

## **ABSTRACT**

Title: MECHANISMS OF JUVENILE TRANSFER:  
VARIATIONS IN INCARCERATION AND  
SENTENCE LENGTH IN CRIMINAL COURT

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The judge's ability to transfer a juvenile to adult court through judicial waiver has been in existence since the inception of the juvenile court in 1899. However, in response to increases in violent juvenile crime, state legislatures created and expanded juvenile transfer policies in the mid to late 1990's. Although many of these policies have been in effect for almost 15 years, there is little empirical work looking at how the type of transfer can affect sentencing outcomes in adult court. This study examines three of the most common juvenile transfer mechanisms (judicial waiver, statutory exclusion, and direct file) and their sentencing outcomes using a large, multi-jurisdictional sample. Results from this study indicate that juveniles transferred through direct file have the highest likelihood of incarceration while youths transferred through statutory exclusion face the harshest incarcerative sanctions. Findings regarding legal and extralegal characteristics are discussed as well as limitations and suggestions for future research.

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AND SENTENCE LENGTH IN CRIMINAL COURT

By

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## CHAPTER 1: INTRODUCTION

In the last 30 years there has been an ideological shift in the purpose of the juvenile court system. Some scholars argue that the juvenile court has been transformed from a youth welfare agency into a “second-class criminal court” for juveniles (Feld, 1999a:3). Many scholars agree that the juvenile court has taken a more punitive stance against juvenile offenders and largely abandoned the basic principles and ideas on which it was founded (Champion, 1989; Feld, 1987, 1990, 1999a; Heilbrun et al., 1997; McCarthy, 1993-1994; Mears et al., 2007; Myers, 2003). A contributing factor to the fundamental shift in the juvenile court system has been the fear of increasing juvenile crime. The public fear of juvenile delinquents and violent crime has risen drastically since the 1980’s (Titus, 2005). During the late 1980’s the United States saw an increase in youth violence as well as publicized statistics that juvenile crime was increasing at high rates (Butts and Travis, 2002; Feld, 1999a; McCarthy, 1993-1994; Merlo et al., 1997a; Mole and White, 2005; Redding, 1999; Torbet and Szymanski, 1998). For example, between 1980 and 1994, the juvenile arrest rate for violent crime increased by 64 percent (Butts and Travis, 2002).

Politicians and scholars also promoted the idea of a generation of juvenile “super-predators” (DiIulio, 1995). These “super-predators” were described as thousands of juvenile offenders who would “rob, rape, maim, and murder” for no particular reason (Mole and White, 2005:1). Fearing the idea of a “super-predator”, the American public began to call for harsher penalties for those juveniles who commit violent crimes or those with a history of prior offenses. This public outcry placed pressure on legislatures to enact harsher penalties for violent and chronic juvenile offenders. These new policies

promoted the “get tough on crime” as well as the “adult crime, adult time” mentalities (Butts and Travis, 2002; Feld, 1987, 1999a; Fritsch and Hemmens, 1995; Kinder et al., 1995; Mears et al., 2007; Steiner and Hemmens, 2003; Torbet and Szymanski, 1998; White et al., 1998).

State legislatures addressed the public’s concern of increasing juvenile crime through the creation and expansion of juvenile transfer policies (Cruz, 2002; Fritsch and Hemmens, 1995; Lemmon et al., 2005; Merlo et al., 1997a; Podkopacz and Feld, 1996; Poulos and Orchowsky, 1994; Redding, 1999; Steiner and Hemmens, 2003). In essence, juvenile transfer policies make it possible for juvenile court officials to send juvenile offenders to the adult criminal justice system for punishment. This often occurs after juveniles have been deemed either non-amenable to the treatment options available to the juvenile court or as serious offenders (Benekos and Merlo, 2008).

The newer legislation enacted involving juvenile transfer expanded different mechanisms with which to send juveniles to adult court. This new legislation is based in the crime control model which emphasizes retribution and an increase in the use of criminal justice sanctions. Prior to the movement to crack down on juvenile crime, the juvenile justice system in many states already allowed for the transfer of serious cases to adult criminal court through judicial discretion (Lanza-Kaduce et al., 1996, 1998-1999; Snyder et al., 2000). Through the amended legislation, juveniles could be transferred to adult court in three ways, depending on individual state statutes. These transfer mechanisms are discretionary judicial waiver, statutory exclusion, and direct file (Benekos and Merlo, 2008; Griffin, 2003; Kupchik, 2006b; Podkopacz and Feld, 1996;

Sickmund, 2003; Zimring, 1990).<sup>1</sup> Although these three transfer mechanisms are not inclusive of all juvenile transfer options, they tend to be the three most frequently used by states across the United States (Griffin, 2008).<sup>2</sup>

This study will examine the differences in the sentence lengths of convicted and incarcerated juveniles among the three primary transfer mechanisms used to transfer juveniles to adult court. Despite the proliferation of modern transfer mechanisms, little is known about how punishments are affected by the mode of transfer. More specifically, this study will be examining if the type and length of sentence is affected by the way the juvenile got to adult criminal court. Important differences may challenge the outcomes or processes associated with different types of juvenile transfer to adult court. Likewise, sentencing outcomes may vary due to different legislation and norms in different states. Therefore it is essential to examine how the type of transfer mechanism may influence sentencing outcomes observed in adult court.

It is important to study the differences in sentencing outcomes between different transfer types because legislatures enacted these new transfer mechanisms (statutory exclusion and direct file) to handle the worst of the worst cases presented in juvenile court (Lanza-Kaduce et al., 1999; Rainville, 2008). Therefore it makes sense that these

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<sup>1</sup> Each of these transfer mechanisms are slightly different in how they are utilized. For statutory exclusion, state law can identify that juveniles with certain offense and prior record histories must be sent to adult court. However, both direct file and judicial waiver are discretionary decisions. Direct file is a decision made by the prosecutor on whether or not to file the charges for a juvenile's case in adult court. Judicial waiver on the other hand, allows a judge to decide if a juvenile's case is amenable to the services available in the juvenile court, and if the judge feels the case is best processed in adult court, then the judicial waiver mechanisms is utilized (Griffin, 2003).

<sup>2</sup> Since this research is using a nationwide sample, this examination of transfer mechanisms is restricted to the three most commonly used mechanisms (Griffin, 2008). Although this paper focuses its analyses on three types of juvenile waiver, there are several other juvenile waiver options in use throughout the United States. These include discretionary judicial waiver, presumptive judicial waiver, statutory exclusion, direct file, reverse waiver and once an adult, always an adult. For more detail on these waiver options, see Griffin (2008).

individuals should be receiving the harshest punishments. However, there is little empirical work examining the validity of this claim. Policy makers need to evaluate the impact that these transfer mechanisms have on case outcomes. If in reality, juveniles transferred through these new transfer mechanisms are not being sentenced like the serious offenders they are perceived to be, the necessity and validity of the newer transfer mechanisms should be called into question.

Virtually no research examines sentencing among the different transfer mechanisms and the existing research is limited to a few studies within single jurisdictions (Kurlychek and Johnson, 2010; Rainville, 2008; Steiner, 2009). To better understand nationwide trends regarding sentencing among transfer mechanisms, it is essential that we take a more representative sample of the nation in regard to juvenile transfer. Therefore, this current study will examine transfer mechanisms and the sentencing outcomes of transferred juveniles who are convicted and subsequently incarcerated. The central research question in this study is as follows:

Are there differences in the sentence lengths given to juveniles transferred to adult court through the three most common transfer mechanisms (discretionary judicial waiver, statutory exclusion, and direct file)? And, if so, what are these differences?

This study uses data, which includes a sample of 40 of the 75 largest counties in the United States using data from the Juvenile Defendants in Criminal Court: Survey of 40 Counties in the United States, 1998 (JDCC). These data include information specific to juvenile felony cases, including demographic characteristics, criminal history, adjudication and sentence. My analysis will focus on those juvenile defendants who are

adjudicated and sentenced within the adult criminal court system across all available jurisdictions.

It is important to note that the year that the data were collected, 1998, is only a few years after the widespread implementation of new juvenile transfer provisions across the United States. Between the years 1992 and 1995, forty-one states amended their juvenile transfer policies in order to make it easier to transfer a juvenile to adult court (Frazier et al., 1998-1999; Puzzanchera, 2003; Torbet and Szymanski, 1998). These data allow for an examination of the three transfer mechanisms shortly after their widespread inception. The following chapters consist of an in depth review of the literature regarding juvenile transfer and juvenile sentencing in adult court, a description of specific research hypotheses drawn from extant theoretical frameworks on criminal sentencing, analyses of sentencing differences by mode of transfer and a summary and conclusion of the study findings, strengths, and limitations.

## **CHAPTER 2: LITERATURE REVIEW**

Despite the current “get tough” on juvenile crime initiatives by legislatures, the juvenile court was not always focused on punishing the juvenile for their crimes. Rather the early juvenile justice system provided social services and rehabilitation efforts for youths who committed delinquent acts. Therefore, it is important to understand the original premise of the juvenile justice system and how it has been transformed over time to permit a more punitive approach to handling juvenile crime. The following chapter provides an overview of the foundation of the juvenile justice system and several U.S. Supreme Court cases that have altered the fundamental principles of the juvenile court. Finally, a review is conducted of current research on various aspects of the juvenile court process.

### **THE CHANGING RHETORIC OF THE JUVENILE JUSTICE SYSTEM**

In the last hundred years, there have been dramatic shifts in ideas of how to punish and rehabilitate juvenile offenders. The original juvenile court was created to provide a way to hold youths accountable for their actions while still providing them with social services needed for proper rehabilitation. However in the last few decades there has been a shift in rhetoric in the juvenile justice system away from rehabilitation and toward harsher punishments. United States Supreme Court rulings as well as legislative changes helped usher in a more adversarial and punitive era to the juvenile justice system.

The juvenile court system in the United States was created in 1899 and established in both Illinois and Denver in an attempt to provide an appropriate justice

system for juveniles and their needs (Bortner, 1986; Caldwell, 1961; Feld, 1990, 1999a). The juvenile justice system was formed during a time of societal and cultural changes. Many metropolitan areas experienced an influx of immigration as well as large scale industrialization efforts. Along with these structural shifts in society, there were also “changing cultural conceptions of childhood” (Feld, 1987: 473) as well as new positivist perspectives on criminality. The positivist criminological perspective suggested that individuals’ behavior was not solely based on free will, but rather a product of “external and deterministic forces” (Feld, 1999b: 190). Progressive reformers of the justice system felt that the penal strategies applied to children were too harsh and inappropriate given their impressionable mental state (Feld, 1987, 1999a). This new court system allowed juveniles to escape the punitive nature of the adult court system, while still addressing any underlying individual, correctional, and social welfare needs. In these terms, the state operated under the idea of *parens patriae*, or a surrogate parent, which placed emphasis on rehabilitation, treatment, and supervision of individual youths (Angell, 2004; Fagan and Deschenes, 1990; Feld, 1987, 1990, 1999a; Fritsch and Hemmens 1995; Mears et al., 2007; Merlo et al., 1997a).

Inherent in the makeup of the original juvenile justice system was a lack of procedural safeguards afforded to defendants in criminal court as well as a high level of discretion among judges and their dispositions (Feld 1987, 1999a; Merlo et al., 1997a). This high level of judicial discretion was intended to allow the judges to decide case outcomes according to what was in the best interest of the child. However, according to some scholars, this high level of unchecked discretion gave judges the opportunity to

hand out disparate punishments to poor and immigrant children (Feld, 1983, 1987, 1999a).

The U.S. juvenile justice system was originally formed to provide individualized, rehabilitative treatment to juvenile offenders in a separate court system than adult offenders. However, over time, we have seen a theoretical shift in the rhetoric of the juvenile court system. The previous rhetoric was that of treatment and rehabilitation. More recently, the rhetoric has been perceived as punitive and has blurred the distinctive line between the juvenile and criminal court systems (Angell, 2004; Feld, 1987, 1999a; Merlo et al., 1997b; Osbun and Rode, 1984; Tanenhaus, 2000). According to some scholars, this inadvertent fundamental change in the juvenile justice system's rhetoric was aided by five major United States Supreme Court rulings (Feld, 1987; Merlo et al., 1997a; Osbun and Rode, 1984).

The first Supreme Court case that began the shift in juvenile justice rhetoric and procedure for juvenile transfer was *Kent v. United States* (1966). Through *Kent*, the Supreme Court's ruling formalized the judicial waiver sentencing decision by requiring that "procedural due process" be observed (Feld, 1987: 489). The Court enumerated a list of criteria that must be considered by judges when deciding whether or not to transfer a youth to criminal court.<sup>3</sup> However, many of these criteria spelled out in *Kent* still allow for a large amount of judicial discretion in transfer decisions (Feld, 1987; *Kent v. United States*, 1966; Osbun and Rode, 1984).

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<sup>3</sup> The following factors must be considered by judges before making a determination of waiver of juvenile court jurisdiction: the seriousness of the alleged offense; if the offense was committed in an aggressive, violent, premeditated or willful manner; if the offense was against persons or against property, placing more weight on person offenses; the prosecutive merit of the complaint; desirability of trial and disposition of the entire offense in one court when the juvenile's associates will be charged in federal court; sophistication and maturity of the; prior record of the juvenile; and the potential of rehabilitation of the juvenile with resources currently available to the juvenile court.

The second case of importance to the rhetoric of the juvenile court was *In re Gault* in 1967. In this case, the defendant was arrested for placing obscene phone calls and subsequently placed in a detention facility. The major issue was that the defendant was not afforded his due process rights as outlined in the Fourteenth Amendment. The ruling of the Court in this case placed procedural safeguards in the juvenile court setting where there had previously been few. Attempting to act in the best interest of children served by juvenile courts, the Supreme Court mandated several basic procedural safeguards such as notification of charges, a fair and impartial hearing, and rights against self-incrimination (*In re Gault*, 1967; Feld, 1987). The Court insisted that these rights were essential to an adversarial process where there is a need to limit the power of the state to ensure that personal freedoms are not violated.

However, the Court's extension of rights, in particular the right against self-incrimination, set in motion fundamental changes in the rhetoric of the juvenile court. As Feld (1987) argues, by extending this right guaranteed by the 5<sup>th</sup> Amendment, which is "the guarantor of an adversarial process and the primary mechanism" for balancing the power between the state and the individual, the Court began to turn the once rehabilitative, individualized juvenile court atmosphere into a pseudo criminal court (Feld, 1987: 480). The extension of these constitutional safeguards began the change in the juvenile adjudication process to mirror the adult court and stray from original functions of the juvenile court.

Another Court decision that helped form the current rhetoric of the juvenile justice system was *In re Winship* (1970). In this case, the defendant was accused of stealing money from a woman's locker. The defendant was convicted by the juvenile

court standard of a preponderance of the evidence, despite the fact that the case might not have held up to the adult court standard of beyond a reasonable doubt. This case addressed the need for juvenile cases to have the same burden of proof of guilt as criminal courts beyond a reasonable doubt. The Supreme Court held that juveniles should be guaranteed the same level of protection when determining guilt as adult offenders are afforded. Given the seriousness of potential consequences resulting from conviction, the burden of proof for the state must be high enough to prevent individuals from being convicted on factual mistakes (Feld, 1987).

