to initiate waiver motions. However, requests of this type should not be viewed as transfer mandates. The same factors which govern waiver motions, filed by prosecutors, should equally apply to motions filed by juveniles. Courts must consider amenability to treatment, for example, which may or may not be of critical concern to defense counsel. The point here is that juveniles before juvenile courts should have the right to request transfers, a right which is not now universally provided.

Appealing Waiver Decisions

When considering the question of appealing waiver decisions, our recommendations vary from the discussion above relating to waiver motions. Appealing the decision to waive is generally regarded as a procedural right, possessed by the juveniles certified to criminal courts. That is as it should be, because of the sanctions (no matter how infrequently used) available to adult sentencing courts. In some states, prosecutors also have the right to appeal, in cases where their motions to transfer are denied. We find little justification in allowing prosecutors this prerogative. The job of prosecutors is to prosecute; the job of judges is to hear the facts and apply the law. Despite the frustrations prosecutors may have with local court philosophies, the fact remains that a forum exists to try their cases, even when waiver motions are denied. Comparable frustrations are experienced in other parts of the system, all without redress. Many law enforcement officers would like to appeal prosecutors' decisions not to file criminal charges against particular suspects, for example. The lack of concentrated power in these matters acts to protect citizens from unwarranted exposure to jeopardy. For this reason, it appears equitable to extend the right of appeal to juveniles and to deny the same right to prosecutors.

The question of the timeliness of appealing a waiver order has presented juvenile justice experts with a particularly thorny predicament. If criminal trials must wait until appeals are fully resolved, juveniles in question could well achieve majority without having ever been called to account for their crimes. If, on the other hand, appeals must wait until the youth have, in fact, been convicted, the consequences are extraordinarily oppressive. They have had the burden and expense of two defenses; they have lost their cases; and, in most jurisdictions, they will then be facing adult sanctions. Most

states have adopted procedures more heavily influenced by the first set of concerns: youth can assign the question of improper waiver to their criminal appeals after conviction. Surely, some better way of resolving this condition can be found. Two possibilities exist beyond simply enacting the second option. The first one would be effected through a one-time appeals procedure. In other words, juveniles who are certified to criminal courts would be entitled to appeal that issue to whatever court provides the first line of appellate review for juvenile court decisions. If unsuccessful, further appeals could be handled as they are now, as part of the post-conviction remedies but, if successful, juvenile courts could immediately proceed to hear and dispose of the merits of the case. One other possible solution would be to toll juvenile court jurisdiction in such a way that jurisdiction would not be lost until after appeals had been exhausted, even if they extend into majority.

The Use of Juvenile Court Records

The importance of juvenile delinquency records to waiver or prosecution decisions, as well as to criminal court sentences, has long been debated. The fact is that not much is known about the impact of prior delinquency on judicial behavior with regard to waivers and criminal sentences. Nevertheless, one point, as a matter of policy, can be made. Juvenile delinquency records should not be available to adult courts for any purpose.

Acts of delinquency are, by definition, not crimes. To equate delinquency records with criminal records denies not only this legal reality but also ignores the very important distinctions which clearly exist between juvenile court adjudications and criminal convictions. To be sure, the state criminal codes form the bases, by reference, to juvenile courts' jurisdiction over delinquents. Still, the distinction between delinquency and criminality is unequivocal. Until that demarcation is legislatively eliminated, both the letter and the spirit of the law should be maintained.

The Future of Juvenile Courts

This last point is one that addresses itself more to the juvenile court bench than to the court. It seems to us that much of the current legislative activity aimed at delinquency matters reflects a public dissatisfaction with juvenile court treatment of serious juvenile offenders. To be sure, a lot of the criticism results from irrational responses to crimes in general, much which is committed by youth who, for one statutory reason or another, are not even subject to juvenile court jurisdiction. The effects of such criticism are obvious. There are, of course, the political prices paid by some judges who are not returned to office. There are other evidences, as well, seen in the ways juvenile court proceedings have become mirrors of their adult court counterparts. One can point to the substantial restrictions placed upon juvenile court discretion in the past few years, and to increasingly strident

calls for the total elimination of juvenile courts as a social institution. At the same time, practically everyone we interviewed expressed opinions favoring the continued existence of juvenile courts and the wistful hope that more young offenders could be effectively controlled and treated as juveniles.

Over the next decade, juvenile courts could reassert themselves as essential institutions with both judicial and social service responsibilities. If juvenile court judges wish to maintain greater jurisdiction over juvenile delinquents, particularly serious juvenile offenders, and reduce the current spate of legislative proposals, they must recognize the importance of publicly demonstrating that they can effectively deal with the problem. They must present themselves more credibly in dealing with juvenile offenders, and they must do so in ways that are demonstrably better than those utilized by the criminal court system. It may not be possible to immediately predict how this will occur, given the current environment, but the opportunity is there to once again make juvenile courts more relevant for troubled youth.

The Correctional Process

The fundamental concerns underlying the transfer issue have very little to do with the judicial process. Despite all the doubts and enthusiasm expressed about the relative superiority of one level of courts over another, most people are really attracted to or appalled by the corrections options that are tied to the two systems. In other words, the basic issue is not which type of trial is fairer to all parties; rather, the issue is what happens to people who are found guilty.

Throughout this study, respondents characterized the adult system as one which offered greater opportunities for young defendants to avoid punishment, at the risk of exposing themselves to harsh and degrading experiences if convicted. The juvenile system was contrasted as one in which juveniles are much more likely to be found delinquent, but then committed to programs which were not geared to deal with serious and violent offenders.

Not one person interviewed believed that young people should be sent to prisons, but many interviewees endorsed the practice (and hence, the transfer process) because they perceived the juvenile corrections system to be bereft of effective services. On the other hand, a number of interviewees preferred that juveniles be treated as juveniles and not to be sent to adult courts which could, in turn, open the door to adult facilities. Yet, even most of them acknowledged that juvenile corrections facilities are better off for having lost the more hardened juveniles, by virtue of the legal mechanisms that transformed them into adults.

Both groups seem to be saying the same thing, despite their outward differences. They want to see crime rates reduced. They want an end to so

much involvement by young people in crimes of violence. They want the people who are arrested and convicted to be handled in such a way that future arrests will be unnecessary. In short, our investigation would suggest that people don't want to be cruel; they just want to feel safe.

The vortex of those feelings is not to be found in the courts. In general, it will be focused in law enforcement; in the specific case, it will be found in corrections. The following comments address the latter service.

If one begins with an assumption (which has found increasing currency over the past decade) that juveniles should not be housed with adults, we find ourselves with a curious inconsistency in most states in the country. We can point to numerous instances wherein 17 year old "juveniles" are forbidden from placement in county jails, while 14 year old "adults" may be legitimately detained there. It all results from the legal fiction that equates adulthood with criminal responsibility. To some observers, there is no inconsistency. To others, it is a national scandal.

Is there any way out? Are there any rules or guidelines which seem to sensibly achieve the intention of holding certain young people criminally responsible, while preserving, at least as long as possible, their childhood? There aren't many good answers, but there may be a few.

Detention Options

Let us begin with the issue of detention and with the assumption that juveniles and adults should never be commingled. In the minds of planners, scholars, national leaders, and many urban officials, this assumption conjures up separate facilities,--jails for adults, and detention centers for juveniles. In the minds of many state and local officials, particularly in rural areas, the picture is one of a single building--a jail with a juvenile wing or cell. Juveniles under the former example may receive counseling, prophylactic medical care, and educational supplements while awaiting hearings. Juveniles in the latter situation may only receive food and solitary confinement. In other, more basic ways, the two forms of detention may be less distinguishable: being locked up means being locked up.

Recognizing the enormous differences in detention facilities in this country, and without wishing to comment upon their adequacy, the following recommendation is offered as a guideline: juveniles should be legally considered juveniles for as long as possible. The practice of transferring youth, awaiting trial in adult courts, to jails (or the adult sections of jails) should be discouraged. Since many of them are never actually tried in adult courts, due to prosecutorial decisions resulting in dismissals and bargained pleas, they need not be considered adults at this point in the proceedings.

The problems of segregating these youth from younger, less sophisticated juveniles is usually less of a problem in detention homes than it is in longer term corrections facilities. Security features built into most detention homes would permit such segregation, without denying to these youth the benefits available to juvenile detainees.

Corrections Options

The issue of sentencing youth as adults poses several different kinds of problems. Yet, the objective should be the same as in the case of detention. For as long as reasonably possible, the corrections system should accommodate the age differences of its inmates. This translates into continued separation of youth from adults, irrespective of their common identification as convicted adult defendants.

Separation, as we are using the term, does not simply mean the absence of sight-and-sound contact. Key respondents around the country repeatedly noted the absence of specialized programming and staff training in adult institutions which house both younger and older offenders. Separation should be used to concentrate more resources on younger offenders, not simply to separate them from the rest of the correctional population.

From a bureaucratic standpoint, this type of separation is very difficult to create. It is even harder to administer a segregated institution over a prolonged period of time. There are alternatives, however.

The first option, the one heard most frequently in the case study states, would call for the creation of small, secure facilities which would be available to juvenile courts. According to our informants, many juveniles are being waived or otherwise referred to adult courts because there are no facilities in the juvenile system that can effectively deal with the most serious cases. Both juvenile court judges and many critics of juvenile courts agreed that such facilities would eliminate a large number of current referrals. They further agreed that the exercise of this option was preferable to the continued referral of serious juvenile offenders to the adult system.

A second option would set aside separate facilities in the adult corrections system which could only accept adult offenders under a specified age. In this way, separate programs, administered by specially trained staff, can be offered with a minimum of bureaucratic difficulties.

A third option grants to criminal courts the discretion to commit young adult offenders to facilities operated by the state juvenile corrections agencies. Several variations on this plan are possible, as evidenced in the state profiles. Generally speaking, the differences relate to the application of youthful offender statutes, laws permitting administrative transfers at the time of majority, and paroling discretion. Whatever particular pattern is used, the salient point is that adult courts may sentence to juvenile facilities.

States which permit this alternative should designate certain facilities which are used for adult court commitments. In this way, such youth can remain more easily segregated from delinquents committed by the juvenile courts.

The mutually exclusive existence of separate facilities in the adult corrections agency or in its juvenile agency counterpart may appear to be a distinction without a difference. On the contrary, strong arguments exist for the desirability of each. Persons favoring young offender facilities in the adult system point not only to the legal basis but also to the ability of the adult system to exercise better control and discipline. They also suggest that, because of the age of these correctional clients and their potential for rehabilitation, such facilities can become models for the rest of the adult system. Conversely, they point out that the same facility, operated by a juvenile corrections agency, would be viewed far differently in relation to the other juvenile service units.

Proponents of juvenile justice placement usually argue that several benefits accrue to the young adult offenders sent to them. The most persistent point is that these individuals are spared the risk of physical and sexual assaults in adult facilities. In addition, they point to their expertise, in staff and program development, for working with adolescents.

All of these corrections options may be found in operation somewhere in America,--they are not untried theories. In view of the alternatives available, it is difficult to justify the sentencing of youth to adult facilities where they will be commingled with older offenders. Unless a state only has one institution, it would seem that the combined leadership of the three branches of government could prevent this from happening, with minimal cost to the state.

RECOMMENDATIONS FOR FUTURE RESEARCH

During the course of this work, questions constantly arose which were beyond the configuration of the original research design. In some instances, as was the case in our search for traffic and conservation offense data, the methodology was modified to accommodate our curiosity. Of necessity, though, many other worthwhile questions were simply noted and set aside. It seems appropriate to end this report by citing these areas for future research.

The Dangerous Young Offender

The very legitimate public outcry over violent crimes committed by juveniles has come to dominate contemporary thinking about the entire problem of juvenile delinquency. It is time to put this matter into perspective.

The terminology of the professional literature and legal enactments need to be standardized. For example, there are several life-threatening acts, such as aggravated burglary that terrify people but are not normally defined as either "violent" or "dangerous".

Perhaps more troubling is the way in which current court jurisdictions unnaturally divide the 15 to 26 year old population of serious offenders.

Various referral mechanisms, described throughout this report, represent legislative attempts to bridge the bureaucratic chasm between the two legal systems. However, the sociological facts would suggest that perhaps it is time to reexamine the problem without being constrained by present legal structures. If we know that most life-threatening crimes are committed by 15 to 26 year olds, why isn't that information used to design the governmental machinery that is expected to deal with the problem? Much research is required to understand the legal, administrative, and political implications of creating new judicial and correctional systems that attack criminality in a more age-focused way.

Fear as an Element of Social Policy

While the prevalence of crime is clearly tied to many causes, most of them appear to be linked to urbanization. Yet, some highly urban states react to criminal activity far differently than do other states which are just as urbanized. The amount of legislative activity is certainly one difference which has been documented in this report.

