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MAJOR ISSUES IN JUVENILE JUSTICE INFOR- MATION AND TRAINING:

Youth in Adult Courts: Between
Two Worlds • Southeast Region

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Major Issues in Juvenile Justice Information and Training Project

This volume is one of a series of books and monographs of Project MIJJIT, 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 Southeast Region

AUTHORS

Donna M. Hamparian, Principal Investigator
Linda K. Estep, Research Assistant
Susan M. Muntean, Research Associate
Ramon R. Priestino, Research Associate
Robert G. Swisher, Research Associate
Paul L. Wallace, Research Associate
Joseph L. White, Project Director

Academy for Contemporary Problems
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U.S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention
National Institute for Juvenile Justice and Delinquency Prevention

Staff

John C. Hall, *Assistant Project Director*
Sandra Clapsaddle, *Administrative Assistant*

Bruce Barker	Deborah Levine
Kathryn Baybutt	Ralph Marcelli
Lisa Beach	Fred McKinney
Pamela Bertram	Karen Morgan
Beth Black	Wayne Murphy
Elizabeth Bohlander	Frank Nagorka
Christopher Carr	Molly Ann Parkhill
Ellis Clifton	Charles Phillips, Ph.D.
Roger Coe	Judith L. Pilotta
Sherry Flannery	Marian Radebaugh
Jack Foster, Ph.D.	Marcia Ramm
Barbara Friedman	Sylvia Robinson
Sandra Gardner	Chip Santer
Rosetta Gooden	Susan Warner
Elizabeth Gray	Kurt Weiland
Jerrell Holloway	David Wilder
Gina Hoy	Christine Wolf

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PROFILE VOLUME

INTRODUCTION

State profiles on youth in adult courts were compiled for each of the 50 states, the District of Columbia, and the federal District Courts. For purposes of this study, juveniles were defined as persons under 18 years of age.

There are four mechanisms by which juveniles are referred to adult court for trial:

- Judicial waiver
- Concurrent jurisdiction
- Excluded offenses
- Maximum age of initial jurisdiction below age 18

The first part of each profile describes the process by which youths are referred to adult courts and what can happen to them after conviction. Included in this part are descriptions of (1) the court organization, (2) the pertinent statutory provisions in the state code, (3) the relevant cases tried in the state supreme court and the federal courts since 1950, and (4) the correctional placement options for juveniles convicted in adult courts. This information was generally obtained through a search of the statutes and case law, and telephone interviews with court and correctional officials.

The second part of the profile presents data collected from every county in the United States on the frequency of referral of youths to adult courts, for each of the mechanisms permitted by state law. In addition, demographic and offense characteristics and the judgments and sentences received by these youths are described for at least the ten percent most populous counties and counties referring five or more juveniles to adult courts in 1978.

The survey data were collected in several different ways. (The individual state profiles detail the survey process in each state.) First, in a few states, frequency of referrals by counties were available from a state agency. Second, in 22 states, private consulting companies, advocacy organizations, and volunteer groups collected the data through telephone interviews on behalf of the Academy. In half of the states, Academy personnel conducted telephone interviews. In the latter two instances, personnel from the courts and prosecutors' offices were generally the interviewees. (For more detail on the research strategies, please refer to the methodology chapter in Appendix A.)

ALABAMA PROFILE

ACKNOWLEDGMENTS

For their assistance in gathering the data on judicial transfers in Alabama, the Academy thanks A. C. Conners of the Family Court in Birmingham, and George Phyfer and Peggy Goodwin from the Department of Youth Services. Appreciation is also expressed to Allen Tapley, Court Administrator, Alabama Supreme Court, and Robert G. Davis, Director, Alabama Law Enforcement Planning Agency, for reviewing the Alabama profile. In addition, the Academy thanks the many other state and local officials who participated in the survey.

METHODOLOGY

The frequency data on judicial waivers were supplied by the Department of Youth Services. In order to verify the state-supplied information and to obtain more detailed information (i.e. Phase II data), telephone interviews were conducted by Academy staff with the district attorneys in several counties. Questionnaires were mailed where the information could not be obtained by telephone. Youth charged with minor traffic violations were routinely tried in adult courts, however, interviewees indicated that no data on juvenile traffic cases were available.

Phase I data on occurrence of judicial transfers were sought for every county in Alabama. Phase II data on age, sex, race, offenses, dispositions, and sentences of youth judicially transferred to criminal courts were sought from the most populous ten percent of the counties and in counties with five or more transfers during 1978.

COURT ORGANIZATION

In Alabama, circuit courts are the highest courts of general jurisdiction. The 39 circuit courts have original jurisdiction for all felonies and misdemeanors, and concurrent jurisdiction with the district courts to receive pleas of guilty in felony cases not punishable by sentence of death. Separate district courts are located in 63 of the 67 Alabama counties; Calhoun and Cleburne Counties, and Coosa and Clay Counties have joint district courts. The district courts conduct bench trials in misdemeanor cases, hear guilty pleas, try civil small claims cases, and handle traffic cases, including traffic offenses committed by juveniles 16 years of age and older.

Generally speaking, juvenile jurisdiction is concurrent between circuit and district courts. In 11 counties, juvenile courts exist as divisions of the circuit courts. In the remaining 56 counties and the Bessemer Division of Jefferson County, the district court judge sits as the juvenile judge.

Under Alabama state law, there are no separately established family courts. However, as methods of organizing workloads, "family courts" have been designated by local officials or circuit court judges in nine counties. Circuit or district court judges sit as the juvenile judge in these "family courts." Family courts have juvenile and domestic relations jurisdiction. Whatever the appropriate court in each county, when it hears juvenile cases, it sits as a "juvenile court."

The remainder of this profile on Alabama will hereafter use the term juvenile courts in reference to juvenile divisions of circuit or district courts and to the nine "family courts." The juvenile courts have exclusive, original jurisdiction of proceedings in which children are alleged to be delinquent, dependent, or in need of supervision.

An overview of Alabama's courts by their jurisdiction over juveniles appears below.

ALABAMA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Family Courts or Juvenile Divisions of Circuit or District Courts	Circuit Courts District Courts	District Courts Juvenile Courts ^a

a. Traffic offenses committed by juveniles under age 16 are tried in juvenile courts.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Alabama extends to 18 years of age, and up to age 19 if the youth is accused of a crime that occurred before he reaches age 18.¹ There are two legal mechanisms by which juveniles are tried in adult courts in Alabama--judicial waiver and excluded offenses.

Judicial Waiver

Two provisions are applicable to judicially waiving or transferring jurisdiction over juveniles to adult courts. First, youth 14 years of age or older and charged with felonies may be judicially waived by the juvenile courts. Second, youth 14 years of age or older who have already been committed by juvenile courts to youth-serving agencies or institutions and are charged with another offense may also be judicially waived. Under both provisions, the transfer process is initiated by prosecuting attorneys.²

State law requires waiver hearings before youth can be transferred from juvenile to adult courts. The 1975 revision of the Alabama juvenile code itemized the factors to be considered at these waiver hearings. The factors include:

- (1) Nature of the present alleged offense.
- (2) Extent and nature of the child's prior delinquency record.
- (3) Nature of past treatment efforts and the nature of the child's response to the efforts.
- (4) Demeanor.
- (5) Extent and nature of the child's physical and mental maturity.
- (6) Interests of the community and of the child requiring that the child be placed under legal restraint or discipline.³

Excluded Offenses

Traffic offenses involving juveniles 16 years of age or older are generally handled in adult courts.⁴ Traffic violations are excluded from the jurisdiction of juvenile courts. However, Alabama state law does provide for juvenile traffic violators to be transferred back to juvenile courts for trial under certain circumstances.⁵

CASE LAW SUMMARY

Prior to recent statutory changes, the Alabama Supreme Court held, in Davis v. State, that the critical date in determining a juvenile's age for purposes of resolving the jurisdictional issue between juvenile and adult courts was the time of trial and not the time of the offense.⁶ Thus, juveniles could be within the jurisdictional age range of juvenile courts at the time of the commission of the offense, but could be handled automatically in adult criminal courts if they exceeded the maximum initial age for juvenile court jurisdiction when proceedings were commenced. The court, in 1978, in In re Bolden v. State, acknowledged that the statutory age of juvenile jurisdiction specified that the date when the offense was committed, and not that of trial, was determinative.⁷

In Hall v. State, the Alabama Supreme Court expressly adopted the due process requirement set forth in Kent v. United States, holding that a statement of reasons must accompany a transfer order.⁸ However, the Alabama high court appears to have had a more difficult time in applying the prohibition against double jeopardy articulated in Breed v. Jones.⁹ In Rudolph v. State, which was decided five years before Breed, the Alabama Supreme Court held that a finding of delinquency was a condition precedent to a valid waiver of juvenile court jurisdiction.¹⁰ Six years later, the Alabama Supreme Court refused to hold the rule in Rudolph, unconstitutional in light of Breed. Rather, in Boyd v. State, the court held that no finding of delinquency had been made in the case at bar, and therefore the court need not address the Breed issue.¹¹ The whole question was ultimately laid to rest in Brown v. State, wherein the court held, citing Kent, that a transfer hearing was not adjudicatory in nature, but rather designed to resolve the issue of probable cause.¹² The court also addressed the "full investigation" requirement enunciated in Kent.

Concerning the procedure to be followed in a transfer hearing, the Alabama Supreme Court held in Walter v. State and Vincent v. State that strict rules of evidence do not apply. Thus, a finding of probable cause can be based upon normally inadmissible hearsay or uncorroborated testimony of an accomplice.¹³

The Alabama Supreme Court has addressed, on numerous occasions, the issue of what type of evidence a juvenile court may consider in making a determination as to whether a juvenile is "incorrigible" and, therefore, eligible for transfer. In essence, the court has held, in Steele v. State, Seagroves v. State, Guenther v. State, and Stapler v. State, that juvenile courts may examine a juvenile's prior record of delinquency and treatment, the circumstances surrounding the commission of the offense, the juvenile's physical and mental maturity, and the juvenile's demeanor before the court.¹⁴ The 1975 statutory revision mentioned earlier (see Transfer Process) essentially codified the standards established in these cases. Finally, in Williams v. State, the court held that it will not interfere with the findings supporting a transfer order unless they are clearly erroneous.¹⁵

CORRECTIONS INFORMATION

Adult corrections facilities are operated by the Board of Corrections of Alabama. Persons 18 or older and convicted of a felony may be committed to the Board of Corrections for a minimum sentence of one year and one day.

The Alabama Youthful Offender Act provides that persons under 21 and charged with lesser crimes not disposed of in juvenile courts may be investigated and examined to determine whether they should be tried as youthful offenders. The trial of youthful offenders and proceedings involving them are conducted separately from adults charged with crimes. If defendants do not plead guilty, the trial of the charge as a youthful offender is before the judge without a jury.

Persons adjudged youthful offenders on felony charges may be placed on probation for a period not to exceed three years, fined with or without probation or commitment, or committed to the custody of the Board of Corrections for a term of three years or less. Youthful offenders charged with misdemeanors may be given treatment as provided by law for misdemeanors.¹⁶

A determination of youthful offender shall not be deemed a criminal conviction for purposes of right to hold office, employment, etc. In addition, fingerprints and photographs and other records of persons adjudged youthful offenders shall not be open to public inspection, except at the discretion of the court.¹⁷

Juvenile facilities are administered by the Department of Youth Services.

Individuals tried in juvenile courts may be sent to group homes or training schools operated by the Department of Youth Services. Youth convicted as adults, first-time adult offenders, and younger adult offenders are usually housed at the Frank Lee Youth Center operated by the Board of Corrections. Youth convicted as adults cannot be sentenced or administratively transferred to the Department of Youth Services. Likewise, juveniles tried as juveniles cannot be committed or administratively transferred to the Board of Corrections.¹⁸

STATE DATA SUMMARY

Alabama has two legal mechanisms by which juveniles are referred to adult courts for prosecution and trial. Judicial waivers can be utilized for juveniles 14 years of age or older who have been charged with felonies, or less serious offenses if they have previously been committed to an institution or agency by juvenile courts. Additionally, traffic offenses involving juveniles

16 years of age or older are excluded from juvenile court jurisdiction and are routinely handled in adult courts. Information was not available concerning the number of juveniles tried in adult courts for traffic offenses. Therefore, the survey findings presented below only reflect one of these legal mechanisms--judicial waiver.

The survey discovered that there were 239 youth referred to adult courts in Alabama during 1978 through judicial waivers. Table 01-1 displays the total number of such referrals reported for each of the 67 counties in addition to the 1978 per capita rates. Two-thirds of the 67 counties reported judicial waivers in 1978. Eighty-eight out of 239 transfers occurred in three relatively highly populated counties (Jefferson, Madison, and Montgomery). In contrast, the second most populated county (Mobile) reported no judicial waivers in 1978.

It can also be discerned in Table 01-1 that the state's overall average per capita rate (rate per 10,000 juveniles aged eight to 17) of judicial waivers was 3.6. Furthermore, the per capita rate varied significantly among the counties reaching a high of 30.2 in Franklin County and a low of 1.0 in Colbert County.

TABLE 01-1. ALABAMA: REFERRALS OF JUVENILES TO ADULT COURTS
IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISMS)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Autauga	6,188	2	3.232
Baldwin	12,889	7	5.431
Barbour	4,883	0	0.000
Bibb	2,930	0	0.000
Blount	5,904	2	3.388
Bullock	2,392	1	4.181
Butler	3,813	1	2.623
Calhoun	19,072	5	2.622
Chambers	6,815	1	1.467
Cherokee	2,945	2	6.791
Chilton	5,129	2	3.899
Choctaw	3,491	0	0.000
Clarke	5,608	3	5.350
Clay	2,419	0	0.000
Cleburne	2,016	0	0.000
Coffee	6,688	1	1.495
Colbert	9,461	1	1.057
Conecuh	3,238	0	0.000

TABLE 01-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Coosa	2,032	0	0.000
Covington	5,905	4	6.774
Crenshaw	2,424	0	0.000
Cullman	10,164	3	2.952
Dale	7,944	9	11.329
Dallas	11,881	4	3.367
DeKalb	8,518	4	4.696
Elmore	7,652	7	9.148
Escambia	7,167	3	4.186
Etowah	16,219	4	2.466
Fayette	3,007	1	3.326
Franklin	4,299	13	30.240
Geneva	4,043	0	0.000
Greene	2,140	0	0.000
Hale	3,122	0	0.000
Henry	2,575	0	0.000
Houston	12,989	8	6.159
Jackson	8,295	0	0.000
Jefferson	109,364	35	3.200
Lamar	2,710	2	7.380
Lauderdale	13,507	9	6.663
Lawrence	5,734	3	5.232
Lee	11,098	7	6.307
Limestone	8,343	7	8.390
Lowndes	3,107	0	0.000
Macon	4,234	1	2.362
Madison	36,156	10	2.766
Marengo	4,929	1	2.029
Marion	4,744	0	0.000
Marshall	10,459	4	3.824
Mobile	64,501	0	0.000
Monroe	4,417	1	2.264
Montgomery	33,612	43	12.793
Morgan	16,072	2	1.244
Perry	2,787	0	0.000

TABLE 01-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Pickens	3,973	2	5.034
Pike	4,432	0	0.000
Randolph	3,199	0	0.000
Russell	8,993	0	0.000
St. Clair	6,739	2	2.968
Shelby	9,222	2	2.169
Sumter	3,047	0	0.000
Talladega	13,190	2	1.516
Tallapoosa	6,317	5	7.915
Tuscaloosa	18,449	11	5.962
Walker	11,469	2	1.744
Washington	3,679	0	0.000
Wilcox	3,347	0	0.000
Winston	3,598	0	0.000
Total	661,685	239	3.612

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 to 17 years old (1978).

Table 01-2 reflects the relationship between the state and Phase II counties. Seven counties were Phase II due to population size and 14 reported five or more transfers (five counties fit both criteria). Cullman County, which fit neither criteria, was a Phase II county due to the availability of data. In Alabama, the 17 Phase II counties represented 59 percent of the state juvenile population and 77 percent of the total transfers.

TABLE 01-2. ALABAMA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	661,685	67	239
Selected for Phase II Investigation	392,575	17	183
Percentage of State Selected for Phase II Investigation	59%	25%	77%

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 01-3 gives a demographic breakdown--age, sex, race--of juveniles judicially transferred in the Phase II counties. Of those cases with specific information, 93 percent were 16 years of age or older. Eighty-seven percent (155) were males and 50 percent were white youth.

TABLE 01-3. ALABAMA: JUDICIAL WAIVERS TO ADULT COURTS IN
PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX,
AND RACE) IN 1978

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un- known	Male	Female	Un- known	White	Minor- ity	Un- known
Baldwin	7	0	3	1	3	0	5	2	0	3	4	0
Calhoun	5	0	0	5	0	0	4	1	0	3	2	0
Cullman	3	0	0	3	0	0	3	0	0	3	0	0
Dale	9	1	4	4	0	0	8	1	0	9	0	0
Elmore	7	1	3	3	0	0	7	0	0	5	2	0
Etowah	4	*	*	*	*	4	*	*	4	*	*	4
Franklin	13	2	1	10	0	0	12	1	0	11	2	0
Houston	8	0	2	6	0	0	8	0	0	6	2	0
Jefferson	35	6	11	16	2	0	16	19	0	7	28	0
Lauderdale	9	0	2	7	0	0	9	0	0	6	3	0
Lee	7	1	2	4	0	0	7	0	0	5	2	0
Limestone	7	1	0	4	2	0	7	0	0	7	0	0
Madison	10	0	9	1	0	0	10	0	0	8	2	0
Mobile	0	0	0	0	0	0	0	0	0	0	0	0
Montgomery	43	0	21 est	22 est	0	0	43 est	0	0	10	33	0
Tallapoosa	5	0	3	2	0	0	5	0	0	2	3	0
Tuscaloosa	11	0	5	6	0	0	11	0	0	5	6	0
State Phase II Total	183	12	66	94	7	4	155	24	4	90	89	4

* denotes Not Available.

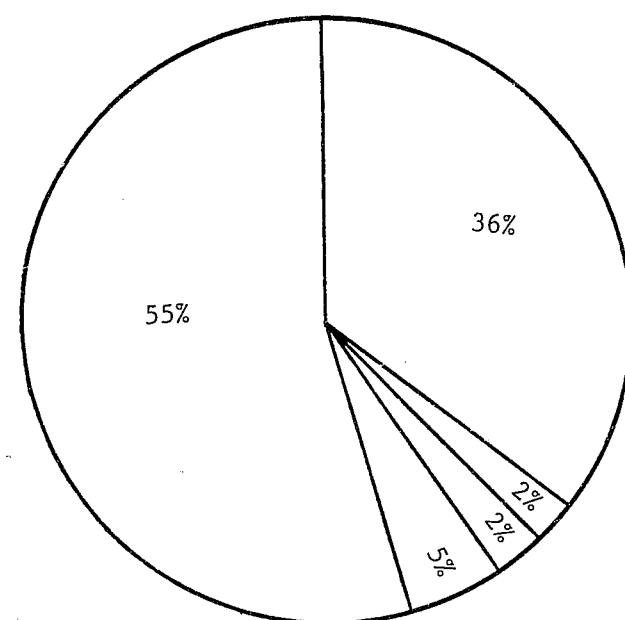
TABLE 01-4. ALABAMA: JUDICIAL WAIVERS TO ADULT COURTS IN
PHASE II COUNTIES (BY COUNTY AND BY TYPES OF
OFFENSES) IN 1978

County	Total Waivers	Offenses ^a										Unknown
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	
Baldwin	7	3	1	0	0	0	0	1	2	0	0	0
Calhoun	5	0	0	2	2	0	0	0	1	0	0	0
Cullman	3	0	0	0	0	0	0	0	2	0	1	0
Dale	9	0	0	0	0	1	2	5	1	0	0	0
Elmore	7	0	0	0	0	0	0	0	7	0	0	0
Etowah	4	*	*	*	*	*	*	*	*	*	*	4
Franklin	13	1	0	0	0	0	0	8	3	1	0	0
Houston	8	0	0	2	0	0	0	6	0	0	0	0
Jefferson	35	2	1	10	0	2	1	6	12	1	0	0
Lauderdale	9	0	1	0	0	0	0	4	0	4	0	0
Lee	7	1	0	3	1	0	0	2	0	0	0	0
Limestone	7	0	0	0	0	0	1	0	1	3	2	0
Madison	10	0	1	5	0	0	0	3	1	0	0	0
Montgomery	43	0	0	16 est	0	0	0	20 est	7 est	0	0	0
Tallapoosa	5	0	0	0	0	0	0	3	2	0	0	0
Tuscaloosa	11	0	3	4	0	0	0	3	1	0	0	0
State Phase II Total	183	7	7	42	3	3	4	61	40	9	3	4

* denotes Not Available.

a. Only most serious offense per individual listed.

FIGURE 01-1. ALABAMA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	36%
Property	55%
Public Order	5%
Other General	2%
Unknown	2%

N= 183

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 32 percent of all offenses in the Phase II counties.

AL-12

The most serious offense with which the 183 youth were charged is displayed by county in Table 01-4. A review of the table reveals that 66 out of the 179 known offenses in Phase II counties (37 percent) were offenses against the person (murder, manslaughter, rape, robbery, assaults, and other personal offenses) and 101 (56 percent) were property offenses (burglary and other property). "Other property" offenses (40) included auto theft, larceny, trespassing, receiving stolen property, and forgery. "Other personal offenses" (4) included kidnapping, arson, sex offenses, other than rape, and weapons violations. These findings have graphically been represented in Figure 01-1.

Table 01-5 represents the judgments of juveniles referred to adult courts in Phase II counties. Where specific information was available, 118 (97 percent) were convicted; 24 were convicted under the youthful offender statute. Three cases were dismissed, and one was found not guilty in adult court. In general, the 12 youth represented in the "other" category referred to cases held open or continued.

TABLE 01-5. ALABAMA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

County	Total Waivers	Not Guilty	Dismissed	Judgments			
				Youthful Offender Judgments	Guilty	Other	Un- known
Baldwin	7	1	0	0	1	5	0
Calhoun	5	0	0	0	3	2	0
Cullman	3	0	0	1	2	0	0
Dale	9	0	0	0	8	1	0
Elmore	7	0	0	7	0	0	0
Etowah	4	*	*	*	*	*	4
Franklin	13	*	*	*	11	*	2
Houston	8	0	2	0	5	1	0
Jefferson	35	0	0	7	26	2	0
Lauderdale	9	0	0	8	1	0	0
Lee	7	0	0	0	7	0	0
Limestone	7	0	1	0	6	0	0
Madison	10	0	0	0	10	0	0
Montgomery	43	*	*	*	*	*	43
Tallapoosa	5	0	0	0	5	0	0
Tuscaloosa	11	0	0	1	9	1	0
State Phase II Total	183	1	3	24	94	12	49

* denotes Not Available.

AL-13

Table 01-6 shows the sentences of youth in Phase II counties convicted in adult courts. Of the 101 known sentences, 69 were sentenced to incarceration. Twenty-five were sentenced to jails and 43 to state adult corrections institutions. Despite data indicating such placements were prohibited, one youth was sentenced to a state juvenile corrections facility.

TABLE 01-6. ALABAMA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Convictions	Sentence Types						Un-known
		Fined	Probation	Jail	State Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities	Other	
Baldwin	1	0	0	1	0	0	0	0
Calhoun	3	0	0	0	3	0	0	0
Cullman	3	0	1	1	1	0	0	0
Dale	8	0	6	0	0	0	0	0
Elmore	7	0	7	0	2	0	0	0
Franklin	11	1	*	1	*	0	0	0
Houston	5	0	0	1	4	*	*	9
Jefferson	33	*	8	*	18	*	0	0
Lauderdale	9	0	1	8	0	0	*	7
Lee	7	0	0	0	7	0	0	0
Limestone	6	0	4	1	0	1	0	0
Madison	10	0	0	8	2	0	0	0
Tallapoosa	5	0	1	4	0	0	0	0
Tuscaloosa	10	*	3	*	6	*	0	0
State Phase II Total	118	1	31	25	43	1	0	17

* denotes Not Available.

Table 01-7 reflects the sentence durations of youth in Phase II counties sentenced to incarceration. Of those with known sentences, 32 youth (49 percent) received maximum sentences of over five years, with 15 receiving maximum sentences of more than ten years, including two youth receiving life sentences.

AL-14

TABLE 01-7. ALABAMA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums						Indeter- minate	Life	Death	Unknown
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years					
Baldwin	1	0	0	0	1	0	0	0	0	0	0
Calhoun	3	0	1	0	2	0	0	0	0	0	0
Cullman	2	*	1	*	*	*	*	*	*	*	1
Dale	2	0	2	0	0	0	0	0	0	0	0
Franklin	1	0	1	0	0	0	0	0	0	0	0
Houston	5	1	2	0	1	1	0	0	0	0	0
Jefferson	18	0	7	4	3	3	0	1	0	0	0
Lauderdale	8	0	7	0	1	0	0	0	0	0	0
Lee	7	0	0	1 est	1 est	4 est	0	1	0	0	0
Limestone	2	*	*	*	*	*	*	*	*	*	2
Madison	10	1	1	*	5	2	*	*	*	*	1
Tallapoosa	4	0	3	0	1	0	0	0	0	0	0
Tuscaloosa	6	0	0	1	2	3	0	0	0	0	0
State Phase II Total	69	2	25	6	17	13	0	2	0	4	

* denotes Not Available.

Table 01-8 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. A total of 239 youth were referred to adult courts and 183 of those cases were further examined under the Phase II survey. Table 01-8 further indicates that 118 youth from the Phase II counties were convicted in adult courts and 69 were confined.

TABLE 01-8. ALABAMA: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 01-1)	239
Total Referrals Selected for Phase II (Table 01-3)	183
Total Referrals Resulting in Convictions (Table 01-6)	118
Total Convictions Resulting in Sentences of Confinement (Table 01-7)	69

AL-15

In summary, 93 percent of the juveniles in Phase II counties transferred in 1978 were 16 years of age or older and 87 percent were males. Roughly one-half were white youth. Fifty-six percent of the offenses were against property and 56 percent of the convicted youth were incarcerated. Maximum sentences over five years were given to 49 percent of those incarcerated.

FOOTNOTES

1. Alabama Code, Section 12-15-1(3)(b).
2. Alabama Code, Section 12-15-34.
3. Alabama Code, Section 12-15-34(d).
4. Alabama Code, Section 12-15-34(a).
5. Alabama Code, Section 12-15-1(8).
6. Davis v. State, 66 So. 2d 714 (1953).
7. In re Bolden v. State, 358 So.2d 795 (1978).
8. Hall v. State, 226 So. 2d 630 (1969); Kent v. United States, 383 U.S. 541 (1966).
9. Breed v. Jones, 421 U.S. 519 (1957).
10. Rudolph v. State, 238 So. 2d 542 (1970).
11. In re Boyd v. State, 341 So. 2d 680 (1976).
12. Brown v. State, 353 So. 2d 1384 (1977).
13. Walter v. State, 365 So. 2d 668 (1978); Vincent v. State, 349 So. 2d 1145 (1977).
14. Steele v. State, 266 So. 2d 746 (1972); Seagroves v. State, 189 So. 2d 137 (1966); Guenther v. State, 188 So. 2d 594 (1965); Stapler v. State, 141 So. 2d 181 (1962).
15. Williams v. State, 361 So. 2d 1157 (1978).
16. Alabama Code, Section 15-19-6.
17. Alabama Code, Section 15-19-7.
18. Alabama Code, Section 12-15-71(d).

DISTRICT OF COLUMBIA PROFILE

ACKNOWLEDGMENTS

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METHODOLOGY

All of the data came directly from the Superior Court of the District of Columbia. Two categories of data were collected:

- (1) Juveniles under 18 judicially waived to adult courts.
- (2) Major felonies which were filed directly in adult courts.

Unfortunately, these two pieces of data were aggregated and could not be separated into the two categories. Phase I frequency data were provided as well as Phase II data on age, sex, offenses, and dispositions of juveniles tried in adult courts. However, no data on race, sentences received by these juveniles, or on juvenile traffic cases heard in the adult division of the Superior Court were available.

COURT ORGANIZATION

The Superior Court of the District of Columbia, consisting of one court, is the highest court of general jurisdiction over all civil and criminal cases in the district. Cases involving persons 18 years of age or older and traffic cases involving juveniles 16 years of age or older are heard in the adult division of Superior Court. Original jurisdiction over most cases other than traffic cases involving individuals under 18 years of age rests in the family division of the Superior Court, hereafter referred to as the juvenile courts. Juveniles may be transferred from the family division of Superior Court to the adult division.

An overview of the District of Columbia's courts by their jurisdiction over juveniles appears below.

DISTRICT OF COLUMBIA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Family Division of Superior Court	Adult Division of Superior Court	Adult Division of Superior Court ^a

a. Youth age 16 or older.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in the District of Columbia extends to 18 years of age.¹ Individuals under 18 years of age can be transferred to adult jurisdiction in several ways.

Judicial Waiver

Adult prosecutions are handled by the United States Attorney for the District of Columbia while juvenile prosecutions are handled by the District of Columbia Corporation Counsel. The Corporation Counsel may initiate a motion for transfer of juveniles to adult courts under three different provisions: (1) juveniles 15 years of age or older and charged with an act which would constitute a felony if committed by an adult, (2) juveniles 16 years of age and older already committed to an agency or institution as a delinquent, and (3) individuals over 17 and under 21 years of age and charged with a delinquent act that occurred before the age of 18.²

In order to retain juvenile jurisdiction, the family division of superior court must determine that there are reasonable prospects for rehabilitating juveniles before their majority. The court must consider the juveniles' ages, the nature of the offenses, their prior delinquency records, their mental condition, past treatment, and availability of treatment. During the amenability hearing, evidence bearing on probable cause or the likelihood that the juvenile committed

the alleged act cannot be admitted. The Division of Social Services, District of Columbia Superior Court, must submit a written report to the juvenile court on the amenability of the child to juvenile treatment.

Judges who conduct hearings pursuant to this section cannot, over the objection of the child, participate in any subsequent factfinding proceedings relating to the offense.

It should be noted that, in 1979, the Superior Court Rules were amended and made clear that the burden of proof is on the government to show that there are not reasonable prospects of rehabilitation if the juvenile system before transferring youth to criminal court.³

Concurrent Jurisdiction

Youth, 16 years of age and older, charged with murder, forcible rape, burglary in the first degree, armed robbery, or assault with the intention to commit any of these offenses may be tried in adult courts.⁴ The decision to proceed in adult court in these cases is solely that of the United States Attorney, and prosecution will go forward in the adult court unless the United States Attorney's office "waives" down to juvenile court. Juveniles charged with these offenses who are not prosecuted as adults are tried in juvenile court and prosecuted by the District of Columbia Corporation Counsel.

When youth are charged with any of the above offenses by the prosecutor and the prosecutor elects to proceed in adult court, all lesser offenses associated with the primary charge will also be tried in adult court.

Excluded Offenses

Finally, cases involving juveniles 16 years of age and older charged with traffic offenses are heard in the adult division of superior court.⁵

CASE LAW SUMMARY

Since 1950, several issues related to the District of Columbia transfer provisions have been considered by state or federal appellate courts. The case of Pee v. United States, prior to Kent v. United States, enunciates the differences between the rights and procedures applicable to a juvenile in criminal court and in juvenile court.⁶ According to the federal court, if the Superior

Court of the District of Columbia pursued the normal criminal law processes, the juvenile was to be entitled to all the constitutional safeguards normally attendant to criminal cases and the federal rules of criminal procedure applied. However, if the court chooses to exercise its juvenile jurisdiction, the constitutional safeguards were determined by the requirements of due process and fair treatment, instead of by direct application of the clauses of the constitution applicable to criminal cases. The juvenile rules, not the federal rules, were applicable.

In Wilhite v. United States, it was held that the D.C. code did not require a formal hearing on a waiver of jurisdiction.⁷ Rather, the investigation called for in the statute is merely administrative, and no particular standards are therefore prescribed.

Following the precepts set forth in Pee, the federal court held, in Harting v. United States, that the principles of fundamental fairness govern in fashioning procedures and remedies to serve the best interest of the child who is confronted with a waiver hearing.⁸ It is implicit in the juvenile court scheme that noncriminal treatment is to be the rule and adult criminal treatment the exception which must be governed by the particular factors of individual cases. According to the court, a child who has committed an offense is exempt from criminal proceedings unless the juvenile court waives its jurisdiction. Further, damaging admissions made by a juvenile while in police custody and prior to the juvenile court's waiver of jurisdiction are excluded from evidence in the subsequent criminal proceeding. (For a later case to the same effect, see Harrison v. United States⁹). However, in Riddick v. United States, it was held that the use of evidence consisting of the juvenile's conversation with the police by the prosecution, at the invitation of the defense, is no ground for reversal when it fails to establish the defendant's innocence.¹⁰

In Green v. United States, the then new full investigation statutory requirement was interpreted to mean that the judge in each case must inquire into the facts of the offense and also into whether retention of juvenile jurisdiction is desirable and proper in a particular case. Further, the results of such inquiry must appear in the record of the case.¹¹

In Franklin v. United States, the court held that the D.C. statutes required the trial judge in a criminal case involving a juvenile to determine, based upon the individual case before the judge, whether or not to remand the case to juvenile court when a timely request for such determination is made by defense counsel.¹²

The decision of Black v. United States reiterated the requirement first stipulated in Shioutakon v. District of Columbia, in 1956, that a juvenile is due the assistance of counsel in juvenile proceedings since waiver hearings may result in the imposition of criminal sanctions.¹³ If he cannot afford to retain counsel, he must be informed of the right to have counsel appointed for him. The Black case also reaffirmed that counsel in a waiver proceeding has a legitimate interest in inspecting a juvenile's confidential social record, a right first announced in Watkins v. United States.¹⁴

The case of Kent v. United States was first heard at the appellate level in 1961.¹⁵ The U.S. Supreme Court heard the case on certiorari in 1966. The case was reversed and remanded for a de novo waiver hearing. The superior court again waived the Kent child, but the court of appeals reversed, stating that the initial invalid waiver of the juvenile invalidated all subsequent criminal proceedings against him.¹⁶ The court concentrated upon the seriousness of Kent's mental illness. After the Supreme Court's decision in the Kent case, Watkins v. United States was remanded for a de novo waiver hearing in compliance with the standards set forth in Kent.¹⁷

In the case of Haziel v. United States is recited the proposition that the right to a waiver hearing is a "critical right" which must be afforded if there is to be compliance with the "full investigation" required by statute and by the Kent case.¹⁸

In Tate v. United States, a waiver order was affirmed as being in accord with the full investigation and specificity of waiver reasons required by Kent.¹⁹ The court noted that the complete legal and juvenile records on the child were before the court and were considered by it in making the order. A similar result was reached in Strickland v. United States, where the reviewing court in affirming a waiver order focused upon the juvenile's lengthy documented juvenile record.²⁰

In Howard v. United States, a waiver order was challenged on the ground that the child would have been civilly committed as a seriously ill juvenile and that the court was in error in concluding that rehabilitation within existing facilities was unlikely.²¹ The first argument failed because of conflicting expert testimony as to the juvenile's mental health in the juvenile court. The second argument also failed, the reviewing court noting that the juvenile court could consider that the juvenile was of an age where he would not be subject to the jurisdiction of the court for a period long enough to ensure rehabilitation.

The statute which excludes juveniles over the age of 16 who have allegedly committed specified serious felonies from treatment as juveniles was challenged on due process grounds in Bland v. United States.²² The court held the statute to be rationally based, because the congressional intent in passing the statute was to counter problems confronting the juvenile system in the District of Columbia. The District of Columbia Appeals Court also held that the discretion of the prosecutor to charge a person 16 years of age or older with an offense which would subject him to adult trial cannot be challenged on the equal protection issue, except where the discretion is prompted by factors such as race. Nor, according to the court, does due process require a hearing before the prosecutor brings such charges against a juvenile.

CORRECTIONS INFORMATION

The Department of Corrections operates adult corrections in the District of Columbia. Offenders adjudicated as delinquent or as persons in need of

supervision are either committed to the Department of Human Resources' Social Rehabilitation Administration and placed under the supervision of the Bureau of Youth Services, or placed on consent decree of probation with the Superior Court's Division of Youth Services. If assigned to the Bureau of Youth Services, juveniles can be sent to a minimum or medium-security institution or to a more secure facility for aggressive male delinquents only. In addition to these, there are group homes and small residential placement settings that house juveniles in aftercare or on direct placement. No youth found to be delinquent or in need of supervision can be committed to an adult penal or corrections institution.²³

When convicted as adults, youth can be placed on probation (Superior Court's Division of Social Services), sentenced under the Youth Corrections Act and committed to either Youth Center I or II at the Lorton prison complex, or sentenced under the D.C. code to the main prison at the Lorton complex. Once committed to an adult facility, there are no statutory provisions for subsequent transfer to a juvenile facility.

STATE DATA SUMMARY

Youth in the District of Columbia charged with murder, forcible rape, burglary in the first degree, armed robbery, or assault with the intent to commit any of these offenses may be tried in adult court due to concurrent jurisdiction. Youth may also be judicially transferred to adult court following a hearing, if they are:

- (1) 15 years of age or older at the time an alleged felony was committed.
- (2) 16 years of age or older and already under commitment to an agency or institution as a delinquent.
- (3) 18 years of age to under 21 years of age and alleged to have committed a delinquent act prior to becoming 18.

Available data from the District of Columbia could not differentiate between juveniles judicially transferred to criminal court and juveniles proceeded against in criminal court through the decision of the United States Attorney (concurrent jurisdiction). In 1978, there were 130 juveniles transferred to adult court through judicial transfer and concurrent jurisdiction in the District of Columbia (see Table 09-1). Data were not available on youth 16 years of age or over tried in adult court for traffic violations (excluded offenses).

TABLE 09-1. DISTRICT OF COLUMBIA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY RATE AND LEGAL MECHANISM)

	Juvenile Population ^a (Ages 8-17)	Judicial Waiver and Concurrent Jurisdiction	
		Cases	Rate ^b
District of Columbia Total	110,116	130	11.806

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 to 17 years old (1978).

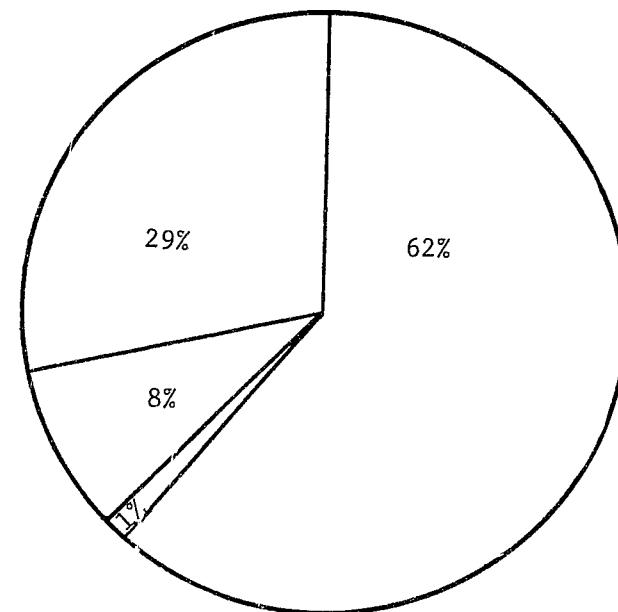
Table 09-2 gives a demographic breakdown for age and sex of youth in adult court. Information on race was unavailable. Ninety-eight percent (128) of the youth transferred were 16 or 17 years of age; the 17-year-olds alone represented 71 percent (92) of the total. Ninety-three percent (118) of the youth were males, where sex was known.

TABLE 09-2. DISTRICT OF COLUMBIA: JUDICIAL WAIVERS AND PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION TO ADULT COURTS (BY AGE, SEX, AND RACE) IN 1978

	Total Referrals	Age				Sex		Race		
		0-15	16	17	18+	Male	Female	Un- known	Minor- ity	Un- known
District Total	130	1	36	92	1	118	9	3	*	130

* denotes Not Available.

FIGURE 09-1. DISTRICT OF COLUMBIA: PERCENTAGE OF JUDICIAL WAIVERS AND PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978



Offenses ^a	
Personal	62%
Property	29%
Public Order	8%
Other General	1%

N= 130

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 51 percent of all offenses in the district.

DC-8

Among the youth in adult court, 62 percent (81 of 130) were charged for offenses against the person--murder, manslaughter, rape, robbery, assault and battery, aggravated assault, and other personal offenses (see Table 09-3). Robbery was by far the most common offenses, with 38 percent of all charges. Property offenses comprised 29 percent (38) of the charges; most were for burglary. This information is graphically displayed in Figure 09-1.

TABLE 09-3. DISTRICT OF COLUMBIA: JUDICIAL WAIVERS AND PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION TO ADULT COURTS (BY TYPES OF OFFENSES) IN 1978

	Total Referrals	Offenses ^a								Public Order	Other General
		Murder/Man-slaughter	Rape	Rob-bery	As-sault/Bat-tery	Aggra-vated As-sault	Other Personal	Bur-glary	Other Prop-erty		
District Total	130	10	3	49	13	3	3	23	15	10	1

a. Only most serious offense per individual listed.

Table 09-4 represents the judgments of juveniles in adult courts through judicial transfer and prosecutorial referral due to concurrent jurisdiction in the District of Columbia. There are 23 cases in the "other" category, most of which were pending or held open. Fifty-eight of the 94 known dispositions (62 percent) were found guilty. Thirty percent (28) were found not guilty or had the charges dismissed. Eight cases (nine percent) were referred back to juvenile court.

TABLE 09-4. DISTRICT OF COLUMBIA: JUDICIAL WAIVERS AND PROSECUTORIAL REFERRAL DUE TO CONCURRENT JURISDICTION TO ADULT COURTS (BY JUDGMENTS IN ADULT COURTS) IN 1978

	Total Referrals	Judgments					Unknown
		Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other ^a	
District Total	130	2	26	8	58	23	13

a. Primarily cases pending or held open.

DC-9

Table 09-5 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts, the number selected for Phase II investigation, and findings concerning convictions applicable to these youth. It can be seen that Phase II data were obtained about all 130 reported cases and that 58 of these youth were convicted in adult court.

TABLE 09-5. DISTRICT OF COLUMBIA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver and Concurrent Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 09-1)	130
Total Referrals Selected for Phase II (Table 09-2)	130
Total Referrals Resulting in Convictions (Table 09-4)	58
Total Convictions Resulting in Sentences of Confinement	*

* denotes Not Available.

In summary, 93 percent of juveniles in adult courts in 1978 were males and 98 percent were 16 or 17 years of age. Sixty-two percent were charged with crimes against the person, most of these being robbery charges. Sixty-two percent were found guilty, and 30 percent were found not guilty or had the charges dismissed. Information was not available for race, sentence type, or sentence duration.

FOOTNOTES

1. District of Columbia Code, Section 16-2301(3).
2. District of Columbia Code, Section 16-2307(a) and Superior Court Rules, Juvenile Proceedings, Rule 108(a).
3. Superior Court Rules, Juvenile Proceedings, Rule 109(c).
4. District of Columbia Code, Section 16-2301(3).
5. District of Columbia Code, Section 16-2301(7).
6. Pee v. United States, 274 F.2d. 556 (1959); Kent v. United States, 383 U.S. 541 (1966), 16 L. Ed.2d. 84, 86 S. Ct. 1045.
7. Wilhite v. United States, 281 F.2d. 642 (1960).
8. Harting v. United States, 295 F.2d. 161 (1961); 111 U.S. App. D.C. 174.
9. Harrison v. United States, 359 F.2d. 214 (1965).
10. Riddick v. United States, 326 F.2d. 650 (1963).
11. Green v. United States, 308 F.2d 303 (1962).
12. Franklin v. United States, 330 F.2d. 205 (1963).
13. Black v. United States, 355 F.2d. 104 (1965); Shioutakon v. District of Columbia, 236 F.2d. 666 (1956).
14. Watkins v. United States, 343 F.2d. 278 (1964).
15. Kent v. United States, 343 F.2d. 247 (1961).
16. Kent v. United States, 401 F.2d. 408 (1968).
17. Watkins v. United States, 373 F.2d. 681 (1966).
18. Haziel v. United States, 404 F.2d. 1275 (1968).
19. United States v. Tate, 466 F.2d. 432 (1972).
20. Strickland v. United States, 449 F.2d. 1131 (1971).
21. United States v. Howard, 449 F.2d. 1086 (1971).
22. United States v. Bland, 472 F.2d. 1329 (1972).
23. District of Columbia Code, Section 16-2320(e).

FLORIDA PROFILE

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Florida Parole and Probation
Commission
Tallahassee

Honorable Seymour Gelber
Juvenile Court
Miami

George Brown, Program Supervisor
Department of Health and Rehabil-
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Tallahassee

Allen Hubanks, Director
Division of Youth Services
Department of Health and Reha-
bitative Services

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Juvenile Court
Tallahassee

John W. Jennings, Chief
Juvenile Bureau
State's Attorney's Office
Tampa

Jim Clark, Administrator
Program Planning and Development
Youth Services Program Office
Department of Health and Rehabil-
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Tallahassee

Judy Justice, Legislative Aide
Tallahassee

Honorable Phillip Knowles
Juvenile Court
Tampa

Susan Evans, District Intake
Specialist
Department of Health and Rehabil-
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Tallahassee

Ruth Kruse, Chairman
Metro-Dade County Youth
Advisory Board
Miami

Mark Ezell, Associated Director
Center for Children and Youth
Tallahassee

Curt McKenzie, Director
Youthful Offender Division
Department of Corrections
Tallahassee

Ric Margolius, Public Defender
Juvenile Justice Center
Miami

Honorable Charles E. Miner
Circuit Court, Leon County
Tallahassee

Ben Poitevent, Assistant State's
Attorney
Juvenile Bureau
Tallahassee

Joseph Ryan, Assistant State's
Attorney
Miami

METHODOLOGY

The Florida Department of Health and Rehabilitative Services provided a computer print-out for fiscal year 1978 containing frequencies (Phase I data) and age, sex, race, and offense information (Phase II data) by county on judicial transfers and on grand jury indictments due to concurrent jurisdiction provisions. Dispositional and sentencing information were not available from that state agency nor any other central source. In order to verify this state-supplied data, and to gather dispositional and sentencing information, state attorneys in a sample of counties were contacted by Academy staff. Although the requested information was available in some of the counties contacted, verification was not possible because the reporting periods were not comparable.

The reader should further understand that the DHRS data is subject to some error because of possible over- or under-reporting of case specific data from the original sources in local government. In addition, some of the concurrent jurisdiction offense data is erroneous (cases recorded in an incorrect offense category) due to a computer error reported by state officials. However, the Academy is confident that the information presented in this profile was systematically gathered, is comprehensive in scope, and represents the most reliable data available on Florida's referral of youth to adult courts.

In addition, an attempt was undertaken to gather data on juvenile traffic offenders referred to adult courts because such offenses are excluded from juvenile court jurisdiction. This information was not available from any state agency, and a sample of county court officials were also unable to report on juvenile traffic cases.

Florida was selected as the case study state from federal administrative region 4. A rapidly growing element of the American "sunbelt", Florida has experienced a great deal of legislative activity in the area of juvenile justice. The state currently utilizes judicial transfer, concurrent jurisdiction, and excluded offenses as legal mechanisms for trying youth as adults. Furthermore, within the judicial transfer mechanism, transfer hearings are mandated for juveniles charged with certain violent offenses following a

delinquency finding for such an offense. Youth requesting trial as adults must be judicially transferred, and once youth are convicted as adults they are thereafter handled as adults for subsequent offenses.

In December 1979, five members of the Academy staff interviewed 19 people in four locations. The locations chosen followed the standard MIJJIT format of the state capital (Tallahassee), the largest city (Miami), a representative small community (Perry), and an additional metropolitan area of special interest (Tampa). The respondents were chosen from those actively involved in or having a special interest in the processes whereby youth are tried and sentenced as adults. These respondents included juvenile and adult court judges, prosecutors, advocacy group members, corrections officials, youth services personnel, legislative aides, and other juvenile justice specialists.

In addition to the interviews, this report is based on other documentary data (agency reports and plans, advocacy group findings, etc.) which the Academy staff has collected on the Florida justice system. This case study report also contains the census and additional data collected on youth tried as adults in Florida in 1978.

HISTORY OF STATUTES RELATING TO JURISDICTION AND TRANSFER

As mentioned above, there are currently several legal mechanisms in Florida by which youth may be tried in adult courts. First, judicial transfer may occur when juveniles 14 years of age or older are charged with any offense. Waiver hearings are required for youth 14 or older who have previously been adjudicated delinquent for a violent offense and are currently charged with a second such offense prior to judicial transfer. Second, under the state's concurrent jurisdiction mechanism, youth may either be indicted before the grand jury and tried as adults, have their cases filed directly in criminal courts, or be adjudicated for delinquency in juvenile courts. Third, lesser traffic violations are excluded offenses and are routinely tried in adult courts. However, traffic courts may waive jurisdiction back to juvenile courts. In addition to these legal mechanisms, in Florida, juveniles of any age who request to be transferred to adult courts for trial must be judicially transferred. Also, once youth have been convicted in adult courts under any of the legal mechanisms, they are thereafter treated as adults for any subsequent offenses.

Florida's first juvenile statute was enacted in 1911. This statute classified as delinquent juveniles under 17 years of age who violated any law, were truant, associated with criminals, were "growing up in idleness or crime," or who frequented establishments where "immoral practices" occurred. The statute did not create independent juvenile courts, but authorized the county circuit judges to exercise jurisdiction over juvenile matters. However, the circuit court judges might, at their discretion, take custody of juveniles within the jurisdiction of the county judges.

The 1911 statute included a "reverse waiver" provision whereby circuit court judges, having assumed custody, could transfer youth under 16 years of age to the county court judges for treatment as juveniles. The judge had to order the transfer either before trial or after trial and conviction but before passing sentence. The reverse waiver provision could not be utilized where youth were accused of or found guilty of rape, murder, manslaughter, arson, burglary, or the attempt to commit any of these crimes.¹

It was not until 1939 that the Florida legislature specified that adjudications in juvenile cases "by a juvenile court judge or by a county judge sitting as a juvenile court" were not convictions of criminal offenses and that those adjudications could not operate to impose any civil disabilities.²

In 1943, adult court judges were given the further option of sentencing a delinquent juvenile to "a Florida industrial school or to such other punishment as might be provided by law for the same offense."³ If committed to an industrial school and found to be "incorrigible or incapable of reformation," the juvenile was then subject to the alternate punishment that the court had designated in the order of commitment. Further amendments in 1943 removed the specified offenses not subject to reverse waiver and raised the maximum age of juvenile jurisdiction to 18 years of age.

The juvenile court law, effective October 1, 1951, represented a complete overhaul of the system of handling delinquent juveniles. The juvenile courts were given exclusive original jurisdiction over juveniles accused of delinquency under the age of 17 years, as authorized by the juvenile court amendment to the Florida constitution.⁴ All proceedings against juveniles were to be brought in the juvenile courts, and provision was made for the transfer to juvenile courts of juveniles accused of criminal acts who were found to have been under 17 years of age at the time the acts were committed.⁵ Also, the definition of delinquency was substantially changed. Youth deemed incorrigible or uncontrollable were still considered delinquents, as were youth whose behavior or associations endangered their own or others' welfare. Deleted from the law, however, were most of the provisions dealing with youth who frequented illicit establishments.

The reverse waiver provision was removed in the 1951 statute. However, the juvenile court law did contain a provision for transfer to adult courts of youth 14-17 years of age who were accused of what would be a felony if committed by an adult. This was completely discretionary with juvenile court judges, who could order transfer to adult courts if they "deemed" that the involved youth "should be transferred." Also, the youth could request, and the court was required to grant, transfer to adult trial.⁶ Transfer of youth 16 years of age or older accused of what would be a capital crime if committed by an adult was required.

In 1953, a second provision was added to the subsection, which allowed for the revesting of jurisdiction in the juvenile courts in the event that charges were not brought against the youth in adult courts, or in cases where charges were nolle or dismissed and no further charges were brought within 60 days.⁷

In 1955, a third provision was added to the statute which called for mandatory transfer of all youth, regardless of age, who were charged with acts

which would be punishable by death or life imprisonment if committed by adults. This provision was only activated where the grand jury returned an indictment against the youth for such a crime.⁸

In 1963, the juvenile courts were given the option to transfer jurisdiction to criminal courts over youth charged with traffic offenses.

In 1967, the judicial transfer statute was changed to require juvenile judges to hold a full-scale hearing before transferring youth 14 years of age accused of felonies to adult trial.⁹ The order had to be written and had to be based upon a determination that it was in the best interests of the public that jurisdiction be transferred. Subsection (b) of the revised statute mandated transfer of cases to adult courts where the youth, joined by a parent, guardian, or counsel, so demanded. Subsection (c) of the statute provided for mandatory transfer where an indictment was returned by the grand jury charging a youth of any age with a violation of law punishable by death. In 1969, the words "punishable by life imprisonment" were inserted following the words "punishable by death."¹⁰

In 1972, the legislature deleted the 1963 provision giving juvenile courts jurisdiction over juvenile traffic offenses with the option of transferring such cases to adult courts. The new provision gave traffic courts exclusive jurisdiction over juvenile traffic cases and granted the juvenile courts jurisdiction over juvenile traffic offenses only if the traffic court waived its jurisdiction.¹¹ Amendments in 1973 and 1978 imposed the further requirement that the youth must have been convicted of two traffic offenses in the past six months to be transferred to juvenile courts, but allowed the court to treat the case as *de novo* delinquency proceeding, once it had been transferred from traffic court.¹² This requirement was deleted from the statutes, effective July 1, 1980.¹³ Also in 1972, the definition of delinquency was again changed, classifying as delinquents only those juveniles who committed violations of the law, not including traffic violations.

There were some jurisdictional changes in the 1973 amendments to the state constitution. As a result, the juvenile courts were elevated to being divisions of circuit courts, where they remain today. One of the amendments also changed the offenses that could be judicially transferred to criminal courts so that it was no longer necessary for the youth to be charged with a felony. The juvenile divisions of circuit courts could transfer jurisdiction over youth 14 years of age or older accused of any offense within the juvenile courts' jurisdiction.

In 1974, the age of juvenile court jurisdiction was once again extended to 18 years of age, where it remains today. (It should be recalled that juvenile court jurisdiction was extended to 18 in 1943 and was lowered to 17 years of age in 1951.)

In 1975, the category of "children in need of supervision" (CINS) was eliminated from the Florida statutes. Previously, juveniles in this category--truant, runaways, and incorrigibles--had been treated as delinquents. The 1975 legislation provided that runaways and truant be treated as dependents rather than delinquents. The treatment of incorrigibles or "ungovernables" was

divided: first-time ungovernables were considered dependents; second-time ungovernables could be treated as delinquents.

A further wrinkle was added to the process of trying youth as adults in Florida by a 1978 amendment. The state's attorneys, regardless of the initial recommendation of the intake officers, now have the option of filing a petition for delinquency, filing a petition to transfer the youth to adult trial (in cases where the judicial waiver mechanism applies), filing an information against 16 or 17 year olds or referring the case to a grand jury (where current jurisdiction applies), or dismissing the case. (See Transfer Process Subsection for a detailed account of the 1978 changes.)

Also of interest are legislative proposals in Florida which have not been approved. Of these, two recent proposals stand out in importance. In 1976, House Bill 1300 was passed in both branches of the legislature. This bill created a direct file process whereby 16 or 17 year olds charged with capital crimes or first or second degree felonies could be directly prosecuted in adult courts at the discretion of the state's attorneys. The Governor vetoed this bill on the grounds that it violated the Florida Constitution's prohibition against trying a person for a capital crime unless indicted by a grand jury. A revised, now current, direct file provision was passed in 1978.

The other proposed change was the 1978 attempt by the legislature to lower the maximum age of juvenile court jurisdiction to 17 years of age. Once again, the bill was vetoed by the Governor. However, recent contacts with respondents in Florida indicate that there is at the time of writing another attempt being made in the legislature to lower the age of jurisdiction, extending juvenile court jurisdiction only to age 17.

CASE LAW SUMMARY

A great number of the cases reaching the Florida Supreme Court since 1950 have concerned alleged noncompliance by court authorities with Florida's statute relating to notification of parents of minors who have been charged with criminal offenses.¹⁴ In Kinard v. Cochran and Fox v. Cochran, the court held that failure to comply with the statute would result in a discharge of the youth involved (if no other charges pend against him) without prejudice to further proceedings against him the matter.¹⁵ In Williams v. Cochran and Collins v. Wainwright, the court held that if the juvenile had been convicted, the conviction would be invalidated if notice was not proper.¹⁶

In Bowen v. Cochran, where the youth's parents had actual notice of the charge and visited him in jail, the conviction and incarceration was not set aside even though the parents had not received written notice.¹⁷ The court held in Johnson v. Cochran and Thompson v. Cochran that the notice required by the statute must be given in sufficient time to allow the juvenile's parents to come to his aid "prior to the trial."¹⁸ In Adams v. Wainwright, the United States Fifth Circuit Court of Appeals considered a habeas corpus petition based upon

the fact that the notification of felony charges required under Florida law to be given to the minor's parents or guardian was instead sent to the defendant's mother in care of his aunt and to his aunt.¹⁹ The court held that this substantially complied with the notification statute and satisfied the constitutional due process requirement. In Holloway v. Wainwright the U.S. Court of Appeals held that actual notice to the parents satisfies the "due notice" requirement.²⁰ The court further held that even a failure to give the statutory notice required under state law would not rise to the level of a federal due process violation.

A number of other aspects of Florida's transfer provisions have also been considered. In Walker v. State, a federal habeas corpus case, it was held that no federal due process violation occurred under circumstances where a juvenile was arrested and confessed to an assault and where the victim died shortly thereafter, thus making transfer of the juvenile mandatory.²¹ The U.S. Court of Appeals distinguished these circumstances from those presented in Kent v. U.S., where the juvenile authorities had discretion as to whether to transfer juveniles to adult trial.²² It should be pointed out that the present statute provides for the mandatory transfer to criminal court only after a grand jury indictment.

In Davis v. State, the Florida Supreme Court upheld the state's transfer statute, even though it did not contain all the factors to be considered in a waiver hearing as enumerated in Kent.²³ The court held that the Kent factors were to be used to supplement those listed in the Florida statute in an appropriate case. Where factors listed in a state statute or in the Kent decision are deemed inappropriate under the circumstances, they need not be considered by the juvenile courts.