The fourth Court decision to impact the rhetoric of the juvenile justice system was *McKeiver v. Pennsylvania* (1971). In this instance the Court held that there was no constitutional requirement to have jury trials held for proceedings in state juvenile courts in order to achieve “fundamental fairness” (Feld, 1987: 481). The Court’s reasoning was that the fact finding in a given case could be done by a judge just as well as a jury and that there need not be a change in the practice of having a judge decide on the facts of a juvenile case. The Court also argued that allowing the right for jury trials in juvenile proceedings would take away the “informality, flexibility, and confidentiality” of the juvenile court (Feld, 1987: 482). However, this decision fundamentally went against several prior decisions regarding juvenile court processing which extended many procedural safeguards that had only been available to adult court defendants. Through this decision the Court attempted to maintain the last distinguishing factor between the juvenile court and adult court system, and in turn, validate the necessity of having a separate court system for juvenile defendants (Feld, 1987; *McKeiver v. Pennsylvania*, 1971).

The last major Court case to affect the change in rhetoric was *Breed v. Jones* (1975). In this case, the Supreme Court ruled that juveniles were protected by the 5<sup>th</sup> Amendment against double jeopardy. This ruling prohibited a juvenile to be re-tried in adult court after a conviction in juvenile court (*Breed v. Jones*, 1975). The reason this case concerns the changing rhetoric is that it increased the “functional equivalence between an adult criminal trial and a delinquency proceeding” (Feld, 1987: 480). The Court also held that due to possible consequences of a juvenile court hearing, there seemed little distinguishing difference between it and a case tried in criminal court (Feld, 1987).

Through these Supreme Court decision the original discretionary activities of the juvenile court have been severely restricted, even though this might not have been the Court’s intention. “From the *parens patriae* doctrine to the recent legislative get tough initiatives, it is evident that the juvenile justice system’s philosophical core and separations have been” taken hostage by the political “climate and have been drastically altered by the rhetoric of deterrence and punishment” (Merlo et al., 1997a: 4). These Court rulings created, perhaps inadvertently, an atmosphere in the juvenile justice system that made the transition and expansion of juvenile transfer policies almost seamless.

## JUVENILE TRANSFER AND TRANSFER MECHANISMS

Juvenile waiver is a legal mechanism that allows juvenile courts to take juvenile offenders out of their jurisdiction and give the case to the adult criminal court system for processing. By definition, juvenile transfer is an exclusion “of a defendant who was legally defined as a juvenile at the time of the offense but whose legal status changed due

to the decision of that court official” (Sanborn and Salerno, 2005: 276).<sup>4</sup> Transfer is usually saved for individuals in the juvenile court system that are considered no longer amenable to treatment. Juvenile transfer provides the juvenile court with a safety valve to provide punitive treatment to select juveniles while still maintaining their rehabilitative ideals (Fagan and Zimring, 2000). In the earlier years of the juvenile justice system, juvenile transfers were only used on rare occasions when juveniles committed crimes that demanded severe punishment (Feld, 1987). The decision to transfer often requires that judges use a certain level of discretion along with factors identified in the Kent decision. In jurisdictions that use judicial waiver as the primary transfer procedure, the judge must weigh several factors into his decision, including seriousness of the current offense, public safety, prior convictions, and level of culpability (Feld, 2001). When juveniles are found to be either too violent or non-amenable to treatment by the juvenile court system, their needs are seen as beyond the scope of the juvenile court and they are then transferred to a court that can better handle their case.

With the expansion of juvenile waiver mechanisms, there has been an active discussion among scholars as to the theoretical motivation of transfer laws. Juvenile transfer policies have been promoted as grounded in deterrence theory. As discussed earlier, many jurisdictions have increased the number of transfer policies that allow juvenile offenders to be punished in adult court. Bishop and Frazier call transfer the “quintessence of the ‘scared straight’ approach to crime control” (Bishop and Frazier, 2000: 244). States have decided to allow for an increase in the severity of punishment to act as both a specific and general deterrent to juvenile offenders (Cullen and Agnew,

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<sup>4</sup> The term, juvenile transfer, goes by various names among different jurisdictions. Some other names that identify juvenile transfer are waiver, exclusion, and certification.

2006; Howell, 1996; Merlo et al., 1997a, 1997b; Mole and White, 2005; Myers, 2003; Zimring, 1990). Although the actual deterrent effect of these policies is questionable (Steiner and Wright, 2006), transfer policies continue to be popular among the general public and satisfy their need to get tough on crime (Lemmon et al., 2005). Three primary mechanisms have developed for waiving a juvenile to adult court. There are discretionary judicial waiver, statutory exclusion and prosecutorial direct file.

### Judicial Transfer

The discretionary judicial waiver decision has been the traditional method of juvenile transfer to adult court jurisdiction since the inception of the juvenile court. Many states have varying amenability for judges to consider when deciding if a juvenile should be transferred. The determination of whether or not to keep a juvenile in juvenile court is often based on the factors outlined in *Kent* (Podkopacz and Feld, 1996; Torbet and Szymanski, 1998). In this instance, juvenile court judges attempt to determine if a juvenile is amenable to the treatment options available to the juvenile court. If a juvenile is found to be unfit to remain in juvenile court, the juvenile court judge will remand the juvenile to adult court. These decisions are typically based on age and/or offense along with the *Kent* recommendations (Griffin, 2003; Lemmon et al., 2005; Rainville and Smith, 2003; Sickmund, 2003; Snyder et al., 2000; Torbet and Szymanski, 1998).

### Statutory Exclusion

Through state statutes, some particular offenses are now automatically transferred to adult criminal court. This often occurs through the combination of offense, age, and prior offense factors. In these cases, the legislature has decided that certain offenses are not suitable or are too serious in nature to be handled by the juvenile court. These laws

are often passed in response to the public's call for legislatures to give adult time to juveniles who commit adult crimes. These cases eliminate any discretionary choices from both the juvenile court judge and the prosecutor about whether or not to transfer a youth (Griffin, 2003; Lemmon et al., 2005; McCarthy, 1993-1994; Rainville and Smith, 2003; Sickmund, 2003; Snyder et al., 2000; Torbet and Szymanski, 1998).

#### Prosecutorial Direct File

The third type of transfer examined in this research is prosecutorial direct file, or prosecutorial waiver, in which the prosecutor has discretion to file a juvenile case directly in adult court. There are usually offense and/or age categories that first must be met before a prosecutor can make a decision about whether the case should be tried in criminal or juvenile court. Many of the prosecutorial direct file provisions allow prosecutors to exhibit a large amount of discretion. Therefore those cases that are eligible to be transferred to adult court are decided solely by the prosecutor (Lemmon et al., 2005; McCarthy, 1993-1994; Rainville and Smith, 2003; Sickmund, 2003; Snyder et al., 2000; Torbet and Szymanski, 1998).

Although previous empirical research examines issues in juvenile transfer, further research should investigate the importance of these different transfer mechanisms in the punishment of youths transferred to adult court. The next section will review the current literature regarding determinants of juvenile transfer and sentencing outcomes of juveniles in adult court.

#### LITERATURE REVIEW

Since the 1970's there has been a growing body of literature devoted to different aspects of the juvenile transfer process. These studies are usually directed at

understanding the juvenile transfer phenomenon (Cruz, 2002; Feld, 1983, 1996; Fritsch and Hemmens, 1995; Mears, 2003; White et al., 1999), identifying significant predictor variables in who gets transferred (Eigen, 1981; Fagan and Deschenes, 1990; Feld, 1996; Lanza-Kaduce et al., 1996, 1998-1999; McNulty, 1996; Osbun and Rode, 1984; Poulos and Orchowsky, 1994), sentencing outcomes (Barnes and Franz, 1989; Bishop et al., 1996; Bortner, 1986; Champion, 1989; Gillespie and Norman, 1984; Houghtalin and Mays, 1991; Kinder et al., 1995; Kurlychek and Johnson, 2004; Lemmon et al., 2005; Males and Macallair, 2000; Myers, 2003; Podkopacz and Feld, 1996; Rainville and Smith, 2003; Rainville, 2008; Redding, 2003; Rudman et al., 1986; Snyder et al., 2000; Winner et al. 1997), and recidivism (Bishop et al., 1996; Winner et al., 1997). By examining their findings, this research study will contribute to the limited literature of transfer mechanisms and their effect on the sentencing outcomes of juvenile transferred to adult court.

#### Prior Studies of Juvenile Transfer

The majority of studies on juvenile transfer have been published in the last 30 years. However, among these studies there has been a major methodological shift in analyzing data. The earlier studies often focus on descriptive analyses of transferred juveniles (Champion, 1989; Gillespie and Norman, 1984; Houghtalin and Mays, 1991; Keiter, 1973; Kinder et al., 1995; Rudman et al., 1986), whereas many of the more recent juvenile transfer studies have utilized advanced statistical modeling practices to provide more thorough analyses. Although it is important to note early studies in this area of research, newer studies that utilize advanced statistical techniques may be better able to

provide more conclusive and generalizable results as to outcome experiences of juveniles transferred to adult court.

### *Understanding the Juvenile Transfer Phenomenon*

Many of the studies geared toward understanding the juvenile transfer phenomenon are based on interviews with courtroom decision makers or reviews of current transfer practices. For instance, Mears (2003) reviews the current juvenile transfer literature and identifies gaps in research that need to be filled if researchers are going to truly understand if waiver works. He discusses some of the intended effects (e.g. greater punishment, reduction in delinquency and recidivism) and unintended effects (e.g. inconsistent use, lengthy detention, and victimization issues) of juvenile transfer. Mears then suggests that systematic reviews of juvenile transfer mechanisms and policies are needed to examine and better understand these intended and unintended effects as well as making a clearer rationale for transfer and ensuring that it is implemented correctly (Mears, 2003).

In his 2002 study, Cruz examines the effects of Proposition 21 in California, which expanded juvenile waiver through incorporating statutory exclusion and direct file, by interviewing courtroom actors about their opinions, thoughts, and experiences with the new juvenile waiver legislation. The author's findings indicated that the only group that had positive opinions of the proposition was the prosecutors. They argued that this proposition was fueled by public demand and that the prosecutors were just enforcing the public will. However, Cruz found that the defense attorneys, probation officers, and the judge interviewed all felt that this new legislation was straying from the juvenile court's rehabilitative foundation and was unduly harsh on juvenile offenders. Therefore, the

majority of courtroom actors felt that the expansion of transfer mechanisms was not the most efficient or effective way to deal with the issue of juvenile involvement in crime (Cruz, 2002).

The collective findings from these studies indicate that juvenile transfers are indeed producing some of the planned outcomes of transfer policies. However, it appears that support within the courtroom community is limited. Several courtroom actors disagree with the harsh penalties associated with transfer and feel that discretionary judicial waiver is the best and should be the only transfer mechanism available (Cruz, 2002). Despite the sentiment that some courtroom actors dislike the practice of juvenile transfer in certain situations, it is important understand what factors may cause a juvenile to be subject to transfer in the first place.

#### *Identifying Significant Predictor Variables for Who Gets Transferred*

In an effort to gain a better understanding of the collective knowledge that has been produced on juvenile transfers, Howell (1996) published a fairly comprehensive overview of studies to date that dealt with different aspects of juvenile transfer. His attempt was to synthesize findings from 36 publications in regard to transfer mechanisms, conviction, incarceration, and the type of offender that gets processed through transfer. Howell concluded that, according to the literature, juveniles that are transferred tend to be more violent, serious, and chronic offenders; there are disparities in transfer across jurisdictions; and criminal conviction rates, incarceration sentences, and incarceration lengths are more likely among transferred youth than non-transferred youth (Howell, 1996).

In 1990, Fagan & Deschenes conducted a study of the factors that guide the decision to transfer juvenile cases to adult court. The data collected involved juveniles who were petitioned to be transferred to criminal court from four juvenile courts across the United States during a three year time frame. Their results indicated that for the jurisdictions in the study, the transfer decision was very susceptible, if not completely determined by the prosecutor's decisions at charging. The authors found that one indicator of transfer that was present across all jurisdictions was the level of violence used in the current offense. Despite several consistent findings across the jurisdictions, the authors indicate that the language of the statutes and other informal criteria considered in the transfer decision appear to be subjective and may cause disparities or unpredictable decision making that could vary by jurisdiction (Fagan & Deschenes, 1990).

Another important study in juvenile transfer literature is that of Poulos and Orchowsky (1994). This study is distinctly different from many other transfer studies in that it examined the probability of transfer to criminal court among serious juvenile offenders that were eligible to be transferred and those that *actually* were transferred. The study used a state-wide random sample of 364 juveniles transferred to criminal court and 363 juveniles adjudicated for similar crimes in the juvenile court system in Virginia from 1988-1990. The authors were able to identify 13 independent variables that were statistically significant when considering the decision of transfer a juvenile to criminal court (including: current offense, prior record, age, and mental health history). Their results also indicated that there appears to be an effect of "justice by geography". Serious

juvenile offenders in urban courts were significantly less likely to be transferred than those youths processed in non-urban courts (Poulos and Orchowsky, 1994).

In a third study, Lanza-Kaduce et al. (1999) examined juvenile transfers in Florida to identify if transfer laws were indeed transferring the worst of the worst cases out of juvenile court. The authors used statewide data from a matched sample of juvenile transferred to adult court (n = 243) and similar individuals who were retained in juvenile court (n = 227) across four jurisdictions. Their findings indicated that overall, the cases that were transferred were for less serious crimes. However, juveniles that were transferred were more likely to have a prior record, multiple charges, gang involvement, or to have used a weapon in the current offense. The authors concluded that although on several aspects, juvenile transfer cases tended to be slightly “worse” than the matched sample, the overall differences between the two groups were slight and only distinct in a small number of cases. Therefore it appears that among the four jurisdictions studied, transfer to adult court was not reserved for the worst juvenile offenders in Florida (Lanza-Kaduce et al., 1999).

Overall, these results from these studies indicate that age, prior record, current offense and weapon use all are significant in predicting the transfer of juveniles to adult court (Howell, 1996; Lanza-Kaduce et al., 1999; Poulos and Orchowsky, 1994). These results help differentiate between those who get transferred and those who do not. Additional research has also examined what happens to transferred and non-transferred youth in regard to recidivism.

*Juvenile Transfer and Recidivism Outcomes*

There have also been studies that have primarily focused on recidivism rates among transferred juveniles (Bishop et al., 1996; Lanza-Kaduce et al., 2005; Winner et al., 1997). The general consensus is that juveniles who are transferred have a higher recidivism rate than non-transferred youth (Fagan, 1996; Redding, 2006). One study, Bishop et al. (1996), examined the rates of recidivism in a matched sample of juveniles who were transferred to adult court and those who were not (n = 2,887). Their results indicated that being transferred increased the likelihood (and frequency) of recidivism and transferred youths were more likely to commit a later felony offense than the non-transferred youths.

A follow up study by Winner et al. (1997) examined whether the short term recidivism differences between transferred and non-transferred juveniles seen in Bishop et al.'s (1996) study persisted over time across all offender groups. Their study contributed an additional 6 years to the time frame covered by the original study. The results indicated that although Winner et al. (1997) were able to replicate the exact findings from the Bishop et al. (1996) study, the non-transferred juveniles actually caught up with the transferred juveniles along the lines of occurrence of re-arrest. Uniquely, the transferred property offenders were not arrested as frequently as non-transferred property offenders. These authors similarly found that juvenile transfer tended to exacerbate recidivism. Thus this finding contradicts the premise that juvenile transfer acts as a specific deterrent for future crime.

