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Adult Court Transfer: A Move Toward Tougher Handling?

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INTRODUCTION<sup>1</sup>

Transfer of juveniles accused of serious offenses to be tried as adults in adult court has long been an option open to the court. In recent years, however, the process has increased in popularity and in legislative activity. This has both immediate and long-term, fundamental causes.

The immediate precursors to legislative activity in the area of the transfer process certainly include Kent v. United States (1966) in which the United States Supreme Court upheld the right of the juvenile to a transfer hearing where social background information would be considered and a statement of reasons for transfer would be required. Specific criteria for such a transfer were cited by the Court in an appendix to the decision as an example of what reasons might be stated by the court for transfer. The criteria specified covered the seriousness of the offense to the community and to the victims, the degree of premeditation, consideration of whether the juvenile's associates would be tried in adult court, the juvenile's maturity, prosecutive merit of the case, the juvenile's prior criminal record and the likelihood of rehabilitation. The specification of these criteria by the Supreme Court was followed by a spate of legislative activity in a number of states producing considerable legislation that included these criteria for transfer decisions (Sorrentino & Olsen, 1977). California was one of those states, and this report addresses the effect of the legislation on the handling of serious juvenile offenders.

More important to this analysis, however, are the more fundamental processes that underlie the recent focus on transfer. Perhaps the most powerful societal force behind the increased interest in the transfer process is a general desire to "get tough" on juvenile crime over the past ten years (Zimring, 1981). This

<sup>1</sup>My thanks to Margaret Heim for her significant contributions to the literature review.

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corresponds to a general drift from the ideal of rehabilitation as a goal of the criminal justice system to a focus on retribution or punishment. While this attitude, to some degree, characterizes both the juvenile justice system and the criminal justice system, the juvenile system continues to maintain an ideal of rehabilitation to a greater extent than does that for adults. The increased public concern for "getting tough" on serious juvenile crime and the perception of the adult criminal justice system as more "tough" or retribution-oriented than the juvenile system has been a major force behind the increased effort to make it easier to transfer juveniles to adult court (Conrad, 1981).

The clear assumption in this movement is that more severe punishment results from adult than from juvenile justice system processing. Whitebread and Batey (1981) describe six theories of punishment in an attempt to develop a theory of waiver. All but one theory assume greater severity in the adult system. Zimring (1981) maintains that inadequate levels of punishment available in the juvenile system is the only justification for waiver.

However, a substantial segment of conventional wisdom maintains that juveniles are actually at greater risk for severe treatment in juvenile court than are adults for similar activities. This is because, 1) juveniles have limited civil rights within the juvenile court, compared to the adult court, and 2) many juvenile cases seem trivial by comparison to adult cases. This thinking is supported by such famous cases as in Gault (1966) where it was argued that denial of due process for juveniles could result in the court's misuse of its discretionary powers concerning the treatment of juveniles. Young (1981) also epitomizes this thinking in saying that as a juvenile court judge, he believes that serious juvenile offenders are handled best by the juvenile court where more serious offenses will result in more severe treatment.

An important question, therefore, which is central to this paper, is

whether or not juveniles transferred to adult court receive more severe treatment than do those who remain in juvenile court. Existing empirical analyses do not conclusively answer this question. Several studies find more severe treatment in adult court. Eigen (1981) compares adults with juveniles in both adult and juvenile courts with respect to convictions and sentences for robbery and homicide cases. He comes to the conclusion that "...the certified (transferred) juvenile receives at least as severe punishment, and in some cases perhaps harsher sanctions as well" (Eigen, 1981; p. 343). Greenwood, Petersilia and Zimring (1980) compare young adults with older juveniles for their treatment in the two systems and indicate that juveniles seem to receive some leniency compared to adults in convictions and incarceration but the relationship is highly dependent on offense severity and prior record.

On the other side of the question, Roysner and Edelman (1981) analyze the New York Juvenile Offender Law which provides for jurisdiction to begin in adult court for certain serious crimes. Under this system youthful offenders in adult court seem to be dismissed or receive unsupervised probation much more often in adult court than in juvenile court. This is largely explained by the presence of rather trivial offenses that are labeled officially with serious charges. It is possible that these types of offenses would be taken more seriously in juvenile court than adult court. The dominant theme among their findings was that transfer to adult court provides an increase in discretion and therefore in variability in handling serious juvenile crimes and offenses.