In W.B. v. State, the constitutionality of the transfer statute was again upheld, the court relying on Davis.²⁴ The court also relied upon Davis in asserting that the juvenile judge did not abuse his discretion in failing to consider whether there was a reasonable chance of rehabilitating the juvenile prior to his reaching majority. Criteria listed in the Florida transfer statute are directory, not mandatory.

In Johnson v. State, Florida's concurrent jurisdiction was upheld on equal protection and due process grounds.²⁵ The effect of this subsection, according to the court, is to allow the prosecutors to proceed either in adult courts against a juvenile accused of a crime punishable by death or life imprisonment by procuring an indictment, or in juvenile courts by not procuring such indictment, hence allowing the juvenile courts to retain jurisdiction. Such prosecutorial discretion is inherent in the system of criminal justice and imposes no constitutional violation, reasoned the court. The case of McCloud v. State was followed on the same issue in 1976.²⁶

In State v. Boatman, a case dealing primarily with a state statute requiring speedy trials in juvenile cases, the court considered the effect of a request by a parent during transfer proceedings that the juvenile be transferred to adult trial.²⁷ The court held that, although the parent cannot order transfer, the parents' desires are a factor that is properly considered by the judge in ordering transfer.

In Jones v. State, the court held that juvenile offenders who are properly transferred to adult trial may be sentenced either as adults or as juveniles.²⁸ Under state statutes, if they are adjudicated delinquent and subsequently fail to comply with or adapt to rehabilitative treatment, youth may be returned to the trial court for an evidentiary determination that they are nonamenable to juvenile treatment and the court may, upon so finding, impose an adult sentence. The court held that the subsequent sentence will not amount to an improper increase in sentence or constitute double jeopardy.

In the 1977 Fifth Circuit Court of Appeals case of Woodward v. Wainwright, it was determined that juvenile treatment is a right granted by the state legislature, which may restrict that right in any manner so long as no discriminatory classification is involved.²⁹ Thus, a Florida law permitting the prosecutor to seek indictments against juveniles accused of serious crimes is not unconstitutional, for the reason that it fails to require a hearing in juvenile courts before adult trial.

Juvenile Court Dispositional Options

The services available for juveniles and the dispositional options available to the juvenile courts are major factors in determining the appropriateness of treating individuals as juveniles. The juvenile services system in Florida prior to 1974 was a decentralized one, with the counties responsible for providing these services. As recently as 1970, 18 of the 67 counties did not have juvenile probation and most did not have juvenile intake services. Even Dade County (Miami) had only ten juvenile probation officers, despite a case load of 1,800 cases per year.

In 1974, the state assumed responsibility for many juvenile services, organized under the Department of Health and Rehabilitative Services (DHRS). Since that time, there has been a rapid development of juvenile services.

Detention of juveniles in Florida is carried out via a regional program operated by DHRS. Detention may be either secure or nonsecure. There are two types of nonsecure programs: attention homes and home detention. Attention homes are privately operated by persons under contract with DHRS to provide a temporary home for detained juveniles who do not require secure custody, but cannot be immediately returned to their own homes. Home detention consists of detained juveniles being placed in their own homes and closely monitored by community youth leaders. Youth are personally monitored twice daily, in addition to phone contacts being made with the youths' parents.

Juveniles within the jurisdiction of the juvenile courts and adjudicated delinquent are subject to sanctions and services of the Department of Health and Rehabilitative Services. DHRS operates a single system separate from the delinquency intake program. Under the Youth Services Program Office of DHRS are detention, community control, and secure and nonsecure programs. An individual would be committed to the Youth Services Program Office if residential sanctions

are dictated. Juveniles adjudicated delinquent may not be transferred from the juvenile corrections system to the adult corrections system.

An interesting portrayal of the development of state and other juvenile services is to be found in a pair of studies by Judge Seymour Gelber. The studies concern juvenile crime in Dade County in 1977 and 1980. In discussing a linkage of racial and ethnic groups to different types of crime in 1977, Judge Gelber observed that the available rehabilitative agencies systematically excluded certain juvenile offenders with long records of delinquency, particularly when it included assault offenses.³⁰ Judge Gelber argued that this results in hard-core offenders, the majority of whom in Dade County were black, not being admitted to these programs. In his 1980 study on the same issues, Judge Gelber noted that the state social agencies had made a conscious effort to fairly apportion their treatment programs on racial and ethnic bases according to crime rates.³¹ However, Judge Gelber also noted that the private sector agencies, which usually represented the better and more sought-after programs, were still underrepresented with black clients.

PROCEDURES FOR TRYING YOUTH AS ADULTS IN 1978

Court Organization

The highest courts of general jurisdiction in Florida are the circuit courts. These courts have jurisdiction over all felonies, and criminal and civil cases which are not handled in lesser courts.

Florida has 67 county courts which have original jurisdiction over all misdemeanors (unless they arise out of the same circumstances as a felony). County courts also hear cases involving violations of municipal and county ordinances, as well as civil matters that do not exceed claims of \$2,500.

Juvenile jurisdiction is exercised by juvenile divisions of the circuit courts. These courts are referred to as juvenile courts throughout this profile. They have exclusive original jurisdiction over proceedings in which juveniles are alleged to have committed delinquent acts.

Juvenile traffic cases are handled in county courts along with adult cases. However, in 1978, adult traffic courts could waive jurisdiction to juvenile courts for juveniles convicted of two traffic offenses in the preceding six months.

An overview of Florida's courts by their types of jurisdiction over juveniles appears below:

FLORIDA: COURT JURISDICTION OVER JUVENILES IN 1978

Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic ^a
Juvenile Division of Circuit Courts	Circuit Courts County Courts	County Courts Juvenile Division of Circuit Courts

a. In 1978, adult traffic courts could waive jurisdiction to juvenile courts over juveniles convicted of two traffic offenses in the preceding six months.

Transfer Process

The initial age of juvenile court jurisdiction in Florida extends to 18 years of age.³² There are, however, three legal mechanisms by which juveniles may be referred to adult courts--judicial transfer, concurrent jurisdiction, and excluded offenses.

Judicial Waiver

Juveniles 14 years of age or older at the time the alleged violation was committed, charged with any offense, may be judicially transferred following a waiver hearing initiated by the state's attorney.³³ However, there is also a mandatory waiver hearing provision such that if the juvenile (14 years or older) has previously been adjudicated delinquent for a violent offense against a person (murder, sexual battery, armed or strong-armed robbery, aggravated battery, or aggravated assault) and is currently charged with a second or subsequent such offense, the state's attorney must file a motion requesting transfer to adult courts.³⁴ Under both provisions within this legal mechanism, the courts are directed to consider a variety of factors in reaching the transfer decision, including the seriousness of the offense and whether the protection of the community is best served by transferring the youth; whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; whether the offense was committed against a person or property, with greater weight given to personal offenses; probable cause; the desirability of trial and disposition of the entire offense in one court if the youth's association in the alleged crime was with adults or youth being prosecuted as adults; the sophistication and maturity of the youth; and the youth's record and previous history.³⁵

Youth who have been transferred for criminal prosecution following a waiver hearing or a grand jury indictment due to concurrent jurisdiction, and have been found to have committed the offense for which they were transferred (or a lesser included offense), are thereafter handled in every respect as if they were adults for any other violations of Florida law.³⁶

There is an additional provision within Florida's judicial waiver statutes which should be understood. Florida's statutes direct that youth, joined by a parent or, in the absence of a parent, by a guardian or a guardian ad litem, who demand in writing to be tried as adults, must be transferred without a waiver hearing.³⁷ Youth who request trial as adults will be tried in juvenile courts for subsequent offenses unless they again request trial as adults.

Concurrent Jurisdiction

The Florida Constitution mandates that all cases, regardless of the offender's age, which carry penalties of death or life imprisonment be indicted before the grand jury. However, the concurrent jurisdiction provision allows the state's attorney to proceed with such cases either in adult courts by seeking an indictment or in juvenile courts by alleging delinquency (See Johnson v. State).³⁸

In Florida, several amendments to the laws pertaining to juvenile offenders became effective October 1, 1978. This addition to the law did not affect the period reflected in the data presented here, which was fiscal July 1, 1977 to June 30, 1978. The Juvenile Justice Reform Act of 1978 added and changed many provisions dealing with trying youth in adult courts. The major change involving concurrent jurisdiction allows the state's attorney to file an information directly with adult criminal courts on persons 16 or 17 years of age when, in the state attorney's judgment, the public interests require that adult sanctions be considered or imposed. These cases are colloquially referred to as "direct files." However, upon motion of the youth, the case is to be transferred to juvenile court for adjudicatory proceedings as a juvenile if it is shown by the youth that there had not previously been two findings of delinquency, one of which involved a felony.³⁹

Excluded Offenses

Lesser traffic offenses are routinely handled in adult courts.⁴⁰ The offenses included are those subject to fines, loss of license, or mandatory driving education classes, but do not include offenses subject to jail sentences. However, in 1978 traffic courts could waive jurisdiction over juveniles convicted of two routine traffic offenses in the last six months and remove those youth to juvenile courts.⁴¹ A 1981 amendment clarified the traffic laws. Youth may not now be waived back to juvenile courts for misdemeanor traffic violations. In addition, felonious traffic cases against juveniles must originate in juvenile courts and may be subject to judicial transfer to adult courts.

Role of the Prosecutors

The prosecutors in Florida have a great deal of discretionary power in determining which processes to follow in juvenile cases. In 1973, the state's attorneys became the sole authority to make decisions regarding the need for filing petitions in delinquency cases. The 1973 legislation limited the intake officers to only making recommendations on the filing of delinquency petitions (see the Transfer Process subsection).

The state's attorneys now have discretion to proceed in any of the several directions, including:

- Filing petitions of delinquency, thereby maintaining cases in juvenile courts;
- Filing petitions to judicially waive youth to adult courts;
- Filing directly with the adult court system, thus bypassing the juvenile court system entirely (both direct filing in criminal courts and presentation of cases to the grand jury for indictment);
- Terminating or dismissing cases without further action for reasons such as insufficient information.

Defender Services

All youth who are tried in adult courts in Florida are represented by counsel. According to a 1979 Department of Health and Rehabilitation Services study, the public defender's offices represented 81 percent of the youth tried in adult courts.⁴² Sixteen percent of the youth were represented by court-appointed private counsel and three percent by private counsel.

Confinement Practices

Detention Practices

In 1978, once the decision was made to try a youth as an adult, the youth was no longer eligible for detention in a juvenile facility. Unless there were serious extenuating circumstances, the youth was housed with other adults, usually in a local jail. Under Florida statutes, the youth could be detained no longer than 30 days.

Effective July 1, 1980, youth to be tried as adults may be held in juvenile detention as well as adult facilities (see Juvenile Court Dispositional options subsection). Youth held in adult jails prior to trial are to be segregated from adults. The 30 day limitation on detention of youth under 18 years of age was retained. According to state sources, a 30-day detention in adult facilities may cost as much as three times the cost of detention in juvenile centers.

Sentencing Options

The Florida Department of Corrections operates state corrections facilities and programs for adult offenders. Adults convicted of felonies and sentenced to one or more years are committed to the custody of the Department of Corrections.

Youth under 18 years of age who are prosecuted in the criminal division of the circuit courts may be subject to criminal sanctions in the Department of Corrections. Since the passage of the 1978 Juvenile Justice Act, the court must use criteria similar to those used in waiver hearings, with an additional special emphasis on records of behavior if the youth had previously been committed to the Youth Services Program Office of DHRS, in making the decision to sentence to the Department of Corrections. Any decision to impose adult sanctions must be in writing and in conformity with each of the stated criteria. The order is renewable on appeal by the youth.⁴³

Youth convicted in adult courts and sentenced to the Department of Corrections (DOC) would most likely be placed in an institution within the Youthful Offender Program (YOP) of the Department of Corrections. Youthful offenders under the Youthful Offender Act of 1978 are persons who have not reached their 21st birthday and are serving their first felony commitment. According to state sources, youthful offenders may be committed to Department of Corrections institutions designated for youthful offenders for sentences not to exceed six years or to a community control program for not more than two years or beyond their 23rd birthday. In addition, sentences combining periods of institutional and community placements may be ordered. The act encourages assignment, where appropriate, to diversionary programs, such as the Pre-Trial Intervention Program, and to probation and restitution centers.

Youth tried as adults may also be committed to DHRS. However, this option is seldom used by criminal court judges. The adult courts, in order to place the youth in DHRS, must stay and withhold the adjudication of guilt and, instead, adjudge the defendant to have committed a delinquent act. Such adjudication is not deemed a conviction.⁴⁴ If youth adjudicated in adult courts prove to be unsuitable for treatment or the community control program, or if the department's juvenile commitment programs are not suitable for a particular youth, the courts have the power to revoke the previous adjudication, impose an adjudication of guilt, classify the youth as youthful offenders, and impose any adult sentence permitted under Florida law.

Florida's Juvenile Justice Act provides an avenue for administrative transfer from DOC to DHRS for individuals under 18 years of age.⁴⁵ This is used primarily for youth who demonstrably cannot cope with adult prison.

STATE DATA SUMMARY

There are three legal mechanisms through which juveniles in Florida may be referred for prosecution in adult courts. The first mechanism is through judicial waiver, following a waiver hearing, of youth 14 years of age or older, for any offense. The second mechanism, prior to October, 1978, involved concurrent jurisdiction between adult and juvenile courts over youth who are alleged to have committed offenses punishable by death or life imprisonment. A second concurrent jurisdiction provision, the direct file provision, became effective October 1, 1978 and thus was not included in the Academy census data collected for fiscal year 1978. Finally, juvenile traffic offenses of a non-serious nature are excluded from juvenile court jurisdiction; however, data were not available on the frequency of this mechanism. The data summary which follows includes Phase I data on judicial waivers and concurrent jurisdiction cases referred to adult courts in fiscal year 1978, and Phase II data (except for judgment and sentencing information) for both mechanisms.

Table 10-1 displays statewide findings, by county, on the number of youth referred to adult courts in 1978 through the judicial waiver or concurrent jurisdiction transfer mechanisms. Additionally, the table indicates youth populations in each county and per capita rates of referral to facilitate comparisons between counties. Table 10-1 reveals that there were a total of 965 youth transferred to adult courts through judicial waiver. Only 12 of the 67 counties (18 percent) reported no waivers in 1978. The seven most populous counties included 57 percent of the state's total juvenile population, but accounted for only 43 percent of the judicial transfers. Twenty-six of the remaining 48 counties (54 percent) reported five or more transfers in 1978 and accounted for 52 percent (498) of the total judicial transfers, while comprising only 29 percent of the total juvenile population. Thus, the medium-size counties accounted for many of the transfers and had generally higher rates of transfer than the larger counties. One such county, Pasco, has a particularly high number of waivers, 159, the most in the state in 1978.

The overall average per capita rate of waiver in Florida during 1978 was about seven youth per 10,000 juveniles eight to 17 years old. Pasco County had the highest per capita rate with 111.98, but other counties with relatively high rates included Gadsden (45.45), Martin (27.49), Holmes (27.47), and De Soto (26.12).

In 1978, 108 youth were referred to adult courts through the concurrent jurisdiction provision. Twenty-one of the counties (31 percent) had concurrent jurisdiction cases. No county reported more than 16, and only seven counties reported five or more. Once again, the seven largest counties comprised a smaller percentage of these cases than their percentage of the juvenile population (47 percent of concurrent jurisdiction cases, while including 57 percent of the juvenile population). However, among the other counties, there was no clear correlation between the number of youth and the number of concurrent jurisdiction cases. At one extreme, Lee, Leon, Liberty, and St. Lucie Counties reported more concurrent jurisdiction cases than judicial transfers, the only counties to do so. (Brevard County reported the same number.) At the other extreme, Pasco County, with 159 judicial transfers, reported only one concurrent jurisdiction case.

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Further review of Table 10-1 reveals that comparatively higher per capita rates of concurrent jurisdiction cases exist in the counties of Liberty (15.04), St. Lucie (9.49), and Leon (3.99). The state's overall per capital rate of concurrent jurisdiction cases was 0.829.

TABLE 10-1. FLORIDA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Concurrent Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b
Alachua	19,236	4	2.079	0	0.000
Baker	2,361	0	0.000	0	0.000
Bay	17,184	25	14.548	1	0.582
Bradford	2,979	1	3.357	0	0.000
Brevard	45,109	13	2.882	13	2.882
Broward	120,375	47	3.904	5	0.415
Calhoun	1,570	2	12.739	0	0.000
Charlotte	4,408	1	2.269	0	0.000
Citrus	5,000	0	0.000	0	0.000
Clay	11,485	2	1.741	0	0.000
Collier	9,405	4	4.253	3	3.190
Columbia	5,498	3	5.457	1	1.819
Dade	211,399	72	3.406	9	0.426
De Soto	2,680	7	26.119	0	0.000
Dixie	1,204	0	0.000	0	0.000
Duval	98,832	82	8.297	16	1.619
Escambia	40,974	59	14.399	2	0.488
Flagler	1,051	0	0.000	0	0.000
Franklin	1,465	1	6.826	0	0.000
Gadsden	7,261	33	45.448	0	0.000
Gilchrist	934	0	0.000	0	0.000
Glades	883	2	22.650	0	0.000
Gulf	1,972	3	15.213	0	0.000
Hamilton	1,607	0	0.000	0	0.000
Hardee	3,644	9	24.698	0	0.000
Hendry	3,240	0	0.000	0	0.000
Hernando	4,273	11	25.743	0	0.000
Highlands	6,233	11	17.648	0	0.000
Hillsborough	101,771	118	11.595	14	1.376
Holmes	2,184	6	27.473	0	0.000

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TABLE 10-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Concurrent Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b
Indian River	7,683	6	7.809	1	1.302
Jackson	6,905	8	11.586	0	0.000
Jefferson	1,863	4	21.471	0	0.000
Lafayette	633	0	0.000	0	0.000
Lake	13,672	6	4.389	0	0.000
Lee	22,336	1	0.448	3	1.343
Leon	20,011	4	1.999	8	3.998
Levy	3,128	1	3.197	0	0.000
Liberty	665	0	0.000	1	15.038
Madison	2,689	1	3.719	0	0.000
Manatee	14,801	9	6.081	0	0.000
Marion	16,422	11	6.698	4	2.436
Martin	6,547	18	27.493	0	0.000
Monroe	7,910	6	7.585	0	0.000
Nassau	5,631	2	3.552	0	0.000
Okaloosa	21,646	10	4.620	0	0.000
Okeechobee	3,492	5	14.318	0	0.000
Orange	72,587	45	6.199	4	0.551
Osceola	5,963	1	1.677	0	0.000
Palm Beach	66,491	2	0.301	0	0.000
Pasco	14,199	159	111.980	1	0.704
Pinellas	76,731	52	6.777	3	0.391
Polk	48,483	32	6.600	1	0.256
Putnam	7,913	5	6.319	0	0.000
St. Johns	6,701	7	10.446	0	0.000
St. Lucie	11,593	9	7.763	11	9.488
Santa Rosa	8,981	11	12.248	0	0.000
Sarasota	17,640	3	1.701	0	0.000
Seminole	25,963	10	3.852	3	1.155
Sumter	3,261	0	0.000	0	0.000
Suwannee	3,426	3	8.757	0	0.000
Taylor	2,542	1	3.934	0	0.000
Union	1,387	0	0.000	0	0.000
Volusia	29,150	12	4.117	4	1.372
Wakulla	1,788	0	0.000	0	0.000

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TABLE 10-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Concurrent Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b
Walton	2,934	3	10.225	0	0.000
Washington	2,488	2	8.039	0	0.000
Total	1,302,472	965	7.409	108	0.829

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.

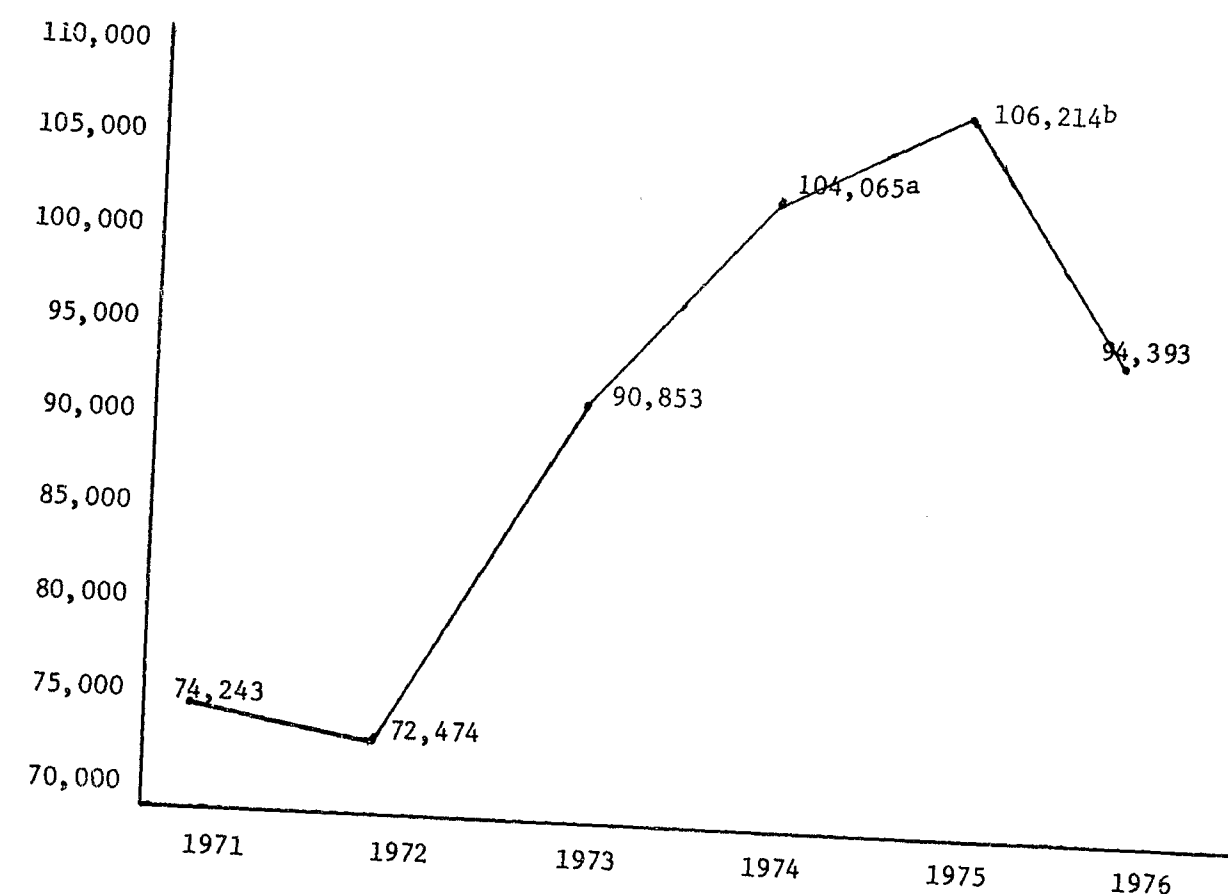
b. Rate per 10,000 juveniles eight to 17 years old (1978).

Youth tried as adults comprise a very small percentage of youth arrested for acts of delinquency. Data provided to the Academy by DHRS for fiscal year 1978 indicates that of the 107,743 juvenile delinquency cases, 57,387 cases (53 percent) were handled non-judicially (diversion) and 38,288 cases (36 percent) were handled judicially.⁴⁶ Using the data presented in Table 10-1 for fiscal 1978, one percent of all juvenile delinquency cases resulted in judicial waivers. Florida's Ad Hoc Subcommittee On Children And Youth reported that from June 1975 to May 1976 three percent of all delinquency complaints resulted in judicial waiver.⁴⁷ Thus, based on two sources of data, it appears that the percentage of juvenile delinquency cases resulting in trial as adults has fluctuated at a low level.

Public and legislative attention to the practice of trying youth as adults generally varies with the perceived fluctuation in the overall juvenile crime rate. Figure 10-1 presents data on juvenile offenses from calendar year 1971 to 1976. The rate of juvenile offenses was generally increasing during that period, even though there was considerable fluctuation from one year to the next--part of which is attributable to statutory changes in 1974 and 1975.

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FIGURE 10-1. FLORIDA: TOTAL NUMBER OF JUVENILE OFFENSES
RECORDED FROM 1971 - 1976



a. Effective July 1, 1974, the age of juvenile court jurisdiction over delinquents was raised from 17 to 18.

b. Effective July 1, 1975, the category of "Children in Need of Supervision" (truants, runaways and incorrigible or ungovernable children) was removed from the juvenile court's jurisdiction.

Source: "Uniform Crime Reports," Department of Criminal Law Enforcement (1971-76). Figure prepared by Ad Hoc Subcommittee On Children And Youth.

Table 10-2 presents data provided by DHRS on the number of delinquency referrals from fiscal year 1976 through fiscal year 1979. The general increase in the number of juvenile referrals noted in Figure 10-1 continued throughout the remainder of the decade.

FL-18

TABLE 10-2. FLORIDA: JUVENILE REFERRALS FROM
FISCAL YEAR 1976 THROUGH
FISCAL YEAR 1979

Data Element	Fiscal Year 1976	Fiscal Year 1977	Fiscal Year 1978	Fiscal Year 1979
Population at Risk ^a	1,224,705	1,215,416	1,198,286	1,177,273
Delinquency Referrals ^b	105,615	101,080	107,743	115,104
Referral Rate ^c (per 1000)	86.2	83.2	89.9	97.8

a. indicates school enrollment, grades 4-12

b. from intake log book figures

c. indicates number of referrals per 1000 population at risk

Source: DHRS, November 1979

Data were retrieved by the Academy from DHRS for all counties on demographic characteristics and offenses of youth referred to adult courts through judicial waiver and concurrent jurisdiction. This Phase II information is presented below, first for judicial waivers and then concurrent jurisdiction.

Judicial Waiver

Table 10-3 displays certain demographic characteristics--age, sex, race--on the 965 youth who were judicially waived during 1978. Sixty percent (572) of 956 cases where age was known were 17 years of age or older. (Youth who committed an offense before the 18th birthday but are not arrested until after the 18th birthday must be initially handled as juveniles and, to be tried as adults, must be referred to criminal courts.) Fifteen percent (146) were reported as 15 years of age or younger. Ninety-five percent (915) of youth judicially waived were male and 64 percent (614) of the cases where race was known were white.

FL-19

TABLE 10-3. FLORIDA: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Un- known	Sex		Race		
		0-15	16	17	18+		Male	Female	White	Minor- ity	Un- known
Alachua	4	0	1	0	3	0	4	0	3	1	0
Baker	0	0	0	0	0	0	0	0	0	0	0
Bay	25	2	10	10	3	0	24	1	20	4	1
Bradford	1	1	0	0	0	0	1	0	0	1	0
Brevard	13	9	0	4	0	0	13	0	4	9	0
Broward	47	8	13	22	3	1	46	1	26	21	0
Calhoun	2	0	0	2	0	0	1	1	2	0	0
Charlotte	1	1	0	0	0	0	1	0	1	0	0
Citrus	0	0	0	0	0	0	0	0	0	0	0
Clay	2	1	0	0	1	0	2	0	1	1	0
Collier	4	1	2	1	0	0	4	0	4	0	0
Columbia	3	0	0	2	1	0	3	0	3	0	0
Dade	72	14	13	32	11	2	70	2	17	54	1
De Soto	7	0	1	5	1	0	7	0	4	3	0
Dixie	0	0	0	0	0	0	0	0	0	0	0
Duval	82	12	21	39	10	0	80	2	46	36	0
Escambia	59	12	13	24	10	0	59	0	28	30	1
Flagler	0	0	0	0	0	0	0	0	0	0	0
Franklin	1	0	0	1	0	0	1	0	1	0	0
Gadsden	33	2	18	10	3	0	32	1	4	29	0
Gilchrist	0	0	0	0	0	0	0	0	0	0	0
Glades	2	0	0	1	1	0	2	0	2	0	0
Gulf	3	3	0	0	0	0	3	0	3	0	0
Hamilton	0	0	0	0	0	0	0	0	0	0	0
Hardee	9	0	1	8	0	0	9	0	8	1	0

FL-20

TABLE 10-2. FLORIDA: JUVENILE REFERRALS FROM
FISCAL YEAR 1976 THROUGH
FISCAL YEAR 1979

Data Element	Fiscal Year 1976	Fiscal Year 1977	Fiscal Year 1978	Fiscal Year 1979
Population at Risk ^a	1,224,705	1,215,416	1,198,286	1,177,273
Delinquency Referrals ^b	105,615	101,080	107,743	115,104
Referral Rate ^c (per 1000)	86.2	83.2	89.9	97.8

a. indicates school enrollment, grades 4-12

b. from intake log book figures

c. indicates number of referrals per 1000 population at risk

Source: DHRS, November 1979

Data were retrieved by the Academy from DHRS for all counties on demographic characteristics and offenses of youth referred to adult courts through judicial waiver and concurrent jurisdiction. This Phase II information is presented below, first for judicial waivers and then concurrent jurisdiction.

Judicial Waiver

Table 10-3 displays certain demographic characteristics--age, sex, race--on the 965 youth who were judicially waived during 1978. Sixty percent (572) of 956 cases where age was known were 17 years of age or older. (Youth who committed an offense before the 18th birthday but are not arrested until after the 18th birthday must be initially handled as juveniles and, to be tried as adults, must be referred to criminal courts.) Fifteen percent (146) were reported as 15 years of age or younger. Ninety-five percent (915) of youth judicially waived were male and 64 percent (614) of the cases where race was known were white.

TABLE 10-3. (Continued)

County	Total Waivers	Age				Un- known	Sex		Race		
		0-15	16	17	18+		Male	Female	White	Minor- ity	Un- known
Hendry	0	0	0	0	0	0	0	0	0	0	0
Hernando	11	1	2	7	1	0	11	0	10	1	0
Highlands	11	0	5	6	0	0	10	1	7	4	0
Hillsborough	118	26	28	52	12	0	112	6	74	44	0
Holmes	6	1	1	3	1	0	6	0	5	1	0
Indian River	6	0	1	5	0	0	6	0	4	2	0
Jackson	8	0	3	5	0	0	8	0	6	2	0
Jefferson	4	0	2	2	0	0	4	0	0	4	0
Lafayette	0	0	0	0	0	0	0	0	0	0	0
Lake	6	1	0	4	1	0	6	0	6	0	0
Lee	1	0	1	0	0	0	1	0	1	0	0
Leon	4	0	4	0	0	0	4	0	2	2	0
Levy	1	0	1	0	0	0	1	0	1	0	0
Liberty	0	0	0	0	0	0	0	0	0	0	0
Madison	1	0	0	1	0	0	1	0	0	1	0
Manatee	9	0	3	4	2	0	9	0	3	6	0
Marion	11	1	5	3	2	0	11	0	6	5	0
Martin	18	0	3	15	0	0	18	0	14	4	0
Monroe	6	0	1	2	3	0	6	0	4	2	0
Massau	2	0	1	1	0	0	2	0	1	1	0
Okaloosa	10	0	2	4	4	0	9	1	6	4	0
Okeechobee	5	0	1	3	1	0	5	0	2	2	1
Orange	45	3	9	24	8	1	43	2	32	13	0
Osceola	1	0	0	0	1	0	1	0	1	0	0
Palm Beach	2	0	0	2	0	0	2	0	0	2	0

FL-21

TABLE 10-3. (Continued)

County	Total Waivers	Age					Sex		Race		Un- known
		0-15	16	17	18+	Un- known	Male	Female	White	Minor- ity	
Pasco	159	37	38	74	7	3	131	28	154	4	1
Pinellas	52	3	15	28	5	1	51	1	27	25	0
Polk	32	2	8	17	4	1	31	1	26	26	0
Putnam	5	2	0	1	2	0	5	0	3	2	0
St. Johns	7	1	1	3	2	0	7	0	6	1	0
St. Lucie	9	0	3	5	1	0	9	0	2	7	0
Santa Rosa	11	0	2	7	2	0	11	0	11	0	0
Sarasota	3	1	0	1	1	0	3	0	2	1	0
Seminole	10	0	0	9	1	0	10	0	5	4	1
Sumter	0	0	0	0	0	0	0	0	0	0	0
Suwannee	3	0	0	2	1	0	3	0	2	1	0
Taylor	1	1	0	0	0	0	1	0	1	0	0
Union	0	0	0	0	0	0	0	0	0	0	0
Volusia	12	0	4	6	2	0	10	2	8	4	0
Wakulla	0	0	0	0	0	0	0	0	0	0	0
Walton	3	0	0	3	0	0	3	0	3	0	0
Washington	2	0	1	1	0	0	2	0	2	0	0
State Total	965	146	238	461	111	9	915	50	614	345	6

The offenses for which youth were judicially transferred are shown on Table 10-4. Of the 159 transferred in Pasco County, 133 were for public order offenses (alcohol and drug violations, disorderly conduct, prostitution, suspicious person). This number is atypical for the state. Fifty-five percent of the transfers were for property offenses; most of these were burglaries. Twenty percent (194) were offenses against the person (murder, manslaughter, rape, robbery, assaults, and other personal offenses). About one-half of the personal offenses were robberies.

Another perspective on the offenses for which Florida youth were judicially transferred is given in Figure 10-2. The figure provides a graphic summarization of the percentages of youth judicially transferred by certain offense categories. The figure shows that 20 percent of the youth were transferred for personal offenses; 55 percent for property offenses; 18 percent for public order offenses, and seven percent for other offenses.

An offense comparison of counties with juvenile populations over and under 40,000 is shown in Table 10-5. The larger counties--Brevard, Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, and Polk--represented 54 percent of judicial transfers in the state. Property offenses (burglary and other property offenses) were the largest offense category for the state--65 percent in larger counties and 44 percent in smaller counties. Personal offenses (murder, manslaughter, rape, robbery, assault and battery, aggravated assault, and other personal offenses) represented 25 percent of offenses in larger counties and 15 percent in smaller counties. Thirty-three percent of transfers from smaller counties were for public order offenses compared to five percent from larger counties.

TABLE 10-4. FLORIDA: JUDICIAL WAIVERS TO ADULT COURTS
(BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

County	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 ^b
Alachua	4	0	0	0	0	0	0	2	1	1	0
Bay	25	1	0	1	0	1	0	17	4	0	1
Bradford	1	0	0	0	0	0	0	0	1	0	0
Brevard	13	0	0	0	1	0	0	5	5	2	0
Broward	47	0	1	9	1	2	1	16	16	0	1
Calhoun	2	0	0	0	0	0	0	0	1	0	1
Charlotte	1	0	0	0	0	1	0	0	0	0	0
Clay	2	0	0	0	0	0	0	0	0	0	2
Collier	4	0	0	0	0	0	0	2	0	1	1
Columbia	3	0	0	2	0	0	0	0	1	0	0
Dade	72	4	0	22	0	2	12	27	2	0	3
De Soto	7	0	2	1	0	0	0	1	3	0	0
Duval	82	2	0	4	4	1	1	36	19	9	6
Escambia	59	0	0	10	0	5	1	24	15	1	3
Franklin	1	0	0	0	0	0	0	0	0	0	1
Gadsden	33	0	0	3	1	1	0	17	8	0	3
Glades	2	0	0	0	0	0	0	0	0	0	2
Gulf	3	0	0	0	0	0	1	2	0	0	0
Hardee	9	0	0	0	0	0	0	7	2	0	0
Hernando	11	0	0	1	1	0	1	2	2	0	4
Highlands	11	0	0	2	0	0	0	6	1	0	2
Hillsborough	118	0	3	14	1	3	2	51	31	4	9
Holmes	6	0	0	0	0	0	0	4	1	0	1
Indian River	6	0	0	0	0	0	1	2	2	0	1
Jackson	8	0	0	4	0	0	0	2	2	0	0

FL-24

TABLE 10-4. (Continued)

County	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 ^b
Jefferson	4	0	0	0	0	2	0	2	0	0	0
Lake	6	0	0	0	0	0	1	3	1	1	0
Lee	1	0	0	0	0	0	0	0	1	0	0
Leon	4	0	0	1	0	0	0	3	0	0	0
Levy	1	0	0	0	0	0	0	0	1	0	0
Madison	1	0	0	0	0	0	0	0	0	0	1
Manatee	9	2	0	0	0	0	0	6	0	1	0
Marion	11	0	0	1	0	1	0	4	4	1	0
Martin	18	0	0	0	0	0	1	7	7	0	3
Monroe	6	1	0	1	0	1	0	2	1	0	0
Nassau	2	0	0	1	0	0	0	0	1	0	0
Okaloosa	10	1	0	1	0	0	0	4	1	1	2
Okeechobee	5	0	2	0	0	1	0	0	1	0	1
Orange	45	0	2	1	0	3	0	25	6	4	4
Osceola	1	0	0	0	0	0	0	1	0	0	0
Palm Beach	2	0	0	0	0	0	0	1	1	0	0
Pasco	159	0	0	0	1	0	0	15	6	133	4
Pinellas	52	0	0	6	0	3	0	30	9	3	1
Polk	32	1	1	5	0	0	1	9	10	3	2
Putnam	5	0	0	0	0	0	0	0	4	0	1
St. Johns	7	0	1	0	0	0	0	5	1	0	0
St. Lucie	9	0	0	0	0	0	1	5	2	1	0
Santa Rosa	11	0	0	1	2	0	1	1	1	3	2
Sarasota	3	0	0	2	0	0	0	0	0	0	1
Seminole	10	0	0	3	2	0	0	3	2	0	0

TABLE 10-4. (Continued)

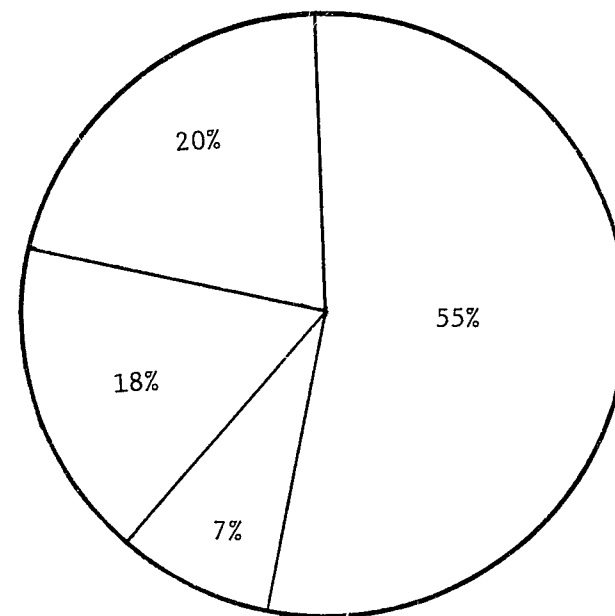
County	Total Waivers	Offenses ^a									
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty	Public Order	Other General ^b
Suwannee	3	0	0	0	0	0	0	2	0	1	0
Taylor	1	0	1	0	0	0	0	0	0	0	0
Volusia	12	2	1	4	0	0	0	4	1	0	0
Walton	3	0	0	0	0	0	0	0	0	2	1
Washington	2	0	0	0	0	0	0	0	0	0	2
State Total	965	14	14	100	14	27	25	355	178	172	66

FL-26

a. Only most serious offense per individual listed.

b. The offenses included in this category are specific to Florida and may vary slightly from the offenses included in this category in other states and in the appendix.

FIGURE 10-2. FLORIDA: PERCENTAGE OF JUDICIAL WAIVERS TO
ADULT COURTS (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	20%
Property	55%
Public Order	18%
Other General	7%

N= 965

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault represent 16 percent of all offenses in the state.

TABLE 10-5. FLORIDA: JUDICIAL WAIVERS TO ADULT COURTS
(BY COUNTY JUVENILE POPULATION AND TYPE OF
OFFENSE) IN 1978

County Category	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
Counties with Juvenile Populations over 40,000	522	7	7	71	7	19	18	224	114	26	29
FL-28 Percentage	100%	1%	1%	14%	1%	4%	3%	43%	22%	5%	6%
Counties with Juvenile Populations less than 40,000	443	7	7	29	7	8	7	131	64	146	37
Percentage	102% ^a	2%	2%	7%	2%	2%	2%	30%	14%	33%	8%

a. Categories not totaling 100 percent due to rounding.

Concurrent Jurisdiction

This section provides information on certain demographic characteristics and the offenses associated with youth referred to adult courts due to concurrent jurisdiction. Table 10-6 displays findings on the age, sex, and race on the 108 concurrent jurisdiction cases. Seventeen was again the most common age given (36 percent) for youth transferred to adult courts under the concurrent jurisdiction provision. However, it is interesting to note that 53 percent (57) of the youth were 16 years of age or younger. Eighty-nine percent (96) were male and 62 percent (67) were white.

TABLE 10-6. FLORIDA: PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Referrals	Age					Sex		Race	
		0-15	16	17	18+	Un-known	Male	Female	White	Minority
Alachua	0	0	0	0	0	0	0	0	0	0
Baker	0	0	0	0	0	0	0	0	0	0
Bay	1	0	1	0	0	0	1	0	1	0
Bradford	0	0	0	0	0	0	0	0	0	0
Brevard	13	0	5	5	3	0	13	0	12	1
Broward	5	0	1	4	0	0	5	0	2	3
Calhoun	0	0	0	0	0	0	0	0	0	0
Charlotte	0	0	0	0	0	0	0	0	0	0
Citrus	0	0	0	0	0	0	0	0	0	0
Clay	0	0	0	0	0	0	0	0	0	0
Collier	3	1	1	1	0	0	3	0	1	2
Columbia	1	0	0	1	0	0	1	0	0	1
Dade	9	2	7	0	0	0	8	1	7	2
De Soto	0	0	0	0	0	0	0	0	0	0
Dixie	0	0	0	0	0	0	0	0	0	0
Duval	16	2	5	6	3	0	15	1	6	10
Escambia	2	1	1	0	0	0	2	0	2	0
Flagler	0	0	0	0	0	0	0	0	0	0
Franklin	0	0	0	0	0	0	0	0	0	0
Gadsden	0	0	0	0	0	0	0	0	0	0

TABLE 10-6. (Continued)

County	Total Referrals	Age				Un-known	Sex		Race	
		0-15	16	17	18+		Male	Female	White	Minority
Gilchrist	0	0	0	0	0	0	0	0	0	0
Glades	0	0	0	0	0	0	0	0	0	0
Gulf	0	0	0	0	0	0	0	0	0	0
Hamilton	0	0	0	0	0	0	0	0	0	0
Hardee	0	0	0	0	0	0	0	0	0	0
Hendry	0	0	0	0	0	0	0	0	0	0
Hernando	0	0	0	0	0	0	0	0	0	0
Highlands	0	0	0	0	0	0	0	0	0	0
Hillsborough	14	5	3	6	0	0	12	2	7	7
Holmes	0	0	0	0	0	0	0	0	0	0
Indian River	1	0	0	1	0	0	1	0	0	1
Jackson	0	0	0	0	0	0	0	0	0	0
Jefferson	0	0	0	0	0	0	0	0	0	0
Lafayette	0	0	0	0	0	0	0	0	0	0
Lake	0	0	0	0	0	0	0	0	0	0
Lee	3	0	1	2	0	0	2	1	2	1
Leon	8	1	4	2	*	1	7	1	6	2
Levy	0	0	0	0	0	0	0	0	0	0
Liberty	1	1	0	0	0	0	1	0	1	0
Madison	0	0	0	0	0	0	0	0	0	0
Manatee	0	0	0	0	0	0	0	0	0	0
Marion	4	1	2	1	0	0	3	1	4	0
Martin	0	0	0	0	0	0	0	0	0	0
Monroe	0	0	0	0	0	0	0	0	0	0
Nassau	0	0	0	0	0	0	0	0	0	0
Okaloosa	0	0	0	0	0	0	0	0	0	0
Okeechobee	0	0	0	0	0	0	0	0	0	0
Orange	4	1	2	1	0	0	3	1	3	1
Osceola	0	0	0	0	0	0	0	0	0	0
Palm Beach	0	0	0	0	0	0	0	0	0	0
Pasco	1	1	0	0	0	0	1	0	0	1
Pinellas	3	2	1	0	0	0	2	1	2	1
Polk	1	1	0	0	0	0	1	0	1	0
Putnam	0	0	0	0	0	0	0	0	0	0
St. Johns	0	0	0	0	0	0	0	0	0	0

TABLE 10-6. (Continued)

County	Total Waivers	Age				Un-known	Sex		Race	
		0-15	16	17	18+		Male	Female	White	Minority
St. Lucie	11	2	2	5	2	0	8	3	6	5
Santa Rosa	0	0	0	0	0	0	0	0	0	0
Sarasota	0	0	0	0	0	0	0	0	0	0
Seminole	3	0	0	2	1	0	3	0	3	0
Sumter	0	0	0	0	0	0	0	0	0	0
Suwannee	0	0	0	0	0	0	0	0	0	0
Taylor	0	0	0	0	0	0	0	0	0	0
Union	0	0	0	0	0	0	0	0	0	0
Volusia	4	0	0	1	3	0	4	0	1	3
Wakulla	0	0	0	0	0	0	0	0	0	0
Walton	0	0	0	0	0	0	0	0	0	0
Washington	0	0	0	0	0	0	0	0	0	0
State Total	108	21	36	38	12	1	96	12	67	41

* denotes Not Available.

Table 10-7 contains data on the charges associated with the concurrent jurisdiction cases. Before reviewing these findings, however, the reader should understand that they are subject to some error. Obviously, only offenses involving murder, rape, robbery, and other violent offenses are applicable to the concurrent jurisdiction provision in Florida statutes in effect prior to October 1978. Those cases attributed in the state-supplied data to any other offense category are, therefore, subject to question. When apprised of this situation by the Academy, state officials indicated that these youth were actually referred to adult courts, but that there was some computer error of a mechanized type with the offense variable listed for those youth.

Recognizing this data problem, it is still interesting to note that 75 cases (69 percent) were for crimes against the person--murder, manslaughter, rape, robbery, aggravated assault, and other personal offenses. Over 60 percent of these were for robbery, 44 percent of the total number of concurrent jurisdiction cases.

TABLE 10-7. FLORIDA: PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

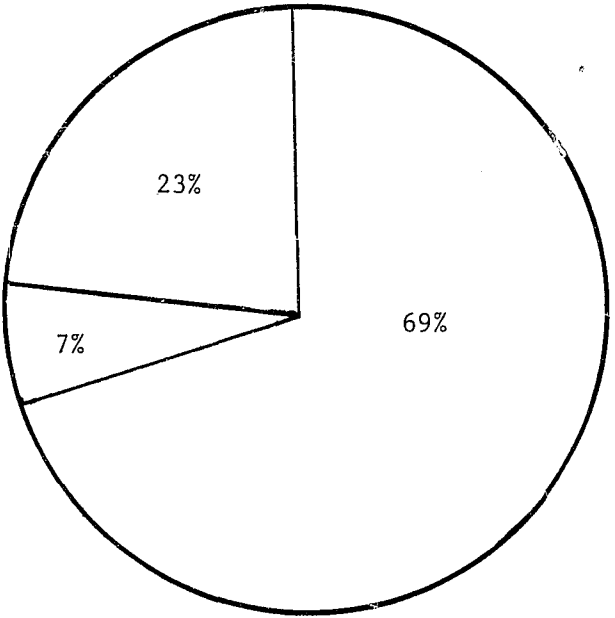
County	Total Referrals	Offenses ^a									
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty	Public Order	Other General ^b
Bay	1	1	0	0	0	0	0	0	0	0	0
Brevard	13	1	0	4	0	0	1	5	0	0	2
Broward	5	0	1	4	0	0	0	0	0	0	0
Collier	3	1	1	1	0	0	0	0	0	0	0
Columbia	1	0	0	1	0	0	0	0	0	0	0
Dade	9	1	0	8	0	0	0	0	0	0	0
Duval	16	4	0	10	0	0	0	2	0	0	0
Escambia	2	1	0	0	0	1	0	0	0	0	0
Hillsborough	14	2	1	5	0	0	0	4	1	0	1
Indian River	1	0	0	0	0	0	1	0	0	0	0
Lee	3	0	0	3	0	0	0	0	0	0	0
Leon	8	0	0	3	0	0	0	4	0	0	1
Liberty	1	0	0	0	0	0	1	0	0	0	0
Marion	4	0	0	2	0	0	0	0	0	0	2
Orange	4	1	0	3	0	0	0	0	0	0	0
Pasco	1	1	0	0	0	0	0	0	0	0	0
Pinellas	3	2	0	0	0	0	0	0	0	0	1
Polk	1	1	0	0	0	0	0	0	0	0	0
St. Lucie	11	1	1	3	0	0	0	2	4	0	0
Seminole	3	0	0	0	0	0	0	0	3	0	0
Volusia	4	0	1	1	0	0	1	0	0	0	1
State Total	108	17	5	48	0	1	4	17	8	0	8

a. Only most serious offense per individual listed.

a. The offenses included in this category are specific to Florida and may vary slightly from the offenses included in this category in other states and in the appendix.

The percentage of concurrent jurisdiction cases referred to adult courts in 1978 by certain offense categories is illustrated in Figure 10-3. The figure shows that 69 percent of the cases involved personal offenses; 23 percent involved property offenses; and seven percent involved other offenses.

FIGURE 10-3. FLORIDA: PERCENTAGE OF PROSECUTORIAL REFERRALS TO ADULT COURTS DUE TO CONCURRENT JURISDICTION (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	69%
Property	23%
Public Order	0%
Other	7%

N= 108

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent 66 percent of all offenses in the state.

Table 10-8 provides a summary display of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. A total of 965 youth were referred to adult courts through judicial waiver and another 108 youth through concurrent jurisdiction. All cases were selected for Phase II investigation, however, no data were available on conviction and confinement practices.

TABLE 10-8. FLORIDA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver	Concurrent Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 10-1)	965	108
Total Referrals Selected for Phase II (Tables 10-2 and 10-4)	965	108
Total Referrals Resulting in Convictions	*	*
Total Convictions Resulting in Sentences of Confinement	*	*

* denotes Not Available.

A variety of additional data were made available to the Academy about youth in Florida. One trend noted in the additional data is the use of the direct file provision, added October, 1978, and a decrease in the use of judicial transfers. The Academy census data, reflecting fiscal year 1978 and thus prior to the addition of the direct file provision, indicates that 90 percent of the youth tried as adults were processed through the judicial transfer mechanism. The Youth Services Program of DHRS reports that in 1979, based on a stratified random sample in twelve counties, 56 percent of youth tried as adults were processed through the judicial transfer mechanism (including self-requested waiver and "once-waived-always-waived" provisions) and 44 percent were processed through the concurrent jurisdiction mechanism, including both direct files and indictments.⁴⁸ Most of the shift appears to be direct file cases which previously would have been judicially waived.

This shift appears to have increased in 1980. Indeed, as illustrated in Table 10-9, by the first half of calendar year 1980 direct files were the most common provision by which youth were tried as adults. This shift is all the more impressive given the rapid increase (67 percent) in the total number of youth tried as adults.

TABLE 10-9. FLORIDA: TRENDS IN YOUTH REFERRED TO ADULT COURTS
(BY LEGAL MECHANISM)

	Judicial Waivers	Concurrent Jurisdiction Indictments	Direct Files	Total to Adult Courts
January-June 1978	533	62	--	595
January-June 1979	306	55	253	614
January-June 1980	396	76	520	992

-- denotes Not Applicable.

Source: DHRS, from intake data cards.

Along with the increasing numbers of youth being tried as adults in Florida, it appears that increasing numbers are being incarcerated in DOC facilities. Table 10-10 presents data compiled by the Florida Center for Children and Youth, Inc. on the number of youth confined in DOC facilities on specific days in 1977 through 1980. These data reflect an 83 percent increase in such confinements during the four year period. Most of this increase occurred between June 30, 1979 and June 16, 1980.

TABLE 10-10. FLORIDA: TREND IN INCARCERATION OF YOUTH UNDER 18 YEARS OF AGE IN DOC FACILITIES

Date	Number
June 30, 1977	202
June 30, 1978	217
June 30, 1979	226
June 16, 1980	369

Source: Florida Center for Children and Youth, Inc., compiled from Florida Department of Corrections Annual Reports

This increase is to be expected given the large percentage of youth tried as adults who are sentenced to adult facilities. Data presented in the 1980 Youth Services Program study indicate that 83 percent of the youth tried as adults in the sample were found guilty.⁴⁹ Furthermore, of those found guilty, 54 percent were sentenced to DOC, 20 percent were sentenced to county jails, and three percent were committed to Youth Services. The study also notes that the proportion of youth tried as adults and committed to Youth Services declined by over one-half from 1974 to 1979.

A final statistical note of interest concerns the highly debated issue in Florida of the most preferable maximum age of juvenile court jurisdiction (see History of Statutes Relating to Jurisdiction and Transfer section). Those supporting a lowered age of jurisdiction generally argue for the need of the more stringent sanctions available in the adult courts, especially greater use of confinement. Yet, based on data provided to the Academy by the Florida Center For Children And Youth, Inc. (Table 10-11), it appears that extending the maximum age of jurisdiction from 17 years to 18 years in 1974 actually resulted in more commitments of 17-year-olds.

TABLE 10-11. FLORIDA: COMMITMENTS OF 17-YEAR-OLDS TO DOC AND DHRS

	Committed to DOC	Committed to DHRS	Total
Fiscal Year 1974a	211	168	379
Fiscal Year 1975b	140	1,102	1,242
Fiscal Year 1976b	172	1,176	1,298

a. 17-year-olds considered adults

b. 17-year-olds considered juveniles

Source: Florida Center For Children And Youth, Inc.

RESULTS OF ON-SITE INTERVIEWS

Juvenile justice specialists in Tallahassee, Miami, Perry, and Tampa were interviewed in December, 1979. Those interviewed included juvenile and adult court judges, prosecutors, advocacy group members, corrections officials, youth services personnel, legislative aides, and other juvenile justice specialists. Those interviewed were asked their perceptions of the effects of trying youth as adults on the courts, corrections, the offenders, and the general public. Respondents were also asked to compare the dispositions and severity of sentences received by youth tried as adults to juveniles tried as juveniles. Opinions on changes that should be made in the juvenile code and state trends on the issue of youth in adult courts were solicited.

The perceptions held by the various persons in the Florida justice system are important to a fuller understanding of past and present procedures for trying youth as adults in the state. Even when some of these perceptions do not coincide with empirical findings, their existence helps to illuminate some of the problems encountered there. The following synopses of the interviews constitute the case study findings.

Perceived Effects on the Court System
of Trying Youth As Adults

Trying youth in adult courts was generally thought to be having little impact on the case load or on court operation costs in Florida. Both the juvenile courts and criminal courts are part of the state circuit court system. Except in some major metropolitan areas, circuit court judges frequently fulfill both the role of juvenile court judge and of criminal court judge. In such instances, a judge may hear a case as juvenile judge, transfer juvenile jurisdiction, and hear the case as criminal court judge. In general, transfer cases require more juvenile court time than retaining the case under juvenile court jurisdiction. It was also reported that concern for due process may result in a somewhat increased work load at the adult court level. Some respondents thought that judges are generally more conscientious in assuring due process protections when youth are being tried as adults rather than as juveniles.

Since youth who are prosecuted in adult courts are generally considered less suitable for juvenile treatment programs, the removal of these youth from juvenile court jurisdiction was thought by some respondents to allow for greater concentration of resources for juveniles who are more likely to benefit from juvenile justice services.

Perceived Effects on the Corrections System
of Trying Youth As Adults

Individuals under 18 years of age comprise a very small proportion of the total incarcerated population of the Florida Department of Corrections. However, data gathered from the department's annual reports indicate that the number of youth under 18 in adult prisons has recently been increasing. This increase reflects the increasing number of youth tried as adults (67 percent increase from 1978 to 1980) and the high percentage (54 percent in 1980) of convicted youth sentenced to DOC facilities (see State Data Summary section).

If the trends in the frequency of youth tried as adults and their commitments continue, there may be a significant impact on program and budgetary considerations of an already overcrowded adult corrections system. The Department of Corrections estimates that an additional 50 admissions serving an average two-year sentence would result in an additional \$3.3 million in per diem and construction costs over a four-year period.

The respondents (interviewed in 1979) thought that the relatively small number of youth being removed for trial as adults was having little impact on juvenile corrections. It remains to be seen if the trend of increasing removal of youth from the juvenile system enables the focusing of resources on fewer juveniles or results in the reduction of resources available to the juvenile system.

Perceived Effects on Offenders
of Being Tried As Adults

Interviewees stated that more attention is paid to due process rights when youth are prosecuted in adult courts rather than in juvenile courts. Other advantages to the youth mentioned included greater likelihood of a successful appeal and the possibility of being released on bail while awaiting trial.

The likelihood of receiving a prison sentence was the primary disadvantage to the youth stated by those interviewed. They indicated that youth sentenced by adult courts would serve considerably longer terms in prison than those tried by juvenile courts. The adult court prison sentences will also be more specific--with minimum and maximum lengths clearly stated. Juveniles placed by the juvenile courts usually serve indeterminate sentences and the average length of stay is reported to be less than six months.

Perceived Effects on the Public
of Trying Youth as Adults

Persons interviewed generally indicated that trying youth in adult courts provided for greater public safety in Florida due to longer periods of incapacitation. Trying youth as adults was also seen as satisfying the punitive desires of the public and as providing greater public accountability due to the openness of the adult court proceedings.

Many persons interviewed claimed that there were no disadvantages to the public associated with trying youth as adults. However, some interviewees cited increased costs, higher rates of dismissal, and the long-term effects on the youth of incarceration with hardened criminals as negative effects on the general public.

Perceptions of Factors to be Considered
in the Referral of Youth to Adult Courts

In Florida, the factors to be considered by the courts in the decision to try juveniles as adults are defined by statute (See Transfer Process subsection). In general, the factors stress severity and type of offense, although characteristics of the offender are included.

Respondents' opinions of critical factors to be considered varied slightly from state law. Although severity of the offense was considered to be the single most important factor, overall emphasis was on the characteristics of the

offender, especially the age of the youth and the youth's past record. Other factors frequently mentioned included: level of criminal sophistication; lack of potential for rehabilitation; and the maturity of the youth. Lack of potential for rehabilitation was the only factor mentioned by respondents that is not included in the state code.

