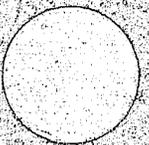
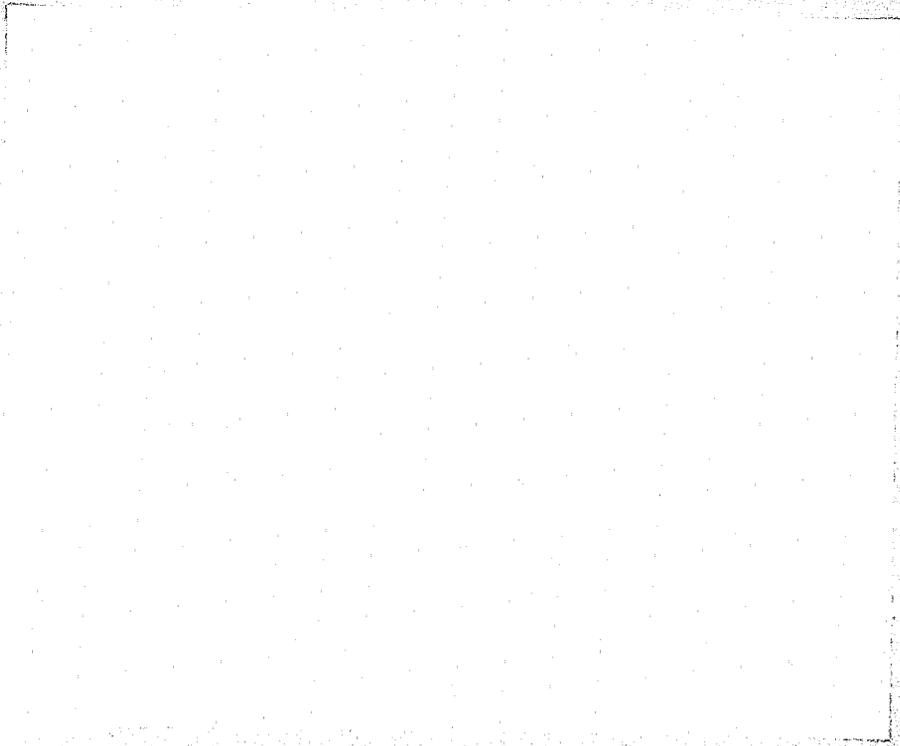


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SEPARATING THE MEN FROM THE BOYS:
THE CRIMINALIZATION OF YOUTH VIOLENCE
THROUGH JUDICIAL WAIVER

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**SEPARATING THE MEN FROM THE BOYS:
THE CRIMINALIZATION OF YOUTH VIOLENCE THROUGH JUDICIAL WAIVER**

I. THE POLICY DEBATE

In the past decade, there has been a vigorous debate on the appropriate forum for the adjudication and disposition of felony offenses committed by juveniles. Critics of the rehabilitative policies of the juvenile court suggest that its sanctions are both inappropriate and disproportionate for serious crimes, and ineffective in deterring subsequent crime (Wolfgang, 1982; Feld, 1983; Regnery, 1986). The seriousness of violent juvenile crimes suggests that such adolescents can be neither controlled nor rehabilitated in the juvenile justice system. These critics contend that the criminal court, with its punitive sanctions, is the most appropriate forum for adjudicating violent juvenile offenders. Their offense and behavior patterns mandate lengthy incarceration in secure facilities. Criminal court sanctions are viewed as according greater community protection, more effective deterrence of future crime, and more proportionate, retributive responses to violent behavior.

Supporters of the juvenile court argue that violent juvenile crime is a transitory behavioral pattern, and that adolescent crime is unlikely to escalate to more serious or persistent crime (Hamparian et al., 1978; Rojek and Erickson, 1982; Shannon, 1985). They argue that adolescent offenders can benefit from the treatment services of the juvenile justice system with minimal threat to public safety and avoidance of the lasting stigmatization of criminal justice processing. Also, many proponents of juvenile justice processing of violent delinquents do not accept the criticisms of rehabilitative programs, arguing instead that weak evaluation research or poor program quality mask the natural strengths of juvenile corrections (Fagan and Forst, 1987).

In response to the growing criticisms of the philosophy and practice of juvenile justice, the traditional emphasis on the "best interests of the child" has been replaced by concerns for community protection, punishment, and deterrence (Miller and Ohlin, 1984). Feld (1983) argues that offender age does not mitigate the harm to the victim, and that society's need for retribution may conflict with rehabilitative policy. Van den Haag (1975) illustrates the rationale for the view that the nature of the offense, not the offender, should determine the court's response:

"The victim of a 15 year old mugger is as much mugged as the victim of a 20 year old mugger, the victim of a 14 year old murderer or rapist is as dead or raped as the victim of an older one" (p. 174).

Accordingly, delinquency policy has shifted perceptibly from a purely rehabilitative approach toward the principles of the criminal law: emphasis on due process, punishment, and individual responsibility (Forst et al., 1985). Whether by special statutes aimed at mandating sanctions for "serious or violent" delinquents, or by legislative maneuvers to restrict the jurisdiction of the juvenile justice system, states have developed a variety of methods to ensure that "tough, sophisticated juveniles are treated differently from other juvenile delinquents" (Hamparian et al., 1982). In many states, delinquency statutes now recognize punishment as an equal partner with rehabilitation in the response to youth crime (Fagan and Hartstone, 1984; Forst et al., 1985; Feld, 1986). States have recently amended the statutory purpose clauses in their juvenile codes to include "preservation of public safety," where previously the "best interests" or "rehabilitation" of the child had been the sole purpose of the juvenile court (Flicker, 1981). Among the stated purposes of the new juvenile code in the state of Washington, for example, are to "protect the citizenry from criminal behavior," "make the offender accountable for his or her criminal behavior," and "provide punishment commensurate with the age, crime, and criminal history of the juvenile offender."¹

In general, states have adopted two tactics to increase the substantive punishment for juvenile offenders. Some states have developed either legislative or administrative guidelines mandating a minimum period of confinement in a secure institution. Thus, either mandatory punishment, for minimum or determinate periods, is an explicit part of the juvenile codes or administrative rules in several states.

Other states, however, have declared entire age-offender groups ineligible for the juvenile court. Some states have restricted the jurisdiction of the juvenile system by lowering the minimum age of criminal court jurisdiction for certain (usually violent) offenses (Feld, 1986). Others have eased the criteria for judges to remove delinquents from the juvenile court or for prosecutors to file charges directly in criminal court, thereby creating in effect a dual jurisdiction which is resolved on a case-by-case basis. These statutes are statements that the *parens patriae* precepts of the juvenile law should be replaced by the principles of punishment, just deserts, and deterrence for these young offenders. These are no longer children, to be protected from the full force of the criminal law by virtue of their incomplete moral and social development (Conrad, 1981).

But Farrington, Ohlin and Wilson (1986) suggest that little is known about the relative merits of transferring cases from juvenile to adult court with the expectation of more certain or severe sentencing policies. The young offender may appear less threatening to the criminal court than his or her older counterpart with a longer record and possible history of failures in less serious sanctions, inviting a more lenient response from the sentencing judge. Farrington et al. go on to say that:

"It is not at all certain that we gain increased deterrence, retribution, or incapacitation in this way. Youth committed by the adult court to adult prisons might become hardened and more, rather than less likely, to offend again upon release. What is needed is much more careful research following comparable samples of offenders through these different experiences to provide a better understanding and confident policies about the division of jurisdiction between the two courts, the relative effectiveness of the dispositional options they provide, and the efficacy of the criteria used to select offenders for differential processing and disposition" (1986:125, emphasis added).

Few studies have compared sanctioning patterns in juvenile and criminal court. The assumptions underlying measures to increase the severity of sanctions for adolescent offenders have not been tested systematically. Not only is the evidence uncertain on sanctioning patterns, but there is little evidence that reductions in the age of majority have had a general deterrent effect on aggregate adolescent crime rates (Singer and McDowall, 1986, for example).

Whether the criminalization of violent juvenile crime has resulted in more certain or severe sanctions is not at all clear. Roysner and Edelman (1981) examined dispositions and placements under the New York Juvenile Offender Law,² which relocated original jurisdiction to the Criminal Court for juveniles between 13 and 15 years of age who are charged with violent crimes. They found that sanctions were no more severe in criminal court, and in many cases were actually less harsh. But Greenwood et al. (1984) found no evidence of a "leniency gap" for young offenders adjudicated and sentenced in criminal courts. Bortner (1986), examining a broader offense range, found that juveniles do not receive longer sentences from the criminal court than they would in juvenile court. She found that the waiver (remand) process was viewed by juvenile court officials as a legal mechanism for staving off criticisms of the entire juvenile justice system.

Thomas and Bilchik (1985) argue that juveniles sentenced in criminal court are treated more severely than in the juvenile court. They found that not only were sanctions harsher, but case attrition for juveniles in criminal court actually was lower than for adults. However, like other studies, their sample of juveniles in criminal court was

selective and skewed toward more serious offenses based on prosecutorial screening (for concurrent jurisdiction cases) and judicial waivers. Similar processes occur in British courts as well (Home Office, 1983). There, Crown Court judges were reluctant to impose more severe sanctions in remanded cases involving youth ages 15-21 convicted of "indictable" (i.e., felony) offenses.

Little is known about the factors that influence differences in sanction patterns in juvenile and criminal court. Court organization theories suggest that sanctions in the criminal court may not be less certain or severe than in the juvenile court for adolescent felony offenders. The "stream of cases" argument holds that adolescents in criminal court appear "less severe" than older offenders, whereas in juvenile court adolescent felony offenders are the most severe. In sorting cases for prosecution (Mather, 1979), criminal justice officials may adjust the going rate specific to juvenile crime in anticipation of the reaction of judges and possibly juries. The stream of cases should also influence the reactions of officials in the working group environment. The criminal court may produce less stability in processing juveniles because bringing juveniles into criminal court entails a change in standard operating procedures. Jacob (1983) suggests that criminal court participants, particularly prosecutors who possess more information than other courtroom personnel and who have a disproportionate influence over the disposition of cases, will behave inconsistently when faced with a new class of (younger) offenders. Thus, we can expect to see less cohesiveness among the working group members of the criminal court, whose social organization is geared to case attributes of older defendants and less oriented to the special circumstances of adolescent offenders.

THE NEED FOR RESEARCH

Accordingly, this study examines the process and outcomes of judicial transfer for violent juvenile offenders. Despite the rapid spread of statutory changes to remove violent adolescents from the juvenile to the criminal courts, there have been few studies comparing the patterns and consequences of sanctions in juvenile and criminal courts for specific, strategic offense and offender groups of adolescent felony offenders. Whether punishment in the juvenile or criminal court is more certain, swift, or severe, has yet to be examined. Yet critical policy decisions regarding the age of jurisdiction have been made in the absence of valid empirical evidence that recidivism is better reduced by punishment in the criminal system. The next section traces the evolution of contemporary juvenile justice policy from its roots in the English Common Law to the "progressive"

reforms of the early 20th century. Then, changes in the philosophy and jurisprudence of juvenile justice are analyzed, concluding with a discussion of the growing use of judicial transfer to reverse the earlier historical trends. Later sections provide results of an empirical study of judicial transfer of violent adolescents, concluding with implications for policy and law.

II. HISTORICAL AND CONTEMPORARY DISTINCTIONS BETWEEN JUVENILE AND CRIMINAL SANCTIONS

A. THE ORIGINS OF A SEPARATE JUVENILE LAW

Juvenile offenders have been treated separately and differently since the beginning of English common law in the 12th century (Thomas and Bilchik, 1985).³ The earliest legal distinctions between juvenile and adult offenders were based on arguments that juveniles lacked the moral development and reasoning capabilities of adults. That is, juveniles were thought to have not reached the spiritual attainment of adults, and accordingly could not distinguish right from wrong. Traditional historical accounts reveal a juvenile court motivated by a progressive ideology that stressed "humanitarianism" and positivistic beliefs that behavior was amenable to rehabilitation (Rothman, 1980). In contrast, critical theorists view the creation of the first U.S. juvenile court in 1899 as part of an historical process of the search for new forms of legal and social control in response to increasing rates of crime and delinquency as unfortunate by-products of urbanization, industrialization, and increased immigration to fill the needs for industrial workers (Platt, 1977).⁴

The social reformers who advocated separate legal settings for juveniles at the turn of the 20th century implicitly recognized the difficulty of convicting and punishing juveniles in the criminal justice process (Thomas and Bilchick, 1985). Since the first juvenile court was established nearly a century ago, society has maintained fundamental distinctions in its legal response to crimes committed by juveniles. The juvenile court "movement" removed juveniles, usually defined as below 18 years of age, from the adult criminal justice and corrections systems to provide them with individualized treatment in a separate system.

Earlier in the 19th century, the opening of the House of Refuge in New York was borne not only from benevolent concern for juveniles, but also as a way to make legal

controls more palatable to justice officials as well as the public (Pickett, 1969). In 1825, New York City ordered homeless young people and those charged as vagrants or petty criminals to the House of Refuge. This institution was designed specifically for poor people and emphasized both educational and vocational development as well as moral training. Both youth and adults kept its beds filled. Some years later, a Juvenile Asylum was opened in New York (Lerman, 1982). Though couched as a home for neglected and orphaned youth, not unlike the House of Refuge, this facility was designed exclusively for children. It focused on care, control, remediation, and protection. It was the forebearer of the modern juvenile corrections facility (Rothman, 1981). Thus, by the time the first juvenile court was founded, there already were in place "systems" for child welfare (usually private, as in the House of Refuge) and juvenile training schools or reformatories, usually operated under public auspices (Lerman, 1982). While the former was seen as responsible for the child's "material welfare," the latter were set aside for law violating youth who were in need of control and redirection.

The modern *parens patriae* philosophy of this century emphasized treatment, supervision, and control, rather than the traditional punitive responses of the criminal law. In separating children from adult offenders, the juvenile court also rejected the jurisprudence and procedural rules of criminal prosecution. Emphasis on the extra-legal factors and mitigating circumstances which contributed to the crime, and discovery of its appropriate treatment, led to informality in both procedure and standards. The court's proceedings were designed to ferret out the underlying causes of youthful misbehavior and to mete out dispositions and treatment to correct them.

This positivist view went hand in hand with a jurisprudential philosophy that stressed informal proceedings, relaxed attention to due process, modified standards of evidence, and a unique socio-legal context (and social organization) in the courtroom. The quasi-clinical proceedings were antithetical to formal, due process procedures and evidentiary standards. Thus, the nature of the decision criteria themselves gave rise to informal proceedings, since they would not be permissible in a formal legal context (Thomas and Bilchik, 1985). A separate bureaucracy, language, and jurisprudence was developed to concretize the boundaries between juvenile and criminal jurisdiction. The juvenile court eschewed the technical rules of evidence and procedure to ensure that all information about the *offender* was available (Feld, 1986), rather than narrowly focusing on the facts of the case. The hearings were closed and access to records was confidential.

Epistemological and philosophical concerns also guided the development of a separate juvenile justice system. The "Progressives" of the late 19th century thought that the causes of juvenile and adult crime differed. Adolescents were deemed not responsible for their behavior, since they were neither mature or fully developed socially (i.e., skill deficits), morally or intellectually. Others held that juvenile crime was the result of inadequate socialization within families, or other social influences. Since these conditions were not the doing of juveniles, they certainly could not be blamed for the behaviors which results. In this view, youth were merely in need of moral guidance or social reform in order to resume a normative developmental path. Later on, a "medical" model supplanted these views, where deviant children were deemed "sick" and in need of individual "treatment" (Lerman, 1982). These views shared the notion that juvenile misbehavior was the result of external forms, and not the exercise of the will.

Accordingly, throughout its history, the juvenile court has maintained its goal of rehabilitation, and placed custody and punishment as secondary or ancillary goals in the pursuit of "remaking the child's character and lifestyle" (Rothman, 1980). From the beginning, rehabilitation and treatment, and in turn the type sanction, were inextricably tied to assumptions about the etiology and process of delinquency. The evolution of this policy over the past 90 years has withstood the emergence and downfall of numerous explanations of youthful deviance, each offering it unique promise to "cure" our society of juvenile crime, as well as a host of critiques from conflicting ideological perspectives. Some condemn the juvenile court's excessive control, while others criticize its leniency and permissiveness. Others cite its inconsistency in individualized dispositions, while others find its responses patterned and insensitive to the factors underlying delinquent conduct. Perhaps because of the contradictions in these views the juvenile court has maintained its central role in the legal responses to juvenile misbehavior, reflecting current thinking about the causes of delinquency and the state's view of how to "cure" it.

Looking back, then, to the era preceding the creation of a separate court, it seems that its origins at first expressed the concerns of reformers that individual responsibility for crimes was not a valid precept for juveniles, and that juveniles ran afoul of the law for reasons mostly not of their own doing. Only later did the concern for separation of jurisprudential forums lead to the institutional separation of legal responses to juvenile and adult law violations. Despite the criminal court's emphasis on punishment, sentencing of adults during this century reflected both offense and offender characteristics, as evidenced by the widespread acceptance of the doctrine of indeterminacy. Only later, as

the juvenile court became a more formalized institution, did the development of a separate court for juveniles reflect a fundamental distinction between sanctions based on characteristics of the offender and on the gravity and circumstances of the offense. Juvenile court dispositions were designed to determine why the child was in court, and what could be done to avoid future appearances (Feld, 1986). To further distance the juvenile court approach, juvenile proceedings were defined as civil rather than criminal, and therefore less stigmatizing in intent (Schlossman, 1983). A separate language developed which further symbolized the separate, benign jurisdiction of the juvenile court. Juveniles were not arrested but were apprehended, adjudicated instead of convicted, and placed instead of sentenced. Moreover, despite the due process reforms of juvenile court procedures pursuant to *Gault*, the Supreme Court in *McKeiver* remained ideologically committed to the traditional "treatment" rationale of the juvenile court (*McKeiver*, 1971:547).

In sum, the central justification for the separation of juvenile and adult jurisdiction is the distinction between punishment and treatment. Whereas punishment involves the imposition of burdens (i.e., deprivation of liberty) on an individual, based on past offenses, for purposes of retribution or deterrence, treatment focuses on the present and future well being of the individual rather than the commission of prohibited acts. Disproportionate responses to comparable individuals would be tolerated if underlying factors or mitigating circumstances were found. Concerns with punishment, retribution, just deserts, or deterrence were secondary in the origins of the concept of "sanction" in the juvenile court. To prevent contamination of juvenile offenders by adult criminals, youth were detained and treated in separate facilities. The distinctions between juvenile and criminal sanctions thus were not limited to the nature of the proceedings, but to the very distinction between treatment and custody.

