

Prosecuting Children as Adults:
How do Juvenile Court Judges Decide Who Should Face that Fate?

by

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Submitted in Partial Fulfillment of the Requirements

for the Degree of

Master of Science

in the

Criminal Justice

Program

YOUNGSTOWN STATE UNIVERSITY

Summer 2010

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Abstract

The increase in juvenile arrests for violent crime over the past several decades has resulted in stricter and harsher legislation regarding juvenile transfer. The legislation has taken much of the discretion away from juvenile court judges, especially with the lowering of the minimum age a juvenile can be transferred to adult criminal court and increasing the amount of crimes that result in automatic transfer. The legislation not only limits the power of judicial discretion, it gives very little to no guidance for juvenile court judges during the transfer process. The effect that the limited guidance has had on the judge's discretionary decision has led to inconsistency in which juveniles are transferred to adult criminal court and which juveniles remain in the juvenile justice system. This study focused on the level of consistency among factors used to determine whether or not to transfer a juvenile, and how certain factors may influence judicial transfer rates. Data were collected from 104 questionnaires completed by juvenile court judges in Ohio and Pennsylvania. The results indicated that there is a level of consistency in how juvenile court judges weigh juvenile transfer factors, but there is less consistency in the offenses judges believe should lead to the transfer process. The results also indicated there is consistency in the juvenile court judges' perception of their discretionary power and in the implications of their discretionary power. Future research studying the effect of geographic regions, residential areas, and judicial experience on the weight juvenile court judges place on factors would benefit this topic. A qualitative study on the responses given by the participants in this study would also benefit the topic.

Acknowledgements

I extend sincere gratitude to the following people, who without their help and guidance this project could not have been completed.

Dr. Tammy King, whose help, support, and dedication during in this process was exceptional.

Dr. John Hazy, for his help, guidance, and support throughout the process.

Dr. Christopher Bellas, for his guidance throughout the process.

My family: my mother, father, brother, sister-in-law, grandparents, and extended family for their unconditional support.

Ashley Kilmer and Ed Villone, fellow graduate assistants who also wrote thesis during this time, for their support and help throughout the process.

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Chapter 1

Introduction

Juvenile courts were created in recognition of the inherent differences, mentally and emotionally, between juveniles and adults. The role of the juvenile court has traditionally been to protect society and to rehabilitate the juvenile offender, with the court acting in the role of the parent. Since the juvenile court's inception in Chicago in 1898 until present day, the court's philosophy has taken a turn as a result of public and legislative pressure to take a harder and more punitive stance in regards to juvenile offenders. Prior to this pressure, the courts retained most offenders in juvenile court rather than binding them over, transferring jurisdiction to the harsher adult criminal court (Fagan and Zimring, 2000).

A juvenile is defined as someone who is under the age of 18 or was under the age of 18 when the crime was committed and is currently under the age of 21. Juvenile delinquency results when a juvenile has violated a law that would have been a crime if the offender were an adult (18 U.S.C. §5031, 1998). Juveniles are typically prosecuted and sanctioned in a juvenile court, which is the court that holds jurisdiction for those offenders who are classified as juveniles under the appropriate state guidelines (Taylor and Fritsch, 2011). At times, a juvenile may be transferred from the juvenile court's jurisdiction to the jurisdiction of the adult criminal court system.

Juvenile Transfer Law

Juvenile transfer law, the process of prosecuting and sanctioning juvenile offenders in the adult criminal court instead of juvenile court, has been in existence since

the inception of the first juvenile court. Each state utilizes at least one of the three types of transfer, although most states use more than one method: judicial waiver laws, statutory exclusion laws, and prosecutorial discretion. Judicial waiver allows juvenile court judges to use professional discretion to decide on a case by case basis whether to retain the juvenile offender in juvenile court, or to transfer jurisdiction of the case to the adult criminal court system. Statutory exclusion laws bypass the juvenile court system in its entirety by granting original jurisdiction of specific classes of offenses to the adult criminal court system. The last category of transfer methods gives concurrent original jurisdiction to both the juvenile court and adult criminal court, leaving the decision of transfer solely to the prosecutors (Griffin, 2008).

In addition to these basic methods of transfer, new methods are increasingly being utilized by states, including: once an adult, always an adult, reverse waiver laws, and blended sentencing laws. Once an adult, always an adult laws mandates that all juveniles that have at any point been tried as adults be tried for any subsequent offenses in adult criminal court, regardless of the nature or circumstances of the case. On the opposite end of the spectrum, reverse waiver laws allow for a juvenile to petition to have his/her case removed from the adult criminal court system to the juvenile court system. Finally, two types of blended sentence laws exist, the first type are juvenile blended sentencing laws, which in addition to a juvenile sentence, a suspended criminal sentence is to be served after the juvenile sentence is completed. If the juvenile completes the juvenile sentence while exhibiting appropriate and cooperative behavior the criminal sentence will not have be served. The second type of blended sentences is criminal

blended sentencing laws, which allow criminal courts to impose juvenile dispositions instead of a criminal sentence to transferred juveniles (Griffin, 2008).

Transfer Rates

The rate of transfer, driven mostly by the occurrence rate of juvenile crime, has seen two significant changes since the mid-1990s. In 1995, the rate of judicial waiver of juveniles to the adult system increased by more than 80 percent, the amount of cases waived peaked in 1994 to approximately 13,000 cases waived (Office of Juvenile Justice and Delinquency Prevention, 2009, 1). This has been the most significant change in transfer cases to date. After 1995, the amount of cases judicially waived dropped over the course of ten years by 47 percent, with just under 7,000 cases being transferred to the adult system. This decrease is misleading. During this time period, statutes were enacted which automatically transferred certain types of cases to the adult system bypassing the judicial waiver system (Office of Juvenile Justice and Delinquency Prevention, 2009, 1). The decrease of transferred cases may not necessarily be the result of juveniles committing less crime or being sent to the adult system less frequently. The decrease is at least in part due to the addition of another transfer method.

Today, legislators have created laws lowering the age of majority for certain crimes automatically transferring juveniles to adult criminal court, completely bypassing the juvenile system altogether. For example, New York law mandates the automatic transfer to adult criminal court for juveniles 14-15 years old (16 is the age of adult court jurisdiction) who have committed 15 enumerated felonies (Redding 2010). The New York law is one of many variations of automatic transfer laws.

Florida, which was one of the first states to transfer juveniles in the 1920s, utilizes prosecutorial waiver which gives the discretion to try a juvenile in juvenile court or adult criminal court to the prosecutor. Once Florida began using this method the number of transfers tripled within a decade (Butts and Mitchell, 2000). Florida currently leads the nation in the number of juveniles transferred to adult criminal court (Poythress, Lexcen, Grisso, and Steinberg, 2006). Florida allowed for juveniles tried in adult courts to receive a life sentence for non-homicide offenses until the United States Supreme Court's recent decision in *Graham v. Florida*, 560 U.S. 08-7412 (2009). In *Graham*, the court ruled that a life sentence for non-homicide juvenile offenders is unconstitutional violating the Eighth Amendment's ban on cruel and unusual punishment. The ruling does however allow life sentences for juveniles found guilty of homicide.

The automatic transfer laws of states like New York, the alarming transfer rates of Florida, and the recent United States Supreme Court decision *Graham v. Florida*, signal a need for reform in juvenile transfer laws. Allowing juvenile offenders as young as 14 to be transferred to adult criminal court, as the New York statute allows, has shown no deterrent effect (Office of Juvenile Justice and Delinquency Prevention, 2008). Similarly, in a 2005 study on the recidivism rates of 630 juveniles in Florida transferred to adult criminal court and juveniles who remained in the juvenile justice system, the researchers found that 49 percent of transferred juveniles recidivated and committed more felonies after transfer than those juveniles retained in the juvenile system, who had a recidivism rate of 37 percent (Florida Legislature's Office, 2010). With transfers unable to generate a deterrent effect, and the United States Supreme Court ruling in *Graham* that non-homicide juvenile offenders cannot be constitutionally sentenced to life

without parole, the practice of transfer and the “get tough” philosophies of the legislature are called into question.

The practice of judicial transfer has specifically been called into question as research has shown there is little conformity in the factors juvenile judges use in evaluating juvenile transfer cases. Many times these factors are vague and ambiguous. Without a nationwide standard, or a high level of conformity among transfer factors, the judges are making inconsistent decisions in juvenile transfer cases. If the most important factors are clearly defined and used nationwide, the juvenile transfer cases will be more consistent and allow for fair treatment under the law for juvenile offenders in every jurisdiction.