Perceptions of Needed Changes in the Referral of Youth to Adult Courts

Most respondents thought that the ideal system for trying youth as adults would closely resemble the system in Florida prior to the introduction of the direct file provision in 1978, including the operation of separate juvenile and adult court systems. Most respondents thought that a juvenile court system was effective in dealing with most juvenile problems. The general consensus was, also, that the best maximum age of initial juvenile court jurisdiction would extend to age 18.

It was suggested by the majority of respondents, however, that only older juveniles charged with serious offenses should be allowed to be transferred to adult courts. All such transfers should go through waiver hearings at the juvenile court level. Most of the respondents thought that transfers of jurisdiction based solely on prosecutorial discretion through the direct file provision should be abolished. The system of judicial transfers was felt to reduce the potential for abuses that may exist if transfer decisions are made at a lower level of visibility.

The majority of interviewees in Florida did not see the necessity for excluding any offenses from juvenile court jurisdiction. Very serious offenses, such as murder, were most often thought to be best handled through grand jury indictments at the initiation of the prosecutor. Other than this use of indictments, the judicial transfer was most frequently advocated as the best means of transferring juveniles to adult courts. Both of these actions were thought to provide for adequate protection of juveniles' rights, while allowing the prosecutors two avenues for seeking more severe sanctions when deemed necessary.

Most respondents thought that if the system were to exist as outlined above, fewer juveniles would appear in adult courts. This appears to be supported by available data on state trends (see State Data Summary section). There would probably be more juvenile placements, although most would probably be placed in Youth Services programs if past experience is continued. The respondents also thought that periods of incarceration would be shorter than for those juveniles sentenced to the adult corrections system.

In order for such a system to be most effective in dealing with juveniles within the juvenile system, many respondents thought that more and better alternatives need to be available to the juvenile courts. If adequate alternatives to transfer and incarceration existed at the juvenile court level, the need for

adult prosecution and sanctions were seen to be unnecessary for most juvenile offenders now being tried as adults.

SUMMARY AND CONCLUSIONS

The trying of youth in adult courts has been a topic of much concern and controversy in the Florida legislature for many years (see History of Statutes Relating to Jurisdiction and Transfer section). The attempt by some members of the legislature to try more youth as adults (through additions of the direct file provision, lowering the age of jurisdiction, etc.) is in response to increasing juvenile crime in the state, particularly violent crime. However, evidence is available, presented in the State Data Summary section, which suggests that this position may be questionable, because:

- Juvenile offenders charged with personal offenses can already be tried in adult courts in Florida.
- Most youth tried as adults in Florida are charged with property offenses, rather than personal offenses.
- Since the creation of the direct file procedure in 1978, there has been a dramatic increase in the number of youth tried as adults. Nevertheless, there have been continuing efforts to lower the maximum age of juvenile court jurisdiction.
- Data from the first two years after the age of jurisdiction was raised in 1974 indicates that more 17-year-olds were committed to correctional programs when 17-year-olds were defined as juveniles than when they were defined as adults.

It should also be pointed out that the direction of the proposed changes in the legislature contradict the direction of the proposed changes by the majority of the case study respondents. Rather than sweeping ever more broadly the number of youth subject to prosecution as adults, most of the respondents emphasized expanding the services available to the juvenile courts. They favored focusing on older youth charged with personal offenses and having a history of similar offenses without apparent rehabilitation. The respondents thought the referral of these serious offenders is best accomplished through the judicial transfer mechanism. They did support the continued use of indictments for specified violent offenses under the concurrent jurisdiction mechanism.

There are several questions about the Florida system which need further study. A major issue is the number of youth confined in DOC facilities and the resultant costs. If the current trends continue (see State Data Summary section), it appears that the costs and demand for limited corrections space will escalate more rapidly, even without the changes suggested by the legislature.

Florida would also be an ideal state in which to conduct a study of comparative dispositions between juvenile and adult courts. There was an increase in juvenile commitments in 1974 when 17-year-olds were placed in juvenile court jurisdiction rather than in adult court jurisdiction (see State Data Summary section). An in-depth study of this development is needed for the current debate over lowering the maximum age of juvenile court jurisdiction.

The resistance to the direct file provision found among the case study respondents indicates the need to examine this provision more closely. Most of the resistance was centered on the amount of discretion exercised by the prosecutors. However, the large and increasing numbers of youth tried as adults under this provision indicates the need to conduct a more in-depth analysis of youth prosecuted under the direct file provision. In particular, documentation on the rates of confinement and the length of confinements received would help clarify if the legislation is accomplishing its intended goals.

Due to currently proposed legislation, its past history of great legislative activity, and its ethnically diverse and rapidly growing population, Florida will be a particularly interesting state to watch regarding crucial issues relevant to youth in adult courts.

FOOTNOTES

1. Florida Laws 1911, Chapter 6216, Section 10. It should be noted that in Florida juvenile courts conduct "waiver hearings" prior to "judicially transferring" youth to adult courts. However, in the past, adult courts in Florida could "waive" jurisdiction to juvenile courts.
2. Florida Laws 1939, Chapter 19070, Sections 1 and 2.
3. Florida Laws 1943, Chapter 21895, Section 3.
4. Florida Constitution Article V, Section 50(48) adopted Nov. 7, 1950; Florida Laws 1951, Chapter 26880; Florida Statutes Annotated, Section 39.01, et seq.
5. Florida Statutes Annotated, Sections 39.02(2) and (3).
6. Florida Statutes Annotated, Section 36.06(6).
7. Florida Laws 1953, Chapter 28172, Section 1.
8. Florida Laws 1955, Chapter 29615, Section 33.
9. Florida Laws 1967, Chapters 67-71.
10. Florida Laws 1969, Chapters 69-146.
11. Florida Laws 1972, Chapters 72-179. Florida Statutes 1972, Section 1(b).
12. Florida Laws 1973, Chapters 73-231; Florida Laws 1978, Chapter 78.414.
13. Florida Statutes Annotated, Section 39.02(1).
14. Florida Statutes Annotated, Section 932.38.
15. Kinard v. Cochran, 113 So. 2d 843 (1959); Fox v. Cochran, 126 So. 2d 883 (1961).
16. Williams v. Cochran, 126 So. 2d 887 (1961); Collins v. Wainwright, 146 So. 2d 97 (1962).
17. Bowen v. Cochran, 121 So. 2d 155 (1960).
18. Johnson v. Cochran, 124 So. 2d 488 (1960); Thompson v. Cochran, 126 So. 2d 564 (1961).
19. Adams v. Wainwright, 445 F. 2d 832, cert. den. 92 S. Ct. 160 (1971).
20. Holloway v. Wainwright, 451 F. 2d 149 (1971).
21. Walker v. State, 466 F. 2d 485 (U.S.C.A.-Fla., 1972).
22. Kent v. United States, 383 U.S. 541 (1966).
23. Davis v. State, 297 So. 2d 289 (1974); Florida Statutes Annotated 39.09(2).
24. W.B. v. State, 313 So. 2d 711 (1975).
25. Johnson v. State, 314 So. 2d 573 (1975).
26. McCloud v. State, 335 So. 2d 257 (1976).
27. State v. Boatman, 329 So. 2d 309 (1976).
28. Jones v. State, 336 So. 2d 1172 (1976).
29. Woodward v. Wainwright, 556 F. 2d 781 (1977).
30. Unpublished study by Judge Seymour Gelber, "A Profile of Dade County Juvenile Crime", October, 1977.
31. Unpublished study by Judge Seymour Gelber, "A Profile of Dade County Juvenile Crime: No. 2-1980", July, 1980.
32. Florida Statutes Annotated, Section 39.01(7).
33. Florida Statutes Annotated, Section 39.02(5)(a).
34. Florida Statutes Annotated, Section 39.09(2)(a).
35. Florida Statutes Annotated, Section 39.09(2)(c).

36. Florida Statutes Annotated, Section 39.02(5)(d).
37. Florida Statutes Annotated, Section 39.02(5)(b).
38. Florida Statutes Annotated, Section 39.02(5)(c).
39. Florida Statutes Annotated, Section 39.04(2)(e)(4).
40. Florida Statutes Annotated, Section 39.10(8).
41. Florida Statutes Annotated, Section 39.02(1).
42. "Analysis of the Penetration of Youth into the Adult Criminal Justice System", Department of Health and Rehabilitative Services, Youth Services Program, 1980.
43. Florida Statutes Annotated, Section 39.111(6). (This Section is new with the 1978 Juvenile Justice Act.)
44. Florida Statutes Annotated, Section 39.111(3).
45. Florida Statutes Annotated, Section 39.111(5)(b).
46. Data provided to the Academy by DHRS, Youth Services program.
47. "Report Of The Ad Hoc Subcommittee On Children And Youth", Florida House Of Representatives Committee On Health And Rehabilitative Services, p. 31.
48. "Analysis Of The Penetration Of Youth Into The Adult Criminal Justice System", DHRS, Youth Services Program, p. 23.
49. Ibid., p. 27.

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GEORGIA PROFILE

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METHODOLOGY

The collection of data on juveniles judicially waived from juvenile to adult court and juveniles originating in criminal court charged with a capital offense was carried out by Blackwater Associates, primarily by telephone questionnaire. Several counties, however, required written questionnaires in order to release juvenile waiver information. Initial contact was made with the clerk of the superior court in each county, with the prosecutor furnishing supplemental information on the disposition and sentencing of the cases. Frequencies of judicial waiver (Phase I data) were sought for all 159 counties in Georgia. Phase II information on age, sex, race, offenses, dispositions, and sentences of youth judicially transferred to adult courts were requested and were generally available from the most populous ten percent of the counties in the state and those counties that judicially waived five or more juveniles in 1978.

Due to the fact that the initial age of juvenile court jurisdiction extends to 17 years of age, the information concerning 17 year old felons, misdemeanants, and traffic violators is not filed separately but is treated the same as that for any other adult offender. Attempts to retrieve court data on 17-year-old individuals were made in the state courts, but these were discontinued when it became apparent that the information would not be forthcoming. Phase I arrest data on 17 year old youth and related demographic and offense data were therefore provided by the Georgia Crime Information Center, Bureau of Investigation, Uniform Crime reports. It was very difficult to determine what percentage of arrests of 17 year olds resulted in court filings since it was reported by state sources that the referral rates to grand juries and district attorneys' filings vary around the state. However, it was also pointed out by Georgia officials that the number of court filings may exceed the number of arrests since, when a person voluntarily comes in response to a bench warrant, no arrest is

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recorded. Therefore, state sources estimated a close relationship exists between the number of arrests of 17 year olds in Georgia and formal court filings. Finally, traffic offense data on 16 year olds handled by adult courts were not available.

COURT ORGANIZATION

Three types of courts in Georgia are considered the highest courts of general jurisdiction. The superior courts, one of which is in each of Georgia's 159 counties, are the major trial courts. These courts have exclusive jurisdiction in felonies, divorce, equity, and matters concerning land title. Many counties, in order to reduce the case load of the superior court, have established state courts. A few have established special criminal courts. These courts share the jurisdiction of the superior courts except for those matters in which the superior courts have exclusive jurisdiction.

There are many courts of limited criminal jurisdiction in Georgia. In counties without a state court, probate court exercises jurisdiction over some traffic offenses. Mayor's, recorder's, and police courts operate in many counties. They hear traffic cases, city ordinance violation cases, and minor criminal matters. Justice of the peace courts exercise jurisdiction in traffic cases and hear certain criminal matters. Magistrate's courts, civil, municipal, and small claims courts often have the same jurisdiction as justice of the peace courts. In many instances, the powers of these lower courts vary from county to county. In some cases, one type of court will replace another. Municipal courts in Savannah and Columbus Counties perform all the functions of justice of the peace courts in other counties.

As of June 1977, 36 of the larger counties utilized separate juvenile courts. One hundred twenty-three counties had juvenile matters presided over by superior court judges or by judges or referees appointed by the superior court judge.¹ Hereafter these separate juvenile courts and the juvenile judges sessions of superior courts will all be referred to as juvenile courts.

An overview of Georgia's courts by their jurisdiction over juveniles appears below.

GEORGIA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Separate Juvenile Court (36 counties)	Appropriate Superior, State, or Criminal Court	Juvenile Court ^a
Juvenile Court Where Judge is Appointed by Superior Court Judge (123 counties)		Adult Court Having Local Jurisdiction over Traffic Offenses ^b

a. In Georgia, the term "juvenile traffic offense" applies only to alleged offenses by persons under the age of 16. Georgia Code Annotated, Section 24A-3101(a)(1). These cases are heard in juvenile court.

b. Juveniles 16 years old are tried in adult court in Georgia for highway and waterway traffic offenses. Youth 17 years old are adults under the law and treated as such when arrested for a traffic violation.

TRANSFER PROCESS

In Georgia, initial age of juvenile court jurisdiction extends to 17 years of age.² Individuals under the age of 18 enter the adult criminal courts adjudication process in four ways.

Judicial Waiver

Juveniles 15 or 16 years old in Georgia may be judicially transferred for any offense which would be a crime if committed by an adult. Juveniles over 12 who are charged with offenses punishable by death or life imprisonment may also be judicially transferred to adult courts.³ In any case of judicial transfer, a transfer hearing must be held. The hearing can be initiated by either the juvenile court or the district attorney. For transfers to take place, the courts must find, at the transfer hearing, that there are reasonable grounds to believe that (1) the juvenile committed the offense, (2) the juvenile is not mentally ill or retarded, and (3) the

transfer is in the best interests of the juvenile and the community. Once waived, the juvenile courts lose jurisdiction over the case; there is no provision for waiver back to the juvenile court.

Concurrent Jurisdiction

There is concurrent original jurisdiction between superior and juvenile courts in Georgia over juveniles who are charged with capital offenses.⁴ Whichever court first takes jurisdiction may retain it, subject to the right of the juvenile courts to transfer the case to criminal courts.⁵ The district attorney generally makes the decision. However, any person, including law enforcement officers, who have knowledge of the facts, may file a petition in the juvenile courts before the district attorney can secure an indictment to proceed in the superior courts.

Excluded Offenses

Juveniles aged 16 who are alleged highway or waterway traffic offenders are under the original jurisdiction of adult courts.⁶

Lower Age of Criminal Jurisdiction

Youth 17 years old are routinely handled as adults in Georgia, under the original jurisdiction of adult courts. These persons are subject to the same court procedures and dispositional alternatives as persons 18 years old or older, and are discussed in a separate section of the data summary which appears later in this profile.⁷

CASE LAW SUMMARY

Since 1950, the Georgia Supreme Court has ruled several times on court jurisdiction over juveniles. In 1954, the case of Jackson v. Balcom laid down the rule that the then exclusive jurisdiction of superior courts to try offenses punishable by death or life imprisonment was not abridged by the passage of Juvenile Court Act of 1951.⁸ This rule was applied again in

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1954 in Jones v. Balcom and in 1969 in Foster v. Caldwell to block attempts by juveniles to have their convictions overturned on the grounds of lack of jurisdiction of the adult court.⁹

In Foster v. Caldwell, the court construed the Jackson rule to give jurisdiction to the superior court over a 15 year old accused of burglary and robbery offenses where no juvenile court existed in the rural area where the offender was tried.¹⁰ The court found no equal protection violation, even though the offender would have been treated as a juvenile in an urban county.

In Holmes v. State, the Georgia Supreme Court held that the dictates of Kent v. U.S. were inapplicable in Georgia, since at that time the state had no provision whereby a juvenile might be waived over to adult court.¹¹ Rather, the adult court had exclusive jurisdiction over felony offenses committed by juveniles over the age of criminal responsibility, determined to be 14 years old.

A 1972 amendment to the state's constitution and statutory enactment passed pursuant thereto in 1973 bestowed concurrent jurisdiction upon the juvenile and superior courts in juvenile capital felony cases. In clarifying the concurrent jurisdiction, the Georgia Supreme Court held, in J.W.A. v. State, that the jurisdiction of the juvenile court, once taken, could not be ousted by the later filing of a criminal indictment in superior court.¹²

In Brown v. State, the court detailed a similar position on the jurisdiction of the courts under the new statutes in juvenile matters where a capital offense is involved.¹³ The superior and juvenile courts have concurrent jurisdiction in such cases. Whichever court first takes jurisdiction may retain it. Where the juvenile court assumes jurisdiction first, it may transfer the case to superior court, but where the superior court is the first to take jurisdiction, it need not hold a waiver hearing but may proceed directly to trial on the charges. (See also Relyea v. State.¹⁴)

Finally, in Hartley v. Clark and Longshore v. State, the Georgia Supreme Court held that where the juvenile court merely issues an order of detention or an order relating to a child suspected of the commission of a capital offense, the juvenile court does not thereby obtain jurisdiction over the child.¹⁵ Such acts by the court do not constitute the filing of a "petition," as is required to commence a juvenile proceeding under Georgia law. Hence, the superior court may properly assume jurisdiction of a case upon subsequent criminal indictment.

CORRECTIONS INFORMATION

Adult corrections in Georgia is under the administration of the Department of Offender Rehabilitation.

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The adult court of jurisdiction may sentence under the Georgia Youthful Offender Act of 1972 all male and female offenders who are at least 17 but less than 25 years of age at the time of conviction.¹⁶ Probation and confinement in an adult facility are the two sentence provisions. The duration of the confinement is decided by the director of the Division of Youth Services with the approval of the State Board of Pardons and Paroles. Youthful offenders may receive an unconditional release on the expiration of six years from the date of conviction or on the expiration of the maximum term of imprisonment provided by law for the offense of which they were convicted.

Juvenile corrections is under the Division of Youth Services, Department of Human Resources. Juveniles adjudicated delinquent may be released, placed on probation, placed with a private or public agency, or committed to the division's facilities.¹⁷

Youth under the age of 17 who are convicted as adults may be sent to the Division of Youth Services to be placed in a juvenile facility.¹⁸ When these youth reach the age of majority (17), they are automatically sent to an adult facility for the remainder of the sentence, unless the sentence order provides for some type of probation or community-based service for the youth upon reaching majority. Two categories of youth convicted in adult court, if incarcerated, will be sentenced to the custody of the state Department of Offender Rehabilitation. First a youth adjudicated delinquent for a felony and subsequently convicted of a felony in superior court may in the discretion of the court be sentenced to the state Department of Offender Rehabilitation. And second, any child convicted of a felony punishable by death or by confinement for life shall only be sentenced into the custody of the department.

Currently, there are no provisions to administratively transfer juveniles to adult facilities while they are serving sentences imposed by juvenile courts. Similarly, 17-year-olds sentenced to adult corrections institutions either directly or under the Georgia Youthful Offender Act cannot be transferred to juvenile facilities.

STATE DATA SUMMARY

In Georgia, there are several ways in which juveniles can appear in adult courts. First, youth 14 to 16 years of age can be transferred to adult court after a hearing in juvenile court for any crime; juveniles over 12 charged with capital offenses may also be judicially waived. Second, superior courts and juvenile courts have concurrent jurisdiction over juveniles charged with capital offenses. No hearing is required and the prosecutor generally decides which court assumed jurisdiction. Third, traffic offenses committed by 16 year olds are tried in adult courts. Fourth, youth 17 years old are routinely tried in adult court due to the maximum age of juvenile court jurisdiction.

Table 11-1 is a display of youth subject to prosecution in adult courts in Georgia in 1978 by county and population rate per 10,000 youth eight through 17 years old. Three of the four mechanisms by which Georgia youth can be tried as adults are represented in this table, data on excluded (traffic) offenses having not been available. In total, 70 youth were judicially transferred, and 45 were tried in adult courts due to prosecutorial discretion (concurrent jurisdiction). There were 2,849 17 year olds arrested as adults due to the maximum age of juvenile court jurisdiction.

A review of the table shows that the lower juvenile population counties were more likely to have higher rates of judicial waiver and prosecutorial referral due to concurrent jurisdiction, although the more populated counties reported more youth in adult courts through these mechanisms. For example, with the exception of Baldwin County, the four Georgia counties with the highest rate of judicial transfer (Baldwin, Hancock, McDuffie, and Putnam) were not the same counties with the largest number of judicial transfers, nor nearly as populated (Baldwin, Clarke, Fulton, and Houston). These four less-populated counties accounted for 40 percent of all the judicial transfers in 1978. Nine of the 11 counties with a juvenile population over 15,000 had rates of judicial transfer under one youth per 10,000.

A similar trend can be seen in the concurrent jurisdiction data, again with the exception of one county, Bibb. However, it should also be noted that this mechanism was seldom used. The highest rates of prosecutorial referral due to concurrent jurisdiction were in Bibb, Burke, Carroll, and Rabun Counties, the latter three counties having juvenile populations of less than 10,000 youth. Bibb County, with over 26,000 in its juvenile population, was the only county to have over five prosecutorial referrals (estimated ten) due to this legal mechanism.

Finally, arrests of youth 17 years old followed a similar pattern, with almost all counties reporting some arrests. All 11 counties with juvenile populations over 15,000 had over 55 arrests of 17 year olds in 1978, but not one of these counties had an arrest rate of 50 youth per 10,000. Thirty-or-counties with juvenile populations under 15,000 had arrest rates of at least 50 youth per 10,000, but less than 55 arrests in 1978.

TABLE 11-1. GEORGIA: REFERRALS OF JUVENILES TO ADULT COURTS
IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Concurrent Jurisdiction		Age of Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b	Cases ^c	Rate ^b
Appling	2,864	0	0.000	0	0.000	9	31.425
Atkinson	1,301	0	0.000	0	0.000	4	30.746
Bacon	1,780	0	0.000	0	0.000	9	50.562
Baker	825	0	0.000	0	0.000	4	48.485
Baldwin	4,781	6	12.550	0	0.000	39	81.573
Banks	1,159	0	0.000	0	0.000	4	34.512
Barrow	3,439	0	0.000	0	0.000	24	69.788
Bartow	6,950	1	1.439	1 est	1.439	48	69.065
Ben Hill	2,426	1	4.122	0	0.000	17	70.074
Berrien	2,273	0	0.000	0	0.000	16	70.392
Bibb	26,091	2 est	0.767	10 est	3.833	93	35.644
Bleckley	1,815	0	0.000	0	0.000	13	71.625
Brantley	1,521	0	0.000	0	0.000	5	32.873
Brooks	2,905	0	0.000	0	0.000	9	30.981
Bryan	1,658	0	0.000	0	0.000	5	30.157
Bulloch	6,018	0	0.000	0	0.000	16	26.587
Burke	3,853	2 est	5.191	2 est	5.191	7	18.168
Butts	2,298	0	0.000	0	0.000	8	34.813
Calhoun	1,353	0	0.000	0	0.000	3	22.173
Camden	2,634	0	0.000	0	0.000	12	45.448
Candler	1,223	1	8.177	0	0.000	3	24.530
Carroll	9,311	1 est	1.074	4 est	4.296	36	38.664
Catoosa	5,961	0	0.000	0	0.000	24	40.262
Charlton	1,499	0	0.000	0	0.000	8	53.369
Chatham	33,355	0 est	0.000	4 est	1.199	87	26.083
Chattahoochee	2,268	0 est	0.000	0	0.000	0	0.000
Chattooga	4,031	0	0.000	0	0.000	10	24.808
Cherokee	7,369	0	0.000	2	2.714	34	46.139
Clarke	10,061	6 est	5.964	0	0.000	38	37.770
Clay	633	0	0.000	0	0.000	1	15.798
Clayton	26,195	3	1.145	4 est	1.527	83	31.685
Clinch	1,458	0 est	0.000	0 est	0.000	7	48.011
Cobb	45,616	2	0.438	1	0.219	104	22.799
Coffee	4,811	0	0.000	0	0.000	34	70.671
Colquitt	6,789	2 est	2.946	0 est	0.000	33	48.608

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TABLE 11-1. (Continued)

County	Juvenile Population (Ages 18-17) ^a	Judicial Waiver		Concurrent Jurisdiction		Age of Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b	Cases ^c	Rate ^b
Columbia	6,107	1	1.637	0	0.000	3	4.912
Cook	2,583	0	0.000	0	0.000	22	85.172
Coweta	6,909	2 est	2.895	2	2.895	27	39.079
Crawford	1,471	0	0.000	0	0.000	3	20.394
Crisp	3,946	0	0.000	0	0.000	9	22.808
Dade	2,138	0	0.000	0	0.000	10	46.773
Dawson	725	0	0.000	0	0.000	2	27.586
Decatur	4,828	0	0.000	0	0.000	30	62.138
DeKalb	82,553	1	0.121	0	0.000	132	15.990
Dodge	3,211	0	0.000	0	0.000	5	15.571
Dooley	2,131	0	0.000	0	0.000	2	9.385
Dougherty	18,103	0	0.000	0	0.000	78	43.087
Douglas	8,659	0	0.000	0	0.000	34	39.266
Early	2,723	0	0.000	0	0.000	9	33.052
Echols	481	0 est	0.000	0 est	0.000	0	0.000
Effingham	3,190	0	0.000	0	0.000	9	28.213
Elbert	3,431	0	0.000	0	0.000	7	20.402
Emanuel	3,706	0	0.000	0	0.000	10	26.983
Evans	1,655	0	0.000	0	0.000	6	36.254
Fannin	2,466	0	0.000	0	0.000	11	44.607
Fayette	3,605	0 est	0.000	0 est	0.000	7	19.417
Floyd	13,912	3	2.156	0	0.000	53	38.097
Forsyth	4,130	0 est	0.000	0	0.000	21	50.847
Franklin	2,401	0	0.000	0	0.000	3	12.495
Fulton	95,365	8	0.839	0	0.000	106	11.115
Gilmer	1,769	0	0.000	0	0.000	11	62.182
Glascok	492	0	0.000	0	0.000	0	0.000
Glynn	9,203	0	0.000	0	0.000	41	44.551
Gordon	5,252	0	0.000	0	0.000	29	55.217
Grady	3,578	0	0.000	0	0.000	8	22.359
Greene	2,056	1	4.864	0	0.000	4	19.455
Gwinnett	22,075	0	0.000	4	1.812	56	25.368
Habersham	3,730	0	0.000	0	0.000	1	2.681
Hall	12,274	0 est	0.000	0	0.000	53	43.181
Hancock	1,998	2	10.010	0	0.000	1	5.005

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TABLE 11-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Concurrent Jurisdiction		Age of Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b	Cases ^c	Rate ^b
Haralson	3,057	0	0.000	0	0.000	11	35.983
Harris	2,305	0	0.000	0	0.000	9	39.046
Hart	3,199	0 est	0.000	0 est	0.000	9	28.134
Heard	1,119	0	0.000	0	0.000	1	8.937
Henry	6,044	0	0.000	0	0.000	25	41.363
Houston	15,129	8 est	5.288	3 est	1.322	60	39.659
Irwin	1,701	0	0.000	0	0.000	4	23.516
Jackson	4,207	0	0.000	0	0.000	13	30.901
Jasper	1,342	1	7.452	0	0.000	3	22.355
Jeff Davis	1,995	0	0.000	0	0.000	4	20.050
Jefferson	3,545	0	0.000	0	0.000	9	25.388
Jenkins	1,788	0	0.000	0	0.000	2	11.186
Johnson	1,440	0	0.000	0	0.000	5	34.722
Jones	3,010	0	0.000	0	0.000	7	23.256
Lamar	2,107	0	0.000	0	0.000	13	61.699
Lanier	984	0	0.000	0	0.000	3	30.488
Laurens	6,325	2	3.163	0	0.000	23	44.269
Lee	1,743	0	0.000	0	0.000	7	40.161
Liberty	3,414	0	0.000	0	0.000	18	52.724
Lincoln	1,198	0	0.000	0	0.000	1	8.347
Long	783	0	0.000	0	0.000	2	25.543
Lowndes	11,426	0 est	0.000	0	0.000	48	42.009
Lumpkin	1,610	0	0.000	0	0.000	14	86.957
McDuffie	3,405	4 est	11.747	0	0.000	22	64.611
McIntosh	1,771	0	0.000	0	0.000	0	0.000
Macon	3,089	0	0.000	0	0.000	4	12.949
Madison	2,917	0	0.000	3	0.285	5	17.141
Marion	1,168	0	0.000	0 est	0.000	2	17.123
Meriwether	4,005	0	0.000	0	0.000	22	54.931
Miller	1,201	0	0.000	0	0.000	4	33.306
Mitchell	4,315	0	0.000	0	0.000	12	27.810
Monroe	2,150	0	0.000	0	0.000	16	74.419
Montgomery	1,047	0	0.000	0	0.000	0	0.000
Morgan	2,209	0	0.000	0	0.000	4	18.108
Murray	3,194	0	0.000	0	0.000	20	62.617

TABLE 11-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Concurrent Jurisdiction		Age of Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b	Cases ^c	Rate ^b
Muscogee	29,291	0	0.000	1	0.841	94	32.092
Newton	6,160	1	1.623	0	0.000	30	48.701
Oconee	1,624	0	0.000	0	0.000	5	30.788
Oglethorpe	1,569	0 est	0.000	0 est	0.000	0	0.000
Paulding	4,210	0	0.000	0	0.000	36	85.511
Peach	3,572	0	0.000	0 est	0.000	15	41.993
Pickens	1,959	0	0.000	0	0.000	4	20.419
Pierce	2,152	0	0.000	0	0.000	6	27.881
Pierce	2,152	0	0.000	0	0.000	5	30.581
Pike	1,635	0 est	0.000	0	0.000	5	30.581
Polk	5,846	0	0.000	0	0.000	13	22.237
Pulaski	1,421	0	0.000	0	0.000	4	28.149
Putnam	1,767	2	11.319	0	0.000	13	73.571
Quitman	358	0	0.000	0	0.000	1	27.933
Rabun	1,542	0	0.000	1	6.485	4	25.940
Randolph	1,664	0	0.000	0	0.000	4	24.038
Richmond	27,841	1	0.359	0	0.000	94	33.763
Rockdale	5,498	0	0.000	0	0.000	14	25.464
Schley	636	0	0.000	0	0.000	0	0.000
Screven	2,456	0	0.000	0	0.000	6	24.430
Seminole	1,598	0	0.000	0	0.000	8	50.063
Spalding	8,269	1	1.209	0	0.000	37	44.745
Stephens	3,776	1	2.648	0	0.000	13	34.428
Stewart	1,275	0	0.000	0	0.000	2	15.686
Sumter	5,225	0	0.000	0	0.000	20	38.278
Talbot	1,388	0	0.000	0	0.000	1	7.205
Taliaferro	435	0	0.000	0	0.000	0	0.000
Tattnall	2,553	0	0.000	0	0.000	2	7.834
Taylor	1,621	0	0.000	0	0.000	5	30.845
Telfair	2,175	0	0.000	0	0.000	2	9.195
Terrell	2,254	1	4.437	0	0.000	4	17.746
Thomas	7,425	0	0.000	1	1.347	36	48.485
Tift	5,854	0	0.000	0	0.000	44	75.162
Toombs	4,389	0	0.000	0	0.000	18	41.012
Towns	701	0	0.000	0	0.000	3	42.796
Treutlen	1,133	0	0.000	0	0.000	0	0.000

TABLE 11-1 (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Concurrent Jurisdiction		Age of Jurisdiction	
		Cases	Rate ^b	Cases	Rate ^b	Cases ^c	Rate ^b
Troup	8,132	1 est	1.230	2	2.459	53	65.175
Turner	1,687	0	0.000	0	0.000	8	47.421
Twiggs	1,729	0	0.000	0	0.000	0	0.000
Union	1,362	0	0.000	0	0.000	3	22.026
Upson	4,255	0 est	0.000	0	0.000	20	47.004
Walker	9,651	0	0.000	0	0.000	30	31.085
Walton	5,715	1	1.750	0	0.000	15	26.427
Ware	6,732	0	0.000	0	0.000	39	57.932
Warren	1,385	1	7.220	0	0.000	0	0.000
Washington	3,420	0	0.000	0	0.000	12	35.088
Wayne	3,754	0	0.000	0	0.000	7	18.647
Webster	492	0	0.000	0	0.000	0	0.000
Wheeler	828	0	0.000	0	0.000	7	84.541
White	1,421	0	0.000	0	0.000	8	56.298
Whitfield	11,300	0	0.000	0	0.000	26	23.009
Wilcox	1,183	0	0.000	0	0.000	6	50.719
Wilkes	1,726	0	0.000	0	0.000	9	52.144
Wilkinson	2,098	0	0.000	0	0.000	2	9.533
Worth	3,302	0	0.000	0	0.000	4	12.114
Total	912,766	70 est	0.767	45 est	0.493	2,849	31.213

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 8-17 years old (1978).

c. Arrest data provided by the Georgia Crime Information Center, Bureau of Investigation. State sources estimated that the number of court filings closely approximates the number of arrests.

Table 11-2A and 11-2B reflects the relationship between the state and Phase II counties regarding juvenile population and transfers to adult courts. Sixteen of the 17 Phase II counties in Georgia were Phase II counties due

to population size, with five counties reporting five or more transfers for either judicial waiver or concurrent jurisdiction, the second Phase II selection criteria. Baldwin County was a Phase II county due to the number of judicial waivers. Phase II counties represented 53 percent of the state's population and 11 percent of the total number of counties. Judicial transfer Phase II counties represented 57 percent of the total judicial transfers. Concurrent jurisdiction Phase II counties represented 60 percent of the total number of youth in adult courts due to prosecutorial discretion. Age, sex, race, and offense data for youth subject to prosecution in adult courts due to age of jurisdiction were available for all counties in the state. However, disposition and sentence data were unavailable.

TABLE 11-2A. GEORGIA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND JUDICIAL WAIVER DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	912,766	159	70
Selected for Phase II Investigation	485,368	17	40
Percentage of State Selected for Phase II Investigation	53%	11%	57%

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 11-2B. GEORGIA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND CONCURRENT JURISDICTION DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Concurrent Jurisdiction	Number of Referrals Concurrent Jurisdiction
State	912,766	159	45
Selected for Phase II Investigation	480,587	16	27
Percentage of State Selected for Phase II Investigation	53%	10%	60%

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.

Judicial Waiver

This section contains a series of tables and a brief discussion pertaining to the Phase II information on Georgia youth judicially waived during 1978. Table 11-3 is a demographic display of youth tried in adult courts due to judicial transfer in Phase II counties. Seven of the 17 Phase II counties reported no transfers and will therefore not appear in subsequent tables. Of those for whom specific information was given, 81 percent (29) of the youth judicially transferred were 16 years old and five were 15. Two were 17 years old; however, the offenses probably occurred before their 17th birthday. Males represented 97 percent of the known Phase II judicial waivers, and white and minority youth represented 42 percent (14) and 58 percent (19), respectively.

TABLE 11-3. GEORGIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY, AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age			Un-known	Sex		Un-known	Race		Un-known
		0-15	16	17		Male	Female		White	Minority	
Baldwin	6	1	5	0	0	6	0	0	3	3	0
Bibb	2	*	*	*	2	*	*	2	*	*	2
Chatham	0	0	0	0	0	0	0	0	0	0	0
Clarke	6	2 est	4 est	0	0	6 est	0	0	3 est	3 est	0
Clayton	3	0	3	0	0	3	0	0	*	*	3
Cobb	2	*	*	*	2	2	0	0	*	*	2
DeKalb	1	0	1	0	0	1	0	0	0	1	0
Dougherty	0	0	0	0	0	0	0	0	0	0	0
Floyd	3	0	3 est	0	0	2 est	*	1	3	0	0
Fulton	8	1	5	2	0	7	1	0	0	8	0
Gwinnett	0	0	0	0	0	0	0	0	0	0	0
Hall	0	0	0	0	0	0	0	0	0	0	0
Houston	8	1	7	0	0	8 est	0	0	4 est	4 est	0
Lowndes	0	0	0	0	0	0	0	0	0	0	0
Muscogee	0	0	0	0	0	0	0	0	0	0	0
Richmond	1	0	1	0	0	1	0	0	1	0	0
Whitfield	0	0	0	0	0	0	0	0	0	0	0
State Phase II Total	40	5	29	2	4	36	1	3	14	19	7

* denotes Not Available.

Offenses for youth judicially transferred in Phase II counties are shown in Table 11-4. Personal offenses (murder, manslaughter, rape, robbery, aggravated assault, and other personal offenses) represented 66 percent (25) of the known offenses. The two charges in the "other personal" category were for child molesting. Property offenses (burglary and other property) represented 32 percent (12) of the known offenses. The "other property" offenses were auto thefts. The one charge in the "other general" category was criminal damage. Figure 11-1 graphically depicts this information, including the percentage of unknown charges.

Judgment data for youth judicially transferred in Phase II counties are found in Table 11-5. Of known judgments, 92 percent (33) were convicted, with 47 percent (17) found guilty and 44 percent (16) convicted under a youthful offender statute. The two in the other category represent a case that was held open and a case that was transferred out of state. The cases of three youth were dismissed.

TABLE 11-4. GEORGIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND TYPES OF OFFENSES) IN 1978

County	Total Waivers	Offenses ^a										
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Unknown
Baldwin	6	0	0	0	0	2	0	4	0	0	0	0
Bibb	2 est	0	0	2 est	0	0	0	0	0	0	0	0
Clarke	6	1 est	0	3 est	0	2 est	0	0	0	0	0	0
Clayton	3	0	0	1	0	1	0	1	0	0	0	0
Cobb	2	*	*	*	*	*	*	*	*	*	*	2
DeKalb	1	0	0	0	0	0	0	0	1	0	0	0
Floyd	3	0	0	2 est	0	0	0	0	0	0	1	0
Fulton	8	1	1	2	0	0	2	1	1	0	0	0
Houston	8	0	0	0	0	4 est	0	0	4 est	0	0	0
Richmond	1	0	0	0	0	1	0	0	0	0	0	0
State Phase II Total	40	2	1	10	0	10	2	6	6	0	1	2

* denotes Not Available.

a. Only most serious offense per individual listed.

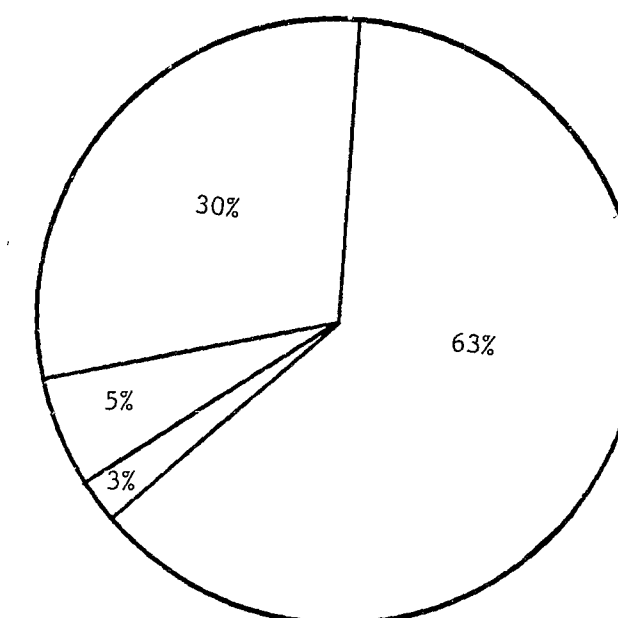
TABLE 11-5. GEORGIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND JUDGEMENTS IN ADULT COURTS) IN 1978

County	Total Waivers	Judgments					Un- known
		Not Guilty	Dismissed	Youthful Offender Judgments	Guilty	Other ^a	
Baldwin	6	0	0	6	0	0	0
Bibb	2	0	0	0	2	0	0
Clarke	6	0	0	6 est	0	0	0
Clayton	3	0	0	1	1	1	0
Cobb	2	*	*	*	*	*	2
DeKalb	1	0	1	0	0	0	0
Floyd	3	0	2	0	1	0	0
Fulton	8	0	0	0	8	0	0
Houston	8	0	0	3 est	4 est	1	0
Richmond	1	0	0	0	1	0	0
State Phase II Total	40	0	3	16	17	2	2

* denotes Not Available.

a. One case was held open and the other was transferred out of state.
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FIGURE 11-1. GEORGIA: PERCENTAGE OF JUVENILE WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	63%
Property	30%
Public Order	0%
Other General	3%
Unknown	5%

N= 40

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent 58 percent of all offenses in the state.

Known sentences for youth convicted in reporting Phase II counties are shown in Table 11-6. Cobb County data were not available. Eighty-two percent (27) were incarcerated, with 76 percent (25) of these sentenced sent to state adult corrections and six percent (two) sent to juvenile corrections. Fifteen percent (five) were given probation, and one youth was fined.

TABLE 11-6. GEORGIA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Con- victions	Sentence Types					
		Fined	Probation	Jail	State Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities	Other
Baldwin	6	0	0	0	6	0	0
Bibb	2	0	0	0	0	2	0
Clarke	6	0	0	0	6 est	0	0
Clayton	2	1	0	0	1	0	0
Floyd	1	0	1	0	0	0	0
Fulton	8	0	1	0	7	0	0
Houston	7	0	3 est	0	4 est	0	0
Richmond	1	0	0	0	1	0	0
State Phase II Total	33	1	5	0	25	2	0

The sentence durations for judicially transferred youth in reporting Phase II counties are reflected in Table 11-7. Of the known sentences, four were sentenced to one year or less, and 81 percent (17) were sentenced to more than one year. Fourteen percent (three) were known to be given terms of over one to three years, and four percent (one) were known to be given terms of over three to five years. Maximum sentences of over five to ten years or more were known to be given to 62 percent (13) of the youth judicially transferred to adult courts.

TABLE 11-7. GEORGIA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCES) IN 1978

County	Total Confinements	Sentence Maximums								Un- known
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeter- minate	Life	Death	
Baldwin	6	3	3	0	0	0	0	0	0	0
Bibb	2	*	*	*	*	*	*	*	*	2
Clarke	6	0	0	0	6 est	0	0	0	0	0
Clayton	1	0	0	0	1	0	0	0	0	0
Fulton	7	1	0	1	5	0	0	0	0	0
Houston	4	*	*	*	*	*	*	*	*	4
GA-19 Richmond	1	0	0	0	0	1	0	0	0	0
State Phase II Total	27	4	3	1	12	1	0	0	0	6

* denotes Not Available.

Concurrent Jurisdiction

This section contains a series of tables and a brief discussion pertaining to the Phase II information gathered about youth referred to adult court during 1978 through the state's concurrent jurisdiction mechanism.

Age, sex, and race data on youth tried in adult court due to concurrent jurisdiction in Phase II counties are shown in Table 11-8. Excluding three counties where data were unknown, 56 percent (ten) were 16 years of age and 44 percent were 15 or under. Ninety-four percent (17) were males. White youth represented 67 percent (12), and minority youth 33 percent (six). Nine Phase II counties--Clarke, DeKalb, Dougherty, Floyd, Fulton, Hall, Lowndes, Richmond, and Whitfield--reported no transfers and will, therefore, not appear in subsequent tables.

TABLE 11-8. GEORGIA: PROSECUTORIAL REFERRAL DUE TO CONCURRENT JURISDICTION IN PHASE II COUNTIES (BY COUNTY, AGE, SEX, AND RACE) IN 1978

County	Total Referrals	Age			Sex			Race		
		0-15	16	Un-known	Male	Female	Un-known	White	Minority	Un-known
Bibb	10	5 est	5 est	0	10 est	0	0	5 est	5 est	0
Chatham	4	*	*	4	*	*	4	*	*	4
Clarke	0	0	0	0	0	0	0	0	0	0
Clayton	4	*	*	4	*	*	4	*	*	4
Cobb	1	*	*	1	*	*	1	*	*	1
DeKalb	0	0	0	0	0	0	0	0	0	0
Dougherty	0	0	0	0	0	0	0	0	0	0
Floyd	0	0	0	0	0	0	0	0	0	0
Fulton	0	0	0	0	0	0	0	0	0	0
Gwinnett	4	2	2	0	4	0	0	4	0	0
Hall	0	0	0	0	0	0	0	0	0	0
Houston	3 est	0 est	3 est	0 est	2 est	1 est	0 est	2 est	1 est	0 est
Lowndes	0	0	0	0	0	0	0	0	0	0
Muscogee	1	1 est	0	0	1	0	0	1	0	0
Richmond	0	0	0	0	0	0	0	0	0	0
Whitfield	0	0	0	0	0	0	0	0	0	0
State Phase II Total	27	8	10	9	17	1	9	12	6	9

* denotes Not Available.

Table 11-9 represents the charges of youth in adult courts due to concurrent jurisdiction in Phase II counties. With the exception of one property offense (auto theft), all known offenses were personal offenses (murder, manslaughter, rape, and robbery). Robbery is the largest offense category with 78 percent (14), ten of which occurred in Bibb County (Macon).

Figure 11-2 illustrates this information, including the percentage of unknown charges.

TABLE 11-9. GEORGIA: PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN PHASE II COUNTIES (BY COUNTY AND TYPES OF OFFENSES) IN 1978

County	Total Referrals	Offenses ^a									
		Murder/Man-slaughter	Rape	Robbery	As-sault/Battery	Aggra-vated As-sault	Other Personal	Burglary	Other Property	Public Order	Other General
Bibb	10	0	0	10 est	0	0	0	0	0	0	0
Chatham	4	*	*	*	*	*	*	*	*	*	*
Clayton	4	*	*	*	*	*	*	*	*	*	*
Cobb	1	*	*	*	*	*	*	*	*	*	*
Gwinnett	4	2	0	1	0	0	0	0	1	0	0
Houston	3	0	0	3	0	0	0	0	0	0	0
Muscogee	1	0	1	0	0	0	0	0	0	0	0
State Phase II Total	27	2	1	14	0	0	0	0	1	0	0

* denotes Not Available.

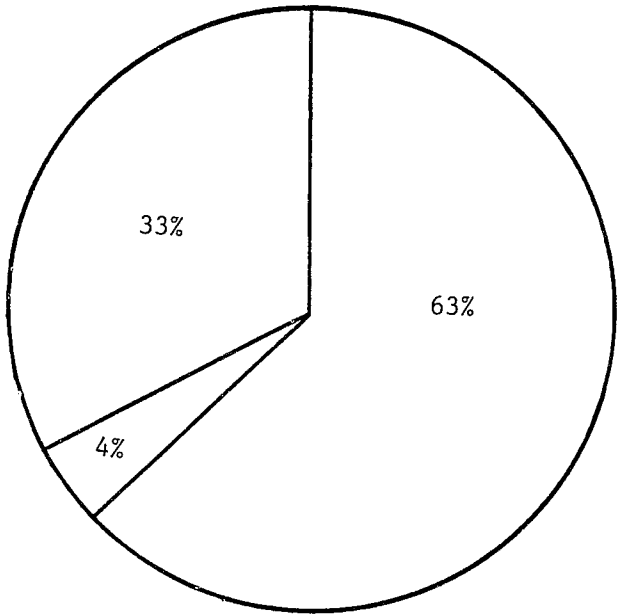
a. Only most serious offense per individual listed.

Judgments for youth in adult court due to concurrent jurisdiction in Phase II counties are shown in Table 11-10. Where judgment data were available, all were convicted. Ninety-four percent (16) of the youth whose judgments were known were found guilty, and one was convicted under a youthful offender statute.

Sentencing for the 17 convicted youth in reporting Phase II counties is displayed in Table 11-11. Data from Chatham, Clayton, Cobb, and Muscogee Counties were not available. One youth received probation and the remainder (94 percent, or 16) were incarcerated. Ten youth were sentenced to state juvenile corrections facilities and six to state adult corrections facilities.

The sentence durations in reporting Phase II counties of youth incarcerated appear in Table 11-12. Data from four counties were not available. Eleven of the 16 known sentences were one to three years and one youth was given a maximum sentence of three to five years. Two of the remaining four youth received maximum sentences of five to ten years, and the other two received life sentences.

FIGURE 11-2. GEORGIA: PERCENTAGE OF PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	63%
Property	4%
Public Order	0%
Other General	0%
Unknown	33%

N= 27

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent 63 percent of all offenses in the state.

TABLE 11-10. GEORGIA: PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN PHASE II COUNTIES (BY COUNTY AND JUDGMENTS IN ADULT COURTS) IN 1978

County	Total Referrals	Judgments					Un-known
		Not Guilty	Dismissed	Youthful Offender Judgments	Guilty	Other	
Bibb	10	0	0	0	10 est	0	0
Chatham	4	*	*	*	*	*	4
Clayton	4	*	*	*	*	*	4
Cobb	1	*	*	*	*	*	1
Gwinnett	4	0	0	0	4	0	0
Houston	3	0	0	1	2	0	0
Muscogee	1	*	*	*	*	*	1
State Phase II Total	27	0	0	1	16	0	10

* denotes Not Available.

TABLE 11-11. GEORGIA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Con-victions	Sentence Types					
		Fined	Probation	Jail	State Adult Cor-rections Facilities	State Juve-nile Cor-rections Facilities	Other
Bibb	10	0	0	0	0	10 est	0
Gwinnett	4	0	0	0	4	0	0
Houston	3	0	1	0	2	0	0
State Phase II Total	17	0	1	0	6	10	0

TABLE 11-12. GEORGIA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums							Life	Death
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeter- minate			
Bibb	10	0	10 est	0	0	0	0	0	0	
Gwinnett	4	0	0	0	2	0	0	2	0	
Houston	2	0	1	1	0	0	0	0	0	
State Phase II Total	16	0	11	1	2	0	0	2	0	

Lower Age of Criminal Jurisdiction

This section contains a series of tables and a brief discussion pertaining to information gathered from all Georgia counties about 17 year olds subject to prosecution in adult courts during 1978 due to age of jurisdiction. This arrest data was estimated by state sources to approximate the actual number of court filings in 1978.

Table 11-13 reflects the demographic data for all Georgia counties on youth subject to prosecution in adult courts due to age of jurisdiction. All for whom ages were given were 17 years old. Males represented 77 percent (2,199) of the state totals. White youth represented 67 percent (1,905) and minority youth 33 percent (944).

TABLE 11-13. GEORGIA: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY, AGE, SEX, AND RACE) IN 1978

County	Total Arrests	Age		Sex		Race	
		17	Un-known	Male	Female	White	Minority
Appling	9	9	0	9	0	4	5
Atkinson	4	4	0	3	1	2	2
Bacon	9	9	0	9	0	6	3
Baker	4	4	0	4	0	1	3
Baldwin	39	39	0	27	12	20	19

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TABLE 11-13. (Continued)

County	Total Arrests	Age		Sex		Race	
		17	Un-known	Male	Female	White	Minority
Banks	4	4	0	3	1	3	1
Barrow	24	24	0	18	6	21	3
Bartow	48	48	0	38	10	36	12
Ben Hill	17	17	0	12	5	9	8
Berrien	16	16	0	9	7	13	3
Bibb	93	93	0	70	23	45	48
Bleckley	13	13	0	12	1	8	5
Brantley	5	5	0	3	2	5	0
Brooks	9	9	0	7	2	4	5
Bryan	5	5	0	3	2	5	0
Bulloch	16	16	0	12	4	7	9
Burke	7	7	0	5	2	2	5
Butts	8	8	0	8	0	5	3
Calhoun	3	3	0	3	0	1	2
Camden	12	12	0	11	1	10	2
Candler	3	3	0	3	0	1	2
Carroll	36	36	0	26	10	21	15
Catoosa	24	24	0	20	4	21	3
Charlton	8	8	0	8	0	5	3
Chatham	87	87	0	67	20	54	33
Chattahoochee	0	0	0	0	0	0	0
Chattooga	10	10	0	8	2	10	0
Cherokee	34	34	0	28	6	29	5
Clarke	38	38	0	29	9	20	18
Clay	1	1	0	1	0	1	0
Clayton	83	83	0	57	26	68	15
Clinch	7	7	0	6	1	5	2
Cobb	104	104	0	73	31	80	24
Coffee	34	34	0	27	7	20	14
Colquitt	33	33	0	25	8	23	10
Columbia	3	3	0	2	1	2	1
Cook	22	22	0	17	5	11	11
Coweta	27	27	0	22	5	16	11
Crawford	3	3	0	3	0	1	2
Crisp	9	9	0	6	3	6	3

GA-25

TABLE 11-13. (Continued)

County	Total Arrests	Age		Sex		Race	
		17	Un-known	Male	Female	White	Minority
Dade	10	10	0	10	0	9	1
Dawson	2	2	0	2	0	2	0
Decatur	30	30	0	25	5	14	16
DeKalb	132	132	0	98	34	85	47
Dodge	5	5	0	3	2	1	4
Dooly	2	2	0	2	0	2	0
Dougherty	78	78	0	54	24	42	36
Douglas	34	34	0	31	3	26	8
Early	9	9	0	8	1	6	3
Echols	0	0	0	0	0	0	0
Effingham	9	9	0	9	0	5	4
Elbert	7	7	0	6	1	5	2
Emanuel	10	10	0	10	0	5	5
Evans	6	6	0	6	0	4	2
Fannin	11	11	0	10	1	10	1
Fayette	7	7	0	5	2	7	0
Floyd	53	53	0	37	16	41	12
Forsyth	21	21	0	18	3	21	0
Franklin	3	3	0	2	1	2	1
Fulton	106	106	0	77	29	70	36
Gilmer	11	11	0	11	0	11	0
Glascock	0	0	0	0	0	0	0
Glynn	41	41	0	33	8	24	17
Gordon	29	29	0	21	8	26	3
Grady	8	8	0	5	3	7	1
Greene	4	4	0	3	1	3	1
Gwinnett	56	56	0	41	15	50	6
Habersham	1	1	0	1	0	1	0
Hall	53	53	0	40	13	42	11
Hancock	1	1	0	1	0	1	0
Haralson	11	11	0	10	1	11	0
Harris	9	9	0	8	1	7	2
Hart	9	9	0	8	1	5	4
Heard	1	1	0	1	0	1	0
Henry	25	25	0	20	5	20	5

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TABLE 11-13. (Continued)

County	Total Arrests	Age		Sex		Race	
		17	Un-known	Male	Female	White	Minority
Houston	60	60	0	46	14	36	24
Irwin	4	4	0	4	0	1	3
Jackson	13	13	0	11	2	10	3
Jasper	3	3	0	3	0	1	2
Jeff Davis	4	4	0	4	0	3	1
Jefferson	9	9	0	9	0	5	4
Jenkins	2	2	0	1	1	1	1
Johnson	5	5	0	5	0	2	3
Jones	7	7	0	5	2	5	2
Lamar	13	13	0	12	1	8	5
Lanier	3	3	0	3	0	3	0
Laurens	28	28	0	24	4	15	13
Lee	7	7	0	7	0	6	1
Liberty	18	18	0	16	2	15	3
Lincoln	1	1	0	1	0	1	0
Long	2	2	0	2	0	2	0
Lowndes	48	48	0	32	16	28	20
Lumpkin	14	14	0	13	1	13	1
McDuffie	22	22	0	16	6	12	10
McIntosh	0	0	0	0	0	0	0
Macon	4	4	0	4	0	0	4
Madison	5	5	0	5	0	3	2
Marion	2	2	0	2	0	2	0
Meriwether	22	22	0	20	2	14	8
Miller	4	4	0	1	3	1	3
Mitchell	12	12	0	7	5	6	6
Monroe	16	16	0	13	3	11	5
Montgomery	0	0	0	0	0	0	0
Morgan	4	4	0	4	0	2	2
Murray	20	20	0	16	4	20	0
Muscogee	94	94	0	70	24	64	30
Newton	30	30	0	19	11	17	13
Oconee	5	5	0	4	1	4	1
Oglethorpe	0	0	0	0	0	0	0
Paulding	36	36	0	28	8	33	3

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TABLE 11-13. (Continued)

County	Total Arrests	Age		Sex		Race	
		17	Un-known	Male	Female	White	Minority
Peach	15	15	0	12	3	8	7
Pickens	4	4	0	4	0	4	0
Pierce	6	6	0	6	0	5	1
Pike	5	5	0	4	1	4	1
Polk	13	13	0	11	2	12	1
Pulaski	4	4	0	3	1	3	1
Putnam	13	13	0	12	1	3	10
Quitman	1	1	0	1	0	1	0
Rabun	4	4	0	3	1	3	1
Randolph	4	4	0	2	2	0	4
Richmond	94	94	0	65	29	51	43
Rockdale	14	14	0	12	2	11	3
Schley	0	0	0	0	0	0	0
Screven	6	6	0	6	0	5	1
Seminole	8	8	0	6	2	2	6
Spalding	37	37	0	24	13	25	12
Stephens	13	13	0	13	0	8	5
Stewart	2	2	0	1	1	1	1
Sumter	20	0	20	16	4	9	11
Talbot	1	1	0	1	0	1	0
Taliaferro	0	0	0	0	0	0	0
Tattnall	2	0	2	2	0	1	1
Taylor	5	5	0	4	1	4	1
Telfair	2	2	0	2	0	2	0
Terrell	4	4	0	3	1	0	4
Thomas	36	36	0	22	14	18	18
Tift	44	44	0	28	16	27	17
Toombs	18	18	0	15	3	12	6
Towns	3	3	0	2	1	3	0
Treutlen	0	0	0	0	0	0	0
Troup	53	53	0	39	14	32	21
Turner	8	8	0	6	2	5	3
Twiggs	0	0	0	0	0	0	0
Union	3	3	0	3	0	3	0
Upton	20	20	0	18	2	11	9

TABLE 11-13. (Continued)

County	Total Arrests	Age		Sex		Race	
		17	Un-known	Male	Female	White	Minority
Walker	30	30	0	23	7	29	1
Walton	15	15	0	13	2	9	6
Ware	39	39	0	30	9	23	16
Warren	0	0	0	0	0	0	0
Washington	12	12	0	10	2	3	9
Wayne	7	7	0	6	1	6	1
Webster	0	0	0	0	0	0	0
Wheeler	7	7	0	6	1	7	0
White	8	8	0	8	0	8	0
Whitfield	26	26	0	19	7	20	6
Wilcox	6	6	0	6	0	5	1
Wilkes	9	9	0	9	0	6	3
Wilkinson	2	2	0	2	0	2	0
Worth	4	0	4	4	0	2	2
State Phase II							
Total	2,849	2,823	26	2,199	650	1,905	944

Table 11-14 shows offenses of youth subject to prosecution in adult court due to age of jurisdiction by offense categories. Public order offenses was the largest category with 42 percent (1202). Property offenses, which included larceny, auto theft, trespassing, burglary, and other property offenses, represented 37 percent (1049). Personal offenses--murder, manslaughter, rape, robbery, assaults, and other personal--represented 18 percent (516). The remaining three percent were "other general" offenses and included status offenses, offenses against the family, and other miscellaneous offenses. Figure 11-3 illustrates offense percentages, including those charges which were unknown.