Finally, Judge Young (1981) refers to a study completed by the National Center for Juvenile Justice comparing Pittsburgh and Buffalo in their handling of 16-year olds under their different systems, Pittsburgh handling them as juveniles and Buffalo as adults. This study, though methodologically flawed, supports his viewpoint that juveniles handled in adult court are treated more leniently than are juveniles in juvenile court.

In the current study, the question of the relative severity of the two systems will be examined in the context of recent waiver legislation in the state of California. The new statute allowed that the change alone could be reason for a transfer hearing for a 16- or 17-year-old juvenile.

However, a transfer hearing was not required by law even if the change was one of those listed in the legislation. The effect of this law was to increase the discretion of the prosecutor and the court in making the transfer decision, while encouraging more liberal use of the procedure. This arrangement aids in evaluating the difference between the two systems in convictions and sentences because it yielded considerable overlap in types and severity of cases handled by the two courts, thereby allowing more valid comparisons than is usually the case.

#### METHODS

This report is based on data collected for a larger study that was concerned with the impact that new juvenile justice reform legislation (AB3121) had on the transfer process in California. The nature of the larger study explains the choice of sites and of sampling periods. This statute took effect on January 1, 1977; since we wanted a pre-legislation comparison point, as well as a sample processed after the new law went into effect, we studied transfer in 1976 and 1977. All cases subjected to transfer hearings (referred to as fitness hearings in California, because the hearing officer is to decide whether or not the accused is "fit" for juvenile court) during that period of time were part of our cohort (except for 1.45% or 5 cases, in Alameda County which could not be located in the file). This amounted to 565 cases in Los Angeles and 339 cases in Alameda County. These two counties were selected because they experienced the largest post-legislation increases in fitness hearings and in transfers to adult court, but their data cannot be assumed to represent the State.

#### Measures of Severity

The central issue of this paper is the relative severity with which the two systems handle juveniles considered for adult court transfer. We have defined and measured severity in three ways: first, the proportion of cases convicted in the two systems; second, the proportion of cases incarcerated after conviction; third, the place or type of incarceration.

#### Data Collected

A large amount of data were collected on each individual in the cohort using arrest reports, district attorneys' files, probation files and court files. The information collected fell into five categories: (A) aspects of the offenses charged, (B) features of the incident other than the offense itself, (C) the subject's history with the juvenile justice system, (D) features of the fitness hearing, (E) outcome variables.

- A. The items under the heading of Offense Data are:
  - 1. Intake charges (up to six).
  - 2. Types of weapons used
  - 3. Amount of injury inflicted
  - 4. Amount of property damage or loss
- B. The items under the heading of Features of the Incident are:
  - 1. Type of complainant (Family Individual, Private Individual, Private Business, Public Agency)
  - 2. Type of victim (same categories as above)
  - 3. Degree of advance planning of the offense
  - 4. Instigator of the incident
  - 5. Victim's gang status
- C. The items used to describe the subject's history with the juvenile justice system are:

1. Number of prior police contacts
  2. Number of prior probation referrals
  3. Probation status at time of hearing
- D. The items used to measure aspects of the fitness hearings are:
1. Type of defense attorney (Private, Court Appointed, or Public Defender)
  2. Presiding officer (judge, referee, commissioner)
  3. Probation officer's recommendation
- E. Outcome variables are:
1. Type of entry into the adult system (not Refiled by Police, Rejected by Adult D.A., Dismissed at Preliminary Hearing, etc.)
  2. Outcome of the fitness hearing
  3. Conviction (or none) on each charge
  4. Sentence

#### Characteristics of the cohorts

The juvenile offender population that is the subject of this analysis represents a restricted range of seriousness. The results reported here cannot be generalized to all levels of offenders, juvenile or adult. In addition, the two counties differ in their client characteristics, and this fact must be taken into account in interpreting differences in transfer processes between the two counties.