B. RESTRUCTURING THE JUVENILE COURT

The traditional separation of juvenile and criminal jurisdiction established an age threshold at which the young offender was to be held liable for criminal actions. In most states, offenders up to 18 years of age were excluded from criminal liability and were not held responsible for their actions. In effect, this was the statutory definition of childhood for purposes of selecting a judicial forum to adjudicate illegal behaviors. However, from its inception, juvenile court judges could waive young offenders to the criminal courts. Thus, legislators never steadfastly held that all juveniles were not culpable, nor

appropriate for the benign ministrations of the juvenile court. Rather, the earliest juvenile court legislation recognized that certain offenders were not amenable to the rehabilitative dispositions of the juvenile court. However, the criteria or standards for determining the appropriate judicial forum for disposition of young offenders remains inconsistent across states (Hamparian et al., 1982; Rudman et al., 1986; Feld, 1986).

Recent years have brought challenges to the boundary between juvenile and criminal jurisdiction. Two sources of criticism have converged in calling for a restructuring of the juvenile court, with special emphasis on increasing its procedural formality while narrowing its jurisdiction. On the one hand, the informality of juvenile court proceedings threatened the due process rights of juveniles. Critics viewed the procedural informality and offender-based decision process as leading to inconsistent and inequitable dispositions. Information and evidence that would be excluded from criminal proceedings under rules of evidence or procedure were admissible if not critical elements in dispositional decisions.

On the other hand, proponents of deterrence and incapacitation policies criticized the juvenile court as ineffective at controlling juvenile crime, particularly violent behavior. A series of damaging studies on the apparent weakness of rehabilitation programs argue against the rehabilitative purposes of the juvenile court (Regnery, 1986). Persistent and unacceptably high rates of juvenile violence have undermined views of the public and its elected officials of the efficacy of a separate juvenile court based on a unique jurisprudential philosophy. Moreover, the statutory limitations on punishment in juvenile court were assailed as inappropriate given the public danger from juvenile violence.

In general, the push to restructure the juvenile justice system to either remove violent adolescents or "criminalize" its response to juvenile violence have reflected several changes in legal and policy goals:

- o punishment--longer periods of confinement in more secure settings and conditions, to strengthen both the retributive and deterrent elements of juvenile justice
- o determinacy--presumptive incarceration, for minimum or fixed terms, for specific offenses or offenders, to insure "accountability" for juvenile offenders
- o "just deserts"--shift in emphasis in dispositional decisions from the social origins of crime and mitigating circumstances, toward proportionate reactions to the severity of the crime

- o social protection--priority on the defendant's danger to the community and decreased emphasis on rehabilitative considerations
- o due process--greater attention in juvenile proceedings to due process and evidentiary standards⁵

The selection of jurisdiction for adjudicating juvenile crime today is one of the most controversial debates in crime control policy, reflecting differences in assumptions about crime etiology, and jurisprudential as well as penal philosophy. For adolescent offenders, especially those whose behaviors may pose particular social danger, critics view the traditional goals of the juvenile court and the "best interests of the child" at odds with public concerns for retribution and incapacitation of criminals. The choice between jurisdictions is a choice between the nominally rehabilitative dispositions of the juvenile court and the explicitly punitive dispositions of the criminal courts (Whitebread and Batey, 1981: 502). It also reflects differences in sentencing policies which assign primary importance to the individual and those which accord greater significance to the seriousness of the offense committed, and attempts to assign punishment proportionately. The strategies to achieve these legal and policy goals include a wide range of sweeping changes in legislation and policy which may signal a fundamental change in the purpose and jurisdiction of the juvenile court.

1. Redefining the Threshold of Adolescence

Historically, the boundary between juvenile and adult court presumes that criminal liability can be assigned at 18 years of age. Recent legislation suggests that the age boundary may be mediated by specific behaviors--for example, the 15 year-old offender who commits a violent offense may be held criminally responsible, while his or her cohort remains a juvenile if law violations are confined to misdemeanors or non-violent acts. Or, the chronic 15 year old misdemeanant may be remanded to the criminal court, distinguished from others solely on the basis of chronicity of offense. In still other instances, some standardless criterion (for example, "amenability to treatment") may determine criminal responsibility regardless of law-violating behaviors. Thus, recent legislation reducing the age threshold for criminal liability creates an age-behavior gradient for legal definitions of childhood (Conrad, 1981).

The juvenile court views offenders below the threshold age for "adulthood," or criminal liability, as "amenable to treatment." That is, they are seen as capable of changes

either in the factors which precipitated their offenses or in the offending behaviors themselves. They are not responsible for their acts, and instead, the state takes responsibility for ameliorating the antecedent conditions which gave rise to the criminal acts.⁶ Juvenile justice "sanctions," accordingly, are designed to remedy the underlying causes of youthful misconduct while retaining the youth under state control (in loco parentis).

Sanctions in the criminal justice system make no such claims. There, depending on the state's legislation and correctional administrators, the intent of sanctions is to provide retribution, deter future crimes, or incapacitate offenders so they cannot commit further crimes. Criminal justice sanctions are not concerned with underlying influences or antecedent conditions. The intent is to inflict punishment through deprivation of liberty in harsh but humane surroundings. And the type and severity of punishment ostensibly is primarily determined by the severity of the crime committed, mediated by the defendant's criminal history as well as mitigating circumstances and background. While there remains in most correctional systems minimal efforts to provide basic social skills to avoid further crime (e.g., education and job training), these are adjuncts to the sanction. In the juvenile system, such services provide much of the substance of the sanction.

2. The "Due Process" Revolution

In recent years, there has been rapid movement to both formalize juvenile court procedures and to strengthen the punitive element of juvenile court sanctions. A series of Supreme Court decisions determined that the informality of the juvenile court threatened the due process guarantees for juveniles. *In re Gault*, 387 U.S. 1 (1967), asserted for juveniles the rights to receive notice of charges against them, have legal representation, confront and cross-examine witnesses, avoid self-incrimination, and appeal court decisions. The *Kent* decision (383 U.S. 541, 1966) presaged the *Gault* decision by extending to juveniles the principle of due process, while raising questions about the rehabilitative element of juvenile court dispositions. Later decisions, such as *In re Winship* (397 U.S. 358, 1970), while reaffirming the basic distinction of offender-based dispositions in juvenile court, introduced procedural regularity into delinquency proceedings and elevated the concept of "proof beyond a reasonable doubt" to an equal status with the "best interests of the child." Moreover, these actions initiated questions about the "best interests" philosophy, and whether it in fact substantively benefited juvenile offenders or the public. The result was greater attention to procedural formality, and in turn, to offense-specific dispositions (Feld, 1986), though the *Gault* and *McKeiver* (1971) decisions explicitly

endorsed the concept of rehabilitation as a concurrent goal and hardly incompatible with due process.

The resulting changes substantially altered the juvenile justice model which prevailed until the 1960s. Greater emphasis on due process brought higher standards of evidence and procedures, including routinization of defense representation and the option for trials before a judge. Also, as states continued to legislate harsher, often offense-specific, penalties for criminal misbehavior, the procedures in juvenile court began more closely to resemble the criminal court. Characteristics such as plea bargaining (in return for dispositional consideration), trial before judges, extensive motions, and use of expert testimony became commonplace in the modern juvenile court (Rubin, 1985). Also, the emphasis on offense-specific dispositions (through both legislative presumptions and judicial conservatism) may have shifted the balance of power in juvenile proceedings from the judge to the prosecutor (Rubin, 1985). As dispositions became more sensitive to offense severity, the tenor and outcome of juvenile proceedings was influenced strongly by the charges brought and the potential penalties they carried.

3. Serious Juvenile Crime and the Failure of Rehabilitation

Another challenge to the distinctive juvenile justice system was the rapid increase in juvenile crime rates in the 1970s, especially violent juvenile crime. Serious and violent juvenile crime rose steadily from 1974-79, and again in 1980-81 (Strasburg, 1984; Weiner and Wolfgang, 1985). Critics of the juvenile court linked these increases to the ineffectiveness of rehabilitative programs, conclusions fueled by key findings which had been consistently appearing since the 1960's (Bailey, 1966; Robison and Smith, 1971; Wright and Dixon, 1975; Lipton et al., 1975; Sechrest et al., 1979). Such findings directly attacked the positivistic foundations of the juvenile court that treatment interventions could curtail further youth offending.

This gave rise in the past 15 years to a different source of dissatisfaction with the justice system, based in part on the public's fear of crime. The increases in juvenile crime rates in the 1970's were noteworthy not only for the volume of offenses, but for their seriousness (Strasburg, 1984). Criticisms of the juvenile court which followed these trends centered on the conflicting goals of *parens patriae* with perceived threats to public safety from adolescents whose behaviors posed social dangers and gave rise to sentiments

for retribution, incapacitation and punishment of juvenile offenders. The specific critiques of the juvenile court took three forms:

- o sanctions in juvenile court were less certain or severe (or inappropriately lenient, based on crime severity) than in criminal court, creating a "leniency" gap in punishment and retribution
- o rehabilitative dispositions in juvenile court were ineffective in curtailing further crime and violence
- o juvenile court sanctions posed risks to the public from (inappropriately) shorter terms of incarceration than the lengthy sentences meted out by the criminal courts

Because juvenile courts traditionally assign primary importance to individualized justice and rehabilitative considerations, its dispositions may seem disproportionate when the severity of the offense or harm to the victim is considered. The retributive dimension of justice demands that punishments fit the severity of crimes to provide a normative condemnation and the extraction of a social toll on behalf of society. Other criticisms address the balance (or tradeoff) between interests of the individual and the community; the punishment options within juvenile court dispositions may provide inadequate social control to protect the community from "dangerous" offenders. Thus, the selection of an appropriate judicial forum to sentence juvenile offenders reflects a choice of the most effective sanctioning mechanism to deter future crimes.

Accordingly, serious and violent juvenile offenders have become the focus of contemporary debates on the efficacy of the juvenile court. Critics of the juvenile court regard its emphasis on rehabilitation and individualized dispositions as inappropriate for certain categories of offenses and offenders, particularly those that threaten the public safety. They point to unacceptably high rates of violent (felony) offenses by juveniles as evidence that juvenile court sanctions are ineffective deterrents to crime. Moreover, the behaviors of violent adolescents suggest that they have attained an age where they may no longer be amenable to the "rehabilitative" ministrations of the juvenile court or where dangerousness must take precedence over rehabilitation in deciding how to sanction a young offender. The reduction of the age of majority for certain classes of offenses and offenders suggests either that they have attained adulthood (as shown by some aspect of their behavior), or the risks to the public are too great to not regard them as adults in adjudicating their crimes.

4. Criminalizing Adolescent Violence: Reducing the Jurisdiction of the Juvenile Court

In the past decade, this perceived weakness of rehabilitation has prompted many legislatures to strengthen the severity and certainty of sanctions for adolescent offenders, especially for violent juvenile offenders. Within the juvenile justice system, proponents of retaining the juvenile justice system have taken steps to blend punishment and retribution with the traditional *parens patriae* philosophy of the juvenile court. Legislatures, juvenile corrections agencies and the courts all have responded to concerns over the nature and effectiveness of sanctions by strengthening the punitive elements of dispositions. Several states have strengthened the certainty and severity of sanctions in the juvenile system. From determinate sentencing statutes for juveniles to administrative guidelines mandating minimum terms of placement in secure care, state legislatures have increased the certainty and severity of sanctions in the juvenile system.

The state of Washington has enacted sweeping legislation mandating specific types and lengths of punishment for juvenile offenders. Using an elaborate numerical formula, offense history and severity calculations determine the severity and length of placement. Mandatory confinement in secure institutions, often with minimum lengths of stay, has been legislatively enacted in New York, Colorado, Illinois and several other states. Such laws specify certain classes of offenses (usually violent crimes) or offenders (often persistent offenders) for placement in state corrections agencies for minimum terms. These actions in effect remove the disposition, placement and release authority from "traditional" juvenile justice authorities (i.e., judges, juvenile corrections agencies or parole boards) to a legislative forum. In other states, including Massachusetts and Georgia, juvenile corrections agencies have preempted legislative authority by developing "classification guidelines" to guide the placement and length of stay decisions.

But the underlying intent of legislatures and correctional agencies are quite different. For legislatures, concerns for community protection plus the public's demand for retribution and punishment have spurred actions to increase the certainty and severity of juvenile sanctions. In effect, the legislatures have partially preempted the dispositional authority of juvenile court judges by limiting their discretion on where and how long to place an offender. For correctional agencies, anticipating the actions of legislatures and prosecutors' efforts to exclude certain juvenile offender groups, guidelines improve the proportionality of correctional punishment and often increase its certainty and severity. And in turn, guidelines neutralize criticisms of juvenile justice decision-making by

anticipating legislative intentions. By surrendering their discretionary authority in these areas, juvenile justice agencies preserve the agencies' structural (and political) integrity.

C. TRANSFER TO CRIMINAL COURT

More common than guidelines, however, are efforts simply to remove or exclude "dangerous" or violent offenders from juvenile court jurisdiction. This has occurred in three ways. First, several states have reduced the jurisdiction of the juvenile court, or eliminated juvenile jurisdiction for specific offense/offender categories. A few states have lowered the age of majority for all offenses from 18 to 16 years. More common are reductions in the age of majority specifically for serious, violent, or repeat felony offenders. Adolescent felony offenders have been removed from juvenile jurisdiction in many states (Feld, 1986). For example, felony offenses for youth 13 or older⁷ originate in criminal court under the Juvenile Offender Law in New York.

Other states have expanded the discretion of prosecutors through the creation of concurrent jurisdiction. In Michigan, Florida, and Massachusetts, for example, prosecutors may elect the court of original jurisdiction for certain categories of adolescent offenses and offenders. Finally, in selected jurisdictions, the systematic application of prosecutorial discretion has relocated certain classes of offenses and offenders from juvenile to criminal court. In Phoenix and Miami, for example, prosecutors routinely file waiver (transfer) motions, most often granted, to transfer specific types of juvenile cases to criminal court (Fagan et al., 1984b). Their intent is to seek longer sentences in secure institutions. Again, the actions of prosecutors reflect a lack of confidence in the sanctioning certainty (patterns) and conditions in juvenile jurisdiction, and an attempt to stave off criticisms of juvenile justice by removing problematic cases (Bortner, 1986).

Finally, many states have simplified the procedures and eased the criteria for transfer⁸ (waiver, remand) to criminal court jurisdiction. Since 1978, over 41 states have passed legislation to expand the use of transfer (Hamparian et al., 1982). The offense categories have been expanded, age eligibility reduced for some or all offense types, and other criteria (e.g., "heinousness of the offense," "dangerousness to the community," "amenability to treatment") have been simplified or added to facilitate the transfer of juveniles to criminal court for prosecution. New Jersey passed transfer legislation in 1983 explicitly shifting the burden of proof on "amenability" and "dangerous" from prosecutors to defense counsel. That is, defense counsel now must disprove prosecutorial allegations

that an adolescent is ineligible for juvenile jurisdiction. Transfer remains today the most widespread mechanism for removing juveniles (adolescents below the age of criminal liability) to the criminal court (Hamparian et al., 1982), and is the focus of this study.

Transfer is one of the most extreme responses to serious juvenile crime. In all but three states,⁹ statutes empower a juvenile court judge to decide, with varying degrees of statutory guidance, whether to transfer certain juveniles charged with specified offenses to adult court for prosecution (Hamparian et al., 1982). The judicial decision to waive a youth to criminal court recognizes that for certain offenses and offenders, juvenile justice system sanctions may--because of jurisdictional limitations or ideological considerations--be insufficient to accomplish the twin goals of punishment and rehabilitation. Waiver statutes assume, moreover, that some youth are simply beyond rehabilitation--that is, not amenable to treatment in the juvenile justice system.

Transfer is itself a severe sanction, with potentially harsh consequences: extended detention in jail, a protracted adjudicatory process, a felony conviction resulting in social and legal sanctions, and a lengthy sentence at a secure correctional institution (Rudman et al., 1986). Accordingly, the transfer decision does more than choose a judicial forum for an accused youth. It invokes a jurisprudential philosophy that governs the nature of the proceedings as well as the purpose and severity of the sanctions. It also raises the important issue of when a child is no longer a child, specifically whether factors other than age are relevant for removing some youth from juvenile court jurisdiction.

Most of the early juvenile court statutes contained some reference to waiver of jurisdiction (Whitebread and Batey, 1981; Thomas and Bilchik, 1985). Certain youth, described as "chronic," "serious," "violent," "sophisticated," "mature" or "persistent" were thought to be out of the purview of the rehabilitative-oriented juvenile court (Feld, 1984; Flicker, 1981). Early statutes gave the juvenile court absolute discretion to dismiss a delinquency petition and transfer a youth to the criminal justice system (Flicker, 1981). Most statutes did not prescribe substantive criteria or procedures for the waiver process, thereby allowing waiver decisions to be made in an informal and subjective manner and predicated on unfettered discretion (Feld, 1978, 1983).

In 1966, the United States Supreme Court, in *Kent v. United States*,¹⁰ struck down the arbitrary procedures implicit in the District of Columbia waiver provision and held that a juvenile was entitled to a waiver hearing, representation by counsel, access to information upon which the waiver decision was based, and, a statement of reasons upon which the

waiver decision can be supported. In a non-binding memorandum attached to the opinion in *Kent*, the majority indicated eight factors which a waiver decision-maker might consider.¹¹ However, the court did not, and to this day has not, struck down legislation providing for judicial waiver based on such inherently general phrases as: "amenability to treatment," "dangerousness," "protection of the public," "best interests of the public welfare," or, the nature of a youth's "family, school and social history."

Over the past several years, half of the state legislatures have amended their juvenile codes to simplify and expedite the transfer of juveniles to criminal court for trial as adults (Hamparian et al., 1982). Legislative bodies at both the state and federal levels have redefined previous criteria for juvenile jurisdiction, and changed the assignment of discretionary authority to determine the court before which certain types of juvenile cases will appear. There are currently three general categories of waiver statutes: judicial waiver, legislative waiver, and prosecutorial waiver.

1. Judicial Waiver

By far the most common type of waiver statute is judicial waiver. This approach authorizes the juvenile court judge to make the transfer decision. The judge must identify, often within vague statutory guidelines, those juvenile offenders amenable to the rehabilitative ministrations of the juvenile justice system and those whose behaviors require the punitive sanction of the criminal justice system. Irrespective of the *Kent* memorandum and the descriptive criteria found in the majority of statutory provisions on judicial waiver, broad discretion surrounds the transfer decision (Wizner, 1984; Rudman et al., 1986). This raises the important issue of whether this type of discretion results in decisions that are inequitable, discriminatory, or inconsistent.

2. Legislative Waiver

A newer approach to prosecuting juveniles as adults, and one that circumvents juvenile court transfer altogether, is legislative waiver, also known as excluded offense provisions. The essence of this approach is for the legislature to specify those offenses for which a juvenile may not be adjudicated in juvenile court. New York's 1978 legislative change is an example of this approach. The Juvenile Offender Law provides that 13-, 14-, and 15-year-olds charged with specified serious offenses are to be prosecuted initially in criminal court. The legislation also establishes a presumptive length of stay in

secure confinement, although the periods of incarceration are not as long as those authorized for adults convicted of the same offense. Georgia's legislative waiver provisions provide in part for the mandatory filing in adult court for juveniles 15 years of age and older charged with burglary and having three prior adjudications for burglary.