TABLE 11-14. GEORGIA: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND TYPES OF OFFENSES) IN 1978

County	Total Arrests	Offenses ^a										
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- Bat- tery	As- Aggra- vated sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Unknown
Appling	9	0	0	0	0	0	0	0	2	5	2	0
Atkinson	4	0	0	0	0	0	0	0	2	1	1	0
Bacon	9	0	0	0	0	0	0	1	4	4	0	0
Baker	4	0	0	0	1	0	0	0	2	1	0	0
Baldwin	39	0	0	2	2	1	2	5	12	14	1	0
Banks	4	0	0	0	0	0	0	1	1	2	0	0
Barrow	24	0	0	0	0	1	0	1	11	11	0	0
Bartow	48	0	1	4	2	3	1	2	15	16	4	0
Ben Hill	17	0	0	0	0	1	0	2	4	10	0	0
Berrien	16	0	0	0	1	0	1	2	2	8	2	0
Bibb	93	0	0	7	3	3	12	2	19	41	6	0
Bleckley	13	0	0	0	0	0	3	1	2	7	0	0
Brantley	5	0	0	0	0	0	0	0	0	5	0	0
Brooks	9	0	0	1	0	1	1	1	1	4	0	0
Bryan	5	0	0	0	0	0	0	0	2	3	0	0
Bulloch	16	0	0	0	0	1	0	2	4	8	1	0
Burke	7	0	0	0	0	0	0	1	2	4	0	0
Butts	8	0	0	0	0	0	0	2	2	4	0	0
Calhoun	3	0	0	0	0	0	0	0	0	3	0	0
Camden	12	0	0	0	0	0	1	1	4	5	1	0

GA-30

TABLE 11-14. (Continued)

County	Total Arrests	Offenses ^a										
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Unknown
Candler	3	0	0	0	0	0	0	1	0	2	0	0
Carroll	36	0	0	1	2	1	2	2	10	18	0	0
Catoosa	24	0	0	0	2	0	1	1	11	7	2	0
Charlton	8	0	0	0	0	0	0	1	4	3	0	0
Chatham	87	1	*	4	2	3	9	6	23	32	4	3
Chattooga	10	0	0	0	0	1	1	1	3	3	1	0
Cherokee	34	0	0	0	3	0	3	5	9	7	7	0
Clarke	38	0	0	2	1	2	1	2	19	10	1	0
Clay	1	0	0	0	0	0	0	0	0	1	0	0
Clayton	83	0	0	1	4	2	7	4	25	34	6	0
Clinch	7	0	0	0	1	0	0	0	0	5	1	0
Cobb	104	1	1	4	4	4	8	7	32	37	6	0
Coffee	34	0	1	0	2	2	2	2	12	11	2	0
Colquitt	33	0	1	1	0	1	0	2	13	14	1	0
Columbia	3	0	0	0	0	0	0	0	0	3	0	0
Cook	22	0	0	0	1	0	2	2	4	12	1	0
Coweta	27	0	0	0	2	3	4	2	8	7	1	0
Crawford	3	0	0	0	0	0	0	0	2	1	0	0
Crisp	9	0	0	0	0	0	0	1	2	6	0	0
Dade	10	0	0	0	0	0	0	1	4	5	0	0
Dawson	2	0	0	0	0	0	0	2	0	0	0	0
Decatur	30	0	0	1	1	2	0	2	9	15	0	0
DeKalb	132	1	2	8	4	4	7	13	42	49	2	0
Dodge	5	0	0	0	0	0	0	0	1	4	0	0
Dooly	2	0	0	0	0	0	0	0	0	2	0	0

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TABLE 11-14. (Continued)

County	Total Arrests	Offenses ^a										Unknown
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	
Dougherty	78	0	0	3	3	1	6	3	26	33	3	0
Douglas	34	0	0	1	2	1	4	2	14	9	1	0
Early	9	0	0	0	0	0	1	1	2	5	0	0
Effingham	9	0	0	0	1	0	0	3	3	2	0	0
Elbert	7	0	0	0	0	0	0	1	2	4	0	0
Emanuel	10	0	0	0	0	0	0	2	1	7	0	0
Evans	6	0	0	0	0	0	0	2	2	2	0	0
Fannin	11	0	0	0	0	3	1	1	1	5	0	0
Fayette	7	0	0	0	0	0	0	1	2	4	0	0
Floyd	53	0	0	2	2	2	4	2	16	23	2	0
Forsyth	21	0	0	0	1	0	0	1	7	11	1	0
Franklin	3	0	0	0	0	0	0	0	1	2	0	0
Fulton	106	1	0	4	3	7	8	7	34	39	3	0
Gilmer	11	0	0	0	1	0	3	0	1	6	0	0
Glynn	41	0	1	3	1	2	3	2	16	13	0	0
Gordon	29	0	0	1	2	1	3	3	10	9	0	0
Grady	8	0	0	0	0	1	0	0	3	4	0	0
Greene	4	0	0	0	0	0	1	2	0	1	0	0
Gwinnett	56	2	0	1	3	3	1	5	16	24	1	0
Habersham	1	0	0	0	0	0	0	0	0	1	0	0
Hall	53	0	1	1	3	4	4	4	16	19	1	0
Hancock	1	0	0	0	0	0	0	0	0	1	0	0
Haralson	11	0	0	0	1	0	4	1	1	3	1	0
Harris	9	0	0	0	0	0	0	1	2	6	0	0
Hart	9	0	0	0	0	0	1	0	5	3	0	0

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TABLE 11-14. (Continued)

County	Total Arrests	Offenses ^a										Unknown
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	
Heard	1	0	0	0	0	0	0	0	0	1	0	0
Henry	25	0	0	0	2	1	3	2	7	10	0	0
Houston	60	0	0	0	3	2	7	3	23	22	0	0
Irwin	4	0	0	0	1	0	0	1	1	1	0	0
Jackson	13	0	0	0	2	1	2	2	2	4	0	0
Jasper	3	0	0	0	0	0	0	0	1	2	0	0
Jeff Davis	4	0	0	0	0	0	0	0	0	4	0	0
Jefferson	9	0	0	0	0	1	0	0	2	5	1	0
Jenkins	2	0	0	0	0	0	0	0	0	2	0	0
Johnson	5	0	0	0	0	0	0	1	1	3	0	0
Jones	7	0	0	0	0	0	0	2	2	3	0	0
Lamar	13	0	0	0	1	1	2	2	2	5	0	0
Lanier	3	0	0	0	0	1	0	0	1	1	0	0
Laurens	28	0	0	1	0	3	1	3	5	15	0	0
Lee	7	0	0	0	0	0	1	1	3	2	0	0
Liberty	18	0	0	0	1	0	2	3	3	9	0	0
Lincoln	1	0	0	0	0	0	0	1	0	0	0	0
Long	2	0	0	0	0	0	0	0	1	1	0	0
Lowndes	48	0	0	1	0	2	3	3	19	19	1	0
Lumpkin	14	0	0	0	1	1	0	2	4	6	0	0
McDuffie	22	0	0	0	2	0	0	2	10	8	0	0
Macon	4	0	0	0	0	0	0	0	2	2	0	0
Madison	5	0	0	0	1	0	0	2	1	1	0	0
Marion	2	0	0	1	0	0	0	0	0	1	0	0
Meriwether	22	0	0	0	2	1	0	1	6	12	0	0

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TABLE 11-14. (Continued)

County	Total Arrests	Offenses ^a										Unknown
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	
Miller	4	0	0	0	2	0	0	0	1	1	0	0
Mitchell	12	0	0	0	0	0	0	1	2	9	0	0
Monroe	16	0	1	1	0	0	0	1	6	7	0	0
Morgan	4	0	0	1	0	0	0	1	1	1	0	0
Murray	20	0	0	0	2	0	1	2	4	11	0	0
Muscogee	94	0	2	7	3	4	7	5	22	43	1	0
Newton	30	0	1	0	3	4	1	3	5	13	0	0
Oconee	5	0	0	0	0	0	0	0	3	2	0	0
Paulding	36	0	1	0	1	3	4	3	9	14	1	0
Peach	15	0	0	0	2	1	1	0	6	5	0	0
Pickens	4	0	0	0	1	0	1	1	0	1	0	0
Pierce	6	0	0	0	0	0	1	0	1	3	1	0
Pike	5	0	0	0	2	0	0	0	0	3	0	0
Polk	13	0	0	0	1	1	1	1	3	6	0	0
Pulaski	4	0	0	0	0	0	0	0	2	2	0	0
Putnam	13	0	0	1	1	0	2	2	7	0	0	0
Quitman	1	0	0	0	0	0	0	0	0	1	0	0
Rabun	4	0	0	0	0	0	1	0	1	2	0	0
Randolph	4	0	0	0	0	0	0	1	1	2	0	0
Richmond	94	0	1	3	4	4	7	5	30	39	1	0
Rockdale	14	0	0	0	0	0	1	1	4	8	0	0
Screven	6	0	0	0	0	1	0	1	1	3	0	0
Seminole	8	0	0	0	2	1	0	0	1	4	0	0
Spalding	37	0	0	1	4	2	0	3	14	12	1	0
Stephens	13	0	0	0	2	2	0	2	2	5	0	0

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TABLE 11-14. (Continued)

County	Total Arrests	Offenses ^a										Unknown
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	
Stewart	2	0	0	0	0	0	0	0	1	1	0	0
Sumter	20	0	0	0	1	0	2	2	8	6	1	0
Talbot	1	0	0	0	0	0	0	0	0	1	0	0
Tattnall	2	0	0	0	0	0	0	0	0	2	0	0
Taylor	5	0	0	0	0	1	1	0	2	1	0	0
Telfair	2	0	0	0	0	0	0	0	0	2	0	0
Terrell	4	0	0	0	0	0	0	1	2	1	0	0
Thomas	36	0	0	0	2	2	0	2	10	18	2	0
Tift	44	0	0	1	2	5	2	2	11	20	1	0
Toombs	18	0	0	0	0	0	2	1	5	10	0	0
Towns	3	0	0	0	0	0	0	0	0	3	0	0
Troop	53	0	3	3	2	4	2	2	12	24	1	0
Turner	8	0	0	0	0	0	0	0	2	6	0	0
Union	3	0	0	0	0	0	1	0	0	2	0	0
Upson	20	0	0	0	1	0	0	1	7	11	0	0
Walker	30	0	1	0	1	2	3	1	8	14	0	0
Walton	15	0	0	2	0	1	0	1	2	9	0	0
Ware	39	1	0	1	1	0	0	4	11	20	1	0
Washington	12	0	0	0	0	0	0	2	2	8	0	0
Wayne	7	1	0	1	0	0	0	1	0	4	0	0
Wheeler	7	0	0	0	0	0	0	0	4	3	0	0
White	8	0	0	0	0	1	0	1	2	4	0	0
Whitfield	26	0	1	0	2	2	2	2	9	8	0	0
Wilcox	6	0	0	0	0	0	0	0	1	5	0	0
Wilkes	9	0	0	0	0	0	0	1	5	3	0	0

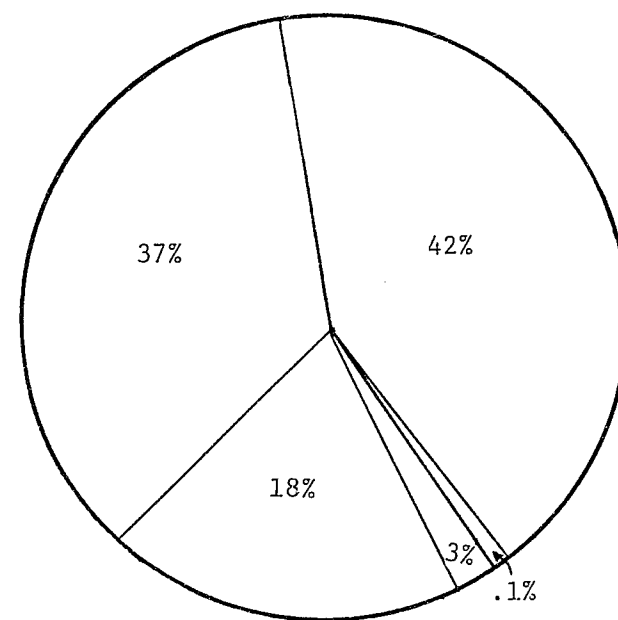
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TABLE 11-14. (Continued)

County	Total Arrests	Offenses ^a										
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Unknown
Wilkinson	2	0	0	0	0	0	0	2	0	0	0	0
Worth	4	0	0	0	1	0	0	0	3	0	0	0
State Phase II Total	2,849	8	19	77	120	116	176	215	834	1,202	79	3

a. Only most serious offense per individual listed.

FIGURE 11-3. GEORGIA: PERCENTAGE OF YOUTH ARRESTS AS ADULTS
DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY)
IN 1978



Offenses^a

Personal	18%
Property	37%
Public Order	42%
Other General	3%
Unknown	.1%

N= 2,849

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent eight percent of all offenses in the state.

A more exhaustive list of offenses appears in Table 11-15. Violent offenses represented 43 percent of all personal offenses and eight percent of all offenses. The "other public order" category included disorderly conduct, obstructing police, obscenity, and damaging property, and represented 19 percent (543) of the total offenses. Counterfeiting, forgery, fraud, and receiving stolen property were examples of offenses in "other property" category which represented 9.3 percent (264) of all offenses. Offenses against the family (1.2 percent of all offenses) included child neglect and contributing to the delinquency of a minor. The offenses included in the other general category are specific to Georgia and may vary slightly from the offenses included in this category in other states and in the appendix.

Table 11-16 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. It should be noted that Phase II data were not always available for every Phase II county concerning dispositions and sentences and data on excluded traffic offenses were also unavailable. In total, 70 youth were tried in adult court due to judicial transfers, and additional information (Phase II) was sought about 40 of these youth. It was learned that in 1978 at least 83 percent (33) of the 40 youth were convicted and at least 82 percent (27) of the convicted youth received sentences of confinement.

Among the 45 youth prosecutorially referred in 1978 due to concurrent jurisdiction, Phase II information was requested about 27 (60 percent) of them. Sixty-three percent (17) of those youth in Phase II counties were convicted, all but one of whom were given confinement sentences. Finally, only demographic and offense Phase II information were available for all 2,849 17-year-olds arrested in 1978 and subject to prosecution in adult court due to age of jurisdiction.

In summary, 97 percent of the youth judicially transferred in Phase II counties were males and 81 percent were 16 years old. More minority youth (16 percent) were transferred in Phase II counties than white youth. Sixty-one percent of the charges were for violent offenses. Eighty-seven percent of the youth were convicted, and 82 percent of the convicted youth were incarcerated. Forty-eight percent of the youth incarcerated were given maximum terms of over five years or more in Phase II counties.

The ages of youth in adult courts in Phase II counties due to concurrent jurisdiction were fairly evenly divided, with 56 percent 16 years old and 44 percent 15 or under. Ninety-four percent were males; white youth outnumbered minority youth two to one. All but one charge were for violent offenses. All were convicted and 94 percent of them were sentenced to incarceration, with the majority given terms of over one to three years; however, two youth were sentenced to life.

TABLE 11-15. GEORGIA: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotal	Offense Category Subtotal	Total
PERSONAL OFFENSES		220	516
Violent Offenses			
Murder	6		
Manslaughter	2		
Rape	19		
Robbery	77		
Aggravated Assault	116		
Arson		18	
Kidnapping		5	
Assault/Battery		120	
Other Personal		153	
PROPERTY OFFENSES		215	1,049
Burglary		364	
Larceny		115	
Auto Theft		91	
Trespassing		264	
Other Property			
PUBLIC ORDER OFFENSES		247	1,202
Drug Violations		412	
Liquor Violations		543	
Other Public Order			
OTHER GENERAL OFFENSES		16 ^a	79
Status Offenses		34	
Offenses Against the Family		29	
Other General ^b			
UNKNOWN			3
TOTAL OFFENSES			2,849

a. According to Georgia Crime Information Center, these arrests may have been made for status offenses occurring before these youth attained majority or for offenses so designated which do apply to adults.

b. According to state sources, the most common offenses in this category include: the state's offense known as "habitual violator" for traffic offenses, soliciting without a license, and soliciting for sodomy or prostitution. It should not include violation of municipal ordinances. The offenses included in this category are specific to Georgia and may vary slightly from the offenses included in this category in other states and in the appendix.

TABLE 11-16. GEORGIA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver	Concurrent Jurisdiction	Age of Jurisdiction ^a
Total Referrals to Adult Courts in 1978 (Table 11-1)	70	45	2,849
Total Referrals Selected for Phase II (Tables 11-3, 11-8, and 11-13)	40	27	2,849
Total Referrals Resulting in Convictions (Tables 11-6 and 11-11)	33	17	*
Total Convictions Resulting in Sentences of Confinement (Tables 11-7 and 11-12)	27	16	*


* denotes Not Available.

a. Arrest data.

Youth in adult courts in Georgia due to age of jurisdiction were all 17 years old, and 77 percent were males. White youth represented about twice as many as minority youth. Public order offenses represented the largest offense (42 percent) category, followed by property offenses (37 percent). Disposition and sentence data were unavailable. Data on youth in adult court due to excluded (traffic) offense were not available.

FOOTNOTES

1. Georgia Code Annotated, Sections 24A-201 and 24A-701.
2. Georgia Code Annotated, Section 24A-401(c).
3. Georgia Code Annotated, Section 24A-2501.
4. Georgia Code Annotated, Section 24A-301(b).
5. Hartley v. Clark, 236 S.E.2d 63 (1977), 239 Ga. 113.
6. Georgia Code Annotated, Sections 24A-401(e)(1) and 24A-3101.
7. Georgia Code Annotated, Section 24A-401(c)(1).
8. Jackson v. Balcom, 80 S.E.2d 319 (1954), 210 Ga. 412.
9. Jones v. Balcom, 82 S.E.2d 657, 210 Ga. 689 (1954). Also, Foster v. Caldwell, 165 S.E.2d 724, 225 Ga. 1 (1963).
10. Foster v. Caldwell, *supra*, notes 7 and 8.
11. Holmes v. State, 163 S.E.2d 803, 224 Ga. 553 (1968); Kent v. United States, 383 U.S. 541 (1966).
12. J.W.A. v. State, 212 S.E.2d 849, 233 Ga. 683 (1975).
13. Brown v. State, 219 S.E.2d 419, 235 Ga. 353 (1975).
14. Relyea v. State, 236 S.E.2d 638, 236 Ga. 299 (1976).
15. Hartley v. Clark, 236 S.E.2d 63, 239 Ga. 113 (1977). Also, Longshore v. State, 238 S.E.2d 22, 239 Ga. 437 (1977).
16. Georgia Code Annotated, Sections 77-346(g) and 77-352.
17. Georgia Code Annotated, Section 99-213.
18. Georgia Code Annotated, Section 77-310(b).



KENTUCKY PROFILE

ACKNOWLEDGMENTS

For their assistance with data collection in Kentucky, the Academy expresses appreciation to Kentucky Youth Advocates, Inc., in particular, David Richart and Robert Ruberg, who were especially helpful in coordinating and supervising the data collection effort. Additional gratitude is owed to John R. Lancaster, Administrator, Department of Justice, for reviewing the Kentucky profile and Jo Ellen S. McComb for assisting us in our legal research. In addition, the Academy expresses appreciation to the many other state and local officials who provided the necessary data.

METHODOLOGY

In Kentucky, the Kentucky Youth Advocates, Inc., through telephone interviews, collected data for the Academy on juveniles judicially waived to criminal courts and on youth routinely tried in adult courts for traffic violations. The data were obtained from district court clerks and from probation officers and prosecutors, when necessary. Phase I data on the frequency of judicial waiver was collected for every county in Kentucky. Phase II data on age, sex, race, offenses, dispositions, sentences, and length of sentences were sought from the most populous ten percent of the counties and counties that referred five or more cases to adult courts in 1978. In general, these data were available from the Phase II counties for judicial waivers. Phase I data about youth aged 16 and over routinely handled by adult courts for traffic offenses were estimated in 109 of Kentucky's 159 counties.

COURT ORGANIZATION

In Kentucky, the circuit courts are the highest courts of general jurisdiction. Organized into 56 judicial circuits, these courts hold sessions in each of the state's 120 counties.

Kentucky's district courts were organized on January 2, 1978 and have jurisdiction over traffic matters and juvenile cases.¹ These courts are also organized into 56 judicial districts and hold sessions in each county. In the remainder of this profile, the term juvenile courts will be referring to these district courts hearing juvenile cases. Juvenile traffic offenses, if the offender is 16 years of age or over, are combined with adult cases.² If a

county does not have a resident district judge, a trial commissioner is appointed by the chief judge in the district.³

An overview of Kentucky's courts by their jurisdiction over juveniles appears below.

KENTUCKY: COURT JURISDICTION OVER JUVENILES IN 1977

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic Jurisdiction ^a
Juvenile Sessions of District Courts	Circuit Courts	Juvenile Sessions of District Courts Traffic Sessions of District Courts

a. Traffic offenses by youth 16 years of age or older are tried with adult traffic offenders in district courts. Traffic offenses by juveniles under 16 years of age are handled in the juvenile sessions of district courts.

TRANSFER PROCESS

In Kentucky, the initial age of juvenile court jurisdiction extends to age 18.⁴ Juvenile sessions of the district courts have exclusive original jurisdiction in proceedings concerning children under 18 years of age, with the exception of excluded traffic offenses for youth 16 years old or older.

Judicial Waiver

In 1978, after a hearing in the juvenile session of district court, juveniles in Kentucky could be judicially transferred to circuit courts if they were at least 16 years old and charged with any felony. In order to transfer persons under 16 years of age, they must have allegedly committed a serious (Class A) felony or a capital offense. The statute did not limit who may initiate the waiver process, but this process required a hearing in juvenile sessions of district courts, and the county attorneys were usually the initiators of the proceedings.⁵ The juvenile courts must, under the

statutes, have found probable cause to believe that an offense was committed by the juvenile. The courts had to then consider the seriousness of the alleged offense, whether the offense was against person or property, (with greater weight being given to offenses against persons), the maturity of the juvenile and prior record, and the prospects for adequate public protection and the likelihood of rehabilitation of the juvenile by resources available to the juvenile justice system. Based on these factors, the courts had to then decide whether the best interests of the juvenile and the public would be served by a transfer. If a transfer was ordered, the order had to state the reasons.⁶

If jurisdiction was waived and the case was transferred, the grand jury could either indict the youth or recommend a return to the juvenile courts. In either case, the adult court could, at its discretion, order the case returned to the juvenile court.⁷

Excluded Offenses

The one exception to exclusive original jurisdiction of the juvenile courts in 1978 was moving motor vehicle violations committed by individuals 16 years old or older which were tried, along with adult offenders, in the traffic sessions of district courts.⁸

The juvenile code was rewritten in 1980 and is now known as the Kentucky Unified Juvenile Code, with an effective date of July 1, 1982. Several changes affect youth referred to and tried in adult courts.

A new category of offender is established--a youthful offender. A youthful offender is defined as any person, regardless of age, transferred to circuit court for trial.⁹ There are four ways a juvenile can be referred to circuit court to be tried as a youthful offender under the new provisions:

- A child over 14 years of age charged with a capital offense, Class A felony or Class B felony.
- A child over 16 years old charged with a Class C or Class D felony and has on two prior separate occasions been adjudicated delinquent for a felony offense.
- A person previously convicted as a youthful offender and charged with the commission of a felony.
- A child who is charged with a capital offense or a Class A or B felony and is also charged with a Class C or Class D felony arising from the same offense. All charges are included in the same proceedings.¹⁰

The juvenile court must hold a preliminary hearing, during which the state must prove by probable cause the existence of at least one of the following factors:

- In the commission of the offense or in the flight therefrom, the child inflicted serious physical injury or caused physical injury through the use of a deadly weapon or dangerous instrument.
- The child has been adjudicated delinquent for a felony within one year prior to the commission of the charged offense.
- The child has failed to comply with the conditions of dispositional order imposed following an adjudication of delinquency for a felony offense during the year immediately preceding the bringing of the action.

If the state sustains its burden of proving the existence of at least one of the foregoing factors, the child must be transferred to the circuit court to be tried as a youthful offender, except that the child may present to the court reasons why he should not be transferred to the circuit court.

If the state fails to prove the existence of at least one of the factors listed in above or if the court is convinced that the child should be dealt with in the juvenile court as any other person charged with a public offense under the provisions of this new code, taking into account the child's amenability to treatment with the juvenile justice system, the child may not be transferred to the circuit court but must be treated as any other child before the juvenile court charged with the commission of a public offense.¹¹

CASE LAW SUMMARY

Since 1950, a number of court decisions in Kentucky have been relevant to waiver issues. The Kentucky Appeals Court (the highest court in Kentucky at that time) long held that, for purposes of resolving the issue of jurisdiction between juvenile and adult courts, the critical date is that of the institution of adult proceedings and not that of the offense, as in Lowry v. Commonwealth, Koonce v. Commonwealth, and Locke v. Commonwealth.¹² However, if proceedings are already pending in the juvenile court before the juvenile attains the age of majority, the adult courts have no jurisdiction, a point decided in Miller v. Anderson.¹³ The current rule is that prosecution of juveniles as adults is proper where they reach the age of adult jurisdiction prior to institution of adult proceedings so long as the investigation and preparation of the case and institution of prosecution proceed with due dispatch (Ferguson v. Commonwealth).¹⁴ Otherwise, adult courts can assume jurisdiction only after a proper transfer from juvenile court, a rule reflected in Heustis v. Sanders, Childers v. Commonwealth, Gipson v. Commonwealth, and Young v. Knight.¹⁵

As in Anderson v. Commonwealth, the Kentucky high court has consistently held that unless the waiver hearing requirements are strictly complied with, the waiver order confers no jurisdiction upon the circuit court.¹⁶ In 1967, the Kentucky Appeals Court adopted the requirement set forth in Kent v. United States that juveniles must be represented by counsel in transfer hearings, but relief was sought after the individual was beyond the age of jurisdiction of the juvenile court.¹⁷ Such cases included Smith v. Commonwealth, Workman v. Commonwealth, and Bailey v. Commonwealth.¹⁸ In Whitaker v. Commonwealth, it was held that the order of the juvenile court, in addition to revealing that a hearing was held and that the juvenile was represented by counsel, must also set forth the reasons for the waiver of jurisdiction as required by the Kent rule.¹⁹ This was also held in Hopson v. Commonwealth.²⁰ Later Kentucky cases, such as Risner v. Commonwealth and Hubbs v. Commonwealth, expanded this requirement and have made it clear that amere parroting of the words of the waiver statute is not a sufficient statement of reasons.²¹ Rather, as in Hubbs and Risner, the waiver order or other court records must contain a statement of reasons specific enough to permit meaningful review. Cases following the cited precedent include Holt v. Commonwealth, Richardson v. Commonwealth, Hamilton v. Commonwealth, and Bingham v. Commonwealth.²²

In one recent case, Schooley v. Commonwealth, the Kentucky Supreme Court was willing to indulge a "common sense inference" justifying a waiver even though the reasons for waiver were not stated with particularity. The juvenile judge had based his decision upon the youth's admission of guilt and upon a child welfare worker's report but had given no explicit statement to that effect. This error, which might require reversal on direct appeal, was held not to be a deprivation of due process because the challenge was not asserted by way of direct appeal from the waiver order. Thus, the youth had not availed himself of the purpose of the direct appeal, to receive the benefit of adjudication in juvenile court, because he was then too old (25 years) for juvenile court jurisdiction.²³

The Kentucky Supreme Court has recently been engaged in reviewing waiver proceedings in light to waiver standards which are not explicitly state in Kentucky Revised Statutes, Section 208.060.²⁴ (For reference to that review, see Sharp v. Commonwealth, Hayden v. Commonwealth, and Mayes v. Commonwealth.²⁵)

CORRECTIONS INFORMATION

In Kentucky, state adult corrections institutions are under the administration of the Department of Justice's Bureau of Corrections. Juvenile institutions are operated by the Department for Human Resources which provides services for juveniles under age 18 adjudicated delinquent. The majority of juveniles receive community-based treatment ranging from probation to their own home to group or foster home settings. The remainder are sent to residential treatment facilities which are maintained as camp environments with minimum to

medium security. After being sentenced to a juvenile correctional facility as a delinquent, there are no provisions to administratively transfer juveniles to adult facilities.

Youth found guilty of a felony offense in adult court and sentenced to imprisonment must be committed to the Bureau of Corrections, except that in the case of youth who are under 18 years of age at the time of sentencing the court may commit them to the Bureau of Social Services, Department for Human Resources. If the sentence would expire before the youth reaches 21 years of age, the commitment must be for an indeterminate period not to exceed the age of 21. If the period of the sentenced youth would extend beyond the age of 21, the commitment must be to the Department for Human Resources until the age of 21 and thereafter to the custody of the Bureau of Corrections.²⁶

Youth tried on a felony charge in adult courts and convicted of a misdemeanor and sentenced to imprisonment must be committed to the county jail, except that a youth under 18 years of age at time of sentencing may be committed to the Department for Human Resources for an indeterminate sentence, not to exceed the age of 21 years.

There are no statutory provisions for an administrative transfer of a youth from an adult to a juvenile institution.

The juvenile code was rewritten in 1980 with an effective date of July 1, 1982. This new code states that youthful offenders, if convicted of a felony offense in circuit courts, will be subject to the same sentencing procedures and duration of sentence as adults convicted of a felony offense except:

- The presentence investigation shall be prepared by the Department for Human Resources.
- Any sentence of incarceration will be served in a juvenile institution. If he reaches his 18th birthday before being released, he shall be returned to the sentencing court to determine whether he should be released, placed on probation, returned to the Department for Human Resources for a maximum of six additional months, or incarcerated in an institution operated by the Bureau of Corrections, Department of Justice.

Upon motion of the Department for Human Resources, the sentencing circuit court may after notice and hearing, order the youthful offender committed to the Bureau of Corrections to serve his sentence if he has manifested violent behavior, threatened other youthful offenders, escaped from the juvenile institution more than once, caused disruptions in the institution by encouraging violent behavior in other residents, personally caused disruption in the institution, or smuggled contraband into the institution.²⁷

A Youthful Offender Parole Board is also established to determine parole, final discharges, and promulgate administrative regulations with respect to

youthful offenders placed within institutions operated by the Department for Human Resources. The State Parole Board shall have jurisdiction over youthful offenders transferred to the Bureau of Corrections.²⁸

Another change includes a provision by which the Department for Human Resources can ask the circuit courts to reconsider a placement made to them of a youth convicted of a felony in circuit courts, if the department thinks the youth is incapable of benefitting from treatment in the facilities of the department. The courts must commit the youth to the state penitentiary for the duration of the sentence fixed by the verdict, allowing credit for such periods of time as the youth was in custody of the department.²⁹ If the youth is 14 years of age or older and is adjudicated delinquent in the commission of a serious felony or capital offense, the sentencing court may commit the youth to the Department of Human Resources for purposes of institutionalization for an indeterminate sentence of not exceeding 12 months.

Likewise, if youth 16 years of age or older are adjudicated delinquent in the commission of a felony offense and have been previously adjudicated delinquent for a felony offense in two or more separate adjudications, the sentencing court may commit the youth to the Department for Human Resources for purposes of institutionalization for an indeterminate period not exceeding 12 months.

Shock probation may, with consent of the department and upon motion of the youth, be granted by the court after a minimum of 30 days.³⁰

STATE DATA SUMMARY

Juveniles could be tried in adult courts in Kentucky in 1978 in two ways. First, juveniles 16 years of age or older and charged with a felony could be judicially transferred after a hearing in juvenile court. Traffic offenses committed by youth 16 years of age or older were tried along with adult traffic offenders (excluded offenses).

As reflected in Table 18-1 in 1978, there were 98 juveniles judicially transferred to adult courts, with Jefferson County (Louisville), the county with the greatest juvenile population, accounting for the largest frequency, 15 (15 percent). Of the 120 counties in Kentucky, 63 percent (75) reported no judicial waivers in 1978. Six counties with juvenile populations of less than 3,000 youth ages eight through 17, had a waiver rate over ten youth per 10,000: Butler, Crittenden, Estill, Hickman, Robertson, and Washington Counties.

TABLE 18-1. KENTUCKY: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Adair	2,159	0	0.000
Allen	2,273	2	8.799
Anderson	2,003	0	0.000
Ballard	1,343	0	0.000
Barren	5,319	0	0.000
Bath	1,705	0	0.000
Bell	6,725	1	1.487
Boone	7,370	0	0.000
Bourbon	3,100	0	0.000
Boyd	8,739	2	2.289
Boyle	3,771	1	2.652
Bracken	1,398	0	0.000
Breathitt	3,414	0	0.000
Breckinridge	2,785	2	7.181
Bullitt	7,362	0	0.000
Butler	1,845	2	10.840
Caldwell	2,044	1	4.892
Calloway	3,913	0	0.000
Campbell	15,871	2	1.260
Carlisle	901	0	0.000
Carroll	1,647	0	0.000
Carter	4,316	0	0.000
Casey	2,558	0	0.000
Christian	11,154	1	0.897
Clark	4,682	3	6.408
Clay	4,753	0	0.000
Clinton	1,479	0	0.000
Crittenden	1,375	2	14.545
Cumberland	1,192	0	0.000
Daviess	15,452	4	2.589
Edmonson	1,639	0	0.000
Elliott	1,071	0	0.000
Estill	2,605	4	15.355
Fayette	29,634	0	0.000
Fleming	2,172	0	0.000

KY-8

TABLE 18-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Floyd	7,916	1	1.263
Franklin	5,972	3 est	5.023
Fulton	1,473	0	0.000
Gallatin	761	0	0.000
Garrard	1,734	0	0.000
Grant	1,993	0	0.000
Graves	5,296	0	0.000
Grayson	3,179	0	0.000
Green	1,762	0	0.000
Greenup	6,664	1	1.501
Hancock	1,486	0	0.000
Hardin	12,798	0	0.000
Harlan	7,419	5 est	6.739
Harrison	2,542	2	7.868
Hart	2,699	0	0.000
Henderson	6,651	3	4.511
Henry	1,935	0	0.000
Hickman	1,060	2	18.868
Hopkins	7,226	1	1.384
Jackson	2,002	1	4.995
Jefferson	125,326	15	1.197
Jessamine	3,645	0	0.000
Johnson	3,698	0	0.000
Kenton	24,431	8	3.275
Knott	3,439	2	5.816
Knox	5,333	0	0.000
Larue	2,084	1	4.798
Laurel	5,993	3 est	5.006
Lawrence	2,317	0	0.000
Lee	1,359	0	0.000
Leslie	2,809	0	0.000
Letcher	5,105	1	1.959
Lewis	2,598	0	0.000
Lincoln	3,248	0	0.000
Livingston	1,462	0	0.000

KY-9

TABLE 18-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Logan	3,891	0	0.000
Lyon	728	0	0.000
McCracken	9,652	1	1.036
McCreary	2,994	1	3.340
McLean	1,800	0	0.000
Madison	7,142	1	1.400
Magoffin	2,507	0	0.000
Marion	3,410	1	2.933
Marshall	3,642	0	0.000
Martin	2,550	1	3.922
Mason	2,744	0	0.000
Meade	4,242	2	4.715
Menifee	930	0	0.000
Mercer	2,984	1	3.351
Metcalfe	1,484	0	0.000
Monroe	2,069	0	0.000
Montgomery	3,145	0	0.000
Morgan	1,964	1	5.092
Muhlenberg	5,191	0	0.000
Nelson	5,228	0	0.000
Nicholas	1,158	0	0.000
Ohio	3,557	0	0.000
Oldham	3,083	0	0.000
Owen	1,279	0	0.000
Owsley	965	0	0.000
Pendleton	2,094	0	0.000
Perry	6,094	1	1.641
Pike	13,639	1	0.733
Powell	1,682	0	0.000
Pulaski	7,029	0	0.000
Robertson	399	1	25.063
Rockcastle	2,664	1	3.754
Rowan	2,390	0	0.000
Russell	2,089	0	0.000
Scott	3,143	0	0.000

TABLE 18-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Shelby	3,446	0	0.000
Simpson	2,429	0	0.000
Spencer	1,175	0	0.000
Taylor	3,049	1	3.280
Todd	1,913	0	0.000
Trigg	1,565	0	0.000
Trimble	1,049	0	0.000
Union	2,851	2	7.015
Warren	9,530	1	1.049
Washington	2,158	3	13.092
Wayne	2,814	0	0.000
Webster	2,379	0 est	0.000
Whitley	4,902	2	4.080
Wolfe	1,206	0	0.000
Woodford	3,165	0	0.000
Totals	608,377	98 est	1.611

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 to 17 years old (1978).

This section contains a series of tables and a brief discussion pertaining to the Phase II information on Kentucky youth judicially waived during 1978.

Table 18-2 reflects the relationship between the state and Phase II counties. These 13 Phase II counties represented 42 percent (41) of the total number of judicial transfers and 48 percent of the state juvenile population. The distribution of transfers from the Phase II counties was skewed, with 37 percent (15) of the Phase II transfers being reported from one county (Jefferson), and two Phase II counties, Fayette and Hardin, reporting zero transfers each.

TABLE 18-2. KENTUCKY: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waivers
State	608,377	120	98
Selected for Phase II Investigation	290,787	13	41
Percentage of State Selected for Phase II Investigation	48%	11%	42%

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 18-3 displays the demographic data on the 41 Phase II transfers. Where data were known, individuals 17 years of age comprised 83 percent (30) of the totals, with four being 16 years of age and two juveniles 15 years old or under. Males accounted for 94 percent (34) of the total. By race, 64 percent (23) were white and 36 percent (13) were minority youth.

TABLE 18-3. KENTUCKY: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES, (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Sex			Race		
		0-15	16	17	Un- known	Male	Female	Un- known	White	Minor- ity	Un- known
Boyd	2	1	0	1	0	1	1	0	2	0	0
Campbell	2	0	0	2	0	1	1	0	2	0	0
Christian	1	0	0	1	0	1	0	0	0	1	0
Daviess	4	0	1	3	0	4	0	0	4	0	0
Fayette	0	0	0	0	0	0	0	0	0	0	0
Hardin	0	0	0	0	0	0	0	0	0	0	0
Harlan	5	*	*	*	5	*	*	5	*	*	5
Jefferson	15	0	2	13	0	15	0	0	4	11	0
Kenton	8	1	0	7	0	8	0	0	8	0	0
McCracken	1	0	0	1	0	1	0	0	0	1	0
Madison	1	0	0	1	0	1	0	0	1	0	0
Pike	1	0	1	0	0	1	0	0	1	0	0
Warren	1	0	0	1	0	1	0	0	1	0	0
State Phase II Total	41	2	4	30	5	34	2	5	23	13	5

* denotes Not Available.

The charges filed against the 41 individuals judicially transferred are shown in Table 18-4. When collapsed into personal or property offenses, 17 were personal offenses and 17 property offenses (47 percent each) based on known data. The two largest frequencies were for the category "other property," with nine, and burglary with eight. ("Other property" includes auto theft, larceny, trespassing, forgery, receiving and possessing stolen property, and fraud.) Figure 18-1 graphically depicts this information, including unknown offense percentages.

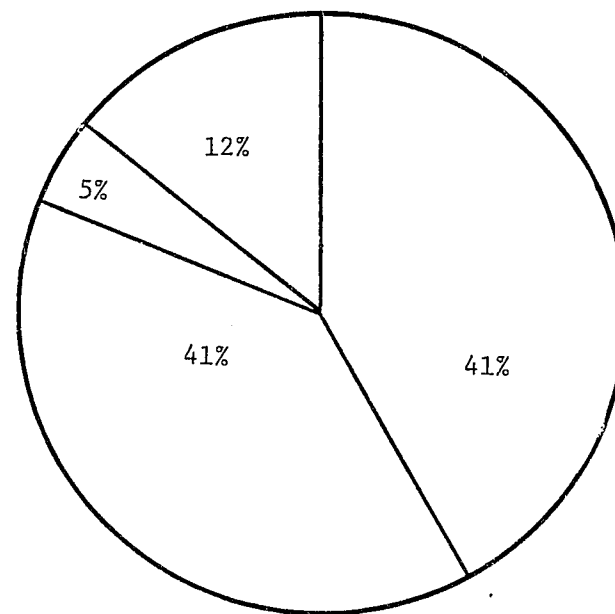
TABLE 18-4. KENTUCKY: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

County	Total Waivers	Offenses ^a										
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Unknown
Boyd	2	0	0	0	0	0	0	1	1	0	0	0
Campbell	2	0	0	0	0	0	0	1	1	0	0	0
Christian	1	1	0	0	0	0	0	0	0	0	0	0
Daviess	4	0	0	0	0	0	0	2	2	0	0	0
Harlan	5	*	*	*	*	*	*	*	*	*	*	5
Jefferson	15	1	2	3	3	0	0	1	3	2	0	0
Kenton	8	3	0	0	1	0	1	3	0	0	0	0
McCracken	1	0	0	0	0	0	0	0	1	0	0	0
Madison	1	0	0	0	0	0	1	0	0	0	0	0
Pike	1	1	0	0	0	0	0	0	0	0	0	0
Warren	1	0	0	0	0	0	0	0	1	0	0	0
State Phase II Total	41	6	2	3	4	0	2	8	9	2	0	5

* denotes Not Available.

a. Only most serious offense per individual listed.

FIGURE 18-1. KENTUCKY: PERCENTAGE OF JUDICIAL TRANSFERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	41%
Property	41%
Public Order	5%
Other General	0%
Unknown	12%

N= 41

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 27 percent of all offenses in the Phase II counties.

KY-14

Table 18-5 lists the judgments for the Phase II counties. Eighty-nine percent (16) of the 18 known charges ended in conviction. Two youth were referred back to juvenile courts.

TABLE 18-5. KENTUCKY: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

County	Total Waivers	Judgments					
		Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other ^a	Unknown
Boyd	2	0	0	0	2	0	0
Campbell	2	0	0	2	0	0	0
Christian	1	0	0	0	1	0	0
Daviess	4	0	0	0	4	0	0
Harlan	5	*	*	*	*	*	5
Jefferson	15	0	0	0	4	0	15
Kenton	8	0	0	0	5	3	0
McCracken	1	0	0	0	1	0	0
Madison	1	0	0	0	1	0	0
Pike	1	0	0	0	1	0	0
Warren	1	0	0	0	1	0	0
State Phase II Total	41	0	0	2	16	3	20

* denotes Not Available.

a. Held open, pending or transferred to another jurisdiction.

Table 18-6 reflects the types of sentences handed down for the 16 convicted youth. State adult corrections received 50 percent (eight) of these individuals, with 38 percent (six) being sent to jail. One received a fine and one was sentenced to probation.

TABLE 18-6. KENTUCKY: SENTENCE REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978

County	Total Convictions	Sentence Types					
		Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
Boyd	2	0	0	2	0	0	0
Christian	1	0	0	0	1	0	0
Daviess	4	0	1	1	2	0	0
Kenton	5	0	0	3	2	0	0
McCracken	1	0	0	0	1	0	0
Madison	1	1	0	0	0	0	0
Pike	1	0	0	0	1	0	0
Warren	1	0	0	0	1	0	0
State Phase II Total	16	1	1	6	8	0	0

KY-15

For the 14 youth sentenced to incarceration, Table 18-7 shows that 46 percent (six) received a maximum sentence of over one to three years, while there was one sentenced to life and one whose sentence exceeded ten years. A sentence of one year or less was given to four (31 percent) individuals.

TABLE 18-7. KENTUCKY: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums						Indeter- minate	Life	Death	Unknown
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years					
Boyd	2	2	0	0	0	0	0	0	0	0	0
Christian	1	0	0	0	0	1	0	0	0	0	0
Dayless	3	1	2	0	0	0	0	0	0	0	0
Kenton	5	1	2	1	*	*	*	*	*	*	1
McCracken	1	0	1	0	0	0	0	0	0	0	0
Pike	1	0	0	0	0	0	0	1	0	0	0
Warren	1	0	1	0	0	0	0	0	0	0	0
State Phase II Total	14	4	6	1	0	1	0	1	0	0	1

* denotes Not Available.

Table 18-8 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts by judicial waiver; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. Phase II information was sought about 41 of the 98 youth judicially waived to adult court in 1978. Sixteen (39 percent) of these youth in Phase II counties were convicted and 14 received sentences of confinement.

TABLE 18-8. KENTUCKY: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 18-1)	98
Total Referrals Selected for Phase II (Table 18-3)	41
Total Referrals Resulting in Convictions (Table 18-6)	16
Total Convictions Resulting in Sentences of Confinement (Table 18-7)	14

In summary, of those juveniles judicially transferred in Kentucky, 83 percent were age 17, 94 percent were males, and 64 percent were white youth. Property and personal offenses were equally represented. Eighty-nine percent of the youth were convicted and 88 percent of those convicted were sentenced to incarceration, 71 percent receiving maximum terms of three years or less.

ROUTINELY HANDLED TRAFFIC OFFENSES

When juveniles 16 years of age or older violated Kentucky traffic ordinances in 1978, the hearings routinely took place in adult courts. This section presents estimated information, by county, on the number of juveniles referred to adult courts due to routine traffic offenses. Table 18-9 displays estimates of the juvenile traffic violations handled in adult courts from the 109 Kentucky counties which were able to provide this information. These 109 counties represent 72 percent of the state's juvenile population and reported 27,928 juvenile traffic violations.

From this data and the proportion of youth population represented, the total number of juvenile traffic violations can be projected to approximate 39,000 cases in 1978 for the entire state.

TABLE 18-9. KENTUCKY: JUVENILE REFERRALS TO ADULT COURTS
FOR EXCLUDED TRAFFIC OFFENSES (BY COUNTY,
JUVENILE POPULATION AND FREQUENCY OF OFFENSES)
IN 1978

County ^a	Juvenile Population (Ages 8-17) ^b	Number of Excluded Traffic Offenses
Adair	2,159	12 est
Allen	2,273	46 est
Anderson	2,003	100 est
Ballard	1,343	350 est
Barren	5,319	119 est
Bell	6,725	162 est
Boone	7,370	499 est
Bourbon	3,100	25 est
Boyd	8,739	70 est
Bracken	1,398	20 est
Breathitt	3,414	100 est
Breckinridge	2,785	7 est
Bullitt	7,362	120 est
Butler	1,845	536 est
Caldwell	2,044	46 est
Calloway	3,913	973 est
Campbell	15,871	940 est
Carlisle	901	21 est
Carter	4,316	175 est
Casey	2,558	87 est
Christian	11,154	505 est
Clark	4,682	675 est
Clay	4,753	388 est
Clinton	1,479	24 est
Crittenden	1,375	300 est
Cumberland	1,192	11 est
Daviess	15,452	399 est
Edmonson	1,639	100 est
Elliott	1,071	50 est
Estill	2,605	25 est
Fayette	29,634	634 est
Fleming	2,172	200 est
Floyd	7,916	100 est
Franklin	5,972	732 est
Fulton	1,473	15 est

KY-18

TABLE 18-9. (Continued)

County ^a	Juvenile Population (Ages 8-17) ^b	Number of Excluded Traffic Offenses
Gallatin	761	110 est
Garrard	1,734	960 est
Grant	1,993	49 est
Graves	5,296	209 est
Grayson	3,179	113 est
Green	1,762	25 est
Greenup	6,664	167 est
Hancock	1,486	35 est
Hardin	12,798	150 est
Harlan	7,419	300 est
Harrison	2,542	528 est
Henderson	6,651	948 est
Henry	1,935	300 est
Hickman	1,060	98 est
Hopkins	7,226	250 est
Jackson	2,002	100 est
Jessamine	3,645	490 est
Johnson	3,698	50 est
Knott	3,439	50 est
Knox	5,333	150 est
Larue	2,084	360 est
Laurel	5,993	239 est
Lawrence	2,317	350 est
Lee	1,359	70 est
Leslie	2,809	78 est
Letcher	5,105	469 est
Lewis	2,598	31 est
Lincoln	3,248	35 est
Livingston	1,462	10 est
Logan	3,891	367 est
Lyon	728	440 est
McCracken	9,652	979 est
McCreary	2,994	95 est
McLean	1,800	40 est
Madison	7,142	1,700 est

KY-19

TABLE 18-9. (Continued)

County ^a	Juvenile Population (Ages 8-17) ^b	Number of Excluded Traffic Offenses
Magoffin	2,507	20 est
Marion	3,410	25 est
Marshall	3,642	20 est
Martin	2,550	25 est
Mason	2,744	89 est
Meade	4,242	43 est
Menifee	930	17 est
Mercer	2,984	240 est
Metcalfe	1,484	11 est
Monroe	2,069	68 est
Montgomery	3,145	318 est
Morgan	1,964	150 est
Muhlenberg	5,191	553 est
Nelson	5,228	1,800 est
Nicholas	1,158	100 est
Ohio	3,557	909 est
Owen	1,279	35 est
Owsley	965	8 est
Perry	6,094	35 est
Pike	13,639	1,500 est
Powell	1,682	63 est
Pulaski	7,029	199 est
Robertson	399	4 est
Rockcastle	2,664	35 est
Russell	2,089	37 est
Scott	3,143	12 est
Shelby	3,446	328 est
Simpson	2,429	45 est
Spencer	1,175	2 est
Taylor	3,049	52 est

TABLE 18-9. (Continued)

County ^a	Juvenile Population (Ages 8-17) ^b	Number of Excluded Traffic Offenses
Todd	1,913	20 est
Trigg	1,565	79 est
Trimble	1,049	100 est
Warren	9,530	1,600 est
Washington	2,158	13 est
Wayne	2,814	98 est
Webster	2,379	150 est
Whitley	4,902	205 est
Wolfe	1,206	9 est
Totals	435,215	27,928 est

a. Counties where traffic offense data were not available are not listed in this table.

b. 1978 population estimated 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.

FOOTNOTES

1. Kentucky Revised Statutes, Sections 24A. 130 and 208.020.
2. Kentucky Revised Statutes, Section 208.020(1)(a).
3. Kentucky Revised Statutes, Section 24A. 100.
4. Kentucky Revised Statutes, Section 208.020.
5. Kentucky Revised Statutes, Section 208.170(1).
6. Kentucky Revised Statutes, Section 208.170(1-4).
7. Kentucky Revised Statutes, Section 208.170(5).
8. Kentucky Revised Statutes, Section 208.020(1)(a).
9. Kentucky Revised Statutes, Chapter 208A, Section 3 (40) (New S.B. 309).
10. Kentucky Revised Statutes, Chapter 208E, Section 86 (New S.B. 309).
11. Kentucky Revised Statutes, Chapter 208E, Sections 6 and 98 (New S.B. 309).
12. Lowry v. Commonwealth, 424 S.W.2d 841 (1968); Koonce v. Commonwealth, 452 S.W.2d 822 (1970); Locke v. Commonwealth, 503 S.W.2d 729 (1973).
13. Miller v. Anderson, 519 S.W.2d 826 (1975).
14. Ferguson v. Commonwealth, 512 S.W.2d 501 (1974).
15. Heustis v. Sanders, 320 S.W.2d 602 (1959); Childers v. Commonwealth, 239 S.W.2d 255 (1951); Gipson v. Commonwealth, 226 S.W.2d 759 (1950); Young v. Knight, 329 S.W.2d 195 (1959).
16. Anderson v. Commonwealth, 465 S.W.2d 70 (1971).
17. Kent v. United States, 383 U.S. 541 (1966).
18. Smith v. Commonwealth, 412 S.W.2d 256 (1967); Workman v. Commonwealth, 429 S.W.2d 374 (1968); Bailey v. Commonwealth, 468 S.W.2d 304 (1971).
19. Whitaker v. Commonwealth, 479 S.W.2d 592 (1972).
20. Hopson v. Commonwealth, 500 S.W.2d 793 (1973).
21. Risner v. Commonwealth, 508 S.W.2d 775 (1974); Hubbs v. Commonwealth, 511 S.W.2d 664 (1974).
22. Holt v. Commonwealth, 525 S.W.2d 660 (1975); Richardson v. Commonwealth, 550 S.W.2d 538 (1977); Hamilton v. Commonwealth, 534 S.W.2d 802 (1976); Bingham v. Commonwealth, 550 S.W.2d 535 (1977).
23. Schooley v. Commonwealth, 556 S.W.2d 912 (1977).
24. Name changed from Appeals to Supreme Court in 1776.
25. Sharp v. Commonwealth, 559 S.W.2d 727 (1977); Hayden v. Commonwealth, 563 S.W.2d 720 (1978); Mayes v. Commonwealth, 563 S.W.2d 4 (1978).
26. Kentucky Revised Statutes, Section 20.180.
27. Kentucky Revised Statutes, Chapter 208F, Section 101 (New S.B. 309).
28. Kentucky Revised Statutes, Chapter 208F, Section 102 (New S.B. 309).
29. Kentucky Revised Statutes, Chapter 208E, Section 93 (New S.B. 309).
30. Kentucky Revised Statutes, Section 208E, Section 92 (New S.B. 309).

MARYLAND PROFILE

ACKNOWLEDGMENTS

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METHODOLOGY

Several features of the data collection effort in Maryland, and the information which it produced, make the state unique among its counterparts in this volume.

Phase I frequency information on judicial waivers and some accompanying Phase II information, including demographic and offense data, were on cases reported by the Department of Health and Mental Hygiene (DHMH), Juvenile Services Administration (JSA). The definition of cases is unusual in this instance. They are based on charges and not individuals, so that a youth waived, having been charged, for example, with robbery and kidnapping, would be counted twice. Therefore, the number of cases is greater than the number of individuals. The state agency estimates there is a 1.66 ratio of charges to individuals, indicating that about 300 youth were responsible for the 511 charges that were reported to have resulted in judicial waiver. Data was reported for fiscal year 1978.

An effort was made to collect Phase I frequency information and Phase II demographic, charges, sentencing, and confinement information from local JSA regional intake workers. This effort was successful for 10 counties, but was terminated when JSA central office expressed a preference that the study rely upon centrally supplied data. Phase I frequency information and Phase II data is provided in this profile for those 10 counties. It is important to note that the county data is based on individuals during 1978 calendar year. It is apparent then that the local data bears little correspondence to the state data in terms of individuals because of the different units and reporting periods. However, both sets of information have been included, with the appropriate qualifications, to give the most complete picture possible about judicial waiver

in the state. Duplicate tables are included in the profile to present both state and locally reported data where it was available from both sources.

The Governor's Commission on Law Enforcement and the Administration of Justice provided arrests of juveniles for offenses excluded initially from juvenile court jurisdiction (murder, rape, and armed robbery). The data were compiled from the Uniform Crime Report: Age, Sex and Race of Persons Arrested: Under 18 Years of Age. This frequency information was provided by county. Verification and additional data were sought from the prosecutors in the 16 counties and Baltimore City where such arrests were reported. The data were not available from local sources. Accordingly, information on the number of arrests for excluded offenses appears in the Phase I, or frequency, table, and is not included in the sections presenting Phase II information.

Finally, contacts with selected district courts indicated that juvenile traffic data were unavailable to the study, or that there would at least be severe problems in retrieving this information. As a result, information on youth tried as adults for traffic violations is not included in the profile.

COURT ORGANIZATION

The highest courts of general trial jurisdiction in Maryland are the circuit courts, with eight systems located throughout the 23 counties and Baltimore City. These circuit courts have exclusive jurisdiction over felonies, appeals from district courts, and misdemeanor cases involving trial by jury. The 24 district courts in Maryland have exclusive jurisdiction over misdemeanors not involving jury trials and violations of county or municipal ordinances.

In Maryland, all juvenile delinquency cases are heard in circuit courts, with the exception of Montgomery County. In Montgomery County the district court has original jurisdiction over juvenile cases.¹ In most courts, juvenile delinquency cases are heard in separate sessions.² Courts with juvenile jurisdictions are hereafter referred to as juvenile courts.

Traffic and boating violations against youth 16 or older, which do not have a penalty of incarceration, are heard in the traffic division of the district court along with adult cases.³ However, the juvenile court has jurisdiction over juveniles charged with two or more violations of the Maryland Vehicle Law, another traffic law or ordinance, or the State Boat Act arising out of the same incident and which would result in the juvenile being brought both before the juvenile court and the criminal court, the juvenile court has jurisdiction over all charges in the incident.⁴

An overview of Maryland's courts by their jurisdiction over juveniles appears below.

MARYLAND: COURT JURISDICTION OVER JUVENILES

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Circuit Courts (Juvenile Session) District Court (Montgomery County only)	Circuit Courts District Courts	Circuit Courts (Juvenile Session) District Courts (Traffic Division)

- a. Also includes watercraft violations.
- b. Juveniles up to 16 years of age.
- c. Youth 16 years of age and older.

TRANSFER PROCESS

In Maryland, initial juvenile court jurisdiction extends to 18 years of age.⁵ There are several ways juveniles may be tried as adults.

Judicial Waiver

First, there are two basic types of cases which can be judicially waived to adult court. Juveniles 15 years old or older charged with any act which would be a crime if committed by an adult, and juveniles less than 15 years of age charged with an act which, if committed by an adult, would be punishable by death or life imprisonment (presently murder and rape), may be judicially waived to the adult session of circuit courts.⁶ In both cases, the juvenile courts must hold a waiver hearing prior to waiving jurisdiction. Waiver proceedings are generally initiated by the state's attorneys, the exception being that juveniles may also request their own waivers.⁷

In order to waive jurisdiction, juvenile courts must find that the juvenile is an unfit subject for juvenile rehabilitative measures.⁸ For purposes of reaching this determination, juvenile courts assume that the juvenile committed the alleged delinquent act and must consider a number of criteria on the record. These criteria include the age of the juvenile, mental and physical

condition of the juvenile, the juvenile's amenability to treatment available to delinquents, the nature of the alleged offense, and the public safety.

An additional type of judicial waiver occurs when the juvenile court has waived its jurisdiction with respect to a youth in accordance with the above provisions, and that youth is subsequently brought before the court on another charge of delinquency. Upon review of the case, the court may then waive its jurisdiction in the subsequent proceeding without following the prescribed judicial waiver procedures. Maryland Code Section 3-817, which provides for this procedure, does not require the youth be previously convicted in adult courts after a judicial waiver to be subject to this subsequent method of waiver of juvenile jurisdiction.