Research Objectives

The objectives of this research were to examine judicial transfers and to determine consistent and unambiguous factors contributing to juvenile transfers in Ohio and Pennsylvania jurisdictions. These factors, if properly structured, could aid in creating a nationwide standard in juvenile transfer cases. A nationwide standard would level the disparity between states with alarming rates of transfer, such as Florida, and states at the other end of the spectrum. This could lead to transfers being more credible and consistent, and most importantly, assuring that all juveniles are treated equally and fairly under the law. Even if a nationwide standard is not attained, this study could lead to individual states clarifying their standards and implementing a stronger set of factors to guide juvenile judges in deciding transfer cases.

Summary

Since the inception of the first juvenile court in Illinois, the ability to transfer a juvenile from the juvenile justice system to adult criminal court has been possible. Each state has chosen a method/or methods of transfer to serve as their standard; this study focuses on judicial transfer, specifically in the states of Ohio and Pennsylvania. To this point, little research exists on the conformity of factors to determine transfer; it is the goal of this study to find conformity in Ohio and Pennsylvania guidelines. Accomplishing this goal will hopefully aid in creating a nationwide standard or stronger individual state guidelines ensuring a fair process for juveniles facing transfer to adult criminal court. In the following chapter, the existing literature on judicial transfer, as well as transfer in general will be reviewed.

Chapter 2

Literature Review

The Creation of the Juvenile Court System

Prior to the development of juvenile courts, children were treated, in the majority of cases, as adults if they were accused or convicted of committing a criminal act. In United States history, it was not until the Colonial Period that the diminished capacity of a juvenile was recognized. Even with the recognition of a juvenile's diminished capacity, 287 juveniles were still executed in America during the Colonial Period, including 12 juveniles under the age of 14. The strongest juvenile reform occurred between 1824 to 1828 in Massachusetts and New York with the inception of juvenile facilities. It was not until the 1870s that juveniles began to receive separation from adults in courts and institutions (Thomas and Bilchik, 1985).

In 1899, Illinois created the first juvenile court and other legislation aimed at protecting juveniles. After the creation of the Illinois juvenile court, gradually each state followed Illinois' lead and created similar juvenile courts, facilities, and created various pieces of legislation directed towards juveniles, both favorable and unfavorable. As the juvenile justice system developed various changes occurred, such as children receiving similar constitutional protections that adults have been granted. Originally, the juvenile court operated under the philosophy that a juvenile would be transferred to the adult criminal court system only in rare and extreme cases since the court was designed to rehabilitate, not punish (Bakken, 2007). In the 1900s-2000s the states seem to be digressing as the increased use of juvenile transfer resulted in juveniles increasingly

being placed back into the adult system (Thomas and Bilchik, 1985). Juvenile transfer is the act of moving a juvenile's case from the juvenile court to the adult criminal court, where the juvenile will be tried and sentenced. The method used to decide whether to retain or transfer the juvenile offender varies from state to state, as each state utilizes a different system (Bakken, 2007). As discussed in chapter one, there are three main methods a juvenile is transferred from the juvenile court system to the adult criminal court system: prosecutorial discretion, statutory exclusion laws, and judicial waiver laws.

Transfer Methods

Prosecutorial discretion gives concurrent original jurisdiction to both the juvenile court and the adult criminal court and allows the prosecutor to decide which court to file the case, currently there are 15 states which utilize prosecutorial discretion as their transfer method (Lemmon, 2005). The prosecutor's decision to file in the adult criminal court rather than the juvenile court is not appealable (Bishop, 1989). State legislation concerning the guidelines the prosecutors use in making their decision are strictly outlined in some states, but are vague and ambiguous in others (Bishop, 1989). Bishop (1989) completed a study on Florida's prosecutorial discretion that analyzed the transfer rates over the course of nine years, 1979-1987. The study showed that from 1979 to 1987 the percentage of transfers involving prosecutorial discretion almost doubled, increasing from 48 percent to 88 percent. The statute's vague and ambiguous language allowed the prosecutors to transfer any 16 or 17 year old who had committed any offense that the prosecutors believed required transfer to serve the best interest of the public. The statute

also allowed for transfer of any 16 or 17 year old offender who had been charged with a felony (Bishop, 1989).

Another method of transfer used in various states is statutory exclusion laws, which mandate the transfer of a juvenile who has committed an enumerated offense found within the state statute and meets age, offense type, or other criteria (Lemmon, 2005). Currently, 29 states use at least one of the two methods of statutory exclusion: exclusion by offense, or exclusion through grand jury indictment of juvenile charged with major felonies (Lemmon, 2005). A study was completed analyzing the juveniles transferred in Pennsylvania through statutory exclusion from March 18, 1996, the date statutory exclusion went into effect, through December 1996. The study found that 87 percent of juveniles transferred to the adult criminal court system were incarcerated as opposed to only 55 percent of those retained within the juvenile justice system. There was no significant difference in conviction rates between retained and transferred juveniles. Jurisdiction had a strong effect on the determination of guilt as cases handled in some jurisdictions were less likely to adjudicated juveniles than any other part of the state whether or not the juvenile was retained or transferred. The study also found that deterrence seems to be more effective in judicial transfer cases and less effective in statutory exclusion transfer cases (Lemmon, 2005).

The final method of juvenile transfer is judicial transfer, which gives the juvenile judge the discretion to decide whether to retain the juvenile in the juvenile system or transfer the juvenile to the adult criminal court system. Judicial transfer is a subjective method that allows a juvenile judge the ability to use their individual discretion to decide on a case-by-case basis whether the juvenile is amenable to rehabilitation, and whether or

not transfer is appropriate. The judicial transfer process begins with a motion from the prosecutor and is followed by a due process hearing where the judge makes the transfer decision (Bakken, 2007). Currently 46 out of the 50 states utilize some form of judicial transfer to determine whether to retain or transfer a juvenile's case (D'Angelo, 2007).

Judicial Transfer

The literature suggests that there is little guidance in the factors that the judges should take into consideration while deciding whether or not to transfer a case. There are three basic factors that most judges use as a foundation for their decisions: the amount of danger imposed on the community by the juvenile; the sophistication/maturity level of the juvenile; and whether or not the juvenile is believed to be treatable (Salekin, Yff, Neumann, Leistico, and Zalot, 2002). Several studies have targeted additional factors used by judges that are not found in the statutes, those being factors that judges feel should be used.

In a recent study by Salekin et al. (2002), they investigated the subcategories of commonly used legal factors in judicial transfer cases. The research was a second attempt by the authors to build on a study performed by Grisso in 1988. Grisso surveyed 127 juvenile judges from 34 states to determine what factors the judges consider during the judicial transfer process. He found three noteworthy conclusions:

- Willingness to accept intervention is negatively associated with juvenile transfer;
- Adult-like self-reliance and greater prior offense record had a positive association; and

- High scores on unsocialized families factor increased the chance of transfer. (Salekin, Yff, Neumann, Leistico, and Zalot, 2002).

The factors in these conclusions were found by judges to be traits of juveniles who pose a greater risk to the community. The previous and present study by the researchers attempted to expand on Grisso's research, specifically by narrowing three broad factors: dangerousness, sophistication-maturity, and amenability into manageable and applicable criteria to use during the transfer process.

The first study by the authors found the "dangerousness" factor includes the following characteristics: irresponsibility, recklessness, sensation seeking behavior, violent/aggressive tendencies, planned/extensive criminality, and psychopathic traits. The sophistication factor involves factors relating to criminal sophistication, intellectual and emotion maturity. The amenability to treatment factor encompasses: consideration/tolerance of others, academic/work success, prosocial behavior, responsibility, motivation to change, and family support levels (Salekin, Yff, Neumann, Leistico, and Zalot, 2002).

Dangerousness

A follow-up study produced similar results with additional findings. The results from the dangerousness factor were similar to the first study. Characteristics such as "use of deadly weapons", "generally carries a weapon", "extreme unprovoked violence", "violent history", "leadership role in the crime", "lacks remorse or guilt", "severe antisocial behavior", "high frequency of criminal behavior" were deemed to be important factors considered during the decision process. Factors such as "hyperactivity", "lacks

realistic long-term goals”, “promiscuous sexual behavior”, “runaway behavior”, “glib/superficial charm”, and the “need for stimulation/proneness to boredom” were found to be unimportant in the decision making process (Salekin, Yff, Neumann, Leistico, and Zalot, 2002, 391-392).

Sophistication-Maturity

The sophistication-maturity factor also produced consistent findings to the first study and introduced several new characteristics to further define the factor. Important factors regarding sophistication-maturity included: “criminal sophistication”, “maintaining convictions even in the face of criticism”, “able to resist criticism from others”, “internal locus of control”, “gives thoughts to consequences”, and “planned premeditated crimes”. Additional characteristics were found somewhat relevant, but not significant: “delays gratification in pursuit of goals” and “consideration of life goals”. No factors were found to be irrelevant (Salekin, Yff, Neumann, Leistico, and Zalot, 2002, 392-393).