In a more recent study, Lanza-Kaduce et al. (2005) examined differences in adult felony recidivism for matched samples of transferred youth and youths who were retained in juvenile court (n = 475). The authors measured recidivism by only counting adult

felony arrests to gain an unbiased view of involvement in crime instead of technical violations such as probation violations. They found that transferred juveniles were more likely to reoffend and more likely to commit a violent offense as an adult (Lanza-Kaduce et al., 2005). The overall findings from prior research continually suggest that transfer to adult court may have a subsequent criminogenic rather than deterrent effect on youths when compared to youths processed in juvenile court (Fagan, 1996; Myers, 2003; Redding, 2006).

#### Prior Studies of Juvenile Transfer and Sentencing Outcomes

Much of the literature on juvenile transfer often focuses on what types of individuals are affected by this decision. However, equally important are the outcomes received by juveniles who are transferred to adult criminal court. The literature on sentencing for transferred juveniles can be broken down into three categories of studies: matched samples, outcomes in adult court, and outcomes in adult court by transfer mechanism. Each of these categories of studies on juvenile transfer sentencing outcomes offer unique contributions to the juvenile waiver sentencing research and provide information to a relatively rare occurrence in justice processing.

#### *Sentencing Outcomes of Matched Samples*

The majority of prior research on the topic of juvenile transfers and sentencing examines the sentencing outcomes between matched samples. The studies in this area tend to examine the probability and severity of sentencing among juveniles retained in juvenile court and those transferred to criminal court. The findings from such studies show mixed results as to the likelihood and severity of criminal sanctions received in

adult court. Some studies suggest that, in relation to juveniles who remain in juvenile court, juveniles transferred to adult court receive longer, more severe sentences (Bishop et al., 1996; Jordan and Myers, 2008; Kupchik, 2006a; Lemmon et al., 2005; Myers, 2003; Podkopacz and Feld, 1996; Redding, 2003; Snyder et al., 2000). For example, Lemmon et al. (2005) found that juveniles sentenced in adult court were much more likely to receive a sentence of incarceration (85%) than juveniles retained in juvenile court (55%). However, other studies indicate that transferred juveniles receive less severe punishments, if any at all (Champion, 1989; Kinder et al., 1995; Steiner, 2005). These contradictory findings indicate that compared to youths retained in the juvenile justice system, it is not a given that transferred youths will face harsher punishment when they get to adult court.

Studies that indicate that transferred juveniles receive longer sentences than their juvenile court counterparts offer varying degrees of severity. In 2003, Myers evaluated the deterrence effect of Pennsylvania's Act 33 legislation. This legislation was passed in 1996 and extended the statutory exclusion power of juvenile transfer. Myers specifically examined a matched sample of violent juvenile offenders both retained in juvenile court ( $n = 419$ ) and transferred to criminal court ( $n = 138$ ). His results indicate that the odds of transferred juveniles being sentenced to incarceration were 15 times higher than non-transferred youth. Also, the average severity of incarceration was greater for transferred youths (31.82 months) than non-transferred youths (10.7 months) (Myers, 2003). In a later study, Lemmon et al. (2005) set out to evaluate the Act 33 legislation passed in Pennsylvania among transferred juveniles and those that remained in juvenile court. The authors found that juveniles processed in the criminal court system were significantly

more likely to receive a sentence of incarceration (85% of sample) than juveniles who remained in juvenile court (55% of sample) (Lemmon et al., 2005).

Snyder et al. (2000) reported similar findings in their study of three states' transfer mechanisms and justice outcomes of juveniles transferred to adult court in comparison with similar cases retained in juvenile court. The findings indicate that across all jurisdictions, juveniles transferred to adult court were more likely to result in some form of confinement as opposed to youths with similar cases who remained in juvenile court. They also note that in one jurisdiction, the use of probation as a sentence was rarely used for juveniles in adult court (Snyder et al., 2000).

However, opposing findings show that transferred juveniles receive less severe punishments in criminal court than do similarly situated non-transferred youth (Champion, 1989; Kinder et al., 1995). Kinder et al. (1995) found that only 6.3% and 17% of transferred juveniles were sent to prison or placed on probation, respectively. However, among their non-transferred juvenile counterparts, 20.7% and 49.5% were sent to placement or put on probation, respectively. Kinder et al. noted that many of the juveniles transferred to criminal court were treated as first time offenders in adult court, and that this helps account for the relative leniency among adult court sanctions (Kinder et al., 1995).

Therefore, despite the collective knowledge on transferred youths' outcomes in criminal court as compared to their juvenile court counterparts, as a whole, the results are inconclusive. One can only speculate the reasons for these inconsistencies across studies. Perhaps the location and type of jurisdiction as well as the rigor of methodological practices may be contributing to the mixed results. However, it can clearly be inferred

that although a juvenile may be transferred to adult court, he may not be receiving as harsh a penalty as he would have in juvenile court. This notion goes against the fundamental principles of juvenile transfer and may lead some to question the overall usefulness of the policy.

### *Sentencing Outcomes of Juveniles in Adult Court*

There are a handful of studies that only examine juveniles transferred to adult court compared to adult offenders and their respective sentences. These studies attempt to determine if transfer is actually delivering on its promise to provide harsher punishments for those juveniles unfit for juvenile court. The overall findings are that juveniles who commit crimes against a person are most likely to receive a sentence of incarceration (Fagan and Deschenes, 1990; Keiter, 1973; Kinder et al., 1995; Myers, 2003; Podkopacz and Feld, 1996; Poulos and Orchowsky, 1994).

In one study (Podkopacz and Feld, 1996), the authors examined the sentencing outcomes of juveniles transferred in one jurisdiction in Minnesota using six years of data (n = 215). Podkopacz and Feld found that 85% of the transferred youths who were convicted of offenses that involved presumptive incarceration under the Minnesota guidelines received some form of incarceration as part of their sentence, with an average sentence length of 966 days.<sup>5</sup> Similarly, 78% of transferred youths convicted of non-presumptive offenses were incarcerated with an average sentence length of 134 days. These results indicate that overall, convicted transferred youths often receive a sentence of incarceration regardless if the charge was presumptive or not, the length of

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<sup>5</sup> In Minnesota, the term presumptive offense/charge is used to indicate a certain type of offense that carries a recommended incarcerative sentence under the Minnesota Sentencing Guidelines (Podkopacz and Feld, 1996).

incarceration may be significantly less if the youth is not convicted of the presumptive charge (Podkopacz and Feld, 1996). The findings from these studies show that transferred youths often receive sentences of incarceration and that offense severity appears to be important in the sentencing of these youths (Gillespie and Norman, 1984; Houghtalin and Mays, 1991; Podkopacz and Feld, 1996).

There is also some evidence which indicates that juveniles are punished more severely than their adult court counterparts when transferred to criminal court (Kurlychek and Johnson, 2004, 2010; Rainville and Smith, 2003; Steiner, 2009). Kurlychek and Johnson (2004) attempt to determine if the sentences received by transferred juveniles are comparable to similarly situated young adult offenders in criminal court. The authors found that there was a statistically significant difference in the average sentence length for juveniles and young adults processed in adult court, with juveniles receiving the more severe punishments. Even after controlling for various legal and extralegal factors, the mere fact that the offender is a juvenile appears to increase the overall severity of their sentence in adult court. Also worth noting, the interaction effect of juveniles convicted of committing personal crimes in criminal court appears to increase the severity of the “juvenile penalty”. The authors concluded that the reason for the overall sentencing difference is that judges feel that juveniles sent to adult court are unable to be rehabilitated and their level of dangerousness outweighs other sentencing concerns. The article finds that the initial decision to transfer a juvenile to adult court may indicate to adult court judges that these juveniles are unable to be rehabilitated and pose a threat to the community, and in turn, this leads to the more severe sentences for juveniles observed in adult court (Kurlychek and Johnson, 2004).

In a more recent study, Steiner (2009) expanded on Kurlychek and Johnson's 2004 study by comparing the imprisonment outcomes given to transferred youth and adults under age 29 in 37 urban counties across the U.S. Steiner found that transferred juveniles were incarcerated at higher rates than other young adult offenders. The results also indicated that differences among county composition affected sentencing outcomes. However, Steiner did not find evidence of a "juvenile disadvantage" among interaction terms with legal or extralegal factors for sentencing in adult court (Steiner, 2009).

In an effort to improve prior research, Kurlychek and Johnson (2010) conducted a study that further examined the notion of a juvenile status penalty faced by juveniles transferred to adult court. The authors used propensity score matching between transferred youth (age 10 to 17 at time of arrest) and their young adult counterparts (age 18 to 21 at time of arrest). Along with traditional legal and extralegal predictor variables, they included controls for the type of waiver, either judicial waiver or statutory exclusion. Throughout all of their analyses, the effect of juvenile status as well as interactions with offense type continued to be strong predictors of punishment in adult court. Juveniles transferred by judicial waiver received a heightened level of a juvenile penalty perhaps due to the fact that they were identified as being dangerous and more culpable for their offenses and therefore receive harsher sentences (62% to 75% more severe) in adult court as compared to their young adult counterparts. Interestingly, the greatest sentencing disparity between transferred youth and young adults was for drug crimes with sentences being six times longer than young adults convicted of similar crimes (Kurlychek and Johnson, 2010).

The consistent findings from these studies show that juveniles transferred to adult court receive a sentence of incarceration the majority of the time and that their sentences lengths can depend on the type of charge they of which they were convicted (Gillespie and Norman, 1984; Houghtalin and Mays, 1991; Kurlychek and Johnson, 2004; Podkopacz and Feld, 1996; Rainville and Smith, 2003). However, some of these studies only examine juvenile transfer as a whole and do not make distinctions between the types of transfer mechanism that sent them there. If we are to truly understand how transfer affects sentencing outcomes, it is essential to determine if sentencing differs by the type of transfer mechanism.

#### *Sentencing Outcomes of Juveniles in Adult Court by Transfer Mechanism*

To date, there have been few published studies that examine the sentences of juveniles transferred to criminal court among the three primary transfer mechanisms (judicial waiver, direct file, and statutory exclusion). In the first study, Steiner (2005) examined sentencing outcomes of 102 youths transferred to adult court by either judicial waiver or statutory exclusion in Idaho. He found that juveniles transferred through legislative exclusion served longer prison sentences than juveniles transferred through judicial waiver. Steiner also found that legislatively waived youths had a smaller probability of being admitted into an intermediate sanction program than judicially waived youths (Steiner, 2009).

In another study, Rainville (2008) examined the sentence lengths of 466 juveniles transferred to criminal court in a southwestern state during a one year time frame. He specifically wanted to see if the length of confinement sentences of transferred youth differed by the type of transfer mechanism that sent them to adult court. In his analyses,

Rainville controlled for offense severity, demographic characteristics, and legal variables. The results indicate that juveniles transferred through statutory exclusion had sentences that were on average 772 days longer than juveniles transferred through judicial waiver (Rainville, 2008). However, these results do not hold across jurisdictions. Contradictory findings by Kurlychek and Johnson (2010) indicate that youths transferred by judicial waiver faced a harsher juvenile penalty in sentencing than did youths who were legislatively transferred.

Despite the crucial contribution of these works in better understanding how transfer mechanism type affects sentencing outcomes, these studies are faced with some limitations. First, all of these studies are restricted in their sample in that they only examine a single state or jurisdictions. Since the results are mixed across jurisdictions as to the effect of certain transfer mechanisms, it is important to reexamine the issue across many jurisdictions to better understand the true effect of transfer mechanism type. Second, Steiner (2009) and Rainville (2008) examined fairly small sample sizes, 102 and 466 juveniles respectively. Therefore, their findings may be due in part to the reduced sample size available for analysis. This study will be combating the issue of small sample size by analyzing 4046 transferred youth. Lastly, although all of these studies examine sentencing outcomes of transferred youth by their transfer mechanism, none of these studies examines prosecutorial direct file. With prosecutorial direct file being a widely used transfer mechanisms across the U.S. it is essential that it be evaluated along with other transfer types and their effects on sentencing outcomes in adult court.

When taking evidence from prior studies, it appears that juveniles transferred to adult court tend to be punished more severely than their juvenile and adult court

counterparts, if sentenced to incarceration, and receive fairly long sentences which may vary by the type of transfer mechanism that sent them to adult court (Lemmon et al., 2005; Podkopacz and Feld, 1996; Rainville, 2008). These results validate the notion that juvenile transfer is a legal mechanism that will allow the adult court to provide harsher punishments than juvenile court.

## CHAPTER 3: THEORY AND HYPOTHESES

Drawing on the findings of prior literature on juvenile sentencing outcomes in adult court, the current study develops and tests several predictions grounded in contemporary theoretical perspectives on criminal punishment. Rooted in the focal concerns theoretical perspective on sentencing, the following section develops competing hypotheses regarding the effects that different modes of transfer may exert on the sentencing of juvenile offenders in adult criminal courts.<sup>6</sup>

### THEORETICAL FRAMEWORK

#### Focal Concerns Perspective

Many of the predictive variables noted by prior research are valid considerations for judges when determining whether or not to transfer, incarcerate and determine sentence lengths. When deciding whether to transfer a juvenile to adult court, judges must take into account the goals of transfer along with several factors that are observed and others that are unknown.<sup>7</sup> The focal concern perspective identifies three main classifications that judges and other courtroom actors consider when making court processing decisions: blameworthiness of the offender, community protection, and practical constraints and consequences (Kurlychek and Johnson, 2004; Steffensmeier et al., 1998). These three considerations are of paramount concern when judges are deciding if a juvenile is appropriate to be waived to adult court. The main aspects and considerations of the focal concern perspective are at the heart of the goals of the juvenile transfer mechanism.

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<sup>6</sup> Although the Focal Concerns Perspective is not considered a theory, it is a useful perspective which identifies the key concerns considered by judges in the decision making process.

<sup>7</sup> See the *Kent* decision for a list of the considerations involved in the juvenile transfer decision.

The traditional juvenile court philosophy holds that juveniles should not be held to the same level of culpability as adult offenders due to their status as a juvenile. Juveniles are also seen as more amenable to treatment options and reform than adult offenders. In this respect, the legislatures have indicated that the amount of blameworthiness of a juvenile must be increased if certain aggravating legal criteria are met. Offender blameworthiness is based on the philosophical ideas of retribution and just deserts. Juvenile transfer policies also hold offender blameworthiness as one of the central tenets. Judges often take into account numerous factors that help assess the overall blameworthiness of a juvenile. Such factors may include prior record, seriousness of the current offense, prior victimization and the role of the offender in the current offense (Kurlychek and Johnson, 2004; Steffensmeier et al., 1998).

Some scholars have suggested that juvenile offenders may actually face increased assessments of blameworthiness due to their “juvenile status” (Kurlychek and Johnson, 2004). Judges may see these youths as beyond rehabilitation as having lost their juvenile status protections, and as more deserving of harsher punishments than their adult court counterparts. As a central aspect of the focal concerns perspective, attribution theory argues that judges rely on known legal factors as well as stereotypes and prior experience to make a decision on an offender’s likelihood of continued involvement in crime (Albonetti, 1991). Since many juveniles transferred to adult court may have prior records and/or serious current offenses, these legal variables directly relate to a judge’s attribution of offender blameworthiness. Thus, the combination of their offense history, current offense, juvenile status, and judicial opinions create an image of an individual that is non-amenable to treatment and increasingly deserving of blame for their crime.