Excluded Offenses

Juveniles 14 years of age or older charged with offenses punishable by death or life imprisonment (murder and rape) and juveniles 16 years of age or older charged with robbery with a deadly weapon are tried initially in circuit courts as adults.⁹ The adult courts may, in such cases, transfer the case to juvenile courts if, after considering the same criteria prescribed for waiver of jurisdiction by juvenile courts it determines that transfer to juvenile courts is in the best interests of the child or society.¹⁰

An interesting jurisdictional conflict emerges for youth 14 years old. As noted earlier, juveniles under age 15 may be judicially waived from juvenile to adult courts, for offenses punishable by death or life imprisonment, implying that juvenile courts have original jurisdiction. The section on excluded offenses states, that youth 14 years of age or older are excluded from juvenile court jurisdiction for these offenses. The Maryland code states specifically that juvenile courts do not have jurisdiction over youth 14 years of age or older charged with offenses punishable by death or life imprisonment, as well as youth 16 years of age charged with robbery with a deadly weapon, unless the previously described reverse waiver procedure had been exercised. This, despite the juvenile courts' statutorily prescribed judicial waiver authority, may indicate that these youth are in fact excluded to adult court and may only come under the jurisdiction of the juvenile court at the behest of the adult court. However, there appears no satisfactory explanation in the code for the apparent contradiction.

Finally, youth 16 years of age or older charged with minor traffic or boating offenses (acts which do not prescribe a penalty of incarceration) will be tried as adults.¹¹ However, if the juvenile is charged with two or more violations of the vehicle law, another traffic law or ordinance, or the State Boat Act arising out of the same incident and which would result in the juvenile being brought to juvenile and adult courts, juvenile courts have exclusive jurisdiction over all charges.

CASE LAW SUMMARY

A review of Maryland case law back to 1950 revealed that several issues related to Maryland's waiver provisions have been considered by state or federal appellate courts.

The Maryland Court of Appeals held, in Savoy v. Warden of Maryland House of Correction, that waiver by a juvenile court of jurisdiction over a 14-year-old boy was not required before prosecution could begin, where charges were punishable by life imprisonment or death.¹² (See also, Bean v. State¹³) Further, the court held, in In re Miles, that the juvenile court has no jurisdiction over an individual who is charged with offenses allegedly committed while he was 17 years of age and where the defendant is over 21 at the time of filing of the petitions.¹⁴ In Mouquin v. State, the court held that an adjudication of delinquency does not bar a subsequent criminal prosecution for the same conduct, since the delinquent was not in jeopardy by the juvenile court proceeding.¹⁵

The U.S. District Court for the District of Maryland held, in Long v. Robinson, that statutes which provided for criminal prosecution of certain offenders charged in the City of Baltimore (although these same offenders would have been treated as juveniles in Maryland outside of Baltimore had they been charged therein) were unconstitutional.¹⁶ One year later, the U.S. Fourth Circuit Court of Appeals, in Woodall v. Pettibone, also held this disparate treatment to be unconstitutional.¹⁷ In this case, it was also held that a juvenile court's waiver of jurisdiction may only be granted after a full due process hearing.

Pursuant to the decision in Long v. Robinson, the Maryland Court of Appeals held, in Hunter v. State, that a subsequent waiver hearing would not validate a conviction which took place under the statute which was declared unconstitutional.¹⁸ (See also Franklin v. State¹⁹) The court also held, in Franklin, that a waiver order was a final appealable order. However, in In re Trader, it held that an order in which the juvenile court refused to waive jurisdiction was interlocutory and nonappealable.²⁰

In Wiggins v. State, the court held that since the purpose of the waiver hearing was not to decide ultimate questions of fact, it was not an opportunity for the juvenile to plead the defense of diminished capacity.²¹ In addition, the court stated that the trier of fact in the subsequent criminal proceeding could not consider the fact that the juvenile court had waived its jurisdiction as evidence of guilt or innocence. Further, the Court of Appeals held, in In re Appeals from Circuit Court for Kent County, that the juvenile court could assume jurisdiction over an individual who was more than 18 years of age, but only for the purpose of determining if waiver was appropriate when the individual was charged with an offense which occurred while he or she was still a child.²² However, juvenile court could not continue to exercise jurisdiction over this individual subsequent to its determination that waiver was not warranted. Finally, the court held, in Parojinog v. State, that the purpose of a waiver

hearing is to resolve the issue of the juvenile's amenability to treatment, not his or her guilt or innocence.²³

CORRECTIONS INFORMATION

Adults convicted of a felony or misdemeanor and sentenced for not less than 90 days are committed to the Division of Corrections, which is within the Department of Public Safety and Correctional Services.

Juvenile institutions, and probation and aftercare (parole) services all come under the jurisdiction of the state Department of Health and Mental Hygiene's Juvenile Services Administration. Juveniles under the age of 18 may be committed by the juvenile courts to the Juvenile Services Administration. JSA may place such juveniles in state juvenile institutions for indeterminate sentences. At the time of commitment, the Juvenile Services Administration assigns an aftercare worker, whose job it is to prepare the community for the juvenile's return, as well as help the institution prepare the juvenile for eventual release back into the community. The date of release is determined by the institutional staff and the aftercare worker, who together make their recommendation to the courts for final approval.

Younger or vulnerable juvenile offenders are often sent to the minimum security Montrose School. There are no provisions to administratively transfer juveniles to adult institutions.

Youth transferred to adult courts for prosecution must be transferred to an adult detention facility.²⁴ In addition to receiving fines and probationary sentences, youth convicted in adult courts may be committed to the Division of Corrections. Younger offenders (14 years of age and older) are usually sent to the Patuxent Institution or to the Maryland House of Correction. All adult institutions are maximum security and offenders cannot be administratively transferred to a juvenile facility.

STATE DATA SUMMARY

There are two legal mechanisms by which juveniles may be tried in adult courts. First, juvenile courts may waive jurisdiction for juveniles 15 years of age or older charged with any offense or juveniles under 15 charged with an offense punishable by death or life imprisonment, after a hearing. Second, juveniles 14 years of age or older charged with offenses punishable by death or life imprisonment, or youth 16 years of age or older charged with robbery with a deadly weapon, are to be tried initially in (adult) circuit courts. The circuit courts may waive jurisdiction back to juvenile courts at the discretion of the judges. In addition, youth charged with minor traffic and boating offenses are

excluded from juvenile jurisdiction and are tried in adult courts, along with adult violators of the same laws. Data were unavailable on these cases.

In 1978, there were 511 charges resulting in judicial waiver to adult courts as indicated in Table 21-1A. Fifty-nine percent (302) came from Baltimore City which contains 20 percent of the state's juvenile population. Baltimore City is an independent city, not included within any county, and has legal status equivalent to a county. Montgomery County, with a juvenile population of over 100,000, was only one of three counties reporting no charges resulting in judicial waivers in 1978; the other two counties were Garrett and Howard.

Table 21-1A also shows that there were 748 juveniles arrested for excluded offenses in 1978. Baltimore City accounted for 71 percent (528) of these cases. The four counties with high rates of excluded offense arrests (besides Baltimore City) were all small counties, with juvenile populations of under 5,000. Even though more juveniles were arrested as adults through excluded offenses than referred to adult courts through judicial waiver, a higher percentage of counties (29 percent) reported no excluded offense cases in 1978.

TABLE 21-1A. MARYLAND: REFERRALS OF JUVENILES TO ADULT COURTS
IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISMS)
REPORTED BY STATE SOURCES

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver ^b		Excluded Offenses	
		Cases	Rate ^c	Cases ^d	Rate ^c
Allegany	13,189	2	1.516	0	0.000
Anne Arundel	65,859	11	1.670	16	2.429
Baltimore	108,184	42	3.882	57	5.269
Calvert	5,692	6	1.054	1	1.757
Caroline	4,010	1	2.493	2	4.988
Carroll	13,848	4	2.889	0	0.000
Cecil	11,229	11	9.796	4	3.562
Charles	14,567	12	8.238	4	2.746
Dorchester	4,979	16	32.135	9	18.076
Frederick	18,037	5	2.772	2	1.109

TABLE 21-1A. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver ^b		Excluded Offenses	
		Cases	Rate ^c	Cases ^d	Rate ^c
Garrett	4,446	0	0.000	0	0.000
Harford	28,010	3	1.071	0	0.000
Howard	19,682	0	0.000	3	1.524
Kent	2,829	5	17.674	11	38.883
Montgomery	106,417	0	0.000	14	1.316
Prince Georges	133,278	15	1.125	75	5.627
Queen Annes	3,505	2	5.706	0	0.000
St. Marys	12,249	2	1.633	0	0.000
Somerset	3,344	18	53.827	4	11.962
Talbot	4,022	3	7.459	0	0.000
Washington	19,057	10	5.247	7	3.673
Wicomico	10,204	18	16.640	2	1.960
Worcester	4,823	23	47.688	9	18.661
Baltimore City	152,600	302	19.790	528	34.600
Total	764,060	511	6.688	748	9.790

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. Data on judicial waivers was provided by the Juvenile Services Administration and is based on the number of charges which resulted in waiver, not on the number of youth actually waived. The state agency estimated that the total of 511 probably represents approximately 300 youth.

c. Rate per 10,000 juveniles age eight to 17 years old (1978).

d. Data on excluded offenses represent arrests of youth for offenses excluded from juvenile court jurisdiction. The number of arrests resulting in filings in adult courts was not available.

Table 21-1B indicates the number of judicial waivers, and corresponding rate per 10,000 youth population in counties involved in the local survey. Prince Georges County clearly had the most waivers among the 10 reporting counties, with 22 waived youth, or 37 percent of the total for these counties. Kent County, with the smallest juvenile population in the state, had the highest rate of waiver with six waivers that occurred amounting to over 21 youth waived per 10,000 in juvenile population.

TABLE 21-1B. MARYLAND: REFERRALS OF JUVENILES TO ADULT COURTS
IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISMS)
REPORTED BY LOCAL SOURCES

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Allegany	13,189	2	1.516
Anne Arundel	65,859	7	1.062
Baltimore	108,184	*	*
Calvert	5,692	2	3.514
Caroline	4,010	*	*
Carroll	13,848	*	*
Cecil	11,229	9	8.015
Charles	14,567	4	2.746
Dorchester	4,979	*	*
Frederick	18,037	*	*
Garrett	4,446	*	*
Harford	28,010	*	*
Howard	19,682	*	*
Kent	2,829	6	21.209
Montgomery	106,417	*	*
Prince Georges	133,278	22	1.650
Queen Annes	3,505	*	*
St. Marys	12,249	1	0.816
Somerset	3,344	*	*
Talbot	4,022	2est	4.973
Washington	19,057	5	2.624
Wicomico	10,204	*	*

TABLE 21-1B. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Worcester	4,823	*	*
Baltimore City	152,600	*	*
Total	764,060	60	2.128 ^c

* denotes Not Available.

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 age eight to 17 years old (1978).

c. Total waiver rate is based upon the combined populations of reporting counties (281,971 youth) rather than on the total state juvenile population.

The remaining tables in the profile present Phase II data on judicial waivers gathered from state and local sources. These tables begin with Table 21-2A, which gives a demographic breakdown by age, sex, and race of youth whose charges resulted in judicial waiver, as reported by the state. Bear in mind that these data, like those in Table 21-1A, are based on charges resulting in judicial waiver, not upon the number of individuals actually waived.

The table indicates that ninety-three percent (467) of the charges resulting in judicial waiver were against youth ages 16 or older. Charges against 17-year-olds (288) accounted for 56 percent of the total. Charges for youth 18 years old or older are included in the table because, while the offenses were committed by juveniles, the judicial waivers seem to have occurred after the charged youth reached 18 years of age. Ninety-six percent (490) of the charges were against males, and, where data were available on race, 68 percent (349) of the charges were against minority youth. Most charges against minority youth resulting in judicial waiver were brought in Baltimore City, which accounts for 76 percent of total charges against minorities. Indeed, Baltimore City accounts for 59 percent of all charges resulting in judicial waiver in Maryland in 1978. In the entire state, 32 percent of charges resulting in waiver were against white youth.

TABLE 21-2A. MARYLAND: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978
REPORTED BY STATE SOURCES^a

County	Total Waivers	Age					Sex		Race		
		0-15	16	17	18+	Un- known	Male	Female	White	Minor- ity	Un- known
Allegany	2	0	0	0	2	0	2	0	1	1	0
Anne Arundel	11	4	1	3	3	0	11	0	7	4	0
Baltimore	42	0	9	25	7	1	41	1	28	14	0
Calvert	6	0	2	3	1	0	5	1	5	1	0
Caroline	1	0	0	1	0	0	1	0	1	0	0
Carroll	4	0	0	0	4	0	4	0	3	1	0
Cecil	11	0	0	6	5	0	9	2	10	1	0
Charles	12	0	2	7	1	2	12	0	5	7	0
Dorchester	16	0	6	9	1	0	13	3	9	7	0
Frederick	5	0	0	3	2	0	5	0	0	5	0
Garrett	0	0	0	0	0	0	0	0	0	0	0
Harford	3	0	2	1	0	0	3	0	2	1	0
Howard	0	0	0	0	0	0	0	0	0	0	0
Kent	5	0	0	5	0	0	5	0	3	2	0
Montgomery	0	0	0	0	0	0	0	0	0	0	0
Prince Georges	15	0	6	8	1	0	15	0	6	9	0
Queen Annes	2	0	0	2	0	0	2	0	1	1	0
St. Marys	2	0	0	1	1	0	2	0	2	0	0
Somerset	18	0	5	13	0	0	18	0	7	11	0
Talbot	3	0	1	1	1	0	3	0	1	2	0
Washington	10	1	2	5	2	0	9	1	7	3	0
Wicomico	18	0	8	10	0	0	14	4	11	7	0
Worcester	23	1	5	14	3	0	22	1	17	6	0
Baltimore City	302	30	75	171	21	5	294	8	36	266	0
State Totals	511	36	124	288	55	8	490	21	162	349	0

a. Waivers are based on the number of charges resulting in transfer, rather than on the number of youth actually waived. State sources estimated that the total of 511 charges probably represents approximately 300 youth.

Table 21-2B provides similar demographic information for the 10 reporting counties involved in the local survey. As noted in the Methodology section, state data covered fiscal year 1978 and reported on charges. While local sources used calendar year 1978 and counted individuals.

The table indicates that one half of the 60 waived youth in these counties were 17 years old and 73 percent were 17 years of age or older. Only nine percent of these youth were 15 years old or younger. Eleven youth were judicially waived for offenses committed before reaching the age of majority (18). Ninety percent of youth reported waived were males, and where race was reported, 63 percent of the youth were reported as white.

TABLE 21-2B. MARYLAND: JUDICIAL WAIVERS TO ADULT COURTS
(BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978
REPORTED BY LOCAL SOURCES

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un- known	Male	Female	Un- known	White	Minor- ity	Un- known
Allegany	2	*	*	1	*	1	1	*	1	*	1	1
Anne Arundel	7	1 est	2 est	4 est	0	0	7	*	0	*	6	1
Baltimore	*	*	*	*	*	*	*	*	*	*	*	*
Calvert	2	0	0	2	0	0	2	0	0	*	*	*
Caroline	*	*	*	*	*	*	*	*	*	*	*	*
Carroll	*	*	*	*	*	*	*	*	*	*	*	*
Cecil	9	0	0	5	4	0	7	2	0	9	0	0
Charles	4	0	0	4	0	0	4	0	0	2	2	0
Dorchester	*	*	*	*	*	*	*	*	*	*	*	*
Frederick	*	*	*	*	*	*	*	*	*	*	*	*
Garrett	*	*	*	*	*	*	*	*	*	*	*	*
Harford	*	*	*	*	*	*	*	*	*	*	*	*
Howard	*	*	*	*	*	*	*	*	*	*	*	*
Kent	6	0	0	6	0	0	6	0	0	2	4	0
Montgomery	*	*	*	*	*	*	*	*	*	*	*	*
Prince Georges	22	3	6	5	7	1	22	0	0	1	5	16
Queen Annes	*	*	*	*	*	*	*	*	*	*	*	*
St. Marys	1	0	0	1	0	0	1	0	0	1	0	0
Somerset	*	*	*	*	*	*	*	*	*	*	*	*
Talbot	2	*	*	*	*	2	*	*	2	*	*	2
Washington	5	1	2	2	0	0	4	1	0	3	2	0
Wicomico	*	*	*	*	*	*	*	*	*	*	*	*
Worcester	*	*	*	*	*	*	*	*	*	*	*	*
Baltimore City	*	*	*	*	*	*	*	*	*	*	*	*
State Totals	60	5	10	30	11	4	54	3	3	26	15	19

* denotes Not Available.

MD-12

Table 21-3A reports the type of charges that resulted in judicial waiver as reported by state sources. Fifty-five percent (282) of the 511 charges resulting in judicial waiver were for property offenses including burglary, larceny, theft, and auto theft. Twenty-six percent (131) were for offenses against persons, with assault out numbering robbery by a two to one margin. One tenth of all charges (53) were for public order offenses which include drug and alcohol violations, disorderly conduct, and vagrancy.

TABLE 21-3A. MARYLAND: JUDICIAL WAIVERS TO ADULT COURTS
(BY COUNTY AND BY TYPES OF OFFENSES) IN 1978
REPORTED BY STATE SOURCES^a

County	Total Waivers	Offenses ^a									
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery ^b	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Un- known
Allegany	2	0	0	0	0	1	0	0	1	0	0
Anne Arundel	11	0	0	2	2	0	4	2	1	0	0
Baltimore	42	0	0	1	11	2	9	10	4	5	0
Calvert	6	0	0	0	1	0	2	1	2	0	0
Caroline	1	0	0	0	0	0	1	0	0	0	0
Carroll	4	0	0	0	0	0	1	0	2	1	0
Cecil	11	0	0	0	1	0	5	2	2	1	0
Charles	12	0	0	1	2	1	3	2	2	1	0
Dorchester	16	0	0	0	1	0	3	4	5	3	0
Frederick	5	0	0	0	0	0	2	2	1	0	0
Harford	3	0	0	0	1	0	2	0	0	0	0
Kent	5	0	0	0	0	0	2	1	2	0	0
Prince Georges	15	0	0	3	0	0	3	6	2	1	0
Queen Annes	2	0	0	0	0	0	0	1	1	0	0
St. Marys	2	0	0	0	0	0	0	1	1	0	0
Somerset	18	0	0	1	2	0	8	3	2	2	0
Talbot	3	0	0	0	2	0	0	1	0	0	0
Washington	10	0	0	1	4	0	3	0	1	1	0
Wicomico	18	0	0	1	4	0	6	6	0	1	0
Worcester	23	0	0	2	3	0	9	2	6	1	0
Baltimore City	302	0	0	31	54	13	71	104	18	11	0
State Phase II Total	511	0	0	43	88	17	134	148	53	28	0

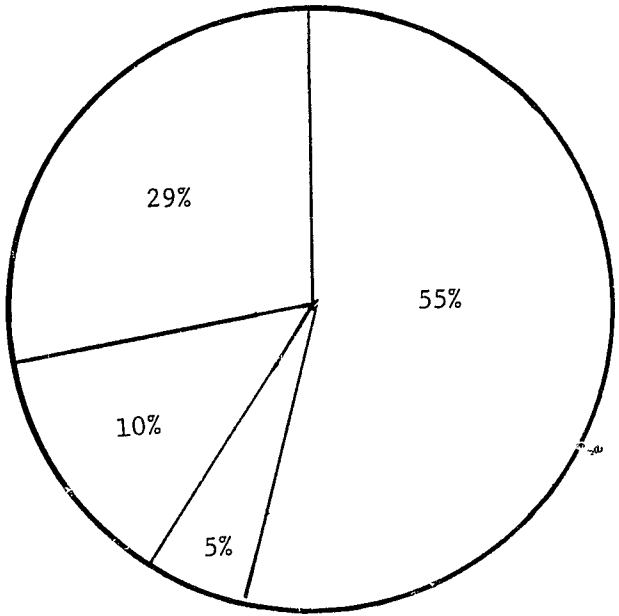
a. Waivers are based on the number of charges resulting in transfer, rather than on the number of youth actually waived. State sources estimated the total of 511 represents approximately 300 youth.

b. The state source supplied data which combined aggravated assault and assault and battery.

A graphic illustration of state reported offense findings appears in Figure 21-1A over one-half (55 percent) of all offenses were against property while 29 percent were against persons. Ten percent of the offenses were for public order violations.

MD-13

FIGURE 21-1A. MARYLAND: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978 REPORTED BY STATE SOURCES



Offenses^a

Personal	29%
Property	55%
Public Order	10%
Other	5%

N = 511

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent eight percent of all offenses in the reporting counties.

Table 21-3B on locally reported offenses is comparable to the foregoing table on state reported offenses except, as before, it is based on individuals, not total charges, and reports data for calendar year 1978.

The prominence of property offenses is again apparent in locally reported information. Fifty-five percent (33) of the 60 individuals waived in these 10 counties were transferred for property offenses. Twenty-eight percent of these youth were waived for personal offenses including murder or manslaughter, rape, robbery, assault and battery, aggravated assault, or other personal offenses. Only three percent of these youth were waived for public order offenses. Thirteen percent of the individuals waived did not have offenses reported.

TABLE 21-3B. MARYLAND: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978 REPORTED BY LOCAL SOURCES

County ^b	Total Waivers	Offenses ^a										
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Un- known
Allegany	2	*	*	*	*	*	*	*	*	*	*	2
Anne Arundel	7	0	0	3	0	1	1	2	0	0	0	0
Calvert	2	0	0	0	0	0	0	1	1	0	0	0
Cecil	9	0	0	0	1	0	0	2	5	1	0	0
Charles	4	0	0	0	1	0	0	3	0	0	0	0
Kent	6	*	*	*	1	*	*	2	1	*	*	2
Prince Georges	22	1	1	3	*	1	1	9	3	1	*	2
St. Marys	1	0	0	0	0	0	0	1	0	0	0	0
Talbot	2	*	*	*	*	*	*	*	*	*	*	2
Washington	5	1	0	0	1	0	0	2	1	0	0	0
State Phase II Total	60	2	1	6	4	2	2	22	11	2	0	8

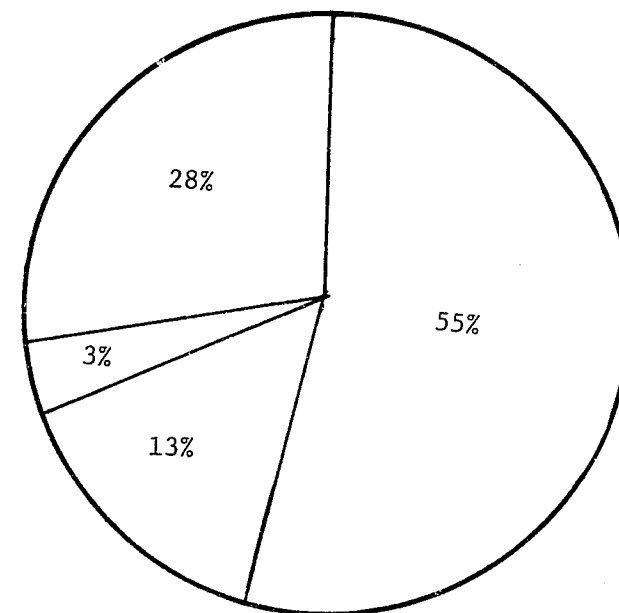
* denotes Not Available

a. Only most serious offense per individual listed.

b. Data were not available from the remaining 14 counties.

Figure 21-1B presents a graphic illustration of the proportion of offenses falling into the personal, property, public order, other general, and unknown offense categories. It is notable that a comparison of this figure with figure 21-1A indicates a very strong correspondence between state and locally reported offense information. The figures indicate that 28 or 29 percent of waivers occurred for personal offenses and both data sources reported that 55 percent of charges associated with judicial waiver were for property offenses.

FIGURE 21-1B. MARYLAND: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978 REPORTED BY LOCAL SOURCES



Offenses^a

Personal	28%
Property	55%
Public Order	3%
Other General	0%
Unknown	13%

N=60

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent 18 percent of all offenses in the reporting counties.

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The remaining data presented in this profile are for the 10 counties that provided information to the study. Dispositional, sentence, and sentence length information was not available from state sources.

Table 21-4 reports the judgments for juveniles waived to adult courts in the six counties where this information was available.

Thirty-five of the 42 known judgments were guilty findings. This constitutes 90 percent of known judgments. Only one case was reported to have resulted in a finding of not guilty, and three were dismissed. The three cases in the "other" category were held open.

TABLE 21-4. MARYLAND: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978 REPORTED BY LOCAL SOURCES

County	Total Waivers	Judgments					
		Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other ^a	Unknown
Allegany	2	*	*	*	1	*	1
Anne Arundel	7	1	0	0	6	0	0
Calvert	2	*	*	*	*	*	2
Cecil	9	0	0	0	9	0	0
Charles	4	*	*	*	*	*	4
Kent	6	0	2	0	4	0	0
Prince Georges	22	*	1	*	11	2	8
St. Marys	1	*	*	*	*	*	1
Talbot	2	*	*	*	*	*	2
Washington	5	0	0	0	4	1	0
State Total	60	1	3	0	35	3	18

* denotes Not Available.

a. Cases held open or pending.

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Sentence types for the 35 youth found guilty in the six reporting counties follow in Table 21-5. Nineteen of the 29 cases where sentences were known resulted in incarceration in either jails or state adult or juvenile corrections facilities. Ten youth were placed on probation and six sentence types were unknown. State sources indicated that juveniles convicted in criminal courts could not be sentenced to juvenile facilities. However, two local sources reported sentences to juvenile corrections.

TABLE 21-5. MARYLAND: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVER TO ADULT COURTS IN REPORTING COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978 REPORTED BY LOCAL SOURCES

County	Total Convic- tions	Sentence Types					Other	Unknown
		Fined	Probation	Jail	Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities		
Allegany	1	0	0	0	1	0	0	0
Anne Arundel	6	0	1	1	2	2	0	0
Cecil	9	*	5	*	*	*	*	4
Kent	4	0	1	3	0	0	0	0
Prince Georges	11	*	2	2	4	1	*	2
Washington	4	0	1	2 est	1	0	0	0
State Total	35	0	10	8	8	3	0	6

Table 21-6, the final one in this profile, presents maximum sentence lengths for the 19 youth who were incarcerated subsequent to judicial waiver. Four sentence lengths were not reported. Four youth were incarcerated for one year or less, and the largest group, seven youth, received maximum sentences of over one and up to three years incarceration. Among known sentence lengths, three youth received maximum sentences of over five to ten years.

TABLE 21-6. MARYLAND: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVER TO ADULT COURTS IN REPORTING COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978 REPORTED BY LOCAL SOURCES

County	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
Allegany	1	0	0	0	1	0	0	0	0
Anne Arundel	5	1	3	1	0	0	0	0	0
Kent	3	3	0	0	0	0	0	0	0
Prince Georges	7	*	1	*	1	1	*	*	*
Washington	3	0	3	0	0	0	0	0	0
State Total	19	4	7	1	2	1	0	0	4

* denotes Not Available.

Table 21-7 provides a summary of the information reported in the preceding tables concerning referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. Some Phase II information, including demographic and offense data, were collected on all 511 state reported charges that resulted in judicial waiver. Information on 60 judicial waivers collected from 10 counties indicated that 35 youths were found guilty subsequent to referral. Of these 35 locally reported convictions, 19 were known to have been sentenced to incarceration in jails, juvenile or adult corrections facilities.

Information about excluded offenses was only available in the form of arrests as opposed to actual trials for these offenses. Phase II information was not available for the 748 arrests for excluded offenses that were reported to have occurred in Maryland in 1978.

TABLE 21-7. MARYLAND: SUMMARY OF DATA TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver ^a	Excluded Offenses ^b
Total Referrals to Adult Courts in 1978 (Table 21-1B)	60	748
Total Referrals Selected for Phase II (Table 21-2B)	60	*
Total Referrals Resulting in Convictions (Table 21-4)	35	*
Total Convictions Resulting in Sentences of Confinement (Table 21-5)	19	*

* denotes Not Available.

a. The data presented is for the 60 youth reported waived during calendar year 1978 by local sources surveyed in 10 counties. The state source reported 511 charges against youth waived statewide during fiscal year 1978. Dispositional, sentence, and sentence length information was not available from the state source.

b. Does not include youth excluded from juvenile court jurisdiction for minor traffic or boating violations.

In summary, of 60 youth judicially waived in the reporting counties during calendar year 1978, 90 percent were males and 63 percent were minorities. Ninety-one percent of these youth were 16 years of age or older. In terms of type of charges, 55 percent were for property offenses, 28 percent were for offenses against persons, and three percent were for public order violations. At least ninety percent of the 60 individuals waived in 10 counties, according to local sources, were found guilty and at least 54 percent of guilty youth were incarcerated. Terms of confinement were generally three years or less, which accounted for 73 percent of all confined youth whose terms were reported. Four youth were confined for more than three years, including one who received a term of over 10 years. The state source reported total charges against youth waived during fiscal year 1978 rather than for individuals waived during calendar year 1978 (as reported by the local source). Nevertheless, the demographic characteristics and offenses reported by the state source were very similar to those reported by the local sources.

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FOOTNOTES

1. Annotated Code of Maryland, Sections 3-803 and 3-804.
2. Annotated Code of Maryland, Section 3-803(a).
3. Annotated Code of Maryland, Section 3-804.
4. Annotated Code of Maryland, Section 3-804(e).
5. Annotated Code of Maryland, Sections 3-801(d),(k), and (l); 3-805(a); and 3-807(a) and (b).
6. Annotated Code of Maryland, Section 3-817(a)(1) and (2).
7. Maryland Rules of Procedure, Rule 911(a).
8. Annotated Code of Maryland, Section 3-817(c).
9. Annotated Code of Maryland, Section 3-804(d).
10. Annotated Code of Maryland, Article 27, Section 594A.
11. Annotated Code of Maryland, Section 3-804(d)(2) and (3).
12. Savoy v. Warden of Maryland House of Correction, 139 A.2d 257 (1958).
13. Bean v. State, 199 A.2d 773, 234 Md. 432 (1964).
14. In re Miles, 309 A.2d 289, 269 Md. 649 (1973).
15. Moquin v. State, 140 A.2d 914 (1958).
16. Long v. Robinson, 316 F. Supp. 22 (1970), aff'd, 436 F.2d 1116 (4th Cir., 1971).
17. Woodall v. Pettibone, 465 F.2d 49 (1972).
18. Hunter v. State, 278 A.2d 608, 263 Md. 17 (1971).
19. Franklin v. State, 285 A.2d 616, 264 Md. 62 (1972).
20. In re Trader, 325 A.2d 398, 272 Md. 364 (1974).
21. Wiggins v. State, 344 A.2d 80, 275 Md. 689 (1975).
22. In re Appeals from Circuit Court for Kent County, 359 A.2d 556, 278 Md. 174 (1976).
23. Parojinog v. State, 384 A.2d 86 (1978).
24. Annotated Code of Maryland, Courts-Judicial Proceedings Article, Section 3-816(b).

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NORTH CAROLINA PROFILE

ACKNOWLEDGMENTS

The Academy thanks Tim Rogers and Blackwater Associates, Inc., for collecting the data on youth referred to adult courts in North Carolina. The Academy is also indebted to Gordon Smith, III, Executive Director, Governor's Crime Commission, for reviewing the North Carolina profile. In addition, the Academy expresses gratitude to the many other state and local officials who provided necessary data and assistance to the study.

METHODOLOGY

In North Carolina, the study sought information on the number of judicial transfers as well as the number of criminal filings on 16 and 17 year old youth (who statutorily are not subject to the jurisdiction of the juvenile court). The data on judicial transfers were collected by Blackwater Associates, Inc., through telephone interviews conducted with intake officers of the juvenile courts. The Department of Justice, Police Information Network, provided Uniform Crime Report arrest statistics for 16- and 17-year-olds. Since a case file was opened upon arrest, the number of court referrals should be equal to the number of arrests for the age group.

Frequency data (Phase I information) from all counties were sought for both judicial transfers and arrests of 16 and 17 year olds. Phase II, demographic, offense, disposition, and sentence, data were sought from the most populous ten percent of the counties and counties reporting five or more transfers in 1978. Age, sex, and offense data on arrests of 16 and 17 year olds were available for all 100 counties. Data on traffic violations of 16 and 17 year olds were unavailable.

COURT ORGANIZATION

The highest courts of general jurisdiction in North Carolina are the superior courts, and they have exclusive jurisdiction over all felony cases. Though there are only 33 superior courts, they hold court and hear cases in each of the 100 counties. The 33 district courts also hear cases in each county. These courts handle misdemeanor cases, preliminary examinations in felony cases, domestic relations cases, and divorce and juvenile cases. District courts, when hearing juvenile matters, will hereafter be referred to as juvenile courts. All

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hearings concerning the transfer of youth to superior court for trial as adults occur in district courts. All routine traffic cases against persons 16 years of age or older, are heard by magistrates attached to the district courts. Traffic violations by juveniles under 16 years of age are heard in juvenile court.¹

An overview of North Carolina courts by their jurisdiction over juveniles appears below.

NORTH CAROLINA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic ^a
District Courts	Superior Courts	District Courts

a. Sixteen and 17 year olds are statutorily adults and are tried in adult courts. Juveniles, under 16 years of age, are tried in juvenile court for traffic violations.

TRANSFER PROCESS

In North Carolina, initial age of juvenile court jurisdiction extends to age 16.² There are two legal mechanisms by which youth may be tried in adult court.

Judicial Waiver

Youth 14 years of age or older charged with a felony in North Carolina may be transferred to adult court. Prior to transfer, a hearing must be held in juvenile court to determine that transfer will serve the needs of the child or the best interests of the state. Youth 14 years of age or older charged with a capital offense are transferred to adult court if the juvenile court finds probable cause.³

The following was added to the judicial waiver provisions, effective January 1, 1980. The court will conduct a probable cause hearing in all felony cases in which the juvenile was 14 years of age or older, unless waived in writing by the counsel for the juvenile. Where probable cause is established,

the prosecutor or juvenile may move that the case be transferred to the Superior Court for trial. If the charge is not a capital offense, the judge may proceed to determine whether the needs of the juvenile or the best interest of the State will be served by transfer of the case to Superior Court for trial.⁴

Lower Age of Criminal Jurisdiction

Youth age 16 years old or older are excluded from the jurisdiction of the juvenile court. These youth are subject to the laws and rules of procedure of adult court and are treated like any other adult in hearings and trials.

Changes in the 1979 juvenile code indicate that (1) the state must be represented by a prosecutor at probable cause hearings for felonies; (2) juveniles have the right to waive the probable cause hearing for felonies; and (3) youth tried as adults have the right to bail.⁵

CASE LAW SUMMARY

A search of North Carolina Court of Appeals' case law since 1950 produced no cases before 1969 regarding youth in adult courts.

Since 1969, the Court of Appeals of North Carolina has heard a few cases involving issues related to juveniles tried as adults. In State v. Johnson, the court held that the defendant, by pleading guilty in superior court prior to raising any issues concerning the transfer hearing, waived any defects which may have been present in the juvenile court proceedings.⁶ Further, in State v. Bridge and Matter of Bunn, the court stated that the resolution of the transfer issue is within the sound discretion of the juvenile court and is not subject to appeal review in the absence of a showing of gross abuse of this discretion.⁷

Concerning the characteristics and effects of the transfer hearing itself, the court held in In re Smith that the hearing to determine whether a transfer is warranted need not be separate from the statutorily mandated probable cause hearing.⁸ In addition, the court of appeals ruled that the transfer hearing is not adjudicatory in nature and, therefore, does not lead to a double jeopardy violation when the case is subsequently tried on the merits in adult court. Finally, the court said, in Matter of Bunn, that even though a statement of reasons supporting the transfer order must be given, the trial court is not required to include findings of fact.⁹

CORRECTIONS INFORMATION

Adult offenders in North Carolina are subject to the authority of the Department of Corrections. Male adult misdemeanants who receive minimum sentences of less than 181 days may be committed to the department if local facilities are not available. Male adult felons may be committed to the department without any regard as to sentence length. Female offenders must be at least 16 years old and have received a minimum sentence of six months to be committed to the Department of Correction.

Youthful offenders under the age of 21 (including both transferred youth and 16- and 17-year-old adults), who are tried and sentenced as adults, may be committed to the department and are segregated from the rest of the prison population by being placed in the youth services complex. Within the complex, the population is further divided. The 18 to 21 year olds are separated from youth under 18 years of age and are generally placed in a separate minimum custody facility.

The purpose of the youthful offender article is to segregate youthful offenders from experienced criminals and to provide vocational, educational, and corrections training and activities to meet their needs. The intent is to provide the court with additional sentencing possibilities.

At the time of commitment, maximum terms are fixed. Youthful offenders are eligible for parole consideration after serving a shorter percentage of the term than other offenders. Upon unconditional discharge, all rights of citizenship which were forfeited on conviction are automatically restored.¹⁰

Other conditions under which individuals may be committed to the department include persons awaiting trial or appellate review, and individuals who are committed for up to 90 days for presentence diagnostic evaluation.

Anyone under 16 years old and adjudicated delinquent by the juvenile court can be committed to the Division of Youth Services of the Department of Human Resources which operates training schools and institutions. These individuals may be sent to minimum-security open-campus facilities, unless evaluation has indicated placement at the one medium-security juvenile facility. The Division of Youth Services may retain jurisdiction until age 18.¹¹

When a juvenile who was tried as an adult has been assigned to an adult institution, the superintendent may decide that the youth is physically too small or too immature to adequately defend himself in the adult prison. A procedure has been developed so that the superintendent of the institution can contact the youth services complex about the youth and recommend transfer to a juvenile facility. This recommendation is presented to the governor's office and, if approved, an executive order is issued to approve the administrative transfer of the youth.¹² Juveniles adjudicated in juvenile court may not be administratively transferred to adult institutions.

STATE DATA SUMMARY

In North Carolina, there are two legal mechanisms by which juveniles can appear in adult courts. First, juveniles 14 or 15 years old and charged with a felony may be transferred to adult courts after a hearing in juvenile court and individuals 14 or 15 years old and charged with a capital offense are transferred to adult court after a determination of probable cause. Second, due to the maximum age of juvenile court jurisdiction, youth 16 and 17 years old are routinely tried in adult courts.

Table 34-1 indicates that in 1978, 183 juveniles were judicially transferred to adult courts, the largest number of which (28) were in Mecklenburg County which contains the city of Charlotte. However, the highest rates of judicial transfers occurred in small counties--Pasquotank, 10.3; Richmond, 13.2; Surry, 10.3 and Tyrrell; 32.2, per 10,000 juveniles seven to 17 years old. Due to age of jurisdiction, 17,624 youth were tried in adult courts statewide. Larger numbers of youth 16 and 17 years were arrested and subject to adult court jurisdiction in counties with larger populations. Guilford, Mecklenburg, and Wake counties have the largest youth populations in the state and reported the most arrests among the states' 100 counties. Total arrests of youth 16 and 17 years old amount to a rate of 182 youth per 10,000 individuals age eight to 17 years old.

TABLE 34-1. NORTH CAROLINA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate ^b	Cases ^c	Rate ^b
Alamance	17,313	3	1.733	253	146.133
Alexander	4,066	0	0.000	20	49.188
Alleghany	1,382	0	0.000	6	43.415
Anson	4,628	0 est	0.000	94	203.111
Ashe	3,494	0 est	0.000	26	74.413
Avery	2,443	1	4.093	40	163.733
Beaufort	6,996	3 est	4.288	37	52.887
Bertie	4,277	0	0.000	21	49.100
Bladen	5,438	0 est	0.000	34	62.523
Brunswick	6,173	0	0.000	93	150.656

TABLE 34-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate ^b	Cases ^c	Rate ^b
Buncombe	24,004	4	1.666	743	309.532
Burke	11,514	7 est	6.080	105	91.193
Cabarrus	13,143	4 est	3.043	415	315.757
Caldwell	11,777	0 est	0.000	284	241.148
Camden	1,161	0	0.000	0	0.000
Carteret	6,024	0	0.000	152	252.324
Caswell	3,806	1	2.627	0	0.000
Catawba	17,668	2	1.132	329	186.212
Chatham	5,383	0	0.000	17	31.581
Cherokee	2,871	0 est	0.000	12	41.797
Chowan	2,006	0	0.000	34	169.492
Clay	960	0	0.000	2	20.833
Cleveland	14,478	1	0.691	253	174.748
Columbus	9,728	2	2.056	174	178.865
Craven	12,266	5 est	4.076	247	201.370
Cumberland	42,204	0	0.000	671	158.990
Currituck	1,711	0 est	0.000	32	187.025
Dare	1,423	0	0.000	29	203.795
Davidson	18,331	6 est	3.273	192	104.741
Davie	3,653	1	2.737	37	101.287
Duplin	7,446	0	0.000	103	138.329
Durham	21,975	12	5.461	604	274.858
Edgecombe	11,350	2	1.762	375	330.396
Forsyth	39,216	7	1.785	571	145.604
Franklin	4,972	0	0.000	34	68.383
Gaston	28,633	3	1.048	546	190.689
Gates	1,480	0	0.000	6	40.541
Graham	1,347	0	0.000	13	96.511
Granville	6,180	2	3.236	75	121.359
Greene	3,077	0	0.000	12	38.999
Guilford	51,232	5	0.976	1,840	359.150
Halifax	10,796	1	0.926	113	104.668
Harnett	9,279	1	1.078	41	44.186
Haywood	7,258	0	0.000	144	198.402
Henderson	7,911	4	5.056	144	182.025

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TABLE 34-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate ^b	Cases ^c	Rate ^b
Hertford	4,624	0	0.000	48	103.806
Hoke	3,917	1	2.553	82	209.344
Hyde	979	0	0.000	3	30.644
Iredell	13,987	3 est	2.145	298	213.055
Jackson	3,548	2	5.637	5	14.092
Johnston	11,738	1	0.852	107	91.157
Jones	1,779	0	0.000	13	73.075
Lee	6,115	0	0.000	185	302.535
Lenoir	10,648	2	1.878	43	40.383
Lincoln	6,804	1	1.470	111	163.139
McDowell	6,011	0	0.000	46	76.526
Macon	2,578	0	0.000	80	310.318
Madison	2,681	0	0.000	4	14.920
Martin	4,936	0	0.000	51	103.323
Mecklenburg	67,667	28	4.138	1,610	237.930
Mitchell	2,245	0	0.000	5	22.272
Montgomery	3,534	0	0.000	66	186.757
Moore	7,331	1	1.364	85	115.946
Nash	11,782	0	0.000	53	44.984
New Hanover	16,996	3	1.765	538	316.545
Northhampton	4,387	0	0.000	30	68.384
Onslow	19,554	0	0.000	258	131.942
Orange	9,131	3	3.286	169	185.084
Pamlico	1,627	0	0.000	44	270.436
Pasquotank	4,844	5	10.322	124	255.987
Pender	3,820	0	0.000	35	91.623
Perquimans	1,397	0	0.000	13	93.057
Person	5,008	0	0.000	36	71.885
Pitt	12,708	0	0.000	316	248.662
Polk	1,868	0	0.000	23	123.126
Randolph	14,423	6	4.160	139	96.374
Richmond	7,580	10 est	13.193	106	139.842
Robeson	19,511	0	0.000	378	193.737
Rockingham	13,845	8 est	5.778	202	145.901
Rowan	14,823	3 est	2.024	242	163.260

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TABLE 34-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate ^b	Cases ^c	Rate ^b
Rutherford	8,706	0	0.000	186	213.646
Sampson	8,976	0	0.000	45	50.134
Scotland	5,572	1	1.795	160	287.150
Stanly	7,409	0	0.000	222	299.635
Stokes	4,995	0	0.000	41	82.082
Surry	9,684	10 est	10.326	166	171.417
Swain	1,855	0	0.000	12	64.690
Transylvania	3,706	1	2.698	42	113.330
Tyrrell	621	2 est	32.206	1	16.103
Union	11,898	4 est	3.362	315	264.750
Vance	6,193	1	1.615	144	232.521
Wake	44,592	1	0.224	1,124	252.063
Warren	3,169	0	0.000	0	0.000
Washington	2,866	0	0.000	14	48.849
Watauga	3,873	0	0.000	26	67.131
Wayne	17,164	2	1.165	240	139.828
Wilkes	9,667	3 est	3.103	118	122.065
Wilson	11,120	3	2.698	188	169.065
Yadkin	4,391	0	0.000	55	125.256
Yancey	2,487	1	4.021	4	16.084
Total	965,843	183 est	1.895	17,624	182.473

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 age eight to 17 years old (1978).

c. Arrest data provided by the Police Information Network of the North Carolina Department of Justice. State sources indicated that there is a one-to-one correspondence between arrests and court filings.

Table 34-2 reflects the relationship between the state and counties selected for Phase II investigation about judicial transfers. Ten counties qualified for Phase II investigation due to population size and 12 due to number

transferred. (Five counties met both criteria.) The total of 17 Phase II counties in North Carolina represented 45 percent of the total state population and 64 percent of all judicial transfers in 1978.

Data on 16 and 17 year old youth routinely tried in adult courts due to the maximum age of juvenile jurisdiction were available for all 100 counties. However, race data as well as dispositional, sentence, and sentence duration data were not available.

TABLE 34-2. NORTH CAROLINA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	965,843	100	183
Selected for Phase II Investigation	431,564	17	117
Percentage of State Selected for Phase II Investigation	45%	17%	64%

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.

Judicial Waiver

The following section of the profile presents information on youth judicially transferred from juvenile to adult courts in North Carolina in 1978. A breakdown of youth judicially transferred in Phase II counties by age, sex, and race is displayed in Table 34-3. All but one of the 117 judicial transfers were youth 15 years old or younger. The single 17 year old was probably transferred for an offense committed prior to reaching legal adulthood. Among cases, where sex was known, all but one of the individuals transferred in Phase II counties were male. Where race was reported, 44 youth were white and 33 were from minority groups. The race of 40 youths was not reported.

TABLE 34-3. NORTH CAROLINA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II
COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Sex			Race		
		14	15	16+	Un- known	Male	Female	Un- known	White	Minority	Un- known
Buncombe	4	0	4 est	0	0	*	*	4	*	*	4
Burke	7	4 est	3 est	0	0	7	0	0	7 est	0 est	0
Craven	5	3 est	2 est	0	0	5	0	0	1 est	4 est	0
Cumberland	0	0	0	0	0	0	0	0	0	0	0
Davidson	6	1 est	5 est	0	0	6	0	0	4 est	2 est	0
Durham	12	0	12	0	0	12	0	0	4	8	0
Forsyth	7	2	5	0	0	7	0	0	3	4	0
Gaston	3	*	*	*	3	3	0	0	*	*	3
Guilford	5	3	2	0	0	4	1	0	*	*	5
Mecklenburg	28	6	22	0	0	28	0	0	*	*	28
Onslow	0	0	0	0	0	0	0	0	0	0	0
Pasquotank	5	1 est	4 est	0	0	5	0	0	1 est	4 est	0
Randolph	6	1 est	5 est	0	0	6 est	0	0	4 est	2 est	0
Richmond	10	1 est	9 est	0	0	10 est	0	0	6 est	4 est	0
Rockingham	8	0 est	8 est	0	0	8 est	0	0	5 est	3 est	0
Surry	10	3 est	7 est	0	0	10 est	0	0	8 est	2 est	0
Wake	1	0	0	1	0	1	0	0	1	0	0
State Phase II Total	117	25	88	1	3	112	1	4	44	33	40

* denotes Not Available.

Table 34-4 is a display of charges for juveniles judicially transferred. Property offenses (burglary, larceny, auto theft, and trespassing) make up the largest category of known offenses with 81 percent. Personal offenses, which includes murder, manslaughter, rape, robbery, aggravated assault, and other personal offenses, represented 19 percent of the total charges. Examples of "other personal" offenses are sexual assault, other than rape and sodomy, arson, and weapons violations.

TABLE 34-4. NORTH CAROLINA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

COUNTIES (BY COUNTY AND BY TYPE OF OFFENSE)												
County	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	Un- known
Buncombe	4	2	0	0	0	1	0	1	0	0	0	0
Burke	7	0	0	0	0	0	1 est	0	6 est	0	0	0
Craven	5	0	0	0	0	0	0	0	5 est	0	0	0
Davidson	6	0	1 est	0	0	0	0	0	5 est	0	0	0
Durham	12	0	2	1	0	1	2	0	6	0	0	0
Forsyth	7	0	1	1	0	0	2	1	2	0	0	0
Gaston	3	1	*	*	*	*	*	*	*	*	*	2
Guilford	5	0	0	1	0	0	0	3	1	0	0	0
Mecklenburg	28	0	0	2	0	0	0	7 est	19 est	0	0	0
Pasquotank	5	0	0	0	0	0	0	0	5	0	0	0
Randolph	6	2	0	0	0	0	0	0	4	0	0	0
Richmond	10	0	0	0	0	0	0	0	10 est	0	0	0
Rockingham	8	0	0	0	0	0	0	2 est	6 est	0	0	0
Surry	10	0	0	0	0	0	0	0	10 est	0	0	0
Wake	1	0	0	1	0	0	0	0	0	0	0	0
State Phase II Total	117	5	4	6	0	2	5	14	79	0	0	2

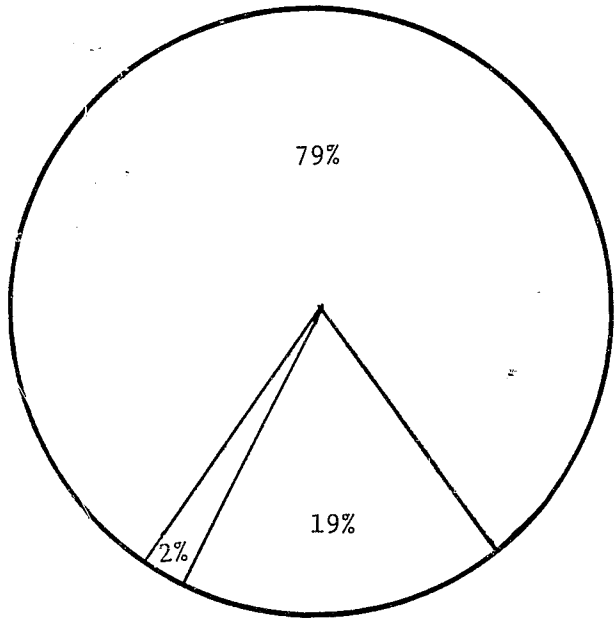
* denotes Not Available.

a. Only most serious offense per individual listed.

Figure 34-1 provides a graphic illustration of charges against youth judicially transferred in Phase II counties.

It indicates that the large majority, 79 percent, of these youth were transferred for property offenses. Less than one-fifth, or 19 percent, were transferred for offenses against persons. Public order or other general offenses did not result in judicial transfers in 1978 among known violations. Only two percent of the violations were not determined.

FIGURE 34-1. NORTH CAROLINA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	19%
Property	72%
Public Order	0%
Other General	0%
Unknown	2%

N= 117

a. Violent offenses (murder, manslaughter, rape, robbery and aggravated assault) represent 15 percent of all offenses in the Phase II counties.

Judgments for the 117 youth judicially transferred in Phase II counties are reflected in Table 34-5. Among the 84 known judgments 33 youth (39 percent) were found guilty, and 48 youth (57 percent) were convicted as youthful offenders. Three youth were referred back to juvenile court. There were no dismissals or findings of not guilty.

TABLE 34-5. NORTH CAROLINA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

County	Total Waivers	Judgments				Guilty	Other	Un- known
		Not Guilty	Dis- missed	Referred to Juve- nile Court	Youthful Offender Judgments			
Buncombe	4	*	*	*	*	*	*	4
Burke	7	0	0	0	0	7	0	0
Craven	5	0	0	0	2 est	3 est	0	0
Davidson	6	0	0	1 est	5 est	0	0	0
Durham	12	0	0	0	0	12	0	0
Forsyth	7	0	0	0	0	7	0	0
Gatson	3	*	*	2	*	*	*	1
Guilford	5	0	0	0	2	3	0	0
Mecklenburg	28	*	*	*	*	*	*	28
Pasquotank	5	0	0	0	5 est	0	0	0
Randolph	6	0	0	0	6	0	0	0
Richmond	10	0	0	0	10 est	0	0	0
Rockingham	8	0	0	0	8 est	0	0	0
Surry	10	0	0	0	10 est	0	0	0
Wake	1	0	0	0	0	1	0	0
State Phase II Total	117	0	0	3	48	33	0	33

* denotes Not Available.

Sentences for juveniles found guilty as adults or convicted as youthful offenders are reflected in Table 34-6. Sentences were not determined for nine of the 81 youth. However, where sentences were known, 34 (49 percent) of these youth were sentenced to a period of probation supervision, and 37 (51 percent) of them were sentenced to incarceration in state adult corrections facilities.

TABLE 34-6. NORTH CAROLINA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Convictions	Fined	Probation	Jail	Sentence Types			Other	Unknown
					State Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities			
Burke	7	0	7 est	0	0	0		0	0
Craven	5	0	3 est	0	2 est	0		0	0
Davidson	5	0	0	0	5 est	0		0	0
Durham	12	*	6	*	4	*		*	2
Forsyth	7	*	*	*	*	*		*	7
Guilford	5	0	0	0	5	0		0	0
Pasquotank	5	0	5 est	0	0	0		0	0
Randolph	6	0	0	0	6	0		0	0
Richmond	10	0	2 est	0	8 est	0		0	0
Rockingham	8	0	5 est	0	3 est	0		0	0
Surry	10	0	7 est	0	3 est	0		0	0
Wake	1	0	0	0	1	0		0	0
State Phase II Total	81	0	35	0	37	0		0	9

* denotes Not Available.

Sentence durations for the 37 incarcerated youth are provided in Table 34-7. Twenty-three youth, or 66 percent of total incarcerations (where sentence lengths were known), were sentenced to maximum terms of three years or less. Ten youth received maximum sentences of more than three years--two youth sentenced to maximum terms over ten years. Two youth received indeterminate sentences. Sentence durations were unavailable for two youth.

TABLE 34-7. NORTH CAROLINA: LENGTH OF CONFINEMENTS REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums							
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeter- minate	Life	Death
Craven	2	*	*	*	*	*	*	*	*
Davidson	5	0	5 est	0	0	0	0	0	0
Durham	4	0	0	2	2	0	0	0	0
Guilford	5	0	0	3	0	0	2	0	0
Randolph	6	0	4	0	0	2	2	0	0
Richmond	8	0	8 est	0	0	0	0	0	0
Rockingham	3	0	3 est	0	0	0	0	0	0
Surry	3	0	3 est	0	0	0	0	0	0
Wake	1	0	0	1	0	0	0	0	0
State Phase II Total	37	0	23	6	2	2	2	0	2

* denotes Not Available.

Lower Age of Criminal Jurisdiction

This section of the profile presents demographic and offense information on youth ages 16 and 17 who were arrested in each of the 100 counties in North Carolina in 1978 due to a lower age of criminal jurisdiction.

Table 34-8 provides descriptive information on the age and sex of youth 16 and 17 years old arrested and automatically subject to adult court jurisdiction by virtue of their age. Sixteen-year-olds represented 45 percent (7,948) and 17-year-olds represented 55 percent (9,676) of the totals. Eighty-three percent were males (14,572) and 17 percent (3,052) were females. Race data were unavailable.

TABLE 34-8. NORTH CAROLINA: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY AGE, AND SEX) IN 1978

County	Total Arrests	Age		Sex	
		16	17	Male	Female
Alamance	253	126	127	223	30
Alexander	20	4	16	19	1
Alleghany	6	2	4	3	3
Anson	94	30	64	85	9
Ashe	26	16	10	22	4
Avery	40	11	29	40	0
Beaufort	37	13	24	34	3
Bertie	21	4	17	17	4
Bladen	34	13	21	29	5
Brunswick	93	26	67	85	8
Buncombe	743	323	420	633	110
Burke	105	56	49	76	29
Cabarrus	415	167	248	375	40
Caldwell	284	128	156	240	44
Camden	0	0	0	0	0
Carteret	152	69	83	129	23
Caswell	0	0	0	0	0
Catawba	329	154	175	261	68
Chatham	17	13	4	13	4
Cherokee	12	5	7	11	1

TABLE 34-8. (Continued)

County	Total Arrests	Age		Sex	
		16	17	Male	Female
Chowan	34	19	15	27	7
Clay	2	0	2	2	0
Cleveland	253	115	138	219	34
Columbus	174	78	96	130	44
Craven	247	136	111	214	33
Cumberland	671	305	366	541	130
Currituck	32	3	29	30	2
Dare	29	10	19	26	3
Davidson	192	88	104	150	42
Davie	37	19	18	29	8
Duplin	103	47	56	94	9
Durham	604	297	307	491	113
Edgecombe	375	165	210	281	94
Forsyth	571	195	376	445	126
Franklin	34	20	14	34	0
Gaston	546	258	288	452	94
Gates	6	5	1	6	0
Graham	13	4	9	12	1
Granville	75	34	41	66	9
Greene	12	5	7	11	1
Guilford	1,840	848	992	1,488	352
Halifax	113	41	72	93	20
Harnett	41	21	20	39	2
Haywood	144	85	59	126	18
Henderson	144	66	78	119	25
Hertford	48	16	32	40	8
Hoke	82	41	41	80	2
Hyde	3	0	3	3	0
Iredell	298	157	141	245	53
Jackson	5	4	1	5	0
Johnston	107	46	61	90	17
Jones	13	4	9	12	1
Lee	185	96	89	154	31
Lenoir	43	21	22	40	3
Lincoln	111	56	55	98	13

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TABLE 34-8. (Continued)

County	Total Arrests	Age		Sex	
		16	17	Male	Female
McDowell	46	28	18	37	9
Macon	80	31	49	62	18
Madison	4	1	3	4	0
Martin	51	17	34	42	9
Mecklenburg	1,610	772	838	1,315	295
Mitchell	5	0	5	4	1
Montgomery	66	36	30	53	13
Moore	85	36	49	75	10
Nash	53	19	34	50	3
New Hanover	538	255	283	440	98
Northhampton	30	17	13	22	8
Onslow	258	79	179	190	68
Orange	169	84	85	150	19
Pamlico	44	16	28	43	1
Pasquotank	124	47	77	107	17
Pender	35	12	23	29	6
Perquimans	13	9	4	13	0
Person	36	22	14	29	7
Pitt	316	120	196	261	55
Polk	23	9	14	16	7
Randolph	139	46	93	106	33
Richmond	106	48	58	88	18
Robeson	378	152	226	312	66
Rockingham	202	98	104	160	42
Rowan	242	110	132	195	47
Rutherford	186	68	118	151	35
Sampson	45	18	27	41	4
Scotland	160	80	80	129	31
Stanly	222	105	117	195	27
Stokes	41	13	28	33	8
Surry	166	73	93	139	27
Swain	12	6	6	9	3
Transylvania	42	17	25	37	5
Tyrrell	1	0	1	1	0
Union	315	186	129	287	28

NC-17

TABLE 34-8. (Continued)

County	Total Arrests	Age		Sex	
		16	17	Male	Female
Vance	144	65	79	116	28
Wake	1,124	497	627	891	233
Warren	0	0	0	0	0
Washington	14	7	7	14	0
Watauga	26	4	22	26	0
Wayne	240	106	134	214	26
Wilkes	118	61	57	96	22
Wilson	188	86	102	148	40
Yadkin	55	27	28	51	4
Yancey	4	0	4	4	0
State Phase II Total	17,624	7,948	9,676	14,572	3,052

A display of charges by category is shown in Table 34-9. The "other property" category, which included larceny, auto theft, and trespassing, was the largest with 28 percent (4,930), followed closely by public order offenses, which included drug and liquor offenses with 27 percent (4,813). Personal offenses did not figure prominently in arrests of these youth in 1978 when compared to the large number of arrests reported for "other property" and public order offenses. The offenses included in the "other general" category are specific to North Carolina and may vary slightly from the offenses included in this category in other states and in the appendix.