Amenability to Treatment

The final factor of amenability to treatment showed similar results to the previous factors. Five factors were analyzed by the researchers to determine what was relevant to judges deciding whether or not a juvenile was amenable to treatment. The research showed that none of the factors, including: “motivated to engage in treatment”, “insightful of problems”, “responsibility”, “motivation to change”, “acknowledgement of a problem”, “willingness to receive help from others” were irrelevant to judges

evaluating amenability to treatment (Salekin, Yff, Neumann, Leistico, and Zalot, 2002, 392-293).

Non-Legal Factors

The use of factors such as: sex, education status, gang affiliation, family situation, child maltreatment, socio-economic status, influence of drugs, and others were recently studied by D'Angelo (2007) to see if, and how often, these factors are considered during the decision making process. The study showed that while they are not legal factors in the particular jurisdiction, these factors: sex, maltreatment, family structure, education level, and gang affiliation are taken into consideration by most judges that participated in the study. The study also showed that race was not considered an important factor; only 12 percent of the judges surveyed indicated race played a role; however, as the researcher noted, judges are not likely to admit to using race as a factor even if in fact they do (D'Angelo, 2007). This study seems to match the popular perception of criminals in general held by the general public. Most people in class discussions, on television shows, movies, and other venues tend to stereotype criminals at all age levels as uneducated, high school dropouts, male, members of a broken home, gang members, and/or part of a delinquent social affiliation.

Arteaga (2002) analyzed six factors judges use when deciding transfers which are found in the Federal Juvenile Delinquency Act. The factors include:

- the age/social background of the juvenile;
- the nature of the alleged offense;
- the extent/nature of juvenile's prior record;

- the present intellectual development/psychological maturity; and
- nature/response to previous treatment attempts, the availability of programs to treat the juvenile's behavioral problems (Arteaga, 2002).

These factors, based on the previous studies and their results, can be placed into similar categories. The age/social background factor could be placed in the sophistication-maturity factor, as could the extent/nature of juvenile's prior record, and the present intellectual development/psychological maturity. The nature of the alleged offense could be placed in the dangerousness factor. The final two factors, nature/response to previous treatment attempts and the availability of programs to treat the juvenile's behavioral problems fall into the final factor, amenability to treatment. The study found that the legislation failed to accomplish the intended goal of making society safer; more specifically, a higher risk of juveniles, who are amenable to treatment, are being transferred as a result of this legislation.

Consistency of Factors

These studies show a relative consistency on factors used by judges to determine whether or not to transfer a juvenile to the adult criminal court system. While the factors are not always labeled or categorized the same, the same basic underlying factors are found in each study conducted. This shows a sense a unity in judges' decision making process, which is interesting because the legislation aimed at moving away from judicial discretion was based on the belief that judges were not using similar criteria (Salekin, Yff, Neumann, Leistico, and Zalot, 2002). The articles showed some consistency in the

factors enumerated in statutes, but little emphasis was placed on the weight the judges place on each factor.

Transfer Rates

Even though the same statutes govern the transfer process for each jurisdiction within a state, studies have shown that transfer rates vary among urban, suburban, and rural juvenile courts within a particular state. Feld (1991) studied the difference between the statutes and rules of statewide applicability among urban, suburban, and rural juvenile courts in Minnesota. The study found that there are differences between the types of crimes committed by juveniles, as well as the seriousness of the crimes committed in each jurisdiction. There are discrepancies in which cases are pursued by the courts and which cases are transferred to adult criminal court. For example, rural counties waive jurisdiction for less serious offenses than urban or suburban counties (Feld, 1991).

The Effects of Transfer Legislation

Another study examined the effects of transferring juveniles to the adult system. The study found that many of those transferred are young and non-violent offenders, with many of the transferred juveniles sent to the adult system with minor charges. Bishop (2000) also found that there is little to no deterrent effect found in transfer cases. Her research also showed that in some cases juveniles are sentenced harsher than adults are in the same system.

Fagan (2008) studied whether or not the new juvenile transfer laws are meeting their goal of reducing crime. Three conclusions regarding the effectiveness of juvenile transfer as a means to reduce crime were researched:

1. Rates of juvenile offenses are no less in states where juvenile transfer is a common practice;
2. Juveniles tried in the adult system are as likely to recidivate as those tried in juvenile court; and
3. Transferring juvenile offenders to adult criminal court is not an effective method of reducing juvenile crime.

Rudman, Hartstone, Fagan, and Moore (1986) examined the transfer process, the rate of transfer, case outcomes, sentences, and the placement of transferred juveniles. The study found that it takes more than twice as long for the entire transfer process to be completed than if the case has remained in juvenile court. Juveniles transferred were adjudicated at similar rates as those retained in juvenile court for committing violent crimes. There is conflicting data as to whether the adult criminal courts hand down stricter punishments; however, in most cases the adult criminal courts gave harsher punishments.

Court Cases on Juvenile Transfer

The major case law in juvenile proceedings began with the United States Supreme Court's decision in the landmark case in *Kent v. United States* (1960) and progressed gradually to the present day case of *Graham v. Florida* (2009). The United States Supreme Court ruled on several aspects of transfer in *Kent v. United States*, 383 U.S. 541,

1966. Kent entered the juvenile justice system at the age of 14 on charges for several housebreakings and an attempted purse snatching, for which he was placed on probation. While still on probation for his earlier delinquent acts, a police investigation led to a confession by Kent to housebreaking, robbery, and rape charges. Based on the opinion of a psychiatrist, who believed Kent was suffering from severe psychopathology, the defense requested that he remained in the juvenile court. The defense argued that based on the psychiatrist's finding, Kent would benefit from the rehabilitation he would receive by remaining in the juvenile justice system.

The juvenile court judge transferred Kent to the adult criminal court system after a full investigation, for which the judge gave the defense no findings or rationale for the transfer, and gave no ruling on any of the defense's motions. The applicable statute provided that a judge deciding a transfer case must complete a full investigation and enumerated circumstance in which transfer was appropriate, but the statute did not provide standards to guide the judge's decision. Kent was transferred to the adult criminal court where he was convicted and sentenced. On appeal, the United States Supreme Court ruled that the juvenile court's function is rooted in *parens patriae*, a parental relationship rather than a criminal relationship, because of this unique role, the transfer of jurisdiction is a "critically important" action to the juvenile's statutory rights. The court enumerated eight factors to juvenile court judges to consider during the process to focus on the proper *parens patriae* relationship:

1. The seriousness of the alleged offense to the community and whether transfer is necessary to protect the community

2. Whether or not the alleged offense was committed in an aggressive, violent, and premeditated or willful manner
3. Whether or not the alleged offense was committed against a person or property, greater weight will be placed on offenses against persons
4. Whether or not there is evidence that would lead a grand jury to return an indictment
5. The desirability of the trial and disposition of the entire offense to be held on one court, when associates of the juvenile are adults who will be charged automatically in the adult criminal court system
6. The sophistication and maturity of the juvenile determined by the home, environment situation, emotional attitude, and pattern of living
7. The record and previous history of the juvenile
8. The prospects for protection of the public and amenability to treatment of the juvenile based on available resources within the juvenile justice system (*Kent v. United States*, 383 U.S. 541 1966).

The Kent factors have been added in part, or in full, to the majority of juvenile court jurisdictions; some states have expanded the factors to be more inclusive, while others give the judge considerably more discretion in evaluating transfer cases (Fagan, 2008).

The United States Supreme Court ruled on another landmark case in 1966, with their decision in *In Re Gault*, 397 U.S. 358, 1966. *In Re Gault* involved a 15 year old juvenile who was taken into custody on charges for making an obscene phone call. When Gault was arrested, the police declined to notify his parents that he had been taken into custody. Further, the court filed a petition with the court regarding custody of Gault on

June 9, which Gault's mother did not become aware of until August 14. The judge handling the case also refused a request by Mrs. Gault to allow her son to confront his accuser. Gault was committed to the State Industrial School until the age of 21 by a juvenile court judge. Upon appeal the United States Supreme Court ruled that juvenile proceedings must be in compliance with the 14th Amendment, specifically: the juvenile and guardian(s) must be afforded adequate notice of the charges, the juvenile and guardian must be notified of the right to council, the opportunity to confront witnesses against the juvenile, the opportunity to confront their accuser and witnesses against them, the right to cross-examination, and they must be provided adequate safeguards against self-incrimination.

The United States Supreme Court directly addressed the procedure involved when a juvenile is tried for an act that would constitute a crime if it had been committed by an adult, *In Re Winship*, 397 U.S. 358, 1970. *In Re Winship* involved a 12 year old juvenile who was arrested for breaking into a woman's locker and stealing \$112; the charges against Winship would amount to a larceny if committed by an adult. The New York statute provided that if a juvenile is tried for committing an act that could constitute a crime if committed by a adult, the standard of proof is based on a preponderance of the evidence.