The variables that have, over the years, shown the most consistent predictiveness in studies of system processing of clients are those that reflect the seriousness of the offense and the subject's prior history with the system. Not coincidentally, these are also the variables that carry legal justification for use in system decision-making. The exception to this is in the decision to convict or not, which should only be influenced by the quality of evidence. Unfortunately we have no good measure of evidence quality that would allow a test of this factor, nor

can we control for it. It is unlikely however, that many cases brought to a fitness hearing would be poor cases legally. We will, therefore, assume equivalency on this variable across courts. Seriousness of offense and prior offense history, then, will be the basis for description and comparison.

#### RESULTS

Table 1 presents the types of offenses dealt with in both counties. The bulk of the offenses represented are quite serious but the average in Alameda County is substantially less serious than in Los Angeles. Weapon use was common, especially in the Los Angeles cohort (Table 2). Nearly half of the Los Angeles cohort inflicted some injury to the victim, while less than 25 percent of the Alameda cohort did so (Table 3). About two-thirds of both groups caused property damage or loss (Table 4). For both counties juveniles given fitness hearings have substantial records with the police. Again, by this criterion the Los Angeles group has more serious offenders (Table 5). In addition, a perusal of these Tables indicates that the juveniles who were found unfit are a more serious group than those who were found fit. However, a large enough number of serious offenses and offenders on all criteria are present in both fit and unfit groups to allow meaningful comparisons of outcomes across the two court systems.

On the face of it, Table 6 indicates that, in both counties, there is a slightly greater chance of being convicted in juvenile than in adult court, ignoring possible differences in the types of cases sent to each and in the quality of evidence associated with court of trial.<sup>2</sup> To adjust for possible biasing effects of the transfer decision, a multiple correlation analysis was completed. The aim of this analysis was to determine the amount of variance

<sup>2</sup>It should be noted that "conviction" is an improper term here; technically, juveniles cannot be "convicted" in juvenile court, but they have their petitions sustained. However for the sake of language simplicity, the adult court terminology will be used throughout.

explained in conviction by court of trial, while controlling for the effects of potential confounding variables. Potential confounding variables were identified by the correlation of all variables related to the incident, the offender and the offense with court of trial. Any variable that correlated at .1 or above with court of trial was entered as a controlling variable. As can be seen from Tables 7 and 8, for both counties only .9% of the variance in conviction is explained by court of trial (juvenile or adult court), after controlling for biasing variables. These control variables are quite similar across counties, but are not identical. In both counties, the subject's prior history, prior probation status, the nature of the charges and the number of charges leveled were all controlled. In Los Angeles County it was also necessary to control for subject's gang status, and in Alameda County the instigator of the incident (offenders, companions, or victims) was correlated with court of trial sufficiently to warrant its use as a control variable.

Based on these analyses, it would seem that, at least in the two counties studied, the idea that it is easier to get a conviction in juvenile court (presumably because of less restrictive rules of evidence) is not supported.

Table 9 begins to address the matter of sentence severity as it relates to court of trial. It shows the percentages of juveniles who have fitness hearings and who are found guilty, who are ultimately incarcerated. One of the more noticeable features of the Table is the fact that there is a considerably higher rate of incarceration in Los Angeles County of these types of offenders than in Alameda County. This probably reflects the difference in offense severity represented by the two counties. It is also true, however, that, without controlling for offense severity and for prior record, juveniles tried in adult court seem to be more likely to receive sentences including incarceration than are juveniles tried and convicted in juvenile court. Tables 10 and 11 display the results of the analogous analysis performed with relevant variables controlled. The same control variables were used in this analysis as in

the guilt outcome analysis, but the result is different. In both counties, being tried in adult court is positively related to incarceration, but over six percent of the variance in incarceration is explained by court of trial in Alameda, while only 2.3% of the variance is similarly explained in Los Angeles County. Juveniles tried in adult court in both counties, are somewhat more likely to receive sentences involving incarceration than their counterparts in juvenile court.