TABLE 34-9. NORTH CAROLINA: YOUTH ARRESTS AS ADULTS DUE TO
AGE OF JURISDICTION (BY COUNTY AND BY TYPES OF
OFFENSES) IN 1978

County	Total Arrests	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 ^b
Alamance	253	2	2	0	13	10	9	33	48	114	22
Alexander	20	1	0	0	0	0	3	4	0	12	0
Alleghany	6	0	0	0	0	0	0	0	4	2	0
Anson	94	0	0	1	2	8	2	21	29	15	16
Ashe	26	0	0	2	1	0	1	5	6	0	11
NC-19 Avery	40	1	0	0	0	1	0	8	11	11	8
Beaufort	37	0	0	1	5	2	0	5	18	6	0
Bertie	21	0	0	0	3	2	0	5	6	4	1
Bladen	34	0	0	0	1	5	1	3	7	13	4
Brunswick	93	0	0	0	2	11	1	19	23	13	24
Buncombe	743	2	2	2	38	34	3	115	203	181	163
Burke	105	0	0	0	5	3	0	25	22	18	32
Cabarrus	415	2	2	1	21	5	15	29	101	131	108
Caldwell	284	0	1	0	16	16	4	57	61	73	56
Carteret	152	0	0	0	3	3	7	8	25	93	13
Catawba	329	1	0	2	12	8	7	33	82	95	89
Chatham	17	0	0	0	0	2	0	2	4	3	6
Cherokee	12	0	0	0	0	0	1	1	6	4	0
Chowan	34	0	0	1	6	2	1	5	8	3	8
Clay	2	0	0	0	0	1	0	0	0	1	0

TABLE 34-9. (Continued)

County	Total Arrests	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 ^b
Cleveland	253	0	0	0	4	22	3	32	56	69	67
Columbus	174	0	0	3	11	2	3	22	62	22	49
Craven	247	0	3	5	8	5	8	30	95	66	27
Cumberland	671	1	2	10	19	45	33	132	200	180	49
Currituck	32	0	0	0	0	6	0	13	4	0	9
Dare	29	0	0	1	0	0	0	1	7	12	8
Davidson	192	0	0	2	27	3	2	19	45	30	64
Davie	37	0	0	0	5	0	0	12	4	7	9
Duplin	103	2	0	1	7	4	2	25	19	29	14
Durham	604	3	1	13	19	16	14	77	183	64	214
Edgecombe	375	2	5	3	16	3	7	57	163	93	26
Forsyth	571	1	1	8	7	57	9	67	196	106	119
Franklin	34	0	1	0	0	5	2	12	5	5	4
Gaston	546	0	0	15	23	24	17	44	99	259	65
Gates	6	0	0	0	0	2	0	3	1	0	0
Graham	13	0	0	0	0	0	0	5	3	4	1
Granville	75	0	0	0	8	2	0	13	18	23	11
Greene	12	0	0	0	0	0	0	3	5	0	4
Guilford	1,840	0	7	14	122	33	18	231	532	487	396
Halifax	113	0	0	2	3	5	0	22	49	15	17

NC-20

TABLE 34-9. (Continued)

County	Total Arrests	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 ^b
Harnett	41	0	1	2	1	1	0	23	8	2	3
Haywood	144	0	0	2	3	7	2	24	34	53	19
Henderson	144	0	1	2	9	9	0	29	42	43	9
Hertford	48	0	0	0	1	1	0	9	17	17	3
Hoke	82	0	2	1	5	1	1	19	25	15	13
Hyde	3	0	0	0	0	0	0	0	0	1	2
Iredell	298	0	0	3	18	6	3	63	95	49	61
Jackson	5	0	0	0	0	1	0	3	0	1	0
Johnston	107	0	0	2	2	11	4	9	25	38	17
Jones	13	0	0	2	0	0	0	6	1	3	1
Lee	185	0	0	0	19	1	1	54	35	34	41
Lenoir	43	1	0	0	2	1	2	5	8	6	18
Lincoln	111	0	0	1	4	5	1	12	21	42	25
McDowell	46	0	0	0	0	1	0	3	19	16	7
Macon	80	0	1	1	0	0	0	4	9	55	10
Madison	4	0	0	0	0	0	0	0	0	3	1
Martin	51	0	0	0	2	1	1	5	8	27	7
Mecklenburg	1,610	1	8	43	129	33	29	253	488	440	186
Mitchell	5	0	0	0	1	0	0	1	3	0	0
Montgomery	66	0	0	0	0	7	0	17	27	8	7

TABLE 34-9. (Continued)

County	Total Arrests	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 ^b
Moore	85	0	4	1	8	0	2	14	15	29	12
Nash	53	0	0	0	1	1	0	23	15	6	7
New Hanover	538	1	3	2	23	11	5	89	179	142	83
Northhampton	30	0	0	1	7	3	0	8	3	3	5
Onslow	258	0	0	2	4	5	6	19	64	135	23
Orange	169	0	11	0	9	3	3	47	43	25	28
Pamlico	44	0	1	0	1	1	1	11	8	12	9
Pasquotank	124	0	0	0	6	2	1	4	66	27	18
Pender	35	0	0	0	2	4	0	6	6	11	6
Perquimans	13	0	0	0	0	0	0	4	0	2	7
Person	36	0	0	0	0	5	3	4	7	9	8
Pitt	316	0	3	3	22	6	5	33	111	79	54
Polk	23	1	0	0	0	0	0	1	1	12	8
Randolph	139	3	0	2	6	2	2	30	42	17	35
Richmond	106	0	0	0	4	1	0	23	36	13	29
Robeson	378	1	2	0	17	14	4	73	133	81	53
Rockingham	202	1	1	1	11	11	5	39	70	30	33
Rowan	242	0	0	5	25	11	2	31	81	55	32
Rutherford	186	0	0	1	3	10	3	13	49	61	46
Sampson	45	0	0	1	1	3	1	15	9	11	4

TABLE 34-9. (Continued)

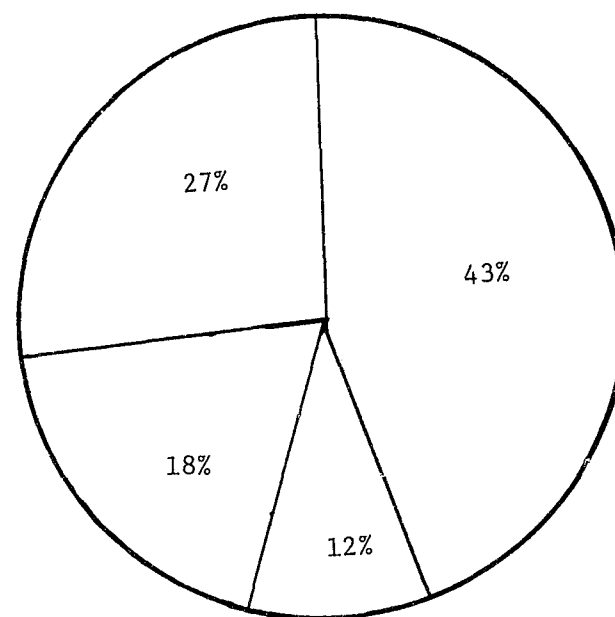
County	Total Arrests	Offenses ^a									
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty	Public Order	Other General ^b
Scotland	160	0	1	1	6	8	5	27	59	21	32
Stanly	222	0	0	0	15	13	3	42	49	71	29
Stokes	41	0	0	1	0	1	1	6	16	6	10
Surry	166	0	0	0	5	8	2	24	28	64	35
Swain	12	0	0	0	0	0	0	1	4	3	4
Transylvania	42	0	0	0	0	1	0	2	16	22	1
Tyrrell	1	0	0	0	0	0	0	0	0	1	0
Union	315	0	0	1	11	3	7	35	51	157	50
Vance	144	0	0	2	16	3	1	16	38	9	59
Wake	1,124	1	3	6	82	25	18	97	229	429	234
Washington	14	0	0	0	1	0	0	5	5	1	2
Watauga	26	0	0	0	2	0	1	6	5	11	1
Wayne	240	1	1	3	18	8	6	30	84	48	41
Wilkes	118	0	0	0	3	5	0	11	45	36	18
Wilson	188	2	1	5	12	4	1	39	63	42	19
Yadkin	55	0	0	0	1	2	0	5	24	16	7
Yancey	4	0	0	0	0	0	0	2	1	1	0
State Phase II Total	17,624	31	71	184	925	607	305	2,572	4,930	4,813	3,186

a. Only most serious offense per individual listed.

b. The offenses included are specific to North Carolina and may vary slightly from the offenses included in this category in other states.

Figure 34-2 graphically illustrates the contribution that each major offense category makes to the 17,624 total arrests. Property offenses contribute the largest proportion to the total, with 43 percent. Public order offenses account for 27 percent of all arrests and other general violations contribute 18 percent. Personal offenses account for the fewest arrests of youth 16 and 17 years old, with only 12 percent of all violations.

FIGURE 34-2. NORTH CAROLINA: PERCENTAGE OF YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	12%
Property	43%
Public Order	27%
Other General	18%

N= 17,624

a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent five percent of all arrests of 16 and 17 year olds in the state in 1978.

A more complete breakdown of offenses is shown in Table 34-10. Larceny was the largest single category, representing 21 percent (3,654) of the totals. Examples of "other property" offenses (four percent) were fraud, embezzlement, receiving or possessing stolen property, and forgery. "Other public order" offenses represented six percent (1,122) of the total and included charges such as disorderly conduct, gambling, and malicious destruction. The "other general" category contained miscellaneous offenses, such as bigamy, blackmail, contempt of court, parole and probation violations, violations of city ordinances and other offenses. These offenses represented 17 percent (2,922) of the totals, were specific to North Carolina and varied slightly from the offenses included in this category in other states.

Violent offenses represented only five percent, 893, of all offenses. The majority were aggravated assaults (68 percent). Offenses included in the "other personal" offense category were weapons, sex offenses, other than rape and sodomy, and intimidation.

Property offenses (burglary, larceny, auto theft, trespassing, and other property offenses), was the largest category with 43 percent. Public order was next with 27 percent. Personal offenses, which included violent offenses, assault and battery, and arson, represented 12 percent. Status offenses and offenses against the family were included in the general offenses category which represented 18 percent of the state total.

TABLE 34-10. NORTH CAROLINA: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
PERSONAL OFFENSES			
Violent Offenses		893	2,123
Murder	29		
Manslaughter	2		
Rape	71		
Robbery	184		
Aggravated Assault	607		
Arson			
Kidnapping		50	
Assault/Battery		—	
Other Personal		925	
		255	
PROPERTY OFFENSES			
Burglary			7,502
Larceny		2,572	
Auto Theft		3,654	
Trespassing		497	
Other Property		—	
		779	
PUBLIC ORDER OFFENSES			
Drug Violations			4,813
Liquor Violations		1,447	
Other Public Order		2,244	
		1,122	
OTHER GENERAL OFFENSES			
Status Offensesa			3,186
Offenses Against the Family		158	
Other Generalb		106	
		2,922	
UNKNOWN			0
TOTAL OFFENSES			17,624

a. According to the Department of Justice; Police Information Network. These arrests may have been made for status offenses occurring before these youth attained majority or for offenses so designated which do apply to adults.

b. The offenses included in this category are specific to North Carolina and vary from the offenses included in this category in other states.

Table 34-11 summarizes some of the information in foregoing tables related to judicial transfers and age of jurisdiction arrests. The table indicates that for judicial transfers, 117 of the total of 183 transfers occurring in 1978 were selected for Phase II investigation. Eighty-one of these youth were known to have been convicted. Judgments were not determined for 33 youth. Thirty-seven of the convicted youth were sentenced to incarceration. Nine sentence types were not reported.

In terms of age of jurisdiction cases, all 17,624 youth were selected for Phase II investigation. Age, sex, and offense data were reported, but judgments, sentence types, and sentence lengths were not available for these youth.

TABLE 34-11. NORTH CAROLINA: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver	Age of Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 34-1)	183	17,624
Total Referrals Selected for Phase II (Tables 34-3 and 34-8)	117	17,624
Total Referrals Resulting in Convictions (Table 34-6)	81	*
Total Convictions Resulting in Sentences of Confinement (Table 34-7)	37	*

In summary, 99 percent of the youth judicially transferred in North Carolina Phase II counties in 1978 were males. All but one were 14 or 15 years old. Fifty-seven percent were white youth. Most charges (84 percent) were for property offenses in Phase II counties. Of youth convicted, 49 percent received probation and 51 percent were sent to state adult corrections. Sixty-six percent of incarcerated youth received maximum terms of three years or less. Youth tried in adult courts due to age of jurisdiction were 16 or 17 years old and 83 percent were males. Property offenses represented the largest category of charges (43 percent). Judgment, sentences, and sentence duration data were unavailable.

FOOTNOTES

1. North Carolina General Statutes, Article 23, Section 7A-278.
2. North Carolina General Statutes, Article 23, Section 7A-278.
3. North Carolina General Statutes, Article 23, Section 7A-280.
4. North Carolina General Statutes, Article 23, Section 7A-610.
5. North Carolina General Statutes, Article 23, Sections 7A-609(a) and 7A-608.
6. State v. Johnson, 168 S.E.2d 709, 5 N.C. App. 469 (1969).
7. State v. Bridge, 199 S.E.2d 477, 19 N.C. App. 567 (1973), Matter of Bunn, 239 S.E.2d 483, 34 N.C. App. 614 (1977).
8. In re Smith, 210 S.E.2d 453, 24 N.C. App. 321 (1974), Previous North Carolina General Statute, Section 7A-280 replaced by North Carolina General Statutes, Section 7A-608, et seq.
9. Matter of Bunn, 239 S.E.2d 483, 34 N.C. App. 614 (1977).
10. North Carolina General Statutes, Article 3B, Section 148-49.10.
11. North Carolina General Statutes, Article 1 Section 134A-32.
12. North Carolina General Statutes, Article 1 Section 134A-27.

SOUTH CAROLINA PROFILE

ACKNOWLEDGMENTS

The Academy thanks the Criminal Docket Report staff in the office of the Attorney General for providing the data on youth under 18 years of age tried in adult courts, and Bill Hamm, Director, Statistical Analysis Center, Governor's office, Office of Criminal Justice Programs, for assisting us in obtaining that data. The Academy acknowledges its gratitude to Lt. Gerald Hamby, Law Enforcement Division, Highway and Public Transportation Department; Louis L. Rosen, Assistant Director, Office of the Court Administrator; and Richard E. McLawhorn, Legislative Council, South Carolina General Assembly, for their assistance in data collection and review of the South Carolina profile. Finally, sincere appreciation is extended to the many other state and local officials who provided us with the necessary data.

METHODOLOGY

Information was collected from several sources in South Carolina about youth appearing in adult court. A survey of juvenile courts in all 46 counties documented the number of youth judicially waived to adult court. In addition, the office of the Attorney General provided information based on indictments about the number, age, sex, race, offenses, and sentences of youth judicially waived. The survey results on the number of judicial waivers in 1978 are presented together with the lesser number of youth who were waived and subsequently indicted to give an indication about the ratio of total waivers to those likely to occur for more serious offenses. All judicial waiver data in the profile except the local survey results on the incidence of waiver are on the indicted waiver cases only.

Care must be taken when comparing youth indicted subsequent to waiver with total judicial waivers because they may not represent the same individuals. For example, there may be a minority of youth included in the indictment data who were waived prior to the reporting period for the study, and subsequently indicted by a grand jury during 1978. These individuals would not have been counted in the course of the local survey because their waiver to adult court occurred prior to 1978.

Information about youth subject to adult court jurisdiction because of the 17 year old age of jurisdiction of the juvenile courts also came from two sources. The state Office of Criminal Justice Programs provided information based on arrests about the number, race, sex, and offenses of youth automatically subject to adult court jurisdiction in 1978. The office of the Attorney General also provided indictment information on youths 17 years of age, including

incidence, race, sex, offense, and sentencing data. Information is presented from both sources for the number, race, sex, and offenses of youths 17 years of age subject to adult court jurisdiction, and sentencing information for these youth is based on indictments only.

As with the judicial waiver data, some caution must be taken in comparing arrest and indictment data for youth 17 years old. First, not all arrests result in court appearances. Second, indictments counted for these youth in 1978 may include a few cases who were judicially waived prior to age 17 while still subject to juvenile court jurisdiction and subsequently indicted after their seventeenth birthday.

Despite the fact that the exact relationships between indictment information, and survey and arrest data are indeterminate, inclusion of all of these data serves several useful purposes. Inclusion of the indictment data provides a unique description of youth in adult court for what are likely to have been more serious offenses. The additional information on waivers from the survey, and on 17 year old youth from arrest data expand upon the complete, yet circumscribed picture provided for indicted youth. Finally, the relation between data sources for the two transfer mechanisms gives an indication about the ratio between serious indictable offenses, and total cases subject to adult court jurisdiction.

Early contacts in the survey process, both at the state and local levels, indicated that information was unavailable or very difficult to retrieve on youth heard in adult court through concurrent jurisdiction over traffic offenses. Because of such difficulties, data on these offenses were not collected.

COURT ORGANIZATION

The highest court of general jurisdiction in South Carolina is the general session of the circuit court. The state is divided into 16 judicial circuits, with a circuit judge presiding in each county. County, civil, and criminal courts have varying jurisdiction, generally exercising authority over minor criminal cases, including felonies and misdemeanors. These 19 lesser courts have concurrent jurisdiction over certain offenses with the circuit courts. The state's 315 magistrate courts and the municipal courts both have jurisdiction over offenses punishable by fines not exceeding \$200 or 30-days of incarceration.

The 16 family courts (hereafter referred to as juvenile courts) have limited jurisdiction. They have original jurisdiction over juvenile cases and the courts provide family court services in each of the 46 counties. Circuit, magistrate, municipal, and family courts share concurrent jurisdiction over juveniles under 17 years of age charged with traffic violations.

In 1977 the General Assembly provided for a unified court system. Several changes were made in the court organization effective at varying times. A family court system went into effect July 1, 1977 (see above). County courts and other similar courts with lesser jurisdiction than the circuit court were phased out on July 1, 1979. The jurisdiction of these courts devolved upon the unified court system. The jurisdiction, duties and functions of magistrate and municipal courts were not affected by the unification.

An overview of South Carolina's courts by their jurisdictions over juveniles appears below.

SOUTH CAROLINA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic ^a
Family Courts	General Sessions of Circuit Courts	Circuit, Magistrate, Municipal Courts Family Courts

a. Juvenile traffic cases are sent to the appropriate adult court exercising jurisdiction over traffic offenses. Concurrent jurisdiction exists between these courts and family courts over juveniles under 17 charged with traffic violations.

TRANSFER PROCESS

The age of initial juvenile court jurisdiction extends to 17 years of age in South Carolina.¹ There are three basic mechanisms by which youth come under adult court jurisdiction.

Judicial Waiver

At the time of the study there were two judicial waiver provisions in South Carolina. A third was added in 1980 and is described at the end of this section as an up-date to provisions existing in 1978.

First, a youth 16 years of age charged with a misdemeanor or felony may be transferred to adult court after a hearing in juvenile court.² At the hearing, the family court judge determines whether retention of juvenile court jurisdiction would be contrary to the best interests of the youth or the public. Transfer to adult court proceeds upon such a finding. However, if family court jurisdiction is retained, the judge who presided over the transfer hearing may not preside over the family court adjudication.³ Any interested party may petition the family court for transfer to adult court. However, the petition is usually filed by the county attorney. The state code is silent on whether juveniles themselves may request transfer.⁴ The code is also silent on what factors are to be considered in making the transfer decision.

The second provision pertaining to judicial waiver provides that a petition may be filed requesting transfer to adult court of individuals under age 17 charged with murder or criminal sexual assault. The judge of the family court is authorized to initially rule on the request for transfer.⁵ Such a ruling, however, need not occur in the course of a formal judicial waiver hearing. If the family court judge denies the transfer request, the petitioner may appeal to the circuit court. The judge of the circuit court then has final authority to assert the jurisdiction of the circuit court or to relinquish jurisdiction to the family court. The state code is silent on what factors are to be considered in determining which court should assume jurisdiction.

In 1980 a third waiver provision was added to the South Carolina juvenile code. It states that a juvenile 14 or 15 years of age who has two prior and unrelated adjudications of assault, assault and battery with intent to kill, assault and battery of a high and aggravated nature, arson, housebreaking, burglary, kidnapping, attempted criminal sexual conduct, or robbery and is currently charged with a third or subsequent such offense, the court may, after full investigation and hearing, if it deems it contrary to the best interest of the child or of the public, transfer the juvenile for criminal proceedings to any court which would have trial jurisdiction for such offenses.⁶

Concurrent Jurisdiction

The second legal mechanism by which youth may come under adult court jurisdiction in South Carolina occurs in the concurrent jurisdiction for traffic offenses between family and adult courts. Circuit, magistrate, or municipal courts exercising jurisdiction over adult traffic offenses share that jurisdiction with family courts for juveniles under 17 years old charged with traffic violations.⁷

Lower Age of Criminal Jurisdiction

Finally, youth 17 years of age are routinely handled in South Carolina's adult courts.⁸ These persons are subject to the same court procedures and dispositional alternatives as persons 18 years old or older, and are discussed in a separate section of the data summary appearing later in this profile.

CASE LAW SUMMARY

A case law search back to 1950 revealed that four cases dealing with waiver or transfer issues have been decided by the South Carolina Supreme Court. In State v. Gorey, the supreme court held that the statutory provisions then in effect which conferred jurisdiction over individuals under 16 years of age charged with serious offenses upon the children's court did not abridge the exclusive jurisdiction of the court of general sessions over murder and manslaughter cases, regardless of the age of the accused.⁹ The court further held that there was no denial of due process when the court of general sessions assumed original jurisdiction over an individual under 16 charged with murder or manslaughter.

In 1975, the supreme court, in Shedden v. State, held that in a county where there was no family court, the court of general sessions had jurisdiction over a minor charged with a criminal offense.¹⁰ Further, the court stated that the minor's guilty plea constituted a waiver of the alleged jurisdictional defect which was not raised until after the plea was entered. Three years later, the supreme court, in State v. England, held that where family court assumed jurisdiction over an individual charged with an offense allegedly committed while he was 16 and did not relinquish jurisdiction even though the accused was 17 prior to the final disposition, the family court improperly convicted the individual under the youthful offender statute.¹¹ Rather, the court held, the accused should have been proceeded against pursuant to the statutory provisions dealing with children.

Finally, the South Carolina Supreme Court, in State v. Wright, held that the defendant had failed to demonstrate an abuse of discretion by the family court judge in focusing primarily on the seriousness of the offense charged as the basis for transferring the case to the court of general sessions.¹²

CORRECTIONS INFORMATION

Adult institutions housing offenders serving more than a three-month sentence or an indeterminate sentence under the Youthful Offender Act fall

within the jurisdiction of the Department of Corrections, under the Division of Regional Operations.¹³ Regionalized facilities report to the regional administrators who are responsible to the division director. Nonregionalized facilities are under the direct supervision of the division director. In addition to the regionalized and nonregionalized facilities of the Department of Corrections, because of overcrowded conditions, some state inmates are housed in designated county facilities, as provided for by legislation. County facilities are designated to house state inmates, in most cases, for a period of one year and may be renewed by mutual agreement of the Department of Corrections and county officials. A coordinator of designated facilities, within the Division of Regional Operations, is responsible for placing state inmates in county facilities.

Under some circumstances, youth age 17 through age 24 may be sentenced as youthful offenders. This may occur if such youth are convicted of a crime where the punishment may be at least one year, except for offenses in which maximum lawful penalties are death or life imprisonment. In convicting youth as youthful offenders, courts may:

- (1) Suspend the sentence and place the offender on probation.
- (2) Release the person to the custody of the division for diagnosis and evaluation.
- (3) Sentence the offender, if under 21, to an indefinite term of custody not to exceed six years for the purpose of treatment.
- (4) Sentence the offender under any other applicable penalty, if it is determined that he will not benefit from treatment.

Treatment may include minimum-security institutions, including training schools, hospitals, farms, forestry, and other camps, and vocational training facilities. As far as possible, those facilities will be used only for the treatment of committed youthful offenders segregated from other offenders. Youthful offenders are to be released conditionally under supervision on or before the expiration of four years from the date of conviction. They are to be released unconditionally six years from the date of conviction.

Juveniles 10 to 17 years old who are adjudicated delinquent and sentenced by a family court judge, or who are listed as status offenders (truancy and incorrigibility) can be committed to the Department of Youth Services, where they serve an indeterminate period.¹⁴ Normally, status offenders are deinstitutionalized within a ten-day period, by agreement between the family court judges and the Department of Juvenile Placement and Aftercare, after commitment to the Department of Youth Services. One of the Department of Youth Services facilities also serve youth under age 17 convicted in criminal courts and serving determinate sentences, in addition to older delinquents who have been adjudicated for a violent or serious offense or who have been violent within another institution. Because youth convicted as adults are not sent to an adult facility for periods exceeding 30 days until after their seventeenth birthday, they are placed in this facility until reaching age 17 and are

transferred to an adult facility at that point. They can only be released prior to age 17 by the adult parole board.

While a provision does exist for the administrative transfer of adjudicated delinquents, 17 to 21 years of age, from a juvenile to an adult facility, in practice, it was reported that these types of transfers rarely occur.¹⁵ Individuals requiring closer supervision or more secure circumstances than afforded by placement in regular settings of a juvenile facility may be sent to a maximum security section of one of those facilities.

STATE DATA SUMMARY

There are three basic legal mechanisms by which youth under 18 years of age may be prosecuted as adults in South Carolina. First, juveniles 17 years of age are beyond the jurisdiction of the family courts and are routinely tried as adults. Second, youth may be transferred to adult court if they are 16 years of age or older and charged with an offense which would be a felony or misdemeanor if committed by adults, or they may be transferred at any age if charged with murder or rape. Transfers must be preceded by judicial transfer hearings. Finally, youth under age 17 charged with a traffic offense may be tried in adult courts due to concurrent jurisdiction between adult courts and family courts over such offenses.

Table 41-1A reflects the number of youth judicially waived in South Carolina counties and the number of 17 year olds arrested and subject to adult court jurisdiction by virtue of their age. The local survey documented the judicial waiver of 60 youth. Spartanburg County was responsible for 38 percent of this total with 23 waivers. The remaining 37 waivers were distributed among seventeen counties with Greenville County having the most waivers with a total of eight.

The table also indicates that statewide, 5,428 17 year olds were arrested and subject to adult court jurisdiction. All counties reported some arrests and Horry County, not the largest in the state, reported the most arrests, and the highest rate, totaling 669 youth age 17. Anderson, Kershaw, Union and York Counties, relatively small counties, have the next highest rates of 17 year old arrests. Among counties reported in the table, there was a state rate of almost 102 arrests of 17 year olds per 10,000 juvenile population.

TABLE 41-1A. SOUTH CAROLINA: REFERRALS OF JUVENILES
TO ADULT COURTS IN 1978 (BY COUNTY, RATE
AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate ^b	Cases ^c	Rate ^b
Abbeville	3,748	*	*	22	58.698
Aiken	18,643	0	0.000	110	59.003
Allendale	2,030	2 est	9.852	13	64.039
Anderson	20,008	**	*	267	133.447
Bamberg	3,293	0	0.000	4	12.147
Barnwell	3,834	0	0.000	12	31.299
Beaufort	10,072	0	0.000	107	106.235
Berkeley	15,845	**	*	74	46.702
Calhoun	2,253	0	0.000	3	13.316
Charleston	47,503	3	0.632	606	127.570
Cherokee	7,494	2	2.669	82	109.421
Chester	5,646	0	0.000	60	106.269
Chesterfield	6,993	0	0.000	51	72.930
Clarendon	6,032	1	1.657	26	43.103
Colleton	5,849	0	0.000	35	59.839
Darlington	11,325	1 est	0.883	109	96.247
Dillon	6,658	1 est	1.501	45	67.588
Dorchester	10,360	2	1.931	43	41.506
Edgefield ^d	3,297	5	6.329	10	30.331
Fairfield	4,135	0	0.000	31	74.969
Florence	19,298	1	0.518	164	84.983
Georgetown	7,863	3 est	3.815	35	44.512
Greenville	47,195	8	1.695	521	110.393
Greenwood	9,631	2	2.077	122	126.674
Hampton	3,342	1	2.992	9	26.929
Horry	16,471	0 est	0.000	669	406.168
Jasper	2,683	0	0.000	6	22.363
Kershaw	7,005	0	0.000	96	137.045
Lancaster	8,785	0	0.000	78	88.788
Laurens	8,971	0	0.000	59	65.767

TABLE 41-1A. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate ^b	Cases ^c	Rate ^b
Lee	3,987	0	0.000	19	47.655
Lexington	22,445	0	0.000	168	74.849
McCormick ^d	1,684	--	--	17	100.950
Marion	6,425	0	0.000	37	57.588
Marlboro	6,212	1	1.610	60	96.587
Newberry	5,243	0	0.000	57	108.716
Oconee	7,925	0	0.000	63	79.495
Orangeburg	15,306	0	0.000	80	52.267
Pickens	11,152	0	0.000	107	95.947
Richland	39,436	2	0.507	495	125.519
Saluda	2,919	--	--	19	65.091
Spartanburg	34,983	23	6.575	360	102.907
Sumter	17,721	2	1.129	136	76.745
Union	5,632	0	0.000	85	150.923
Williamsburg	7,890	0	0.000	12	15.209
York	17,353	0	0.000	244	140.609
Total	532,575	60	1.127	5,428	101.919

-- 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 to 17 years old (1978).

c. Arrest data provided by the Office of Criminal Justice Programs which did not estimate the number of arrests which resulted in court referrals.

d. Regional data for Edgefield, McCormick and Saluda Counties appears under Edgefield County.

Table 41-1B provides a description of judicial waivers and youth, 17 years old excluded from juvenile court jurisdiction because of age, as was presented

in the previous table, except that this information is based on grand jury indictments. State sources reported a total of 17 judicial waivers resulting in indictment in 1978. These cases were distributed in very small numbers among 11 counties. Greenwood County, with three youth reflected in the table, had the highest number of youth indicted subsequent to judicial waiver. These 17 indicted youth constitute 28 percent of the number of youth found to have been waived in the local survey.

The incidence of indictment for 17 year old adults is also much lower than in the previous table of arrests. The largest number of indictments under this legal mechanism was 65 youth in Charleston County. On the average 16 youth, 17 years of age, were indicted in South Carolina counties in 1978, and indictments shown constitute 14 percent of the arrests shown in the foregoing table.

TABLE 41-1B. SOUTH CAROLINA: REFERRALS OF JUVENILES TO ADULT COURTS RESULTING IN INDICTMENT IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver ^b		Age of Jurisdiction ^c	
		Cases	Rate ^d	Cases	Rate ^d
Abbeville	3,748	0	0.000	10	26.681
Aiken	18,643	2	1.073	16	8.582
Allendale	2,030	0	0.000	1	4.926
Anderson	20,008	1	0.500	39	19.492
Bamberg	3,293	0	0.000	3	9.110
Barnwell	3,834	0	0.000	3	7.825
Beaufort	10,072	0	0.000	32	31.771
Berkeley	15,845	0	0.000	9	5.680
Calhoun	2,253	0	0.000	3	13.316
Charleston	47,503	2	0.421	65	13.683
Cherokee	7,494	0	0.000	24	32.026
Chester	5,646	0	0.000	19	33.652
Chesterfield	6,993	0	0.000	3	4.290
Clarendon	6,032	0	0.000	7	11.605
Colleton	5,849	0	0.000	8	13.678
Darlington	11,325	0	0.000	19	16.777
Dillon	6,658	0	0.000	3	4.506
Dorchester	10,360	1	0.965	10	9.653
Edgefield	3,297	1	3.033	11	33.364
Fairfield	4,135	0	0.000	5	12.092

SC-10

TABLE 41-1B. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver ^b		Age of Jurisdiction ^c	
		Cases	Rate ^d	Cases	Rate ^d
Florence	19,298	2	1.036	15	7.773
Georgetown	7,863	0	0.000	12	15.261
Greenville	47,195	2	0.424	40	8.475
Greenwood	9,631	3	3.115	45	46.724
Hampton	3,342	0	0.000	5	14.961
Horry	16,471	1	0.607	34	20.642
Jasper	2,683	0	0.000	1	3.727
Kershaw	7,005	0	0.000	17	24.268
Lancaster	8,785	0	0.000	16	18.213
Laurens	8,971	0	0.000	12	13.376
Lee	3,987	0	0.000	0	0.000
Lexington	22,445	0	0.000	21	9.356
McCormick	1,684	0	0.000	3	17.815
Marion	6,425	0	0.000	11	17.121
Marlboro	6,212	0	0.000	5	8.049
Newberry	5,243	0	0.000	10	19.073
Oconee	7,925	1	1.262	11	13.880
Orangeburg	15,306	0	0.000	19	12.413
Pickens	11,152	0	0.000	34	30.488
Richland	39,436	0	0.000	14	3.550
Saluda	2,919	0	0.000	3	10.277
Spartanburg	34,983	0	0.000	54	15.436
Sumter	17,721	1	0.564	27	15.236
Union	5,632	0	0.000	8	14.205
Williamsburg	7,890	0	0.000	1	1.267

SC-11

TABLE 41-1B. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver ^b		Age of Jurisdiction ^c	
		Cases	Rate ^d	Cases	Rate ^d
York	17,353	0	0.000	33	19.017
Total	532,575	17	0.319	741	13.914

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. May include indictments for waivers occurring prior to 1978.

c. May include indictments resulting from arrests prior to 1978 and 17 year olds waived to adult court as juveniles and later indicted as adults.

d. Rate per 10,000 juveniles eight to 17 years old (1978).

The tables remaining in this profile present Phase II information on youth indicted by the grand jury after judicial waiver and 17 year olds routinely tried in adult courts because of the age of jurisdiction of the juvenile court.

Table 41-2 indicates that Phase II information was collected on all judicial waivers resulting in indictments in each of South Carolina's 46 counties.

Phase II data was similarly collected for all 17 year olds indicted in each county in the state. In addition, Phase II demographic and offense information was received from state sources for all 17 year old youth arrested during 1978.

SC-12

TABLE 41-2. SOUTH CAROLINA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver ^b
State	532,575	46	17
Selected for Phase II Investigation	532,575	46	17
Percentage of State Selected for Phase II Investigation	100%	100%	100%

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. Based on judicial waivers resulting in indictments in 1978, and may include indicted youth judicially waived prior to 1978.

Judicial Waiver

This section will present specific findings on judicial transfers, in terms of demographics of youth transferred, offenses, judgments, and sentencing information. It is important to stress that youth reflected in the following judicial transfer tables are those first described in Table 41-1B and they include only transferred youth who were indicted in 1978.

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Table 41-3 provides a description of the age, sex, and race of youth judicially transferred and subsequently indicted in 1978. All of these youth were under 17 years old because of the maximum age of juvenile court jurisdiction. Five youth, or 29 percent of the total of 17 youth, were ages 15 or younger. All but one of these 17 youth were male and there was an almost even split between those who were white and those who were minority youth.

TABLE 41-3. SOUTH CAROLINA: JUDICIAL WAIVERS TO ADULT COURTS RESULTING IN INDICTMENT (BY COUNTY AND BY AGE, SEX, AND RACE) in 1978a

County	Total Waivers	Age		Sex		Race	
		0-15	16	Male	Female	White	Minority
Abbeville	0	0	0	0	0	0	0
Aiken	2	1	1	2	0	1	1
Allendale	0	0	0	0	0	0	0
Anderson	1	1	0	1	0	0	1
Bamberg	0	0	0	0	0	0	0
Barnwell	0	0	0	0	0	0	0
Beaufort	0	0	0	0	0	0	0
Berkeley	0	0	0	0	0	0	0
Calhoun	0	0	0	0	0	0	0
Charleston	2	0	2	2	0	1	1
Cherokee	0	0	0	0	0	0	0
Chester	0	0	0	0	0	0	0
Chesterfield	0	0	0	0	0	0	0
Clarendon	0	0	0	0	0	0	0
Colleton	0	0	0	0	0	0	0
Darlington	0	0	0	0	0	0	0
Dillon	0	0	0	0	0	0	0
Dorchester	1	0	1	1	0	1	0
Edgefield	1	0	1	1	0	0	1
Fairfield	0	0	0	0	0	0	0
Florence	2	0	2	2	0	1	1
Georgetown	0	0	0	0	0	0	0
Greenville	2	0	2	2	0	2	0
Greenwood	3	1	2	2	1	0	3
Hampton	0	0	0	0	0	0	0
Horry	1	0	1	1	0	1	0
Jasper	0	0	0	0	0	0	0
Kershaw	0	0	0	0	0	0	0

TABLE 41-3. (Continued)

County	Total Waivers	Age		Sex		Race	
		0-15	16	Male	Female	White	Minority
Lancaster	0	0	0	0	0	0	0
Laurens	0	0	0	0	0	0	0
Lee	0	0	0	0	0	0	0
Lexington	0	0	0	0	0	0	0
McCormick	0	0	0	0	0	0	0
Marion	0	0	0	0	0	0	0
Marlboro	0	0	0	0	0	0	0
Newberry	0	0	0	0	0	0	0
Oconee	1	1	0	1	0	1	0
Orangeburg	0	0	0	0	0	0	0
Pickens	0	0	0	0	0	0	0
Richland	0	0	0	0	0	0	0
Saluda	0	0	0	0	0	0	0
Spartanburg	0	0	0	0	0	0	0
Sumter	1	1	0	1	0	1	0
Union	0	0	0	0	0	0	0
Williamsburg	0	0	0	0	0	0	0
York	0	0	0	0	0	0	0
Total	17	5	12	16	1	9	8

a. May include indictments for waivers occurring prior to 1978.

The offenses of youth indicted after judicial waiver appear in Table 41-4. There were seven property crimes, including burglary and larceny and nine offenses against persons, involving murder, manslaughter, rape, robbery, aggravated assault, and sexual offenses ("other" personal). The largest single category of offense was larceny, shown in the table under "other property" offenses. The single charge listed under the "other general" category was reported to have been a traffic violation.

Figure 41-1 indicates the relative percentages that major offense categories contributed to the total of 17 indicted judicial waivers. The figure indicates that 53 percent of these youth were waived and indicted for personal offenses, and 41 percent for property offenses.

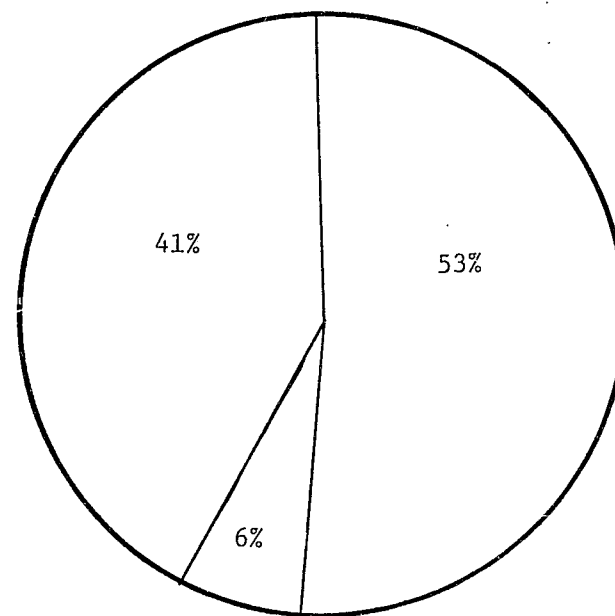
TABLE 41-4. SOUTH CAROLINA: JUDICIAL WAIVERS TO ADULT COURTS
RESULTING IN INDICTMENT (BY COUNTY AND BY TYPES
OF OFFENSES) IN 1978^a

County	Total Waivers	Offenses ^b									
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty ^c	Public Order	Other General
Aiken	2	0	0	1	0	0	1	0	0	0	0
Anderson	1	0	0	0	0	0	0	0	1	0	0
Charleston	2	1	0	1	0	0	0	0	0	0	0
Dorchester	1	0	0	0	0	1	0	0	0	0	0
Edgefield	1	1	0	0	0	0	0	0	0	0	0
Florence	2	1	0	0	0	0	1	0	0	0	0
Greenville	2	0	0	0	0	0	0	1	1	0	0
Greenwood	3	0	0	1	0	0	0	0	2	0	0
Horry	1	0	0	0	0	0	0	0	1	0	0
Oconee	1	0	0	0	0	0	0	0	1	0	0
Sumter	1	0	0	0	0	0	0	0	0	0	1
State Total	17	3	0	3	0	1	2	1	6	0	1

- a. May include indictments for waivers occurring prior to 1978.
- b. Only most serious offense per individual listed.
- c. All six "other property" charges were for larceny.

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FIGURE 41-1. SOUTH CAROLINA: PERCENTAGE OF JUDICIAL WAIVERS
TO ADULT COURTS RESULTING IN INDICTMENT (BY
OFFENSE CATEGORY) IN 1978^a



Offenses^b

Personal	53%
Property	41%
Public Order	0%
Other General	6%

N= 17

- a. May include indictments for waivers occurring prior to 1978.
- b. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 41 percent of all offenses in the state.

The judgments of the 17 youth waived and indicted are shown in Table 41-5. Thirteen of the 14 cases (93 percent) where judgments were known, were found guilty or convicted under the youthful offender statute. (The three cases in the other category were held open or pending.) One case was dismissed.

TABLE 41-5. SOUTH CAROLINA: JUDICIAL WAIVERS TO ADULT COURTS RESULTING IN INDICTMENT (BY COUNTY AND BY JUDGMENTS) IN 1978a

County	Total Waivers	Not Guilty	Dismissed	Judgments		Guilty	Other ^b
				Referred to Juve- nile Court	Youthful Offender Judgments		
Aiken	2	0	0	0	1	1	0
Anderson	1	0	0	0	0	1	0
Charleston	2	0	0	0	0	2	0
Dorchester	1	0	0	0	1	0	0
Edgefield	1	0	0	0	0	1	0
Florence	2	0	0	0	0	2	0
Greenville	2	0	0	0	2	0	0
Greenwood	3	0	0	0	0	1	2
Horry	1	0	0	0	1	0	0
Oconee	1	0	1	0	0	0	0
Sumter	1	0	0	0	0	0	1
State Total	17	0	1	0	5	8	3

a. May include indictments for waivers occurring prior to 1978.

b. Cases pending or held open.

The sentences of the eight youth found guilty appear in Table 41-6. Sentences were not available for the five youthful offenders. Six of the eight youth were incarcerated in state-operated adult corrections facilities and one youth was sentenced to jail. (It should be noted that a youth less than 17 years of age at the time of sentencing would have been placed in a juvenile facility until reaching 17 years of age.) Only one of the eight youth was placed under probation supervision.

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TABLE 41-6. SOUTH CAROLINA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS RESULTING IN INDICTMENT (BY COUNTY AND SENTENCE TYPE) IN 1978a

County	Total Convic- tions	Sentence Types						Un- known ^b
		Fined	Pro- bation	Jail	State Adult Cor- rections Facilities	State Juvenile Cor- rections Facilities	Other	
Aiken	2	*	*	*	1	*	*	1
Anderson	1	0	1	0	0	0	0	0
Charleston	2	0	0	0	2	*	*	1
Dorchester	1	*	*	*	*	0	0	0
Edgefield	1	0	0	0	1	0	0	0
Florence	2	0	0	0	2	0	0	0
Greenville	2	*	*	*	*	*	*	2
Greenwood	1	0	0	1	0	0	0	0
Horry	1	*	*	*	*	*	*	1
State Total	13	0	1	1	6	0	0	5

* denotes Not Available.

a. May include indictments for waivers occurring prior to 1978.

b. Those juveniles sentenced under the youthful offender statute are not available.

Finally, the sentence lengths of the seven incarcerated youth are provided in Table 41-7. Four of these youth received maximum sentences of over ten years. One youth received one year or less; one received over three through five years; and one was sentenced to over five through ten years incarceration.

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TABLE 41-7. SOUTH CAROLINA: LENGTH OF CONFINEMENT REPORTED
FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO
ADULT COURTS RESULTING IN INDICTMENT (BY COUNTY
AND MAXIMUM SENTENCE) IN 1978^a

County	Total Confine- ments	Sentence Maximums							
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeter- minate	Life	Death
Aiken	1	0	0	0	1	0	0	0	0
Charleston	2	0	0	1	0	1	0	0	0
Edgefield	1	0	0	0	0	1	0	0	0
Florence	2	0	0	0	0	2	0	0	0
Greenwood	1	1	0	0	0	0	0	0	0
State Total	7	1	0	1	1	4	0	0	0

a. May include indictments for waivers occurring prior to 1978.

Lower Age of Criminal Jurisdiction

This section of the profile presents findings about youth subject to prosecution in adult courts. The 17 year olds represented in the following tables are legal adults in South Carolina and are subject to the same laws and rules of procedure as all adults in the state. The descriptive characteristics and charges against youth 17 years old are presented from two vantage points. Tables appear in both of these areas; describing youth arrested and subject to adult court jurisdiction, and youth age 17 who were indicted.

Table 41-8A provides a description of the sex of 17 year olds subject to adult court jurisdiction by virtue of their age. Information on racial characteristics was not available. The table indicates that 17 year old males arrested by far outnumbered females, constituting 85 percent of all arrests. Statewide, this would indicate that on the average 5.85 seventeen year old males are arrested for every like aged female.

TABLE 41-8A. SOUTH CAROLINA: YOUTH ARRESTS AS ADULTS
DUE TO AGE OF JURISDICTION (BY COUNTY
AND BY SEX) IN 1978^a

County	Total Arrests ^b	Sex	
		Male	Female
Abbeville	22	19	3
Aiken	110	95	15
Allendale	13	11	2
Anderson	267	240	27
Bamberg	4	4	0
Barnwell	12	9	3
Beaufort	107	88	19
Berkeley	74	66	8
Calhoun	3	2	1
Charleston	606	491	115
Cherokee	82	72	10
Chester	60	55	5
Chesterfield	51	42	9
Clarendon	26	21	5
Colleton	35	33	2

TABLE 41-8A. (Continued)

County	Total Arrestsb	Sex	
		Male	Female
Darlington	109	95	14
Dillon	45	43	2
Dorchester	43	39	4
Edgefield	10	10	0
Fairfield	31	28	3
Florence	164	126	38
Georgetown	35	28	7
Greenville	521	436	85
Greenwood	122	102	20
Hampton	9	7	2
Horry	669	594	75
Jasper	6	6	0
Kershaw	96	86	10
Lancaster	78	69	9
Laurens	59	52	7
Lee	19	15	4
Lexington	168	132	36
McCormick	17	16	1
Marion	37	29	8
Marlboro	60	53	7
Newberry	57	41	16
Oconee	63	62	1
Orangeburg	80	66	14
Pickens	107	93	14
Richland	495	419	76
Saluda	19	17	2
Spartanburg	360	299	61
Sumter	136	117	19
Union	85	81	4
Williamsburg	12	11	1
York	244	216	28
State Total	5,428	4,636	792

a. Arrest data provided by the Office of Criminal Justice Programs which did not estimate the number of arrests resulting in court referrals.

b. All youth arrested were 17 years of age.

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Table 41-8B provides a demographic description of the 741 seventeen year old youth who were indicted. Similar to arrest data, 88 percent of the youth where gender was known were also male. (The sex of 22 indicted 17 year old youth was unknown.) The race of 40 youth, or five percent of the total, was also unknown, but among cases of known race, 62 percent of the youth were white.

TABLE 41-8B. SOUTH CAROLINA: YOUTH INDICTED AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY SEX AND RACE) IN 1978a

County	Total Indictmentsb	Sex			Race		
		Male	Female	Unknown	White	Minority	Unknown
Abbeville	10	10	0	0	5	5	0
Aiken	16	15	*	1	10	5	1
Allendale	1	1	0	0	0	1	0
Anderson	39	36	1	2	26	10	3
Bamberg	3	2	1	0	3	0	0
Barnwell	3	3	0	0	1	2	0
Beaufort	32	25	7	0	22	10	0
Berkeley	9	9	0	0	9	0	0
Calhoun	3	3	0	0	1	2	0
Charleston	65	51	9	5	30	28	7
Cherokee	24	22	2	0	18	6	0
Chester	19	16	3	0	12	7	0
Chesterfield	3	2	1	0	3	0	0
Clarendon	7	7	0	0	3	4	0
Colleton	8	8	0	0	3	5	0
Darlington	19	18	*	1	12	6	1
Dillon	3	3	0	0	2	1	0
Dorchester	10	10	0	0	7	*	3
Edgefield	11	11	0	0	*	8	3 est
Fairfield	5	4	1	0	2	3	0
Florence	15	12	3	0	9	6	0
Georgetown	12	11	1	0	5	7	0
Greenville	40	22	18	0	29	11	0
Greenwood	45	37	7	1	27	17	1
Hampton	5	5	0	0	1	4	0
Horry	34	32	2	0	30	4	0
Jasper	1	1	0	0	1	0	0
Kershaw	17	14	2	1	14	2	1

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TABLE 41-8B. (Continued)

County	Total Indictments ^b	Sex			Race		
		Male	Female	Unknown	White	Minority	Unknown
Lancaster	16	12	3	1	5	7	4
Laurens	12	12	0	0	10	2	0
Lee	0	0	0	0	0	0	0
Lexington	21	18	2	1	18	2	1
McCormick	3	3	0	0	2	1	0
Marion	11	11	0	0	4	7	0
Marlboro	5	4	1	0	1	4	0
Newberry	10	9	1	0	2	5	3
Oconee	11	11	0	0	9	2	0
Orangeburg	19	18	1	0	5	14	0
Pickens	34	30	4	0	30	2	2
Richland	14	13	1	0	10	4	0
Saluda	3	3	0	0	2	1	0
Spartanburg	54	45	6	3	37	14	3
Sumter	27	21	6	0	15	12	0
Union	8	8	0	0	5	3	0
Williamsburg	1	1	0	0	*	*	1
York	33	27	*	6	17	10	6
State Total	741	636	83	22	457	244	40

* denotes Not Available.

a. May include indictments resulting from arrests prior to 1978 and 17 year olds waived to adult court as juveniles and later indicted as adults.

b. All youth indicted were 17 years of age.

Charges against youth 17 years old based on arrest data are presented in Table 41-9A. The largest category of offense by far was public order violations which constituted 45 percent of the offenses in all 5,428 arrests. Next most frequent in offense categories was the "other property" classification which contains violations such as larceny, shoplifting, trespassing, and auto theft. This category accounts for 27 percent of the 1978 arrests of youth 17 years old. Burglary ranks next in frequency of arrest, accounting for 12 percent of the total and remaining offenses contribute not more than five percent to all arrests for that year.

TABLE 41-9A. SOUTH CAROLINA: YOUTH ARRESTS AS ADULTS
DUE TO AGE OF JURISDICTION (BY COUNTY
AND BY TYPES OF OFFENSES) IN 1978^a

County	Total Arrests	Offenses ^b									
		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 Offenses ^c
Abbeville	22	0	0	0	1	2	0	3	2	12	2
Aiken	110	0	1	4	4	4	2	9	29	49	8
Allendale	13	0	0	2	0	0	1	4	1	5	0
Anderson	267	0	1	5	7	2	5	22	57	144	24
Bamberg	4	0	0	0	0	0	0	1	1	2	0
SC-25 Barnwell	12	0	0	0	0	0	0	0	9	3	0
Beaufort	107	2	1	2	5	0	4	17	30	44	2
Berkeley	74	0	0	1	2	0	2	20	16	30	3
Calhoun	3	0	0	0	0	0	0	1	2	0	0
Charleston	606	1	1	16	34	33	17	65	244	176	19
Cherokee	82	0	0	1	3	6	2	7	12	48	3
Chester	60	0	1	2	1	1	0	13	14	27	1
Chesterfield	51	0	0	0	6	2	0	6	10	27	0
Clarendon	26	0	0	0	1	2	0	4	7	10	2
Colleton	35	0	0	0	1	2	1	2	15	12	2
Darlington	109	0	0	1	5	4	4	15	27	47	6
Dillon	45	0	0	2	1	0	4	10	6	21	1
Dorchester	43	0	0	0	2	1	1	3	11	24	1
Edgefield	10	0	0	0	0	2	0	2	2	4	0
Fairfield	31	0	0	2	1	0	0	4	9	12	3

TABLE 41-9A. (Continued)

County	Total Arrests	Offenses ^b									Other Offenses ^c
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty	Public Order	
Florence	164	0	0	1	3	1	0	12	43	95	9
Georgetown	35	0	0	1	0	0	1	4	13	16	0
Greenville	521	0	1	10	9	10	13	89	155	219	15
Greenwood	122	1	2	3	11	5	2	21	44	33	0
Hampton	9	0	0	2	2	0	0	2	2	1	0
Horry	669	1	0	0	10	4	22	24	98	467	43
Jasper	6	0	0	0	0	1	0	1	3	1	0
Kershaw	96	0	0	1	5	3	0	17	22	44	4
Lancaster	78	0	1	3	2	1	0	12	12	38	9
Laurens	59	0	1	1	4	1	0	11	11	27	3
Lee	19	1	0	0	1	1	0	4	2	10	0
Lexington	168	1	0	0	6	6	3	17	42	75	18
McCormick	17	0	2	0	1	0	*	2	2	10	0
Marion	37	0	0	1	0	0	3	4	7	19	3
Marlboro	60	0	0	0	2	2	4	7	9	34	2
Newberry	57	0	0	1	1	3	1	5	14	31	1
Oconee	63	0	0	0	0	1	1	9	9	42	1
Orangeburg	80	0	2	0	0	1	2	9	38	26	2
Pickens	107	0	0	4	1	5	5	5	16	66	5
Richland	495	3	4	9	40	12	15	72	197	117	26

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TABLE 41-9A. (Continued)

County	Total Arrests	Offenses ^b									Other Offenses ^c
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Personal	Bur- glary	Other Prop- erty	Public Order	
Saluda	19	0	0	0	0	0	1	7	2	8	1
Spartanburg	360	1	0	2	9	9	9	37	114	166	13
Sumter	136	2	0	1	3	5	3	15	42	58	7
Union	85	0	0	0	7	1	3	7	26	39	2
Williamsburg	12	0	0	0	0	0	0	3	3	5	1
York	244	0	0	2	29	9	7	29	44	113	11
State Total	5,248	13	18	80	220	142	138	33	1,474	2,457	253

a. Arrest data provided by the Office of Criminal Justice Programs which did not estimate the number of arrests which resulted in court referrals.

b. Only most serious offense per individual listed.

c. The offenses included in this category are specific to South Carolina and may vary slightly from the offenses included in this category in other states.

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Table 41-9B describes charges against indicted 17 year old youth. Forty-five percent of these cases were charged with offenses in the previously described "other property" category. One-fourth of all youth were indicted for public order offenses and other offense categories contributed not more than eight percent to the total of 741 youth.

TABLE 41-9B. SOUTH CAROLINA: YOUTH INDICTED AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978^a

County	Total Referrals	Offenses ^b									Other General Offenses ^c
		Murder/Man-slaugh-ter	Rape	Rob-bery	As-sault/Bat-tery	Aggra-vated As-sault	Other Personal	Bur-glary	Other Prop-erty	Public Order	
Abbeville	10	0	0	0	0	2	1	0	5	2	0
Aiken	16	1	0	1	0	1	0	0	11	1	1
Allendale	1	0	0	0	0	0	0	0	0	1	0
Anderson	39	0	0	3	0	0	0	0	19	13	4
Bamberg	3	0	0	0	0	0	1	0	1	0	1
Barnwell	3	0	0	0	0	0	0	0	0	2	1
Beaufort	32	1	0	2	0	1	0	0	14	12	2
Berkeley	9	0	0	0	0	0	0	1	5	2	1
Calhoun	3	0	0	0	0	0	0	0	1	1	1
Charleston	65	1	0	7	1	4	0	9	30	7	6
Cherokee	24	0	0	0	1	3	2	0	9	7	2
Chester	19	0	0	2	0	1	0	0	12	4	0
Chesterfield	3	0	0	0	0	0	0	0	0	2	1
Clarendon	7	1	0	0	0	0	0	0	5	1	0
Colleton	8	0	0	0	0	0	0	1	6	1	0
Darlington	19	0	0	1	0	0	0	3	8	6	1
Dillon	3	1	0	1	0	0	0	0	1	0	0
Dorchester	10	0	0	2	0	0	0	0	4	4	0
Edgefield	11	0	0	1	0	1	1	0	2	5	1
Fairfield	5	0	0	2	0	0	0	1	1	1	0
Florence	15	0	0	0	0	1	1	0	7	5	1
Georgetown	12	0	0	2	0	0	0	2	5	3	0
Greenville	40	0	0	4	0	0	1	2	21	9	3
Greenwood	45	0	0	4	1	6	1	0	24	6	3
Hampton	5	0	0	0	0	0	0	3	2	0	0
Horry	34	0	0	0	0	0	1	1	12	17	3
Jasper	1	0	0	0	0	0	0	1	0	0	0
Kershaw	17	0	0	1	0	0	3	5	5	1	2
Lancaster	16	0	0	2	0	0	1	1	7	4	1
Laurens	12	0	0	0	0	1	0	1	4	3	3
Lexington	21	0	0	2	0	0	0	4	10	3	2
McCormick	3	0	0	0	0	0	1	0	0	2	0
Marion	11	0	0	1	0	1	0	0	6	1	2
Marlboro	5	0	0	0	0	0	1	1	3	0	0
Newberry	10	0	0	0	0	2	1	0	5	1	1
Oconee	11	0	0	1	0	0	0	0	6	2	2
Orangeburg	19	0	0	4	0	0	0	3	6	5	1
Pickens	34	0	0	4	0	2	2	1	5	14	6
Richland	14	1	0	0	0	1	0	1	6	3	2
Saluda	3	0	0	0	0	0	0	0	3	0	0

TABLE 41-9B. (Continued)

County	Total Referrals	Offenses ^b									Other General Offenses ^c
		Murder/Man-slaugh-ter	Rape	Rob-bery	As-sault/Bat-tery	Aggra-vated As-sault	Other Personal	Bur-glary	Other Prop-erty	Public Order	
Spartanburg	54	0	0	1	0	0	0	0	34	15	4
Sumter	27	0	0	5	0	2	2	0	11	6	1
Union	8	0	0	0	0	0	0	0	2	4	2
Williamsburg	1	0	0	0	0	0	0	0	1	0	0
York	33	1	0	1	0	2	2	1	14	10	2
State Total	741	7	0	54	3	31	22	42	333	186	63

- a. May include indictment resulting from arrests prior to 1978 and 17-year-olds waived to adult court as juveniles and later indicted as adults.
- b. Only most serious offense per individual listed.
- c. The offenses included in this category are specific to South Carolina and may vary slightly from the offenses included in this category in other states.