What accounts for these differences? Are there certain combinations of criminal laws that generate greater public confidence? Are there public or privately operated programs in certain states or communities that serve to reduce public fear of crime? Can these programs be made to work elsewhere? If researchers can identify the elements present in states which appear to be reacting to their crime problems in ways that promote public confidence, they would make a considerable contribution to current efforts to deal with crime and delinquency.

The Growing Role of Prosecutors

One very evident trend in juvenile courts is the growing role of prosecuting attorneys. They presently exercise more responsibilities in determining jurisdiction, grounds, and charges associated with the filing of petitions. In many jurisdictions, they also determine such collateral questions as diversion, waiver, detention. Local practices may even accord greater authority to prosecutors than may be found in statutes.

There has been little research on the role of prosecutors with regard to juvenile court intake. Yet, their involvement has a profound impact upon juveniles who come before the courts. This "gatekeeping" role effectively controls whether cases will be treated informally, formally, or even dismissed without juvenile court intervention. How deeply juveniles penetrate the system, both in terms of adult court referrals and juvenile corrections options can also be affected by prosecutors. These decisions obviously impact upon many juveniles each year.

What are the different models for prosecutorial involvement presently being used? How different are the outcomes from each other and from previous practices in which intake was exclusively a court function? General assumptions, made by many juvenile justice specialists, tend to suggest that greater prosecutorial involvement results in greater due process, at a cost of more filings, more confinements, and more waivers. Would these outcomes be supported by reliable research?

The growing role of the prosecuting attorneys in juvenile court hearings has also called into question the need for the court itself. If there are to be no substantive distinctions between criminal trials and delinquency hearings, is there any current justification for maintaining two court systems? Investigation of the trend toward more prosecutorial involvement in juvenile court proceedings is clearly warranted.

Comparative Dispositions

Thousands of youth are referred to criminal courts each year. There, they are tried as adults for crimes committed during their juvenile years. The stated rationale for these legislated practices is either that everything which the juvenile justice system has to offer has been unsuccessfully tried, or that certain crimes are so reprehensible that juvenile court dispositional options are not appropriate. Underlying both of these theses is the belief, frequently stated in the legislation, that public safety requires longer periods of confinement or more severe punishments than these same youth could receive in juvenile courts. Stated in another way, youth convicted in

adult courts will receive longer, tougher sentences than they would have received in juvenile courts.

Is it true that juveniles tried as adults, when convicted, are sentenced more severely than juveniles who are adjudicated delinquent and who receive juvenile court dispositions? Our research to date revealed that adult courts in 1978 ordered fines and probation in half the cases initiated against youth through judicial waiver or prosecutorial mechanisms. Further, where confinements were ordered, maximum sentences did not exceed one year in over 40 percent of the cases. All of these sanctions are normally within juvenile court dispositional powers. More important, if the belief that youth in adult courts receive longer, tougher sentences is erroneous, it suggests that current attempts to ease the referral process may be counterproductive. A study to test the validity of the hypothesis is very much in order.

The Use of Delinquency Records

During the current study, several questions arose regarding the use of juvenile court case files. How important are they to juvenile court judges when ordering judicial waivers? Are records of previous delinquency adjudications dispositive of the requirement that waived juveniles be "unamenable" to rehabilitation as juveniles? Are such court records available to prosecuting attorneys? Are they used differently by prosecutors in states having judicial waiver provisions from those which provide concurrent jurisdiction?

These questions lead to another set of research considerations, namely, the use of juvenile court records by adult courts as bases for sentencing. In some states, this practice has been legislatively instituted; in other states, it is forbidden in one way or another. Some interviewees suggested that practices varied from statutory procedures. For example, respondents sometimes reported that such records were rarely used, despite statutory authority, by sentencing courts. The result was that convicted youth were considered first-offenders, despite lengthy delinquency histories. In other states, respondents believed that informal channels existed for criminal court judges to have access to delinquency information, despite statutory prohibitions. Authoritative research findings could easily be used to either ensure greater compliance with legislative intent or create more uniform procedures throughout the country.

Youthful Offender Legislation

Several states have either enacted or are considering youthful offender statutes which authorize criminal courts to sentence young adults and waived

juveniles to facilities for either shorter periods or for less secure confinement. These statutes commonly result in sentences of lesser severity than those given under general criminal sentencing guidelines. In a few states, youthful offenders are assigned to the state juvenile correctional agency. Whatever the arrangement, it is frequently difficult to understand the differences between youthful offenders, criminal offenders, and juvenile delinquents, in terms of their criminal histories and the sentences they receive. Except for the age requirement, normally overlapping both juvenile and criminal court jurisdictions, unique characteristics are difficult to discern.

Youthful offender legislation also creates several unusual problems for correctional agencies and facilities. For example, the incarceration of youthful offenders with juvenile delinquents creates serious policy concerns. However, housing them in prisons containing more mature and criminally sophisticated adults defeats the purpose of the special legislation. It seems timely to examine the ways in which a trifurcated correctional system might best evolve, including the possibility of a separate state corrections agency or unit to serve only this class of offender. This investigation should assess those factors influencing decisions related to prosecuting persons under all three types of sentencing structures, i.e., youthful offenders, criminal offenders and juvenile delinquents. Special attention would be directed at examining the influence of discretionary factors at both the prosecutorial and sentencing levels.

The Silent Disappearance of Juvenile Court Judges

The precise structure of juvenile courts varies. This is well documented in Chapter 3 of this report. Very few states have juvenile courts per se. In most instances, juvenile cases are heard by circuit, district, superior, or common pleas judges. In counties where the volume of cases is high, juvenile divisions or even juvenile courts have been created, resulting in erratic statewide structures. Over the years, juvenile divisions and courts increased in number to a point where, in the 1960s, several thousand judges carried full-time juvenile caseloads and considered themselves "juvenile court judges". Their public images, constituencies and in-service training all related to juveniles in court.

Over the past ten years, considerable reforms have occurred in court organization. Through court unifications and assigned rotation of judges, a new phenomenon is coming into focus. Increasingly, general trial judges are being assigned to hear juvenile cases for a month or two a year. Workloads of judges thus become equalized and the decisions more consistent among juvenile and adult cases. However, juvenile benches are now filled by judges who have decreasing knowledge of the needs of children or of available juvenile resources. Their in-service training tends to be in such areas as criminal procedure and evidence. Their professional memberships

tend to be away from juvenile associations. The result is that "juvenile court judges" are disappearing.

The implications strike at the foundation of the current juvenile justice system. The need for a separate court, separate procedures, or a separate philosophy seems to be slipping away. The opportunity for research is now, while the transition is occurring; the results could have substantial effects on legislators and judges.

The Use of Juries in Juvenile Courts

In America today, there are over 15 states which permit the use of juries in juvenile courts. Many of these statutes were passed since 1971, the year in which the U.S. Supreme Court held, in McKeiver v. Pennsylvania, that jury trials were not required in juvenile court proceedings, since they would destroy the unique character of the juvenile court system.

Several aspects of this phenomenon warrant investigation, including an examination of why some legislatures have ignored the Supreme Court's decision; whether there is any validity to the notion that juries are incompatible with juvenile court philosophy; and the effects, if any, of using juries in juvenile court hearings.

Effects of Denial of Bail to Juveniles

In the course of the Academy's research relating to youth in adult courts, persistent themes recurred as respondents were asked to enumerate the relative advantages of waiving juveniles to criminal courts. A frequent response related to the use of bail and release on recognizance which, in most states, is possible only in adult courts. There appears to be some basis for observing that one advantage of referral to criminal courts is the presence there of bail. It may unnecessarily glut the adult system to refer juveniles to it for benefits that could be built into the juvenile system as well.

The use of detention and denial of bail in juvenile courts raises several interesting issues: (1) there are substantial eighth Amendment questions, concerning cruel and unusual punishment, and 14th Amendment issues of due process and equal protection of the laws; (2) children held in detention are denied the educational and socializing experiences normal to this period of their lives; (3) needless detention of children costs unnecessary expenditure of public funds.

A national perspective on these issues is far from clear. By testing the mood of the country for the use of bail in juvenile courts, a set of national policy recommendations would emerge, that could affect both the frequencies of pre-hearing detention and waiver to adult courts.

The Impact of Former Jeopardy on Cases Transferred to Juvenile Courts

Most states permit juvenile courts to transfer juveniles, under certain circumstances, to the jurisdiction of adult, criminal courts. Once transferred or waived, these individuals are considered adults, subject to all the benefits and hazards to which adults would be exposed. They are, in law, adults.

An examination of case law reveals that such transfers from juvenile courts are considered legal, when accomplished in accordance with state laws dealing with the subject. Former jeopardy (or double jeopardy) has been held to be inapplicable to such transfers because of the non-criminal nature of juvenile court proceedings or because such hearings only constitute probable cause reviews.

However, less is known about the reverse procedure. In a few states, criminal courts can waive underaged "adults" back to juvenile courts. In New York, for example, 13 to 15 year olds, who are charged with certain felonies, must initially be tried in criminal courts but may be waived to family courts at any time during the proceedings. The issue raised is whether, because the case began in criminal court, the doctrine of former jeopardy would prevent a subsequent retrial in juvenile court for the same offense.

The Trial of Traffic and Other Minor Offenses

As reported earlier, an estimated 1,000,000 youth a year are routinely tried as adults for traffic offenses, fish and game law violations, and other minor misdemeanors. These cases result from state laws which divert such offenders, through one legal mechanism or another, from juvenile court jurisdiction to criminal or quasi-administrative courts. However, in about 20 states, traffic and other minor offenders are routinely referred to juvenile courts.

Procedural differences among the states appear to have little to do with considerations of public safety. Rather, they appear to be more related to perceptions of the dividing lines between adulthood and juvenility. For example, a juvenile traffic offender in one state might typically be fined by

an adult court, whereas the same type of offender in another state might be "grounded" for six months by the local juvenile court.

While both approaches might be valid, these kinds of hearings probably amount to somewhere around 2,000,000 cases a year. Relative cost and outcome advantages of one system over another could point to the best and most efficient ways to handle these cases. The result could mean the identification of considerable resources which could be shifted to other types of offenders.

APPENDIX A

APPENDIX A

METHODOLOGY

This study was organized into three complementary lines of research: an extensive literature review; a nationwide survey of county-specific statistical data; and a ten-state case study. Each major line of research, in turn, consisted of two or more major pieces of work.

LITERATURE REVIEW

The literature review consisted of a search, from 1950 to the present, for publications pertaining to trying juveniles as adults. Indices of both popular and professional publications were utilized. They included:

- The Reader's Guide to Periodical Literature
- The Index to Legal Periodicals
- The Social Sciences Index
- The Criminal Justice Periodical Index

The Mechanized Information Center at the Ohio State University and the National Criminal Justice Reference Service performed searches for published material related to the prosecution of youth as adults. The Index of Dissertation Abstracts was also searched.

At the same time, staff members contacted, in an attempt to uncover local research, research in progress, and unpublished material, a variety of groups active in criminal justice research and reform. The result of all these efforts is a review of over 175 books, articles, and monographs dealing with some aspect of the referral process. Many of these works were used, during the preliminary stages of the research, to identify important legal issues and policy questions. A discussion and presentation of the literature review is found in Chapter 2.

The legal research for this report, carried out by staff attorneys and law students under their supervision, included both statutory material and case law. The analysis of the statutory law focused on the laws in effect during calendar year 1978 in 52 jurisdictions (the 50 states, plus the District of Columbia and the federal courts). While special attention was paid to any changes in state laws that occurred in 1978, only in the ten case study states did the research more extensively trace the historical changes under which juveniles were prosecuted as adults. In the ten case

study states, the staff traced juvenile court jurisdiction and transfer provisions to the initial juvenile delinquency statutory enactments.

A statutory update was subsequently conducted through 1980 and is reported in the final section of Chapter 3 and in each state's profile, where relevant.

The search of state and federal juvenile and criminal codes focused on certain areas. One of the major concerns was the jurisdictional boundaries of juvenile courts. In each jurisdiction, information was sought about:

- The maximum age of original juvenile court jurisdiction.
- The age to which juvenile court jurisdiction may be retained.
- Offenses by youth outside juvenile court jurisdiction.
- The role of the prosecutors.
- Those situations in which juvenile and criminal courts share concurrent jurisdiction.
- Those situations where juveniles can request trial as adults.

Specific information pertaining to the judicial waiver procedures in each state was also sought. The concern here was with ascertaining:

- For what offenses juveniles might be waived.
- At what age and under what circumstances juveniles become eligible for judicial waiver to criminal courts.
- By whom waiver proceedings can be initiated.
- Whether hearings are required prior to waiver
- The factors to be considered in judicial hearings.