3. Prosecutorial Waiver

Another approach to circumventing juvenile court jurisdiction is known as prosecutorial waiver (also called concurrent jurisdiction), and involves the option to file a criminal complaint directly in adult court. The legislation in these jurisdictions gives the prosecutor discretion to proceed either in juvenile court or criminal court, often with some restriction or guidelines, such as a combination of the alleged offense, the age of the juvenile, and whether the youth has had prior adjudications in juvenile court.

Nebraska and Arkansas are the two states that have traditionally used this method of prosecuting serious juveniles in adult court. Prosecutors around the country have become interested in experimenting with this method. A few states have recently replaced more traditional transfer procedures with prosecutorial waiver. In 1967, for example, Colorado passed a law to allow prosecutors to file directly on juveniles 16 and 17 years of age charged with an offense that, if committed by an adult, could result in a sentence of life imprisonment or death. Colorado later lowered the age to 14 in that provision. And in 1973, the Colorado legislature broadened the direct filing provision to include youth over 16 years charged with certain felonies and youth who, the prior two years, had been adjudicated for a felony offense.

In 1981, Florida passed a law that permits the state's attorney to file a criminal complaint on 16- and 17-year-old youth when the public interest requires the consideration of adult sanctions. This applies to felonies or to a misdemeanor preceded by two delinquency adjudications, one of which must have been for a felony offense. Similar statutes exist in Michigan and Massachusetts, though there are no data on how often or under what circumstances these options are used.

It should be noted that both legislative and prosecutorial waiver statutes commonly authorize the criminal court judge to send a juvenile offender back to juvenile court for adjudication and/or disposition. This process is typically called "reverse waiver."

D. THIS STUDY

Few empirical studies have examined the nature, determinants, or consequences of the judicial transfer decision for violent juvenile offenders. Specifically, there has been little research to understand the types of offenses or offenders that meet judicial perceptions of the "dangerousness" or "amenability to treatment" standards found in transfer statutes. Hamparian et al. (1982) analyzed the application of judicial waiver statutes and found little explanation for the high degree of variation in transfer decisions. Keiter (1973) studied characteristics of youth transferred to criminal court in Cook County, Illinois. Keiter's study, a retrospective analysis, suggests that lack of decision-making criteria "invites abuse" in the transfer decision. Eigen (1981) examined the determinants of waiver in Pennsylvania for homicide and robbery. For interracial offenses, race carried significant weight in the outcome of the transfer decision, as did the prior incarceration history of the accused youth.

This study contributes new data to the empirical literature on transfer. It examines the judicial transfer decision in five urban juvenile courts for youth charged with violent offenses and, more generally, it addresses the issue of criteria for transfer--what is the threshold of adolescence, or when is a child no longer a child. The research and policy questions include:

- o Which offense and offender attributes influence the judicial decision to transfer?
- o Is there consistency in the application of such variables in the transfer decision?
- o Can models be constructed to predict whether youths, within and across sites, will be transferred?
- o Are there differences in case processing time between those youth transferred to adult court and those retained in juvenile court?
- o How do the sentences of those youth transferred to adult court compare to those retained in juvenile court? Are sentences longer or placements harsher?
- o What happens to transferred youth? In which types of facilities are they placed, and what are the punitive and rehabilitative contexts in those placements?
- o What are the legal and policy implications of differential determinants of transfer?

III. STUDY DESIGN

This study of judicial transfer is part of a research program¹² on violent juvenile offenders¹³ (Fagan et al., 1984). Data were collected on chronically violent juvenile offenders from 1981-1984 in five urban juvenile courts (Boston, Detroit, Memphis, Newark, and Phoenix).¹⁴ In each jurisdiction, judicial waiver was the mechanism for removing juvenile offenders to the criminal court. In 1983, research on violent youth considered for transfer and those transferred began in the same jurisdictions.

A. SAMPLES

Two samples of chronically violent youth were developed for this study. First, the population which remained in juvenile court consisted of N=225 youth meeting specific criteria regarding current and prior offenses. The universe of eligible cases was identified from juvenile court petitions and court records. Motions for transfer had never been made for any of these youth.

Second, in the same sites, a comparison sample of violent youth were identified who were considered for transfer to criminal court. (These youth were not otherwise part of the first sample.) The universe of eligible cases also was identified from juvenile court petitions and court records. For each youth (N=201), a petition for transfer had been filed by the prosecutor. Eligibility and offense criteria were identical to those which defined the sample. The two samples differed only in whether the youth was considered for transfer to criminal court.

Readers should note that local record-keeping practices differed among the five juvenile courts, so that data on some variables could not be used consistently in all analyses. For example, practices in Memphis did not permit the identification of those youth considered for transfer, but not transferred. Because records identified only those youth who were actually transferred, we could not include data on Memphis youth retained in juvenile court.

B. DATA SOURCES

Data were abstracted from juvenile court records, police arrest reports, and court histories. Information was recorded on: the date of offense, the charges filed at

apprehension and at conviction, the dates of various hearings and court appearances, the date of the transfer decision, and the date of conviction. Information about the offense (e.g., number of victims, age and race of victims, number of co-participants) and information about the offender (e.g., race, age, mental health history, offense record and placement history) also were recorded.

C. MEASURES

Prior empirical research on transfer (Hamparian et al., 1982; Rudman et al., 1986; Keiter, 1973; Eigen, 1981), together with current statutory criteria, were used to identify the factors that represent the concepts of "amenability to treatment," "dangerousness," and other attributes of the offense and offender. These measures included weapon use, victim data, and prior crimes. Case processing variables were included as well, to determine the celerity of punishment.

The study also included the assessment of youth attitudes and perceptions toward the nature and quality of the programs in juvenile and adult correctional facilities, and an overall evaluation of facility and correctional environment. Specifically, interviews were conducted which consisted of both narrative and fixed-choice questions pertaining to the youths' experiences in prison or training school, their perceptions of services they received, an assessment of their needs for the remainder of their sentences, attitudes toward staff and fellow inmates, and opinions about the benefits and liabilities of having youth like themselves serve time in an adult facility. Five scales of correctional environment were constructed and compared for youth in juvenile and adult correctional facilities: perceptions of staff assistance, case management services, treatment services, social climate, and victimization within the institution.

1. Staff Assistance

Youth were asked to rate a series of five items using a four-point Likert-type scale to assess staff help in providing counseling and remedial services specifically focused on behaviors and social skills designed to prepare youth for their return to the community. The items emphasized education, job training and employment, and interpersonal and social skills.

2. Case Management Services

Case management implies an intervention philosophy based on individualized social work approaches to managing inmates or residents, and to decision-making regarding participation in services, length of stay, and punishments and rewards. Two types of items assessed youth perceptions of case management services. Youth were asked to describe how certain case management functions were performed, including frequency of contact with case managers. Also, youth were asked to rate the quality of case managers' assistance and services in counseling and obtaining other social services, using a four point scale.

3. Treatment Services

Respondents were asked to rate the quality of institutional services for health care, education, vocational skills and job training, counseling, and family relations. These areas were selected based on their well-established correlation with serious or violent juvenile crime (Strasburg, 1978; Fagan et al., 1983) and presence in effective intervention programs for adolescent offenders (Mann, 1976; Romig, 1978; Fagan et al., 1984).

4. Social Climate Scales

There have been significant advances in the measurement of institutional climate for juvenile corrections since the studies in the Massachusetts correctional system (Feld, 1981; Miller et al., 1982). Standardized scales were adapted from similar analyses of socialization processes in juvenile institutions and smaller residential programs (Miller et al., 1982) to assess institutional social climate for the current research. Four subscales measured youth perceptions of the extent to which youth-staff interactions supported the development of social interactional skills (Social Network), promoted fairness and consistency in rewards and sanctions (Social Learning), provided opportunities to develop concrete social skills (e.g., educational attainment, vocational training) (Youth Opportunities), and emphasized behavioral goals in services and resident management (Goal Orientation). Each subscale was comprised of 10-20 true-false items, and summative scale scores were developed. The inter-scale reliabilities were high (Kronbach's alpha = .89). The inter-item reliabilities of the four scales were also generally high.¹⁵

5. Victimization

Respondents were asked simply to report whether they had been victims of specific offenses at any time during their stay in the institution. Frequency scores within a recent time period were not obtained for two reasons: concern over potential period effects across several institutions, and uneven lengths of stay across respondents, some of whom had been residents for less than one year. Unfortunately, external validation was not possible for victimization reports. However, these items have been used in several studies with institutional and non-institutional juvenile offender populations (Fagan et al., 1986; Fagan et al., 1987b) and have high construct validity based on external criteria. The inter-item reliability coefficient was moderate (Kronbach's alpha = .61). Prevalence scores were calculated for each item and compared across samples.

D. METHODS OF ANALYSIS

Preliminary, descriptive analyses were conducted to examine the relationships between the transfer decision and characteristics of the offenses and offenders.¹⁶ Both two- and three-dimensional contingency tables were analyzed using odds ratios to examine associations between variables. Although desirable, log-linear analysis was not used due to small cell sizes in the multidimensional tables. Secondly, a t-test procedure was used to compare the mean number of prior offenses and prior adjudications for the transferred and non-transferred youths. Discriminant analysis was conducted to determine criteria predictive of the transfer decision. Similar methods were used to analyze the differences in correctional settings for youths placed in adult prisons or training schools.

Qualitative methods were used to complement the quantitative analysis. Observations were made of transfer hearings in all sites and interviews were conducted with key actors in the transfer process--juvenile court judges, prosecutors and defense counsel. Detailed interview schedules were administered to the respondents covering the criteria, procedure, and intent of transfer, as well as an assessment of impact. Interviews with youths convicted in adult court and sentenced to an adult correctional facility provided social context for understanding some of the consequences of transfer. Finally, a statutory analysis was conducted of the transfer provisions in each site. The specific provisions, as might be assumed, have a direct impact on transfer practices.

IV. THE TRANSFER DECISION

A. STATUTORY CONTEXT: OPERATIONAL DEFINITIONS OF EXCLUDED JUVENILES

The juvenile court's authority to implement judicial waiver is derived from state statutes. The statutes in turn define those juvenile offenders who may be nominated for exclusion from the juvenile court via judicial transfer. To understand the determinants of transfer among five sites, we first outlined each state's statutory structure. In all five locales, statutes provide age, offense and operational definitions for "other" criteria to guide the judicial waiver decision.¹⁷ Table 1 describes such criteria for Massachusetts, Michigan, New Jersey, Arizona, and Tennessee.

The five statutes provide a mix of specific and non-specific criteria which serve as the only "official" guidelines to enable the juvenile court judge to make the transfer decision. While the age of initial criminal court jurisdiction is precise, as is the minimum age for which judicial waiver is allowed (in all states but Arizona), offense restriction criteria contain vague terminology. Such vagueness, however, is tempered by interpretations found in case law. The range of legal criteria is broad, from any offense (in Arizona) to specific lists of violent offenses (in New Jersey and Massachusetts). Massachusetts further qualifies this restriction by including a prior juvenile corrections commitment, evidence of the "amenability to treatment" criterion. Still other qualifiers include attributions of intent or malice. Such provisions may increase the burden of proof to prosecutors by encompassing extra-legal factors. Nevertheless, "legal" meaning may be attributed to such phrases as: "threat of bodily harm" or offenses committed in an "aggressive, violent or willful manner."

It is when the statutes attempt to set out "general" criteria such as "amenability to treatment" and "dangerousness" that the degree of judicial discretion is revealed. Two states include in their statutes the seriousness of the alleged offense, despite concurrent committing offense restrictions. Though all states mention "amenability," only two operationalize the concept. These operational definitions are vague, however, with language such as "maturity," "patterns of living," and "character." Two states include an assessment of the appropriateness of available placements for rehabilitation of the offender. Past treatment efforts and public safety are also mentioned, though not consistently, as

Table 1

Statutory Judicial Waiver Provisions

	Age of Initial Criminal Court Jurisdiction	Minimum Age for Which Judicial Waiver Is Allowed	Offense Restrictions	Other Statutory Criteria
MASSACHUSETTS (Boston)	17	14	Previously committed to DYS as delinquent and present offense punishable by imprisonment OR Present offense involved infliction or threat of serious bodily harm	If the court finds probable cause, it shall then consider, but shall not be limited to, evidence of the following factors: <ul style="list-style-type: none"> • Seriousness of the alleged offense • The child's family, school and social history, including his court and juvenile delinquency record • Adequate protection of the public • The nature of any past treatment efforts for the child • The likelihood of rehabilitation of the child
MICHIGAN (Detroit)	17	15	Any felony	If the court finds probable cause, it shall consider the following criteria: <ul style="list-style-type: none"> • The prior record and character of the child, his physical and mental maturity and his pattern of living • The seriousness of the offense • Whether the offense, even if less serious, is part of a repetitive pattern of offenses which would lead to a determination that the child may be beyond rehabilitation under existing juvenile programs and statutory procedures • The relative suitability of programs and facilities available to the juvenile and criminal courts for the child • Best interests of the public welfare and protection of the public security
NEW JERSEY (Newark)	18	14	Homicide; treason; offense against the person committed in an aggressive, violent, or willful manner; or violation of the Controlled Dangerous Substances Act OR Juvenile charged with delinquency may elect to be tried as an adult	If the court finds probable cause, and is satisfied that: <ul style="list-style-type: none"> • Adequate protection of the public requires waiver, and • There are no reasonable prospects for rehabilitation of the juvenile prior to his attaining the age of majority by use of the procedures, services and facilities available to the court
ARIZONA (Phoenix)	18	Not specified, presumably any age	Any offense	The court may transfer the action to criminal court, if it finds probable cause and reasonable grounds to believe that: <ul style="list-style-type: none"> • The child is not amenable to rehabilitation through available facilities, and • The child is not amenable to an institution for mentally deficient, defective or ill persons, and • The safety or interest of the public requires transfer
TENNESSEE (Memphis)	18	16 Over 14	Any offense Murder, manslaughter, rape, armed robbery, kidnapping	If the juvenile court finds: <ul style="list-style-type: none"> • The youth is not amenable to an institution for the mentally retarded or mentally ill, AND • The interests of the community require that the youth be put under legal restraint or discipline. In making the above determination the court shall consider: <ul style="list-style-type: none"> • The extent and nature of the youth's prior delinquency, • The nature of past treatment efforts, and the nature of the youth's response thereto, • Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against the person, • Whether the offense was committed in an aggressive and premeditated manner, • The possible rehabilitation of the youth by use of procedures, services and facilities currently to the court.

statutory criteria. Thus, states vary extensively in the breadth, specificity, and generality of extra-legal as well as legal criteria for the transfer decision.

Not only are the criteria discretionary, but so is the manner in which the judges are to consider such criteria (see Table 1). For example, in Massachusetts the court shall consider but "shall not be limited to . . ." a list of criteria. In Michigan the court must only "consider" certain criteria. The same element of discretion is in the New Jersey statute which mandates that the court must be "satisfied" that certain determinants are met; and, in Arizona, the court "may" transfer a youth if "reasonable grounds" are present to "believe" that specified elements are present. The extent to which these criteria must be met differs depending on whether the court merely "considers" them versus when the court is "satisfied" on "reasonable grounds." In turn, the disparities in burden of proof may lead to differing procedures for transfer and judicial interpretations of criteria.

B. THE CHARGING DECISION AND PROSECUTORIAL DISCRETION: CASTING THE NET

The transfer process can best be viewed as a series of discretionary decisions, involving several actors in the juvenile and criminal justice systems. At the first level of discretion is the prosecutor, who decides what charges are to be filed against the youth. This is an important decision, at least in three states, because being charged with specified offenses *requires* the prosecutor to file a transfer motion with the juvenile court. In those instances where the decision to file is not mandated by law, the prosecutor's discretion to file is paramount. This section discusses the prosecutor's discretion to charge and file transfer motions.

Table 2 shows the two samples (juvenile court only and considered-for-transfer), aggregated across the four sites, and broken down by race. In each sample, eight of nine youth are minorities, and nearly four in five are black. Appendix I shows the racial distributions for each sample by site. The percentage of blacks in the samples initially appears to be unusually high. However, the proportion of black and other minority youth in these samples matches recent estimates of violent juvenile crime (Strasburg, 1984; Weiner and Wolfgang, 1985). In 1981, black juveniles (7-17 years of age) had arrest rates of 834.2 per 100,000 for violent crimes, compared to 127.4 for anglos, or a 7:1 ratio. The prevalence ratio in our samples is also approximately 7:1.

Table 2

Juvenile Court and Considered-for-Transfer
Samples by Race

	Juvenile Court Only (N=225)	Considered for Transfer (N=201)
	%	%
Anglo	12	11
Black	79	79
Chicano	5	9
Asian	0	0
Other	4	1

Whether the percentages of minorities in the samples accurately reflect the actual distribution of violent juvenile crime in each locale cannot be determined. Recent self-report studies on serious and violent delinquency do not suggest that differential rates of offending can explain these findings, nor are the urban-rural differentials sufficient to explain the over-representation of black youth in these samples (Elliott and Huizinga, 1987). Readers should bear in mind that these are *arrested* populations.

An alternative explanation of the high proportion of minorities is the multiple screening process found in juvenile court. Each sample reflects a universe of youth meeting stringent offense criteria. In each case, the same prosecutors decided the prior and committing charge, and also entered the motions for transfer. While the prosecuting attorneys may have varied within jurisdictions, the policies and cultures of the prosecutors' offices prevailed in each decision. The samples may reflect the systematic application of discretionary (but statutorily constrained) criteria regarding violent crime. Offenders charged with lesser crimes were excluded from the sample. Thus, the sample composition reflects case evaluation and charging decisions by prosecutors, which in turn determines the official portrait of violent crime in each site. At the same time, the nearly equal prevalence of minorities in the two samples suggests that prosecutors do not disproportionately target minority youth for transfer. The transfer sample was selected *after* the charging decisions were made. Multiple screening, apparently, does not necessarily lead to consecutive and compounded disparities.