A more specific breakdown of information on charges for youth 17 years old who were arrested in 1978 is presented in Table 41-10A. One-half of the public order category, which is the largest offense classification, are liquor violations and 29 percent of the offenses were for other public order offenses. One-fifth of these offenses were drug related. Larceny and burglary were the most frequent property offenses, contributing 47 percent and 30 percent respectively to the total of 2,107 property violations.

TABLE 41-10A. SOUTH CAROLINA: YOUTH ARRESTS AS ADULTS
DUE TO AGE OF JURISDICTION (BY OFFENSE
TYPE AND FREQUENCY) IN 1978^a

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
PERSONAL OFFENSES			611
Violent Offenses		253	
Murder	11		
Manslaughter	2		
Rape	18		
Robbery	80		
Aggravated Assault	142		
Arson		11	
Kidnapping		1	
Assault/Battery		220	
Other Personal		126	
PROPERTY OFFENSES			2,107
Burglary		633	
Larceny		999	
Auto Theft		125	
Trespassing		169	
Other Property		181	
PUBLIC ORDER OFFENSES			2,457
Drug Violations		495	
Liquor Violations		1,238	
Other Public Order		724	
OTHER GENERAL OFFENSES		12	253
Status Offenses ^b		13	
Offenses Against the Family		228	
Other General			
UNKNOWN			0
TOTAL OFFENSES			5,428

a. Arrest data provided by the Office of Criminal Justice Programs which did not estimate the number of arrests resulting in court referrals.

b. According to the Office of Criminal Justice Programs. These arrests may have been made for status offenses occurring before these youth attained age of majority or for offenses so designated which do apply to adults.

Similarly specific information on offenses for indictments as for arrests follows in Table 41-10B. As sated in reference to Table 41-8B, property offenses and public order offenses make up the majority of charges for which 17 year olds were indicted in 1978. Larceny offenses accounted for 66 percent of the total of 375 property offenses. Burglary, also theft, other property, and to a much lesser extent, trespassing make up the remaining third of the 375 offenses. Drug violations accounted for 82 percent of the public order offenses for which 17 year olds were indicted in 1978.

TABLE 41-10B. SOUTH CAROLINA: YOUTH INDICTED AS ADULTS
DUE TO AGE OF JURISDICTION (BY OFFENSE
TYPE AND FREQUENCY) IN 1978^a

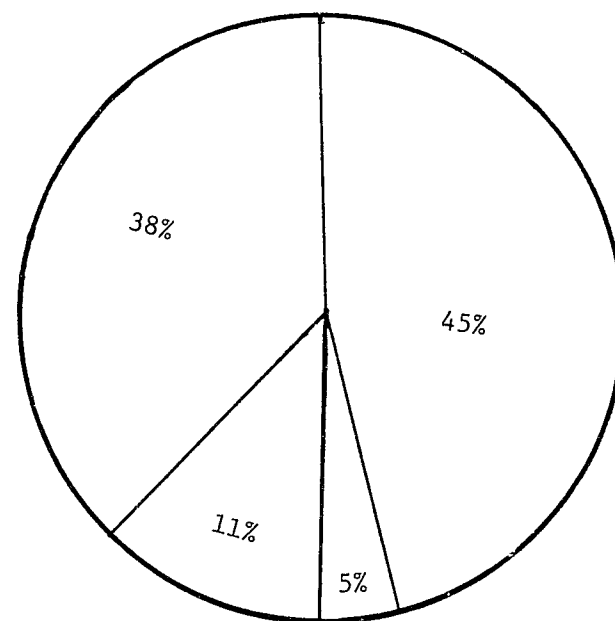
Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Totals
PERSONAL OFFENSES			117
Violent Offenses		92	
Murder	4		
Manslaughter	3		
Rape	0		
Robbery	54		
Aggravated Assault	31		
Arson		3	
Kidnapping		—	
Assault/Battery		3	
Other Personal		19	
PROPERTY OFFENSES			375
Burglary		42	
Larceny		246	
Auto Theft		49	
Trespassing		1	
Other Property		37	
PUBLIC ORDER OFFENSES			186
Drug Violations		153	
Liquor Violations		—	
Other Public Order		33	
OTHER GENERAL OFFENSES			63
Status Offenses		—	
Offenses Against the Family		44	
Other General		19	
UNKNOWN			0
TOTAL OFFENSES			741

-- denotes Not Applicable.

a. May include indictments from arrests prior to 1978 and 17 year olds waived to adult court as juveniles and later indicted as adults.

Figure 41-2A provides a graphic illustration of the contribution each major offense category makes to charges in all arrests of 17 year olds in 1978. The dominance of public order and property offenses in arrests is clear in the figure, with these categories contributing 45 percent and 38 percent to total arrests respectively. Personal offenses were involved in 11 percent of all arrests.

FIGURE 41-2A. SOUTH CAROLINA: PERCENTAGE OF YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978^a



Offenses^b

Personal	11%
Property	38%
Public Order	45%
Other General	5%

N= 5,428

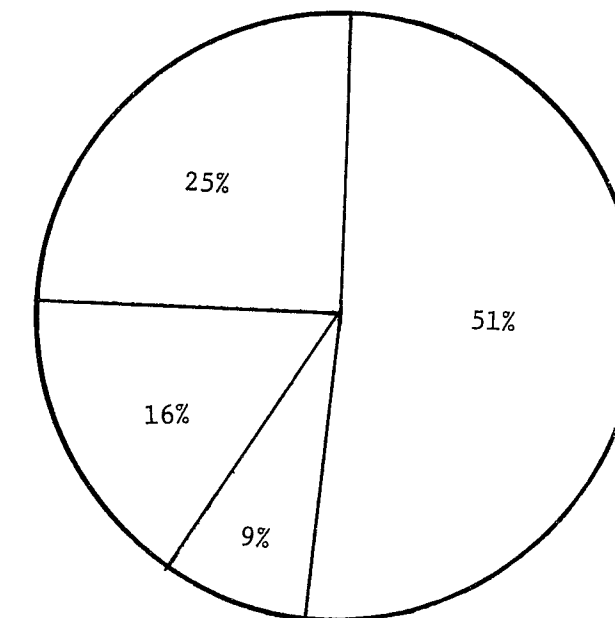
a. Arrest data was provided by the Office of Criminal Justice Programs which did not estimate the number of arrests resulting in court referrals.

b. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 4.7% of total offenses.

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Figure 41-2B is the counterpart to the preceding figure for 17 year old youth indicted rather than arrested in 1978. The figure indicates that just over one-half of all indictments of youth 17 years old were for property offenses. Public order offenses accounted for one-fourth of all indictments and personal offenses made up 16 percent of the total.

FIGURE 41-2B. SOUTH CAROLINA: PERCENTAGE OF YOUTH INDICTED AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978^a



Offenses^b

Personal	16%
Property	51%
Public Order	25%
Other General	9%

N= 741

a. May include indictments resulting from arrests prior to 1978 and 17 year olds waived to adult court as juveniles and later indicted as adults.

b. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 12 percent of all offenses in the state.

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Remaining information on youth 17 years old in adult court in the profile is based only upon indicted youth. Arrest data was not available on judgments, sentences, and sentence lengths nor on the number of arrests resulting in trials. Table 41-11 provides a description of the judgments found in the cases of the 741 youth seventeen years old who were indicted in 1978. Sixty-one percent, or 413 youth, where judgments were known, were found guilty in adult court after indictment and an additional 35 percent, or 235 youth, were convicted as youthful offenders. These two groups combined constitute a total conviction rate for all indicted 17 year olds of 96 percent. The cases against 30 youth were dismissed, and only one youth was found not guilty. Fifty-one in the "other" category were either pending or held open (and were not counted in the known cases), and 11 judgments were unknown.

TABLE 41-11. SOUTH CAROLINA: YOUTH INDICTED AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY JUDGMENTS) IN 1978^a

County	Total Referrals	Not Guilty	Judgments				Un-known
			Dismissed	Youthful Offender Judgments	Guilty	Other ^b	
Abbeville	10	0	1	2	6	1	0
Aiken	16	0	0	2	5	2	0
Allendale	1	0	0	0	1	0	0
Anderson	39	0	1	5	33	0	0
Bamberg	3	0	0	1	2	0	0
Barnwell	3	0	1	1	1	0	0
Beaufort	32	0	3	8	9	12	0
Berkeley	9	0	1	1	7	0	0
Calhoun	3	0	0	1	1	1	0
Charleston	65	0	3	32	22	8	0
Cherokee	24	0	0	8	16	0	0
Chester	19	0	0	11	8	0	0
Chesterfield	3	0	0	0	3	0	0
Clarendon	7	0	2	1	4	0	0
Colleton	8	0	0	1	3	4	0
Darlington	19	0	0	6	13	0	0
Dillon	3	0	0	0	2	1	0
Dorchester	10	0	1	3	6	0	0
Edgefield	11	0	0	2	9	0	0
Fairfield	5	0	0	3	2	0	0

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TABLE 41-11. (Continued)

County	Total Referrals	Not Guilty	Dismissed	Judgments			
				Youthful Offender Judgments	Guilty	Other ^b	Un-known
Florence	15	0	0	8	7	0	0
Georgetown	12	0	0	2	10	0	0
Greenville	40	0	0	12	28	0	0
Greenwood	45	0	2	18	22	3	0
Hampton	5	0	0	3	0	2	0
Horry	34	0	1	8	25	0	0
Jasper	1	0	0	1	0	0	0
Kershaw	17	*	4	5	5	2	1
Lancaster	16	1	2	4	4	5	0
Laurens	12	0	2	5	5	0	0
Lexington	21	0	0	8	13	0	0
McCormick	3	0	0	0	3	0	0
Marion	11	*	2	2	4	2	1
Marlboro	5	0	0	3	2	0	0
Newberry	10	*	1	3	4	*	2
Oconee	11	0	0	3	8	0	0
Orangeburg	19	0	1	8	9	1	0
Pickens	34	0	0	0	34	0	0
Richland	14	0	0	1	3	0	0
Saluda	3	0	0	2	0	1	0
Spartanburg	54	0	1	0	33	0	0
Sumter	27	*	*	5	9	6	7
Union	8	0	0	1	7	0	0
Williamsburg	1	0	1	0	0	0	0
York	33	0	0	8	25	0	0
State Total	741	1	30	235	413	51	11

* denotes Not Available.

a. May include indictments resulting from arrests prior to 1978 and 17 year olds waived to adult court as juveniles and later indicted as adults.

b. Pending or held open cases.

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The following Table 41-12 reports the sentences for the 648 seventeen year old youth found guilty and convicted as a youthful offender. Sentences for the almost all youthful offenders were not available in the dispositional information provided to the study by state sources. Sixty percent of known sentences in these known cases resulted in incarceration, with 188 youth going to jail, and 48 youth sentenced to state corrections facilities. Over one-third (35 percent) of the known sentences were probation supervision, 17 youth were fined. Sentences for 392 of the indicted 17 year olds were unknown.

TABLE 41-12. SOUTH CAROLINA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM YOUTH INDICTED AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND SENTENCE TYPE) IN 1978a

County	Total Convictions	Fined	Probation	Jail	Sentence Types			Un-known ^b
					State Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities	Other	
Abbeville	8	*	3	1	2	*	*	2
Aiken	14	*	*	3	2	*	*	9
Allendale	1	1	0	0	0	0	0	0
Anderson	38	1	8	24	*	*	*	5
Bamberg	3	1	1	1	0	0	0	0
Barnwell	2	*	*	1	*	*	*	1
Beaufort	17	*	1	1	1	*	*	14
Berkeley	8	*	2	5	*	*	*	1
Calhoun	2	*	*	1	*	*	*	32
Charleston	54	*	10	10	2	*	*	8
Cherokee	24	*	6	8	2	*	*	11
Chester	19	*	4	4	*	*	0	0
Chesterfield	3	0	2	1	0	0	0	1
Clarendon	5	1	2	1	*	*	*	2
Colleton	4	*	2	*	*	*	*	6
Darlington	19	*	6	7	*	*	0	0
Dillon	2	0	2	0	0	0	0	3
Dorchester	9	*	1	5	*	*	*	2
Edgefield	11	4	*	2	3	*	*	3
Fairfield	5	*	*	2	*	*	*	9
Florence	15	*	*	5	1	*	*	2
Georgetown	12	*	4	6	*	*	*	14
Greenville	40	1	14	6	5	*	*	18
Greenwood	40	1	6	12	3	*	*	3
Hampton	3	*	*	*	*	*	*	8
Horry	33	1	3	19	2	*	*	1
Jasper	1	*	*	*	*	*	*	5
Kershaw	10	*	4	1	*	*	*	4
Lancaster	8	*	2	*	2	*	*	6
Laurens	10	1	1	2	*	*	*	

TABLE 41-12. (Continued)

County	Total Convictions	Fined	Probation	Jail	Sentence Types			Un-known ^b
					State Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities	Other	
Lexington	21	*	5	4	*	*	*	12
McCormick	3	0	1	2	0	0	0	0
Marion	6	*	1	2	1	*	*	2
Marlboro	5	*	1	1	*	*	*	3
Newberry	7	*	2	2	*	*	*	3
Oconee	11	3	*	2	3	*	*	3
Orangeburg	17	*	*	4	5	*	*	8
Pickens	34	*	15	13	3	*	*	3
Richland	14	*	1	1	1	*	*	11
Saluda	2	*	*	*	*	*	*	2
Spartanburg	53	*	19	9	4	*	*	21
Sumter	14	*	1	6	2	*	*	5
Union	8	*	1	3	*	*	*	4
York	33	2	8	11	4	*	*	8
State Total	648	17	139	188	48	0	0	256

* denotes Not Available.

a. May include indictments resulting from arrests prior to 1978 and 17 year olds waived to adult court as juveniles and later indicted as adults.

b. Includes 234 youthful offender convictions and 22 other youth determined to be guilty shown in Table 41-11.

Table 41-13 represents sentence duration for 17 year olds sentenced to incarceration subsequent to indictment and guilty findings in criminal court. A total of 236 youth were reported to have been incarcerated. Data were unavailable on four cases, 84 percent of known cases received maximum sentences of one year or less. Fourteen youth received maximum sentences over one year through five years. Twelve youth were sentenced to over five and through ten years, and the same number received maximum sentences over ten years.

TABLE 41-13. SOUTH CAROLINA: LENGTH OF CONFINEMENT REPORTED
FOR SENTENCES ARISING FROM YOUTH INDICTED AS
ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND
MAXIMUM SENTENCE) IN 1978^a

County	Total Confine- ments	Sentence Maximums								
		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
Abbeville	3	1	1	1	0	0	0	0	0	0
Aiken	5	3	0	0	1	1	0	0	0	0
Anderson	24	24	0	0	0	0	0	0	0	0
Bamberg	1	1	0	0	0	0	0	0	0	0
Barnwell	1	1	0	0	0	0	0	0	0	0
Beaufort	2	1	1	0	0	0	0	0	0	0
Berkeley	5	5	0	0	0	0	0	0	0	0
Calhoun	1	1	0	0	0	0	0	0	0	0
Charleston	12	10	0	0	0	2	0	0	0	0
Cherokee	10	7	*	*	*	*	*	*	*	3
Chester	4	4	0	0	0	0	0	0	0	0
Chesterfield	1	1	0	0	0	0	0	0	0	0
Clarendon	1	1	0	0	0	0	0	0	0	0
Darlington	7	7	0	0	0	0	0	0	0	0
Dorchester	5	5	0	0	0	0	0	0	0	0
Edgefield	5	4	0	0	0	1	0	0	0	0
Fairfield	2	2	0	0	0	0	0	0	0	0
Florence	6	5	0	0	0	1	0	0	0	0
Georgetown	6	6	0	0	0	0	0	0	0	0
Greenville	11	6	*	1	2	1	*	*	*	1

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TABLE 41-13. (Continued)

County	Total Confine- ments	Sentence Maximums								
		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
Greenwood	15	13	2	0	0	0	0	0	0	0
Horry	21	19	0	1	1	0	0	0	0	0
Kershaw	1	1	0	0	0	0	0	0	0	0
Lancaster	2	0	0	1	0	1	0	0	0	0
Laurens	2	2	0	0	0	0	0	0	0	0
Lexington	4	4	0	0	0	0	0	0	0	0
McCormick	2	2	0	0	0	0	0	0	0	0
Marion	3	2	0	0	1	0	0	0	0	0
Marlboro	1	1	0	0	0	0	0	0	0	0
Newberry	2	2	0	0	0	0	0	0	0	0
Oconee	5	2	0	0	2	1	0	0	0	0
Orangeburg	9	4	2	0	1	2	0	0	0	0
Pickens	16	15	1	0	0	0	0	0	0	0
Richland	2	1	0	0	1	0	0	0	0	0
Spartanburg	13	10	0	1	2	0	0	0	0	0
Sumter	8	7	0	0	0	1	0	0	0	0
Union	3	3	0	0	0	0	0	0	0	0
York	15	11	2	0	1	1	0	0	0	0
State Total	236	194	9	5	12	12	0	0	0	4

* denotes Not Available.

a. May include indictments resulting from arrests prior to 1978 and 17-year-olds waived to adult court as juveniles and later indicted as adults.

Table 41-14 summarizes information from some of the key tables in this profile describing youth judicially waived and subsequently indicted, as well as 17 year olds in adult court who were indicted. The table indicates that Phase II information was sought on all youth reported to have been tried in adult courts through these legal mechanisms in 1978. Just over three-fourths of youth waived and indicted were convicted. Sentences were not available on the five waived and indicated youth convicted as youthful offenders.

Similarly, Phase II data was sought on all 741 seventeen year olds indicted and tried in adult court in 1978. Eighty-seven percent of these youth were convicted, 235 were convicted as youthful offenders. Sentence type was available for only one of these youthful offenders. Of youth for which sentences were available, 236 received sentences of confinement.

TABLE 41-14. SOUTH CAROLINA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)^a

	Judicial Waiver	Age of Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 41-1B)	17	741
Total Referrals Selected for Phase II (Tables 41-3 and 41-8B)	17	741
Total Referrals Resulting in Convictions (Tables 41-5 and 41-11)	13	648
Total Convictions Resulting in Sentences of Confinement (Tables 41-7 and 41-13)	7 ^b	236 ^c

a. Data in this table is based upon youth judicially waived and indicted in 1978 and 17 year olds automatically tried in adult court who were indicted in 1978.

b. Does not include five youth convicted as youthful offenders whose types of sentences were not available.

c. Does not include 234 youth convicted as youthful offenders whose types of sentences were not available.

In summary, a survey of South Carolina counties indicated that 60 youth were judicially waived in 1978. State sources reported that 17 youth were indicted in 1978 subsequent to judicial waiver. Seventy-one percent of the indicted youth were 16 years old, all but one were male, and there was a near even split between white and minority youth. Personal offenses constituted 53 percent of total charges and 41 percent were waived for property offenses. Thirteen of these youth were found guilty in adult courts, five of which were convicted as youthful offenders. (Data were unavailable on three cases.) Of the eight nonyouthful offender judgments, seven resulted in incarceration in state adult corrections facilities, three of which were sentenced to maximum periods of confinement of ten years or less.

Arrest information shows on 5,428 youth 17 years old subject to adult court jurisdiction by virtue of their age in 1978. Data indicated that 85 percent of these youth were male. Thirty-eight percent of the charges against these youth were for property offenses and 45 percent were for public order offenses.

Eighty-eight percent of the 741 youth 17 years old who were indicted in 1978 were also male, and 65 percent of these youth were white, where race was known. Race data were unavailable in 40 cases. Just over one-half of these youth, 51 percent, were indicted for property offenses, and one-fourth were indicted for public order violations. Sixty-one percent (where data were available) were found guilty and another 35 percent were convicted as youthful offenders. One-third of nonyouthful offenders were sentenced to probation while 61 percent were incarcerated, 188 in jails and 48 in state adult corrections facilities. Eighty-four percent of these 232 received maximum sentences of one year or less. Twelve youth received maximum sentences over ten years.

FOOTNOTES

1. Code of Laws of South Carolina, Section 14-21-510(A)(3).
2. Code of Laws of South Carolina, Section 14-21-540.
3. Rules of Practice in the Family Court for Juvenile Matters, Rule 41.
4. Code of Laws of South Carolina, Sections 14-21-550 and 14-21-510.
5. Code of Laws of South Carolina, Section 14-21-510(D).
6. Code of Laws of South Carolina, Section 20-7-430(5) (1981 Revision).
7. Code of Laws of South Carolina, Section 14-21-515.
8. Code of Laws of South Carolina, Section 14-21-510(A)(3).
9. State v. Gorey, 111 S.E.2d 560 (1959).
10. Shedden v. State, 218 S.E.2d 421; 265 S.C. 334 (1975).
11. State v. England, 245 S.E.2d 608 (1978).
12. State v. Wright, 237 S.E.2d 764 (1977).
13. American Correctional Association, Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities: United States and Canada (College Park, Md.: 1978).
14. Code of Laws of South Carolina, Section 14-21-620.
15. Code of Laws of South Carolina, Section 24-15-510.

TENNESSEE PROFILE

ACKNOWLEDGMENTS

The Academy expresses its appreciation for the data collection efforts of the Ohio Management and Research Group, which conducted the telephone survey in Tennessee's 95 counties. John Allen and his staff were extremely diligent in contacting and following up with designated local officials who were able to report on juveniles tried as adults in that state. Gratitude is also owed to Michael Catalano, Staff Attorney, Tennessee Supreme Court, for his assistance in explaining the state's court organization. In addition, the Academy expresses its appreciation to the many others who provided additional information.

METHODOLOGY

The Ohio Management and Research Group sought data on judicial waivers in Tennessee's 95 counties through telephone interviews with the juvenile court clerks, followed by calls to prosecuting attorneys and then circuit court clerks, if all the necessary data were not available. Phase I data--the frequency of youth judicially transferred to adult courts--were available in all 95 counties. Phase II data--age, sex, race, offenses, dispositions, and sentences of youth judicially transferred--were also available from the most populous ten percent of the counties and those counties with five or more judicial transfers in 1978. Finally, data on referrals of youth to adult courts, due to excluded traffic offenses, were available from 74 of the state's counties. These data were provided either by the circuit court clerks or in some counties, sources in the city courts.

COURT ORGANIZATION

The highest courts of general jurisdiction in Tennessee are the circuit courts, also known as criminal courts. These circuit courts have jurisdiction over felonies and misdemeanors. Other courts of general jurisdiction include law and equity courts and chancery courts.

Courts of limited jurisdiction in Tennessee include general session courts which have been established in most Tennessee counties by special legislation.¹ These general session courts have jurisdiction in criminal cases where the maximum sentence is under one year. They also conduct preliminary hearings in felony and civil cases. What are called county courts in Tennessee were

established primarily as local governing bodies, but also hold some judicial powers. County courts' jurisdiction is largely juvenile and probate matters. Furthermore, there are numerous city or municipal courts in Tennessee that are primarily limited to hearing ordinance violations.

Juvenile jurisdiction is located in several different courts in Tennessee. In 1978, in 21 counties, juvenile jurisdiction was exercised in special sessions of the general session courts. In 59 counties, county (court) judges or county executives act as judges in cases involving juvenile matters. Seven separate juvenile courts or other courts with concurrent jurisdiction hear juvenile matters in 14 counties: Anderson, Carter, Davidson, Hamblen, Hamilton, Jackson, Knox, Marshall, Sevier, Shelby, Sullivan, Warren, Washington and Williamson Counties. Finally, in Dyer County, the law and equity court judge has juvenile jurisdiction.² All these courts will hereafter be referred to as juvenile courts.

Juvenile traffic violations, except drunken driving and negligent homicide, are tried in adult courts.

In 1980, the Tennessee Supreme Court decided that juvenile court judges must be attorneys in order to try cases where there is a possibility of commitment to a training school. Legislation was passed shortly thereafter which requires a hearing to determine likelihood of commitment. If so, then jurisdiction is transferred to general sessions courts for trial. If this judge is not an attorney, then jurisdiction is transferred to the circuit courts. This legislation expires August 31, 1982.³

An overview of Tennessee's courts by jurisdiction over juveniles appears below.

TENNESSEE: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic ^a
General Sessions Courts (21 counties)	Circuit or Criminal Courts	All courts with general juvenile jurisdiction ^a
County Courts Judges or County Executives (59 counties)	General Sessions Courts	City or Municipal Courts and other appropriate adult courts ^b
Juvenile Courts or Courts with concurrent juris- diction (14 counties)	City or Municipal Courts	

TENNESSEE: COURT JURISDICTION OVER JUVENILES
IN 1978 (continued)

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic ^a
Law and Equity Court (1 county)		

a. Only drunken driving and negligent homicide traffic offenses are tried in juvenile courts.

b. Most traffic offenses by juveniles are routinely tried in adult courts.

TRANSFER PROCESS

In Tennessee, initial juvenile court jurisdiction extends to 18 years of age.⁴ There are two legal mechanisms by which youth can be tried in adult courts.

Judicial Waiver

There are several provisions in Tennessee statutes for judicially transferring youth to adult courts. First, individuals 16 years of age or older may be transferred to adult courts for any offense.⁵ This includes youth 16 years of age or older charged with drunken driving or negligent (vehicular) homicide.⁶ Second, juveniles 15 years of age and charged with murder, manslaughter, rape, armed robbery or kidnapping are also eligible for prosecution in adult courts.⁷

Under either provision, in order to effect a judicial transfer, a hearing within the juvenile courts must be held. The courts must find, at the transfer hearing, that there are reasonable grounds that the individual committed the alleged act, that the juvenile is not eligible for commitment to an institution for the mentally inadequate, and that the interests of the community dictate the juvenile's removal or incapacitation.

In making the determination, the factors the juvenile courts may consider are:

1. The extent and nature of the child's prior delinquency records;
2. The nature of past treatment efforts and the nature of the child's response;
3. Whether the offense was against a person or property, with greater weight in favor of transfer given to offenses against the person;
4. Whether the offense was committed in an aggressive and premeditated manner; and
5. The possible rehabilitation of the child by use of procedures, services and facilities currently acceptable to the juvenile courts.⁸

If the case is not transferred, the juvenile judge who conducted the hearing cannot preside at the hearing on the delinquency petition if an interested party objects. If the case is transferred to an adult court of which the judge who conducted the transfer hearing is also the judge, that judge is disqualified from presiding in the criminal prosecution.⁹ The statute is silent on who may initiate the transfer hearing.

Beginning in 1979, the circuit courts were required to have a hearing to decide whether to accept jurisdiction from juvenile courts of youth judicially transferred, or to transfer the youth back to juvenile courts.¹⁰

Excluded Offenses

All traffic offenses, except drunken driving and negligent homicide, are excluded from juvenile court jurisdiction in Tennessee. Youth charged with these offenses are automatically referred to adult courts, where they are treated like adult violators.

CASE LAW SUMMARY

Since 1950, a number of cases regarding waiver-related issues have been heard in Tennessee courts. Under prior statutes, juvenile courts in Tennessee had exclusive original jurisdiction over all criminal offenses committed by juveniles under 18 years of age, except murder in the first or second degree and rape.¹¹ This exclusion is no longer in effect. Pursuant to these statutory provisions, the Tennessee Supreme Court, in Greene v. State, held that a criminal court, hearing a case against a minor for rape and other crimes, should have transferred the case to juvenile court when the charge of rape was withdrawn,

since the criminal court no longer had jurisdiction over the matter.¹² The federal appeals court (Sixth Circuit Court) held that where a juvenile was not represented by counsel during juvenile proceedings and was transferred to adult trial without waiver, as a rape suspect pursuant to Tennessee statute, he was not deprived of his constitutional right to counsel, as counsel was later appointed for the adult arraignment (Jackson v. Johnson).¹³ The Tennessee Supreme Court later held that under these statutes, no preliminary hearing in juvenile court was required to confer jurisdiction upon the criminal court when excluded offenses formed the basis of the change (State ex. rel Donehue v. Russell).¹⁴ Today, however, current statutes require transfer hearings in all cases prior to transferring individuals under the age of 18 to criminal courts.

Questions concerning the admissibility of certain evidence in proceedings involving juveniles have been raised on several occasions. In State v. Strickland, the Tennessee Supreme Court held that a statement taken from a juvenile in violation of statutorily mandated detention procedures cannot be used against the juvenile at a transfer hearing or at the trial de novo in circuit courts, if the transfer order is appealed.¹⁵ However, the court held, in Colyer v. State, that such a statement can be used against a juvenile defendant at a trial in criminal court after the case has been transferred.¹⁶ This same juvenile defendant, however, cannot be impeached by the use of his or her prior delinquency record (Clores v. State).¹⁷

The Tennessee high court has held that a juvenile has no constitutional or statutory right to a jury trial at a transfer hearing, and that the transfer statute is not void for vagueness or overbreadth.¹⁸ The transfer order is, however, a final appealable decision (In re Houston).¹⁹

CORRECTIONS INFORMATION

The Department of Corrections is responsible for adult and juvenile services. An order of the juvenile court committing a child to the custody of the Tennessee Department of Corrections is for an indefinite time. The Department of Corrections, Division of Youth Services, uses a variety of juvenile facilities for youth adjudicated delinquent and committed to them. These include supervised foster homes, group homes, and six youth centers, some of which have age limitations to segregate the younger children from the older ones. Juveniles are normally sent to these facilities for an indefinite time, normally four to six months, unless they are felons who are given determinate sentences. A juvenile delinquent may not be committed or transferred to a penal institution or other facility used primarily for adult offenders.²⁰

When youth are convicted in adult courts, the disposition "shall be made as if he were an adult and no such child shall be sentenced to a state correctional school for juvenile delinquents."²¹ However, after a youth is sentenced to an adult institution, the Department of Corrections may petition the committing court to allow a transfer to a juvenile institution. Upon approval, the defendant may be placed in a juvenile facility until the age of 18. At 18, individuals

who were tried in adult courts may be transferred to adult institutions, if time is remaining on their sentences. If the term expires while in the juvenile facility, the youth shall be released. For purposes of parole, they are treated as adults. The decision to transfer to a juvenile facility is based on the age of the person, the severity of the crime, and the level of security needed.

STATE DATA SUMMARY

Judicial transfer and excluded traffic offenses are the only mechanisms by which youth may be transferred to adult courts in Tennessee. Data collected about youth charged with excluded traffic offenses will be discussed in a later section of this profile.

Table 43-1 shows the number of youth who were judicially transferred to adult courts in 1978, by county, estimated juvenile population eight through 17 years of age, and rate per 10,000 juveniles. In total 215 youth were reported to be transferred, for a state rate of 2.96 per 10,000 juveniles. Thirty-nine of the 95 counties (41 percent) had no judicial transfers in 1978. Ten counties (11 percent) had five or more transfers and accounted for 124 of the 215 reported. Four of these latter counties were among the ten most populous of the counties. As a result, the 17 Phase II counties in Tennessee represented the most populous jurisdictions and in most cases, also the most frequent users of the judicial transfer process.

TABLE 43-1. TENNESSEE: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Anderson	10,654	0	0.000
Bedford	4,281	5 est	11.680
Benton	2,068	0 est	0.000
Bledsoe	1,299	9	69.284
Blount	11,781	3	2.546
Bradley	10,812	0	0.000
Campbell	5,448	0	0.000
Cannon	1,585	3 est	18.927
Carroll	4,262	0	0.000
Carter	7,482	0	0.000

TABLE 43-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Cheatham	3,259	1	3.068
Chester	1,755	0	0.000
Claiborne	3,848	3 est	7.796
Clay	1,169	3 est	25.663
Cocke	5,228	0	0.000
Coffee	6,231	3 est	4.815
Crockett	2,609	0	0.000
Cumberland	4,661	10	21.455
Davidson	73,608	24	3.261
Decatur	1,520	4	26.316
DeKalb	2,077	1	4.815
Dickson	4,873	3 est	6.156
Dyer	5,362	6 est	11.190
Fayette	5,428	1	1.842
Fentress	2,746	2	7.283
Franklin	4,992	1	2.003
Gibson	8,242	1	1.213
Giles	3,661	0	0.000
Grainger	2,956	0	0.000
Greene	8,376	5	5.969
Grundy	2,211	1	4.523
Hamblen	7,985	1	1.252
Hamilton	44,150	9	2.039
Hancock	1,097	0	0.000
Hardeman	4,258	3	7.046
Hardin	3,387	0	0.000
Hawkins	6,823	2	2.931
Haywood	4,368	1	2.289
Henderson	3,285	1	3.044
Henry	4,133	0	0.000
Hickman	2,389	0	0.000
Houston	1,038	0	0.000
Humphreys	2,622	0	0.000
Jackson	1,356	3 est	22.124
Jefferson	4,518	0	0.000

CONTINUED

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TABLE 43-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Johnson	2,231	0	0.000
Knox	46,656	6	1.286
Lake	1,438	0	0.000
Lauderdale	4,283	0	0.000
Lawrence	5,929	3	5.060
Lewis	1,259	1	7.943
Lincoln	4,372	0	0.000
Loudon	4,419	1	2.263
McMinn	6,912	1	1.447
McNairy	3,517	2	5.687
Macon	2,135	1 est	4.684
Madison	12,339	0	0.000
Marion	4,147	0	0.000
Marshall	3,085	1 est	3.241
Maury	8,223	2	2.432
Meigs	1,112	0	0.000
Monroe	4,565	1	2.191
Montgomery	12,772	4 est	3.132
Moore	540	0 est	0.000
Morgan	2,582	0	0.000
Obion	5,341	2	3.745
Overton	2,769	0	0.000
Perry	854	0	0.000
Pickett	762	0	0.000
Polk	2,144	2	9.328
Putnam	5,825	10 est	17.167
Rhea	3,645	0	0.000
Roane	7,282	1	1.373
Robertson	6,031	1	1.658
Rutherford	10,971	2	1.823
Scott	3,189	0	0.000
Sequatchie	1,427	0	0.000
Sevier	5,591	0	0.000
Shelby	136,253	40	2.936
Smith	2,288	2	8.741

TABLE 43-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Stewart	1,283	2 est	15.588
Sullivan	22,768	0	0.000
Sumner	13,663	2 est	1.464
Tipton	6,193	4 est	6.459
Trousdale	882	0	0.000
Unicoi	2,683	0	0.000
Union	1,991	0	0.000
Van Buren	687	2	29.112
Warren	5,435	4 est	7.360
Washington	12,666	3 est	2.369
Wayne	2,437	1	4.103
Weakley	4,420	1	2.262
White	3,000	1	3.333
Williamson	8,484	0	0.000
Wilson	8,145	3	3.683
Totals	727,518	215 est	2.955

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 to 17 years old (1978).

Table 43-2 reflects the relationship between Phase I and Phase II counties in Tennessee. The 17 Phase II counties represented 59 percent of the total juvenile population. The 138 transfers which occurred in these counties represented 64 percent of the total transfers in the state. Madison and Sullivan Counties are the only Phase II counties that transferred no youth in 1978.

TABLE 30-2. TENNESSEE: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	727,518	95	215
Selected for Phase II Investigation	427,431	17	138
Percentage of State Selected for Phase II Investigation	59%	18%	64%

a. 1978 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 43-3 gives a demographic breakdown--age, sex, race--of those youth judicially transferred in the Phase II counties. Ninety-eight percent of those whose age was reported were 16 or 17 years of age. Ninety-nine percent were males and 62 percent were white youth. Despite the fact that juveniles, 15 years of age, can be transferred for specified serious offenses, the county sources indicated that all youth transferred were at least 16 years old. The two youth reported as 18 years of age were probably charged with offenses committed before reaching 18 years of age.

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TABLE 43-3. TENNESSEE: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Un- known	Sex		Race	
		0-15	16	17	18+		Male	Female	White	Minor- ity
Bedford	5	0	0	5 est	0	0	5 est	0	5 est	0
Bledsoe	9	0	2 est	7 est	0	0	9	0	3	6
Blount	3	0	0	1	2	0	3	0	3	0
Cumberland	10	0	7 est	3 est	0	0	8	2	10 est	0
Davidson	24	0	0	24 est	0	0	24	0	15	9
Dyer	6	0	0	6 est	0	0	6 est	0	5 est	1 est
Greene	5	0	2 est	3 est	0	0	5 est	0	5 est	0
Hamilton	9	0	0	9	0	0	9	0	6	3
Knox	6	0	1 est	5 est	0	0	6	0	4 est	2 est
Madison	0	0	0	0	0	0	0	0	0	0
Montgomery	4	0	2 est	2 est	0	0	4 est	0	2 est	2 est
Putnam	10	0	10	0	0	0	10	0	10	0
Rutherford	2	*	*	*	*	2	2	0	2	0
Shelby	40	*	*	*	*	40	40 est	0	10 est	30 est
Sullivan	0	0	0	0	0	0	0	0	0	0
Sumner	2	0	0	2	0	0	2	0	2	0
Washington	3	0	1 est	2 est	0	0	3 est	0	3	0
State Phase II Total	138	0	25	69	2	42	136	2	85	53

* denotes Not Available.

Table 43-4 shows the types of offenses for which youth were transferred to criminal courts. Ninety-six of the 134 known offenses (72 percent) were offenses against the person, including murder, manslaughter, rape, robbery, assaults, arson, kidnapping, and weapons violations. Twenty-eight percent were property offenses--burglary, larceny, auto theft, and other crimes related to property violations. Figure 43-1 graphically depicts the percentage of each offense category, including the unknown offenses.

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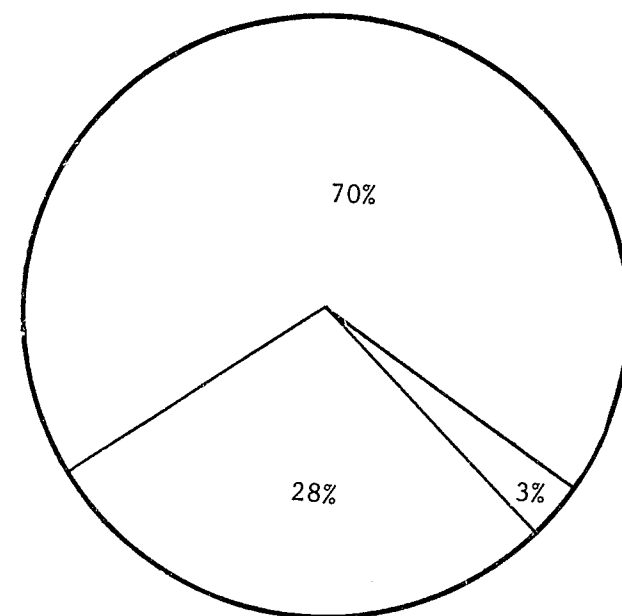
TABLE 43-4. TENNESSEE: JUDICIAL WAIVERS TO ADULT COURTS IN
PHASE II COUNTIES (BY COUNTY AND BY TYPES OF
OFFENSES) IN 1978

County	Total Waivers	Offenses ^a										
		Murder/ Man- slaugh- ter	Rape	Rob- bery	As- sault/ Bat- tery	Aggra- vated As- sault	Other Per- sonal	Bur- glary	Other Prop- erty	Public Order	Other General	Unknown
Bedford	5	0	0	1 est	2 est	0	0	0	2 est	0	0	0
Bledsoe	9	0	0	0	9	0	0	0	0	0	0	0
Blount	3	2	0	0	0	0	0	0	1	0	0	0
Cumberland	10	0	0	0	0	2 est	0	3 est	5 est	0	0	0
Davidson	24	2	0	20	0	1	0	0	1	0	0	0
TN-12 Dyer	6	0	0	1 est	0	0	0	3 est	2 est	0	0	0
Greene	5	0	0	3 est	0	0	0	0	2 est	0	0	0
Hamilton	9	0	1	0	0	0	0	7	1	0	0	0
Knox	6	4	1	0	0	0	0	1	0	0	0	0
Montgomery	4	*	*	*	*	*	*	*	*	*	*	4
Putnam	10	0	0	0	0	0	2 est	6 est	2 est	0	0	0
Rutherford	2	0	0	2	0	0	0	0	0	0	0	0
Shelby	40	9	20	10	0	0	0	1	0	0	0	0
Sumner	2	0	1	1	0	0	0	0	0	0	0	0
Washington	3	0	0	0	0	0	2	1	0	0	0	0
State Phase II Total	138	17	23	38	11	3	4	22	16	0	0	4

* denotes Not Available.

a. Only most serious offense per individual listed.

FIGURE 43-1. TENNESSEE: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	70%
Property	28%
Public Order	0%
Other General	0%
Unknown	3%

N= 138

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 59 percent of all offenses in Phase II counties.

Table 43-5 represents the judgments of youth in Phase II counties who were judicially transferred to adult courts. One hundred-twelve of the 123 known dispositions (91 percent) were found guilty. Seven of the transferred youth (6 percent) were either acquitted or had charges against them dismissed. Four cases were referred back to juvenile courts. (Excluded from the known judgments were 12 cases held open or pending and 3 cases where the judgments were unknown).

TABLE 43-5. TENNESSEE: JUDICIAL WAIVERS TO ADULT COURTS
IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS
IN ADULT COURTS) IN 1978

County	Total Waivers	Not Guilty	Judgments				Other ^a	Unknown
			Dismissed	Referred to Juve- nile Court	Guilty			
Bedford	5	0	0	0	5 est	0	0	
Bledsoe	9	0	0	0	9	0	0	
Blount	3	0	0	0	3	0	0	
Cumberland	10	0	3 est	0	5 est	2 est	0	
Davidson	24	1	0	1	22	0	0	
Dyer	6	0	3 est	0	2 est	1 est	0	
Greene	5	0	0	0	5 est	0	0	
Hamilton	9	*	*	1	5	1	2	
Knox	6	0	0	0	2	4	0	
Montgomery	4	0	0	0	0	4 est	0	
Putnam	10	0	0	0	10 est	0	0	
Rutherford	2	*	*	*	1	*	1	
Shelby	40	0	0	2	38	0	0	
Sumner	2	0	0	0	2	0	0	
Washington	3	0	0	0	3	0	0	
State Phase II Total	138	1	6	4	112	12	3	

* denotes Not Available.

a. Held open or pending cases.

Table 43-6 shows the sentences imposed upon those youth found guilty in adult courts among the Phase II counties. Of the 88 known sentences, 74 were

incarcerated (84 percent), the majority (68 youth) being committed to adult facilities. The five youth reported to have been sentenced to juvenile facilities were most likely granted a transfer after the original adult commitment decision. (See Corrections section.) Only 14 youth (16 percent) in these Phase II counties received probation.

TABLE 43-6. TENNESSEE: SENTENCES REPORTED FOR CONVICTIONS
ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS
IN PHASE II COUNTIES (BY COUNTY AND BY
SENTENCE TYPE) IN 1978

County	Total Convictions	Fined	Probation	Jail	Sentence Types			Other	Un- known
					State Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities			
Bedford	5	0	5 est	0	0	0	0	0	0
Bledsoe	9	0	0	0	9	0	0	0	0
Blount	3	0	0	0	3	0	0	0	0
Cumberland	5	0	0	0	5 est	0	*	22 est	0
Davidson	22	*	*	*	*	*	*	*	0
Dyer	2	0	0	0	2 est	0	0	0	0
Greene	5	0	2 est	0	3 est	0	0	0	0
Hamilton	5	0	1	0	4	0	0	0	0
Knox	2	0	0	0	2	*	*	2	0
Putnam	10	*	6 est	*	2	0	0	0	0
Rutherford	1	0	0	1	0	0	0	0	0
Shelby	38	0	0	0	38	2	0	0	0
Sumner	2	0	0	0	0	3	0	0	0
Washington	3	0	0	0	0	0	0	0	0
State Phase II Total	112	0	14	1	68	5	0	24	

* denotes Not Available.

Table 43-7 presents the sentence durations of those youth sentenced to jails or to state adult or juvenile corrections institutions in Phase II counties, to the extent that they could be determined. Seven of the 34 known sentence durations (21 percent) were for maximum terms of one year or less. Most of the cases (62 percent) were for maximum terms of more than one through five years. At least six youth received maximum sentences in excess of ten years.

TABLE 43-7. TENNESSEE: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums								Unknown
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	
Bledsoe	9	0	6	3	0	0	0	0	0	0
Blount	3	0	1	0	0	2	0	0	0	0
Cumberland	5	0	0	5	0	0	0	0	0	0
Dyer	2	2 est	0	0	0	0	0	0	0	0
Greene	3	0	2 est	1 est	0	0	0	0	0	0
Hamilton	4	0	2	0	0	2	0	0	0	0
Knox	2	2	0	0	0	0	0	0	0	0
Putnam	2	0	0	0	0	2	0	0	0	0
Rutherford	1	0	0	1	0	0	0	0	0	0
Shelby	38	*	*	*	*	*	*	*	*	38
Sumner	2	*	*	*	*	*	*	*	*	2
Washington	3	3	0	0	0	0	0	0	0	0
State Phase II Total	74	7	11	10	0	6	0	0	0	40

Table 43-8 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. 138 of the 215 youth reported to have been judicially transferred were selected for Phase II investigation. One hundred-twelve of these youth were determined guilty and at least 74 were sentenced to periods of confinement.

TABLE 43-8. TENNESSEE: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 43-1)	215
Total Referrals Selected for Phase II (Table 43-3)	138
Total Referrals Resulting in Convictions (Table 43-6)	112
Total Convictions Resulting in Sentences of Confinement (Table 43-7)	74

In summary, of 215 youth judicially transferred in 1978, 100 percent of the 138 youth reported upon in Phase II counties were 16 years of age or older, 99 percent males, and 62 percent were white youth. Most of the incident offenses (72 percent) were offenses against the person in Phase II counties, robbery in particular. Twenty-eight percent were for property offenses. Ninety-one percent were found guilty when judgments were reported. Most of these (84 percent) were incarcerated, 47 percent receiving maximum terms of over three years and 53 percent receiving maximum terms of three years or less.

Routinely Handled Traffic Offenses

When juveniles 16 years of age or older violated Tennessee traffic ordinances in 1978, except drunken driving and negligent homicide, the hearings routinely took place in adult courts. This section presents information, by county, on the number of youth referred to adult courts due to excluded traffic offenses.

Table 43-9 shows the data on referrals to adult courts resulting from excluded traffic violations. The 7,538 cases shown are from 87 of the 95 counties representing 77 percent of the state's total juvenile population. In virtually all counties, data obtained were characterized as "estimates." Therefore, figures reflected may only be used in the most general way to obtain some idea of the incidence of adult court handling of traffic offenses by youth under 18.

TABLE 43-9. TENNESSEE: JUVENILE REFERRALS TO ADULT COURTS FOR EXCLUDED TRAFFIC OFFENSES (BY COUNTY, JUVENILE POPULATION AND FREQUENCY OF OFFENSES) IN 1978

County	Juvenile Population (Ages 8-17) ^a	Number of Excluded Traffic Offenses
Anderson	10,654	64 est
Bedford	4,281	36 est
Benton	2,068	252 est
Bledsoe	1,299	40 est
Blount	11,781	248 est
Bradley	10,812	235 est
Campbell	5,448	25 est
Cannon	1,585	*
Carroll	4,262	0 est
Carter	7,482	140 est
Cheatham	3,259	61 est
Chester	1,755	36 est
Claiborne	3,848	92 est
Clay	1,169	20 est
Cocke	5,228	73 est
Coffee	6,231	350 est
Crockett	2,609	106 est
Cumberland	4,661	100 est
Davidson	73,608	424
Decatur	1,520	77 est
DeKalb	2,077	45 est
Dickson	4,873	24 est
Dyer	5,362	15 est
Fayette	5,428	*
Fentress	2,746	180 est

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TABLE 43-9. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Number of Excluded Traffic Offenses
Franklin	4,992	74 est
Gibson	8,242	*
Giles	3,661	0 est
Grainger	2,956	*
Greene	8,376	308 est
Grundy	2,211	95 est
Hamblen	7,985	60 est
Hamilton	44,150	131 est
Hancock	1,097	60 est
Hardeman	4,258	50 est
Hardin	3,387	120 est
Hawkins	6,823	50 est
Haywood	4,368	135 est
Henderson	3,285	100 est
Henry	4,133	47 est
Hickman	2,389	285 est
Houston	1,038	14 est
Humphreys	2,622	*
Jackson	1,356	16
Jefferson	4,518	75 est
Johnson	2,231	51 est
Knox	46,656	245 est
Lake	1,438	59 est
Lauderdale	4,283	24 est
Lawrence	5,929	0
Lewis	1,259	102 est
Lincoln	4,372	0
Loudon	4,419	0
Macon	2,135	28 est
Madison	12,339	250 est
Marion	4,147	2 est
Marshall	3,085	0
Maury	8,223	0
McMinn	6,912	0
McNairy	3,517	0

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TABLE 43-9. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Number of Excluded Traffic Offenses
Meigs	1,112	55 est
Monroe	4,565	18 est
Montgomery	12,772	0 est
Moore	540	50 est
Morgan	2,582	40 est
Obion	5,341	40 est
Overton	2,769	*
Perry	854	0
Pickett	762	135 est
Polk	2,144	90 est
Putnam	5,825	89 est
Rhea	3,645	32 est
Roane	7,282	28 est
Robertson	6,031	0
Rutherford	10,971	56 est
Scott	3,189	72 est
Sequatchie	1,427	0
Sevier	5,591	17 est
Shelby	136,253	**
Smith	2,288	0
Stewart	1,283	82 est
Sullivan	22,768	500 est
Sumner	13,663	150 est
Tipton	6,193	40 est
Trousdale	882	74 est
Unicoi	2,683	50 est
Union	1,991	35 est
Van Buren	687	5 est
Warren	5,435	0
Washington	12,666	425 est
Wayne	2,437	132 est
Weakley	4,420	141 est
White	3,000	23 est
Williamson	8,484	*
Wilson	8,145	135 est

TABLE 43-9. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Number of Excluded Traffic Offenses
Totals	727,518	7,538 est

* 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.

FOOTNOTES

1. Office of the Executive Secretary, Tennessee Supreme Court, Annual Report 1978.
2. Ibid.
3. State ex. rel. Anglin v. Mitchell, 575 S.W.2d 284 (1980).
4. Tennessee Code Annotated, Section 37-202(1) and (3).
5. Tennessee Code Annotated, Section 37-234.
6. Tennessee Code Annotated, Section 37-202(3).
7. Tennessee Code Annotated, Section 37-234.
8. Tennessee Code Annotated, Section 37-234(b).
9. Tennessee Code Annotated, Section 37-234(f).
10. Tennessee Code Annotated, Section 37-258(d).
11. Tennessee Code Annotated, Sections 37-230, 37-231, 37-243, and 37-265 (prior to repeal and amended by Public Acts of 1970, Chapter 600).
12. Greene v. State, 358 S.W.2d. 306 (1962).
13. Jackson v. Johnson, 584 F.2d 233 (1966).
14. State ex rel. Donehue v. Russell, 429 S.W.2d 818; 221 Tenn. 609 (1967).
15. State v. Strickland, 532 S.W.2d. 912 (1975), citing Tennessee Code Annotated, Section 37-215(a).
16. Colyer v. State, 577 S.W.2d. 460 (1979).
17. Clores v. State, 484 S.W.2d 534 (1972).
18. State v. Strickland, 532 S.W.2d. 912 (1975).
19. In re Houston, 428 S.W.2d. 303; 221 Tenn. 528 (1968).
20. Tennessee Code Annotated, Section 37-233(a).
21. Tennessee Code Annotated, Section 37-234(g).

VIRGINIA PROFILE

ACKNOWLEDGMENTS

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METHODOLOGY

Data collection was conducted by Academy staff, initially contacting local court services directors, juvenile service workers, judges, clerks of courts, or prosecutors for the frequency data (Phase I) of youth judicially transferred to adult courts in 1978. Phase II data--age, sex, race, offenses, dispositions, and sentences--were also sought from these sources. However, after experiencing difficulty in obtaining these data from local sources and determining a state source for data, the local survey was terminated. Both Phase I and some Phase II data had been obtained from 14 local jurisdictions (counties and independent cities) at that time, although variation in reporting periods resulted in data reflecting both the 1978 fiscal and calendar years.

The Virginia Department of Corrections was able to provide Phase I data for all local Virginia jurisdictions regarding youth judicially transferred and subsequently indicted by the grand jury in 1978. This information, then, varies from the locally supplied Phase I data which only reflects the frequency of judicial transfer, and not necessarily during the same 1978 reporting period. In addition, this state source provided Phase II data on age, sex, race, and offenses for the most populous ten percent of the independent cities and counties and those local jurisdictions with five or more judicial transfer and subsequent indictments. These data were also provided for two additional counties, due to the availability of the information. Dispositions and sentences for these judicially transferred and indicted youth were not available from this source.

COURT ORGANIZATION

The highest courts of general jurisdiction in Virginia are the circuit courts. There are 31 circuits within the circuit court system, and circuit court judges preside on site in 122 locations.

The 31 general district courts are courts of limited jurisdiction. Criminal jurisdiction of the general district courts cover general misdemeanors, exclusive jurisdiction of city and county ordinance violations, and preliminary examination of felonies.

A juvenile and domestic relations district court also exists in each of the 31 districts. Jurisdiction of these courts covers all cases relating to juveniles, including offenses committed against juveniles by adults and commitment of mentally handicapped juveniles to appropriate facilities. These courts will hereafter be referred to as juvenile courts. Cases involving juveniles accused of traffic violations are heard by juvenile and domestic relations district court.

An overview of Virginia's courts by their jurisdiction over juveniles appears below.

VIRGINIA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic ^a
Juvenile and Domestic Relations District Courts	Circuit Courts	Juvenile and Domestic Relations District Courts

TRANSFER PROCESS

In Virginia, the initial age of juvenile court jurisdiction extends to 18 years of age.¹ There is only one legal mechanism by which youth may be tried in adult courts in Virginia, judicial transfer, but there are several provisions for transferring youth in this manner.

If juveniles 15 years or older are charged with an offense which, if committed by an adult, could be punishable by confinement in the penitentiary, the juvenile courts may, on the motion of the state's attorney, hold transfer

hearings. In order to transfer jurisdiction, the courts must find probable cause to believe the juveniles committed the alleged act and that the juveniles are not amenable to treatment or rehabilitation as juveniles in available facilities. The juvenile courts must also consider the nature of the present offense, the nature of the juveniles' prior delinquency record, the nature of past treatment efforts, and the nature of the juveniles' response to past treatment efforts. In addition, the courts must find that the juveniles are not mentally retarded or criminally insane and that the interests of the community require that the juveniles be placed under legal restraint or discipline.² However, when the alleged act is armed robbery, rape or murder the juvenile courts may transfer youth to adult courts without making the nonamenability finding. If the case is not transferred to adult courts, the judge who conducted the hearing cannot, over the objection of an interested party, preside at the adjudicatory hearing in juvenile court.

In addition to the above provision, if the juvenile courts elect to retain jurisdiction of a case in which the punishment could be death or imprisonment for 20 years or more if heard in an adult court, the state's attorney may seek to have the case removed to the adult courts. Notification is made by the state's attorney to both the juvenile court and the juvenile's counsel and the juvenile court is required to submit all information regarding the case, including the written court opinion from the transfer hearing, to the appropriate circuit court. It is then the responsibility of the circuit court to determine if the juvenile should be returned to juvenile court for adjudication or advise the state's attorney to seek a grand jury indictment for adult court prosecution.³

Finally, any juvenile who fits the age and offense criteria for judicial transfer may, with written consent of counsel, elect to be tried in adult courts, without a transfer hearing.⁴

Juveniles under 18 charged with traffic violations are handled in the juvenile courts in Virginia.⁵

In 1980, the Virginia General Assembly passed legislation which allows juvenile courts to transfer without a nonamenability finding youth previously tried in adult courts, convicted of a felony, and currently alleged to have committed an act which would be a felony if committed by an adult.⁶

CASE LAW SUMMARY

Since 1950, the Virginia Supreme Court has, on numerous occasions, rendered opinions concerning transfer issues, and such cases have twice been heard in the Fourth Circuit Court of Appeals.

Prior to 1977, the Code of Virginia contained two statutory mechanisms which provided for the criminal prosecution of individuals under the age of 18 years. First, judges of courts of record could, at their discretion,

retain jurisdiction over such individuals, instead of transferring the matter to juvenile court. Second, if a juvenile court declined to certify an individual 14 years of age or older who was charged with an offense punishable by 20 years or life imprisonment or death for criminal prosecution, the commonwealth's attorney could seek an indictment from the grand jury.