Along with the two basic groupings of statutory information and literature review, mentioned above, the Academy staff sought information on court organization in each jurisdiction, the corrections placements available to juvenile and criminal courts, and the transfer procedures between juvenile and adult corrections agencies. These searches were initially conducted through telephone interviews with state court administrators and with corrections officials in every state and, ultimately, back to the state codes.

Court Organization

Three basic pieces of court organization data were sought from every jurisdiction:

- The location of juvenile jurisdiction.
- The location of criminal jurisdiction, particularly those courts to which juveniles were referred.
- The location of juvenile traffic jurisdiction.

The telephone interviews and statutory reviews were supplemented through the use of several research volumes, including National Survey of Court Organization,¹ Courts of Limited Jurisdiction: A National Survey,² and state specific reports on court organization. These data were essential in identifying the courts to be contacted for the national census and in understanding the referral mechanisms.

The corrections information sought from every state included the organization of state and local juvenile and adult corrections services; whether youth convicted in adult courts could be sentenced to juvenile and/or adult corrections facilities; whether youth placed in adult facilities could be judicially or administratively transferred to juvenile corrections; and whether there were youthful offender sentencing or treatment provisions within each jurisdiction. This information was also obtained through communication with juvenile and adult corrections officials in every state. Statutory searches were supplemented by corrections agencies descriptions found in Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities, United States and Canada, 1978 Edition.³

The results of the statutory review may be found in Chapter 3, How Youth Are Referred to Adult Courts: Overview of State Statutes, and in the 52 state and federal profiles which appear in a series of companion volumes to this report, divided according to geographical areas of the country.

In most of the 52 court systems included in the study, the case law survey began with 1950. This cutoff date resulted from the interplay of two factors. Constraints of time and staff resources were one consideration. (An initial screening identified over 1,000 relevant cases since the 1950 cutoff date.) The desire to focus analysis on the litigation most directly responsible for and related to the current state of affairs was the other consideration. It is largely during the past 30 years that juvenile offenders have been defined as we know them today. It was felt that resources would be best spent in unraveling the complex fabric of the law during this important period of transformation.

Analysis of case law was also limited to decisions of the federal appellate courts and highest state appellate courts. It is in the federal

appeals courts and state supreme courts that one finds precedent-setting litigation. This is particularly true of the issue at hand.

The information gained in the literature and legal reviews not only comprise a significant part of this report, but it also served to direct the other two phases of the work. Through these initial review phases, transfer mechanisms were identified in each jurisdiction; parochial terminology was categorized and used wherever possible; issues in specific states were surfaced and addressed in the case study states; and generally facilitated the field work.

DATA COLLECTION

By far, the most ambitious and difficult part of this study was the data collection line of research. As social researchers well know, collecting data from public agencies is, at best, difficult. This study was no exception. Before it was completed, staff members would have examined everything from very sophisticated data tapes to court records kept in penciled, handwritten notebooks. Beyond the normal difficulties of social research were problems consciously created by the researchers, with respect to defining the population to be studied; to deciding to conduct a census, rather than a sample study; and to electing to seek data on traffic and other minor offenses.

For purposes of the study, the census population was defined as any person under 18 years of age. These individuals are designated by the term "juveniles" when discussed within the context of juvenile courts; they are designated "youth" when discussed within the context of adult or criminal courts. While juveniles and youth are, in fact, the same age group divided jurisdictionally, youth are, in law, adults in every jurisdiction in the country.

There are at least four ways juveniles can be referred to adult courts:

- By judicial transfers, in which juvenile court judges waive jurisdiction, on a discretionary basis, to adult courts. In some states, juveniles charged with crimes may ask to be tried as adults. This type of transfer is usually handled as part of the judicial waiver procedure, and may only be granted, in most states, at the judge's discretion;
- By the exercise of prosecutorial discretion, when juvenile and adult courts share concurrent jurisdiction over particular offenders or offenses. The prosecutors have the authority to decide where to file charges under this type of legal mechanism. The discretion, once exercised, is usually not appealable;

- By legislatively excluding certain categories of offenses from juvenile court jurisdiction. This automatically results in referrals of youth arrested for those offenses to criminal courts.
- By legislatively defining the age of initial criminal court jurisdiction to an age below 18. In 12 states, the minimum ages of criminal responsibility are either 16 or 17. As a consequence, those individuals above the minimum age of criminal court jurisdiction are automatically tried as adults.

This last category of youth created the greatest hazard, in terms of data collection. At the same time, the data collected in these 12 states may be the most remarkable information in this study, since they have never been collected and presented before. Nevertheless, that decision not only increased the magnitude of the research to be conducted, but it also increased several-fold the level of complexity of the data retrieval and collection process. County prosecutors and court clerks would be asked to divide their entire criminal caseloads for 1978 by age, and to report data pertinent only to 17 year old defendants and, in four states, to 16 year olds, as well.

Furthermore, the manner of data collection varied considerably from the other legal mechanisms. In judicial waiver cases, juvenile court defendants could be traced or tracked from juvenile court records to the adult courts. In instances of direct files, prosecutors generally had records which would also permit the tracking of such individuals. Even in excluded offense cases, it was simply a matter of locating certain cases which involved a homicide or other crime and following its progress through the system. However, in age-of-jurisdiction cases, the critical variable is age. All cases of 16 and/or 17 year olds would have to be identified; only then could other data elements be located. Since criminal courts, unlike juvenile courts, do not consider age to be a significant basis for accessing data, their ability to retrieve data concerning defendants within certain birth cohorts was negligible.

This task was beyond the capabilities of most local officials to comply, despite their willingness to cooperate. In South Carolina, state officials were able to supply such data in addition to arrest data, from their statewide criminal justice information system. In a burst of extraordinary hospitality, Vermont officials manually retrieved the requested information to the extent that it was accessible. In the remaining ten states, all of the statistics which appear in this section consist of arrest information collected by state agencies responsible for reporting Uniform Crime Report data. In Missouri, only felony arrest data were available, so property and public order offenses for that state may be underrepresented.

State officials in Connecticut, Georgia, Massachusetts, Michigan, Missouri, New York, and North Carolina estimated that very high percentages

(Between 90 and 100 percent) of such arrests are referred to adult courts or to prosecutors. In Georgia, Louisiana, and Texas, local studies resulted in very similar estimates for the statewide arrest data. Since the South Carolina and Vermont statistics are based on court filings, no attempts were made to calculate court filing data based upon arrests.

The second methodological issue related to the decision to conduct a national census of youth in adult courts. The decision to collect data for the entire cohort population rested on two main considerations.

First, in the area of transfer, the country faces an information vacuum. Individuals under 18 years of age have, for years, been prosecuted as adults. No one, however, had any idea how often this occurred. Different researchers, over the years, had developed bits and pieces of information covering a limited number of jurisdictions and procedures. Such a paucity of information called for the development of a comprehensive data set that could serve as a baseline for future research in this area.

The second consideration was more weighty. Referral to adult courts, as a strategy for dealing with serious juvenile crime, seems to be growing in importance and coming under increased legislative scrutiny in a large number of states. When legislators make their decisions, they should have at their disposal the most comprehensive information practicable. Certainly, the best information, the data most easily defended, are all the cases in every legislator's jurisdiction. Because of the understandable interest of legislators, and Congressmen for that matter, in having data pertinent to their home districts, many reports based upon scientific sampling techniques frequently are disregarded as a basis for political decisions around public policy. In a highly volatile policy area that can literally lead to the forfeiture of childhood for many juveniles, the most extensive data possible would be needed before the product could truly be viewed as a public service. This required a census.

The third and final research strategy called for the collection of as much data about youth in adult courts for traffic and other minor offenses. Most minor traffic, fish and game, boating, and other summary offenses are handled in adult courts, because of the exclusion of these offenses from juvenile court jurisdiction or because concurrent jurisdiction exists between juvenile and criminal courts. Again, as in age-of-jurisdiction cases, little is known about the incidence because of both the legalistic notion that youth so charged and tried are adults, and because of the monumental data retrieval problems. Yet, it appeared to be a valuable set of information if it could be obtained. The decision was, therefore, made to attempt to collect traffic data in states where youth are tried in adult courts for such offenses.

Phase I Data Collection

Data collection efforts were divided, on the basis of the types of data sought, into two phases. In the Phase I effort, information was sought on the incidence of juveniles and youth referred to adult courts during 1978 and the procedures through which they entered adult courts.

Phase I data collection involved asking some combination of the five questions that appear below. In some states, only the judicial waiver question was relevant; in others, questions on two or three mechanisms were applicable.

- How many juveniles were waived to adult courts after hearings in juvenile courts?
- How many youth were prosecuted in adult courts because the prosecutors exercised their options to file the cases in criminal courts?
- How many youth were prosecuted in adult courts, without first appearing in juvenile courts, because the charges against them were excluded from juvenile court jurisdiction?
- How many individuals below 18 years of age were prosecuted in adult courts because the age of initial criminal court jurisdiction was lower than 18?
- How many juveniles were prosecuted for traffic and other summary cases in adult courts?

The diversity in state (and federal) procedures created a situation in which data were collected from a variety of agencies and stages in the adjudication process. In judicial waiver situations, data were normally gathered from juvenile courts. In situations where prosecution in criminal courts occurred due to statutory exclusions from juvenile court jurisdiction or where prosecutors decided where cases would be heard, data collection efforts were focused on criminal courts and prosecutors. Where prosecution in criminal courts occurred as a result of lower ages of initial criminal court jurisdiction, data collection efforts focused on state crime-reporting agencies, prosecutors, and criminal courts.

When data sources were adult courts or prosecutors, information would usually be reported in terms of the number of criminal filings in adult courts. When the data sources were juvenile courts, the number of waivers from juvenile courts comprised the nature of the data. However, no one-to-one ratio exists between waivers from juvenile courts and filings in adult courts which result from waivers. Previous research in some

jurisdictions indicates that not all youth judicially waived are subsequently prosecuted in adult courts.⁴ Since most of the information on judicial waivers came from juvenile courts, this factor must be kept in mind when reviewing the results presented in this report.

Throughout the data collection, an attempt was made to focus on the number of individuals referred. Unfortunately, that was impossible in a few instances. Some courts only retained records based upon cases or charges, rather than individuals. A single case may involve a number of individuals, and a single individual may be prosecuted for a number of charges. Generally speaking, the reader can assume that the tabular statistics refer to persons, unless otherwise noted.

While the data collection operated at the state and county levels, using counties as the units of analysis, this approach proved impossible for some court systems to provide differentiated data. In a few states with unified court systems or with multicounty jurisdiction for certain courts, data were provided that consisted of aggregated totals, representing more than one county, which could not be separated. This is only troublesome when dealing with county comparisons, and the few instances in which it occurred are noted.

Some states keep their records on a fiscal year basis; others keep it for calendar years. Generally, the data reported was annual year 1978. Exceptions to this are noted in the state profiles. In each state, data were collected for 1978, as that state defined it. As a consequence, while each state's data represent a 12-month period known as 1978, the national aggregated tables in Chapter 4 combine these data, even though they represent periods ranging from April, 1977 to March, 1979. This allows each state to receive information on a period that is meaningful for its own recordkeeping and budgetary purposes.

As previously noted, data were sought in each state on those individuals below 18 years of age. However, many states consider individuals to be juveniles if they committed offenses prior to their 18th birthdays, even though they may be 18 or 19 when prosecuted. These individuals were included in the data collection. Again, this procedure allows the data to be relevant to the policymakers and researchers concerned with each state and its practices.

Some states allow juveniles to be prosecuted as adults under a variety of special circumstances. For example, juveniles in Ohio who lie about their age at arrest and claim to be adults are processed as adults if their lies are not discovered prior to adjudication. These peculiarities are not part of the basic transfer situations outlined above, and they have not been included in the analysis unless, through the absence of methods for distinguishing them from other data, they were included in the totals reported by the respondents.

In some cases, respondents were unable to provide exact figures for the number of waivers or prosecutions of youth in adult courts. Though estimates were never sought initially, they were accepted when no other information was available. If any segment of a total resulted from an estimate, it is duly noted in the appropriate tables.

The Phase I data collection consisted, first, of a telephone survey of state agencies which could conceivably collect state and local data that were pertinent to the study. For the most part, included in this group were state criminal justice planning agencies, supreme court administrative offices and statistical data centers. The research methodology required that, if the data set were determined to completely report all required information, it had to be verified in at least ten percent of the local governments which were represented in the state reports. If verified, the remainder of the data set would be accepted as reliable. If it could not be verified, all local governments were to be contacted for data and the state data would be either discarded or reflected as an alternative data set in the state profile, depending upon the circumstances. In a few states, state data was not verified. In a few others, such as California and Wisconsin, the most populous county (in these cases, Los Angeles and Milwaukee Counties, respectively) have historically failed to report to a designated state agency, although all other counties did so. The only way to create a state data set was to combine state data with one local county's data, because of its disproportionate significance to the size of the ultimate figures.