It is important to note again, at this point, that the cases sent to adult court overlap in seriousness with the cases remaining in juvenile court to a very large extent. Two good measures of the seriousness for a case are injury inflicted and property damaged or lost. These measures were related only very weakly with court of trial ( $r < .1$ ). The strongest relation was with the category of "death" within the injury variable. This was controlled by the charge variable of homicide, and even then, it can be seen that there are a substantial number of homicides in the juvenile court as well as the adult court. Once this category is removed, there is little relation between injury inflicted and court of trial. It therefore seems reasonable to assume that the controls for case seriousness as a biasing factor are adequate, since few were needed.

The final measure of treatment severity is the type of incarceration experienced by juveniles sentenced from adult and juvenile courts. Some practitioners within the juvenile justice system have speculated that the transfer process may not be worth the time and effort because juveniles convicted in adult court can still be sentenced to the California Youth Authority, an institution serving the juvenile court as well. Further, they considered it likely that convictions would be harder to obtain in the adult court (Young, 1981). Table 12 indicates that, indeed, a substantial number of juveniles convicted in adult court are sent to California Youth Authority. However, almost half are sent to adult institutions, either to the state penitentiary or to a county jail. Penitentiary and jail placements are

not available to the juvenile court. Interestingly, the overall percent of convicted juveniles from adult court who are sentenced to adult institutions is somewhat higher in Alameda than in Los Angeles County. However, in Alameda County, the offenders are more likely to be placed in county jail than in state prison; in Los Angeles County the proportions sent to each of the two adult placements are about equal. In Alameda County a juvenile offender is more likely to receive an adult placement than in Los Angeles County, but a Los Angeles offender is more likely to go to the penitentiary than an Alameda County offender.

#### DISCUSSION AND CONCLUSIONS

The data presented suggest that transferring juveniles to the adult court for trial constitutes more severe treatment than allowing them to remain within the juvenile court in the two counties studied. These conclusions hold for both counties. In both counties, the conviction rates were equivalent in the two courts, contradicting the common belief that conviction is easier in juvenile court. Once convicted, however, offenders are more likely to be incarcerated by the adult court system than by the juvenile system. Furthermore, in adult court about half the incarcerations are carried out in adult institutions.

It is important to consider the generalizability of these findings. First it is clear that we cannot generalize them to small, rural counties with low levels of crime, especially juvenile crime. However, the findings in Los Angeles and Alameda Counties indicate that generalizability is not limited to counties the size of Los Angeles. Alameda County is a little over one-seventh the size of Los Angeles (see Table 13); the juvenile violent crime rate is substantially higher in Los Angeles County, especially homicide, assault and robbery rates. Nevertheless, in both counties it is clear that adult court handling results in similar conviction rates for similar crimes. In both counties sentence severity is greater in adult than in juvenile court.

The New York experience (Roysher and Edelman, 1981) indicates, as well, that these results cannot be assumed with a wholesale transfer of jurisdiction for juveniles charged with serious crimes to the adult court. There is reason to think that this would result in relatively trivial crimes (with serious labels) passing through the adult court and being dismissed or treated lightly. However, when the transfer is made case-by-case and is based on relatively specific criteria, as occurs under the California law, the juvenile cases appearing in adult court will be more comparable to adult cases and are likely to be treated similarly. Clearly, this means more severe punishment than usually occurs in the juvenile court.

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TABLE 1  
Most Serious Offense Brought to Fitness Hearing  
by Fitness Hearing Outcome by County

	Los Angeles County			Alameda County		
	Unfit	Fit	Total	Unfit	Fit	Total
Homicide	57 76.0%	18 24.0%	75 14.4%	5 27.8%	13 72.2%	18 5.6%
Forcible Rape	26 60.5%	17 39.5%	43 8.3%	9 45.0%	11 55.0%	20 6.3%
Armed Robbery	86 48.6%	91 51.4%	177 34.0%	25 52.1%	23 47.9%	48 15.0%
Use of Firearm (Except Robbery)	10 31.3%	22 68.8%	32 6.1%	31 57.4%	23 42.6%	54 16.9%
Strong-arm Robbery	16 37.2%	27 62.8%	43 8.3%	14 73.8%	5 26.3%	19 6.0%
Felony Assault (Except with Firearm)	26 34.7%	49 65.3%	75 14.4%	0 0.0%	0 0.0%	0 0.0%
Other Crimes Against Persons	6 54.5%	5 45.5%	11 2.1%	8 57.1%	6 42.9%	14 4.4%
Burglary	15 44.1%	19 55.9%	34 6.5%	32 64.0%	18 36.0%	50 15.7%
Other Property Offenses	10 40.0%	15 60.0%	25 4.8%	22 44.9%	27 55.1%	49 15.4%
Hard Drugs	0 0.0%	0 0.0%	0 0.0%	3 33.3%	6 66.7%	9 2.8%
Criminal Driving	0 0.0%	0 0.0%	0 0.0%	3 21.4%	11 78.6%	14 4.4%
Victimless Crimes	0 0.0%	0 0.0%	0 0.0%	3 18.8%	13 81.3%	16 5.0%
Other	4 66.7%	2 33.3%	6 1.2%	6 75.0%	2 25.0%	8 2.5%
TOTALS	256	265	521	161	158	319