C. THE PROSECUTORIAL DECISION TO SEEK TRANSFER

A more detailed comparison of the juvenile court and considered-for-transfer samples addresses the factors that prosecutors consider in deciding to file a motion to transfer. Transfer statutes prescribe a variety of criteria for deciding "amenability" to treatment, "dangerousness" and threats to public safety, and other factors which disqualify a youth for processing as a juvenile. (See: Hamparian et al., 1982; Feld, 1986; and Rudman et al., 1986, for analyses of these criteria.) Table 3 compares anglo and minority youth in each sample on selected offense and offender variables.¹⁸

There were no statistically significant differences within samples between minority and anglo youth on any of the offense or offender attributes. Anglo youth appear to have a lower threshold of prior charges for transfer consideration than do minority youth. Controlling for race, considered-for-transfer youth had fewer prior charges than did the

Table 3

Characteristics of Juvenile Court and Considered-for-Transfer Samples by Race

Characteristics	Juvenile Court Only		Considered for Transfer	
	Anglo	Minority	Anglo	Minority
	Mean	Mean	Mean	Mean
Age at Offense	15.8	15.5	15.8	15.9
Age at Onset	*	*	14.0	13.8
Age to Juvenile Maximum	1.5	1.2	1.4	1.5
Number of Victims at Offense	2.1	1.6	1.6	1.6
Number of Co-Participants	1.9	1.9	1.9	1.6
Number of Prior Adjudications (c)	3.2	3.2	2.3	2.5
Number of Prior Charges (Offenses)	5.4	7.9	4.0	5.1
Number of Prior Mental Health Commitments	0.2	0.3	0.1	0.1

Significance of Race Differences:
 a = Juvenile Court: $p < .05$
 b = Considered for Transfer: $p < .05$
 c = Interaction: $p < .05$

*Not available

juvenile court youth. And minority youth had more prior criminal involvement than anglo youth in each sample, discounting the differential thresholds for either a violence charge or a transfer motion. The lower rates of prior crime for the considered group may reflect charge differentials.

Table 3 offers few clues in explaining the prosecutorial decision to seek transfer to criminal court. Prosecutors and judges agreed that the most salient indicator of "amenability to treatment" was prior record. Table 3 shows that prior records actually were larger and more serious for youth not considered for transfer. These normative criteria did not apply for the sample of violent youth. Factors not measured here apparently are contributing to the decision to seek transfer--factors such as weapon use or victim injury, which are regarded as "heinous" and befitting of transfer, or intent or malice, indications of lack of character or remorse. For example, capital offenses seemed to provoke a prosecutorial motion to transfer. The application of broad discretionary authority, in the absence of specific standards or criteria, makes it difficult to sort out legal or social patterns to explain prosecutors' choices of court of jurisdiction.

D. SEPARATING THE MEN FROM THE BOYS: THE JUDICIAL TRANSFER DECISION

The application of the statutory criteria by juvenile court judges was analyzed by comparing the characteristics of transferred offenders with those retained in juvenile court. The statutory and discretionary clauses from Table 1 were operationalized to include the following factors: age at offense, type of violent offense, and prior offense history. Also included was ethnicity, a factor associated with disparity in judicial decision-making (Thornberry, 1973, 1979; Fagan et al., 1987b). Other factors associated with decision-making in the juvenile court (McCarthy and Smith, 1986) were included as candidate determinants of the transfer decision: age at onset (first offense), and the number of co-participants and victims in the committing offense.

Because the statutory age of jurisdiction differed among the states, we dichotomized age at offense as one year or less and more than one year before the end of juvenile court jurisdiction. It was assumed that the closer to the age limit for criminal court jurisdiction, the greater the number of youths who would be transferred. This hypothesis resulted from interview data with prosecutors in each site, who stated quite clearly that one purpose of the transfer decision was to obtain longer sentences in secure care than

could be obtained in the juvenile justice system. In Boston and Detroit, where the age limit is 17, age at offense was categorized as 15 or under, i.e., more than one year prior to court jurisdiction, and age 16, or one year or less. In Newark, Memphis and Phoenix with a court age-jurisdiction of 18, age at offense was categorized as 16 or under, i.e., more than one year prior, and 17, or one year or less prior to criminal court jurisdiction.

Age at onset was similarly dichotomized, based on the general consensus of the predictive relationship between early psychosocial development, age at onset of delinquency, and subsequent delinquency and aggression (see, for example, Loeber and Dishion, 1983). Official crime statistics show an increase in criminal activity starting at age 13 (Weiner and Wolfgang, 1985). In longitudinal research, age at onset has been shown to be related to severity and chronicity of delinquency and adult criminality; juveniles who begin their criminal careers at earlier ages are more likely to commit serious or violent offenses and to be frequent offenders (Hamparian et al., 1978; Wolfgang et al., 1972; Farrington, 1973; Hamparian et al., 1984). Therefore, age at onset was dichotomized as 13 or younger or 14 and older.

Statutory criteria limit the transfer decision to a specific subset of offense types. This study's sample further limits the subset of offenses, since only violent offenses have been examined. However, the offense categories include several types of violent offenses, including aggravated assault, sexual assault, instrumental violence against persons (e.g., robbery), and capital offenses. The variability in these offenses suggests possible differentials in decision-making. The analyses therefore examine differences by type of offense.

The two other characteristics of the offense--number of co-participants and number of victims--are hypothesized to affect the transfer decision. A greater number of offenders may increase the desire to transfer for a deterrent effect, whereas a greater number of victims may increase the desire for retributive justice or public protection. Both these variables were dichotomized: co-participants as none or some and victims one or multiple.

Table 4 shows the number and percent of youth transferred on these factors across sites. The overall rate of youth transferred varies widely. In Boston (21%), Detroit (31%) and Newark (41%), less than half considered for transfer were eventually transferred. In Phoenix (71%), the majority of violent delinquents considered for transfer were judicially waived to the criminal court.¹⁹ Several factors may explain the differences in decision

Table 4

Transfer Rates by Site and Case Characteristics

		BOSTON	DETROIT	NEWARK	PHOENIX
		% (N)	% (N)	% (N)	% (N)
TOTAL SAMPLE		100 (29)	100 (93)	100 (51)	100 (28)
TRANSFERRED		20.7 (6)	31.2 (29)	41.2 (21)	71.4 (20)
RACE	White	22.2 (2)	12.5 (1)	-- (0)	60.0 (3)
	Non-White	20.0 (4)	32.9 (28)	41.2 (21)	73.9 (17)
		.875	3.44	--	1.89
AGE AT OFFENSE	>2	11.1 (1)	21.9 (9)	40.0 (8)	42.9 (6)
	<1	25.0 (5)	38.5 (20)	41.9 (13)	100.0 (14)
		2.67	2.22	.923	--
TYPE OF OFFENSE	Murder	-- (0)	39.4 (13)	66.7 (6)	80.0 (4)
	Rape	100.0 (1)	25.0 (3)	-- (0)	-- (0)
	Robbery	-- (0)	28.6 (4)	58.8 (1)	85.7 (6)
	Aggravated Assault	25.0 (5)	22.6 (7)	5.9 (1)	66.7 (8)
	Kidnap	-- (0)	66.7 (2)	66.7 (4)	50.0 (2)
NUMBER OF VICTIMS	1	15.8 (3)	27.9 (19)	34.1 (14)	80.0 (12)
	>2	30.0 (3)	40.0 (10)	70.0 (7)	61.5 (8)
		1.81	1.72	4.50	2.5
NUMBER OF CO-PARTICIPANTS	0	25.0 (2)	27.6 (8)	25.0 (3)	63.6 (7)
	>1	19.0 (4)	32.8 (21)	46.2 (18)	75.0 (12)
		1.42	1.28	2.57	1.71
AGE AT ONSET	<12	40.0 (4)	40.0 (6)	66.7 (10)	50.0 (1)
	>13	10.5 (2)	29.5 (23)	30.5 (11)	73.1 (19)
		.176	.627	.220	2.71

= odds ratio

patterns by site. Certainly, prevailing philosophy and crime control policy will determine the rate of transfer. However, the comparative characteristics of the justice systems may also bear on the transfer decision. For example, the statutory limitations in Phoenix constrain the dispositional options of juvenile court judges, specifically in the length of incarceration. In other sites, the availability of secure treatment or long-term incarceration in the juvenile system may afford options within the juvenile system. There also seem to be varying ways to operationalize factors such as "amenability to treatment." Also, there may be subtle or subjective differences in the offenders across sites, despite the fact that all youth in the sample were adjudicated for violent offenses.

1. Race

The relationship between race and transfer is initially explored in Table 4. (The issue of race and transfer will be more fully addressed later in this monograph.) No white youth were considered for transfer in Newark. In two out of the three other sites, a higher proportion of minorities considered for transfer were actually transferred than were whites. This hints broadly at racial discrimination. There are competing explanations for these initial findings, however. It is possible, for example, that black youth are more likely to have committed specific crimes or possess some other personal characteristics that are more closely associated with transfer, though these may not necessarily be defined by statute. This issue will be explored in the multivariate analyses.

2. Age

The age at onset of delinquency is thought to be a predictor of adult criminality (see, for example, Greenwood, 1982). Table 4 shows that in three of four sites, age at onset is associated with the transfer decision. In Newark, 67% of those who began their criminal careers at an early age were transferred, compared to 31% of those who began at age 14 or older. In Boston and Detroit, 40% of youth with a younger age at onset were more likely to be transferred than youth with later initiation into delinquency (11% and 30% respectively). Phoenix again offers a different trend from the other sites. These results suggest that juvenile court judges apparently regard the length of the delinquent career (and accordingly, the number of prior offenses) as an important manifestation of the statutory guidelines for determining transfer.

The interval from age at offense to the juvenile corrections jurisdiction limit does appear to be related to the transfer decision in three of four sites. Previous analyses (Rudman et al., 1986) show that age at offense by itself was associated with the transfer decision in only one site. However, when examined as a function of the time interval from offense to jurisdiction limit, Table 4 shows that age influences the transfer decision. In Boston, Detroit and Phoenix, a greater percentage of youths within one year of the court jurisdictional limit were transferred to adult court. In Newark, however, age made no difference. In comparison, 100% of the 17-year-olds in Phoenix were transferred.

3. Type of Offense

Table 4 also suggests that factors other than age and race may explain the judicial waiver decision. The type of violent offense in the petition to transfer may also be a determinant. One might assume that the frequency of transfer would increase with the severity of the committing offense. That is, the more heinous the offense or the greater the injury to the victim, the more likely the decision to transfer. However, as found earlier, the patterns vary. For example, none of the youth charged with murder in Boston were transferred. In Detroit, 40% of youth charged with murder were transferred compared to 67% in Newark and 80% in Phoenix.²⁰

Other committing offense types showed similar variability. None of the eight youth in Boston charged with armed robbery were transferred; in comparison, 29% were transferred in Detroit, 59% in Newark, and 86% in Phoenix. The same varied pattern exists for youth charged with aggravated assault. In Newark, few youth (6%) charged with aggravated assault were transferred. But in Boston, 25% were transferred; 23% in Detroit; and 67% in Phoenix (where nearly all were 17 years).

Accordingly, the juvenile courts appear to view violent juvenile crime as a heterogeneous category with respect to its bearing on the limits of juvenile jurisdiction. While for some cases the type or consequence of the offense determines the transfer decision, for others, the age at offense mediates that decision. The trends for homicide are particularly noteworthy for understanding the age-crime relationship to the transfer decision: murder, the most serious offense and a capital crime, resulted in extreme variation.

4. Situational Factors

Two situational factors that surround the committing offense also were examined. First, the presence of co-participants may influence the decision to transfer in one of two ways. Juvenile offending is often viewed as a group or "wolfpack" phenomenon (Piper, 1985), and a large number of co-participants may induce the juvenile courts to effect a transfer because of the perceived public threat of group criminal activity. On the other hand, the absence of accomplices may be viewed by the juvenile courts as a sign of a shift from juvenile to adult behavior patterns, indicating the lone offender is a fit candidate for transfer. However, as is shown in Table 4, the number of co-participants was not an important factor in most sites.

The second situational factor was the number of victims in the incident. If the alleged offense involved multiple victims, the youth may be more likely to be transferred, since the numbers of victims may be viewed as a measure of the severity of the offense and an implied threat to public safety. Table 4 shows that there is, in fact, a significant association between the number of victims and the likelihood of transfer in three of the four sites. In Newark, 70% of the offenders with multiple victims were transferred, compared to 34% of those with one victim. In Boston, 16% of the youth were waived when the instant offense involved one victim, 30% when there were two or more victims. In Detroit, 28% were waived with only one victim, 40% with two or more. But in Phoenix, a reverse pattern was found: 80% with one victim were waived, compared to 62% with two or more victims.

5. Specific Patterns

The effects of age (age at committing offense and age interval to juvenile jurisdiction) in combination with other factors suggest a more complex process underlying the transfer decision. Table 5 shows that, when type of offense is considered the relationship between age at offense and transfer decision is weak in all sites, except Phoenix. In Boston, of youths charged with aggravated assault, none of the younger offenders were transferred, compared to 33% of the older offenders. For all offenses except aggravated assault in Detroit, a greater percentage of older youths than younger youths were transferred. In Newark, where age had no independent effect irrespective of offense, age differences were noted only in robbery offenses (71% of older in comparison to 50% of younger offenders). However, there was a reverse pattern for murder and

Table 5

Transfer Rates by Type of Offense and Age at Offense

	BOSTON		DETROIT		NEWARK		PHOENIX	
	%	(N)	%	(N)	%	(N)	%	(N)
MURDER								
>2	--	(0)	23.5	(17)	83.0	(5)	66.7	(2)
<1	--	(0)	56.2	(18)	33.3	(1)	100.0	(2)
Total								
Transferred	0.0	(0)	60.6		33.0	(9)	20.0	(1)
RAPE								
>2	100.0	(1)	12.5	(8)	--	(0)	--	(0)
<1	--	(0)	50.0	(4)	--	(0)	--	(0)
Total								
Transferred	100.0	(1)	25.0	(12)	0.0	(0)	0.0	(0)
ROBBERY								
>2	--	(0)	20.0	(5)	50.0	(5)	66.7	(3)
<1	--	(0)	33.3	(9)	71.0	(5)	100.0	(4)
Total								
Transferred	0.0	(0)	28.6	(14)	59.0	(10)	85.7	(7)
AGGRAVATED ASSAULT								
>2	--	(0)	27.3	(11)	--	(0)	20.0	(1)
<1	33.3	(15)	20.0	(20)	8.0	(1)	100.0	(7)
Total								
Transferred	25.0	(15)	22.6	(31)	6.0	(1)	66.7	(8)
KIDNAP								
>2	--	(0)	--	(0)	100.0	(2)	33.3	(3)
<1	--	(0)	66.7	(3)	50.0	(2)	100.0	(1)
Total								
Transferred	--	(0)	66.7	(3)	66.7	(4)	50.0	(4)

kidnapping. Thus, in Newark, type of offense is more important than age at offense. In Phoenix, type of offense made no difference with respect to age and transfer.

The results suggest that juvenile court judges may consider age to be important in the transfer decision, but only for certain violent offenses and in relation to the maximum age of juvenile jurisdiction. Comparing Tables 4 and 5, it appears that age at offense is a salient factor in the transfer decision only when viewed in the context of the age limits of juvenile jurisdiction.

Table 6 examines the delinquent histories of youth considered for transfer by three variables which earlier supported independent contributions to the transfer decision. A direct relationship between the number of prior offenses and the percentage of youth transferred exists in three of the four sites. Overall, in Boston, Detroit, and Newark, transferred youth had more prior offenses; the opposite was true in Phoenix. However, minority youth in Boston had more priors, irrespective of transfer, while in Detroit minority youth had fewer priors. Only in Phoenix was there a race-priors interaction. White retained youth had more priors, but minority retained youth had identical priors with transferred youth. In other words, race and priors made a difference only for white youth, but in a counter-intuitive direction.

Age at offense also seems to have an effect on the transfer decision, independent of the mean number of prior offenses. In all sites and especially in Newark, age at offense rather than prior offenses seems to dictate the transfer decision. Youths with a greater number of priors at earlier ages were less likely to be transferred, but at later ages youth with a greater number of priors were more likely to be transferred.

The relationship between prior offenses, type of offense, and the transfer decision varies from one site to the next. In Boston for aggravated assault it appears that more prior offenses lead to a transfer. There is little difference in Detroit, except for murder in which youth transferred had longer delinquency records. In Newark, with the exception of aggravated assault cases which seem to be treated similarly, offenders who had more priors were more likely to be transferred. Phoenix, again, is dissimilar in that type of offense and number of priors appear to be unrelated to the transfer decision.

A final glimpse at the transfer decision is shown in Figure 1. The mean number of prior petitions and adjudications is instructive for a comparative view of juvenile justice processing of youth considered for transfer. Clearly, the Newark youth have over-

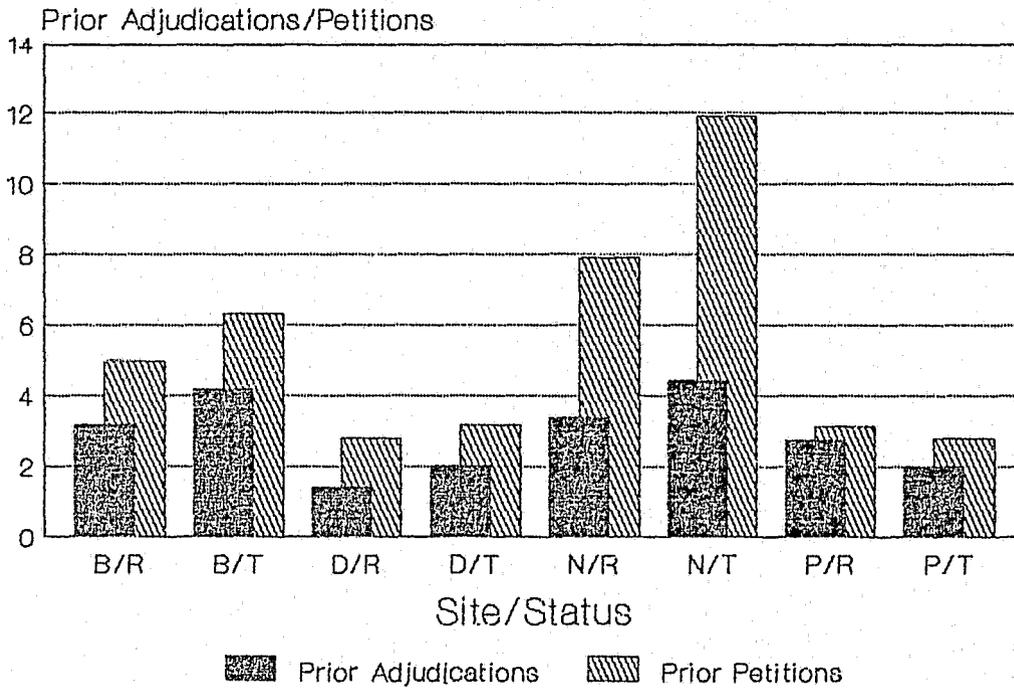
Table 6

Mean Prior Offenses for Waived and Retained Youth by Selected Characteristics

	BOSTON		DETROIT		NEWARK		PHOENIX	
	Retained	Waived	Retained	Waived	Retained	Waived	Retained	Waived
	\bar{X} (N)							
TOTAL SAMPLE	---	---	---	---	---	---	---	---
TOTAL TRANSFERRED	4.96 (23)	6.33 (6)	2.80 (64)	3.17 (29)	7.90 (30)	11.90 (21)*	3.12 (8)	2.80 (20)
RACE								
White	4.14 (7)	5.50 (2)*	4.00 (7)	5.00 (1)	---	---	4.00 (2)	2.33 (3)
Nonwhite	5.31 (16)	6.75 (4)	2.65 (57)	3.11 (28)	7.90 (30)	11.90 (21)*	2.83 (6)	2.88 (17)
AGE								
>2	4.50 (8)	3.00 (1)	2.90 (32)	2.89 (9)	7.17 (12)	4.50 (8)*	3.12 (8)	1.67 (6)
<1	5.20 (15)	7.00 (5)	2.69 (32)	3.30 (20)	8.39 (18)	16.46 (13)*	---	3.28 (14)
OFFENSE								
Murder	---	---	0.90 (20)	2.46 (13)*	0.67 (3)	8.67 (6)*	3.00 (1)	1.75 (4)
Rape	---	3.00 (1)	3.78 (9)	2.33 (3)	---	---	---	---
Robbery	6.12 (8)	---	4.80 (10)	4.00 (4)	8.40 (7)	15.40 (10)	5.00 (1)	1.33 (6)
Aggravated Assault	4.33 (15)	7.00 (5)*	3.17 (24)	3.71 (7)	8.90 (16)	8.00 (1)	3.00 (4)	4.75 (8)
Kidnap	---	---	3.00 (1)	5.50 (2)	1.00 (2)	9.00 (4)	2.50 (2)	1.50 (2)

*t-test significant at .05 level.