The results of the Phase I data can be found in Chapter 4 (National Data Summary), Table 7, and in Table 1 of each of the 52 state and federal profiles which appear in the separate profile volumes.

Phase II Data Collection

Certain counties in each state were singled out for more intensive investigation. They became known, during the life of the study, as Phase II counties. The Phase II data collection was conducted in two types of counties: the most populous ten percent of the counties in each state and those having five or more referrals in 1978 to adult courts through judicial waivers, concurrent jurisdiction filings, or excluded offenses. That is to say, if a state had 100 counties, and six of them had five or more waivers, the Phase II sample would consist of 16 counties. Of course, any duplications on the two lists would reduce the number of counties which would be contacted for Phase II data. In some states, data were available from most counties in the state. Whenever additional data were available, they were included in the Phase II effort. Where possible, seven pieces of information listed below were collected in Phase II counties on all cases of judicial waiver, concurrent jurisdiction and/or excluded offenses.

- The age distribution.
- The sex distribution.
- The racial distribution.
- The most serious offense with which such youth were charged.
- The judgments rendered by adult courts against such youth.
- The sentences imposed upon youth convicted in adult courts.
- The maximum sentences imposed upon youth when they were sentenced to confinement.

Traffic and other minor offense data were also sought from local agencies which were contacted for data more central to the study. A sample questionnaire appears below:

FORM 3
 WAIVER STUDY
 SAMPLE QUESTIONNAIRE
 MANDATORY PHASE II COUNTIES
 Ten Percent Most Populous Counties in 1970

County Names

QUESTIONS FOR (MOST PROBABLE DATA SOURCE NAMED)

CONTACT'S NAME _____ PHONE: _____

1. We are collecting 1978 data. How does your agency, for record-keeping purposes define 1978?
 - () January 1 - December 31
 - () July 1 - June 30
 - () Other _____ to _____
- *2. During 1978, how many juveniles were waived to criminal court after a hearing in juvenile court?

_____ ESTIMATE * _____ *

OTHER SOURCE? _____
 NAME PHONE

(ASK QUESTION NO. 3 IF THE ANSWER TO NO. 2 IS NOT ZERO)

3. Did any of these juveniles request their transfer? How many?

_____ ESTIMATE * _____ *

OTHER SOURCE? _____
 NAME PHONE

4. During 1978, how many waiver hearings did not result in a transfer to criminal court?

_____ ESTIMATE * _____ *

OTHER SOURCE? _____
 NAME PHONE

5. We are also interested in juveniles sent directly to adult court because of the charge against them, such as murder. In 1978, did any juveniles in your county go directly to criminal court without a hearing in juvenile court?

YES -- How many?

_____ ESTIMATE * _____ *

OTHER SOURCE? _____
 NAME 245 PHONE

6. _____ year olds in _____ are also tried as adults because of the maximum age of juvenile court jurisdiction. How many of the defendants in felony cases were _____ year olds?

ESTIMATE * _____ *

OTHER SOURCE? _____

NAME

PHONE

7. Do the totals refer to individuals or to cases?

() Individuals

() Other (SPECIFY) _____

() Cases

() Charges

8. We are also interested in misdemeanor charges against _____ year olds and traffic citations issued to _____ and _____ year olds. Who in your county would be able to tell us how many misdemeanor charges were filed against _____ year olds?

SOURCE: _____

NAME

PHONE

Who would have information on traffic offenses that would indicate the age of the defendant?

SOURCE: _____

NAME

PHONE

*(IF THE TOTAL FOR NUMBER 2 (JUDICIAL WAIVERS) IS "5 OR MORE" -- ASK THE RESPONDENT PHASE II FOR JUDICIAL WAIVERS)

(IF THE TOTAL FOR NUMBER 5 (EXCLUDED OFFENSES) IS "5 OR MORE" -- ASK THE RESPONDENT PHASE II FOR EXCLUDED OFFENSE)

(IF THIS IS A COUNTY ON THE PHASE II LIST, ASK THE RESPONDENT PHASE II QUESTIONS)

(IF NO PHASE II IS NECESSARY -- TERMINATE CONVERSATION)

(AFTER ALL NECESSARY PHASE I AND PHASE II QUESTIONNAIRES HAVE BEEN COMPLETED -- YOU MUST COMPLETE THE QUESTIONNAIRE CHECKLIST ON PAGES 5 AND 6.)

QUESTIONNAIRE CHECKLIST

COUNTY _____

DATA COLLECTOR _____

1. Is this county on the list on Page 1?

() NO

() YES -- Is Phase II for 17 year old felonies completed?

() YES

() NO -- Why? _____

2. Is the answer to Question No. 2 greater than or equal to five (5)?

() NO

() YES -- Is Phase II for judicial waivers completed?

() YES

() NO -- Why? _____

3. Is the answer to Question No. 5 greater than or equal to five (5)?

() NO

() YES -- Is Phase II for excluded offenses completed?

() YES

() NO -- Why? _____

4. Is there a State Court in this County?

() NO

() YES -- Did you call State Court to inquire about _____ year olds charged with misdemeanors?

() YES

() NO -- Why? _____

4. Continued

Did you call State Court to inquire about traffic citations issued to _____ and _____ year olds?

() YES

() NO -- Why? _____

5. Check each questionnaire for the county. Identify blanks by questionnaire name, page, and question numbers and indicate why the data were not gathered.

PHASE II FOR
JUDICIAL WAIVERS

RESPONDENT _____

COUNTY _____

We are also interested in more detailed information concerning those waived to criminal court. We would like to know their age, sex, race, the charges against them, and the disposition of their cases in criminal court. Can you give me any of that information?

() YES -- (GO TO DATA QUESTIONS BELOW)

() NO -- Would you be able to provide it if I called again later?

_____ TIME TO CALL BACK

IF NO -- Can I mail my questions to you?

() YES --

NAME _____

AGENCY _____

ADDRESS _____

IF NO -- Is there anyone else that might have all or part of that information?

() YES --

NAME, ETC. _____

(CALL THIS PERSON)

() NO -- (TERMINATE THE CALL)

DATA QUESTIONS --

1. Do you know how many of those waived to criminal court were male?

_____ ESTIMATE * _____ *

2. Can you tell me about the ages of those referred?

_____ How many were 16? ESTIMATE* _____ *

_____ How many were 15? ESTIMATE* _____ *

_____ How many were under 15? ESTIMATE* _____ *

_____ Other (SPECIFY) _____

WAIVER -- PHASE II

3. Can you tell me about the charges against those sent to criminal court? How many were charged with:

___ Murder	ESTIMATE* ___ *	___ Aggravated Assault	ESTIMATE* ___ *
___ Manslaughter	ESTIMATE* ___ *	___ Burglary	ESTIMATE* ___ *
___ Rape	ESTIMATE* ___ *	___ Larceny	ESTIMATE* ___ *
___ Robbery	ESTIMATE* ___ *	___ Auto Theft	ESTIMATE* ___ *
___ Assault & Battery	ESTIMATE* ___ *	___ Other (Specify) _____	

4. How many of those referred to criminal court were:

___ White ESTIMATE* ___ *
___ Minority ESTIMATE* ___ *

5. Can you tell me what happened to their cases in criminal court?

___ Case Dismissed with prejudice	ESTIMATE* ___ *
___ Case dismissed without prejudice	ESTIMATE* ___ *
___ Held open/continued	ESTIMATE* ___ *
___ Referred to Juvenile Court	ESTIMATE* ___ *
___ Convicted under a Young Adult Offender Statute	ESTIMATE* ___ *
___ Found Guilty as Charged	ESTIMATE* ___ *
___ Found Guilty of a Lesser Included Offense	ESTIMATE* ___ *
___ Other (SPECIFY) _____	

6. Do you know what type of sentences they received?

___ Fined or Received informal supervision	ESTIMATE* ___ *
___ Received formal supervision (probation)	ESTIMATE* ___ *
___ Sent to local correctional facilities (jail)	ESTIMATE* ___ *
___ Sent to state correctional facilities	ESTIMATE* ___ *
___ Sent to non-residential facilities	ESTIMATE* ___ *
___ Other (SPECIFY) _____	

7. Can you tell me about the sentences of those sent to residential facilities?

How many received sentences of:

___ Less than one year	ESTIMATE* ___ *
___ From 1 to 3 years	ESTIMATE* ___ *
___ From 4 to 5 years	ESTIMATE* ___ *
___ From 6 to 10 years	ESTIMATE* ___ *
___ From 11 to 20 years	ESTIMATE* ___ *
___ More than 20 years but less than life	ESTIMATE* ___ *
___ Life imprisonment	ESTIMATE* ___ *
___ How many were sentenced to death?	ESTIMATE* ___ *

(IF NECESSARY, GO TO ANOTHER PHASE II QUESTIONNAIRE)

(IF NOT, THANK AND TERMINATE CALL)

PHASE II FOR
EXCLUDED OFFENSES

RESPONDENT _____ COUNTY _____

We are also interested in more detailed information concerning those juveniles sent directly to criminal court. We would like to know their age, sex, race, the charges against them, and the disposition of their cases in criminal court. Can you give me any of that information?

() YES -- (GO TO DATA QUESTIONS BELOW)

() NO -- Would you be able to provide it if I called again later?

_____ TIME TO CALL BACK

IF NO -- Can I mail my questions to you?

IF YES

NAME _____

AGENCY _____

ADDRESS _____

IF NO -- Is there anyone else that might have all or part of that information?

() YES --

NAME, ETC. _____

(CALL THIS PERSON)

() NO -- (TERMINATE THE CALL)

1. Do you know how many of those sent to criminal court were male?

_____ ESTIMATE* _____ *

2. Can you tell me about the ages of those referred?

How many were 17?

_____ ESTIMATE* _____ *

How many were 16?

_____ ESTIMATE* _____ *

How many were 15?

_____ ESTIMATE* _____ *

How many were under 15?

_____ ESTIMATE* _____ *

3. Can you tell me about the charges against those sent to criminal court? How many were charged with:

3. (Continued)

_____ Murder	ESTIMATE* _____ *	_____ Aggravated Assault	ESTIMATE* _____ *
_____ Manslaughter	ESTIMATE* _____ *	_____ Other (SPECIFY) _____	
_____ Rape	ESTIMATE* _____ *		
_____ Armed Robbery	ESTIMATE* _____ *		

4. How many of those referred to criminal court were:

_____ White	ESTIMATE* _____ *
_____ Non-white	ESTIMATE* _____ *

5. Can you tell me what happened to their cases in criminal court?

_____ Case dismissed with prejudice	ESTIMATE* _____ *
_____ Case dismissed without prejudice	ESTIMATE* _____ *
_____ Held open/continued	ESTIMATE* _____ *
_____ Referred to Juvenile Court	ESTIMATE* _____ *
_____ Convicted under a Young Adult Offender Statute	ESTIMATE* _____ *
_____ Found Guilty as Charged	ESTIMATE* _____ *
_____ Found Guilty of a Lesser included Offense	ESTIMATE* _____ *
_____ Other (SPECIFY) _____	

6. Do you know what type of sentences they received? How many were --

_____ Fined or received informal supervision	ESTIMATE* _____ *
_____ Received formal supervision (probation)	ESTIMATE* _____ *
_____ Sent to local correctional facilities (jail)	ESTIMATE* _____ *
_____ Sent to state correctional facilities	ESTIMATE* _____ *
_____ Sent to non-residential facilities	ESTIMATE* _____ *
_____ Other (SPECIFY) _____	

7. Can you tell me about the sentences of those sent to residential facilities? How many received sentences of:

___ Less than one year	ESTIMATE* ___ *
___ From 1 to 3 years	ESTIMATE* ___ *
___ From 4 to 5 years	ESTIMATE* ___ *
___ From 6 to 10 years	ESTIMATE* ___ *
___ From 11 to 20 years	ESTIMATE* ___ *
___ More than 20 years	ESTIMATE* ___ *
___ Life imprisonment	ESTIMATE* ___ *
___ How many were sentenced to death?	ESTIMATE* ___ *

(IF NECESSARY, GO TO ANOTHER PHASE II QUESTIONNAIRE)

(IF NOT, THANK AND TERMINATE CALL)

EXCLUDED MISDEMEANORS

COUNTY _____ DATA COLLECTOR _____

Hello, my name is _____ of _____. I'm calling for the Academy for Contemporary Problems in Columbus, Ohio. We are involved in a study concerning how often individuals _____ years old are charged with misdemeanors in adult court. I was directed to you as someone who might give me some information about this. Can you help me?