Another aspect that is essential to both the focal concern perspective and juvenile transfer decisions is protection of the community. Due to the increased perceptions of the general public that juvenile offenders are increasingly committing violent crimes (Muschert, 2007), this aspect of the focal concern perspective may be most easily observed and criticized by the general public. Protection of the community is associated with the philosophies of incapacitation and deterrence. This decision involves the consideration of factors that are known to justice decision makers such as prior history, current offense, use of weapon, as well as factors that may be unknown, such as assessment of the likelihood of recidivism upon release (Gillespie and Norman, 1984; Kurlychek and Johnson, 2004; Steffensmeier et al., 1998).

The last factor in the focal concern perspective is practical constraints and consequences. This factor is broken down into two parts, offender needs and organizational constraints. The first aspect, offender needs, discusses the practical constraints that judges must consider when deciding what type of facility juveniles should be sentenced to and how long juveniles should be incarcerated. This decision is often based on the juvenile's health conditions, special needs, family ties, and psychological needs. The second aspect, organizational constraints, is most concerned with the availability of criminal justice resources and how these juvenile transfers will affect the flow of cases. This idea of organizational constraints is explicitly spelled out in the courtroom community literature (Eisenstein and Jacob, 1977; Eisenstein et al., 1988). This theoretical perspective argues that resource availability, local norms, and case flow will vary across jurisdictions and therefore may affect case processing and outcomes (Dixon, 1995). Despite the lack of room at facilities that are able to hold juveniles,

judges may feel the pressure of the public to increase the level of accountability among violent and chronic offenders and give juveniles sentences of imprisonment (Kurlychek and Johnson, 2004; Steffensmeier et al., 1998).

Prior research suggests that those juveniles most likely to be transferred and sanctioned harshly in adult court are charged with violent crimes and often have a history of involvement with either the juvenile or adult criminal justice system (Fagan and Deschenes, 1990; Myers, 2003; Podkopacz and Feld, 1996; Poulos and Orchowsky, 1994). This is consistent with the theoretical ideas of the focal concerns perspective in that these juveniles fall into the key categories that judges use to assess offender blameworthiness and are seen as posing a threat to the local community through their actions. Although there may be key individual characteristics that identify certain juveniles as deserving more punishment than others, the use of different transfer mechanisms may initially differentiate between the inherent level of culpability and/or dangerousness assigned to the offender and offenses committed. With these varying assessments of culpability and dangerousness, it can be assumed that sentencing outcomes may be related to the type of transfer mechanism that sent a juvenile to adult court. However, since the literature regarding sentencing outcomes among different transfer mechanisms is limited and conflicting, it provides no real guidance as to which transfer mechanism, if any, produces the most severe sentencing outcomes. I therefore begin with the following null hypothesis:

*Hypothesis 1: There will be no differences in sentencing outcomes for juveniles transferred to adult court through discretionary judicial waiver, direct file, and statutory exclusion.*

There may, however, be reasons to expect significant differences in sentencing by mode of transfer. Many of these potential differences can be explained by understanding the sequential nature of case processing in the justice system. For those states that have more than one transfer mechanism, there may be a series of decision points that affect which transfer mechanism, if any, a youth can be processed through. After a juvenile is arrested, the prosecutor must decide whether or not to charge the youth with a crime and if so, which crime. It is at this stage in the process that different transfer mechanisms come into play. As noted before, statutory exclusion mandates that a youth be sent to adult court if they meet certain case specific qualifications, such as age, prior history, and current offense seriousness. In this case, the prosecutor's charging decision can make a juvenile's case legislatively excluded from juvenile court just by the current charge. Also at the prosecutor's charging decision stage is the time when the prosecutor himself can decide if he wants the juvenile's case tried in adult court. As described earlier, in prosecutorial direct file, the prosecutor has the ability to choose the forum, either adult or juvenile court, in which to file the charges. Although the cases processed through direct file might not represent the most serious crimes, the prosecutor's discretion in charging may select out cases that he feels are deserving of punishment in adult court as well as other case processing factors that may secure a conviction in adult court.<sup>8</sup>

After the prosecutor has decided to try a case in juvenile court, the judge is the last courtroom actor that is able to intervene and send a juvenile to adult court. The judge can then be thought of as having the last "pick" of youths who may need to be processed in adult court even though prior screening decisions did not exclude them from juvenile

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<sup>8</sup> This could include things such as convictability, strength of the evidence, witnesses, etc. (Albonetti, 1987; Forst, 2007)

court processing. These youths may not be the most serious offenders but may exhibit other characteristics of individuals no longer amenable to the treatment services available to the juvenile court system. It may be through this sequential processing scheme in states with multiple transfer mechanisms that influence on sentencing outcomes of those youths convicted in adult court occurs.

Keeping the idea of sequential processing in mind, one could come up with several different scenarios of the transfer mechanism may be key in influencing later sentencing outcomes. For instance, the focal concerns perspective suggests that juveniles transferred through statutory exclusion will receive the harshest penalties since they have committed crimes that have excluded them for any case processing in the juvenile court system. This is because juveniles who have been statutorily waived to adult court have committed crimes that have been deemed by the legislatures as too serious to be handled in juvenile court. The legislatures have indicated that juveniles who commit severe crimes have an increased level of blameworthiness, present a threat to the community and are no longer amenable to the resources available to the juvenile court. Therefore, judges at the sentencing stage in adult court may take into consideration the fact that these juveniles have been statutorily waived as an indication of increased culpability for their actions and a need to protect the community and thus impose the harshest sanctions.

In contrast, the discretionary transfer mechanisms of direct file and judicial waiver involve juvenile offenders that have not committed crimes that automatically exclude them from juvenile court jurisdiction (Torbet and Szymanski, 1998). The focal concerns perspective would indicate that since these youths have not committed legislatively excluded crimes, they may not pose as large a threat to the community and

the level of offender blameworthiness may be lessened due to their perceived amenability to treatment. Since both direct file and judicial waiver allows for individualized decisions on whether to transfer, individuals transferred by these mechanisms may result in punishments that are less harsh than individuals transferred through statutory exclusion. This is due to the fact that discretionarily waived youths have not been initially singled out by the legislatures for prosecution in criminal court and as indicated previously, these youths may be seen as more amenable to available treatment options and other resources than youths transferred through statutory exclusion.

However, the opposite argument can be also supported through the focal concerns perspective. That is, youths transferred by discretionary decisions may send up a “red flag” to judges at sentencing since there are likely certain legal aggravating factors that have triggered the need to send them to adult court. It is often the combination of current offense, age, and prior record that identify certain youths as eligible for prosecutorial direct file or discretionary judicial waiver (Lemmon et al., 2005; Sickmund, 2003). Judges and prosecutors must then make a discretionary decision as to the best system to handle the juvenile’s as well as the community’s needs. In these cases, focal concerns perspective would argue that judges and prosecutors may find that certain youths do not belong in juvenile court due to factors such as amenability to treatment, both prior and future, and threat to the community and therefore initiate the proceedings to send them to adult court. Although these juveniles have not been subject to the statutory exclusion mechanism, their individual case may warrant the need for processing in the adult court system. However, for those youths subject to statutory exclusion, adult court sentencing judges may recognize the mandatory nature of the legislative exclusion and may not see

these youths as the most deserving of punishment in comparison to other transferred youths. Similar to research on mandatory minimum sentences, judges may try to circumvent the legislative mandates due to the belief that they are unduly harsh in certain situations (Tonry, 1992). There is also evidence that discretionary decisions, such as pretrial detainment, made earlier in case processing can influence the severity of later punishments (Williams, 2003).

An interesting aspect of this study is that it examines two different discretionary transfer decisions, direct file and judicial waiver, and their associated sentencing outcomes. Although both mechanisms are based on discretionary decisions, there is little empirical work that identifies how these transfer mechanisms differ in their effect on sentencing outcomes. There are some inherent differences between direct file and judicial waiver as to when and how certain youth are identified as needing to be transferred. Prosecutorial direct file grants the most amount of discretion in that the charging decision lies solely with the prosecutor as to which court, either adult or juvenile, to file the case. Prosecutors are often concerned with obtaining convictions and maximizing available punishments (Steiner and Wright, 2006). It is that charging decision that determines the fate of juveniles that are eligible to be prosecuted in either court system. On the other hand, discretionary judicial waiver comes later in the court process. Once a juvenile has been deemed eligible for transfer, it is up to the judge to decide if transfer is appropriate for that specific individual (Torbet and Szymanski, 1998). In making this decision, the judge is fulfilling his role of providing individualized justice to offenders (Steiner and Wright, 2006). These two discretionary transfer decisions are made at two ends of the case processing spectrum, with direct file in the charging

decision and judicial waiver in the juvenile court. Once in adult court, there may be certain legal characteristics that indicate youths transferred by one of the discretionary waiver mechanisms are more deserving of punishment than the others. However, as noted previously, since prior research in this area does not provide substantial guidance as to the expected outcome, I test the following non-directional hypothesis:

*Hypothesis 2: There will be differences in sentencing outcomes for juveniles transferred to adult court through discretionary judicial waiver, direct file, and statutory exclusion.*

## CHAPTER 4: METHODOLOGY

In order to test these hypotheses the current study will examine 4,046 transferred youth who have been convicted and sentenced in adult court. These data come from a sample of 40 of the 75 largest counties in the United States from “Juvenile Defendants in Criminal Court: Survey of 40 Counties in the United States, 1998” (JDCC). These data were collected by the United States Department of Justice, Bureau of Justice Statistics and were obtained from the Inter-University Consortium for Political and Social Research (ICPSR). The original data file created by the State Court Processing Statistics provided a representative sample of felony defendants in 40 of the 75 largest counties in the United States in May 1998 and their associated legal and extralegal processing factors.<sup>9</sup> The JDCC data set was then created to isolate all juveniles from the original data that were sent to adult court through juvenile transfer mechanisms.

### DATA COLLECTION

To compile the JDCC data set, the Bureau of Justice Statistics (BJS) collected the data in two stages. The BJS compiled an independent sample of the data from the State Court Processing Statistics. Counties were chosen from a list of the 75 largest counties in the U.S. chosen by population size in 1998.<sup>10</sup> Next, the BJS collected information on all juvenile felony defendants among the sample of 40 counties and tracked through disposition or until one year after the filing date. Since juvenile transfer is a fairly rare

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<sup>9</sup> Felony defendants were followed for one year after the date of filing and all pertinent legal factors were recorded including case outcome. These data are collected every two years by the Bureau of Justice Statistics and the U.S. Census Bureau to provide information about felony cases filed across the country (Steiner, 2009).

<sup>10</sup> After the initial selection of 40 counties, several counties chose not to continue with the data collection. Therefore, those counties were not replaced through systematically. For an extensive sampling description, see Steiner (2009).

event, data were collected for all transferred juveniles throughout the entire year of 1998. The BJS collected information specific to juvenile felony cases, including demographic characteristics, criminal history, adjudication and sentence.

This data set offers many unique contributions when studying sentencing outcomes of transferred juveniles. First, the data were collected at a national level among 40 of the 75 largest counties in the United States and therefore is a large, multi-jurisdictional sample. This allows for a comparison from a national sample that may not have been previously available. Second, information and research regarding transferred juveniles are usually restricted to small sample sizes. This study is different in that it will be analyzing a large sample of transferred youth ( $n = 4,046$ ). Third, this study examines not only the sentencing outcomes received by transferred youth but the data allows for analysis of different transfer mechanisms and how they may affect sentencing and incarceration outcomes. Fourth, since the data were collected from the date of case filing and followed for a year, there is a wealth of information and variables regarding case processing and sentencing outcomes. Finally, the amount of legal and extralegal characteristics collected on juveniles transferred to adult court is quite large and provides additional characteristics available for examination that may influence any subsequent justice decision making processes. Taking all of these contributions and strengths together, these data prove useful in exploring and answering this study's hypotheses.

## SAMPLE DESCRIPTION

The sample of individuals that will be examined in this study are juvenile felony defendants who are transferred to adult courts in a sample of 40 of the 75 largest counties in the United States in 1998. The total sample available in the data set is 7,135 juveniles.

From the total sample of transferred juveniles, a sample of 4,046 juveniles who were convicted and sentenced will be analyzed to examine the relationship between transfer mechanism and sentencing outcomes. Out of the 4,046 convicted and sentenced juveniles, 2,760 juveniles received some type of incarcerative sentence, however there is only data for sentence length on 2,690 (70 missing cases). The average sentence length for the 2,690 juveniles who received a sentence of incarceration is 67.62 months. Table 1 enumerates the descriptive statistics for the total juvenile sample as well as the convicted sample and Table 2 provides detailed coding descriptions for all variables in the analysis.

[Table 1 about here]

## VARIABLES

### Dependent Variables

The first dependent variable is incarceration. This variable is coded '1' for juveniles who received a sentence of incarceration and '0' for juveniles who did not receive a sentence of incarceration. The data for this sample were collected with separate variables to distinguish between prison, jail, and juvenile facility incarceration sentences. Three variables are combined to indicate if a youth received any type of incarceration, without making a distinction of the type of incarceration. Due to the fact that this is the first study of its kind, a more simplistic analytic approach is utilized. This is consistent with prior work in this area (Rainville, 2008), though it will be important for future research to further delineate among different types of incarceration.

The second dependent variable is length of sentence for those juveniles who received a sentence of incarceration as part of their disposition in adult court. This variable includes sentences to jail, prison, and juvenile facility. The actual sentences are

measured in months, a continuous variable, to give the most accurate depiction of sentence length and variation possible.<sup>11</sup> Measurement of incarceration in months has been used by prior research to allow for detailed description of the total incarceration sentence length (Myers, 2003).<sup>12</sup> However, since the distribution of sentence length in months is rightly skewed, a natural log transformation was done on the sentence length variable in order to normalize the distribution. This is consistent with prior work on juvenile punishment in adult court (e.g. Kurlychek and Johnson, 2004).

### Independent Variables

The independent variable in this study is mode of transfer, captured with three categories: discretionary judicial waiver, statutory exclusion, and direct file. All three independent variables were coded by the original data collectors to differentiate which transfer mechanism was used to get the juvenile to adult court. The original variable in the data set, “filemech” was a nominal scale that ordered the three transfer mechanisms. For purposes of this research study, all three transfer mechanisms will be coded as binary variables in order to isolate their effects on sentencing outcomes.

The first dummy variable is “judicial waiver”. This variable captures the number of individuals who were transferred to adult court through discretionary judicial waiver.

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<sup>11</sup> Although length of sentence is a straightforward way to measure the severity of the imposed sentence, there have been other indicators used for measuring sentence severity such as the type of incarceration facility, adult versus juvenile, and actual time served (Fritsch et al., 1996a, 1996b; Kupchik, 2007) In the Fritsch et al. (1996a, 1996b) studies, the authors measured sentence length as well as the actual time served for juveniles transferred to adult court and found that these individuals were only serving, on average, 27% of their original sentence, though this varies by crime type. However, their results should be interpreted with some caution since almost 45% of their sample had not been released from prison and therefore, individuals serving longer sentences for more serious crimes may alter their initial findings (Fritsch et al., 1996a, 1996b).