In 1975, the United States Supreme Court ruled on the issue of juveniles being tried at both the juvenile and adult court in the case *Breed v. Jones*, 421 U.S. 519, 1975. *In Breed*, a 17 year old juvenile was tried for an act that would be considered a crime if committed by an adult in juvenile proceedings, which resulting in a finding that Breed was unfit for treatment in the juvenile justice system. The judge ordered that Breed then

be tried as an adult. On appeal, the United States Supreme Court ruled that trying a juvenile in both the juvenile and adult criminal court is a violation of the double jeopardy clause of the 5th Amendment (*Breed v. Jones*, 421 U.S. 519, 1975).

The United States Supreme Court addressed the implications of the 8th Amendment as it applies to juveniles sentenced to capital punishment in *Roper v. Simmons*, 543 U.S. 551, 2005. In *Roper*, a 17 year old juvenile, Simmons, recruited two of his friends to commit burglary and murder and the three juveniles carried out his plan. After Simmons had turned 18 years old he was tried, convicted, and sentenced to the death penalty. On appeal, the United States Supreme Court ruled that it is cruel and usual punishment under the 8th amendment to execute a juvenile under the age of 18.

More recently, the United States Supreme Court ruled on the issue of life sentence without the possibility of parole for juveniles in *Graham v. Florida*, 560 U.S. 08-7412, 2009. In *Graham*, a 16 year old juvenile was convicted of armed home robbery and sentence to life in prison without the possibility of parole. Graham was on probation at the time of the arrest for armed burglary and attempted armed robbery. The court ruled that life in prison for juveniles under the age of 18 is a violation of the 8th amendment's ban on cruel and unusual punishment.

Pennsylvania's Transfer Model

Leete (1996) studied the recent trends of juvenile law in Pennsylvania, including recent transfer legislation, which was driven by former Governor Tom Ridge's belief in the philosophy, "if you commit an adult crime, you will do adult time" (Leete, 1996, 492). The legislation encompassed a wide range of juvenile crime and increased the

juvenile court's jurisdiction to include truancy issues. In the case of murder, the adult criminal court has original jurisdiction over juveniles; the legislation changes were aimed at the process of reverse transfer. With the "get tough" legislation, the burden of proof is on the juvenile to prove by a preponderance of the evidence, that reverse transfer of the case is consistent with public interest and that the juvenile is amenable to treatment. In all cases other than murder, the juvenile court has original jurisdiction over juvenile cases, unless the state can prove by a preponderance of the evidence that a transfer best serves public interests and that the juvenile is not amenable to treatment.

According to the Pennsylvania Juvenile Court Judges Commission data, from 1986 to 1993, the percentage of juveniles transferred to adult criminal court for federal drug crimes increased from 5.7 percent to 23 percent. For juveniles that were transferred to adult criminal court; 89 percent of those who pled or were convicted were incarcerated; close to 60 percent were sentenced to county jails, and almost 30 percent were sent to a state prison. The average sentence was approximately 20 months for minimum sentences and just under four years for maximum sentences. Most juveniles who were paroled, were not paroled until near the end of their sentence. The average age of a transferred juvenile was around 17 years old. In 1986, 13 percent of transferred juveniles had previously been transferred to adult criminal court. In 1992, the number of juveniles transferred to adult criminal court doubled without a major reduction in crime (Leete 1996).

Pennsylvania's judicial transfer process involves a two-phase hearing. In the first phase, the juvenile court judge must determine if there is a prima facie showing of evidence that the juvenile in question did commit the alleged act and that the act would

be a felony if the act had been committed by an adult. If the burden of proof is met, then the second phase, the public interest phase, commences. During this phase, the judge must determine if he or she believes the juvenile is amenable to treatment, supervision, or rehabilitation, and the judge must determine whether or not transfer is in the best interest of the public. To guide the judge's decision, the statute provides eight factors for the judge to take into consideration:

1. The impact of the offense on the victim(s)
2. The impact of the offense on the community
3. The threat imposed on the safety of an individual or the general public by the juvenile
4. The nature and circumstances of the alleged act
5. The degree of the juvenile's culpability
6. The adequacy and duration of dispositional alternatives available to the court under the Juvenile Act and the adult criminal justice system
7. The determination of whether the juvenile is amenable to treatment supervision, or rehabilitation by consideration of:
 - a. Age
 - b. Mental capacity
 - c. Maturity
 - d. The degree of criminal sophistication possessed by the juvenile
 - e. The juvenile's previous record, if any

f. The nature and extent of previous delinquent history, including the success or failure of previous treatment or rehabilitation attempts by the court

8. Any other relevant factors (Transfer Hearing, Rule 394, 2005)

When evaluating whether or not the transfer of the juvenile is in the public's best interest and whether or not the juvenile is amenable to treatment, the burden of proof by a preponderance of evidence is placed on the prosecution. The burden of proof is shifted to the juvenile if:

1. A deadly weapon was used and the juvenile was 14 years or older at the time of the offense or,
2. The juvenile had previously been adjudicated of an offense that would be a felony if committed by an adult and the juvenile was 15 years or older or,
3. There is a prima facie case establishing the juvenile committed an offense that if committed by an adult would have been classified as either rape, involuntary deviate sexual intercourse, aggravated assault, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any aforementioned crime or murder (Transfer Hearing, Rule 394, 2005).

Ohio's Transfer Model

A study by Burns (1996) researched how Ohio Juvenile Courts have responded to increasing violent juvenile crime. In 1992, juveniles accounted for 12 percent of Ohio's murder arrests and 20 percent of violent crime arrests. Burns reviewed the transition

from Juvenile Rule 30 to Ohio Revised Code 2151.26 to the amended version, which occurred in 1994 in response to public outrage at the increased amount of juvenile violent crime. Prior to the amendment, the standards in Rule 30 and ORC 2151.26 required mandatory transfer for juveniles who committed aggravated murder or murder if the court has probable cause to believe the juvenile committed the act and the juvenile had previously been adjudicated for aggravated murder or murder. The standards also gave juvenile judges subjective discretion in determining transfer in non-mandatory transfer cases.

In this process, a preliminary hearing must be followed by a second hearing to determine the offender's amenability to treatment. The juvenile court judges were required to take into consideration specific factors to determine both the juvenile's amenability to treatment and the safety of the community. However, the judges were given great discretion in choosing how much weight to put on each factor and the judges were not required to state the reasons used to decide transfer nor how the factors were weighted. Based on this standard, the transfer decision was highly inconsistent and possibly abused as each judge's decision was based on that particular judge's preference for weighting criteria.

The amended version of Rule 30 and ORC 2151.26 changed both the mandatory transfer process and the judicial discretion process. The amendment required mandatory transfer in more circumstances than previously allowed by Rule 30 and was targeted at repeat offenders. The amendment also placed several restraints on the judge's discretion when evaluating a non-mandatory transfer case. While the judge's were still required to consider the enumerated factors during the process, with the amendment, the factors

become objective as opposed to the previous subjective factors. The amendment also mandated transfer if certain criteria existed in the juvenile's case. The final change in the amendment involved the housing of juvenile offenders; prior to the amendment, juveniles were housed with adult offenders, the amendment required juveniles to now be housed separate from the adult population.

Reader (1996) studied an amendment to Ohio House Bill 1.47, which allows for the automatic transfer of juveniles who meet certain criteria and committed at least one of the enumerated offenses. Category One Offenses include: aggravated murder and attempted murder. Category Two Offenses include; kidnapping, rape, voluntary manslaughter, involuntary manslaughter, felonious sexual penetration, aggravated arson, aggravated robbery, and aggravated burglary. A juvenile is automatically transferred to adult criminal court without an amenability to treatment hearing, in the following cases:

1. The offender is 14 years old or older and has committed a felony offense and has previously been tried in adult criminal court or,
2. The offender is 14 years old or older, is a resident of another state, and has committed a crime that would result in consideration of transfer in that state or,
3. The offender is 16 or 17 years old and has committed a Category One Offense, or the offender is 14 or 15 years old, has committed a Category One Offense and previously has been committed to the Ohio Department of Youth Services for either a Category One or Two Offense or,

4. The offender is 16 or 17 years old, has been committed to the Ohio Department of Youth Services for a Category One or Two Offense and has committed another Category One or Two Offense, except kidnapping or,
5. The Offender is 16 or 17 years old and committed a Category Two Offense, except kidnapping, and used, displayed, or indicated possession of a firearm.

The bill is based on the perception that juvenile offenders are responsible for most of the country's violent crimes. However, a report from the FBI showed that in 1991 juveniles were only responsible for 11 percent of all violent crimes; the report also showed that juveniles were only responsible for a 13 percent increase in the nationwide violent crime rate. The study notes that two states with automatic transfer laws, New York and Florida, have the highest juvenile violent crime arrest rates and all exceed the national average of juvenile crime (Reader, 1996).