RESPONDENT'S NAME _____ PHONE _____

1. We are collecting 1978 data. How does your agency, for recordkeeping purposes, define 1978?

() January 1 - December 31

() July 1 - June 30

() Other _____ to _____

2. During 1978, how many _____ year olds were charged with misdemeanors in your court?

ESTIMATE* _____ *

(IF DATA ARE PROVIDED, CONTINUE WITH NUMBER 3)

(IF NO DATA ARE PROVIDED, ASK:) Who in your county might have information on the number of _____ year olds charged with misdemeanors in 1978?)

NAME _____ PHONE _____

3. What were the six most common charges?

How Many? _____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(THANK AND TERMINATE CALL)

CONCURRENT OR EXCLUDED TRAFFIC OFFENSES

COUNTY _____ DATA COLLECTOR _____

Hello, my name is _____ of _____. I'm calling for the Academy for Contemporary Problems in Columbus, Ohio. We are involved in a study concerning how often individuals under 18 are dealt with in adult court for traffic offenses. I was directed to you as someone who might give me some information about this.

RESPONDENT'S NAME _____ PHONE _____

1. We are collecting 1978 data. How does your agency, for recordkeeping purposes, define 1978?

() January 1 - December 31

() July 1 - June 30

() Other _____ to _____

2. In your court in 1978, how many _____ year olds were charged with traffic offense?

_____ ESTIMATE* _____ *

How many _____ year olds?

_____ ESTIMATE* _____ *

(IF NO DATA ARE AVAILABLE:) Do you know of anyone else in your county who might have the information we need?

NAME _____ PHONE _____

One of the most unique features of the data collection effort was the use of state and local organizations in 22 states (see Table A-1) to conduct the telephone interviews. These organizations included private research organizations, advocacy groups, and civic and professional organizations with interests in juvenile justice. Each was contracted to collect data within a specific state.

Members and personnel of these organizations received extensive training conducted by Academy staff on court organization, transfer processes, the use of the interview schedule, and the techniques of telephone interviewing. These training sessions were conducted in several sites around the country. In addition, directories of juvenile and criminal court and prosecution contacts were developed by Academy staff to provide at least three possible sources for data within each county. The assumption was never made that data were unavailable until all sources were exhausted.

In 11 of the 22 states, the contracted agencies collected all of the data for those states. In 11 states, it was supplemented by data supplied by official state agencies, and in Washington, Academy staff collected the data in most counties, while data in two counties were collected through contract personnel. In 23 states, Academy staff conducted telephone local interviews from its Columbus, Ohio office. In 12 states, the interviews supplemented data collected from state sources. In eight states, all of the data were collected through Academy contacts with state and federal agencies.

TABLE A-1. METHOD OF OBTAINING CENSUS DATA BY STATE

State	Contract Interviewers	State Agency	Academy Interviews
Alabama		X	X
Alaska		X	X
Arizona			X
Arkansas	Ohio Management and Research Group	X	
California		X	
Colorado	Ohio Management and Research Group		
Connecticut		X	X
Delaware			X
District of Columbia		X	
Florida		X	
Georgia	Blackwater Associates, Inc.	X	
Hawaii			X

CONTINUED

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TABLE A-1. (Continued)

State	Contract Interviewers	State Agency	Academy Interviews
Idaho	League of Women Voters of Pocatello		
Illinois		X	X
Indiana	Indiana Juvenile Justice Task Force		
Iowa	Iowa Network of Community Youth Services	X	
Kansas	Wyandotte Association for Child Care Services, Inc.	X	
Kentucky	Kentucky Youth Advocates, Inc.		
Louisiana	Cindy Seghers	X	
Maine			X
Maryland		X	X
Massachusetts		X	X
Michigan	Ohio Management and Research Group	X	
Minnesota	Minnesota Supreme Court Commission		
Mississippi		X	X
Missouri	National Juvenile Law Center, Inc.	X	
Montana		X	X
Nebraska	League of Women Voters		X
Nevada			X
New Hampshire			
New Jersey			X
New Mexico			X
New York		X	
North Carolina	Blackwater Associates, Inc.	X	
North Dakota			X
Ohio	Ohio Youth Services Network		
Oklahoma		X	
Oregon	Jack Chapman		
Pennsylvania		X	X
Rhode Island		X	
South Carolina		X	
South Dakota			X

TABLE A-1. (Continued)

State	Contract Interviewers	State Agency	Academy Interviews
Tennessee	Ohio Management and Research Group		
Texas	San Antonio Area League of Women Voters	X	
Utah		X	X
Vermont	Coordinators of the Local Juvenile Diversion Programs		
Virginia		X	X
Washington	Kent Kollmorgen, Gregory Swarts		X
West Virginia		X	X
Wisconsin	Youth Policy and Law Center, Inc.	X	
Wyoming	Denice Wheeler		
U.S. Federal District		X	
Total	22	30	23

Pretests of the Instruments and Training

Data collection instruments and procedures were pretested in Ohio and South Carolina. The South Carolina test was performed by project staff, while a Columbus-based consultant firm collected the Ohio data. The Ohio pretest also allowed the training for "outside" data collectors to be pretested. As a result of the pretest, both the instruments and the procedures for the data collection and training were modified after an evaluation of the pretest.

Analysis of the Data

The coding, key punching, and computer programming of the data were done by Appropriate Solutions, Inc., computer consultants. The program was set up so that the referral data under each mechanism (judicial waiver,

concurrent jurisdiction, excluded offenses, and age of jurisdiction), would remain discrete, by state and by county. This was done because the frequencies result from discretion exercised by different people. For example, waivers result from judicial discretion; direct filings in concurrent jurisdiction states result from choices by prosecutors; excluded offenses result from legislative discretion. In addition, data on 16 and 17 year old adults were primarily arrest information rather than court filings. Viewed individually and comparatively, the statistical information is extremely instructive when viewed discretely by legal mechanism. When added together, the data lose their relevance. For these reasons, nowhere in the report are frequencies added together across legal mechanisms nor are single rates computed that include all mechanisms.

It is always difficult to describe national crime data in any uniform manner because of the variations of definitions and reporting styles extant in the country. It is even more difficult to divide all offenses into a limited number of categories. After considerable experimentation, the offense list, below, was used as a first step toward creating a final list. The intent was to keep discrete those offenses most likely to result in juveniles being referred to adult courts, such as the five violent offenses--murder, manslaughter, rape, robbery and aggravated assault--and the three offenses for which juveniles are disproportionately arrested--burglary, auto theft, and simple assault.

TABLE A-2. ORIGINAL OFFENSE CODES USED TO CATEGORIZE YOUTH REFERRAL DATA

1. Murder
2. Manslaughter: vehicular homicide, reckless homicide
3. Rape: sexual imposition, sodomy
4. Robbery: armed robbery, purse snatching, strong-armed robbery, aggravated robbery
5. Assault/battery and other nonarmed assault
6. Aggravated assault
7. Burglary: breaking and entering, attempted breaking and entering, attempted burglary
8. Larceny, theft, and shoplifting
9. Auto theft
10. Kidnapping

TABLE A-2. (Continued)

11. Arson
12. Trespassing
13. Other personal offenses: escape, intimidation, menacing, weapons violations, sex offenses, firebombings, inciting to violence, firearms, air rifles, armed violence, carrying concealed weapons, carrying into prison things to aid escape, fugitive from justice
14. Other property offenses: bad checks, forgery, fraud, embezzlement, false credit cards, receiving or possessing stolen property, extortion, uttering false instruments, obtaining money under false pretenses, tax violations
15. Drug violations: possessing intoxicating compound, controlled substance or cultivation/possession/distribution of controlled substance
16. Liquor violations: intoxication, possession of intoxicating beverages, transporting open container
17. Other public order offenses: disorderly conduct, gambling, prostitution, obstructing justice, suspicious persons, conspiracy, obscene language, false alarm, indecent exposure, adult contribution to delinquency of minor, promoting prostitution, peeping tom, bribery, criminal mischief, eavesdropping, loitering, vagrancy, coercion, eluding police officer, failure to comply with lawful order, damaging or tampering with vehicle, pandering, disturbing the peace, obstructing an officer, illegal use of telephone, malicious destruction, destroying private property, vandalism
18. Status offenses: in need of supervision, runaway, curfew, ungovernable
19. Other general offenses: contempt of court, probation violation, AWOL and desertion, accessory to a felony, breaking into any petrol container, illegal alien entry, parole revocation
20. Traffic offenses: OMVI, unauthorized use of vehicle, illegal entry, reckless driving, driving while impaired, leaving scene of accident, speeding, invalid driver's license, failure to stop at stop sign, impersonating another person
21. Offenses against the family: child abuse, bigamy, spouse abuse

These categories were later collapsed into ten categories, listed in Table A-3, to be used in all the data tables in the profiles. Again, the

offenses that are viewed as the most serious were kept separate for two reasons. First, the assumption was made that most juveniles referred to adult courts would be referred for serious offenses. Second, the most serious offenses are of most concern to the public, and the data would be most meaningful if, for example, the tables showed the number of juveniles judicially waived to adult courts for murder. Therefore, most of the differences between Tables A-2 and A-3 result from the collapse of property crimes and minor offenses into fewer categories.

TABLE A-3. COMBINED OFFENSE CODES USED TO CATEGORIZE YOUTH REFERRAL DATA IN STATE PROFILES

1. Murder and Manslaughter
2. Rape
3. Robbery
4. Assault/battery
5. Aggravated assault
6. Burglary
7. Other property offenses: larceny, auto theft, trespassing, other property offenses
8. Other personal offenses: kidnapping, arson, other personal offenses
9. Public order offenses: drug violations, liquor violations, other public order offenses
10. Other general: status offenses, traffic offenses, offenses against the family, other general offenses

A third categorization of offenses was made in order to more easily reflect a major objective of the study, i.e., determining the ratio of referrals to adult courts for crimes against persons, as opposed to property crimes and public order offenses. The ten categories were combined into four groups: personal, property, public order, and other. Table A-4 defines these groupings.

TABLE A-4. OFFENSE CATEGORIES, COMBINED BY TYPE OF OFFENSE

1. Personal offenses. Murder/manslaughter, rape, robbery, assault/battery, aggravated assault, and other personal offenses
2. Property offenses. Burglary and other property offenses
3. Public order offenses
4. Other general offenses

Criminal court judgments, as they were applicable to Phase II youth, were divided into seven categories: not guilty, dismissed, referred to juvenile courts, adjudicated under a youthful offender statute, guilty, other, and unknown. Some of the judgments, such as not guilty or unknown, need no further explanation. Some need to be defined.

Dismissed judgments include both the cases dismissed by prosecutors and those dismissed by the courts. Separation into the two categories was impossible.

In some jurisdictions, youth referred to adult courts can be referred back to juvenile courts for adjudication or for disposition. Again, no attempt was made to differentiate the data.

In some states, in addition to youth being sentenced under criminal codes, they can also be sentenced as youthful offenders. This treatment may mean probation instead of incarceration, indeterminate sentencing instead of minimum and maximum sentences, or incarceration in a reformatory instead of a prison. In some states, a technical finding of culpability is part of the process preceding youthful offender treatment. In such instances, youthful offenders are not found guilty and are not sentenced. They are simply adjudicated youthful offenders and ordered to particular dispositions. However, the data could not be divided according to dispositions, even though youthful offender judgments were separately retrievable. In some states, however, they could not be divided as to judgments and appear within the aggregated guilty totals.

Most juveniles convicted in adult courts and sentenced to corrections facilities received both minimum and maximum sentences. A decision was made to use only the maximum lengths of sentence. Almost all sentences had maximum sentence lengths stated in the disposition. While maximum sentence lengths are seldom the length of the terms served, this appeared to be the best measure available for purposes of intrastate and interstate comparison.

Traffic Citations Handled in Adult Court

Most states routinely handle minor traffic violations by juveniles in adult courts. In most states, the age of the traffic violator is not included in any of the information reported to the state or included in local court reports. Questions on juvenile traffic violations handled in adult courts were asked in all states where the statutes provide exclusions from juvenile jurisdiction or where they provide concurrent jurisdiction between adult and juvenile courts.

The staff was able to obtain estimated traffic data in 18 of the 35 states that handle juvenile traffic cases in adult courts. This data comprised a 16 percent sample of the nation's youth (age eight to 17). The numbers thereby obtained are admittedly a rough estimate of the number of juvenile traffic violations handled in adult courts. However, in view of the lack of any national data on this topic, the information is presented for whatever value might be made of it.