In Tilton v. Commonwealth, the Virginia Supreme Court held that the transfer from a court of record to a juvenile court was not mandatory.⁷ However, the court found that the investigation into the physical, mental, and social condition of the defendant did not meet the requirement of a full and complete investigation required by statute. Therefore, the case was remanded for trial. (See also, Norwood v. City of Richmond.)⁸

Included in the Virginia Code is the prohibition of judicial transfer or criminal prosecution of individuals under 15 years of age. In Lee v. Jones, the court rejected the defendant's argument that this statute only applied to fugitives and held that it applied to all individuals under this age.⁹ The court held, in Watts v. Commonwealth, that transfer was mandatory where the defendant was 16 years of age or older and had previously been committed to training school.¹⁰

In Lyons v. Commonwealth, the court held that the defendant had failed to demonstrate an abuse of discretion by the circuit court in not treating him as a juvenile.¹¹ Further, in Redmon v. Peyton, the Fourth Circuit Court of Appeals held that under Virginia law, the circuit court is not required to transfer juveniles to juvenile court, but may independently determine whether the juvenile should be tried as an adult.¹²

In Peyton v. French, the Virginia Supreme Court held that a hearing and the appointment of a guardian ad litem prior to certification to be statutorily required.¹³ In addition, the court held that since French was then 21 years of age, he could not be retried as a juvenile, but could be retried as an adult on new indictments.¹⁴ The holding in French concerning the hearing and appointment of a guardian ad litem was reaffirmed in Pruitt v. Peyton,¹⁵ as was the holding concerning the statutory prohibition of retrying an adult as a juvenile, in Pruitt v. Guerry.¹⁶ (See also, Jones v. Commonwealth and Gregory v. Peyton).¹⁷ Further, in the habeas corpus case of Brown v. Cox, the Fourth Circuit Court of Appeals held that a retrial as an adult for a crime committed as a juvenile did not deprive the defendant of fundamental rights under the facts of the case, even though the transfer order waiving the defendant over to initial adult trial was invalid on procedural due process grounds.¹⁸ A "reconstituted" transfer hearing was not required by the court.

In Toran v. Peyton,¹⁹ the court held that the independent investigation conducted by a corporation court concerning the defendant's suitability to trial as an adult nullified any claim by the defendant that the juvenile court certification was defective.²⁰ The court, in Cradle v. Peyton, held that the defendant was not denied due process by virtue of the fact that he was not represented by counsel (or told that one would be appointed if he was indigent) at the certification hearing.²¹ The court distinguished the decision in In re Gault²² because Gault prohibited confinement without due process protections and the instant case involved certification orders. The court also held Kent v.

United States²³ inapplicable because it was not expressly decided on constitutional grounds. However, the court reversed the conviction in Matthews v. Commonwealth for the trial court's failure to provide findings of fact prior to certification.²⁴ This reversal was based on a new transfer statute.²⁵ Finally, the court held, in Turner v. Commonwealth, that the failure to give the statutorily mandated notice of the transfer hearing did not require reversal of the conviction, since all necessary parties were present at the transfer hearing.²⁶ (The defendant had also failed to raise an objection to the lack of notice.)

CORRECTIONS INFORMATION

The Division of Institutional Services of the Virginia Department of Corrections operates both adult prisons and juvenile learning centers, the latter under a specialized Youth Region. The Youth Region operates the Bon Air Reception and Diagnostic Center and six learning centers throughout the state.

Adults who are 18 years of age and over convicted of a felony or misdemeanor and sentenced to confinement for six months or more can be committed to one of the corrections centers.

Juveniles adjudicated delinquent and committed to the Department of Corrections may be institutionalized in the Youth Region's learning centers for juveniles. They cannot be placed in a corrections center directly or through administrative transfer. However, Virginia is one of a very small number of states which does allow adjudicated juveniles to be sentenced to adult corrections under special circumstances. When juveniles 15 years of age or older are charged with and adjudicated for an offense which if committed by an adult would be a misdemeanor or a felony, juvenile courts may impose the penalties which are authorized to be imposed on adults for such violations, those penalties not to exceed 12 months in jail for a single offense or multiple offenses. In these cases, the juvenile courts must find that the adjudicated juvenile is not amenable to treatment or rehabilitation as a juvenile through available facilities, and that the nature of the individual's prior delinquency record, past treatment efforts, and the interests of the community require that the juvenile be placed under legal restraint or discipline. The facility must be approved for the detention of juveniles, must have adequate supervision, and the juveniles must be separated from adult prisoners by sight and sound. In addition, no juvenile found guilty of a misdemeanor can be confined for a longer period of time than an adult for a comparable offense.²⁷

Youth judicially transferred by juvenile courts, tried and convicted in adult courts, and sentenced to the Division of Institutional Services are generally placed at the Southampton Correctional Center for youthful adult first offenders. However, circuit courts may sentence or commit a transferred youth, determined to be guilty, in "the manner prescribed in this law for the hearing and disposition of cases in the juvenile court."²⁸ In addition, these adult courts may place youth on probation to be supervised by a juvenile probation

officer. The juvenile code does not provide for the administrative transfer of juveniles convicted in criminal courts from adult to juvenile corrections facilities.

STATE DATA SUMMARY

In Virginia, youth 15 years of age or older may be judicially transferred to adult courts provided the alleged offense would be punishable by a penitentiary sentence if committed by an adult. A transfer hearing is required, except when the alleged offense is armed robbery, rape or murder, or when the juvenile, with counsel's consent, requests transfer. In addition, if the juvenile court elects to retain jurisdiction of a case in which adult court punishment could be death or incarceration for 20 or more years, the state's attorney can request circuit court to determine the appropriate jurisdiction, either remanding the case back to juvenile court or recommending a grand jury indictment.

As described in the Methodology section of this profile, data on youth judicially transferred to adult courts in 1978 were sought from some local Virginia jurisdictions (counties and independent cities) before turning to the Department of Corrections for the state-supplied information. This state-supplied data only includes information on youth who were judicially transferred and subsequently indicted by a grand jury in 1978, which logically implies that the number of judicial transfers made from juvenile courts in that year is most likely higher than the number of cases of youth under 18 which were indicted and reported in this state data. Therefore, the data collected on judicial transfer from 14 local jurisdictions are also offered as a point of comparison. However, it should be noted that there is some discrepancy on the 1978 reporting periods (fiscal or calendar year) used by the local sources which may not coincide with that used by the Department of Corrections (DOC).

Table 47-1A displays the DOC reported data by county and independent city and estimated juvenile population eight through 17 years of age. A total of 509 youth were reported to have been transferred and indicted in 1978, for a rate of 5.809 per 10,000 juveniles in Virginia. The independent cities of Richmond and Roanoke were reported to have transferred and indicted 49 youth each, accounting for 19 percent of the total reported by the state source.

TABLE 47-1A. VIRGINIA: REFERRALS OF JUVENILES TO ADULT COURTS
IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)
AS REPORTED BY STATE SOURCE

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases ^b	Rate ^c
Accomack	5,050	4	7.921
Albermarle	7,388	0	0.000
Alleghany	2,414	0	0.000
Amelia	1,685	3	17.804
Amherst	4,906	1	2.038
Appomattox	2,081	5	24.027
Arlington	17,286	1	0.579
Augusta	8,752	2	2.285
Bath	867	0	0.000
Bedford	5,005	2	3.996
Bland	789	0	0.000
Botetourt	3,650	3	8.219
Brunswick	2,906	0	0.000
Buchanan	7,358	2	2.718
Buckingham	2,388	0	0.000
Campbell	7,451	4	5.368
Caroline	3,256	0	0.000
Carroll	4,219	0	0.000
Charles City	1,526	0	0.000
Charlotte	2,388	1	4.188
Chesterfield	20,178	12	5.947
Clarke	1,428	2	14.006
Craig	600	0	0.000
Culpeper	4,084	1	2.449
Cumberland	1,391	0	0.000
Dickenson	3,574	0	0.000
Dinwiddie	3,760	2	5.319
Essex	1,583	1	6.317
Fairfax	106,315	1	0.094
Fauquier	5,730	0	0.000
Floyd	1,829	0	0.000
Fluvanna	1,651	0	0.000
Franklin	5,765	18	31.223
Frederick	5,256	1	1.903
Giles	2,985	2	6.700

TABLE 47-1A. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases ^b	Rate ^c
Gloucester	2,932	2	6.821
Goochland	2,038	0	0.000
Grayson	2,399	5	20.842
Greene	1,314	7	53.272
Greensville	2,035	0	0.000
Halifax	5,846	1	1.711
Hanover	8,861	12	13.542
Henrico	27,900	7	2.509
Henry	10,696	32	29.918
Highland	350	0	0.000
Isle of Wight	3,912	2	5.112
James City	3,374	11	32.602
King and Queen	914	0	0.000
King George	1,687	0	0.000
King William	1,521	1	6.575
Lancaster	1,440	0	0.000
Lee	3,930	1	2.545
Loudoun	10,454	1	0.957
Louisa	3,180	0	0.000
Lunenburg	2,393	2	8.358
Madison	1,680	6	35.714
Matthews	1,223	0	0.000
Mecklenburg	5,301	7	13.205
Middlesex	1,060	0	0.000
Montgomery	7,887	0	0.000
Nelson	2,020	0	0.000
New Kent	1,355	1	7.380
Northampton	2,563	1	3.902
Northumberland	1,396	1	7.163
Nottoway	2,346	0	0.000
Orange	2,997	0	0.000
Page	3,310	1	3.021
Patrick	2,841	1	3.520
Pittsylvania	12,044	6	4.982
Powhatan	1,593	9	56.497

TABLE 47-1A. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases ^b	Rate ^c
Prince Edward	2,249	0	0.000
Prince George	3,034	0	0.000
Prince William	34,724	5	1.440
Pulaski	5,616	18	32.051
Rappahannock	1,131	0	0.000
Richmond	1,101	0	0.000
Roanoke	11,625	14	12.043
Rockbridge	3,050	1	3.279
Rockingham	9,303	0	0.000
Russell	4,599	0	0.000
Scott	4,164	0	0.000
Shenandoah	4,383	1	2.282
Smyth	4,193	6	11.554
Southampton	3,746	8	21.356
Spotsylvania	4,574	12	26.235
Stafford	5,952	7	11.761
Surry	1,070	0	0.000
Sussex	2,296	1	4.355
Tazewell	8,033	10	12.449
Warren	3,217	2	6.217
Washington	6,954	0	0.000
Westmoreland	2,274	1	4.398
Wise	7,614	0	0.000
Wythe	3,941	0	0.000
York	7,881	5	6.344
<u>Independent City</u>			
Alexandria City	12,640	11	8.703
Bedford City	991	2	20.182
Bristol City	3,453	8	23.168
Buena Vista City	1,112	0	0.000
Charlottesville City	4,896	0	0.000
Chesapeake City	20,951	13	6.205
Clifton Forge City	790	1	12.658
Colonial Heights City	2,998	0	0.000
Covington City	1,567	0	0.000
Danville City	6,867	7	10.194

TABLE 47-1A. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases ^b	Rate ^c
<u>Independent City (Continued)</u>			
Emporia City	825	0	0.000
Fairfax City	4,506	0	0.000
Falls Church City	1,290	0	0.000
Franklin City	1,314	0	0.000
Fredericksburg City	1,860	0	0.000
Galax City	893	0	0.000
Hampton City	24,228	3	1.238
Harrisonburg City	2,433	0	0.000
Hopewell City	4,392	10	22.769
Lexington City	877	2	22.805
Lynchburg City	9,512	27	28.385
Manassas City	*	0	0.000
Manassas Park City	*	0	0.000
Martinsville City	3,343	0	0.000
Newport News City	25,946	11	4.240
Norfolk City	44,359	1	0.225
Norton City	717	0	0.000
Petersburg City	8,576	12	13.993
Poquosan City	*	0	0.000
Portsmouth City	19,722	0	0.000
Radford City	1,528	0	0.000
Richmond City	36,135	49	13.560
Roanoke City	14,836	49	33.028
Salem City	3,527	1	2.835
South Boston City	1,097	0	0.000
Staunton City	3,030	8	26.403
Suffolk City	1,976	6	30.364
Virginia Beach City	43,635	5	1.146
Waynesboro City	2,822	0	0.000
Williamsburg City	632	5	79.114

TABLE 47-1A. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver Cases ^b	Rate ^c
<u>Independent City</u> (Continued)			
Winchester City	2,901	2	6.894
Total	876,187 ^d	509	5.809

* denotes Not Available.

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 only youth who were judicially transferred and indicated by a grand jury in 1978.

c. Rate per 10,000 juveniles eight to 17 years old (1978).

d. Juvenile populations were unavailable from Manassas City, Manassas Park City, and Poquosan City, and are not included in this total.

Table 47-1B provides the data supplied by 14 local jurisdictions, nine counties and five independent cities, on youth judicially transferred in 1978 but not necessarily indicted. These localities reported a total of 98 transfers in 1978. Greene County was the only one reporting no transfers, while the City of Alexandria reported the most, 24 youth. Comparing the number of transfers to the number of cases reported by state sources to have been indicted by the grand jury is difficult, given the different reporting periods in parts of the two data sets.

TABLE 47-1B. VIRGINIA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 IN SELECTED COUNTIES (BY COUNTY, RATE AND LEGAL MECHANISM) AS REPORTED BY LOCAL SOURCES

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Appomattox	2,081	4	19.222
Augusta	8,752	4	4.570
Fairfax	106,315	1	0.094
Greene	1,314	0	0.000
Madison	1,680	3	17.857
Pittsylvania	12,044	5	4.151
Smyth	4,193	1	2.385
Spotsylvania	4,574	18	39.353
Washington	6,954	1	1.438
<u>Independent City</u>			
Alexandria City	12,640	24	18.987
Bristol City	3,453	7	20.272
Chesapeake City	20,951	19	9.069
Hampton City	24,228	5	2.064
Petersburg City	8,576	6	6.996
Total	217,755	98	4.500

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 to 17 years old (1978).

Table 47-2A reflects the relationship between counties and independent cities selected from the state data source for Phase II investigation and all local jurisdictions in Virginia. There were 43 Phase II localities in Virginia. Fourteen local jurisdictions met the population criteria for Phase II selection and 36 were selected due to the number of transfers criteria, including nine of which fit both criteria. Two additional counties were included due to the availability of data from the state source. In Virginia, the 43 Phase II local jurisdictions represented 68 percent of the state juvenile population and 89 percent (452) of the total number of transferred and indicted youth.

VA-12

TABLE 47-2A. VIRGINIA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA REPORTED BY STATE SOURCE

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	876,187 ^b	136	509
Selected for Phase II Investigation	601,863	43	452
Percentage of State Selected for Phase II Investigation	69%	32%	89%

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. State juvenile population total does not include the cities of Manassas, Manassas Park, and Poquoson, for which this information was not available.

Table 47-2B shows the relationship between the reporting local jurisdictions in Virginia which provided Phase I and II data and all counties and independent cities in the state. The 14 (ten percent) local jurisdictions represent 25 percent of the state's estimated juvenile population. It could not be determined what proportion of the state total transfers in 1978 were made by these 14 localities, because data were not sought from all local sources.

VA-13

TABLE 47-2B. VIRGINIA: RELATIONSHIP OF PHASE II COUNTIES
TO ALL COUNTIES, BASED UPON 1978 POPULATION
ESTIMATES AND DATA REPORTED BY LOCAL SOURCES

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	876,187 ^b	136	*
Selected for Phase II Investigation	217,755	14	98
Percentage of State Selected for Phase II Investigation	25%	10%	*

* denotes Not Available.

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. State juvenile population does not include the cities of Manassas, Manassas Park, and Poquoson, for which information was not available.

Table 47-3A is a Phase II county breakdown of the age, sex, and race of youth transferred and indicted, as reported by the Department of Corrections. Where specific information was supplied, 90 percent were 17 years of age or younger, with 55 percent of the known cases being 17 years old. The 22 youth reported to be 18 or older may have reached that age by the time they were indicted. Ninety-eight percent of the youth for which data were reported were males and 60 percent were white.

TABLE 47-3A. VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II
COUNTIES (BY COUNTY AND AGE, SEX, AND RACE) IN 1978 AS
REPORTED BY STATE SOURCE

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un- known	Male	Female	Un- known	White	Minority	Un- known
Appomattox	5	0	3	2	0	0	5	0	0	2	3	0
Arlington	1	0	0	1	0	0	1	0	0	1	0	0
Chesterfield	12	0	7	5	0	0	12	0	0	10	2	0
Fairfax	1	*	*	*	*	1	*	*	1	*	*	1
Franklin	18	1	8	9	0	0	18	0	0	15	3	0
Grayson	5	*	*	*	*	5	*	*	5	*	*	5
Greene	7	0	5	2	0	0	7	0	0	4	3	0
Hanover	12	1	3	7	1	0	9	3	0	9	3	0
Henrico	7	1	2	2	2	0	7	0	0	5	2	0
Henry	32	1	9	13	9	0	32	0	0	19	13	0
Isle of Wright	2	0	0	2	0	0	2	0	0	0	2	0
James City	11	0	0	6	5	0	11	0	0	9	2	0
Lee	1	0	0	1	0	0	1	0	0	1	0	0
Madison	6	1	1	4	0	0	6	0	0	1	5	0
Mecklenburg	7	2	0	4	1	0	7	0	0	7	0	0
Pittsylvania	6	0	4	2	0	0	6	0	0	1	5	0
Powhattan	9	3	4	2	0	0	9	0	0	4	5	0
Prince William	5	3	1	0	1	0	4	1	0	4	1	0
Pulaski	18	1	3	14	0	0	18	0	0	18	0	0
Roanoke	14	2	2	10	0	0	12	2	0	14	0	0

TABLE 47-3A. (Continued)

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un- known	Male	Female	Un- known	White	Minority	Un- known
Smyth	6	*	*	*	*	6	*	*	6	*	*	6
Southampton	8	1	1	5	1	0	8	0	0	1	7	0
Spotsylvania	12	0	0	12	0	0	12	0	0	12	0	0
Stafford	7	*	*	*	*	7	*	*	7	*	*	7
Tazewell	10	1	2	7	0	0	8	2	0	10	0	0
York	5	0	0	3	2	0	5	0	0	5	0	0
<u>Independent City</u>												
Alexandria City	11	0	3	7	1	0	11	0	0	1	10	0
Bristol City	8	0	0	8	0	0	8	0	0	8	0	0
Chesapeake City	13	2	2	9	0	0	13	0	0	7	6	0
Danville City	7	1	2	4	0	0	7	0	0	2	5	0
Hampton City	3	*	*	*	*	3	*	*	3	*	*	3
Hopewell City	10	2	0	7	1	0	10	0	0	10	0	0
Lynchburg City	27	1	1	16	9	0	27	0	0	27	0	0
Newport News City	11	0	3	8	0	0	11	0	0	4	7	0
Norfolk City	1	0	0	1	0	0	1	0	0	1	0	0
Petersburg City	12	2	7	3	0	0	12	0	0	1	11	0
Portsmouth City	0	0	0	0	0	0	0	0	0	0	0	0
Richmond City	49	7	19	22	1	0	49	0	0	14	35	0
Roanoke City	49	6	12	28	3	0	48	1	0	24	25	0
Staunton City	8	0	4	3	1	0	8	0	0	1	7	0
Suffolk City	6	0	2	1	3	0	6	0	0	1	5	0

VA-16

TABLE 47-3A. (Continued)

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un- known	Male	Female	Un- known	White	Minority	Un- known
<u>Independent City</u> (Continued)												
VA-17 Virginia Beach City	5	0	0	5	0	0	5	0	0	3	2	0
	Williamsburg City	5	0	0	3	2	0	5	0	0	1	4
State Phase II Total	452	39	110	238	43	22	421	9	22	257	173	22

* denotes Not Available.

Table 47-3B is a county breakdown of locally supplied data by age, sex, and race. Of cases where age was known, 57 percent were 17 years old. Four percent were 15 years of age or younger. Ninety-nine percent were males and 58 percent were minority youth.

TABLE 47-3B. VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN SELECTED COUNTIES (BY COUNTY AND AGE, SEX, AND RACE) IN 1978 AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un- known	Male	Female	Un- known	White	Minority	Un- known
Appomattox	4	0	1	3	0	0	4	0	0	3	1	0
Augusta	4	0	1	3	0	0	4	0	0	2	2	0
Fairfax	1	*	*	*	*	1	*	*	1	*	*	1
Greene	0	0	0	0	0	0	0	0	0	0	0	0
Madison	3	0	2	1	0	0	3	0	0	3	0	0
Pittsylvania	5	0	2	3	0	0	5	0	0	1	4	0
Smyth	1	0	1	0	0	0	1	0	0	1	0	0
Spotsylvania	18	*	*	*	*	18	*	*	18	*	*	18
Washington	1	0	1 est	0	0	0	1	0	0	1	0	0
Independent City												
Alexandria City	24	0	12 est	12 est	0	0	24	0	0	4	20	0
Bristol City	7	0	4 est	3 est	0	0	7	0	0	7	0	0
Chesapeake City	19	2	3	14	0	0	18	1	0	10	9	0
Hampton City	5	0	0	5 est	0	0	5	0	0	1	4	0
Petersburg City	6	1	4	1	0	0	6	0	0	0	6	0
State Phase II Total	98	3	31	45	0	19	78	1	19	33	46	19

* denotes Not Available.

The Department of Corrections also provided the offenses for which youth were judicially transferred and indicted in 1978 in the Phase II counties. Table 47-4A shows that of known offenses, 69 percent (297) were property offenses, with burglary accounting for 40 percent of all known offenses. Personal offenses represented 22 percent (96) of all known charges, with murder/manslaughter accounting for 14 percent (13) of these personal offenses and three percent of all charges. Seven percent of all known charges were for public order offenses (drug and liquor violations, disorderly conduct and destruction of property). Figure 47-1A graphically depicts these offense categories by percentage, including the unknown offenses.

TABLE 47-4A. VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES
(BY COUNTY AND BY TYPES OF OFFENSES) IN 1978 AS REPORTED BY STATE
SOURCE

County	Total Waivers	Offenses ^a										Unknown
		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	
Appomattox	5	0	0	0	0	0	0	2	3	0	0	0
Arlington	1	1	0	0	0	0	0	0	0	0	0	0
Chesterfield	12	0	0	0	0	0	0	2	8	2	0	0
Fairfax	1	*	*	*	*	*	*	*	*	*	*	1
Franklin	18	0	0	1	0	0	0	10	7	0	0	0
Grayson	5	*	*	*	*	*	*	*	*	*	*	5
Greene	7	0	0	0	0	0	0	3	4	0	0	0
Hanover	12	0	0	1	0	0	1	6	3	1	0	0
Henrico	7	0	0	1	1	0	0	3	1	1	0	0
Henry	32	0	1	1	5	0	1	17	2	5	0	0
Isle of Wright	2	0	0	0	1	0	0	1	0	0	0	0
James City	11	0	0	2	0	0	0	2	7	0	0	0
Lee	1	1	0	0	0	0	0	0	0	0	0	0
Madison	6	0	0	0	0	0	0	6	0	0	0	0
Mecklenburg	7	0	0	0	0	0	0	0	3	1	3	0
Pittsylvania	6	1	0	1	0	0	0	1	3	0	0	0
Powhattan	9	0	2	0	2	0	0	2	3	0	0	0
Prince William	5	2	0	0	0	0	1	1	1	0	0	0
Pulaski	18	0	0	1	0	0	0	7	10	0	0	0
Roanoke	14	0	0	4	0	0	0	7	3	0	0	0

TABLE 47-4A. (Continued)

County	Total Waivers	Offenses ^a										Unknown
		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	
Smyth	6	*	*	*	*	*	*	*	*	*	*	6
Southampton	8	0	0	2	2	0	1	2	1	0	0	0
Spotsylvania	12	0	0	0	0	0	0	6	6	0	0	0
Stafford	7	*	*	*	*	*	*	*	*	*	*	7
Tazewell	10	0	0	1	0	0	0	0	1	8	0	0
York	5	0	0	0	0	0	0	3	2	0	0	0
<u>Independent City</u>												
Alexandria City	11	2	0	3	0	0	0	5	1	0	0	0
Bristol City	8	0	0	0	0	0	0	6	2	0	0	0
Chesapeake City	13	0	0	6	0	0	0	4	2	1	0	0
Danville City	7	0	2	0	0	0	0	1	4	0	0	0
Hampton City	3	*	*	*	*	*	*	*	*	*	*	3
Hopewell City	10	0	0	0	0	0	0	8	1	1	0	0
Lynchburg City	27	*	*	*	*	*	*	12	12	*	*	3
Newport News City	11	1	1	1	0	0	1	5	2	0	0	0
Norfolk City	1	0	0	0	0	0	0	1	0	0	0	0
Petersburg City	12	1	0	0	0	0	0	5	4	2	0	0

VA-20

TABLE 47-4A. (Continued)

County	Total Waivers	Offenses ^a										Unknown
		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	
<u>Independent City</u> (Continued)												
Richmond City	49	4	0	10	3	0	5	14	10	2	1	0
Roanoke City	49	0	0	9	3	0	1	19	13	4	0	0
Staunton City	8	0	0	0	0	0	0	7	0	1	0	0
Suffolk City	6	0	0	2	0	0	0	3	0	0	1	0
VA-21 Virginia Beach City	6 ^b	0	0	3	0	0	0	0	3	0	0	0
Williamsburg City	5	0	0	0	0	0	0	1	3	0	1	0
State Phase II Total	453 ^c	13	6	49	17	0	11	172	125	29	6	25

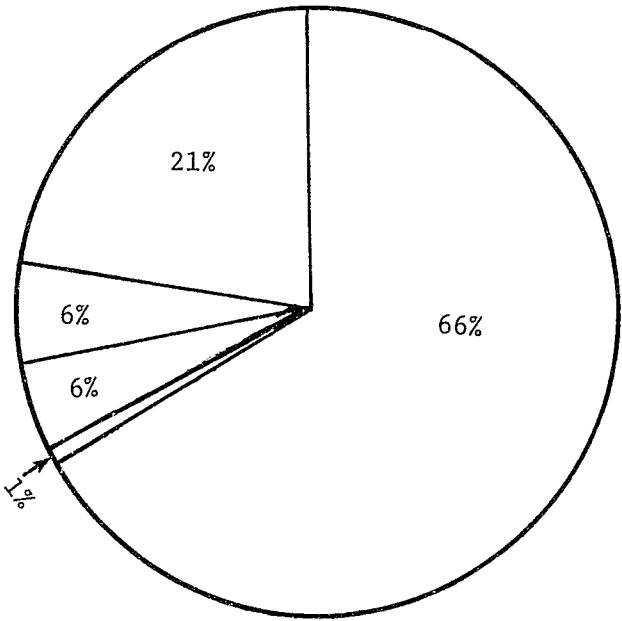
* denotes Not Available.

a. Only most serious offense per individual listed, except in Virginia Beach City.

b. Data represent charges rather than individuals; five youth were reported to be judicially transferred and indicted.

c. Includes Virginia Beach City report of charges rather than individuals.

FIGURE 47-1A. VIRGINIA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978 AS REPORTED BY STATE SOURCE



Offenses^a

Personal	21%
Property	66%
Public Order	6%
Other General	1%
Unknown	6%

N= 453^b

- a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent 15 percent of all offenses in the Phase II counties.
- b. Includes Virginia Beach City report of charges rather than individuals.

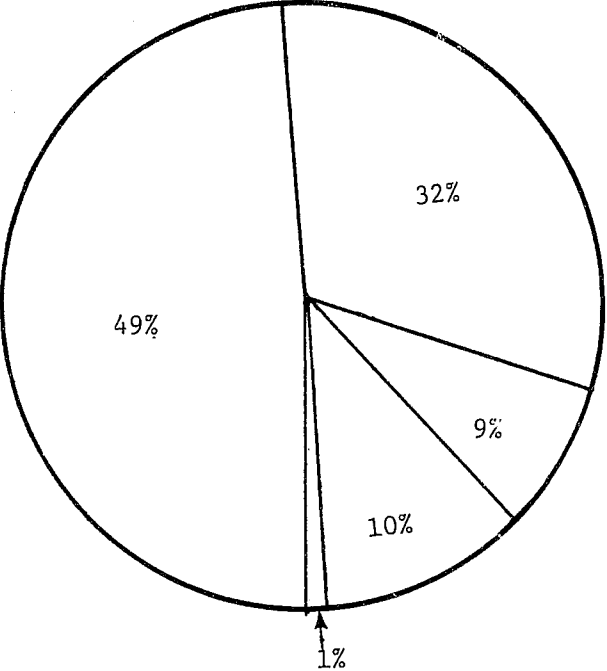
A breakdown of offense data presented by the 14 reporting localities appears in Table 47-4B transfers. Almost 50 percent of the offenses that resulted in judicial transfer were unknown. Of known offenses, 62 percent were property offenses (burglary and other property). Personal offenses (murder, rape, robbery, assaults, and other personal) represented 19 percent of all known charges, with most of these being for robbery. Seventeen percent of those reported were public order offenses, the majority being drug violations. Also, Figure 47-1B illustrates the proportions of these offense categories including the unknown offenses.

TABLE 47-4B. VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN SELECTED COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978 AS REPORTED BY LOCAL SOURCES

County	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	Unknown
Appomatox	4	0	0	0	0	0	0	0	4	0	0	0
Augusta	4	0	0	0	0	0	0	3	1	0	0	0
Fairfax	1	*	*	*	*	*	*	*	*	*	*	1
Madison	3	0	0	0	0	0	0	0	3	est 0	0	0
Pittsylvania	8 ^b	0	1	0	0	0	0	3	4	0	0	0
Smyth	1	0	0	0	0	0	0	0	0	0	1	0
Spotsylvania	18	*	*	*	*	*	*	*	*	*	*	18
Washington	1	*	*	*	*	*	*	*	*	*	*	1
<u>Independent City</u>												
Alexandria City	24	*	*	*	*	*	*	*	*	*	*	24
Bristol City	7	0	0	0	0	0	0	0	0	7	0	0
Chesapeake City	19	0	0	8	0	0	0	4	5	2	0	0
Hampton City	5	*	*	*	*	*	*	*	*	*	*	5
Petersburg City	6	1	0	0	0	0	0	4	1	0	0	0
State Phase II Total	101 ^c	1	1	8	0	0	0	14	18	9	1	49

- * denotes Not Available.
- a. Only most serious offense per individual listed, except in Pittsylvania County.
- b. Data represent charges rather than individuals; five youth were reported to be judicially transferred.
- c. Includes Pittsylvania report of charges rather than individuals.

FIGURE 47-1B. VIRGINIA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN SELECTED COUNTIES (BY OFFENSE CATEGORY) IN 1978 AS REPORTED BY LOCAL SOURCES



Offenses^a

Personal	10%
Property	32%
Public Order	9%
Other General	1%
Unknown	49%

N= 101

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

Disposition and sentence data were not available from the Department of Corrections, but some of this information was reported by the local jurisdictions contacted. Table 47-5 reflects the disposition data which were available from the local sources. Only 32 percent (31) of the youth who were transferred have judgments reported in this table. Of these known judgments, 77 percent (24) were found guilty and 13 percent (4) were reported to have been convicted under a youthful offender provision which was not identified during this study's legal search of the Virginia Code. The three youth appearing in the "other" category were cases pending or held open.

TABLE 47-5. VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN SELECTED COUNTIES (BY COUNTY AND BY JUDGMENTS) IN 1978 AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Youthful Offender Judgments	Guilty	Other ^a	Un- known
Appomattox	4	*	*	*	*	*	*	4
Augusta	4	0	0	0	0	4	0	0
Fairfax	1	*	*	*	*	*	*	1
Madison	3	0	0	0	0	1	2	0
Pittsylvania	5	0	0	0	0	4	1	0
Smyth	1	*	*	*	*	*	*	1
Spotsylvania	18	*	*	*	*	*	*	18
Washington	1	*	*	*	*	*	*	1
Independent City								
Alexandria City	24	*	*	*	*	*	*	24
Bristol City	7	*	*	*	*	*	*	7
Chesapeake City	19	0	0	0	4	15	0	0
Hampton City	5	*	*	*	*	*	*	5
Petersburg City	6	*	*	*	*	*	*	6
State Phase II Total	98	0	0	0	4	24	3	67

* denotes Not Available.

a. Cases pending or held open.

Only a limited amount of data were available from local jurisdictions about sentences received by convicted youth. Augusta and Madison Counties were the only two jurisdictions able to provide this information. Among the total of five youth convicted in these two counties, two were sentenced to state juvenile corrections facilities, two were sentenced to jails. The maximum sentence lengths for these youth included two sentences of one year or less, the others being unavailable. The fifth convicted youth reported upon (Madison County) was sentenced to an adult corrections facility for a maximum term of over ten years.

Finally, Table 47-6 reflects the information provided in the preceding tables, showing the "drop-off" of cases as youth proceed from transfer to sentencing. It should be recalled that there is a basic difference between the state and locally supplied data, the state reported youth both judicially transferred and indicted by a grand jury. This procedure alone causes a drop-off of some youth when indictment does not occur following a judicial transfer.

TABLE 47-6. VIRGINIA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver (State Source)	Judicial Waiver (Local Sources)
Total Referrals to Adult Courts in 1978 (Table 47-1A)	509	*
Total Referrals Selected for Phase II (Tables 47-3A and 47-3B)	452	98
Total Referrals Resulting in Convictions (Table 47-5)	*	28
Total Convictions Resulting in Sentences of Confinement	*	5

* denotes Not Available.

In summary, according to the Department of Corrections, of youth appearing in adult courts in Phase II counties, 55 percent were 17 years old, 98 percent were males, and 60 percent were white, where data were available. Most of the known charges were for property offenses in Virginia (69 percent).

FOOTNOTES

1. Virginia Code, Section 16.1-228.
2. Virginia Code, Section 16.1-269.
3. Virginia Code, Section 16.1-269(E).
4. Virginia Code, Section 16.1-270.
5. Virginia Code, Section 16.1-228(H).
6. Virginia Code, Section 16.1-269(A)(3)(b).
7. Tilton v. Commonwealth, 85 S.E.2d 368; 196 Va. 774 (1955).
8. Norwood v. City of Richmond, 128 S.E.2d, 425; 203 Va. 886 (1962).
9. Lee v. Jones, 188 S.E.2d 102; 212 Va. 792 (1972).
10. Watts v. Commonwealth, 189 S.E.2d 346; 213 Va. 57 (1972).
11. Lyons v. Commonwealth, 131 S.E.2d 407; 204 Va. 375 (1963); although the juvenile court had certified the defendant to circuit court, circuit court had the power to sentence him as a juvenile. (Code of 1950, Section 16.1-177, since revised and renumbered).
12. Redmon v. Peyton, 420 F.2d 882 (1959).
13. Peyton v. French, 147 S.E.2d 739; 207 Va. 73 (1966).
14. Code of 1950, Section 16.1-159.
15. Pruitt v. Peyton, 165 S.E.2d 288; 209 Va. 532 (1969).
16. Pruitt v. Guerry, 170 S.E.2d 1; 210 Va. 268 (1969).
17. Jones v. Commonwealth, 192 S.E.2d 775; 213 Va. 425 (1972); Gregory v. Peyton, 156 S.E.2d 624; 208 Va. 157 (1967).
18. Brown v. Cox, 481 F.2d 622 (1973).
19. Toran v. Peyton, 153 S.E.2d 213; 207 Va. 923 (1967).
20. Former Code Section 16.1-175 authorized the court to conduct this independent investigation, if it chose to do so.
21. Cradle v. Peyton, 156 S.E.2d 874; 208 Va. 243 (1967).
22. In re Gault, 387 U.S. 1 (1967).
23. Kent v. United States, 383 U.S. 541 (1966).
24. Matthews v. Commonwealth, 218 S.E.2d 538; 216 Va. 358 (1975).
25. Virginia Code, Section 16.1-176.
26. Turner v. Commonwealth, 222 S.E.2d 517 (1976).
27. Virginia Code, Section 16.1-284.
28. Virginia Code, Section 16.1-272.
29. Virginia Code, Section 16.1-272(B).

WEST VIRGINIA

ACKNOWLEDGMENTS

The Academy expresses its appreciation to Karen Hill, Youth Services Program Supervisor, West Virginia Department of Welfare, and the area supervisors who were very helpful in attempting to provide data on judicial waivers for 1978. Appreciation is also expressed to Samme L. Gee, Assistant Administrative Director, Supreme Court of Appeals, and Deborah E. Greenham, Graduate Student Intern, West Virginia Joint Committee on Government and Finance, for reviewing parts of the West Virginia profile. In addition, the Academy acknowledges the assistance of the many other state and local officials who provided the study with the necessary data.

METHODOLOGY

Data collection in West Virginia began with Judicial waiver frequency (Phase I) data by county for 1978 provided by the Department of Welfare. However, verification calls made by Academy staff to local juvenile and adult courts, prosecutors' offices, probation departments, and county welfare offices in a sample of counties resulted in discrepancies in the two data sources. Therefore, all 55 counties were surveyed by the Academy staff for Phase I frequency data. Phase II data--age, sex, race, dispositions, and sentences--were sought and provided by the five most populous counties (if any waivers occurred in 1978), as well as by the one other county reporting five or more waivers. Also, Lincoln County was included in the Phase II category due to the availability of data.

Data on minor municipal ordinance violations and traffic violations against juveniles routinely handled in magistrate, and municipal courts were unavailable from any source.

COURT ORGANIZATION

In West Virginia, circuit courts are the highest courts of general jurisdiction. The circuit courts have unlimited original jurisdiction for criminal and civil cases, including juvenile matters. The circuit court system is divided into 31 circuits with circuit court judges presiding on locations in every county. The magistrate courts and the municipal courts have limited criminal jurisdiction in West Virginia.

The juvenile divisions of the circuit courts have exclusive original jurisdiction over individuals under 18 years of age in any proceeding related to delinquency.¹ This profile will hereafter refer to these juvenile divisions of the circuit courts as juvenile courts.

The magistrate and municipal courts in West Virginia share concurrent jurisdiction with the juvenile courts over juveniles charged with minor municipal traffic violations or violations of natural resources laws.² However, the magistrate and municipal courts may not impose a sentence of confinement on youth who have violated traffic or natural resources laws.³

An overview of West Virginia's courts by their jurisdiction over juveniles appears below.

WEST VIRGINIA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Juvenile Divisions of Circuit Courts	Criminal Divisions of Circuit Courts	Juvenile Divisions of Circuit Courts Magistrate Courts Municipal Courts

TRANSFER PROCESS

The maximum age of initial juvenile court jurisdiction in West Virginia extends to 18 years of age.⁴ There are two legal mechanisms by which youth are tried in adult courts in West Virginia--judicial waiver and concurrent jurisdiction.

Judicial Waiver

There are several judicial waiver provisions by which youth can be tried as adults in West Virginia. Three of these provisions apply to all juveniles under 18 years of age. First, juveniles charged with treason, murder, robbery with a firearm or deadly weapon, kidnapping, first degree arson, or first degree sexual assault may be waived to adult courts.⁵ Second, juveniles charged with an offense of violence to a person, which would be a felony if committed by an

adult and who has been previously adjudged delinquent for the commission of a violent felony, may be waived.⁶ Finally, juveniles may be waived if charged with a felony after having been twice previously adjudged delinquent of a felony.⁷

There are three additional waiver provisions which apply only to juveniles 16 and 17 years of age. First, juveniles 16 years of age or over may be waived if charged with any violent felony against a person, even if they have no prior conviction for such an offense.⁸ Second, juveniles 16 years of age or older charged with a felony may be waived if they once previously were adjudged delinquent for a felony offense.⁹ Finally, juveniles 16 years of age and older must be waived if they demand to be tried in adult courts.¹⁰

In every type of transfer provision except the latter, the transfer process is initiated upon written motion of the prosecuting attorney. The court, in deciding amenability, conducts a hearing to consider the youth's mental and physical condition, maturity, emotional attitude, home or family environment, school experience, and similar personal factors, in addition to establishing probable cause.¹¹ There is no statutory authority allowing transfer back to juvenile court once the judicial waiver decision has been made.

In most states judicial waiver may not be appealed until after judgment in adult courts. However, West Virginia is one of the few states where youth have the right to directly appeal a judicial waiver order to the Supreme Court of Appeals.¹² If the waiver order is appealed, proceedings in adult courts must be stayed, pending final action of the Supreme Court of Appeals.

Concurrent Jurisdiction

In West Virginia, the juvenile courts, magistrate courts, and municipal courts share concurrent jurisdiction over minor traffic violations and violations of natural resources laws by juveniles. Hit and run, negligent homicide, driving under the influence of alcohol or controlled substances or drugs, and reckless driving are handled exclusively by the juvenile courts.¹³

CASE LAW SUMMARY

Since 1950, the Supreme Court of Appeals of West Virginia has ruled many times on issues regarding youth in adult courts. In the earliest of these, Dye v. Skeen, the court held that circuit courts had the discretion to try an individual who was under 21 years of age and charged with breaking and entering as either a juvenile or an adult under the then existent habitual offender statute.¹⁴

Prior to 1977, capital offenses were excluded from juvenile court jurisdiction, and the majority of the cases which follow were decided pursuant to this statutory provision.¹⁵ In State ex rel. Hinkle v. Skeen, the court held that circuit courts did not lose jurisdiction over a 15-year-old who pleaded guilty to a lesser included offense (noncapital) instead of murder (capital).¹⁶ The appellant had failed to object to the jurisdiction of the court at the time he entered his plea. See also, Wade v. Skeen and Brooks v. Boles.¹⁷ In Smith v. Winters, the court held that the circuit courts had jurisdiction over youth charged with capital offenses (murder), even though the prosecuting attorney stated that he would not ask for the imposition of the death penalty.¹⁸ The court held, in State ex rel. Slatton v. Boles, that the state statutes reflected a legislative intent that no individuals who were under 16 years of age and charged with a criminal (noncapital) offense should be criminally prosecuted.¹⁹ See also, State ex rel. Taylor v. Boles; State ex rel. Browning v. Boles.²⁰ After the abolition of the death penalty, the court held, in State ex rel. Campbell v. Wood, that offenses punishable by life imprisonment were subject to exclusion from juvenile court jurisdiction as contained in the then-current code.²¹ See also, Lycans v. Bordenkircher and State v. Laws.²²

The other major area addressed by the West Virginia Supreme Court of Appeals has been the transfer hearing. In State v. McArdle, the court held that a juvenile was entitled to notice, time to prepare a defense, and a meaningful waiver hearing since a motion to transfer a juvenile to criminal court from juvenile court is a critical state in the proceedings against a juvenile.²³ This holding was reaffirmed in State ex rel. Smith v. Scott, in which the court incorporated the standards or criteria set forth in Kent v. United States.²⁴ (See also, State ex rel E.D. v. Aldredge and State v. Bannister.²⁵ The code was changed in 1978 to incorporate the standards or criteria. The court also held, in State v. Thomas, that evidence concerning prior criminal convictions of the defendant, which occurred while he was still a juvenile, is admissible in a criminal proceeding.²⁶

The transfer hearing was also the subject in Hall v. McKenzie, heard by the U.S. Court of Appeals, Fourth Circuit.²⁷ The appeals court held that there was no violation of double jeopardy jurisdiction, since the juvenile court lacked jurisdiction of the case except to transfer it. It further held that a guilty plea in adult court foreclosed the habeas corpus attack on the state statute, alleging its failure to set forth standards to guide the juvenile court in determining whether transfer of jurisdiction should take place.

CORRECTIONS INFORMATION

In West Virginia, the Department of Corrections is responsible for both adult and juvenile corrections facilities. Individuals committed by courts of criminal and juvenile jurisdiction for custody in penal, corrections, or training institutions under the jurisdiction of the commissioner of corrections may be committed to any appropriate institution.²⁸ However, the commissioner has the authority to transfer any individual to any appropriate institution

within the department. Juveniles found delinquent in juvenile courts may not be held in an adult institution.

Adjudicated delinquents may be committed to juvenile facilities of the department, with males being placed in the West Virginia Industrial School for Boys and females housed at the West Virginia Industrial Home for Girls. Juveniles who present behavioral problems are placed in the Attention Unit of the schools.

Youth convicted in criminal courts, in lieu of being sentenced as adults, may be given delinquency dispositions and placed in a juvenile facility.²⁹ Upon reaching age 18, most of them are transferred to the Anthony Center for Young Adult Offenders. The court's dispositional order may order a medium-secure or secure placement for the judicially waived youth upon reaching 18 years of age.

No youth under 18 years of age, convicted of a crime shall be held in custody in a penitentiary, but may be placed in other adult corrections facilities. However, youth may be transferred to a penitentiary upon reaching 18 years of age, if the Commissioner of the Department of Corrections and the court which committed the youth find the transfer appropriate.³⁰

STATE DATE SUMMARY

Judicial waiver and concurrent jurisdiction are the two legal mechanisms by which youth can be referred to adult courts in West Virginia. All juveniles under 18 years of age are eligible for prosecution in adult courts. This eligibility varies with the age of the juvenile, the severity of the offense, and past delinquency history. Youth 16 years of age or older must be transferred by the juvenile courts to adult courts if the juveniles demand trial as adults. In addition, the magistrate and municipal courts have concurrent jurisdiction with the juvenile courts over traffic violations and violations of natural resources laws by juveniles. Information was not available from any source concerning the number of youth tried as adults for traffic and natural resources violations. Therefore, the survey findings presented below only reflect those youth tried as adults under the judicial waiver mechanism, as reported by local sources.

Table 49-1 presents the 46 juveniles transferred to adult courts in West Virginia by county. Sixty-five percent (36 counties) of the 55 counties had no waivers in 1978. Only Cabell and Randolph counties had more than five. These two counties also had the first and second highest rates, respectively, of judicial waivers per 10,000 juvenile population.

TABLE 49-1. WEST VIRGINIA: REFERRALS OF JUVENILES FROM
JUVENILE COURTS TO ADULT COURTS IN 1978
(BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Barbour	2,546	1	3.928
Berkeley	7,002	2	2.856
Boone	5,056	1	1.978
Braxton	2,194	4 est	18.232
Brooke	5,328	0	0.000
Cabell	15,208	10 est	6.575
Calhoun	1,452	0	0.000
Clay	1,962	0	0.000
Doddridge	1,110	0	0.000
Fayette	9,539	0	0.000
Gilmer	1,158	0	0.000
Grant	1,598	0	0.000
Greenbrier	5,459	0	0.000
Hampshire	2,447	0	0.000
Hancock	7,212	0	0.000
Hardy	1,460	0	0.000
Harrison	12,162	0	0.000
Jackson	4,267	3	7.031
Jefferson	4,308	0	0.000
Kanawha	36,299	3	0.826
Lewis	3,170	0	0.000
Lincoln	3,946	2	5.068
Logan	8,786	1	1.138
McDowell	9,853	2	2.030
Marion	9,784	0	0.000
Marshall	6,588	0	0.000
Mason	4,500	1	2.222
Mercer	10,643	1 est	0.940
Mineral	4,365	0	0.000
Mingo	7,340	1	1.362
Monongalia	8,825	0	0.000
Monroe	1,721	0	0.000
Morgan	1,623	0	0.000
Nicholas	4,748	0	0.000
Ohio	9,318	0	0.000

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TABLE 49-1. (Continued)

County	Juvenile Population (Ages 8-17) ^a	Judicial Waiver	
		Cases	Rate ^b
Pendleton	1,082	0	0.000
Fleasants	1,579	0	0.000
Pocahontas	1,384	1	7.225
Preston	1,384	0	0.000
Putnam	4,844	0	0.000
Raleigh	5,670	0	0.000
Randolph	13,132	7 est	15.562
Ritchie	4,498	0	0.000
Roane	1,652	1	4.369
Summers	2,289	0	0.000
Taylor	2,257	0	0.000
Tucker	2,579	0	0.000
Tyler	1,311	0	0.000
Upshur	1,943	2 est	5.829
Wayne	3,431	0	0.000
Webster	6,771	0	0.000
Wetzel	2,027	2	5.290
Wirt	3,781	0	0.000
Wood	893	1	0.628
Wyoming	15,923	0	0.000
Total	6,623	46 est	1.500
	306,646		

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 to 17 years old (1978).

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Table 49-2 shows the relationship between Phase I and Phase II counties in West Virginia. There were five Phase II counties due to population size. Randolph was the only county not among the largest ten percent that waived five or more youth in 1978. Lincoln did not meet either Phase II standard, but was included because of the availability of additional data. These seven Phase II counties represented 33 percent of the total juvenile population and 50 percent of the waiver cases. Two of the Phase II counties (Harrison and Raleigh) transferred no youth in 1978.

TABLE 49-2. WEST VIRGINIA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17) ^a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	306,646	55	46
Selected for Phase II Investigation	101,168	7	23
Percentage of State Selected for Phase II Investigation	33%	13%	50%

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 49-3 gives a demographic breakdown according to the age, sex, and race of youth waived in Phase II counties. Eighty-three percent were 17 years of age. All youth of known gender were males. Eighty-seven percent were white youth.

TABLE 49-3. WEST VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age			Sex		Un- known	Race	
		0-15	16	17	Male	Female		White	Minor- ity
Cabell	10	0	2 est	8 est	9 est	*	1	8 est	2 est
Harrison	0	0	0	0	0	0	0	0	0
Kanawha	3	0	1	2	3	0	0	2	1
Lincoln	2	0	0	2	2	0	0	2	0
Raleigh	0	0	0	0	0	0	0	0	0
Randolph	7	0	1 est	6 est	6 est	*	1	7 est	0
Wood	1	0	0	1	1	0	0	1	0
State Phase II Total	23	0	4	19	21	0	2	20	3

* denotes Not Available.

Table 49-4 indicates that forty-three percent of the cases waived in Phase II counties were for public order offenses, including alcohol and drug violations, disorderly conduct, gambling, and prostitution. Ten (43 percent) were offenses against the person, with robbery being the most common offense, accounting for 30 percent of the cases waived. Three (13 percent) were for burglary.

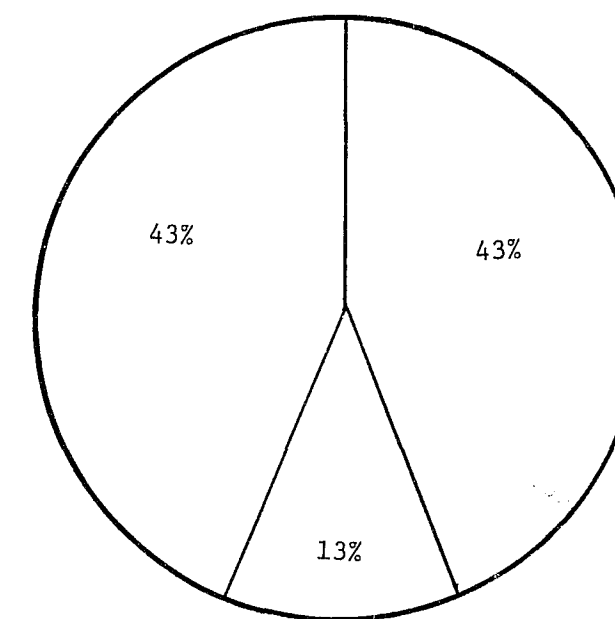
TABLE 49-4. WEST VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

County	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
Cabell	10	0	0	3	0	0	0	0	0	7	0
Kanawha	3	0	0	3	0	0	0	0	0	0	0
Lincoln	2	2	0	0	0	0	0	0	0	0	0
Randolph	7	0	0	0	1 est	0	0	3 est	0	3 est	0
Wood	1	0	0	1	0	0	0	0	0	0	0
State Phase II Total	23	2	0	7	1	0	0	3	0	10	0

a. Only most serious offense per individual listed.

Figure 49-1 portrays offenses in West Virginia Phase II counties grouped into the categories of personal, property, public order, and other general offenses. The prominence of personal and public order offenses among those reported in the Phase II counties is again noted. These two categories account for a total of 86 percent of all reported charges, compared to only 13 percent for property offenses.

FIGURE 49-1. WEST VIRGINIA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses^a

Personal	43%
Property	13%
Public Order	43%
Other General	0%

N= 23

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 39 percent of all offenses in the Phase II counties.

Table 49-5 shows that 87 percent (20) of the youth waived in Phase II counties were found guilty. Of these, two were reported to have been convicted as youthful offenders, although no youthful offender provision was found to exist in the West Virginia code by Academy staff. The response probably indicated placement at the Anthony Center for Young Adult Offenders. Two youth were reported to have been referred back to juvenile courts, although no statutory authority was determined to exist. One case was dismissed. No youth were found to be not guilty.

TABLE 49-5. WEST VIRGINIA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

County	Total Waivers	Not Guilty	Dismissed	Judgments		Guilty	Other
				Referred to Juve- nile Court	Youthful Offender Judgments		
Cabell	10	0	0	2 est	0	8 est	0
Kanawha	3	0	0	0	2	1	0
Lincoln	2	0	0	0	0	2	0
Randolph	7	0	1 est	0	0	6 est	0
Wood	1	0	0	0	0	1 est	0
State Phase II Total	23	0	1	2	2	18	0

Table 49-6 presents the sentences of those youth found guilty in West Virginia adult courts from Phase II counties. Where the sentences were known, one-half of the youth (six) received jail sentences. One-third were sent to state adult corrections facilities. One youth was placed on probation, and one youth received a nonresidential placement in the community.

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TABLE 49-6. WEST VIRGINIA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978

County	Total Convictions	Fined	Probation	Jail	Sentence Types			Un- known
					State Adult Cor- rections Facilities	State Juve- nile Cor- rections Facilities	Other	
Cabell	8	*	*	6 est	*	*	*	2 est
Kanawha	3	0	1	0	2	0	0	0
Lincoln	2	0	0	0	1	0	1a	0
Randolph	6	*	*	*	*	*	*	6
Wood	1	0	0	0	1	0	0	0
State Phase II Total	20	0	1	6	4	0	1	8

* denotes Not Available.

a. Nonresidential sentence in the community.

Table 49-7 indicates the sentence durations of those youth sentenced to confinement in reporting Phase II counties. Of the five known cases, three were sentenced to maximum sentences of more than one through three years. None received a maximum sentence over five years. Only one received a maximum sentence of one year or less.

TABLE 49-7. WEST VIRGINIA: LENGTH OF CONFINEMENTS REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVER TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums							Life	Death	Unknown
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeter- minate				
Cabell	6	*	3 est	*	*	*	*	*	*	*	3 est
Kanawha	2	*	*	*	*	*	*	*	*	*	2
Lincoln	1	0	0	1	0	0	0	0	0	0	0
Wood	1	1	0	0	0	0	0	0	0	0	0
State Phase II Total	10	1	3	1	0	0	0	0	0	0	5

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Table 49-8 indicates the total number of judicial waivers occurring in West Virginia in 1978 along with those selected for Phase II investigation, and Phase II waivers known to have resulted in conviction and confinement. Twenty-three of the 46 waivers received in-depth investigation, and among these 23, 20 youth were convicted. Ten of the 20 convicted youth were reported to have been confined in adult corrections facilities or jail subsequent to trial.

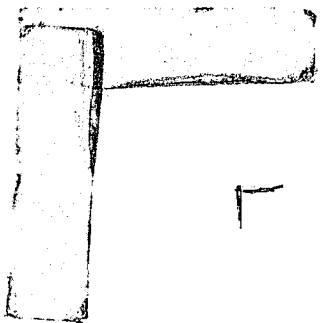
TABLE 49-8. WEST VIRGINIA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 49-1)	46
Total Referrals Selected for Phase II (Table 49-3)	23
Total Referrals Resulting in Convictions (Table 49-6)	20
Total Convictions Resulting in Sentences of Confinement (Table 49-7)	10

In summary, of the 23 juveniles waived to adult court from Phase II counties in 1978, all were males, 87 percent were white youth, and 83 percent were 17 years old. Most of the offenses (43 percent) were for public order violations. There were ten waivers in Phase II counties for personal offenses and three for property offenses. Eighty-seven percent of the youth for whom judgments were known were convicted in adult courts, with 83 percent of them receiving sentences of incarceration.

FOOTNOTES

1. West Virginia Code, Section 49-5-1(a).
2. West Virginia Code, Section 49-5-1(a).
3. West Virginia Code, Section 49-5-1b.
4. West Virginia Code, Section 49-5-1(a).
5. West Virginia Code, Section 49-5-10(d)(1).
6. West Virginia Code, Section 49-5-10(d)(2).
7. West Virginia Code, Section 49-5-10(d)(3).
8. West Virginia Code, Section 49-5-10(d)(4).
9. West Virginia Code, Section 49-5-10(d)(5).
10. West Virginia Code, Section 49-5-10(c).
11. West Virginia Code, Section 49-5-10(d).
12. West Virginia Code, Section 49-5-10(f).
13. Supra, note 1.
14. Dye v. Skeen, 62 S.E.2d 681 (1950). The habitual offender statute then in effect was West Virginia Code, Section 49-2-1 et seq. (1950).
15. Former West Virginia Code, Section 49-5-3.
16. State ex rel. Hinkle v. Skeen, 75 S.E.2d 223, 138 W.Va. 116 (1953).
17. Wade v. Skeen, 85 S.E.2d 845 (1955); Brooks v. Boles, 153 S.E.2d 526, 151 W.Va. 576 (1967).
18. Smith v. Winters, 124 S.E.2d 240 (1962).
19. State ex rel. Slatton v. Boles, 130 S.E.2d 192 (1963).
20. State ex rel. Taylor v. Boles, 130 S.E.2d 693 (1963); State ex rel. Browning v. Boles, 132 S.E.2d 505 (1963).
21. State ex rel. Campbell v. Wood, 155 S.E.2d 893, 151 W.Va. 807 (1967). The former code was West Virginia Code, Section 49-5-3.
22. Lycans v. Bordenkircher, 222 S.E.2d 14 (1975); State v. Laws, 251 S.E.2d 769 (1978).
23. State v. McArdle, 194 S.E.2d 174 (1973).
24. State ex rel. Smith v. Scott, 238 S.E.2d 223 (1977); Kent v. United States, 383 U.S. 541, 16 LED 2d 84 (1966).
25. State ex rel. E.D. v. Aldredge, 245 S.E.2d 849 (1978); State v. Bannister, 250 S.E.2d 53 (1978).
26. State v. Thomas, 203 S.E.2d 445 (1974).
27. Hall v. McKenzie, 575 F.2d 481 (Fourth Cir. W.Va., 1978).
28. West Virginia Code, Section 62-13-5.
29. West Virginia Code, Section 49-5-13(e).
30. West Virginia Code, Section 49-5-16(b).



END