The nationwide increase of violent and dangerous juvenile crimes led legislators to take a tougher stance toward juvenile offenders, beginning in January, 2002. In the case of Ohio, before 2002, the focus of legislation was on the treatment and rehabilitation of juvenile offenders; after 2002, Ohio's focus shifted to punishment. As the penalties increased for juveniles, the minimum age of transfer decreased significantly (OCJS 2009). Based on the juvenile's age and the crime committed, juvenile court judges have five options:

- Mandatory transfer of the juvenile to adult criminal court
- Discretionary transfer of the juvenile to adult criminal court

- Mandatory blended sentences, where a juvenile and adult sentence are given, if the juveniles system sentence is completed without incident, the adult court system sentence is suspended
- Discretionary blended sentences or,
- Traditional juvenile treatment, which range from court-run programs to state commitment (Ohio Department of Public Safety, 125, 2007).

As shown in the table below from the “*State of Crime and Justice in Ohio*” publication, specific standards set in place for juvenile transfers in Ohio. With each offense type, the juveniles are placed into four age categories. If the juveniles are under 14 years old, they cannot be transferred and the judges are limited to discretionary blended sentences or traditional treatment. Whether the juveniles are sentenced to a discretionary blended sentence or traditional treatment is determined by both age and offense. Those juvenile offenders over the age of 14 are transfer eligible; depending once again on the age and the offense committed, the sentence will either involve a mandatory transfer, blended sentence, discretionary blended sentence, or traditional treatment.

Table 1
Juvenile Sentences by Age and Transfer Eligibility

Offense	Transfer Eligible		Not Transfer Eligible	
	Ages 17 and 16	Ages 15 and 14	Ages 13 and 12	Ages 11 and 10
Aggravated murder and murder	Mandatory transfer	Mandatory Transfer or Blended	Discretionary blended	Discretionary blended
Attempted aggravated murder and murder	Mandatory transfer	Mandatory Transfer or Blended	Discretionary blended	Discretionary blended
First-degree violent felony and enhancement	Mandatory transfer	Discretionary blended or blended	Discretionary blended	Discretionary blended
First-degree non-violent felony and enhancement	Discretionary blended	Discretionary blended	Discretionary blended	Traditional treatment
First-degree felony	Discretionary blended	Discretionary blended	Traditional treatment	Traditional treatment
Second-degree felony enhanced	Mandatory Transfer or Blended	Discretionary blended	Discretionary blended	Traditional treatment
Second-degree felony	Discretionary blended	Discretionary blended	Traditional treatment	Traditional treatment
Third-degree felony enhanced	Discretionary blended	Discretionary blended	Traditional treatment	Traditional treatment
Third-degree felony	Discretionary blended	Traditional treatment	Traditional treatment	Traditional treatment
Fourth- and Fifth-degree felony enhanced	Discretionary blended	Traditional treatment	Traditional treatment	Traditional treatment
Fourth- and Fifth-degree felony	Traditional treatment	Traditional treatment	Traditional treatment	Traditional treatment

Table taken from Ohio Department of Public Safety, 2007, 126

In the case of mandatory and discretionary transfer, several criteria must be met before the case can be transferred to the adult criminal court system. First, a complaint must be filed in juvenile court alleging the juvenile committed an act that would be a felony if an adult had committed the act. Second, the court must find that at the time the act was charged, the juvenile was 14 years of age or older. Third, there must be a finding of probable cause that the juvenile in fact committed the act. Last, after taking the applicable factors into consideration, the court must find that the juvenile is not amenable to treatment or rehabilitation within the juvenile system and that transfer is necessary to protect the community (OCJS 2009). According to the Ohio Revised Code, juvenile court judge must make an analysis of factors that favor and disfavor transfer. Factors that favor a transfer include:

1. The physical, psychological, or serious economic harm suffered by the victim;
2. The exacerbation of existing physical or psychological vulnerability or age suffered by the victim;
3. The relationship between the juvenile and victim facilitated the alleged act,
4. The act was committed for hire, as part of a gang or organized criminal activity;
5. The juvenile had a firearm on his or her person or under his or her control at the time the act occurred and used, displayed, brandished, or indicated possession of the firearm;
6. At the time of the alleged act the juvenile was awaiting adjudicated or disposition as a delinquent child, was under a community control sanction, or was on parole for a previous delinquent child adjudication or conviction;

7. Previous determinations have been made that the juvenile will not benefit from rehabilitation;
8. The juvenile is emotionally, physically, or psychologically mature enough for a transfer to the adult criminal court; and/or,
9. There is insufficient time to rehabilitate the juvenile in the juvenile system (ORC 2152.12 (D), 2002)

The juvenile court judge is also to weigh enumerated factors indicating a showing against transfer of the juvenile:

1. The victim induced or facilitated the alleged act,
2. The juvenile was acting under provocation when committing the alleged act,
3. The juvenile was not the principal actor or at the time of the offense was acting under the negative influence or coercion of another person,
4. The juvenile did not cause physical harm to a person or property or did not have a reasonable belief that harm of that nature would occur when the act was allegedly committed,
5. The juvenile has not previously been adjudicated as a delinquent child,
6. The juvenile is not emotionally, physically, or psychologically mature enough for transfer to the adult criminal court system,
7. The juvenile has a mental illness or is mentally retarded,
8. There is sufficient time to rehabilitate the juvenile within the juvenile system and the level of security available in the juvenile system affords a reasonable assurance of public safety (ORC 2152.12 (E), 2002).

Present Study

The subjects of this study, Ohio and Pennsylvania, each use a combination of the three main transfer methods and the newer methods, blended sentencing, “once an adult always an adult”, and reverse waiver. Ohio uses a combination of discretionary judicial waiver, mandatory judicial waiver, discretionary blended sentences, mandatory blended sentences, and “once and adult, always an adult” (ORC 2152.12, 2002). Pennsylvania employs a different set of legislation, allowing juveniles to be transferred by: discretionary judicial transfer, presumptive judicial transfer, statutory exclusion, reverse waiver, and “once an adult, always an adult” (Transfer Hearing, Rule 394, 2005).

Each juvenile court judge in Ohio and Pennsylvania was sent a 12 question questionnaire designed to answer three research questions. The judges were selected from a juvenile court judge directory composed by the respective juvenile division of each state. The judges were asked to rate eight common transfer factors found in state statutes and literature using a likert scale. The participants were also asked which offenses they believe should result in transfer proceedings. Finally, the participants were asked what their perceptions of their discretionary power and the resulting implications of that power were.

Summary

Currently, there are limited publications available devoted to studying the conformity of factors to guide judicial transfer cases, especially in the state of Ohio and Commonwealth of Pennsylvania; most publications are dedicated to general discussion of transfer or automatic transfer laws. The research questions guiding this study are:

- a. What are the common factors used in juvenile transfer cases among a majority of juvenile court judges in Ohio and Pennsylvania?
- b. What do juvenile court judges believe should be the offenses leading to juvenile transfers?
- c. What are the judges' perceptions of the practice of discretion and its influence?

The following chapter will describe the sample used in the research project, as well as present the results from the statistical procedures used to answer the research questions.

Chapter 3

Methodology

Research Design

Ongoing research is beneficial for the juvenile system as the contributions may aid in shaping proper legislation to benefit those involved. The legislators, partially due to public outcry, have moved away from the rehabilitation based *parens patriae* philosophy of acting as the parent of the juvenile, and have moved into a “get tough” philosophy aimed at punishment. The “get tough” mentality has resulted in significant changes, including taking away a large amount of discretion from the juvenile court judges, which has hindered the ability of the judges to evaluate each juvenile’s case on a case-by case-basis.

In order to determine whether the current legislation is effective, juvenile judges, who have the proper expertise in juvenile issues, were questioned to determine what factors and offenses should guide the transfer process. Juvenile court judges, based on their experience of handling juvenile matters, are also best suited to answer the question of who ultimately should decide whether a juvenile should be retained in the juvenile justice system, or transferred to the adult criminal court system.

While there is significant research in the general topic of juvenile transfer, the existing research is mostly focused on the transfer laws and legislation, with limited research on judicial transfer guidelines. The current study assesses the judicial discretion involved in juvenile transfer and the resulting implications of judicial discretion. The study focuses on the state of Ohio and the Commonwealth of Pennsylvania, two

geographic locations with similar legislation. There currently is very limited research and publications focusing on these two locations.

Research Questions

The research questions that guided this study were:

- a. What are the common factors used in juvenile transfer cases among a majority of juvenile court judges in Ohio and Pennsylvania?
- b. What do juvenile court judges believe should be the offenses leading to juvenile transfers?
- c. What are the judges' perceptions of the practice of discretion and its influences?