Juvenile population estimates for 1978 were provided by the National Center for Juvenile Justice. The population estimates were developed using two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census (also prepared by the U.S. Bureau of the Census). The relative percentages of single age groups within the 1970 census were calculated. Assuming equal mortality, each 1970 age group was estimated for 1975. Extrapolating these figures to 1978, the estimates assume a zero mortality rate for the juvenile age groups, and therefore the number of eight to 17 year olds in 1978 should be equal to the number of five to 14 year olds in 1975. This gives a slightly inflated population estimate for eight to 17 year olds because the juvenile mortality rate was about 1.3 per 1,000 juveniles. However, the deviation is so small that the effect on calculating the rates of waiver, for example, in relation to a community's juvenile population, is virtually unaffected.

CASE STUDIES

The case study approach was chosen as a means by which to develop a more intensive analysis in a few selected states than was possible from the national census. The advantages of the case studies may be seen in detailed information on the processes by which youth are tried as adults, the institutions involved in the processes, and a history of the development of those processes. In addition, perspectives expressed by interviewees reflect how well the processes are meeting the goals for which they were designed and how those processes might be changed for the better.

The guiding principle in case study state selection was to find a group of states that would collectively present a diverse national view of how youth are referred to adult courts in various types of social, political, and legal environments. Included in the criteria for the selection of states for case studies were:

- One state from each federal region, assuring geographic representation from the entire country.
- A mix of rural and urban states to ascertain whether there is a differential treatment in terms of frequency and reasons for use of offenses charged and of sentences received in such different states.
- Statutory provisions and different legal mechanisms.
- Legislative activity. In many states new approaches are being developed and implemented for addressing the problems of serious juvenile offenders. It was felt that states adopting "new approaches" should be studied while, at the same time, it was important to study those states where satisfaction with the present procedure was evidenced by lack of legislative activity.

Table A-5 indicates the states selected.

TABLE A-5. STATES SELECTED FOR CASE STUDY
INVESTIGATION (BY FEDERAL REGION
AND LEGAL MECHANISM)

Federal Region		Age of Jurisdiction	Legal Mechanisms (in 1978)
1.	Massachusetts	17	Judicial Waiver
2.	New York	16	Excluded Offenses
3.	Pennsylvania	18	Judicial Waiver, Excluded Offenses
4.	Florida	18	Judicial Waiver, Concurrent Jurisdiction
5.	Minnesota	18	Judicial Waiver
6.	Oklahoma	18	Judicial Waiver
7.	Nebraska	18	Concurrent Jurisdiction
8.	Colorado	18	Judicial Waiver, Concurrent Jurisdiction
9.	California	18	Judicial Waiver
10.	Washington	18	Judicial Waiver

In the ten case study states, the research staff traced the age of jurisdiction, transfer provisions, and juvenile court jurisdiction to the earliest provisions in each state. The issues addressed were:

- Jurisdiction of the juvenile courts;
- Age to which jurisdiction may be or was retained;
- Jurisdiction between adult and juvenile courts, including excluded offenses and concurrent jurisdiction; and
- Judicial waiver provisions.

Subsequent to the preparation of the histories and prior to the completion of the Phase II data collection, the case study interviews began. Teams of Academy staff members spent periods of roughly one week in each of the case study states. The field trips began with New York in November, 1979, and ended with Nebraska in April, 1980. Consistent with the study design and reflecting the emphasis on diversifying locations, interviews were conducted in three or four locations in each state, based on the following format: (1) the state capital, (2) the largest city, (3) a representative county from among counties containing the lower third of the population, and (4) another county of interest due to some extraordinary characteristic, such as the rate of juveniles tried as adults, or the concentration of large industries.

Interviews were conducted with judges, juvenile court personnel, county prosecutors, public defenders, state legislative staff, state juvenile and adult corrections administrators, juvenile justice advocates, juvenile justice researchers, and law enforcement officers. Between 20 and 30 interviews were conducted in each of the 10 states. Extended investigative interviews were conducted, in an effort to answer a number of questions:

- What are the effects on the courts and corrections systems of trying youth as adults?
- How are youth affected by being tried as adults?
- What are the advantages and disadvantages to the public and to public safety of trying youth as adults?
- What are the factors that enter into decisions to refer youth to criminal courts?
- What changes to the juvenile code are presently being considered?
- What changes would improve the current legal and child service systems, with respect to this issue.
- How do dispositions in juvenile courts and sentences of youth tried in adult courts for similar offenses compare?
- What seem to be the state trends in the handling of youth crime and the referral of youth to adult courts?

Case study findings were combined with other information from the other two lines of research to form state profiles. As a result, the 52 state profiles vary considerably in length and richness of information. In 42 profiles, there may be found the statutory and case law information, plus the Phase I and Phase II data. In ten states, all the material is presented but is combined with the case study information obtained through on-site interviews. All of the state-specific information appears in the profiles, in a series of companion volumes divided according to geographical sections of the country. A summary of the ten case studies also appears in Chapter 5.

Chapter 6, the final chapter, presents conclusions and recommendations based upon the research findings. It summarizes particularly the findings of Chapters 3, 4, and 5, and analyzes the significance of the data. Recommendations are limited to those which can be supported by the research findings or which relate to future research.

FOOTNOTES

1. U.S. Department of Justice, National Survey of Court Organization (Washington, D.C.: U.S. Government Printing Office, 1973).

2. Edited by Knob, Karen Markle, Courts of Limited Jurisdiction: A National Survey, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United State Department of Justice, 1977.

3. American Correctional Association, Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities, United States and Canada, 1978 Edition

4. Reports of studies on youth in adult courts include: R. Gable, "The Pittsburgh-Buffalo Project: An Investigation of the Outcome of Judicial Proceedings Involving 16 and 17 Year Old Youth in Allegheny County, Pennsylvania and Erie County, New York," preliminary draft; Pennsylvania Joint Council on the Criminal Justice System, "The Transfer of Juveniles to Adult Court, 1974-1977," December, 1978; K. Teilmann and M. Klein, "Assessment of the Impact of California's 1977 Juvenile Justice Legislation," January, 1979, draft; Department of Health and Rehabilitative Services, "An Analysis of the Penetration of Children into the Adult Criminal Justice System in Florida," August 15, 1980; Minnesota Supreme Court Juvenile Justice Study Commission, "Report to the Minnesota Supreme Court," November, 1976.

APPENDIX B

APPENDIX B
 STATUTORY REFERENCES FOR AGE OF JURISDICTION, JUDICIAL WAIVER,
 CONCURRENT JURISDICTION, AND EXCLUDED OFFENSES, 1978

Jurisdiction	Age of Jurisdiction Reference	Judicial Waiver Reference	Concurrent Jurisdiction Reference	Excluded Offenses Reference
Alabama	§12-15-1(3)(b)	§12-15-34(a)		§12-15-1(8)*
Alaska	§47.10.010(a)(1)	§47.10.060		§47.10.010(b)*
Arizona	§8-201(5)(8)(9)	Rules 12, 13, and 14		
Arkansas	§45-403(1)		§45-417; and §45-418	§45-403(2)*
California	§602	§707(a) and (b)		
Colorado	§19-1-103(2)	§19-1-104(4)(a); and §19-3-108	§19-1-104(4)(b)(I-III)	§19-1-103(9)(I)*
Connecticut	§51-301	§51-307; and §51-308		
Delaware	Title 10, §901(3) and (7)	Title 10, §921(2)(b); §937(c)(5); and §938		Title 10, §921(2)(a); and §927*
District of Columbia	§16-2301(3)	§16-2307(a); and Rule 108(a)	§16-2301(3)	§16-2301(7)*
Florida	§39.01(7)	§39.02; and §39.09	§39.02(5)(c); and §39.04(2)(e)(4), (effective Oct. 1, 1978)	§39.02(1)*

APPENDIX B (Continued)

Jurisdiction	Age of Jurisdiction Reference	Judicial Waiver Reference	Concurrent Jurisdiction Reference	Excluded Offenses Reference
Georgia	§24A-401(c)(1); and §24A-301(a)(1)(A)	§24A-2501(a)(4)	§24A-301(b)	§24A-3101(a), (b), and (c)*
Hawaii	§571-11; and §571-2	§571-22		
Idaho	Ch. 16, §1802(c)	Ch. 16, §1806		Ch. 16, §1803(2)*
Illinois	Ch. 37, §702-2	Ch. 27, §702-7		Ch. 37, §702-7(2)*
Indiana	§31-5-7-4.1	§31-5-7-14		§31-5-7-4.1
Iowa	§232.2(3) and (12); and §232.63	§232.72	§232.8; and §232.62, concurrent provision and grand jury indictment provision were eliminated in 1979.	§232.8*
Kansas	§38-802(b)	§38-808		§38-802*; and §38-806(a)
Kentucky	§208.020	§208.170(1)		§208.020(1)(a)*
Louisiana	§13:1569(3)	§13:1571.1		§13:1570(A)(5)
Maine	Title 15, §3101(2)(D)	Title 15, §3101(4)		Title 15, §3103*

APPENDIX B (Continued)

Jurisdiction	Age of Jurisdiction Reference	Judicial Waiver Reference	Concurrent Jurisdiction Reference	Excluded Offenses Reference
Maryland	§3-801(d), (k), and (1); §3-805(a); and §3-807(a) and (b)	§3-817(a)(1) and (2)		§3-804(d)
Massachusetts	Ch. 119, §52	Ch. 119, §61	Ch. 119, §52 and §74*	
Michigan	§27.3178 (§598.2)	§27.3178 (§598.4)		
Minnesota	§260.015(2) and (5)	§260.125; and §260.193*		
Mississippi	§43-21-5	§43-21-31		§43-21-31; and §43-21-33*
Missouri	§211.031(2); and §211.021(2)	§211.071, Rule 118.01(1)		
Montana	§41-5-103(10); and §41-5-203(1)	§41-5-206	§41-5-203(2)*	
Nebraska	§43-202		§43-202(3); §43-202.02; §43-202.01; and §43-202*	
Nevada	§62.020(2)	§62.080		§62.040
New Hampshire	§169:2(II)	§169:21-b		§169:30(II)*

APPENDIX B (Continued)

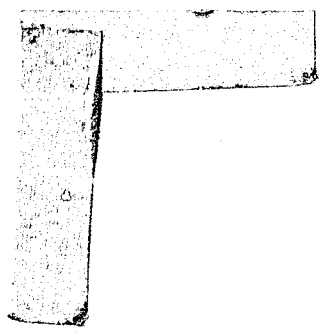
Jurisdiction	Age of Jurisdiction Reference	Judicial Waiver Reference	Concurrent Jurisdiction Reference	Excluded Offenses Reference
New Jersey	§2A:4-43(a); and §24A:4-44	§2A:4-48; and §2A:4-49		§2A:4-44*
New Mexico	§32-1-3	§32-1-29; §32-1-30; and Rule 30		§32-1-48; and §32-1-3(N)*
New York	FCA, Art. 7, §712(a)			Penal Code, §30.00
North Carolina	Art. 23, §7A-278	Art. 23, §7A-608; §7A-609(a)*		
North Dakota	§27-20-02	§27-20-34		§27-20-02(2)*
Ohio	§2151.011(B)(1)	§2151.26; Rule 30; and §2151.26(B) (1978)		
Oklahoma	Title 10, Art. 1, §1101(a) and (b)	Title 10, Art. 1, §1112	Title 10, Art. 1, §1112*	
Oregon	§419.476(1)(a)	§419.533		
Pennsylvania	Title 42, §6302	Title 42, §6355(a)		Title 42, §6302
Rhode Island	§14-1-3	§14-1-7		§14-1-7.1; and §14-1-3(F)*
South Carolina	§14-21-510(A)(3)	Rule 41; §14-21-540; and §14-21-510	§14-21-515*	

APPENDIX B (Continued)

Jurisdiction	Age of Jurisdiction Reference	Judicial Waiver Reference	Concurrent Jurisdiction Reference	Excluded Offenses Reference
South Dakota	§26-8-1(3)	§26-11-4; and §26-8-22.7		§26-8-7*
Tennessee	§37-202(1) and (3)	§37-234		§37-202(3)*
Texas	§51.02(1)(B)	§54.02		§51.03(a)*; Traffic Regulations, §106
Utah	§78-3a-2	§78-3a-25	§78-3a-44*	
Vermont	Title 33, §635 and §632			
Virginia	§16.1-228	§16.1-269; and §16.1-270		
Washington	§13.40.020(10); and §13.04.011	§13.04.011(1) and (2); and §13.04.110		§13.04.030(6)(c)* (July 1, 1978)
West Virginia	§49-5-1(a)	§49-5-10	§49-5-1(a)*	
Wisconsin	§48.02	§48.18		§48.17*
Wyoming	§14-1-101	§14-6-237	§14-6-203(c)	
United States Federal Districts	Title 18, §5031	Title 18, §5032		

*Citation for traffic or other minor offenses only.