Table 2  
 Weapon Used in Instant Offense  
 by Fitness Hearing Outcome by County

	<u>Los Angeles County</u>			<u>Alameda County</u>		
	<u>Unfit</u>	<u>Fit</u>	<u>Total</u>	<u>Unfit</u>	<u>Fit</u>	<u>Total</u>
Gun	133 53.6	115 46.4	248 48.0	39 50.0	39 50.0	78 24.6
Other Weapons	60 43.5	78 56.5	138 26.7	27 44.3	34 55.7	61 19.2
No Weapon	62 47.3	69 52.7	131 25.3	91 51.1	87 48.9	178 56.2
TOTALS	255	262	517	157	160	317

Table 3  
 Amount of Victim Injury in Instant Offense  
 by Fitness Hearing Outcome by County

	<u>Los Angeles County</u>			<u>Alameda County</u>		
	<u>Unfit</u>	<u>Fit</u>	<u>Total</u>	<u>Unfit</u>	<u>Fit</u>	<u>Total</u>
Death	59 75.6	19 24.4	78 15.0	13 72.2	5 27.8	18 7.3
Hospitalization	39 57.4	29 42.6	68 13.1	15 41.7	21 58.3	36 11.5
Medical Attention	41 48.2	44 51.8	85 16.3	10 66.7	5 33.3	15 4.8
Little or None	119 41.2	170 58.8	289 55.6	118 48.2	127 51.8	245 78.0
TOTALS	258	262	520	156	158	314

Property Damage or Loss  
 By Fitness Outcome by County

	<u>Los Angeles County</u>			<u>Alameda County</u>		
	<u>Unfit</u>	<u>Fit</u>	<u>Total</u>	<u>Unfit</u>	<u>Fit</u>	<u>Total</u>
\$1,000 or more	41 56.2	32 43.8	73 14.2	27 45.0	33 55.0	60 19.1
Less than \$1,000	94 47.5	104 52.5	198 38.4	64 49.6	65 50.4	129 41.1
None	85 49.7	86 50.3	171 33.2	60 50.0	60 50.0	120 38.2
Amount Unknown	33 45.2	40 54.8	73 14.2	4 80.0	1 20.0	5 1.6
TOTALS	253	262	515	155	159	314

Table 5  
 Mean Number of Police Contacts of Subjects  
 By Fitness Outcome by County

		<u>Unfit</u>	<u>Fit</u>
Los Angeles County	$\bar{X}$	11.45	7.70
Alameda County	$\bar{X}$	9.32	6.19

Table 6  
 Guilt Findings by Court of Trial by County

	<u>Los Angeles County</u>		<u>Alameda County</u>	
	<u>Adult Court</u>	<u>Juvenile Court</u>	<u>Adult Court</u>	<u>Juvenile Court</u>
Guilty	223 79.6%	220 84.6%	136 79.1%	142 88.2%
Not Guilty	57 20.3%	40 15.4%	36 20.9%	19 11.8%

Table 7

Summary of Multiple Correlation Analyses  
 Correlating Court of Trial with Guilt Outcome,  
 Controlling for Biasing Variables - Los Angeles County