<sup>12</sup> As noted earlier, some authors have measured sentence length by examining actual sentence imposed and amount of time actually served (Fritsch et al., 1996a, 1996b). Although the examination of time served would provide an interesting additional analysis, the focus of this study is on the judge’s decision at the time of sentence and not correctional officials’ decisions of parole.

All individuals who were transferred to adult court through discretionary judicial waiver or certification mechanisms are coded as '1'. Individuals who were not transferred by discretionary judicial waiver or certification mechanisms are coded as '0'.

The second dummy variable is "statutory exclusion". This variable captures the number of individuals who were transferred to adult court through statutory exclusion mechanisms. All individuals who were transferred to adult court through statutory exclusion mechanisms are coded as '1'. Individuals who were not transferred by statutory exclusion mechanisms are coded as '0'. In later analyses, statutory exclusion will be used as the reference category in order to examine the unique differences between the discretionary transfer mechanisms of judicial waiver and direct file.

The last dummy variable is "direct file". This variable captures the number of individuals who were transferred to adult court through prosecutorial waiver or direct file mechanisms. All individuals who were transferred to adult court through direct file mechanisms are coded as '1'. Individuals who were not transferred by direct file mechanisms are coded as '0'.

### Control Variables

Prior research in the area of juvenile transfer has indicated that there are several variables that may affect the juvenile transfer and sentencing decision in adult court. Table 2 enumerates the operationalization of each control variable as well as the independent and dependent variables. This study will focus on five separate legal control variables and five extra-legal control variables. Legal control variables will consist of the most serious initial offense, age at the time charges were filed, number of current charges, trial conviction, prior record, and pretrial release. Prior research demonstrates

that the seriousness of the current offense is influential in both the transfer and sentencing decision (Lemmon et al., 2005; Myers, 2003). In the current study, offense seriousness is captured with a series of 14 binary variables that specifically identify the most serious adjudication charge (see Table 1 for enumeration of the charge categories).<sup>13</sup> In later analyses, the variable “burglary” is used as the reference category.

[Table 2 about here]

Next, prior record has been proven to significantly influence decisions not only in predicting transfer (Fagan and Deschenes, 1990; Houghtalin and Mays, 1991; Keiter, 1973; Myers, 2003; Poulos and Orchowsky, 1994), but also in the probability of a sentence of incarceration (Lemmon et al., 2005; McNulty, 1996) and sentence length in adult court (Kurlychek and Johnson, 2004). This variable will be captured with a combination of two variables, adult prior arrests or convictions and juvenile prior arrests or convictions. Prior record is a binary variable indicating if a transferred youth has had prior involvement with either the juvenile or criminal justice system.

Another variable, number of current charges, will be counted as a continuous variable indicating the total number of charges brought against a transferred youth. Also, a variable for conviction at trial (yes = 1, no = 0) is included since prior research shows that individuals convicted at trial may receive a harsher punishment than those convicted at earlier stages in the criminal justice process (Johnson, 2003). As prior research has shown (Eisentsein and Jacob, 1977), mode of conviction can be influential to sentencing decisions and therefore, a measure of trial conviction is included (yes = 1, no = 0).

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<sup>13</sup> Three of the offense variables (fraud, forgery, and driving offenses) had only a few cases. Additional analyses were conducted to see if combining them into the other felony category would change the results. Findings from both the logistic regression and the OLS regression remained in the same direction and the magnitude of the coefficients were almost identical.

Lastly, the variable of pretrial release is a binary variable that indicates whether a youth has been granted a form of pretrial release prior to adjudication.

This study will also control for the age of the offender at the time that charges were filed. The age if the individual eligible for transfer has often appeared as a predictor of transfer to adult court (Fagan and Deschenes, 1990; Myers, 2003; Podkopacz and Feld, 1996; and Orchowsky, 1994; Snyder et al., 2000) and sentence length in adult court (Houghtalin and Mays, 1991; Kurlychek and Johnson, 2004). Many state statutes created exclusionary rules for individuals who commit certain crimes above a particular age. Therefore, the relationship that age plays in the transfer and sentencing decisions in adult court may be very important even among different transfer mechanisms. This will be measured as a continuous variable in one year intervals.

The extralegal variables to be examined in this study are race/ethnicity (Black, Hispanic, Other/Unknown race), gender, and state. First, race and ethnicity are included as a control variable due to the mixed findings of its importance in transfer and sentencing outcomes for juvenile in adult court (Feiler and Sheley, 1999; Lemmon et al., 2005; McNulty, 1996; Mears, 2003; Myers 2003; Podkopacz and Feld, 1996; Poulos and Orchowsky, 1994). Race will be coded as three binary variables of Black, Hispanic, and other/unknown race, with White being the reference category.<sup>14</sup>

Most studies examining the juvenile transfer decision and subsequent sentencing analyze a population of male juveniles. The findings of several studies indicate that although gender is not a significant predictor of transfer, being male is significant in

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<sup>14</sup> The analyses looked at models with and without the other/missing race category. Findings showed the magnitude, directionality and significance of the coefficients remained the same whether other/unknown race was included in the model or not. I decided to keep this category in the final model because the pattern of results remained the same and by excluding these cases, I would lose 115 of cases from the analysis.

predicting the likelihood of a sentence of incarceration (Lemmon et al., 2005), and increased sentence length in adult court (Kurlychek and Johnson, 2004). In this study, gender is coded as a binary variable (male = 1, female = 0).

Finally, variables regarding states have been created to allow for analysis of different geographical areas.<sup>15</sup> In studies that attempt to make cross-jurisdictional comparisons, the overwhelming majority have found that rates of transfer (Fagan and Deschenes, 1990) and sentencing outcomes in adult court (Snyder et al., 2000) do indeed vary across jurisdictions. Since many states have different transfer mechanisms that are not consistent throughout the sample, it is essential to control for each state so that results do not assume homogeneity of transfer mechanisms across state boundaries. Table 3 displays the different transfer mechanisms for each state included in the sample.<sup>16</sup>

[Table 3 about here]

## ANALYTIC TECHNIQUES

### Logistic Regression

In analyzing the hypotheses, logistic regression is utilized. Logistic regression is used when analyzing a binary outcome or dependent variable. This technique works by applying maximum likelihood estimation to the natural log odds of an event occurring. In this study, the first dependent variable is binary in that ‘1’ refers to juveniles sentenced to incarceration and ‘0’ refers to juveniles not sentenced to incarceration. Therefore, logistic regression is be utilized to examining the differences between youths who were

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<sup>15</sup> In an effort to assess any sentencing differences that might emerge due to methods of judicial appointment as well as the availability of parole, these factors will be examined in later analyses. In this sample, all chief prosecutors are elected (DeFrances, 2002), while in Alabama, Arizona, Hawaii, Maryland, New York City, and Washington, judges are appointed and in the rest of the sample, judges are elected (Rottman et al., 2000). Only in Washington was there no parole board available to any defendants in 1998 (Rottman et al., 2000).

<sup>16</sup> Also see the Appendix for a comparison of convicted and incarcerated youth and their sentence lengths by state.

incarcerated and youths who were not. Unlike Ordinary Least Square (OLS) regressions, logistic regression does not assume that the dependent and independent variables form a linear relationship, or are normally distributed (Long, 1997). Therefore, logistic regression is the most appropriate analysis technique to examine the relationship between transfer mechanism and sentences of incarceration. The following equation will be used to evaluate the impact of my independent and control variables on my dependent variable, incarceration:

$$\text{Log}(\text{Odds}) = \beta_1 + \beta_2(\text{Waiver})_{2i} + \beta_2(\text{Direct File})_{2i} + \beta_3(X)_{3i} + \dots + \beta_k X_{ki} + \varepsilon_i$$

Where Log(Odds) is the natural log of the odds of incarceration.  $\beta_1$  is the model intercept,  $\beta_2$  and  $\beta_3$  are the effects of the key independent variables, type of transfer, and  $\beta_3 X_{3i}$  through  $\beta_k X_{ki}$  is a vector that includes all legal and extralegal control variables in the analysis.

### Ordinary Least Squares (OLS) Regression

Because incarceration length follows a linear pattern, OLS is an appropriate regression model to investigate the effect of transfer mechanism on the dependent variable of incarceration length. Therefore, an OLS regression is used to examine the sentence lengths for the hypotheses in this study.<sup>17</sup> OLS regressions are used for data in which the dependent variable is a continuous variable. These regressions attempt to

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<sup>17</sup> There are other analytic techniques that could be utilized to examine the incarceration and sentencing decision, such as a negative binomial regression or a Tobit analysis. A negative binomial regression is used when examining count data, however much of the prior research examining sentencing outcomes often utilizes a logistic regression to examine the incarceration decision as well as an OLS regression for sentencing outcomes (Long, 1997; Rainville, 2008; Steffensmeier and Demuth, 2000). A Tobit analysis is utilized when facing issues of limited censored data, such as sentence length since some offenders are not sentenced to incarceration. In the case of this analyses, the use of logistic regression and OLS regression is sufficient in examining sentencing outcomes, however the use of a Tobit analysis would be useful to verify the results. Although these techniques are not used in this study, future research should consider these alternative analytic techniques in examining incarceration and sentence length outcomes.

produce an estimate of best fit and minimize the sum of square differences between the observed and expected data points (Pindyck and Rubinfeld, 1998). Preliminary examination of sentence lengths for transferred juveniles revealed a sharp positive skew, as shown in Figure 1. A natural log transformation was therefore applied to normalize the distribution, as demonstrated in Figure 2. The following equation will be used to evaluate the impact of the independent and control variables on the dependent variable, sentence length.

$$\ln(Y_i) = \beta_1 + \beta_2(\text{Waiver})_{2i} + \beta_3(\text{Direct File})_{2i} + \beta_3(X)_{3i} + \dots + \beta_k X_{ki} + \varepsilon_i$$

Where  $\ln(Y_i)$  is the natural log of the number of months of incarceration.  $B_1$  is the model intercept,  $B_2$  and  $B_3$  are the effects of the key independent variables, mode of transfer, and  $B_3 X_{3i}$  through  $B_k X_{ki}$  is a vector that includes all legal and extralegal control variables in the analysis.

#### Missing Data

Similar to most official data, there are some cases in this sample that contain missing data in various data fields. The lack of data for certain variables may be due to coding error or omission. Although each jurisdiction had similar coding sheets for recording data, in some instances coders that were unsure of how to code information placed these occurrences in the “don’t know” category. The effects of missing data on later analyses include incorrect standard errors, biased coefficients, and possibly incorrect results (Pindyck and Rubinfeld, 1998).

As reported in Table 4, only a few variables have missing data values. For number of charges, mean substitution is used to replace missing information (5.3% of convicted juvenile sample). The variable of age at the time charges were filed had 11

missing values. These missing values were filled in by manually computing the offender's age by subtracting the individual's date of birth from the date of filing. Lastly, for the sentence length variable, of the 2,760 individuals incarcerated, there was only sentence length data for 2,690 individuals. For these 70 cases that did not have sentence length data, listwise deletion was employed.

[Insert Table 4 about here]

## CHAPTER 5: FINDINGS

### DESCRIPTIVE STATISTICS

From observing the results in Table 1, it can be seen that among the full sample, only 39% of juveniles were incarcerated. However, 68% of those convicted received some term of confinement. This reflects the fact that a large number of juveniles who are transferred to adult court are not convicted and sentenced ( $n=7135-4046$ ). Likewise, the average sentence length is quite different between the full sample (28.30 months) and the convicted sample (67.62 months). This is expected since the mathematical computation of the mean would decrease when numerous individuals with no incarcerative sentence length, the full sample, are added to those with measurable incarcerative sentences, the convicted sample.

Moreover, both the full sample and convicted sample are mostly males (96% and 97% respectively) and African Americans (61% and 57% respectively). The average number of current charges for both the full sample and convicted sample was approximately 3 and the proportion of individuals with prior records were comparably close, with 0.44 for the full sample and 0.51 for the convicted and sentenced sample. Likewise, the proportion of juveniles convicted through trial was very similar for both the full sample and the convicted sample, with 5% and 7% respectively. Also, the average age at the time charges were filed for was 16.69 for the full sample and 16.86 for the convicted sample.<sup>18</sup>

To further investigate the possible differences between the modes of transfer, Table 5 provides the descriptive statistics for the full sample and the convicted sample

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<sup>18</sup> It should be noted that there are 40 individuals in the sample that were over 18 at the date of charges being filed. These individuals committed their crimes as juveniles (under age 18) and therefore have been included in the final sample.

disaggregated by transfer mechanism. There are a few noticeable differences between the convicted and sentenced youths from the three different transfer mechanisms. Among modes of transfer, direct file accounts for the larger proportion of juveniles in adult court, with 86% of juveniles transferred through judicial waiver being incarcerated whereas only 64% and 59% of statutory exclusions and direct file waivers were incarcerated respectively. Interestingly, though, the proportion of judicial waivers increases from the full to the convicted sample, whereas the proportion of statutory exclusions decreases. Similar differences are observed for incarcerative sentence lengths among the three transfer mechanisms. Judicial waiver has the highest average incarcerative sentence length at 93.34 months whereas the average incarcerative sentence length for statutory exclusion and direct file are 80.07 and 30.00 respectively.

These findings could be due in part to the fact that convicted and sentenced juveniles transferred through judicial waiver were more likely to have a prior record and less likely to be granted pretrial release. Focal concerns perspective would suggest that individuals who are less likely to be granted pretrial release might be seen as potential threats to community safety. Therefore, the judge's decision to incarcerate may be influenced by this prior decision of community protection. Also, focal concerns perspective would indicate that since these individuals are more likely to be repeat offenders, they may have increased levels of blameworthiness. This attribution of blameworthiness may then cause the sentencing judge to hand down longer, more severe incarcerative sentences.

In part, the differences in proportions of incarceration and average sentence length might be due to variations in offender and offense characteristics. As noted above,

youths transferred through judicial waiver were most likely to have prior records, whereas statutory exclusion cases tended to involve the most charges. In terms of extralegal offender characteristics, African American youths were more likely to arrive in adult court through statutory exclusion, Hispanics were more likely to get to adult court through judicial waiver and Whites were more likely to be transferred through direct file. When examining the juveniles who were transferred and convicted through statutory exclusion compared to transferred juveniles from other mechanisms who are convicted, they tend to be younger, less often have a prior record, are convicted on more charges, and are predominately African-American.

As part of the descriptive analysis, correlations among the independent variables were also examined. If there are levels of high correlation between any two variables, this may lead to issues of multicollinearity in the regression models and possibly lead to Type II errors. There are moderately high correlations between the transfer mechanism variables as well as the race/ethnicity variables. This outcome is expected and is not indicative of multicollinearity since these variables are dummy coded and therefore are inherently related to one another. The only set of variables that experienced a high level of correlation was Florida and the direct file transfer mechanism, which suggests that direct file was used prominently in that state.<sup>19</sup> Florida is used as the omitted reference category as a result in an attempt to limit the potential of a Type II error in the final regression models.

## RESULTS FROM LOGISTIC REGRESSION

### Transfer Mechanisms

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<sup>19</sup> The Phi coefficient between Florida and direct file had a large effect size of 0.80.