Figure 1
Transfer Decision



B-Boston D-Detroit N-Newark P-Phoenix
R-Retained T-Transferred

whelmingly more prior petitions and prior adjudications than similar youth in the other sites. Whether the lengthier prior histories in Newark are products of criminal activity, intensive police activity, or prosecutorial focus is impossible to discern from data sources available to the study. In Boston and Detroit, there appears, on simple observation, to be much less prior offense activity than in Newark.

Phoenix differs here as elsewhere in these analyses. It is the only site where the youth transferred to criminal court have fewer prior offenses and adjudications than those retained by the juvenile court. The "automatic" prosecutorial transfer policy offers a salient explanation of the Phoenix findings, where the age limits on juvenile jurisdiction eclipses other factors in explaining the transfer decision. Such prosecutorial aggressiveness may also explain Phoenix's higher rate of adjudication relative to the number of prior petitions. In other sites, the ratio of adjudications to petitions is considerably lower. The varying rates across sites reflect the unique aspects of the norms and social organization of juvenile justice processing across jurisdictions. Ito and Stapleton (1982) and Rudman et al. (1986) have shown the contributions to court decisions of factors such as the formality of system processing and the standards of documentation required to enter a court petition. Such discrepant practices contribute to divergent case outcomes for both violent and non-serious offenses.

5. Racial Differences in the Judicial Transfer Decision

Racial disparities in juvenile justice have been recognized in several studies (McCarthy and Smith, 1986; Fagan et al., 1987b). Because transfer has harsh consequences, the weight of racial disparities in the transfer decision is heavier than at other decision points. Accordingly, at issue is whether the judicial decision to grant or deny the prosecutors' motions for transfer is reflected in differences in either the rate of minorities transferred, or the characteristics of the minority and anglo youth transferred. Overall, 37% of the transfer motions for the considered-for-transfer population were granted. For anglo youth, 27% were granted compared to 39% for minority youth. Though not *statistically* significant, this difference is hardly trivial.²¹ Differences by site followed similar patterns.

Of all youth considered for transfer, the characteristics of those retained in juvenile court to those transferred to criminal court are compared in Table 7. Differences between anglo and minority youth are slight. Significant differences were found only for

Table 7

Characteristics of Youth Retained in Juvenile Court and Youth Transferred
by Race

Characteristics	Retained		Transferred	
	Anglo	Minority	Anglo	Minority
	Mean	Mean	Mean	Mean
Age at Offense	15.6	15.8	16.3	16.1
Age at Onset	14.1	14.0	13.7	13.5
Age to Juvenile Maximum	1.5	1.6	1.2	1.5
Number of Victims at Offense (b)	1.4	1.4	2.2	1.8
Number of Co-Participants	1.4	1.9	2.3	1.9
Number of Prior Adjudications	2.4	2.3	1.8	2.9
Number of Prior Charges (Offenses)	4.1	4.5	3.8	5.9
Number of Prior Mental Health Commitments	0.1	0.1	0.3	0.2

Significance of Race Differences:

a = Juvenile Court: $p < .05$ b = Considered for Transfer: $p < .05$ c = Interactions: $p < .05$

the number of victims: minority youth who were transferred have fewer victims in the committing offense than anglo youth. The number of victims in the offense, however, is not a significant predictor in the multivariate analysis, discussed later.

For other offense or offender characteristics, no significant differences between minority and anglo youth were observed. Perhaps the homogeneity of the committing violent offenses, and the relatively small number of white youth, were determining factors in judicial decisions. Despite the empirical and theoretical distinctions between aggressive, instrumental, and other forms of violence (Megargee, 1982), judges may view these violent acts as a narrow group posing serious threats to public safety. In other words, given a restricted offense range, the less direct influences of race may not emerge. Alternatively, the criteria and evidence standards for sustaining a transfer motion may be less onerous to prosecutors for a violent charge. Certainly, the nature of the committing offenses, together with the prior offense histories of this sample, lessens the burden to the state to prove "probable cause" of "dangerousness" or other threat to community safety. Thus, the transfer motion may actually be akin to a probable cause hearing for the charge at hand.

E. PREDICTION AND CLASSIFICATION: DETERMINANTS OF THE TRANSFER DECISION

As shown above, there is great variation across jurisdictions in the factors that explain the transfer decision. To what extent can those same variables be used to predict the transfer decision, site by site?

Earlier analyses failed to identify individual factors which contributed to group differences in transfer outcomes. To determine which combinations of factors could model the transfer decision, multivariate analyses were conducted to identify linear combinations of explanatory variables. Discriminant function analyses ascertained offender characteristics (particularly race) and offense characteristics that may establish models of the transfer decision.²² Table 8 shows the results of models developed individually for each site, and for an aggregate model combining data for all sites. In addition to the characteristics from earlier, univariate analyses, the discriminant models include specific violent offenses (as dummy variables) to determine if transfer decisions within each site are driven by particular offense types.

Race entered the model only in one site, Detroit, but it had the lowest coefficient of the discriminating variables. Detroit had the highest percentage of homicide cases, and minority youth charged with homicide were transferred more often than their anglo counterparts. Race did not enter the aggregate model, nor did Detroit enter as a site difference. Accordingly, race again appears to play an insignificant role in the judicial transfer decision. The most consistent contributors across sites were the age at offense (older youth were more often transferred), age at onset (youth whose delinquent histories started at an earlier age were more often transferred), and youth charged with murder. In fact, specific offense types (murder and armed robbery) contributed to the models in three of the four sites as well as the aggregate model. However, armed robbery had a negative loading in Boston, indicating that this offense type was less likely to be transferred. In two sites, Boston and Newark, offense type contributed more than other characteristics. In Boston, rape was the strongest contributor, while murder was the strongest contributor in Newark.

Other offense or individual characteristics did not consistently enter. For example, the number of victims in the committing offense was a relatively weak discriminator in two sites. Prior charges did not enter any of the models, and prior adjudications was a contributor to transfer only in Detroit. The models ranged in classification scores from moderate in two sites (about two in three cases correctly classified) to very strong (seven in eight cases correctly classified) in two other sites. The aggregate model also had a moderate classification score. Among the offense characteristics, only the number of victims was a salient discriminator, though weakly, in any of the models. Finally, only Phoenix was a discriminator in the aggregate model among the sites. This last finding suggests that in Phoenix as elsewhere, factors not included in this model contributed to transfer in important ways. Accordingly, our ability to explain judicial transfer decisions based on statutory definitions is at best moderate. The transfer decision appears to incorporate factors not specified by statute, and which tap the subjective orientation of judges and prosecutors.

Table 8

Discriminant Analysis of Transfer Decision by Site

	Boston	Detroit	Newark	Phoenix	Total
Race		.35			
Age at Onset	-.67		-.75		-.49
Age at Offense	.71	.42		1.02	.58
Type of Offense:					
- Rape	1.01				
- Armed Robbery	-.69		.53	.58	.23
- Murder		.64	.80	.58	.62
- Aggravated Assault					
Number of Victims		.41	.40		.22
Prior Adjudications		.70			
Site (a)	NA	NA	NA	NA	.60
% Cases Classified Correctly	86.2%	67.7%	66.7%	85.7%	70.7%
Eigenvalue	.57	.17	.57	.51	.24
Wilkes Lambda	.64	.85	.64	.66	.81
Canonical Correlation Coefficient	.60	.39	.60	.58	.44
Chi Squared	11.3	14.4	21.1	10.2	42.2
p	.02	.01	.000	.02	.000

a. Each site was entered as a dummy variable in the aggregate model. Only Phoenix entered the final discriminant function.

V. COMPARATIVE SANCTIONS IN JUVENILE AND CRIMINAL COURT

Most theorists agree that swift and sure punishment is a central component of an effective system of sanctions. The celerity and certainty of the court's response are important influences on how the justice process is perceived and the lessons learned from a sanction (Van den Haag, 1975). For example, social learning theorists suggest that the more time which elapses from offense to sanction, the weaker is the linkage between behavior and consequences (Jensen, 1978). The punishment imposed forms the substance of the sanction. The presumption of a "leniency gap" is based on two notions about juvenile court: sanctions are less certain--offenders less often are found "guilty" of their offenses and less frequently are punished--and not as harsh--the length and harshness of punishment are not as severe for juvenile court sanctions. Yet these criminal and juvenile court sanctions have rarely been compared, leaving open the question of whether punishment is more certain and severe in criminal court.

A. SWIFT PUNISHMENT: CASE PROCESSING TIME

Analysis of the court records on violent youth considered for transfer and qualitative information on the transfer process provide contrasts in court processing differences between the juvenile and criminal justice systems. This section will analyze juvenile and criminal court processing of violent juvenile offenders with regard to processing time (juvenile arrest through criminal court disposition), court outcome (adjudication/conviction), and punishment (disposition and sentence). Where applicable, the variety in case processing time, as well as court outcomes, will be analyzed in light of the qualitative procedural differences within each system.

1. Court Processing Time

From the moment unlawful conduct is connected with a suspect, it is incumbent upon the justice system, juvenile or criminal, to operate in a "swift and sure" manner in the hopes that the "fair" processing of a guilty individual will somehow deter future criminal conduct by formally holding people accountable for their behavior. The issue of timely and effective system processing becomes strikingly important when juveniles are charged with violent offenses. Given the seriousness of the alleged crimes, juveniles will likely remain detained for the duration of the process (whether it be an exclusive juvenile

or criminal justice proceeding or a transfer process involving both systems; Coates et al., 1978). The longer the process takes, the greater the delay in the delivery of appropriate services for the adjudicated or convicted youth. At the same time, lengthy detention periods become part of the punishment itself, though it may not be so regarded by the courts or correctional agencies.

To assess the impact of the transfer process on "swiftness" (system processing time), information was abstracted on key decision-making dates for youth considered for transfer. Processing dates were recorded from the following juvenile justice system decisional points: arrest, filing of petition to transfer, hearing on the petition to transfer, and decision on the petition to transfer. In addition, for those youth considered for transfer but retained by the juvenile court, the date of the juvenile court hearing on a petition for delinquency and date of disposition also were recorded. Finally, for those youth transferred, dates when the charges (petitions) were filed and when cases were adjudicated and sentenced were recorded. The dates were then analyzed to assess court processing time for youth considered for and transferred to the criminal court, and youth considered for transfer but subsequently retained for delinquency proceedings in the juvenile court.

Table 9 shows that it takes 2.5 times as long (285 vs. 99 days) for transferred cases to be closed in criminal court than similar cases retained in juvenile court. The difference is particularly dramatic for Newark (over four times longer) and Boston (almost 3 times longer). The majority of the time differential occurs after the transfer decision is made. In general, criminal court processing involves more court "action" than juvenile court and hence more time. Juvenile court processing is comparable across sites, regardless of whether the case is eventually transferred. Time to transfer is essentially the same as time to juvenile court disposition within sites, though large differences occurred between the locales. Some differences were found in criminal court processing time across sites. It takes 229 days in Boston for a transferred youth to be filed against, tried, and convicted; it takes 323 days for the same to occur in Newark. However, the time is cut in half for Phoenix.

One explanation lies in differences, in the sites, of the transfer order appellate process. There are avenues of appeal from an order to transfer, in one form or another, in all four sites. In Phoenix, an order to transfer is appealable to the Arizona State Court of Appeals. Because the Arizona appellate process takes so long (several months), the trial

Table 9

Violent Youth Considered for Transfer to Criminal Court
Processing Time (in Days)

	Retained by Juvenile Court					Transferred to Criminal Court					
	Boston Days (N)	Detroit Days (N)	Newark Days (N)	Phoenix Days (N)	Total Days	Boston Days (N)	Detroit Days (N)	Memphis Days (N)	Newark Days (N)	Phoenix Days (N)	Total Days
JUVENILE COURT:											
Arrest to Petition	0.3 (13)	17.3 (64)	5.1 (49)	3.0 (15)	7.9	1.4 (10)	16.8 (29)	0.4 (50)	9.9 (60)	3.3 (46)	6.5
Petition to Transfer Motion	20.1 (38)	3.3 (28)	26.6 (52)	-- --	18.9	32.7 (11)	16.7 (15)	38.9 (41)	39.0 (56)	-- --	35.7
Motion to Transfer Decision	65.9 (18)	69.7 (74)	27.9 (26)	-- --	59.9	144.6 (11)	84.5 (32)	0.2 (46)	22.9 (60)	-- --	38.1
Transfer Decision to Juvenile Court Hearing (Retained Only)	3.6 (14)	20.0 (33)	37.4 (24)	2.2 (22)	17.8	-- --	-- --	-- --	-- --	-- --	--
CRIMINAL COURT (Transferred Only):											
Transfer Decision to Charges Filed	-- --	-- --	-- --	-- --	--	10.6 (9)	33.5 (28)	118.5 (52)	36.6 (55)	18.0 (57)	50.9
Charges Filed to Disposition	-- --	-- --	-- --	-- --	--	228.8 (9)	129.0 (34)	93.6 (56)	323.3 (53)	101.1 (52)	167.1
Arrest to Disposition (Juvenile or Criminal Court)	125.7 (13)	89.4 (67)	96.9 (39)	121.1 (15)	98.7	359.9 (9)	216.8 (31)	238.7 (54)	425.5 (53)	200.1 (41)	285.1

proceeds in criminal court. Therefore, the appellate process continues simultaneously with the proceedings in criminal court. In Newark, an order to transfer is appealable to the New Jersey Court of Appeals. The appellate process takes between 11 and 18 months. However, unlike Phoenix, the appellate process postpones any action in criminal court. A youth in Newark remains detained, in juvenile or adult facilities, awaiting the results of the appeal prior to the start of criminal court action. In Newark, the appeal must proceed prior to any action on merits in criminal court.

In Memphis and Boston, the appellate process takes place within the forum of the criminal courts rather than an appeal from an order issued by the juvenile court. By Tennessee statute, an order to transfer issued by the juvenile court is not subject to appeal. The criminal court judge has the power, in Memphis, to refuse to accept jurisdiction of the case, and remand the youth back to the jurisdiction of the juvenile court, where such youth would be subject to a delinquency proceeding. The youth usually remains detained pending the outcome of the acceptance hearing. It may take two months or more before an acceptance hearing finding. In Boston, the appellate process of the transfer order also takes place within the context of the criminal court. Once the youth is transferred to criminal court and the grand jury returns an indictment, the youth is arraigned. If the youth's defense attorney wants to challenge the legality of the juvenile court transfer decision, he or she will make a motion, in criminal court, to dismiss the indictment.

Therefore, in all sites except Phoenix, the criminal justice process is delayed pending the outcome of the appellate proceedings. The process has a major impact on the time it takes the youth's case to enter the mainstream criminal justice process. The appellate process can take approximately 11-18 months in New Jersey, 2-6 months in Memphis, and 3-4 months in Boston.

2. Detention

Most youth who are the subject of transfer proceedings have been in juvenile court custody, usually in a juvenile detention facility, from the time of arrest. Detention often occurs in secure facilities with minimal services. Some observers call it "dead time," since school, family and community ties may be severed by the lengthy isolation. Detention is ordered primarily due to the nature of the offense--usually violent--or the fact that such youth often have extensive prior juvenile court contacts. Such youth are detained not

because they are subject to transfer proceedings but for the traditional criteria guiding the decision to detain: to ensure the youth's presence at the hearing; the youth is likely to commit an offense injurious to him- or herself or others; the interest of the youth or the public requires custodial protection.

If the petition to transfer is sustained, the Boston courts consider detention mandatory while the trial proceeds in criminal court. The youth remains in juvenile detention. In Memphis, the "Special Judge" sets bail, which remains in effect until a bail hearing determination is scheduled in criminal court. In Phoenix, the accused youth (who is in custody) is transferred to the county jail and must have an initial appearance hearing (which includes a detention decision) within 24 hours. Basically, the same procedure takes place in Newark: detained youths have no right to bail until they are the subject of criminal court proceedings. However, most youth are not able to meet the bail requirements and, therefore, remain in detention, receiving little more treatment intervention than basic living requirements, for the duration of the transfer process.

B. SURE PUNISHMENT: COMPARATIVE SANCTIONS IN JUVENILE AND CRIMINAL COURT

1. Court Outcomes

The certainty of punishment was comparable in juvenile and criminal courts. Table 10 shows that about half the transferred youth were convicted on the target charge, and 45% more were convicted of reduced charges. The conviction rate for target crimes was slightly higher in juvenile courts, and conversely adjudication for lesser charges were lower (28%). Dismissal rates were low, but twice as high in juvenile court (14%) than criminal court.

Differences within sites showed a varied pattern. For example, dismissal rates in juvenile court in Detroit (19%) and Newark (23%) were far higher than in criminal court (9% in Detroit, 6% in Newark). In Phoenix, there were no dismissals in juvenile court, but 8% were dismissed in criminal court. In Boston, the opposite trend was found. In all locales but Phoenix, plea bargaining in criminal court resulted in a higher rate of convictions for reduced charges.