To answer these questions, a survey was created based on previous literature and was sent to 294 juvenile court judges in Ohio and Pennsylvania. The judges were selected through a juvenile court judge directory composed by the respective juvenile division of each state. The judges included in the directory are the only judges who oversee juvenile cases. Based on their experience of exclusively hearing cases involving judicial juvenile transfer, juvenile judges were selected as the recipients of the survey. The judges were best equipped to answer questions about the factors used to decide transfer and how much weight is placed on each factor, the offenses that should lead to transfer, and whether or not the juvenile judges should retain the discretion to decide juvenile transfer cases. There was a response rate of 35%, (n=104) 104 completed surveys by the deadline date.

Data Collection

The surveys were created based on information gathered from journal articles and publications. The questions were designed to discover what factors the juvenile court judges use in deciding judicial transfer, the offenses that judges consider during the process, and what their perceptions are of their discretionary power, and the resulting implications of that power. The survey included 12 questions:

- Five questions to describe the sample
- One question to find the factors commonly used by the judges and the weight each judge places on each factor
- Two questions to find the offenses judges consider in the transfer process
- Five questions to determine the judges' perception of their discretionary power and the resulting implications of that power (See Appendix A).

The survey incorporated five questions that were created to describe the sample. One question on the survey asked the judges approximately how many cases they considers per year involving transferring jurisdiction from their court to the adult criminal court. In order to determine the experience of each judge, another question asked the judges how long they have served on the bench; the judges were given five choices: one to five years, six to ten years, 11 to 15 years, 16 to 20 years, and more than 20 years. The other two questions that were used to describe the sample focused on geographic locations. One of the two questions asked the judges which state, Ohio or the Commonwealth of Pennsylvania, their court is located. The second question asked whether the court sits in an urban, rural, or suburban area.

To determine the factors commonly used by the juvenile court judges in determining transfer and the weight the judges place on each factor, two questions were included in the survey. The first question asked the judges to rate the importance of eight commonly used factors according to journal articles and the respective state statutes. The factors involved were:

- amenability to treatment
- perceived dangerousness of the offender
- sophistication of the crime/nature of the crime
- maturity level of the offender
- the offender's social background
- the extent/nature of the offender's prior record
- the juvenile's response to past treatment efforts
- the availability of programs to treat the offender's problems

The judges were asked to rate each factor on a scale of one to five, with one being not very important and five being extremely important. The second question asked the judges if there were any other factors that were not mentioned within the survey. The judges were provided two choices, yes and no, and were asked to specify if there are additional factors the judge considers.

In establishing the offenses the judges are most likely to consider during the transfer proceedings, one question was included in the survey. The question asked the judges in their opinion which offense a juvenile must commit to be considered for transfer. The judges were given four choices: homicide, rape, arson, and "other". The

judges were asked to specify what other offense they consider if they checked the “other” category.

To answer the final research question, what the juvenile court judges’ perceptions are of their discretionary power and the resulting implications are of that power, five questions were asked of the judges. The first question asked the judges whether they believed they should retain discretion in juvenile transfer cases. The judges were provided two choices, yes and no. The second question asked whether juvenile courts across the United States are too lenient on juveniles, exhibit an appropriate level of punishment with juveniles, or are too harsh on juveniles. The judges were asked to check one of the responses and were asked to explain their reasoning. Following this question, the questions shifted to the implications of the judges’ discretionary power. The judges were asked whether sending a juvenile to the adult criminal court system played a role in making the juvenile a “better criminal”. The options to answer the question were “yes” and “no” and the judges were once again asked for an explanation. In the next question the judges were given a question asking whether the transfer process is over utilized, on target, or under utilized. The final question asked, based on the “spirit of the law” whether the judges believe the transfer process is over utilized, on target, or over utilized.

Summary

The questionnaire helped in clarifying the factors utilized during the transfer process, as well as other factors and tools the judges consider. The questionnaire also helped in determining the judges’ perception on their discretionary power and how their power impacts the process and the juvenile offenders involved in the process. The

following chapter presents the analysis of the data obtained from the surveys in order to help answer the research questions.

Chapter Four Analysis and Findings

Chapter four entails an analysis of the data obtained from the questionnaires that were designed to answer the research questions. There are three goals of this chapter:

- To determine commonly used factors that juvenile court judges utilize during the transfer proceedings
- To find similar patterns in the offenses that judges believe are worthy of transfer
- To ascertain what the judges' perceptions of their discretionary power are and what implications arise out of their power.

To analyze the data, the questions on the questionnaire were placed in three categories, each of the categories were designed to aid in answering each of the research questions.

The categories are:

- Transfer factors
- Offenses
- Judicial Perceptions on the Power of Discretion

The data was gathered from questionnaires that were sent to 294 juvenile court judges in Ohio and Pennsylvania. The questionnaires contained 12 questions that were created based on journal articles and the respective state statutes. The questionnaire attempted to understand the common transfer factors that juvenile judges utilize, the offenses that judges believe must be committed for a juvenile to be transferred, and the judge's perception on their discretion power and the resulting implications of that power.

Sample Description

To describe the sample, the results from four questions from the questionnaire were analyzed. The first question used to describe the sample was the question asking the judges how many cases per year they considered involving transfer from their court to the adult criminal court system. From the 104 total questionnaires, there were 99 valid questionnaires to analyze this question. The number of cases the judges heard in a year ranged from zero to 500 cases. The average number of transfer cases heard in a year was approximately 11 ($\bar{x}=11.34$). The median of cases considered in a year was three. The most frequent response from the judges was one per year (See Table 1).

The second question used to describe the sample asked the participants in increments of 5 years how long they had served on the bench. The first increment was one to five years, which described approximately a quarter of the sample (n=26). The second increment, six to ten years, described approximately 18 percent of the sample (n=19). The third increment, 11 to 15 years, encompassed approximately 19 percent of the sample (n=20). The fourth increment, 16 to 20 years was the smallest increment of the sample as it included approximately 16 percent of the sample (n=17). The final increment, 20 years and beyond, included approximately 20 percent of the sample (n=21) (See Table 1).

The third question used to describe the sample asked the participants which state or commonwealth their court sits in. Ohio participants made up over 54 percent (n=57) of the sample and Pennsylvania participants made up approximately 45 percent (n=48) of the sample. The final question asked the participants which type of residential area their court sits in. Participants from rural residential areas accounted for almost half of the

sample (n=50). The participants from urban residential areas were the next largest group, representing approximately 23 percent (n=24) of the sample. The third largest group represented counties with a combination of residential areas and made up approximately 16 percent (n=17) of the sample. The smallest group, rural residential areas, represented approximately 13 percent (n=14) of the sample (See Table 1).

Table 1: *Descriptive Profile of the Sample, n=105*

Item	n	Percentage
Number of transfer cases heard per year		(Mean =11.34, Median =3) (Range =0-500)
Years spent on the bench		
1-5	26	25.20%
6-10	19	18.40%
11-15	20	19.40%
16-20	17	16.50%
20+	21	20.40%
State/Commonwealth of court		
Ohio	57	54.30%
Pennsylvania	48	45.70%
Geographic description of court location		
Urban	24	22.90%
Suburban	14	13.30%
Rural	50	47.60%
Combination	17	16.20%

Factors

To answer the first research question, what are the common factors used among a majority of juvenile court judges in Ohio and Pennsylvania, the judges were asked to rate eight factors commonly found in juvenile transfer statutes and journal articles. The participants were given a likert-scale which ranged from one, not very important, to five, very important to rate each factor. Three factors, amenability to rehabilitation and the perceived dangerousness of the offender, were found to be extremely important to the participants. The amenability to treatment factor is the highest rated factor ($\bar{x}=4.51$). The other two factors produced similar results: the perceived dangerousness of the offender ($\bar{x}=4.45$) and the juvenile's response to past treatment efforts ($\bar{x}=4.44$) (See Table 2).

The participants rated four of the factors of having average importance. The first factor in this group was the extent and nature of the offender's prior record, which had a mean of 4.19. The next factor, the maturity level of the offender, was close in importance ($\bar{x}=4.12$). The final two factors in this group were also ranked as important: the availability of programs available to treat the offender's problems ($\bar{x}=3.93$) and the sophistication of the crime/nature of the crime factor ($\bar{x}=3.88$). The final factor was ranked by the participants as having a lower importance to the transfer decision than the other eight factors. The offender's social background factor was ranked the lowest of the eight factors ($\bar{x}=2.88$) much lower than the other seven factors (See Table 2).