The logistic regression analysis employed in this study is used to examine the likelihood of incarceration for those transferred juvenile offenders who have been convicted in adult criminal court. Initially, a reduced model (Model 1) was run to isolate the direct effects of the different transfer mechanisms on likelihood of incarceration. These initial findings show that juveniles transferred through judicial waiver are 2.61 times more likely to be incarcerated than those for statutory exclusion. Next, Model 2 was run on the transfer mechanisms as well as the legal and extra-legal control variables. In this model, the results show that again, youths transferred through judicial waiver are more likely to be incarcerated (1.37 times) than those transferred through statutory exclusion. Interestingly, the results show that after controlling for other factors, the decreased likelihood of incarceration (25%) for youths transferred through direct file becomes significant. However, these results change when controlling for the fixed state effects in the full model which is Model 3.

The results from the logistic regression show that being transferred through direct file is statistically significant in predicting a sentence of incarceration when compared to statutory exclusion. Juveniles transferred through direct file are 52% more likely to be incarcerated than youths transferred through statutory exclusion. For judicial waiver in the final model, the likelihood of incarceration was greater than but not statistically different from that of statutory exclusion.<sup>20</sup> This finding suggests that, after controlling for legal, extra-legal and state effects, adult court judges may place more value in the prosecutor's discretionary transfer decision than in statutorily defined transfer mechanisms. As discussed previously, adult court sentencing judges may be familiar

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<sup>20</sup>Results for both logistic regression and OLS analyses were rerun utilizing list wise deletion for all missing cases to verify the results reported. The magnitude of the coefficients were very similar and in the same direction and all significant variables continued to be significant after controlling for missing data.

with the mandatory nature of the legislatively defined transfer and may not see these youths as the most deserving of punishment in comparison to juveniles transferred through prosecutorial direct file.

The relationship between incarceration decisions for juveniles transferred through direct file and judicial waiver was examined as well. The results indicate that there is no significant difference in the likelihood of incarceration for juveniles transferred through direct file when compared those transferred through judicial waiver ( $\beta = 0.27$ , S.E. = 1.31). Therefore, regarding the discretionary transfer mechanisms and the incarceration decision, we are unable to reject the null that there is no difference between the two transfer mechanisms.

[Table 6 about here]

#### Legal Control Variables

The findings indicate that there were four offenses that if convicted of, significantly reduced the odds of incarceration for a transferred juvenile when compared to those convicted of burglary, while there was only one that increased the odds. The four offenses that were less likely to be incarceration were drug offenses (48%), forgery (76%), weapons (62%), and misdemeanors (74%). This means that transferred juveniles convicted of drug offenses, weapons offenses, forgery, or misdemeanors were less likely to receive a prison sentence when compared to those waived youths convicted of burglary. The one offense that had statistically higher odds of incarceration was murder. The likelihood of incarceration for transferred youth convicted of murder was 982% higher than those transferred youths convicted of burglary. This result lends credence to focal concerns perspective's view that judges consider community protection when

handing down sentences. By incarcerating juveniles convicted of murder, judges are attempting to keep these serious juvenile offenders off the streets.

When examining other legal factors, only three out of the five legal factors analyzed in this study were found to be significant in predicting the odds of incarceration. The results show that juveniles with a prior record were more likely to receive a sentence of incarceration by 61% while individuals granted pretrial release were 65% less likely to be incarcerated. These two legal variables are key considerations in the community protection aspect of the focal concerns perspective. Therefore, judges may be taking a juvenile's prior record and pretrial release status into account when making the 'in/out' incarceration decision. Also, the findings indicate that the likelihood of incarceration increased by 66% if a juvenile was convicted through trial. This is consistent with prior research that suggests that individuals who take their cases to trial receive longer sentence than those who are found guilty through diversion or plea bargain options (Johnson, 2003).

#### Extralegal Control Variables

The only variable among the extra-legal factors examined that was statistically significant in predicting an increase in the odds of incarceration was being African-American. Youths who were African-American that were convicted had a 55% increase in the likelihood of being incarcerated. This finding is consistent with prior work examining the likelihood of incarceration among racial and ethnic groups more generally in criminal courts (Kramer and Steffensmeier, 1993).

#### States

There were several states in the analysis that had significantly increased odds of incarceration for an offender convicted and sentenced in their jurisdiction as compared to Florida. These states along with their associated odds of incarceration in comparison to Florida include Alabama (30.83), Arizona (3.04), California (7.42), Georgia (10.39), Indiana (59.11), Kentucky (47.98), Maryland (16.49), Ohio (19.50), Pennsylvania (4.52), Tennessee (34.84), Texas (7.97), Washington (37.75), and Wisconsin (8.72). It is clear from these results that the likelihood of incarceration varies greatly from state to state. From these results, it appears that there are some large interstate differences that should be examined through future research.

Taking all of the results together from the logistic regression analysis, findings show that in some instances the type of transfer mechanism, the offense, the location of the court, legal factors, and the race of the defendant all affected the likelihood of incarceration for transferred youth in adult court.

## RESULTS FROM ORDINARY LEAST SQUARES REGRESSION

### Transfer Mechanisms

Table 7 reports the statistics from the OLS regression model. In order to test the null and alternative hypotheses of whether there is or is not a difference in sentence length for juveniles transferred through different mechanisms, an OLS regression model was run with the independent and control variables. As Table 7 indicates, there is a statistically significant difference among the transfer mechanisms. The full model explains 53.7% of the variation in sentence length for transferred youths who are incarcerated. This value is quite high for social science research. The adjusted  $R^2$  for

this model is still very high, 52.9%, even after taking into account the number of controls used.<sup>21</sup>

[Table 7 about here]

Similar to the logistic regression analyses, three models were run to examine how the effect of transfer mechanism changed when adding additional variables to the model. The results from all three models examining the effect of transfer mechanisms on sentence length (Models 4, 5, and 6) show that juveniles transferred through direct file receive significantly shorter sentence lengths than those transferred through statutory exclusion. For the full model (Model 6) the findings indicate that a juvenile who was transferred through judicial waiver will have a 30% decrease in incarcerative sentence length compared to youth waived through statutory exclusion. When evaluated at the mean incarceration length of 67.62 months, this 30% decrease in incarcerative sentence length translates into a 23.66 month reduction in sentence length in relation to juveniles transferred through statutory exclusion. Incarcerated juveniles transferred through judicial waiver, received significantly less punishments, in terms of sentence length, when processed in adult court relative to those transferred through statutory exclusion.

The results for direct file indicate the same trend as those for judicial waiver. The coefficient for direct file is -0.39 and shows that incarcerated juveniles transferred through direct file have a 32% decrease in incarcerative sentence length. In actual months, this equates to a 26.46 month decrease in incarcerative sentence length for youths transferred through direct file in comparison to those transferred through statutory

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<sup>21</sup> The  $R^2$  for the OLS regression is an indication of how much variation in the sentence length decision the model used in this research is able to explain. However, for the logistic regression model, the  $R^2$  provided (referred to as the pseudo  $R^2$ ) is not equivalent in meaning to the  $R^2$  of the OLS regression. The pseudo  $R^2$  is really only useful when comparing different models from the same data that examine the same outcome variable (Long, 1997).

exclusion. These results taken together conclude that we must reject the null hypothesis that suggests that there will be no differences in sentencing outcomes for juveniles transferred to adult court through discretionary judicial waiver, direct file, and statutory exclusion.<sup>22</sup>

Further analyses examined the relationship between the discretionary transfer mechanisms of judicial waiver and direct file on sentence length.<sup>23</sup> Similar to the results from the logistic regression, the direct file transfer mechanism did not produce differences that were statistically significant ( $\beta = -0.04$ , S.E. = 0.09). Again, these results further indicate that there does not appear to be any appreciable differences between the discretionary waiver mechanisms regarding sentence length.

#### Legal Control Variables

There were several offense variables that reached statistical significance in the OLS model. Only four offense variables had a statistically significant increase in sentence length from the reference category of burglary. Not surprisingly, all were crimes against persons. Murder was highly significant with a t-statistic of 11.41. The results show that if a juvenile was incarcerated for murder, there would be a 271% increase in sentence length relative to burglary which equates to an 88.74 month increase in incarcerative sentence length. Similarly, rape increased one's sentence length by 95% (45.16 months), robbery by 38% (21.99 months), and assault by 30% (17.75 months) relative to burglary offenses.<sup>24</sup>

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<sup>22</sup> A supplemental analysis was conducted on the regression model for sentence length that incorporated probation offenders as well as incarcerated offenders. The directionality of the coefficients and significance of the variables remained almost the same in the model which included probationers.

<sup>23</sup> Results for this analysis are not displayed in this paper.

<sup>24</sup> A sensitivity analysis was conducted to see if juveniles sentenced to life without parole (LWOP) altered the results when included in the final analyses for both the logistic regression and OLS analysis. In total, there were 44 juveniles sentenced to LWOP (judicial waiver, n=28; direct file, n=4; statutory exclusion,

There were also several significant offense variables in the model that indicated on average a lower sentence than that of juvenile offenders convicted of burglary. These included offenses such as theft (44%, 39.27 months), motor vehicle theft (48%, 44.13 months), other property offense (55%, 53.36 months), drug offense (41%, 35.89 months), fraud (84%, 123.60 months), weapons (56%, 54.80 months), other public order offense (52%, 49.78 months), other felony (64%, 68.22 months), and misdemeanor (79%, 107.16 months). These results taken as a whole indicate that when compared to waived juveniles convicted of burglary, only those waived juveniles convicted of person offenses are significantly more likely to receive longer sentences of incarceration.

Additional legal variables were also related to sentence lengths for waived youths. Pretrial release was highly significant and had the third largest effect of all the variables included in the model. If a waived juvenile is granted pretrial release, on average, their sentence length will be 41% or 35.26 months lower than juveniles not given pretrial release. The other legal variables, number of charges, trial conviction, and prior record were associated with longer sentences. For every additional charge, sentence length increases by 3% or 2.08 months. If a juvenile was convicted through trial, on average, their sentence length will increase by 115% or 51.80 months. Similarly, if a juvenile has a prior record in either adult or juvenile court, on average their sentence length will increase by 10% or 6.17 months. Finally, age was also found to be significant in this model. This means that for every year increase in age, on average results in a 6% or 4.10

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n=12). Overall, the results remained the same in magnitude and significance. However, for sentence length, two slight changes should be noted. The effect of murder and rape on sentence length decreased slightly (227% and 81% respectively) after removing the LWOP cases but they still remained significant. This indicates that juveniles sentenced to LWOP are slightly driving the effect of both murder and rape in a positive direction but that even without the LWOP cases, these variables are important in explaining large increases in sentence lengths.

month decrease in sentence length. In relation to focal concerns perspective, judges may see younger offenders as more culpable for their offenses and as greater threats to the community since they have committed offenses serious enough to warrant case processing in adult court at such a young age.

#### Extra-legal Control Variables

Although prior studies have found the extra-legal variables of gender and race/ethnicity to be significant in predicting sentence lengths for transferred juveniles (Fagan and Deschenes, 1990; Myers, 2003; Podkopacz and Feld, 1996), this study did not find consistent evidence to support such assertions. The only extra-legal variable that was statistically significant was whether or not a juvenile was male. The results show that males receive average sentences that are about 43% or 24.40 months longer than females. Race and ethnicity had no direct effects on average sentence lengths for transferred youth.<sup>25</sup>

#### States

One unique aspect of this study is that it allows for analysis across many states. The results show that the state that a juvenile is tried in can indeed have a significant influence on their sentences. Some states including Arizona (39%), New York (65%) and Washington (34%) meted out substantially shorter sentences among transferred youth relative to the reference category of Florida. However other states such as Alabama (304%), California (81%), Georgia (97%)<sup>26</sup>, Illinois (81%), Indiana (142%), Kentucky

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<sup>25</sup> Supplemental analyses were conducted on the race/ethnicity variables to see if there was any significant difference in sentence length among the different transfer mechanisms. The findings indicate that for African-American defendants, being transferred through judicial waiver resulted in a 40.1% decrease in sentence length when compared to statutory exclusion. Also, results show that for Hispanic offenders, being transferred through direct file had a 38.9% decrease in sentence length.

<sup>26</sup>  $\alpha = .10$  level

(134%), Maryland (151%), Missouri (224%), Tennessee (144%), Texas (220%) and Wisconsin (208%) have an increased average incarcerative sentence length when compared to Florida.<sup>27</sup> From examining these results, it can be concluded that sentence lengths among juveniles waived to adult court for similar offenses can and do differ significantly across state lines.

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<sup>27</sup> As described previously, additional analyses were done to determine if having elected versus appointed judges or having parole boards was significant in predicting sentence length. For states that have elected judges, the findings show that there was no significant difference in sentence length for waived juveniles when compared to states with appointed judges. For states with parole (all states in the sample except Washington), there was no significant difference in sentence length for transferred juveniles who are incarcerated in states with and without parole boards.

## CHAPTER 6: SUMMARY AND CONCLUSION

### SUMMARY AND DISCUSSION

The main focus of this study examines how the type of transfer mechanism affects both the “in/out” incarceration decision as well as sentence length for waived juveniles in adult court. The results suggest that the effect of transfer mechanism may vary at different stages of the sentencing process. Initially, findings indicated that juveniles transferred through judicial waiver were more likely to receive incarceration than those transferred through statutory exclusion. However, after controlling for both legal and extra-legal factors, as well as state effects, this relationship disappeared. This may be due in part to the fact that the overwhelming majority of states examined have a judicial waiver option whereas only four states have direct file. This may influence results that do not control for state effects since there may be more variation in the decision to incarcerate for youths transferred through judicial waiver because many states may vary in the application of sentences for judicially waived youth. After controlling for state effects, results show that for the incarceration decision, juveniles transferred through direct file had the highest likelihood of incarceration among the three transfer mechanism groups. These findings suggest that judges may take into consideration the way a juvenile is transferred to adult court when assessing whether or not to incarcerate. It also suggests that judges may be considering the fact that not all legislatively waived youth are serious enough offenders to warrant incarcerative sentences. Since these youths are sent to adult court solely based on offense and often times age combinations, other important legal and extralegal factors are not considered like they are in the discretionary transfer mechanisms.

However, juveniles transferred through direct file have been hand picked by the prosecutor offenders too serious to remain in the juvenile court. As described earlier, in prosecutorial direct file, the prosecutor has the ability to chose the forum, either adult or juvenile court, in which to file the charges. Although the cases processed through direct file might not represent the most serious crimes, the prosecutor's decision in which court system to file charges identifies those cases that he feels are the most deserving of punishment in adult court. Judges may see the prosecutor's discretionary decision to transfer a case as an indicator of the level of culpability of the juvenile offender compared to those youths who were automatically transferred and therefore use the direct file mechanism as a way of identifying individuals most deserving of incarceration.

Once transferred youths have been sentenced to incarceration, the effect of transfer mechanism changes. Youths who are transferred through statutory exclusion are receiving longer incarcerative sentences on average than those transferred through direct file or judicial waiver. As focal concerns perspective would suggest, the legislatures have indicated that juveniles who require a statutory exclusion from juvenile court have an increased level of blameworthiness, present a threat to the community and are no longer amenable to the resources available to the juvenile court. These attributions then seem to influence the adult court sentencing judge's decision. This may be due in part to the fact that youths transferred through statutory exclusion have committed crimes that state legislatures have identified as being too serious for processing in juvenile court. This automatic transfer seems to trigger more severe incarceration outcomes for these convicted youths. However, it is important to keep in mind that incarceration is less likely for statutorily excluded youth as compared to other transfer mechanisms.