The general trend suggests that sanctions are fairly certain for both transferred and retained youth charged with violent felonies. Charge reduction is more common in

Table 10

Court Outcome for Violent Youth Considered for Transfer to Criminal Court

	Retained by Juvenile Court					Transferred to Criminal Court					
	Boston N (Z)	Detroit N (Z)	Newark N (Z)	Phoenix N (Z)	Total N (Z)	Boston N (Z)	Detroit N (Z)	Memphis N (Z)	Newark N (Z)	Phoenix N (Z)	Total N (Z)
Adjudicated/Convicted Target Offense	27 (79)	39 (53)	22 (45)	15 (65)	103 (57)	7 (70)	12 (35)	27 (52)	21 (40)	31 (59)	98 (48)
Adjudicated/Convicted Lesser Offense	6 (18)	21 (28)	16 (33)	8 (35)	51 (28)	3 (30)	19 (56)	23 (45)	29 (55)	18 (34)	92 (45)
Dismissed/Acquitted	1 (3)	14 (19)	11 (23)	-- --	26 (14)	-- --	3 (9)	2 (4)	3 (6)	4 (8)	15 (7)
TOTAL	34 (100)	74 (100)	49 (101)	23 (100)	180 (99)	10 (100)	34 (100)	52 (101)	53 (101)	53 (101)	205 (100)

criminal court, consistent with general criminal court processing trends. There is little doubt that youth are "held accountable" for violent crimes, irrespective of the judicial forum where the case is adjudicated. The results also show that youth charged with violent crimes are processed consistently with transferred youth charged with property offenses (Hamparian et al., 1982).

2. Punishment

Because criminal court judges sanction youth transferred and convicted as adult offenders, it has been generally assumed that such youth receive more severe punishment (placements and sentences) than youth retained by the juvenile justice system. However, conflicting data have emerged with regard to the criminal court's sanctioning of juveniles. Some research suggests that "most juvenile offenders are not seen (by criminal courts) as serious enough to take up court time" (Royscher and Edelman, 1982), and, as such, receive disproportionately high rates of dismissals and probation placements. The "going rate" for juveniles in criminal court may be somewhat lower since they appear younger and more inexperienced than their older counterparts in criminal court (Emerson, 1981). Other research efforts have found that young offenders do receive the more severe sanctioning anticipated (Greenwood et al., 1984) and that, as such, there is no "leniency gap" for young offenders in adult court.

To examine this controversy specifically for violent juvenile offenders, we analyzed court (juvenile and criminal) dispositions and sentences for the violent youths considered for transfer. Prior to presenting these data, we provide a brief discussion of what sanctions are generally available in our study sites.

The actual dispositional alternatives available both to juvenile and criminal court judges are largely a function of court jurisdiction, statutory limitations, and, to varying degrees, individual court prerogative. Within juvenile court jurisdiction, the dispositional options available to the court consist largely of commitment to youth corrections, probation, and/or suspended sentence. Within criminal court jurisdiction, the dispositional alternatives consist of the levying of fines, probation, restitution, work furlough, community service, jail, prison, or a combination of the above alternatives where appropriate.

The length of commitment received by violent delinquents in juvenile court depends largely upon the jurisdiction in which they are adjudicated. The juvenile court can commit an adjudicated delinquent to an institution for the duration, which is determined by the jurisdictional age limits of each state's juvenile court (which may be longer than the age majority). Jurisdiction agency limits for our study sites are:

Locale	Age
Memphis (Tennessee)	19
Boston (Massachusetts)	18
Newark (New Jersey)	21
Detroit (Michigan)	19
Phoenix (Arizona)	18

The length of sentence imposed at the criminal court level is dictated by statute subject to the discretion of the sentencing judge.

This study indicates that the criminal court generally sanctions violent youth more severely than the juvenile court. Table 11 shows that of the youth transferred to and convicted in criminal court in our sites, 89% were incarcerated (84% in prison, 5% in jail) and only 11% were placed on probation. In contrast, 14% of the youths retained by and convicted in juvenile court received probation dispositions, while 84% received a commitment to juvenile corrections (3% got a suspended commitment).

An examination of the criminal courts reveals several major dispositional differences. First, Newark criminal courts placed 40% of the youths into a special prison for young offenders (under 26 years of age). In none of the other sites were youths placed in special facilities for younger populations. Second, although the option to place transferred youth into the juvenile corrections facilities exists for three of our sites, no youths in our study were so placed. And, finally, Phoenix appeared to be the only site in our sample where the criminal court system tended to exercise the broadest array of dispositional alternatives. Of those violent juveniles transferred to and convicted in criminal court, 70% were sentenced to prison, 6% to jail, 23% received probation, and 2% work furlough. Of 10 youths receiving jail sentences, all but one received an additional disposition (usually restitution or community service).

Table 12 displays, by years, the mean length of sentence received by all youth in the considered-for-transfer sample who were adjudicated in juvenile court or convicted in criminal court and committed to juvenile or adult correctional institutions. As seen in

Table 11

Court Disposition for Violent Youth Considered for Transfer to Criminal Court

	Retained by Juvenile Court					Transferred to Criminal Court					
	Boston N (Z)	Detroit N (Z)	Newark N (Z)	Phoenix N (Z)	Total N (Z)	Boston N (Z)	Detroit N (Z)	Meaphis N (Z)	Newark N (Z)	Phoenix N (Z)	Total N (Z)
Suspended Commitment	1 (3)	-- --	3 (8)	-- --	4 (3)	-- --	-- --	-- --	-- --	-- --	-- --
Work Furlough	-- --	-- --	-- --	-- --	-- --	-- --	-- --	-- --	-- --	1 (2)	1 (1)
Probation	5 (15)	7 (12)	5 (13)	4 (17)	21 (14)	2 (20)	2 (6)	1 (2)	1 (4)	12 (23)	18 (10)
Jail	-- --	-- --	-- --	-- --	-- --	-- --	4 (12)	2 (4)	-- --	3 (6)	9 (5)
Juvenile Corrections	28 (82)	53 (88)	30 (79)	20 (83)	131 (84)	-- --	-- --	-- --	-- --	-- --	-- --
Prison	-- --	-- --	-- --	-- --	-- --	8 (80)	27 (82)	49 (94)	26 (96)	37 (70)	147 (84)
TOTAL	34 (100)	60 (100)	38 (100)	24 (100)	156 (101)	10 (100)	33 (100)	52 (100)	27 (100)	53 (101)	175 (100)

Table 12

Length of Sentences for Violent Youth Considered for Transfer to Criminal Court

	Retained by Juvenile Court					Transferred to Criminal Court					
	1 Year N (%)	2 Years N (%)	3 Years N (%)	4-7 Years N (%)	Total N (%)	1 Year N (%)	2 Years N (%)	3 Years N (%)	4-7 Years N (%)	>7 Years N (%)	Total N (%)
Boston	6 (54.5)	3 (27.3)	1 (9.1)	1 (9.1)	11 (100)	2 (20.0)	-- --	2 (20.0)	3 (30.0)	3 (30.0)	10 (100)
Detroit	-- --	28 (48.3)	25 (43.1)	5 (8.6)	58 (100)	3 (10.0)	1 (3.0)	3 (10.0)	10 (33.0)	17 (56.0)	34 (100)
Memphis	-- --	-- --	-- --	-- --	-- --	2 (4.0)	2 (4.0)	35 (63.0)	9 (16.0)	48 (87.0)	96 (100)
Newark	-- --	-- --	22 (75.9)	7 (24.1)	29 (100)	2 (4.0)	-- --	14 (28.0)	20 (40.0)	-- --	36 (100)
Phoenix	1 (5.0)	12 (60.0)	7 (35.0)	-- --	20 (100)	13 (25.0)	5 (10.0)	20 (39.0)	8 (15.0)	46 (89.0)	92 (100)
TOTAL	7 (5.9)	43 (36.4)	55 (46.6)	13 (11.0)	118 (100)	22 (8.2)	8 (2.9)	74 (27.6)	50 (18.7)	114 (42.5)	268 (100)

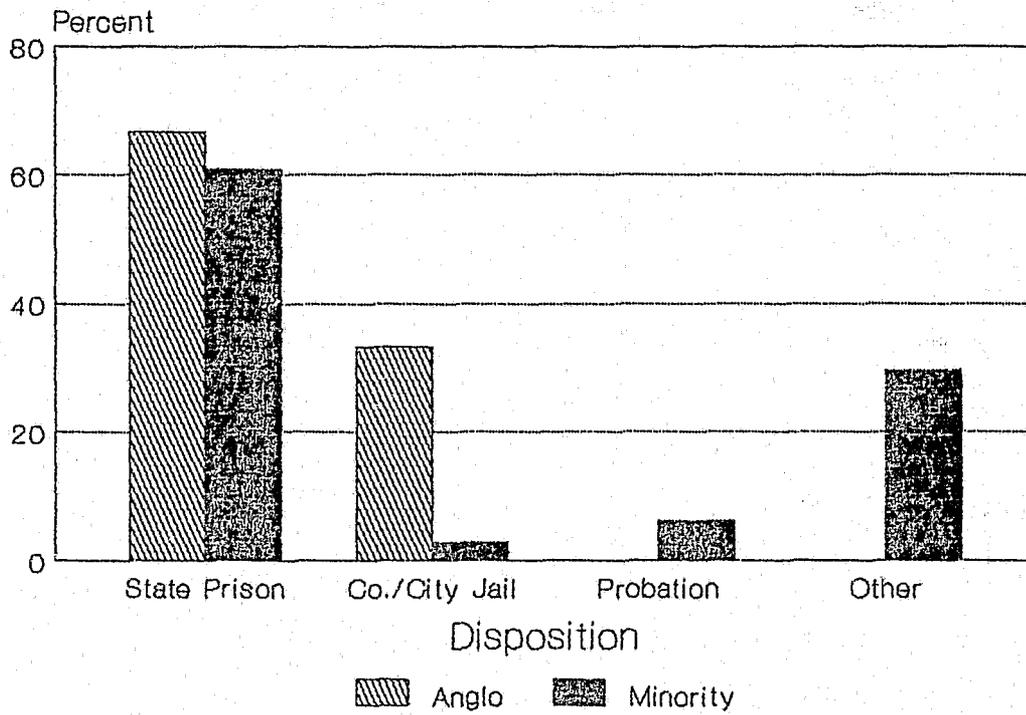
this figure, youths convicted in criminal court received substantially longer sentences in all sites. On the average, youth in criminal court received sentences four times longer than those retained and adjudicated in juvenile court. Only 13 of the 118 youths (11%) committed by the juvenile court in Boston, Newark, or Phoenix received court commitments of more than four years. In contrast, 61.2% of the youths convicted in criminal court and committed to state corrections were sentenced to over four years. Further, 42.3% of the youths retained by juvenile court received sentences of less than two years, whereas in criminal court only 11.2% of the total were sentenced to less than two years. These data suggest that because the criminal justice system is not limited by the jurisdictional age considerations of the juvenile justice system, violent youths convicted and sentenced in criminal court receive considerably longer sentences, in adult secure facilities, than their counterparts retained by the juvenile court.

The sentencing dispositions of cases transferred to criminal court and broken down by race are shown in Figure 2. At first glance, it appears that minority youth receive less severe sanctions than white youth. All of the white youth (N=6) convicted were incarcerated, compared to fewer than two in three minority youth ($p < .02$). About one in three minority youth received some lesser sanctions, ranging from probation to "other" dispositions such as fines, restitution, community service, or remand to a treatment program.

These results may mask race influences on sentencing which occur at decision points prior to criminal court. For example, the racial differences of youth transferred may selectively channel youth into the criminal court population: 27% of white youth petitioned were transferred, compared to 39% for minority youth. If any "threshold" for transfer is lower for minority youth than for white youth, only the "worst" anglo youth may be transferred. (For a frequency distribution of the types of offenses by race, see Appendix II.) Plea bargaining is less probable for such cases. By contrast, a broader range of minority youth may be filtered into criminal court. Accordingly, criminal court judges may be faced with a wider array of offense severity among minority offenders at the time of sentencing. In turn, the likelihood of plea bargaining is higher, and judges may feel warranted in imposing less severe sanctions.

It is important to remember that the data discussed above are court-imposed sentence data. Because substantial differences typically exist between sentence and actual time served, the above data do not speak to differences in length of time served for juvenile and adult offenders.

Figure 2
Disposition of Transferred Youth by Race



Chi-square: $p < .02$

C. SUBSTANTIVE PUNISHMENT: YOUTH IN JUVENILE AND ADULT INSTITUTIONS

States vary in the management of adolescents sentenced to adult facilities. Some permit a youth convicted in criminal court to be housed temporarily in a juvenile training school and then moved to adult prison to serve out the remainder of his or her sentence when the youth reaches a specified age (e.g., 18). Other states provide that the criminal court judge commit the transferred youth directly to the adult Department of Corrections, which may have a separate facility or unit within a facility to house juveniles convicted as adults. Despite these limited efforts to protect juveniles, the correctional experience for such youth can be particularly overwhelming. Not only are they isolated from family and other social anchors, they immediately move to the lowest rungs of a social hierarchy in the prison culture. As initiates in prison, they lack both status and resources to manage the contingencies of the prison setting. Violence in jails or prisons is commonplace and often brutal (Poole and Regoli, 1983; Irwin, 1985), and juveniles sentenced to adult facilities are exposed daily to such risks. Although serious juvenile offenders transferred to adult court may be regarded by the juvenile court judges as too sophisticated for a juvenile population, one may question whether they are sufficiently sophisticated to cope with their adult criminal counterparts.

The distinctions between prisons and juvenile facilities are in evidence in overt and subtle ways. Although remedial programs are commonly found in prisons, adult correctional facilities emphasize retribution and control. Inmate cultures and control are distinctly different in the two contexts. Correctional staff often wear uniforms and are referred to as "correctional officers." Adult prisons also carefully distinguish staff involved in prison services, such as education and counseling, from custodial staff.

By contrast, rehabilitation remains the primary goal of juvenile corrections, despite the adoption of punitive or deterrent-oriented juvenile justice policies in the past decade (Krisberg, 1986). Juvenile staff use the terminology of therapy and rehabilitation. Line staff often carry titles such as "institutional social worker" or "counselor." Juvenile staff "teach" and "guide" youth to learn new behaviors in preparation for returning to the outside world. Their interactions with youth emphasize behavioral change and social development. It follows, therefore, that perceptions of staff services and interactions are likely to differ between residents in juvenile correctional facilities and their counterparts in adult institutions. The emphasis on rehabilitation in juvenile facilities, and the specific

attention to education and counseling as part of the evaluation of treatment progress and ultimately release decisions, should also result in higher ratings for therapeutic and rehabilitative services by residents in juvenile corrections.

The principal distinction between juvenile and criminal justice sanctions is embodied in the treatment-custody dichotomy (Feld, 1986). Correctional interventions for juveniles in criminal court are intended to be harsher than the rehabilitative interventions of juvenile court, regardless of whether punishment or incapacitation is the guiding crime control policy. Placing juveniles in adult facilities removes violent offenders from the community and eliminates immediate risks to public safety. However, it also places juveniles in facilities with specific and widely recognized shortcomings: high recidivism rates (Petersilia et al., 1985), high levels of violence (Lockwood, 1980; Keve, 1983), and isolation from the mediating influences of natural social networks and informal controls in the social context to which the youth will return. Accordingly, the assessment of transfer policies should weigh these outcomes or consequences of incarceration of juveniles in adult facilities as part of the social costs of transfer.

This study contrasted the correctional experiences of juveniles incarcerated in adult facilities with a comparable sample of juveniles incarcerated in secure training schools. The treatment-custody dichotomy predicts that perceptions of treatment interventions will be stronger in juvenile training schools than in adult correctional facilities. This study addresses that empirical question by assessing youth perceptions of prisons and training schools. To the extent that differences between juvenile justice and criminal justice center around treatment, we would expect youth in juvenile correctional institutions to express greater satisfaction with their treatment services than youth in prison. (The perceptions of youth, and staff, were assessed using the scales discussed in the Methods section of this monograph.)

1. Staff Assistance and Case Management

Respondent ratings of assistance given by staff are shown in Table 13. Simple univariate ANOVA routines show significantly higher ratings by residents of juvenile facilities on four of the five dimensions measuring the staff's provision of services. The results are not surprising. Youth housed in separate wings of prisons generally encounter uniformed guards or other institutional personnel who are neither trained nor mandated to become involved in remedial or counseling areas. Counseling services are provided

Table 13

Assessment of Institutional Services by Youth in
Training School and Prison

	Training School	Prison
Staff help you to control your violent behavior	3.75	3.53
Staff help you to improve your relations with others your age***	3.47	1.97
Staff provide you with skills to help you when you return to the community*	3.58	3.05
Staff help you feel good about yourself**	3.62	2.63
Staff help you to achieve personal goals*	3.42	2.72

ANOVA:

*p>.05

**p<.01

***p<.001

primarily by special staff in prisons, usually in a format separate from daily routines. In contrast, training schools place greater emphasis on counseling by line staff as a continuous part of daily activities.

In training schools, youth are more likely to encounter staff whose training, educational background, and job responsibilities emphasize these areas. The reward structures for salary and advancement for juvenile corrections staff are predicated (ostensibly) on helping residents to build social skills and to control antisocial behaviors. Prison staff, whose performance is evaluated on the ability to manage and control inmates, receive little recognition for helping inmates. In fact, youth in prison were found to spend less time with special staff having technical skills and specific mandates to work with them as counselors or "helpers."

Case managers, or social workers in juvenile facilities, have a central role in coordinating institutional services, compiling information on behavior and attainment of clients' goals, and funneling that information to decision-makers, specifically parole or classification boards. For youth in either juvenile or adult facilities, case managers are potentially prominent figures in a young offender's correctional career. Table 14 shows the perceptions of case management in each type of facility.

For three aspects of case management, Table 14 shows that there are no significant differences in the structure and extent of case management activities between juvenile and adult facilities. Most youth were assigned a caseworker: 72% in juvenile facilities compared to 89% of the prison sample. The first contact for most youth was within the first week, and most reported that meetings thereafter were frequent. Performance contracts, a widely used social work tool, were more often used in juvenile facilities. However, the differences were not statistically significant.

Interestingly, the distinctions between adult and juvenile corrections become evident in respondents' evaluations of the quality of case management services. Each of six dimensions of case management were rated higher by respondents in juvenile facilities. These dimensions, describing staff-resident interactions, showed that staff in juvenile facilities were consistently more involved in the provision of counseling and remedial services and more concerned with the respondents' specific behaviors and progress. Again, these research findings would seem to offer evidence of the divergent philosophies and management strategies between juvenile and adult corrections. These results may be explained in terms of the more correctionally or management-oriented approaches of adult

Table 14

Youth Perceptions of Case Management

	Training School	Prison
Percent Youth Assigned Caseworker	72.0%	89.0%
Percent Reporting Time to First Contact Within 7 Days	58.5%	53.3%
Percent Reporting Meetings More than One Per Month	77.3%	86.4%
Percent of Youth Having Performance Contract	21.7%	7.8%
Extent Social Worker Has Been Helpful:		
Helped establish daily routine***	2.54	1.61
Helped youth get oriented to rules and procedures***	2.81	1.65
Helped youth understand consequences of rule-breaking***	3.21	2.12
Encouraged youth's participation in programs***	3.36	2.06
Provided youth with counseling**	2.71	2.10
Helped youth obtain needed services***	2.91	1.82

ANOVA:

*p<.05

**p<.01

***p<.001

prisons, or may be an artifact of the physical and demographic characteristics of the divergent settings. For whatever reasons, the net effect for youth in prisons seems to be a marked diminution of the quality of intervention services.