Table 2: The Importance of Transfer Factors, n=103

Factor	Mean	Std. Deviation
Amenability to rehabilitation	4.51	0.96
Perceived dangerousness of the offender	4.45	0.94
The juvenile's response to past treatment efforts	4.44	0.93
The extent and nature of the offender's prior record	4.19	1.01
Maturity level of the offender	4.12	0.84
The availability of programs available to treat the offender's problems	3.93	1.06
Sophistication of the crime/nature of the crime	3.88	1.01
The offender's social background	2.88	1.25

Offenses

The participants were given two questions designed to answer the second research question, what do juvenile court judges believe should be the offenses leading to juvenile transfers. The first question asked the participants to select among three offenses given that must be committed by a juvenile to be considered for transfer. The four offenses provided to the respondents were: homicide, rape, arson, and “other”; the judges were asked to specify which other offenses they consider if they had checked “other”. Over 70 percent (n=69) of the participants indicated that homicide should be a factor that if committed, must be considered in transfer proceedings. The participants were split on whether or not rape must be committed for a juvenile to be transferred as 50 percent (n=49) responded “yes” and 50 percent (n=49) responded “no”. The final offense given to the participants, arson, drew significantly less support. Only 30 percent (n=30) of the participants thought that arson must be committed for a juvenile to be transferred (See Table 3).

For the final category, 30 percent (n=30) of judges indicated that there are additional unlisted offense that should result in juvenile transfer. Of the participants who believe there are other offenses that should result in transfer, 68 percent (n=66) believed the additional offenses should include some sort of violent felony with use of a firearm. Approximately 10 percent (n=10) of the participants indicated the enumerated factors in their respective state statute should be the sole offenses considered (See Table 3).

Table 3: *Percentage of Respondents Who Endorse Each Offense as Mandatory for Transfer, n=105*

Offense	Percentage Yes Response	Percentage No Response
Homicide	70.4% (n=69)	29.6% (n=29)
Rape	50% (n=49)	50% (n=49)
Arson	30.6% (n=30)	69.4% (n=68)
Other	30.9% (n=30)	69.1% (n=67)

Judicial Perceptions on the Power of Discretion

The final research question, what are the judge’s perceptions of the practice of discretion and its influences, involved five questions from the questionnaire. The first question asked the participants whether they felt they should retain discretion in juvenile transfer cases. Over 95 percent (n=97) of the participants believed they should retain discretion, while only less than 5 percent (n=5) thought they should not retain discretion in juvenile transfer cases (See Table 4). The second question pertaining to judicial

discretion asked the participants, when reviewing cases across the United States, do you believe the juvenile courts are too lenient, exhibit an appropriate level of punishment, or are too harsh on juveniles. Over 90 percent (n=83) of the participants responded that the juvenile courts exhibit an appropriate level of punishment. Just over 3 percent (n=3) believed the juvenile courts are too harsh and the remaining 3 percent (n=3) believed the juvenile courts are too lenient (See Table 5).

The participants were also asked whether, based on the “spirit of the law” do you believe that overall the correct or incorrect juveniles are being transferred to adult criminal court. Over 94 percent (n=88) of the participants believed that the correct juvenile were being transferred to the adult criminal court system. Only 5.4 percent (n=5) of the participants believed the courts are transferring the wrong juveniles to the adult criminal court system (See Table 6).

In determining the judicial perceptions of the implications of their discretionary power, two additional questions were asked. The first question asked the participants whether or not sending a juvenile to the adult system plays a role in making the offender a “better criminal”. Approximately 52 percent (n=48) of the participants believed transferring a juvenile to the adult criminal court system does play a role in making the juvenile offender a “better criminal”. Just over 46 percent (n=42) of the participants believed sending a juvenile to the adult criminal court system does not play a role in making the juvenile offender a “better criminal” (See Table 7).

The final question used to determine the judicial perception of discretion and the resulting implications asked the participants whether they believed the juvenile to adult transfer process is: over utilized, on target, or under utilized. Over 80 percent (n=75) of

the participants indicated that the process is on target. Just over 10 percent (n=10) of the participants believed that the process is over utilized and slightly more than 8 percent (n=7) believed the process is under utilized (See Table 8).

Table 4: *Judicial Perceptions on Discretion, n=102*

Item	Percentage of "Yes" Responses	Percentage of "no" Responses
Do you believe Juvenile Court Judges should retain discretion in juvenile transfer cases?	95.1% (n=97)	4.9% (n=5)

Table 5: *Judicial Perceptions on the Court's Treatment of Juvenile Offenders, n=89*

Juvenile Courts' Treatment of Juvenile Cases	Percentage of judges who believe the courts are too lenient	Exhibit appropriate level of punishment	Percentage of judges who believe the courts are too harsh
Do you believe Juvenile Court Judge's are too lenient or harsh?	3.4% (n=3)	93.3% (n=83)	3.4% (n=3)

Table 6: *Judicial Perceptions on Belief that the "Correct Juveniles" are Being Transferred, n=93*

Item	Percentage of "No" Responses	Percentage of "Yes" Responses
Based on the "spirit of the law" do you believe the correct juveniles are transferred	5.4% (n=5)	94.6% (n=88)

Table 7: *Judicial Perceptions on the Implications of Transfer, n=91*

Item	Percentage of "No" Responses	Percentage of "Yes" Responses
Does sending a juvenile to the adult system play a role in making the juvenile a "better criminal"	46.20% (n=42)	52.70% (n=48)

Table 8: *Judicial Perception of the Utilization of the Transfer Process, n=92*

Item	Percentage of "Over utilized" responses	Percentage of "On target" responses	Percentage of "Under Utilized" Responses
The juvenile to adult transfer process is:	10.90% (n=10)	81.50% (n=75)	7.60% (n=7)

Effect of Residential Area on Transfer Factors

Courts sitting in urban residential areas had the highest rating in four of the transfer factors: perceived dangerousness of the offender, maturity level of the offender, the offender's social background, and the extent and nature of the offender's prior record. On a scale of one, not very important, to five, very important, the participants that sit in an urban court had a mean of 4.58 in the amenability to treatment factor. The participants that sit in an urban court had a mean of 4.24 in rating the maturity level of the offender factor. The offender's social background factor had a mean of 2.91 for participants who sit in an urban court. The extent and nature of the offender's prior record had a mean of 4.21 for urban court participants (See Table 9).

The rural courts rated three of the transfer factors higher than rural and suburban court participants. The sophistication of the crime/nature of the crime transfer factor had a mean of 3.94 among the rural court participants. The juvenile's response to past

treatment efforts factor had a mean of 4.42 from the rural court participants. The final factor rated higher by rural court participants was the availability of programs available to treat the offender's problems factor with a mean of 4.03 (See Table 9).

The suburban court participants rated only one factor higher than the urban and rural court participants did. The suburban court participants rated the extent and nature of the offender's prior record factor with a mean of 4.21 (See Table 9). No differences in means were different statistically, (data not shown, $p \geq .05$) comparison via t-tests.

Table 9: Mean Comparison of Transfer Factors and Residential Area, n=102

Item	Does your court sit in a urban area?		Does your court sit in a rural area?		Does your court sit in a suburban area?	
	Yes	No	Yes	No	Yes	No
Amenability to treatment	4.64	4.45	4.42	4.67	4.39	4.55
Perceived dangerousness of the offender	4.58	4.39	4.33	4.65	4.34	4.49
Sophistication of the crime/nature of the crime	3.88	3.89	3.94	3.78	3.69	3.96
Maturity level of the offender	4.24	4.06	4.12	4.11	4.00	4.16
The offender's social background	2.91	2.87	2.83	2.97	2.66	2.97
The extent and nature of the offender's prior record	4.21	4.19	4.14	4.3	4.21	4.19
The juvenile's response to past treatment efforts	4.36	4.47	4.42	4.46	4.34	4.47
The availability of programs available to treat the offender's problems	3.91	3.94	4.03	3.76	3.86	3.96

Effects of Experience on Transfer Factors

The final analysis, a means comparison, was completed to determine the effect that experience on the bench had on the participants rating of the eight transfer factors. The participants were divided into two groups, those with less than 11 years on the bench and those with 11 or more years experience on the bench. Both groups had the same

mean for the maturity level of the offender factor. The group of participants with more than 11 years on the bench only rated two factors higher than lesser experienced judges. This group had a mean of 4.59 on the amenability to treatment factor and a mean of 4.51 on the juvenile's response to past treatment efforts factor. The lesser experienced group rated each of the remaining five factors higher than the more experienced group. The perceived dangerousness of the offender factor had a mean of 4.55. The sophistication of the crime/nature of the crime had a mean of 3.98. The offender's social background had a mean of 3.07. In the final factor, the extent and nature of the offender's prior record, the lesser experienced group had a mean of 4.23 (See Table 10).