Combining these results may suggest that there is a selection effect occurring. Perhaps only the most serious statutory exclusion cases are incarcerated, and these more serious offenders receive longer incarcerative sentence lengths.

Also worth noting is that the supplemental analyses run to examine if there were differences between outcomes for youth transferred through the discretionary transfer mechanisms of direct file and judicial waiver came back with no significant differences between the two groups. This held true for both the incarceration decision and the sentence length outcome. Focal concerns perspective would suggest that sentencing judges in adult court may not be seeing direct file and judicial waiver as different from one another when assessing offender blameworthiness and community protection. This finding may initially seem to contradict the discussion above which says that youths transferred through direct file are the most likely to be incarcerated. However, the results from the models reported in this study show the difference between direct file and statutory exclusion. So it appears being waived by direct file exhibits a distinctly different outcome in relation to those youths who are statutorily waived. But between the two discretionary waiver types, judges are not assessing these transfer modes differently.

Although there may be key characteristics that identify certain juveniles as deserving more punishment than others, it is apparent that the use of different transfer mechanisms may serve as a way of differentiating between levels of culpability among individual offenders. Therefore, these results lead to the rejection of the null hypothesis in favor of the alternative hypothesis that suggests that there are differences in sentencing outcomes for youths transferred by the different transfer mechanisms.

As noted in the results, there were several legal control variables that significantly affected the likelihood of incarceration as well as sentence length. Individuals who had a prior record, were convicted of murder, or were convicted through trial had an increased likelihood of incarceration. Among incarcerated juveniles, conviction of a person offense, number of current charges, or trial conviction all resulted in significant increase in total incarcerative sentence length. These results are consistent with prior research on juvenile transfer sentencing outcomes (Fagan and Deschenes, 1990; Myers, 2003).

The results regarding how age of the offender affects sentencing outcomes are a little more interesting. The findings show that age is not a significant predictor of an increased likelihood of incarceration but that it is significant in predicting sentence length. More specifically, for every one year increase in age, the average incarcerative sentence length for a transferred youth decreases by 6%. This may initially seem counter intuitive, since it could be argued that as individuals ages, a judge may feel that they are more culpable for their actions and then in turn attribute higher levels of blameworthiness to them, and thus increasing their sentence length. However, judges may see younger serious offenders as more blameworthy for their actions and feel the need to protect the community, which would lead to longer sentences for younger juveniles. Judges may be harsher on younger offenders since it takes a certain combination of offense and prior record history to have a younger juvenile transferred to adult court.

Both focal concerns perspective and attribution theory suggest that stereotypes and attributions of offender based on extra-legal factors may influence judicial perceptions of offender blameworthiness (Albonetti, 1991; Steffensmeier et al., 1998). Although these factors are not relevant legal considerations, they can play a role in

sentencing decisions. Overall, many of the extra-legal control variables were not found to have a significant effect on the likelihood of incarceration or sentence length for waived juveniles in adult court. Being African-American increased the likelihood of incarceration while being male increased the average sentence length of incarcerated juveniles. These findings are supported through prior research on offender characteristics and sentencing outcomes (Kramer and Steffensmeier, 1993).

One unique aspect of this study is that it examines the effect of the state in which a juvenile was transferred. Individual state effects can also play a significant part in sentencing outcomes experienced. A total of thirteen states showed that the likelihood of incarceration was higher in their state than for the comparison state of Florida. These increased odds ranged anywhere from 3.04 all the way to 59.11. However, the effect that a state had on sentence length varied more once a transferred youth was incarcerated. When compared to Florida, only three states had average sentence lengths that were significantly lower whereas ten states had average sentence lengths that were significantly longer.

These results lend support to the fundamental ideas in courtroom community theory, which suggests that resource availability, local norms and legal culture, as well as case flow may affect case outcomes in varying jurisdictions and is evidenced in the findings of this study (Dixon, 1995). In addition, the results are consistent with the focal concerns perspective aspect of practical considerations and constraints. As focal concerns perspective suggests, judges must consider not only an offender's specific needs but also the organizational constraints of any sentence, especially incarceration. However, a judge must weigh his need to maintain public safety against the availability

of room at facilities that are able to hold juveniles. He is then required to make a judgment about how to best punish the offender while dealing with organizational constraints of the availability of criminal justice resources (Steffensmeier et al., 1998). As the varying results across states shows, it may be this consideration of organizational constraints in combination with the state resources and norms that affects sentencing outcomes across locations.

## CONCLUSION

This study offers several unique contributions to the study of sentencing outcomes for transferred juveniles. First, this study contributes to the very limited research on sentencing outcomes among the different transfer mechanisms. Second, by examining a large, multi-jurisdictional sample, this study goes beyond that of prior research in this area which often only examine a single jurisdiction (Kurlychek and Johnson, 2010; Rainville, 2008; Steiner, 2009) and allows for a comparison from a national sample that may not have been previously available. Third, information and research regarding transferred juveniles are usually restricted to small sample sizes, usually tied to the fact that they are only examining a single state. This study is unique in that it analyzes a large sample of transferred youth ( $n = 4,046$ ). Fourth, this study examines not only the sentencing outcomes received by transferred youth but the data allows for analysis of different transfer mechanisms and how they may affect sentencing and incarceration outcomes. Fifth, since the data were collected from the date of case filing and followed for a year, there is a wealth of information and variables regarding case processing and sentencing outcomes. Finally, there were a large number of legal and extralegal characteristics collected on juveniles transferred to adult court which provides additional

characteristics available for examination that may influence any subsequent justice decision making processes.

However, there are some limitations that should be noted in this study. Since the original data is only a sample of the 40 of the 75 most populous counties in the U.S., some of this information may not be generalizable to all jurisdictions, especially rural jurisdictions. Another issue encountered with these data is that information was only collected for 1 year after transfer. Therefore, if a juvenile's case took more than 1 year to process, the case outcome (n = 564) and sentencing information (n = 2353) was not included in the data set. Also, in terms of the entire database, there is an issue of analyzing older data. Since this data was collected shortly after nationwide changes to transfer policy, these data may capture an effect on sentencing of transferred juveniles that would decay over time and not be as pronounced as this data might initially suggest. However, although this database offers the unique contribution of identifying which transfer mechanism a youth was transferred through, there have not any updated or more recent publications of data of this type to allow for a more updated analysis.

Inherent to official data, there are a few cases of missing data among certain variables as well as poor measures for others. One issue is the accurate recording of prior record. As previous studies have shown, prior record is often a significant indicator in the decision to incarcerate as well as subsequent sentences (Fagan and Deschenes, 1990; Myers, 2003; Poulos and Orchowsky, 1994). These data only have two measures of prior record, involvement with the court system at time of arrest or prior arrests/convictions. Thus, the measure for prior record used in this analysis was only a proxy for prior history and may not fully capture the actual extent of an individual's prior criminal history.

Another issue is that these data do not capture a reliable measure of offense severity. Since the severity of the current offense has been proven to be important in determining sentencing outcomes (Ulmer and Johnson, 2004), the lack of a consistent measure of offense severity limits some of the study's conclusions. For example, by not making a distinction between different classifications of murder (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> degree, manslaughter, etc.) it is difficult to truly understand how each specific offense influences the sentencing outcomes of transferred youths. Also, this data set does not provide measures of the third aspect of the focal concerns perspective which is practical constraints and consequences. As prior research has indicated, controlling for measures of practical constraints and consequences may be important in fully understanding a judge's decision in sentencing (Hartley et al., 2007).

A final limitation of this study is that of selection bias. Issues of selection effects and potential bias can be introduced at numerous stages of criminal case processing. These selection effects can become more pronounced at every successive stage in the criminal justice system. By focusing on only a few decisions in the processing of a case, researchers are not able to isolate the effect of a particular case characteristic at a given stage. In the current study, by examining only juveniles who have been transferred to adult court, these data systematically exclude all juveniles who remained in juvenile court. When analyzing data on transferred youth, there is a systematic bias introduced since these juveniles may be qualitatively different from youths who were not transferred. Since these data do not provide information on non-transferred youth, this research was unable to examine if there is a statistical difference in those juveniles who are transferred and those who are not. Although these limitations are important to consider when

examining the results of this study, they do not undermine the research objective set forth and therefore this study is able to add valuable information to the limited research on sentencing outcomes by juvenile transfer mechanism.

#### Future Research

Future research endeavors looking at juvenile transfer and associated transfer mechanisms should consider the limitations of this research and attempt to address them through several suggestions. First, future studies should examine more recent data as the effect of being transferred via different transfer mechanisms might not be the same now as it was in 1998. Second, by only collecting and examining data from urban jurisdictions, we are only able to apply our findings to urban courts. Research has shown that case outcomes can vary depending on the level of bureaucracy and size of the court in which a case is processed (Dixon, 1995). Therefore, it is essential that future researchers collect data on rural, suburban, and urban courts.

Third, the data collection period should be extended beyond a set one year time limit. As noted in the limitations of this study, over 2,900 juveniles' cases were not completed within this set time frame. In order to obtain complete case and sentencing information, data collection periods should have a longer if not indefinite time frame. Fourth, the variables and measures collected by researchers need to be more precise. This study did not have exact measures of either prior record or offense severity. Since these variables have been found to be significant in predicting sentencing outcomes (Ulmer and Johnson, 2004), it is essential that data collection procedures incorporate better measures of variables that have been shown to influence case processing. Likewise, since these data did not contain measures of the third aspect of the focal

concerns perspective, future research efforts must attempt to incorporate measures of this concept in order to fully understand judicial decision making in the context of focal concerns. Fifth, this research reveals stark differences in the punishment of transferred youth across states. Given that jurisdictional variation in case processing exists (Eisenstein and Jacob, 1977), future research should examine the contextual variations of juvenile transfer outcomes across state lines as well as within different courtrooms.

Sixth, the issue of selection bias should be addressed in future research endeavors. This study was limited to examining only transferred youth. In the future, researchers should collect case processing information across multiple decision points in the justice process in order to better understand how different stages in the criminal justice process affect case outcomes for different types of offenders. Finally, future research needs to consider how the sequential processing of cases in deciding what transfer mechanism is utilized, if any. In the data for this study thirteen of the nineteen states examined had multiple transfer mechanisms that can be selected at different stages of case processing. As alluded to earlier, the decision to transfer a juvenile to adult court can be utilized by different court actors at different stages for perhaps completely different reasons. Unfortunately, this research was unable to examine this issue, but future researchers should examine if this sequential processing affects later case outcomes.

In conclusion, the findings of this study indicate that the way a juvenile gets to adult court can affect their sentencing outcomes. Juveniles transferred through direct file are more likely to be incarcerated, while youths transferred through statutory exclusion receive the longest incarcerative sentences. These results indicate that for sentence length, there may be a selection effect going on. That is, statutorily waived youth who

have been identified as needing incarceration may have committed serious enough offenses to warrant the most severe incarcerative sentence. Although this study is not without its limitations, the current research adds valuable information to the limited knowledge on the effect of juvenile transfer mechanisms on adult court sentencing outcomes.

<b>Table 1</b>				
<b>Descriptive Statistics of Variables for Full Sample and Convicted and Sentenced Sample</b>				
	<b>Full Sample (n=7,135)</b>		<b>Convicted and Sentenced Sample (n=4,046)</b>	
<b>Variable</b>	<b>Mean (proportion)</b>	<b>St.Dev.</b>	<b>Mean (proportion)</b>	<b>St.Dev.</b>
<i>Dependent Variables</i>				
Incarceration	0.39	0.49	0.68	0.47*
Length of Sentence in Months	28.30	80.97	67.62	114.06
<i>Independent Variables</i>				
Judicial Waiver	0.24	0.42	0.30	0.45*
Statutory Exclusion	0.34	0.49	0.28	0.45*
Direct File	0.41	0.48	0.42	0.49
<i>Legal Control Variables</i>				
Murder	0.03	0.22	0.03	0.18
Rape	0.03	0.18	0.02	0.13
Robbery	0.31	0.46	0.27	0.44*
Assault	0.19	0.40	0.15	0.36*
Other Violent	0.03	0.17	0.04	0.20
Drug Offense	0.15	0.36	0.06	0.23
Burglary	0.08	0.28	0.10	0.30
Theft	0.05	0.21	0.07	0.26
Motor Vehicle Theft	0.03	0.17	0.03	0.17
Other Property	0.02	0.12	0.02	0.15
Weapons	0.03	0.16	0.03	0.17
Other Public Order	0.01	0.09	0.02	0.13
Other Felony	0.01	0.08	0.01	0.09
Misdemeanor	0.02	0.14	0.04	0.19
Age at File Date	16.69	1.08	16.86	0.99*
Prior Record	0.44	0.50	0.51	0.50*
Number of Current Charges	3.36	3.85	3.20	3.95*
Trial Conviction	0.05	0.21	0.07	0.26
Pretrial Release	0.50	0.50	0.46	0.50*
<i>Extra-Legal Control Variables</i>				
Black	0.61	0.50	0.57	0.50*
Hispanic	0.19	0.38	0.20	0.40
Other/Unknown Race	0.03	0.16	0.03	0.17
White	0.17	0.38	0.20	0.40
Male	0.96	0.24	0.97	0.16

\*Difference is significant from the full sample at the  $\alpha=.05$  level.

<b>Table 2</b>		
<b>Coding of Variables</b>		
<b>Variables</b>	<b>Coding</b>	<b>Description</b>
<i>Dependent Variables</i>		
Incarceration	Yes '1' No '0'	A binary outcome variable that identifies if a juvenile received a sentence of incarceration.
Length of Sentence	Continuous Variable	The length of a sentence of incarceration, measured in months.
<i>Independent Variables</i>		
Judicial Waiver	Yes '1' No '0'	A binary outcome variable indicating that a juvenile was transferred by judicial waiver.
Statutory Exclusion	Yes '1' No '0'	A binary outcome variable indicating that a juvenile was transferred by statutory exclusion.
Direct File	Yes '1' No '0'	A binary outcome variable indicating that a juvenile was transferred by direct file.
<i>Legal Control Variables</i>		
Age at Time of Charges being Filed	Continuous Variable	The age of an individual at the time of their arrest, measured in years.
Number of Current Charges	Continuous Variable	A count of the number of charges being filed against a juvenile.
Prior Record	Yes '1' No '0'	A binary variable that indicates if a juvenile was involved with either the adult or juvenile justice system at the time of their arrest.
Pretrial Release	Yes '1' No '0'	A binary variable that indicates if a juvenile was given pretrial release or not.
Trial Conviction	Yes '1' No '0'	A binary variable that indicates if a juvenile was convicted at trial.
Most Serious Adjudicated Offense	14 Binary Variables Yes '1' No '0'	A series of 14 binary variables that indicate the most serious offense that a juvenile of which they have been adjudicated. Burglary is the reference category. See Table 1 for the full list of offenses.
<i>Extra-Legal Control Variables</i>		
Gender	Male '1' Female '0'	This variable is measured in a binary outcome variable that differentiates between males and females.
Black; Hispanic; Other/Unknown Race	Yes '1' No '0'	A series of three binary outcome variables that identify individuals as being from a certain racial group with White as a reference category.
State	18 Binary Variables Yes '1' No '0'	A series of 18 binary variables that indicate if a juvenile was processed in a particular state or not. Florida is the reference category. See Table 3 for full list of states in the data.