2. Interventions and Treatment

Specific treatment and remedial services were measured as well. Analyses compared youth ratings of each service or intervention. Table 15 shows that services in juvenile corrections were rated higher in three of five areas: medical care, counseling, and family relations. For educational and vocational programs, respondents rated juvenile and adult facilities about the same.

Adult prisons have traditionally provided education and training programs. In that light, the results in Table 15 are not surprising. Moreover, the attention in juvenile facilities to counseling and family programs is also traditional of juvenile programs (Vinter, 1975). However, the low rating of medical care in adult prisons is both surprising and troubling. Also, it is likely that there are cumulative effects across a range of services which translate to perceptions of overall institutional climate, and which in turn may have reciprocal effects for specific services. For example, the effectiveness of a counseling program may be influenced by the quality of other interventions such as medical care.

Table 16 examines the overall social climate in the institution, comparing the social climate in each setting using standardized scales. On each subscale, the social climate in training school is shown to have a significantly greater orientation toward intervention principles than in prison. Again, the dichotomy between treatment and custody is boldly illustrated. How staff interact with residents is determined by a variety of factors, from physical plant to staff training and qualifications, to institutional culture, and the backgrounds of the residents themselves. The results here are surprising only in their consistency across different dimensions of institutional social climate. Prisons, predominantly custodial facilities, are neither intended nor equipped to establish an institutional climate where the interactions between residents and staff promote social and personal development. When hundreds of adult offenders are housed in crowded facilities, the attention of staff and administrators understandably turns to custody and management of inmate behavior.

Table 15

Assessment of Treatment Approaches and Programs

Items	Training School	Prison
How helpful has the educational program been?	3.52	3.61
How helpful has the institution been in meeting your medical and health needs?***	3.28	2.63
To what extent has the staff helped you develop vocational skills?	3.37	3.75
How helpful were the programs in helping you to understand yourself, set personal goals, and deal with your problems?***	3.48	2.51
How helpful was the facility in improving your relationship with your family?***	2.98	1.65

ANOVA:

*p<.05

**p<.01

***p<.001

Table 16
Youth Perceptions of Social Climate

Scale	Training School	Prison
Social Networks***	3.58	2.89
Social Learning***	3.27	2.86
Youth Opportunities***	3.24	2.95
Goal Orientation***	3.61	2.79

ANOVA:
 *p<.05
 **p<.01
 ***p<.001

4. Violence and Victimization in Prisons and Training Schools

Whether the emphasis on custody and control in prison is warranted may be assessed in part through the victimization results in Table 17. Annual prevalence measures (the percent reporting each type of victimization within the past year) were compared in simple contingency tables with chi-square statistics. Over half of the residents in either type of facility reported being victims of property crime. Victimization from violence, on the other hand, ranged from 36.7% in training schools to 45.7% in prisons. However, aggregate data were found to mask important differences in specific types of crimes. For example, assaults with weapons were reported by one in four training school residents and one in three prison inmates. Sexual assault was five times more likely among youth in prison than in training schools, beatings by staff nearly twice as likely, and attacks with weapons nearly 50% more common. In summary, though the prevalence of property crime was comparable, the danger of specific types of violence seems to be far greater in prisons than in training schools.

Although the victimization results are not statistically significant, they nevertheless illustrate the increased danger of violence for juveniles sentenced to adult prisons. Prisons are designed to be institutions of punishment and control, with a secondary emphasis on rehabilitative interventions. Inmate codes tend to regulate violence in custodially oriented facilities, but general levels of aggression are higher in treatment-oriented facilities (Poole and Rigoli, 1983). Our data suggest the opposite is true.

It appears that a rather cruel and ironic form of punishment is accorded to transferred youth, where retribution for crimes against society occurs through victimization and physical punishment inflicted by staff and inmates. Judicial transfer decisions to criminal court, though intended to increase the punitive element of a sanction, do not mandate that such punishment include violence. Unfortunately, that appears to be a consequence of this decision. As we have seen, the risks of violence to adolescents increase dramatically when these individuals are transferred to the adult correctional system. Placed in large institutions among older inmates with serious criminal backgrounds, and often not segregated other than for sleeping, juveniles in adult prisons appear to suffer rape, aggravated assault, and other violent assaults at a far greater rate than juveniles who remain in the comparatively benign environment of a training school.

Table 17
Victimization

Items	Training	Prison
	School	
	% Yes	% Yes
Has anyone tried to take something from you by force or by threatening to hurt you?	15.3	18.5
Have you been beaten up by any inmates?	6.8	8.6
Have you been beaten up by any staff persons?	5.1	9.9
Has anyone stolen anything from you?	44.1	48.1
Has anyone damaged any of your things on purpose?	16.9	18.5
Has anyone attempted to sexually attack or rape you?	1.7	8.6
Have you been attacked with a weapon by anyone here?	23.7	32.1

Chi-Square:
*p<.05
**p<.01
***p<.001

VI. CRIMINALIZING YOUTH VIOLENCE: POLICY OPTIONS

In the past decade, most states have taken steps to promote stricter sanctions for juvenile offenders. In many states, laws and policies have been adopted to increase the transfer of juvenile offenders to the criminal court. Though the criteria and methods vary quite extensively across the nation, there appears to be a consistent underlying theme: a growing perception that serious and chronic juvenile offenders no longer are appropriate for the treatment-oriented juvenile justice system. Concerns for community protection and retribution have superseded the "best interests of the child," especially in the case of serious and violent criminality.

A. POLICY IMPLICATIONS

Behind this trend is a fairly clear policy goal: to punish juvenile offenders consistently and harshly through incarceration. Lacking confidence in the ability of the juvenile justice system to sanction or rehabilitate serious delinquents, policy-makers have looked increasingly to the criminal courts for punitive responses to youth crime. If bringing youth into criminal court increases both procedural and substantive punishment, we must measure the impacts and consequences of such policies. But if bringing juveniles into the criminal court is a symbolic process for deterring crime, then it is important to determine whether these ends are better served in the less formal juvenile court where "they may provide the quickest relief to continuing harm" (Reiss, 1985:26). This study examined whether these policy goals have been met, whether punishment was more likely and severe for violent youth transferred to criminal court or retained in the juvenile justice system, and what offense and offender variables best account for the transfer decision.

1. Accountability and Punishment

The results show that, at least in these five study sites, youth processed in adult court received harsher punishments than comparable youth processed in juvenile court. Despite extensive variation in the statutes and procedures for transferring juveniles to criminal court, nearly half the youth considered for transfer were eventually transferred. Moreover, adjudication rates in the juvenile court were comparable to the criminal court; overall, nine youths in ten were found guilty. Incarceration rates were also consistently

high in both systems. About three youths in four were sentenced (or committed) to state corrections, usually secure confinement. However, youth in criminal court were also sentenced to local jails. Accordingly, when all types of confinement are considered, violent youth in adult court are more often sentenced to some form of incarceration. Those not incarcerated in either system were usually placed on probation. Where the systems depart most, and where the criminal courts are indeed more punitive, is in sentencing practices. When county jail is included, the incidence and length of incarceration are far greater in the criminal courts. The average sentence lengths were at least two times, and for some offenses over four times, longer in the criminal courts.

2. Time to Outcome: The Process Is the Punishment

Though punishment may be "sure" in the criminal courts, it is by no means "swift." In each jurisdiction, cases took at least two times, and in one site five times, longer to reach disposition in the criminal court. The differences may be explained in part by procedure and court organization. For example, Phoenix collapses probable cause and amenability hearings, while other sites have a time-consuming appellate procedure for transferred cases entering the criminal court. These procedures alone, however, cannot explain the differences in case processing time. It may be that given more crowded dockets, the more frequent use of motions, and a generally more formal atmosphere, the observed case processing times in criminal court may be standard for cases of this severity.

A major consequence of the time interval is the extended stays in detention for transferred youth. Most transferred youth in the study remained in detention until sentencing--from 6.7 months in Phoenix to over 11 months in Newark and Boston. In all sites except Boston, detention was in an adult holding facility. Additional detention time accrued for those awaiting transfer to a correctional facility.

For these youth, a critical question is the conditions of detention. Coates et al. (1978) cited detention as the major predictor of recidivism in a juvenile corrections population. Recall that the average age of youth in this study is about 16 years. For youth who are housed for long periods of time in adult detention facilities awaiting trial, and then awaiting transportation to adult facilities, what kinds of services, if any, exist? Are those juvenile offenders receiving educational services in either detention or prison,

and if so, of what duration? In Massachusetts, for example, no formal treatment policies exist which differentiate convicted juveniles from older inmates.

3. "Natural" Criteria for Transfer

The harsh consequences of transfer suggest that the decision to remove a youth to criminal jurisdiction should be guided by explicit policy and criteria which express the intent of the transfer statutes. Formal, articulated standards for transfer to criminal court are absent from the statutes in the five states in this study, and in general across the nation (Feld, 1986). Instead, broad variation exists across states in the offense criteria and offender characteristics which qualify a youth for consideration for transfer. Within states, subjective factors such as "amenability to treatment" and "threat to community safety" are not operationally defined to guide judicial decision-making. The lack of articulated decision-making guidelines may invite disparity if not abuse, as has often been suggested (Keiter, 1973; Wizner, 1984). However, systematic abuse was not found in this study. On the other hand, lacking formal, operationally defined criteria, the courts relied on "natural criteria" which reflected normative attitudes about juvenile crime and punishment as well as the "going rate" for serious juvenile crime.

The results suggest that a limited number of factors can be identified as influences on the transfer decision, both within sites and among the cohort of violent offenders across sites. Offense and age criteria emerged as consistent discriminators of the transfer decision, indicating a narrow view among judges of the age and severity threshold where juvenile jurisdiction is no longer appropriate. Juvenile court judges appear to be concerned primarily with specific types of violent offenses, even within the restricted range of offense types in this sample. Murder, specifically, seems to be the offense targeted by juvenile court judges for transfer to criminal jurisdiction. In Boston, where there were no accused murderers in the sample, the crime of rape was predictive of transfer.

The contributions of age to the transfer decision do not imply simply that judges consider factors in adolescent development regarding age and amenability to treatment. Rather, age is related to jurisdiction. As youth approach the maximum age of juvenile court jurisdiction, prosecutors and judges evidently weigh the capacity for punishment in the juvenile justice system. Juvenile jurisdiction determines the length of incarceration, which may be viewed as insufficient for certain categories of offenses or offenders. This

was particularly evident in Phoenix, where the state supreme court held that juvenile corrections jurisdiction ends at age 18. Accordingly, the salient age-related factor for transfer is not simply the age/amenability relationship, but also the age/length of stay calculus.

The surprising finding that prior record did not enter either the local or aggregate models contradicts the widespread assumptions that judges weigh offense history (either length or severity) as a primary criterion for amenability to treatment. But the finding on age of onset as a predictor of transfer suggests that judges may view this factor as a proxy for length of career or prior rehabilitative efforts.

Race was not predictive of transfer, though racial disparities in other juvenile justice decisions have been widely observed. Though more minority than white youth were transferred, race effects disappeared when other variables were controlled. Minority youth were more often charged with murder, and murder was a significant predictor in multivariate models. Similarly, the age of onset (that is, first arrest and length of career) was earlier for minority youth, an age-related variable predictive of transfer. Thus, it appears that the effects of race are indirect, but visible nonetheless. Offense history is in part a function of police responses to youth crime, a process that is influenced strongly by neighborhood social context and status (Smith, 1986). The concentration of minority youth in the neighborhoods were Smith and others observed differential processing of minorities in arrest decisions suggests that these age-related offense history factors may be confounded by race.

The informal criteria and statutory language which seem to guide the transfer decision are so subjective as to invite disparity if not capriciousness by prosecutors and judges. The absence of formal criteria, coupled with the apparent "natural" transfer criteria, have several implications for juvenile justice policy and delinquency theory. First, even when guided by broad, non-specific standards lacking operational criteria, judges appear to focus naturally on rational, concrete factors in the transfer decision. To the extent that criteria for transfer should be formalized to support uniformity and reduce disparity in the decision-making process, such legislative standards or criteria should reasonably relate to the offender's age and the severity of the offense he is charged with. Feld (1986), for example, argues that the determinative factors in the transfer decision should be restricted to a narrow range of offense-specific factors, which contribute to consistent responses to serious juvenile crime. This should, as Feld states,

neutralize the "legislative impetus to take that decision out of their hands" (p.58). On the other hand, the absence of specific language with standards and criteria may invite further disparity and undermine fairness.

Second, though race is not a direct factor in the juvenile transfer decision, the indirect effects of race suggest that other factors, not incorporated in this study, may bear on the transfer decision. The over-representation of minorities in the transfer decision process suggests that social class and neighborhood may subtly influence judges. Perhaps judges assume that these factors contribute to the potential of, and opportunities for, rehabilitation for youth petitioned for transfer. The uneven distribution of intervention services, formal and informal social controls, and opportunities for prosocial activities in minority and (predominantly) white neighborhoods does not justify disparities in transfer decisions. There is a racial component to transfer, but apparently it is expressed through a variety of intervening characteristics independent of offense-specific criteria. Reducing disparity in transfer decisions will require addressing not only judicial disposition decision behaviors, but also larger social policy issues on the fairness and equity of available rehabilitative services and economic opportunities.

Third, transfer is a process resulting from multiple discretionary screening points, both by prosecutors and by judges. The initial charge determination and transfer motion are prosecutorial decisions. Judges then rule on a petition to transfer. The burden of proof remains for now on the prosecutor, but legislative disquiet (e.g., in New Jersey) may result in a shift to the defense. The disproportionate number of minority transfers, together with the extensive number of non-serious sentences in criminal court, suggests that transfer may lead to plea bargaining for a reduced charge and lighter sanctions. Whether this is an unintended consequence of transfer, or simply the result of expanding the universe of criminal court cases, it appears that regular criminal justice processes govern the disposition of transferred cases. Transfer is a serious decision that addresses not guilt but jurisdiction. But the lack of legislative criteria may invite prosecutors to regard transfer as a disguised plea bargain. This was not the original intent of the reformers who left transfer in the original juvenile court statutes. Statutory revisions should discourage such behaviors among those prosecutors who diminish the significance of the transfer decision.

Fourth, the distribution of committing offenses by race indicates that blacks in the juvenile justice system have a disproportionately higher rate of violent crime, particularly

homicide. These findings are consistent with nationwide data on black homicide rates, which indicate that blacks commit homicides at a rate seven times greater than anglos (Report on Black and Minority Health, 1985). The residual effects of such trends are seen in these data: more black youth are transferred, primarily for homicide. Once again, reducing the disparity in homicide rates for black communities may reduce disparities in transfer. In turn, this depends on reducing poverty and the economic inequality in black neighborhoods (Greenberg et al., 1985; Messner and Tardiff, 1986).

Finally, the disproportionately high rate of transfer for blacks has implications for adult corrections. The majority of transferred youth are convicted in criminal court and sentenced to lengthy prison terms. The current study also found that of the absolute number of youth sent to prison, minorities far exceeded whites (although a slightly smaller percentage of minority than white juveniles convicted in criminal court were given prison sentences). Thus, these processes may accelerate the already increasing prevalence of minorities in jails, detention centers, and prisons (Krisberg et al., 1984). These trends forecast future problems not only for correctional administrators but for the agencies and communities who must reintegrate youth returning from institutions.

4. Youth in Prison

Transfer laws result in the placement of serious juvenile offenders in secure institutions for longer periods of time than if they had been processed in the juvenile justice system. But incarcerating youth in adult prisons, whether for punishment or incapacitation, is only one side of the broader crime control issue. Policy-makers and correctional administrators must pay greater attention to the consequences of the increasing use of transfer laws.

The increased exposure of juveniles to violence in adult facilities may increase the chances that they will exhibit violent behavior upon release. Victimization by violence has well-established etiological consequences in subsequent violence and crime (Akers, 1977; Singer, 1986; Fagan et al., 1987a). Victimization by sexual assault has specific etiological consequences for subsequent sexual aggression toward women (Groth and Birnbaum, 1979) and children (Finkelhor, 1984). For although transfer decreases community risks through lengthy incapacitation of violent youngsters, it carries both fiscal and social costs. The social costs of imprisoning young offenders in adult facilities may be paid later in crime and violence upon their release.

The policy implications of the current research can be related to mounting evidence about the liabilities of placing offenders, particularly juveniles, in a punitive correctional institution (Eisikovits and Baizerman, 1983). Several studies, for example, have shown a relationship between institutional policy and inmate behavior. Peretti (1970) discusses the "social climate" of institutions and claims that a social climate based on rehabilitation (as opposed to punishment) is more likely to bring about positive change in inmates. Moos (1970) similarly focuses on the social environment of correctional institutions and also maintains that positive social environments are more likely to bring about positive inmate change. More recently, Feld (1981) conducted a comparative study of types of institutions and found that juveniles in custody-oriented facilities had worse attitudes and institutional behavior than youth in rehabilitatively oriented facilities.

The findings of these studies indicate that institutional policies and practices do have an effect on institutional behavior, if not on post-release behavior (Flanagan, 1981). Krohn (1980) points out that there is not much relationship between the attitudes of prisoners about their pre-conviction criminal justice experiences and their experiences in prison. Attitudes about prison, Krohn claims, are greatly related to inmates' relations with prison staff. Thus, even prisoners who have negative attitudes about the police and prosecutors can have favorable attitudes about their prison experiences.

The experiences and needs of juveniles in adult correctional facilities have received little attention in research or policy. It is particularly important to recognize their unique position in the social hierarchy of prison and the vulnerability which accompanies such power differentials. The seriousness of their commitment offense may further obscure the fact that they are adolescents, who want and need programs to help them gain employment and social skills to avoid further crime. Flanagan (1981, 1982), moreover, suggests the importance of better planning for long-term prisoners. The juvenile offenders in this study, with an average sentence of 29 years,²³ certainly fall in this category. A young person hearing that he may be locked up for 10 or 20 years may have difficulty envisioning an end to that term, easily believing that there is no tomorrow. Correctional administrators should attend not only to the custody needs of such inmates, but also to their program needs.

The isolation of adolescent offenders in secure adult institutions for lengthy sentences raises the danger of prisonization, i.e., an "institutionalized" personality. During the years when the transition from adolescence to adulthood occurs, when social skills and

cues are learned, these youth will know little else other than the institutional world. The social rules and norms learned are those that prevail in the institution, including the reciprocal cycle of victimization and retaliation. The etiological implications of sexual assault and violence in prison are often not considered in the debates on crime control measures. In developing policy for violent delinquents, administrators and legislators should weigh the risks of future crime and violence from increased exposure to violence in prison, deprivation from the normalizing influences of meaningful contacts with natural social networks, and unmet treatment or remedial needs.