Table 10: *Means Comparison of Transfer Factors and Experience on the Bench, n=101*

Item	1-10 Years on the Bench	11 + Years on the Bench
Amenability to treatment	4.48	4.59
Perceived dangerousness of the offender	4.55	4.42
Sophistication of the crime/nature of the crime	3.98	3.88
Maturity level of the offender	4.11	4.11
The offender's social background	3.07	2.74
The extent and nature of the offender's prior record	4.23	4.21
The availability of programs available to treat the offender's problems	3.80	4.07
The juvenile's response to past treatment efforts	4.41	4.51

Summary

Chapter four included a discussion on the analysis and results of the three research questions evaluated in the research project. The data to answer the research

question were obtained through questionnaires that were sent to 294 juvenile court judges in Ohio and Pennsylvania.

The first research question, what transfer factors are most commonly utilized by juvenile court judges, showed that the participants weigh some commonly used statutory factors as being more important than others. The amenability to treatment, perceived dangerousness of the offender, and the juvenile's response to previous treatment attempts were rated by the participants as having the highest importance of the eight transfer factors included in the questionnaire. The extent and nature of the offenders prior record and the maturity level of the offender were rated as having above average importance. The availability of programs available to treat the offender's problems and sophistication of the crime were rated by the participants as having average importance in the transfer evaluation process. The final factor, the offender's social background, was rated the lowest by the participants.

The second research question analyzed the offenses the participants believed must be committed for a juvenile to be transferred to adult criminal court. Approximately 70% of the participants believed that transfer must be considered if the juvenile offender committed a homicide. Half of the respondents believed that transfer must be considered if the juvenile offender has committed a rape. Approximately 30% of the participants believed that transfer should be considered if arson was committed. Finally, 30% of the participants believed that transfer should be considered if "other" offenses were committed, which involved felonies with weapons.

The final research question evaluated the perspectives of the participants concerning whether or not they believe they should retain in juvenile transfer cases and

what their perceptions are of the implications of judicial discretion. Over 95% of the participants believed they should retain discretion in juvenile transfer cases. The majority of the participants believe that transferring a juvenile to the adult system does play a role in making the juvenile offender a “better criminal”. Approximately 95% of the participants indicated they believed that the correct juveniles are being transferred to the adult criminal court system. Over 80% of the participants believe the utilization of transfer process is on target. The final chapter will summarize the research projects, problems incurred during research, possible contributions, and suggest further research.

Chapter 5 Discussion

The previous chapter analyzed the data obtained through the collection of questionnaires that were distributed to 294 juvenile court judges in Ohio and Pennsylvania. The data was collected to answer three research questions:

- What are the common factors used in juvenile transfer cases among a majority of juvenile court judges in Ohio?
- What do juvenile court judges believe should be the offenses leading to juvenile transfers?
- What are the judges' perceptions of the practice of discretion and its influences?

Approximately 54% of the questionnaires included in the survey represented Ohio Juvenile Court Judges, while the remaining 45% of the participants represented Pennsylvania. The sample had a fairly even distribution of experience on the bench. The distribution of residential area was slightly less representative as participants from suburban residential areas were overrepresented.

Strengths

The distribution of judicial experience on the bench was evenly distributed. The largest increment of years of experience on the bench was the one to five years increment, which described approximately a quarter of the sample. The next largest increment, 20 years and beyond, included approximately 20 percent of the sample. The third largest increment, 11-15 years, described approximately 19 percent of the sample. The next increment, six to ten years, represented approximately 18 percent of the sample. The smallest increment, 16 to 20 years, described approximately 16 percent of the

sample. The difference between the largest and smallest increments is marginal, giving the sample a relatively even distribution of judicial experience on the bench.

The study found that there is a sense of unity in the juvenile court judges' decision making process. The results showed that the participants rated five of the eight factors as highly important, two of the factors as having above average importance, and one factor as having average importance. These findings coincide with the findings of the studies included in the literature review, showing some consistency in the use of transfer factors among juvenile court judges.

The findings on the final research question pertaining to judicial discretion were relatively consistent. Approximately 95 percent of the participants indicated that they believe they should retain discretion in deciding juvenile transfer cases. Approximately 95 percent of the participants believe that the correct juveniles are being transferred to the adult criminal court system. More than 80% of the participants believe that the utilization of the transfer process is "on target".

Weaknesses

While the distribution of Ohio and Pennsylvania participants was fairly even, the residential areas were less even. Participants from rural residential areas comprised half of the sample, while the remaining half consisted of urban, suburban, and counties with a mixture of residential areas. From the remaining half, almost a quarter of participants were from urban residential areas, making suburban counties underrepresented. As shown in the literature review, the type of residential areas within a county can affect the transfer rates and opinions of judges.

The findings in regard to the offenses that must be considered during the transfer process were less consistent than the first research question. Approximately 70 percent of the participants indicated that transfer should be considered if a juvenile commits a homicide. Half of the participants believe that transfer should be considered if a juvenile commits a rape. Approximately 30 percent of the participants indicated that if a juvenile commits arson, the case should be considered for transfer. Finally, 30% of the participants believed that transfer should be considered if “other” offenses were committed, most of the participants indicated the use of weapons or a serious felony must be involved.

Evaluation

The results were as expected with some exceptions. The low rating of the social background factor was somewhat surprising as socio-economic status, familiar status, and other social background factors are often mentioned in criminal justice related publications. Also unexpected was the lack of consistency in the rating of offenses in the transfer process. The highest rated offense, homicide, was still relatively low compared to what was expected, especially considering the transfer legislation has become harsher based on media and public perceptions about violent youth offenders. The next highest rated offense, rape, was split among the participants with 50 percent believing rape should lead to a transfer hearing and 50 percent believing rape should not automatically lead to transfer proceedings. The strong emphasis by the participants on the transfer factors was not surprising based on the literature; especially in regards to the factors regarding the juvenile’s amenability to treatment and the juvenile’s responses to past

treatment efforts, as rehabilitation was the founding philosophy of the juvenile court system.

Contributions

The hope of this research project is that the study will expand knowledge of the juvenile transfer process, particularly the judicial discretion involved in the process. Most existing data on the juvenile transfer process is limited to studies on transfer laws and legislation, little research exists on the other dimensions of juvenile transfer. There is limited research on the transfer policies of Ohio and Pennsylvania, thus this research will add to the information of other states and the national level.

Further Research

The legislation concerning juvenile transfer, specifically judicial juvenile transfer, has rapidly expanded over the past decade. As research is limited in regards to judicial juvenile transfer, further research would be beneficial to the field of study. Additional research would help shape and reform current legislation built on the “get tough” philosophy. Suggestions for further research would include further research on the effects experience on the bench and residential areas within the county have on the weight the juvenile court judges place on the juvenile transfer factors.

As shown in chapter four, the judges from the three residential areas rated each of the eight factors similar to one another. An interesting study would be to further investigate the effect of a judge’s residential area on how the judge weights each factor. An expanded study could include a larger sample size with more evenly distributed

residential areas. Additional factors could also be included to coincide with the respective statutes involved.

Also shown in chapter four, with the exception of the offender's social background factor, the judges did not vary substantially in how they weighed factors based on their experience on the bench. In one factor, the maturity level of the offender, judges with less than ten years experience on the bench rated the factor exactly the same as judges with more than ten years. A further study evaluating the effect of years experience on how judges weight transfer factors could include a larger sample size and expand on the result of the current study.

Other future studies would include a comparison of the Ohio and Pennsylvania judges. The judges were asked to indicate which state, Ohio or Pennsylvania, their courts sits in to describe the present sample. Future research could expand on the present study by analyzing the research questions by comparing the responses of the Ohio juvenile court judges to the Pennsylvania juvenile court judges.
respective statutes involved.

Finally, further research would include a qualitative study of the responses received from the participants. In the questionnaire used in this study, the judges were asked to comment on selected question. The majority of the comments were not utilized in the present study, but further research conducting a qualitative study on the comments would benefit the topic.

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June 8, 2010

Dr. Tammy King, Principal Investigator
Ms. Laura Ann Canale, Co-investigator
Department of Criminal Justice and Forensic Sciences
UNIVERSITY

RE: HSRC PROTOCOL NUMBER: 185-2010
Title: Procecuting Children as Adults: How Do Juvenile Court Judges Decide Who
Should Face that Fate?

Dear Dr. King and Ms. Canale:

The Human Subjects Research Committee has reviewed the abovementioned protocol and determined that it is exempt from full committee review based on a DHHS Category 4 exemption.

Any changes in your research activity should be promptly reported to the Human Subjects Research Committee and may not be initiated without HSRC approval except where necessary to eliminate hazard to human subjects. Any unanticipated problems involving risks to subjects should also be promptly reported to the Human Subjects Research Committee.

The HSRC would like to extend its best wishes to you in the conduct of this study.

Sincerely,

Peter J. Kasvinsky
Dean, School of Graduate Studies
Research Compliance Officer

PJK/cc

c: Atty. Patricia Wagner, Chair
Department of Criminal Justice and Forensic Sciences