<b>Table 3</b>			
<b>Waiver Mechanisms in the States Utilized for Analysis, 1998</b>			
	Judicial Waiver	Statutory Exclusion	Direct File
Alabama	X	X	
Arizona	X	X	X
California	X		
Florida	X	X	X
Georgia	X	X	X
Hawaii	X		
Illinois	X	X	
Indiana	X	X	
Kentucky	X		
Maryland	X	X	
Michigan	X		X
Missouri	X		
New York		X	
Ohio	X	X	
Pennsylvania	X	X	
Tennessee	X		
Texas	X	X	
Washington	X	X	
Wisconsin	X	X	
Source: Rainville and Smith, 2003			

<b>Table 4</b>				
<b>Missing Data</b>				
	<b>Full Sample (n = 7,135)</b>		<b>Convicted and Sentenced Sample (n = 4,046)</b>	
	N	% Missing	N	% Missing
Incarceration	2760	0	2760	0
Sentence	7065	.90	2690	1.73
Judicial Waiver	1675	0	1194	0
Statutory Exclusion	2443	0	1131	0
Direct File	2933	0	1721	0
State	7135	0	4046	0
Number of Charges	6532	8.45	3832	5.29
Pretrial Release	3576	1.82	1821	1.43
Most Serious Adjudicated Offense	7135	0	4046	0
Trial Conviction	320	0	289	0
Prior Record	3143	0	2070	0
Age at File Date	6452	.50	4035	.27
Male	7135	0	3935	0
Black	3409	0	2295	0
Hispanic	418	0	820	0
Other/Unknown Race	1295	0	115	0
White	1234	0	816	0

<b>Table 5</b>								
<b>Descriptive Statistics of Full Sample and Convicted Sample by Waiver Mechanism</b>								
	<b>Convicted and Sentenced (n=4,046)</b>							
	<b>Full Sample</b>		<b>Judicial Waiver</b>		<b>Statutory Exclusion</b>		<b>Direct File</b>	
	<b>(n=4,046)</b>		<b>(n=1,194)</b>		<b>(n=1,131)</b>		<b>(n=1,721)</b>	
<b>Variable</b>	<b>Mean (proportion)</b>	<b>St.Dev.</b>	<b>Mean (proportion)</b>	<b>St.Dev.</b>	<b>Mean (proportion)</b>	<b>St.Dev.</b>	<b>Mean (proportion)</b>	<b>St.Dev.</b>
<i>Dependent Variables</i>								
Incarceration	0.68	0.47	0.86*	0.34	0.64*	0.48	0.59*	0.49
Length of Sentence in Months	67.62	114.06	93.34*	137.65	80.07*	117.25	30.00*	61.02
<i>Legal Control Variables</i>								
Age at File Date	16.86	0.99	17.19*	0.95	16.31*	1.02	16.98*	0.84
Prior Record	0.51	0.50	0.63*	0.48	0.41*	0.49	0.50	0.50
Number of Current Charges	3.20	3.95	3.47*	3.64	4.12*	5.69	2.40*	2.23
Trial Conviction	0.17	0.37	0.09*	0.29	0.11	0.31	0.03*	0.17
Pretrial Release	0.46	0.50	0.32*	0.47	0.51*	0.50	0.52*	0.51
<i>Extra-Legal Control Variables</i>								
Black	0.57	0.50	0.47*	0.50	0.69*	0.46	0.55	0.50
Hispanic	0.20	0.40	0.30*	0.46	0.17*	0.37	0.16	0.37
Other/Unknown Race	0.03	0.17	0.05	0.22	0.03	0.17	0.01	0.11
White	0.20	0.40	0.18	0.39	0.12*	0.32	0.27*	0.45
Male	0.97	0.16	0.97	0.17	0.96	0.19	0.98*	0.13
All offense type and state level dummy variables have been excluded from this table.								
*Difference is significant from the full convicted sample at the $\alpha=.05$ level.								

Table 6: Logistic Regression for the Incarceration Decision

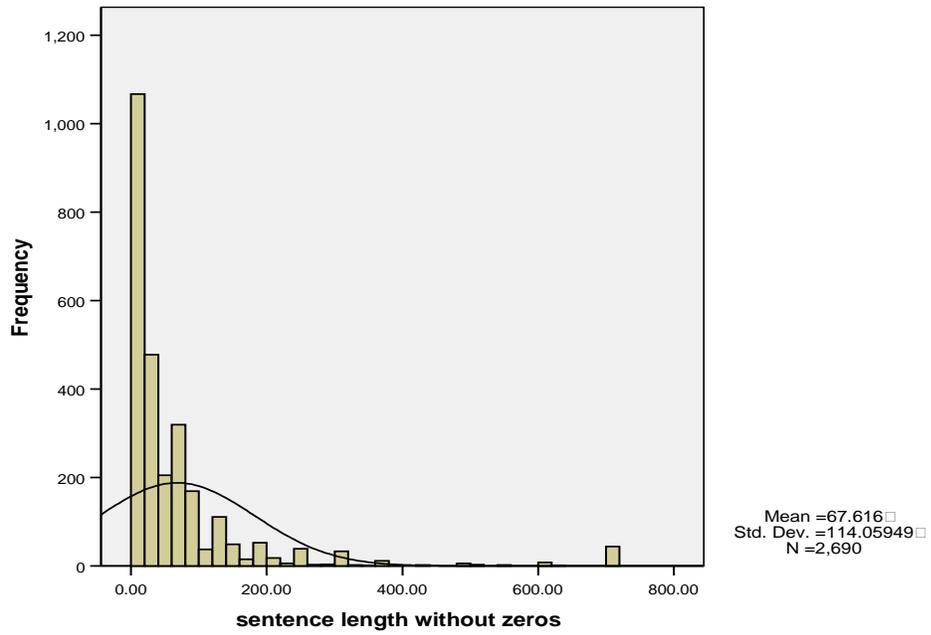
	Model 1			Model 2			Model 3		
	$\beta$	S.E.	Exp	$\beta$	S.E.	Exp	$\beta$	S.E.	Exp
<i>Independent Variables</i>									
Judicial Waiver	1.28	0.11	3.61**	0.86	0.12	2.37**	0.14	0.20	1.15
Direct File	-0.23	0.08	0.80	-0.29	0.10	0.75**	0.41	.019	1.51*
<i>Control Variables</i>									
Murder				2.41	0.73	11.07**	2.38	0.74	10.81**
Rape				0.17	0.34	1.18	0.28	0.37	1.32
Robbery				-0.05	0.15	0.95	0.03	0.16	1.03
Assault				0.21	0.16	1.23	0.09	0.17	1.09
Other Violent Offense				0.89	0.26	2.44**	0.36	0.27	1.43
Drug Offense				-0.85	0.15	0.43**	-0.65	0.16	0.52*
Theft				-0.29	0.18	0.75	-0.36	0.19	0.70**
Motor Vehicle Theft				-0.46	0.23	0.63**	-0.40	0.24	0.67
Other Property Offense				0.03	0.28	1.03	-0.31	0.29	0.74
Weapons				-0.66	0.24	0.52**	-0.96	0.26	0.38**
Other Public Order				0.01	.031	1.01	-0.15	0.31	0.87
Other Felony				-1.12	0.39	0.33**	-1.12	0.41	0.33**
Misdemeanor				-0.62	0.22	0.54**	-1.34	0.27	0.26**
Age				0.22	0.04	1.25**	0.04	0.05	1.04
Prior Record				0.41	0.08	1.51**	0.48	0.09	1.61**
Total Charges				0.04	0.01	1.04**	0.02	0.02	1.02
Trial Conviction				0.46	0.19	1.58*	0.50	0.20	1.64*
Pretrial Release				-1.02	0.08	0.36**	-1.05	0.09	0.35**
Black				0.37	0.10	1.45**	0.44	0.11	1.55**
Hispanic				0.10	0.12	1.11	0.15	0.13	1.16
Other/Unknown Race				0.30	0.28	1.35	0.22	0.31	1.24
Male				0.53	0.22	1.71*	0.36	0.24	1.43
<i>State Effects</i>									
Alabama							1.25	1.17	3.48
Arizona							-1.07	0.55	0.34
California							-0.15	0.56	0.86
Georgia							2.34	0.86	10.39*
Hawaii							0.55	0.76	1.74
Illinois							-0.01	0.23	0.99
Indiana							4.08	0.54	59.11**
Kentucky							3.87	0.75	47.98**
Maryland							2.80	0.35	16.49*
Michigan							0.54	0.47	1.71
Missouri							0.79	0.41	2.20
New York							-0.01	0.25	0.99
Ohio							2.97	1.04	19.50*
Pennsylvania							1.51	0.38	4.52*
Tennessee							3.55	0.56	34.84*
Texas							2.08	0.44	7.97
Washington							1.45	0.92	4.27
Wisconsin							2.17	0.55	8.72*
Constant	0.57	0.06	1.77	-3.39	0.77	0.03	-1.12	1.05	3.06

Table 7: Ordinary Least Squares Regression for the Natural Log of Sentence Length

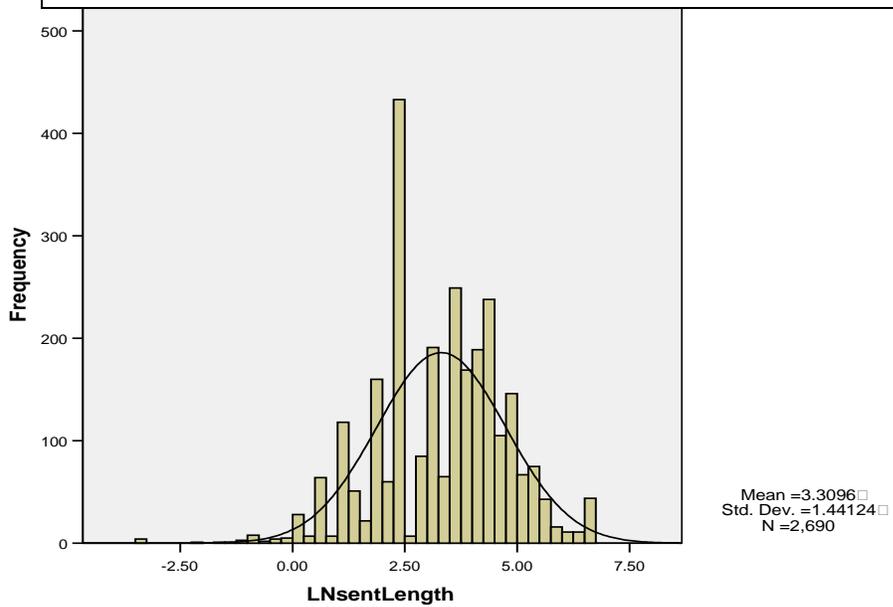
	Model 4			Model 5			Model 6		
	$\beta$	S.E.	Exp	$\beta$	S.E.	Exp	$\beta$	S.E.	Exp
<i>Independent Variables</i>									
Judicial Waiver	0.01	0.07	1.01	0.10	0.06	1.11	-0.35	0.08	0.70**
Direct File	-1.10	0.07	0.33**	-0.67	0.06	0.51**	-0.39	0.09	0.68**
<i>Control Variables</i>									
Murder				1.50	0.12	4.48**	1.31	0.12	3.71**
Rape				0.75	0.16	2.12**	0.67	0.15	1.95**
Robbery				0.23	0.08	1.26**	0.33	0.08	1.38**
Assault				0.22	0.09	1.25*	0.26	0.08	1.30**
Other Violent Offense				0.20	0.11	1.22	0.10	0.11	1.10
Drug Offense				-0.43	0.09	0.65**	-0.53	0.09	0.59**
Theft				-0.78	0.11	0.46**	-0.58	0.10	0.56**
Motor Vehicle Theft				-0.72	0.15	0.49**	-0.65	0.13	0.52**
Fraud				-1.90	0.77	0.15*	-1.83	0.71	0.16**
Forgery				-1.06	0.42	0.35*	-0.57	0.38	0.57
Other Property Offense				-0.93	0.15	0.39**	-0.79	0.14	0.45**
Weapons				-0.74	0.15	0.48*	-0.81	0.14	0.44**
Other Public Order				-0.87	0.17	0.42**	-0.74	0.16	0.48**
Driving Offense				0.53	1.09	1.70	0.61	0.99	1.84
Other Felony				-1.00	0.42	0.37*	-1.01	0.38	0.36**
Misdemeanor				-1.35	0.14	0.26*	-1.58	0.13	0.21**
Age				0.02	0.02	1.02	-0.06	0.02	0.94*
Prior Record				0.19	0.04	1.21**	0.09	0.04	1.10*
Total Charges				0.03	0.01	1.03**	0.03	0.01	1.03**
Trial Conviction				0.76	0.08	2.14**	0.77	0.07	2.15**
Pretrial Release				-0.54	0.05	0.58**	-0.52	0.05	0.59**
Black				0.21	0.06	1.23**	-0.02	0.06	0.98
Hispanic				-0.17	0.07	0.84*	-0.06	0.07	0.94
Other/Unknown Race				-0.19	0.13	0.83	-0.13	0.12	0.88
Male				0.48	0.14	1.62**	0.36	0.13	1.43**
<i>State Effects</i>									
Alabama							1.40	0.21	4.04**
Arizona							-0.49	0.07	0.61**
California							0.59	0.11	1.81**
Georgia							0.68	0.35	1.97
Hawaii							-0.07	0.34	0.93
Illinois							0.59	0.12	1.81**
Indiana							0.89	0.12	2.42**
Kentucky							0.85	0.14	2.34**
Maryland							0.92	0.12	2.51**
Michigan							-0.06	0.22	0.95
Missouri							1.17	0.22	3.24**
New York							-1.06	0.14	0.35**
Ohio							-0.11	0.20	0.90
Pennsylvania							-0.19	0.16	0.83
Tennessee							0.89	0.14	2.44**
Texas							1.16	0.14	3.20**
Washington							-0.41	0.18	0.66*
Wisconsin							1.12	0.20	3.08**
Constant	3.69	0.05		2.51	0.43		4.04	0.44	
R <sup>2</sup>				0.44			.537		

\*p &lt; 0.05; \*\*p &lt; 0.01

**Figure 1: Sentence Length in Months for Incarcerated Offenders**



**Figure 2: Natural Log of Sentence Length in Months for Incarcerated Offenders**



## Appendices

<b>Appendix A: Sentence Length in Months by State</b>		
	<b>Mean Sentence Length in Months</b>	<b>St. Dev.</b>
Alabama	18.00	8.09
Arizona	11.56	1.91
California	34.18	4.67
Florida	4.80	0.32
Georgia	1.91	1.19
Hawaii	3.52	1.45
Illinois	9.59	2.60
Indiana	10.16	1.59
Kentucky	51.18	6.10
Maryland	2.73	0.90
Michigan	23.66	3.80
Missouri	1.29	0.55
New York	7.10	0.91
Ohio	6.38	2.42
Pennsylvania	43.35	3.89
Tennessee	1.82	0.40
Texas	33.63	10.62
Washington	3.75	0.71
Wisconsin	40.83	14.19
<p>Note: A test of ANOVA was run on the average sentence lengths across the states in the study and resulted in an F statistic of 24.65 which was significant at the <math>\alpha=.01</math> level. This indicates that there is a significant difference between states in the average sentence length given to transferred youths.</p>		

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