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APPENDIX C

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APPENDIX C
 MAXIMUM AGE OF INITIAL JUVENILE COURT JURISDICTION AND COURTS HAVING
 JURISDICTION OVER JUVENILE TRAFFIC CASES IN 1978

State	Maximum Age of Initial Juvenile Court Jurisdiction is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
Alabama	X				X	Traffic offenses; 16 and over; may be transferred back to juvenile court.
Alaska	X				X	Non-felonious traffic, fish and game, and park and recreation violations; no minimum age requirement.
Arizona	X			X		Traffic hearing officer may be appointed by the juvenile court.
Arkansas	X				X	Non-serious traffic violations; no minimum age requirement.
California	X			X		Traffic hearing officer may be appointed by the juvenile court to hear traffic cases.
Colorado	X				X	State traffic and game and fish laws or regulations; 16 years of age and older.
Connecticut			X	X ^a		
Delaware	X				X	Minor traffic violations; 16 years of age and older.

APPENDIX C (Continued)

State	Maximum Age of Initial Juvenile Court Jurisdiction Is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
District of Columbia	X				X	Traffic violations; 16 years of age and older.
Florida	X				X	Lesser traffic violations; no minimum age requirements; may be waived to juvenile court.
280 Georgia		X			x ^b	Traffic offenses; 16 years of age.
Hawaii	X			X		
Idaho	X				X	Routine traffic, watercraft, fish and game violations; no minimum age requirement.
Illinois		X			x ^b	Traffic, boating, or fish and game law violation; no minimum age requirement.
Indiana	X				X	Traffic; no minimum age requirement.
Iowa	X				X	Traffic, watercraft, snowmobile, fish and game violations; no minimum age requirement.

APPENDIX C (Continued)

State	Maximum Age of Initial Juvenile Court Jurisdiction Is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
Kansas	X				X	Traffic offenses; 14 years or older, except driving while intoxicated, reckless driving, vehicular homicide, eluding a police officer, driving with a revoked license.
Kentucky	X				X	Moving vehicle offense; 16 years of age and older.
Louisiana		X		X ^b		Minor traffic offenses; under 17 years of age.
Maine	X				X	All motor vehicle, snowmobile, or watercraft violations, except driving under the influence of intoxicating liquor or drugs; no minimum age requirement.
Maryland	X				X	Routine traffic and watercraft violations; 16 years of age and older.
Massachusetts		X		X	X ^b	Minor traffic violations; 16 years of age and under; concurrent jurisdiction between adult and juvenile courts.

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APPENDIX C (Continued)

State	Maximum Age of Initial Juvenile Court Jurisdiction Is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
Michigan		X		X ^b		
Minnesota	X			X ^c		May be judicially waived to adult court.
Mississippi	X			X	X	Traffic violations; no age restriction; concurrent jurisdiction between juvenile, justice of the peace, and municipal courts.
Missouri		X		X ^c		Juveniles under 17 years of age may be judicially waived.
Montana	X			X	X	Alcoholic beverage, traffic, fish and game violations; no minimum age requirement.
Nebraska	X			X	X	Traffic violations (other than parking violations); any age; concurrent original jurisdiction among juvenile, district, county, and municipal courts.
Nevada	X				X ^c	Traffic violations excluded from juvenile jurisdiction only in counties with 200,000 or more population;

APPENDIX C (Continued)

State	Maximum Age of Initial Juvenile Court Jurisdiction Is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
New Hampshire	X				X	in juvenile courts in all other counties; no minimum age requirement.
203 New Jersey	X				X	Motor vehicle, aeronautic, boating or game law violations; 16 years of age and older.
New Mexico	X				X	Traffic violations; 17 year olds are heard in adult courts.
New York			X	X ^a		Routine traffic violations; no age specified.
North Carolina			X	X ^a		Juveniles under 16 years of age are in juvenile court.
North Dakota	X				X	Juveniles under 16 years of age are in juvenile court.
Ohio	X				X	Traffic violations, except negligent homicide, manslaughter, driving while under the influence of drugs or alcohol, driving with an open receptacle containing alcoholic beverage and aggravated reckless driving; no minimum age requirements.

APPENDIX C (Continued)

State	Maximum Age of Initial Juvenile Court Jurisdiction Is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
Oklahoma	X			X	X	Traffic, except habitual traffic violations; no minimum age requirements; juvenile, district and municipal court share concurrent jurisdiction.
Oregon	X			X		May be judicially waived to adult court; blanket remand orders may allow youth to be tried originally in adult court.
284 Pennsylvania	X				X	Summary offenses unless the child fails to pay a fine; ten years of age or older.
Rhode Island	X				X	Traffic offenses; no minimum age requirement.
South Carolina		X		X	xb	Traffic violations; under 17 years of age; concurrent jurisdiction among magistrate, municipal, family, and circuit courts;
South Dakota	X				X	Hunting, fishing, boating, and traffic violations; minimum age of ten years.
Tennessee	X				X	Traffic offenses, except drunken driving and negligent homicide; no minimum age requirement.

APPENDIX C (Continued)

State	Maximum Age of Initial Juvenile Court Jurisdiction Is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
Texas		X			X ^b	Minor traffic violations or minor alcohol offenses, except driving under the influence of alcohol or drugs; 14 years of age or older.
Utah	X			X	X	Traffic violations; no minimum age requirement; concurrent jurisdiction between circuit and juvenile courts.
Vermont			X	X ^a		
Virginia	X			X		
Washington	X				X	Traffic offenses; age 16 or older (7/1/78).
West Virginia	X			X	X	Minor traffic offenses and natural resources laws; no confinement permitted; no minimum age requirement; concurrent jurisdiction among magistrate, municipal, and juvenile courts.
Wisconsin	X				X	Traffic and boating; 16 years of age and over.

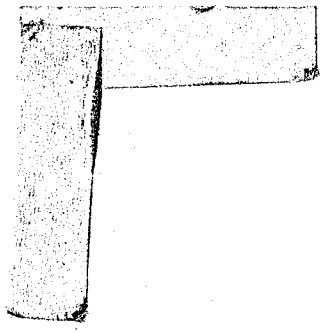
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APPENDIX C (Continued)

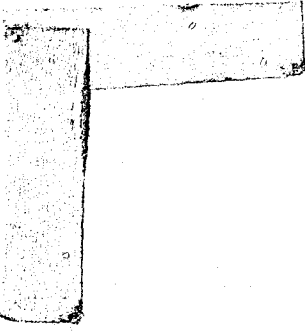
State	Maximum Age of Initial Juvenile Court Jurisdiction Is Under			Courts With Jurisdiction Over Traffic Cases		Comments
	18	17	16	Juvenile	Adult	
Wyoming	X			X	X	Municipal ordinances, alcohol, and traffic violations; no minimum age requirement; concurrent jurisdiction between juvenile and adult courts.
United States (Federal Districts)	X					Juvenile traffic cases are not within the federal jurisdiction.
Total	40	8	4	23	37	

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- a. Sixteen and 17 year olds are adults.
- b. Seventeen year olds are adults.
- c. In 1980, traffic violations were excluded from juvenile court jurisdiction.



APPENDIX D



FEDERAL PROFILE

ACKNOWLEDGMENTS

The Academy expresses its appreciation to Richard Ransom and James A. McCafferty of the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts for their assistance in providing a computer tape of all individuals under 18 years of age tried in federal district courts. Special appreciation is expressed to Constance T. Springmann, Assistant Administrator, Bureau of Prisons, U.S. Department of Justice, for reviewing the profile. In addition, the Academy thanks the many other officials who provided the necessary information.

METHODOLOGY

The computer tape supplied by the Administrative Office of the United States Courts included data on frequencies (Phase I data) and age, sex, race, offenses, and sentences (Phase II data) for youth tried as adults in each of the federal court circuits in 1978. The data are aggregated totals of youth who requested to be tried as adults and youth who were judicially waived for trial as adults; therefore, the two categories could not be separated. The data were not verified by contacts with the individual federal court districts. Since Phase II data were available for all of the districts, no direct Phase II contact was necessary.

COURT ORGANIZATION

The federal district courts are the highest courts of general trial jurisdiction within the federal judicial system. The United States has been divided into ten judicial circuit with at least one federal district court in each state and territory. Juvenile cases which come within the jurisdiction of the federal courts are heard in the appropriate district court. Before juveniles may have proceedings against them in any court of the United States, the U.S. Attorney General, after investigation, must determine that an appropriate state court does not have or refuses to assume jurisdiction. The U.S. Attorney General may also find that available programs or services are not adequate to meet the needs of the juvenile and may authorize the federal district court to assume jurisdiction.¹ If the federal district courts assume jurisdiction, court may be convened at any time and place within the district, in chambers or otherwise.



CASE LAW SUMMARY

A review of cases relevant to youth being tried as adults, which have been heard in the federal appeals courts since 1950 follows. This includes major cases heard by the U.S. Supreme Court. The cases cited for the respective circuit courts of appeal in this profile are cases originating in the federal court system. Cases which have been appealed to the federal circuit courts of appeal from state court systems are discussed in the respective state profiles.

The United States Supreme Court

In 1966, the U.S. Supreme Court decided Kent v. United States, which set forth guidelines for the courts to follow in waiver hearings under state law and which conferred due process rights upon juveniles faced with the possibility of waiver to adult courts.⁴

Specifically, the court set forth four basic safeguards required by due process during the waiver proceedings:

1. If the juvenile court is considering waiving jurisdiction, the juvenile is entitled to a hearing on the question of waiver.
2. The juvenile is entitled to representation by counsel at such hearing.
3. The juvenile's attorney must be given access to the juvenile's social records on request.
4. If jurisdiction is waived, the juvenile is entitled to a statement of reasons in support of the waiver order.⁵

As an appendix to its decision in Kent, the Supreme Court suggested the following criteria to be used in determining whether to waive jurisdiction over juveniles for transfer to adult courts:

1. the seriousness of the alleged offense and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

Youth who are tried as adults within the federal court system are transferred from the district courts sitting as juvenile courts to the criminal session of the district courts. The remainder of this profile on the United States federal jurisdiction will use the term "federal juvenile courts" in reference to the federal district courts sitting as juvenile courts and "federal adult courts" in reference to the criminal sessions of the federal courts.

An overview of the federal district courts' jurisdiction over juveniles appears below.

FEDERAL: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic ^a
District Courts	District Courts	

- a. Juvenile traffic cases are not within federal jurisdiction.

TRANSFER PROCESS

The initial age of federal juvenile court jurisdiction extends to 18 years of age.² Juveniles appearing in federal juvenile courts may request, in writing, to be tried as adults.³ There is no age or offense requirement. The U.S. Attorney General may also initiate transfer proceedings if the act was committed after the juvenile's 16th birthday and if the adult penalty would be imprisonment for ten years or more, life imprisonment, or death. In either case, the transfer may take place only after the federal juvenile court conducts a hearing and finds that such a transfer is in the interest of justice.

In making a finding that a transfer would be in the interest of justice, the court must consider and place in the record findings on each of the following factors: the juvenile's age and social background, the nature of the alleged offense, the juvenile's prior record, present intellectual development and psychological maturity of the juvenile, past treatment efforts and the juvenile's responses, and the availability of programs designed to treat the juvenile's behavioral problems.



4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment.
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the criminal court.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.
7. The record and previous history of the juvenile.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the juvenile court.⁶

In 1967, the court decided In re Gault, which conferred due process rights upon juveniles accused of delinquency, including the right to assistance of counsel, the right to sufficient notice of charges, the privilege against self-incrimination, and the right to confront witnesses.⁷ While not concerned with the transfer issue, Gault served to reaffirm the due process rights of all juveniles in juvenile courts. In the case of Jones v. Breed, the U.S. Supreme Court vacated the ninth circuit's decision and remanded for a writ of habeas corpus.⁸ The holding of the Supreme Court was that criminal trial of youth as an adult following an adjudicatory hearing in juvenile court on delinquency charges exposed the involved person to double jeopardy. The high court held that jeopardy attached when the juvenile court, as trier of fact, began to hear evidence.

The First Circuit Court of Appeals

In U.S. v. Quiones, this court held that Congress could legitimately vest in the U.S. Attorney General discretion as to whether or not to try juveniles as adults and that such determinations might be made without a due process hearing.⁹ The court further held that the distinction in the statute providing for differential treatment of juveniles accused of crimes punishable by death or life imprisonment as compared with juveniles accused of other crimes imposed no equal protection violation.

The Second Circuit Court of Appeals

With U.S. v. Williams, the Second Circuit Court of Appeals held that, for the purpose of federal law, a juvenile is a person under 18 years of age at the time of the commission of an offense.¹⁰ This case also held that before juveniles may waive their rights as juveniles, they must be fully apprised of their rights and of the consequences which will follow from adult proceedings against them. The involved juveniles must be told of their right to be proceeded against as juveniles.