The calculus of transfer policy shown here suggests that the social benefits in terms of public protection and retribution may be offset by the social costs of imprisoning transferred youth. Placing young offenders in adult correctional facilities for long periods of time may have hidden or delayed costs; the harm which accrues may outweigh the short-term benefits of reduced community danger. The vast majority of such offenders (virtually all in this study) will eventually be returned to society. Policy-makers must ask whether society is at greater risk from youth who spend one to three years in a system designed to "treat" them or from youth who spend 10-15 years in a system designed to "punish."

B. TRANSFER AND THE QUESTION OF YOUTH

The transfer decision has at its heart the finding that the young offender is no longer a child. Though children have traditionally been given special consideration in our society, the boundaries of childhood are at best artificial (Conrad, 1981). Society has varying definitions of the end of childhood for different purposes or responsibilities: the right to vote (18), the authority to drive an automobile unaccompanied by an adult (as young as 16 years in some states), the choice to marry (16), the right to drink alcohol (21 in most states), and the right to die in combat (18). Obviously, the debate is unending as to when the notion of childhood as a "state of unreadiness" ends. There is little agreement on an age threshold when sanction sensitivity is sufficient to merit criminal, or punitive, responses to law violations (Greenwood et al., 1980).

The changes in court jurisdiction and transfer practices in delinquency matters signal shifts in the philosophical and theoretical underpinnings of juvenile justice policy. This in turn suggests changes in society's views of adolescence and the limits of the state's power to affect moral development. At its core is a debate over who is a child, and

therefore, deserving of special consideration. The once clear demarcation at age 18 between the juvenile and criminal justice systems is moving steadily toward a more varied approach encompassing features both of the offense and the offender. The general trend is a lower age of criminal jurisdiction, especially for serious and chronic juvenile offenders (Feld, 1986). Rubin (1985) suggests a reduced age of criminal jurisdiction for specific categories of serious and violent juvenile crime, while Feld (1986) argues for narrow age-prior record-offense criteria to restrict eligibility for transfer. In each case, these changes would minimize discretion and reserve the harsh criminal court process for "dangerous" offenders. But they take different views on whether the waiver decision should be made by the judiciary or the legislature. Moreover, several reductions in the age of majority overlook the serious consequences of transfer for young offenders sentenced to prison.

The downward trend in the age of adult responsibility for criminal acts and the increasing use of transfers (Hamparian et al., 1982) suggest that there are a variety of behaviors and personal attributes that may signal an end to adolescence, and that efforts aimed at moral or social development are no longer appropriate. Furthermore, the variation in ideas about the end of adolescence is reflected in a variety of statutory schemes regarding transfer criteria. In some states, policies to operationalize these new social concerns are keyed to the *offender* (in terms of age, prior crimes, and earlier attempts to rectify delinquency). In other states, the limits of juvenile jurisdiction are defined by the *offense*: those charged with certain offenses are deemed beyond rehabilitation. In these states, transfer to criminal court may serve the goals of retributive justice, deterrence, or incapacitation (Thomas and Bilchik, 1985). Still other states have chosen to combine age, background, and crime in a "flexible" policy that embraces parts of both systems. These discretionary policies suggest that there is an age-crime relationship which can inform decisions as to whether rehabilitation or punishment is most likely to reduce crime for certain offenders.

There are important questions regarding the threshold of adolescence. To the extent that the correlates of crime are unrelated to age, it may matter little at what age we choose to punish an offender rather than to provide assistance. We know that age alone is not an accurate predictor of sustained involvement in crime (Hirschi and Gottfredson, 1983). Why then should policy be linked to age thresholds that appear to be unrelated to crime? There is little empirical justification for age-based definitions of juvenile jurisdiction. Similarly, imposing behavior-specific limits on juvenile jurisdiction suggests

that there are salient etiological distinctions between juveniles and adults. Such policies rely on an age-behavior relationship which indicates when rehabilitative intervention becomes extraneous to the causes of crime. Accordingly, some 16 year old offenders may be less amenable to treatment than others based either on extra-legal factors or patterns of prior delinquency.

The operationalization of age, offense, and amenability criteria pose further complex questions. The burden of proof remains on the state to provide convincing evidence that processing a juvenile in juvenile court would be either ineffective or pose a threat to the community (Thomas and Bilchik, 1985). However, in New Jersey (Fisher, 1985) and a growing number of other states (Rubin, 1985), the burden of proof has been shifted to the defendant, particularly for serious and violent crime. What is the age threshold when certain behaviors signify that character is formed beyond the intervention of contemporary treatment programs? How have the juvenile courts and the legislatures codified these empirical questions? And what have been the consequences in consistency of decision-making from the current statutes which define the legal limits of adolescence?

This study has examined the judicial transfer decision for violent youth in five urban juvenile courts. Violent youth account for less than one-third of all youth transferred, yet they are a central focus of juvenile justice attention. Accordingly, our initial expectation was that virtually all of our sample youth would be transferred. We were wrong. The percentage of youth transferred varied from a low of 21% in Boston to a high of 71% in Phoenix and we know now the transfer has particularly harsh, perhaps unforeseen, consequences for youth placed in adult prisons.

The absence of uniform criteria used by juvenile court judges in making the transfer decision is, itself, a finding. A number of possible explanations might apply. First, because of the small number of cases at each site, the wide variation in the proportion of cases transferred and the lack of variation in the explanatory variables, our analytic efforts may have been biased. We examined only violent offenders, yet they are not a homogeneous group, with great diversity in age, delinquent careers, prior interventions, and contexts surrounding their offenses. Second, it is likely that juvenile court judges used additional criteria (not measured in this research)--factors that may or may not be legally justified. Probation reports, family histories and psychological evaluations, may contribute to the transfer decision. Outcomes of previous court interventions also weigh on judges. It is difficult to measure empirically the extent to

which the nature and type of such reports, histories, and evaluations, may have influenced the judicial waiver decision. Other factors that may be related to the transfer decision, such as the youth's dress or demeanor in court, are difficult to assess quantitatively. Apparently, factors unrelated to statute or offense contribute significantly to transfer.

C. TOWARD A TRANSFER POLICY

The basic precepts of fairness and equity, together with the reality of harsh consequences of transfer for adolescents placed in adult prisons, suggest that waiver eligibility be restricted to objectively defined categories of offenses and offenders. There appear to be no empirical grounds for positivistic notions that we can ferret out, using vague notions of character development and guesswork as to who will benefit from unevenly provided treatment interventions, those youngsters whose characters and behaviors are still open to change from those who are molded for the duration. Social science affords few clues to suggest an age threshold when adolescence ends and rational, deliberate behavioral decisions begin. Nor is there data to determine which behaviors signal that the character is fully formed and beyond changes which might result from treatment interventions or even natural maturational processes. Nevertheless, there is public agreement that juvenile justice should include protective and punitive dimensions, though not at the exclusion of rehabilitation.

When transfer is invoked, it should reflect the fact that youth have crossed a behavioral threshold which calls for a correctional response which the juvenile system may be unable to provide. That is, transfer as a last resort disposition should proportionately respond to adolescent misbehaviors which are more serious than those who are not transferred. The decision to transfer should reflect the fact that waived youth have committed more serious law violations than youth retained in the juvenile system. To the extent that some adolescents should be excluded from the juvenile court, the criteria should reflect only objective, operationally defined behavioral thresholds within the statutorily determined juvenile jurisdiction. Waiver provides an option for community protection when other last resort dispositions in the juvenile justice system have failed or cannot assure a period of incarceration which satisfies community sentiments for punishment. Generally, transfer statutes agree that this last resort juvenile disposition should be reserved for serious and violent offenders whose past and current behaviors suggest that community protection should take precedence over rehabilitative factors.

In formulating a transfer policy, the first consideration is whether the decision should be made judicially, based on standards and provisions defined by statute, or legislatively, by excluding specified offenses or offenders from juvenile court jurisdiction. The issue mirrors a broader context and debate on the shifting regulatory environment--should judicial decisions be regulated by legislative standards or preempted by legislative fiat. Though legislative waiver offers to minimize or even eliminate discretionary decisions, they threaten to concretize earlier decisions and cut off opportunities for adjustment and tempering of other discretionary decisions. For example, legislative may waiver place broad discretionary powers in the hands of prosecutors. But judicial waiver provides a forum for questioning and even neutralizing decisions made elsewhere. The evaluation and weighing of statutory criteria within a judicial forum is essential to the balance between defense and prosecution, as well as the concerns of the electorate with the precepts of law and statute.

The criteria for waiver should reflect behavioral concerns, not age. Social laws and conventions send inconsistent messages on age. We are uncertain when adolescence ends, and seem to vary that assessment depending on the behavior at issue. The harsh consequences of waiver suggest that it should be reserved for the most serious offenders--those accused of violent crimes. Prison space is scarce and expensive, and only those who threaten public safety should be placed there. The chronic property offender, the target of waiver in many jurisdictions, can be monitored and socially controlled in less restrictive settings using surveillance and nonincarcerative sanctions which punish by deprivation of liberty and imposition of restrictions on choice.

Accordingly, transfer should also be reserved only for those violent offenders whose past behaviors indicate a pattern of aggressive acts which merit punishment as well as incapacitation, proportionately greater than the responses of the juvenile system. There is general agreement that the probability of further violent behavior is best predicted by past violence, and that the transitional probability from the third to continued violent offenses is far greater than the probability of a third offense given a second or first (Hamparian et al., 1978; Shannon, 1985). This suggests that at least two prior violent felonies and a current charge for a violent felony, should qualify a youth for transfer. Prior behaviors should be certified by prior adjudications, rather than simply prior petitions (i.e., charges). The use of an adjudication-based threshold reflects the varying cultures of juvenile courts in using formal or informal case processing (Ito and Stapleton, 1982; Rubin, 1985). Adjudication provides a consistent basis for evaluating prior behavior

and avoids disparities from regional or even courtroom differences. Any exceptions to this criterion, for example in homicides or other capital crimes, should be reserved only for these lethal acts and should reflect community attitudes about crime and punishment as well as proportionality regarding these most serious offenses.

Two prior adjudications, not one, reflect important new information about the ability of the juvenile justice system to establish programs which can provide rehabilitative interventions while assuring that both punishment (in secure settings) and community protection are guaranteed for substantial periods (Fagan and Hartstone, 1986). Several recent studies have shown that small community-based secure care programs can effectively respond to violent delinquents with a balance of punishment and social interventions befitting of their adolescent status (Coates et al., 1978; Krisberg, 1986; Greenwood and Zimring, 1985).²⁴ Recent innovations in juvenile corrections suggest that there are dispositions within the juvenile system which might extend the threshold where last resort options such as transfer are invoked. In the current study, the inability to identify salient, consistent and objective legal factors for transfer for youth with two violent offenses, suggests that we should extend the threshold for transfer in light of promising new correctional interventions for the most problematic youth in the juvenile system.

The consequences of transfer also suggest that age minimums should be set--it is unwise if not cruel to send a younger adolescent to an adult prison. But we are concerned with an asymmetrical decision--remember that it is the juvenile who is deemed the adult in a transfer proceeding, not the adult shunted back to adolescent status. Accordingly, the setting of an age minimum of 16 years for placement in adult corrections should reflect waiver's one-way street, and the permanency of the decision. Moreover, if the youngest eligible offenders are waived, provision should be retained for reversing the waiver either for correctional placement or custodial care until the youth reaches an age and physical stature which is appropriate for treatment as an adult. Remember that we are speaking of adolescents whose maturation is not complete, and whose character will be shaped by their social worlds in this age period. To avoid creating a generation of "prisonized" young offenders with extremely high likelihoods of reoffending, there must be careful attention to according them the basic social developmental benefits to which all youth are entitled: education, job skills, counseling, and interpersonal contact. These are, after all, children and adolescents.

The jurisprudence of transfer should be a procedural hearing which certifies the eligibility of the prior offense criteria and which establishes the grounds for the current charge. In effect, the transfer hearing should establish probable cause for the current offense as well as the severity of the charges, to avoid spurious charges which may relocate a youth to the criminal system. The burden of proof in a probable cause hearing rests with the state, not the offender. The use of both offense-based criteria and procedural and evidentiary standards to establish eligibility for transfer expresses the legal and objective underpinnings of the proposed transfer policy, and the movement away from the subjective and standardless criteria which infuse many contemporary statutes. Retaining the burden of proof with the prosecution also reflects the current balance of powers within the judicial process, and ensures that transfer to the criminal system will occur only when the state has established grounds that an alleged offender has been involved in this offense.

Inconsistent and standardless decisions for youth retained in the juvenile court are not surprising in a judicial context which cherishes individualized justice, although even this notion is increasingly subject to challenge (Forst et al., 1985). But for youth who may be tried and convicted in criminal court and subjected to years of imprisonment in a secure institution, such subjective decision-making is no longer justified. This is not to suggest that there should be no variation in decision-making criteria and practices *among* states. Each state has, naturally, lawful authority to decide which offense and offender characteristics and relevant to the transfer decision. *Within* states, however, the doctrines of fundamental "fairness" and "equal protection" suggest that formal, articulated criteria should be established to promote equitable and consistent transfer decision-making.

NOTES

1. RCW Sec. 13.40.010.
2. In 1978, New York State enacted legislation which placed original jurisdiction to the Criminal Court for specific felony violent and serious juvenile offenses committed by youth 13-15 years of age. See Singer and McDowall (1986).
3. Early efforts to exempt young people from criminal punishment focused on children, usually those who had not yet reached adolescence. The creation of a legal separation between adolescents and adults was a later invention. See Platt (1977), Zimring, (1981), and Schlossman (1983), for analyses of the historical processes leading to this distinction. The return to earlier notions of adolescent responsibility for criminal acts reflects the thinking which preceded the House of Refuge in 1825 (Pickett, 1969).
4. Adolescents lived in a "gray" area in the century preceding the formal juvenile court in 1899. With the first House of Refuge (Pickett, 1969) in 1825, there was a social if not legal distinction between adolescents and adults. Thus, the "invention" of delinquency (Platt, 1979) in part reflected a shift in the legal age of responsibility, to reconcile legal views with the social reformers' views earlier that century.
5. Ironically, rarely is there mention of *swifter* justice, despite its theoretical relevance to deterrence and social learning.
6. Interestingly, recent efforts to incorporate punishment with treatment are based on the notion that such "social learning" is part of the rehabilitative process. See: Jensen, 1978, for a discussion of the social meaning of sanctions.
7. Homicide cases for youths age 13 originate in criminal court under the J.O. Law in New York, while other offenses (e.g., aggravated assault) originate in the criminal court at age 14.
8. Transfer, bindover, certify, remand, refer and waive are all words used interchangeably to describe the process whereby a youth, through a petition filed in the juvenile court ends up in the criminal justice system to be tried as an adult.
9. Arkansas, Nebraska and New York.
10. 383 U.S. 541 (1966).
11. Ibid at 566-67.
12. The URSA Institute has been evaluating the Office of Juvenile Justice and Delinquency Prevention's Violent Juvenile Offender Research and Development Program since January 1982. Four sites were initially selected to implement the intervention model: Boston, Memphis, Newark, and Phoenix. Detroit was added in the Spring of 1983. The Transfer sub-study was also added in 1983.
13. The criteria for being defined as a violent juvenile offender were that a youth must: (1) have a presenting violent adjudication (murder/attempted murder, rape/attempted

rape, aggravated assault, armed robbery, arson of an occupied dwelling, kidnapping) and (2) a prior adjudication for a felonious person or property offense. Only youth possessing a presented adjudication of murder 1st degree did not require prior adjudication.

14. As a result of differences in record keeping across sites, data were collected and analyzed for different years across sites. Specifically, data presented in this paper represent youths considered for transfer in: 1981-82, Boston; 1981-July, 1983, Phoenix; 1983-1984, Newark, Detroit, and Memphis.
15. Kronbach's alpha for the four social climate scales are as follows: Social Network = .81; Social Learning = .87; Youth Opportunities = .39; Goal Orientation = .69.
16. In cross-classification analyses, the independent variables were dichotomized not only to simplify analyses, but also to increase cell sizes.
17. Mass. Gen Laws Ann., Ch. 119, Sec. 61; Mich. Comp Laws Ann., Sec. 712A.4; N.J. Stat. Ann., Secs 2A:4-48 and 4-49; Ariz. Rules of Procedure for Juvenile Court, Rules 12, 13, and 14.
18. Minority youth were aggregated in the subsequent analyses since the cell sizes for some minority groups were too small for analysis and tests of significance.
19. Note that Memphis was not included in these analyses because court records could not distinguish those youths considered for transfer, but retained in juvenile court.
20. In Phoenix, two of the youth charged with murder were 17 years of age and were subject to virtually automatic transfer policy.
21. The samples for both violent delinquents in juvenile court and the considered-for-transfer population were universes of those meeting the selection criteria for the sampling periods. Thus, differences are absolute, not reflections of generalized trends to larger populations.
22. Discriminant analysis is designed to classify a dependent variable into two or more groups based on the configuration of the independent variables. A discriminant function is produced with coefficients which signify the relative contributions of each independent variable in classifying cases. Thus, the values of the coefficients tell their relative importance in the model. A classification table is also produced which displays the percentage of cases correctly classified based on the discriminant coefficients. By using a stepwise procedure, the order of entry of the independent variables provides information on their relative strength independently. The coefficients tell their relative contributions in the multivariate model.
23. With the possibility of parole in indeterminate sentences, the transferred youth, as a group, probably will serve about ten years.
24. See also: Schwartz, Ira (ed.) (1987). *Reinvesting Youth Corrections Resources: A Tale of Three States*. Minneapolis: University of Minnesota.

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APPENDICES

Appendix I

Race by Site for Juvenile Court and Considered-for-Transfer Samples

Race	Juvenile Court				Considered for Transfer			
	Boston (N=58) %	Detroit (N=51) %	Newark (N=93) %	Phoenix (N=23) %	Boston (N=29) %	Detroit (N=13) %	Newark (N=51) %	Phoenix (N=28) %
Anglo	28	10	0	26	31	9	0	18
Black	71	88	92	26	62	91	100	14
Chicano	0	0	1	43	0	0	0	64
Asian	0	0	0	0	0	0	0	0
Other	2	2	6	4	7	0	0	4

Appendix II

Frequency Distribution of Offense by Race and Site

Offense	Race	Boston		Detroit		Newark		Phoenix		Total
		Juvenile Court Only	Considered for Transfer							
Murder	Anglo	3	0	1	2	0	0	2	0	8
	Minority	3	0	6	31	15	9	1	5	70
Kidnap	Anglo	0	0	0	2	0	0	1	1	4
	Minority	0	0	0	1	2	6	0	3	12
Rape	Anglo	0	0	1	1	0	0	0	0	2
	Minority	0	1	10	11	3	2	0	0	27
Aggravated Assault	Anglo	8	8	1	3	0	0	1	2	23
	Minority	23	12	13	28	25	17	13	10	141
Robbery	Anglo	4	1	1	0	0	0	2	2	10
	Minority	14	7	23	14	43	17	2	5	125
Total		55	29	56	93	88	51	22	28	422