	<u>Variables</u>	<u>Variance Explained</u>	
Control Variables	Number of Prior Police Contacts	.3%	
	Probation Status	.3	After Controlling for Preceding Variable
	Number of Charges	1.4	After Controlling for Preceding Variables
	Charge	4.5	After Controlling for Preceding Variables
	Subjects Gang Status	.0	After Controlling for Preceding Variables
	Court of Trial	.9	After Controlling for Preceding Variables

Zero-Order  $r^2$  for Court of Trial with Guilt Outcome = .002 (Variance Explained = .2%)  
 (Juvenile Court is positively related to guilt)

Table 8

Summary of Multiple Correlation Analyses  
 Correlating Court of Trial with Guilt Outcome,  
 Controlling for Biasing Variables - Alameda County

	<u>Variables</u>	<u>Variance Explained</u>	
Control Variables	Instigation	.9%	
	Prior Police Contacts	.3	After Controlling for Preceding Variables
	Number of Charges	2.5	After Controlling for Preceding Variables
	Charge	6.1	After Controlling for Preceding Variables
	Prior Criminal Probation	1.5	After Controlling for Preceding Variables
	Court of Trial	.9	After Controlling for Preceding Variables

Zero-Order  $r^2$  for Court of Trial with Guilt Outcome = .012 (Variance Explained = 1.2%)  
 (Juvenile Court is positively related with Guilt)

Incarceration of Cases Convicted

By Court of Trial by County

	<u>Los Angeles County</u>		<u>Alameda County</u>	
	<u>Adult Court</u>	<u>Juvenile Court</u>	<u>Adult Court</u>	<u>Juvenile Court</u>
Incarcerated	209 95.8%	165 76.0%	109 84.5%	70 50.0%
Not Incarcerated	9 4.2%	52 24.0%	20 15.5%	70 50.0%

Table 10

Summary of Multiple Correlation Analyses  
Correlating Court of Trial With Sentence of  
Confinement for Subjects Found Guilty,  
Controlling for Biasing Variables - Los Angeles County

	<u>Variable</u>	<u>Variance Explained</u>	
Control Variables	Number of Prior Police Contacts	4.7%	
	Probation Status	1.4	After Controlling for Preceding Variables
	Number of Charges	3.5	After Controlling for Preceding Variables
	Charge	2.4	After Controlling for Preceding Variables
	Subjects' Gang Status	.4	After Controlling for Preceding Variables
	Court of Trial	2.3	After Controlling for Preceding Variables

Zero-Order  $r^2$  for Court of Trial with incarceration = .080 (Variance Explained = 8%)  
(Adult Court is positively correlated with incarceration)

Table 11

Summary of Multiple Correlation Analyses  
Correlating Court of Trial with Sentence of Confinement  
for Subjects Found Guilty,  
Controlling for Biasing Variables - Alameda County

	<u>Variable</u>	<u>Variance Explained</u>	
Control Variables	Instigator	4.3%	
	Prior Police Contacts	7.1	After Controlling for Preceding Variables
	Number of Charges	2.2	After Controlling for Preceding Variables
	Charge	4.7	After Controlling for Preceding Variables
	Prior Criminal Probation Status	2.8	After Controlling for Preceding Variables
	Court of Trial	6.2	After Controlling for Preceding Variables

Zero-Order  $r^2$  for Court of Trial with incarceration = .11 (Variance Explained = 11.3%)  
(Adult Court is positively correlated with incarceration)

Table 12

Sentences of All Cases Tried and Convicted  
in Adult Court by County

	<u>Los Angeles County</u>	<u>Alameda County</u>
State Prison	45 20.4%	14 10.3%
Sentences Including County Jail	48 21.7%	52 38.2%
California Youth Authority	116 52.5%	43 31.6%
No Confinement	9 4.1%	20 14.7%
Other	3 1.3%	7 5.1%
TOTALS	221	136

Table 13

Comparison of Los Angeles and Alameda County  
populations and juvenile crime rates.

	<u>Los Angeles County</u>	<u>Alameda County</u>
Population	7,008,400	1,094,300
Rate of Juvenile Crimes against persons (per 100,000 population)	112.1	79.6
Juvenile Homicide Rate	2.4	1.1
Juvenile Forcible Rape Rate	3.9	4.0
Juvenile Robbery Rate	47.3	36.4
Juvenile Assault Rate	58.5	38.1

**END**