The Third Circuit Court of Appeals

U.S. ex rel. Turner v. Rundle was an application of the Kent requirements for waiver hearings.¹¹ The Third Circuit Court of Appeals ruled that where a juvenile was not informed of his right to appointed counsel before making a confession, the admission of the same into evidence constituted error.

The Seventh Circuit Court of Appeals

In the case of Geboy v. Gray, the Seventh Circuit Court of Appeals held that a juvenile must be provided with counsel at a waiver hearing.¹² This case was remanded for de novo hearing on the issue of waiver because of defects in notice to the parents of the juvenile of the pendency of the hearing, failure to timely appoint counsel, and failure of counsel to fully explore alternatives to waiver to adult court. In the case of U.S. ex rel. Bombacino v. Bensinger, it was held that the prosecutor need not produce evidence to show probable cause prior to waiver.¹³ The court held that a statement of reasons for transfer was not required because appellate review of the order was not available until after the adult court trial occurred. Since the transfer order did not prescribe future conduct, the issue of probable cause would be subsequently resolved.

In U.S. v. Cheyenne, the court held that evidence taken with reference to juvenile transfer hearings (including confessions) are inadmissible in subsequent criminal prosecutions.¹⁴

The Ninth Circuit Court of Appeals

The Ninth Circuit Court of Appeals, in the case of Powell v. Hocker, granted a habeas corpus petition, applying In re Gault retroactively to a conviction rendered without a "full investigation" having been conducted in juvenile court prior to waiver of the involved juvenile to adult trial.¹⁵ A plea of guilty entered by the juvenile in criminal court was held not be a waiver of this defect.

CORRECTIONS INFORMATION

The Federal Bureau of Prisons is assigned the responsibility for the care and custody of sentenced and unsentenced inmates confined in the bureau detention facilities. The bureau has a network of 50 corrections institutions, ranging from penitentiaries to halfway houses for convicted and committed offenders.

Bureau of Prison sources indicate that juveniles tried as juveniles are boarded in state facilities under purchase-of-care agreements. They are never placed in federal facilities unless an appropriate placement cannot be found. If all placement options are exhausted, the juveniles can be placed in the most appropriate federal institution, but only with prior approval of the director of the Bureau of Prisons. (This occurs rarely, and generally the person is 19 years of age or older.) The Juvenile Justice and Delinquency Prevention Act mandates that juveniles committed to adult facilities must be kept separate from and have no regular interaction with adult prisoners.¹⁶

Youth tried as adults and committed to the custody of the U.S. Attorney General can be placed in Bureau of Prisons' facilities. An attempt is made to place committed offenders in facilities close to where they live and also in a facility that meets their needs for service, education, and security. Youth committed to a Bureau of Prisons facility cannot be administratively or judicially transferred to a state juvenile facility.

FEDERAL JURISDICTION DATA SUMMARY

Youth under 18 years of age are eligible for prosecution in federal district courts as adults, if the U.S. Attorney General finds that state courts either do not have jurisdiction or refuse jurisdiction, or if existing state programs or services are inadequate to meet the needs of the juvenile. The U.S. Attorney General may file a motion to proceed against juveniles as adults, if the juveniles are 16 years of age or older and the adult punishment for the



offense is imprisonment for ten years or more, life imprisonment, or death. Juveniles may request, in writing, to be tried as adults. A court hearing is required.

The data provided to the Academy on the number of youth judicially transferred under federal jurisdiction is presented in Table 52-1. In 1978, there were 101 youth proceeded against as adults in the ten federal jurisdictions. Four of the ten federal circuits reported no such judicial transfers in 1978. District 5 had the largest number of judicial transfers, 43, which included illegal aliens primarily apprehended in Texas.

TABLE 52-1. FEDERAL CIRCUITS: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY CIRCUIT AND LEGAL MECHANISM)

Circuit	Judicial Waivers
Circuit 1	0
Circuit 2	0
Circuit 3	2
Circuit 4	0
Circuit 5	43
Circuit 6	8
Circuit 7	0
Circuit 8	30
Circuit 9	14
Circuit 10	4
Total	101

Due to the availability of data, Phase II data were gathered for all ten federal circuits and thus include 100 percent of the federal jurisdiction transfers. Table 52-2 presents a demographic breakdown--age, sex, race--of youth judicially transferred in the federal circuits. Forty-eight percent of the youth (48) were 15 years of age or younger. It should be recalled that juveniles of any age may request their own transfer, while persons must be at least 16 years old to be judicially transferred to adult courts. Ninety-four percent (95) of the youth were males. Sixty of the 97 cases (62 percent) where race was known were minority youth. In Circuit 8, all 30 were minority youth.

TABLE 52-2. FEDERAL CIRCUITS: JUDICIAL WAIVERS TO ADULT COURTS
(BY CIRCUIT AND BY AGE, SEX, AND RACE) IN 1978

Circuit	Total Waivers	Age				Sex		Race		
		0-15	16	17	18+	Male	Female	White	Minor- ity	Un- known
Circuit 1	0	0	0	0	0	0	0	0	0	0
Circuit 2	0	0	0	0	0	0	0	0	0	0
Circuit 3	2	0	0	2	0	1	1	1	1	0
Circuit 4	0	0	0	0	0	0	0	0	0	0
Circuit 5	43	22	15	6	0	41	2	21	19	3
Circuit 6	8	0	6	2	0	7	1	7	*	1
Circuit 7	0	0	0	0	0	0	0	0	0	0
Circuit 8	30	20	7	3	0	28	2	0	30	0
Circuit 9	14	4	10	0	0	14	0	6	8	0
Circuit 10	4	2	2	0	0	4	0	2	2	0
Circuit Total	101	48	40	13	0	95	6	37	60	4

* denotes Not Available.

Table 52-3 presents data on the offenses for which the judicially transferred youth were charged. Forty-nine of the charges (49 percent) were property crimes (including burglary, trespassing, larceny, auto theft, receiving stolen goods, and fraud). Twenty (20 percent) were crimes against the person (murder, manslaughter, rape, robbery, assaults, and other personal offenses). The 18 in the "other general" category in Circuit 5 included the illegal aliens mentioned earlier. These findings have been graphically represented in Figure 52-1, by offense category.

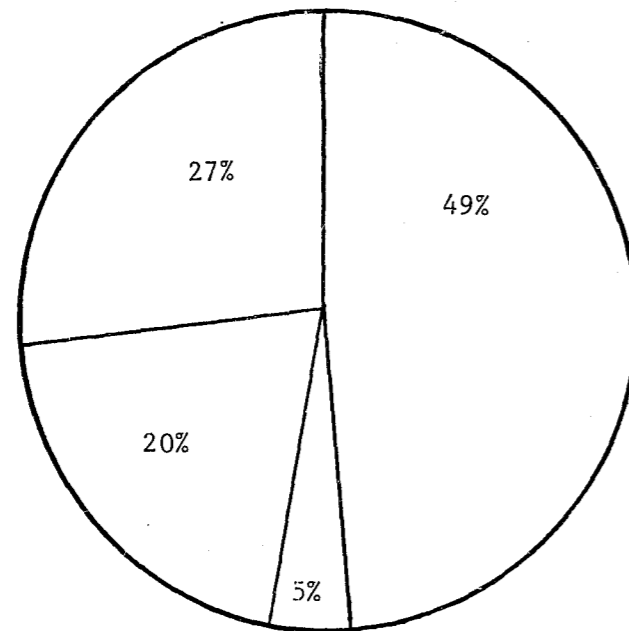
TABLE 52-3. FEDERAL CIRCUITS: JUDICIAL WAIVERS TO ADULT COURTS
(BY CIRCUIT AND BY TYPE OF OFFENSE) IN 1978

Circuit	Total Waivers	Offenses ^a									
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty	Public Order	Other General
Circuit 3	2	0	0	1	0	0	0	0	1	0	0
Circuit 5	43	0	0	1	0	0	0	15	4	5	18
Circuit 6	8	0	0	1	1	1	0	0	5	0	0
Circuit 8	30	0	2	1	0	4	1	13	6	0	3
Circuit 9	14	2	0	0	0	2	1	0	5	0	4
Circuit 10	4	0	1	0	0	1	0	0	0	0	2
Circuit Total	101	2	3	4	1	8	2	28	21	5	27

a. Only most serious offense per individual listed.



FIGURE 52-1. FEDERAL CIRCUITS: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	20%
Property	49%
Public Order	5%
Other General	27%

N= 101

a. Violent offense (murder/manslaughter, rape, robbery, and aggravated assault) represent 17 percent of all waived offenses in the federal circuits.

Table 52-4 represents the judgments received in adult courts by youth transferred within the federal jurisdiction. All 101 were found guilty.

TABLE 52-4. FEDERAL CIRCUITS: JUDICIAL WAIVERS TO ADULT COURTS (BY CIRCUIT AND BY JUDGMENT) IN 1978

Circuit	Total Waivers	Judgments			
		Not Guilty	Dismissed	Guilty	Other
Circuit 3	2	0	0	2	0
Circuit 5	43	0	0	43	0
Circuit 6	8	0	0	8	0
Circuit 8	30	0	0	30	0
Circuit 9	14	0	0	14	0
Circuit 10	4	0	0	4	0
Circuit Total	101	0	0	101	0

The sentences of the 101 youth found guilty in federal adult courts are displayed in Table 52-5. Sixty-two youth (61 percent) were given probation. The remaining 39 (39 percent) were sentenced to adult corrections institutions. Twenty-three of those sentenced to adult facilities (59 percent) were from District 5.



TABLE 52-5. FEDERAL CIRCUITS: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY CIRCUIT AND SENTENCE TYPE) IN 1978

Circuit	Total Convictions	Sentence Types				
		Fined	Probation	Jail	Adult Corrections Facilities	Other
Circuit 3	2	0	1	0	1	0
Circuit 5	43	0	20	0	23	0
Circuit 6	8	0	5	0	3	0
Circuit 8	30	0	25	0	5	0
Circuit 9	14	0	9	0	5	0
Circuit 10	4	0	2	0	2	0
Circuit Total	101	0	62	0	39	0

Table 52-6 presents the sentence durations of the 39 youth sentenced to adult corrections facilities. Of the 32 known sentence durations, 26 (81 percent) received maximum terms of three years or less. Of these, 11 (34 percent of total) received maximum terms of one year or less. Only one youth was known to have received a maximum term over five years.

TABLE 52-6. FEDERAL CIRCUITS: LENGTH OF CONFINEMENTS REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS (BY CIRCUIT AND MAXIMUM SENTENCE) IN 1978

Circuit	Total Confinements	Sentence Maximums								
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Circuit 3	1	1	0	0	0	0	0	0	0	0
Circuit 5	23	8	13	1	*	*	*	*	*	1
Circuit 6	3	0	1	2	0	0	0	0	0	0
Circuit 8	5	*	1	1	*	*	*	*	*	3
Circuit 9	5	2	*	*	*	*	*	*	*	3
Circuit 10	2	0	0		1	0	0	0	0	0
Circuit Total	39	11	15	5	1	0	0	0	0	7

In summary, 94 percent of youth transferred in 1978 were males and 87 percent were 16 years of age or younger. Sixty-two percent were minority youth. Approximately one-half of the incident offenses (49 percent) were property crimes and 20 percent were crimes against the person. All of the youth transferred to adult courts within the federal jurisdiction were found guilty. Approximately two-thirds (62 percent) were placed on probation; all the rest were sentenced to adult corrections institutions with 81 percent receiving maximum terms of three years or less.

FOOTNOTES

1. United States Code Annotated, Title 18, Section 5032.
2. United States Code Annotated, Title 18, Section 5031.
3. Supra, note 1.
4. Kent v. United States, 383 U.S. 541 (1966).
5. Ibid.
6. Ibid.
7. Ibid. In re Gault, 387 U.S. 1, 18 L.Ed.2d 527 (1967).
8. Jones v. Breed, 421 U.S. 519, 95 S. Ct. 1779, 44 L.Ed.2d 346 (1975).
9. U.S. v. Quiones, 516 F.2d 1309 (1975).
10. U.S. v. Williams, 459 F.2d 903 (1972).
11. U.S. ex rel. Turner v. Rundle, 438 F.2d 839 (1971).
12. Geboy v. Gray, 471 F.2d 575 (1973).
13. U.S. ex rel. Bombacino v. Bensinger, 498 F.2d 875 (1974).
14. U.S. v. Cheyenne, 558 F.2d 902 (1977).
15. Powell v. Hocker, 453 F.2d 652 (1971).
16. United States Code Annotated, Title 18, Section 5039.

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