The Michigan Juvenile Waiver Package: An Analysis of Its Use in Wayne County, Michigan

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THE MICHIGAN JUVENILE WAIVER PACKAGE: AN ANALYSIS OF ITS USE IN WAYNE COUNTY, MICHIGAN

by

Kenneth C. Jackson

A Thesis Submitted to the Faculty of The Graduate College in partial fulfillment of the requirements for the Degree of Master of Arts Department of Sociology

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Kenneth C. Jackson
THE MICHIGAN JUVENILE WAIVER PACKAGE: AN ANALYSIS OF ITS USE IN WAYNE COUNTY, MICHIGAN

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Western Michigan University, 1994

On October 1, 1988, the Michigan Juvenile Waiver Package took effect in Michigan. One of the results of this was the implementation of the prosecutorial waiver method in Michigan. Whereas previously juveniles could only be waived and tried in the adult court via a judicial waiver, now it was possible for the prosecutor to waive juveniles aged 15 or 16 if charged with one or more of seven specified Class 1A felonies. Data were collected for all youth subject to prosecutorial waiver in Wayne County over a five year period, from October 1, 1988 through October 1, 1993. Data included: date of waiver; age, race, and sex of the juvenile; the offense charged; and the outcome of the waiver trial. It was found that over half of the juveniles waived to the adult court were returned to the juvenile justice system for sentencing after conviction. This was unexpected, as one of the goals of the waiver law was harsher punishment for serious, violent youth. In summary, the prosecutorial waiver law in Michigan appears to serve more of a symbolic function than an instrumental one.
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CHAPTER I

INTRODUCTION

For almost one hundred years, since the creation of the first juvenile court in Chicago, Illinois, children have been subject to a different justice system than adults. The differential treatment of offenders based on age however, dates back much further than this, to four thousand years ago. The justice system for youth is not only physically separate from the adult justice system, but also ideologically and philosophically different. It is guided by the assumption that the youths subject to it are in need of guidance and supervision and can be rehabilitated, that the problems that brought them to the attention of the court can be corrected (Platt, 1977).

While the rehabilitative philosophy of the juvenile court is in direct contrast to the punitive and retributive philosophy of the criminal court, there has been since the court's creation a way to subject its clientele to the adult court. The waiver, or transfer, of jurisdiction is typically reserved for a small number of youths, not intended for the majority of juvenile court clientele. Traditionally, waiver has been justified as providing greater protection for the general public than the juvenile court can, by removing from the community youth who are dangerous and intractable or those who have exhausted the rehabilitative resources within the juvenile court (Bortner, 1986). The oldest and most prevalent method to transfer jurisdiction is the judicial waiver, by which a juvenile
court judge relinquishes the court's jurisdiction over a youth in order for
the criminal court to initiate proceedings against him or her (Feld, 1984).

In recent years, the underlying philosophy of the juvenile justice
system has been criticized and challenged. The rehabilitative ideals of the
juvenile court have suffered from a loss of public confidence due to a
systematic increase in the amount of serious, chronic, and violent juvenile
crime, and the apparent leniency of the courts in dealing with these
offenders (Champion, 1989). As a result, the concern for the best interests
of the child has been replaced with a need for greater public protection,
with punishment and retribution becoming more prominent (Bortner,
1986). One result of this philosophical shift has been a change in the
juvenile court's jurisdiction and sentencing policies across the nation.
Since 1978, over 40 states have passed laws reflective of this change, all of
which have restricted the once exclusive and original jurisdiction of the
juvenile court (Feld, 1987).

The two primary methods by which states have narrowed juvenile
court jurisdiction are through the legislative waiver and the prosecutorial
waiver. Those states with legislative waiver, or legislative offense
exclusion, mandate that youth with stated age, offense, and prior record
restrictions be tried automatically in the criminal court. In these cases the
juvenile court does not have original jurisdiction, the youth is legislatively
excluded from it. The second method is the prosecutorial waiver, in which
the prosecutor, also restricted by age, offense, and past record
requirements, is allowed to determine judicial forum by filing the
appropriate papers in the respective court (Feld, 1987).
According to Braithwaite and Shore (1981), the waiver of jurisdiction for juvenile offenders to the criminal court is the most serious disposition available to the juvenile court. Zimring (1981) equates the waiver of juveniles to capital punishment, in that both share low incidence, are discretionary, ultimate, and inconsistent with the underlying philosophy of the respective court. Feld (1987) states that it represents a choice between the rehabilitative philosophy of the juvenile court and the punitive philosophy of the criminal court. It is also indicative of the juvenile court's recognition that the youth is incompatible with the rehabilitative dispositions available to him or her in the juvenile court, and is deserving of punishment (Braithwaite & Shore, 1981).

The predominant rationale for allowing the transfer of juveniles to criminal courts has been that particular juveniles, by virtue of their behavior and criminal activity, are not deserving of the protection afforded by their juvenile status. Hence, the waiver is justified as protecting the public, by identifying and incapacitating those juveniles deemed as dangerous and intractable (Bortner, 1986). Accordingly, the waiver is used when the crime is particularly heinous and the minimum length of confinement exceeds the maximum length available under the juvenile justice system (Feld, 1984). In recent years, the use of waiver has increased significantly in most states. An analysis of trends in waiver statutes indicates that hearings are now being used more often in order for officials to impose more serious punishment on juveniles charged with serious crimes than is possible in the juvenile court (Champion, 1989). This is due to the gradual replacement of the rehabilitation philosophy
with one of just deserts, a result of the public's criticism of juvenile court processing and its apparent leniency toward youth (Champion, 1989; Feld, 1987).

This thesis will have as its focus the Michigan Juvenile Waiver Package that took effect on October 1, 1988. A history of the juvenile court and the philosophy of the juvenile justice system will first be presented, followed by the changes that have taken place since its creation, to allow an understanding of the juvenile court today. Various waiver mechanisms presently in use, which include judicial, legislative and prosecutorial, will then be examined. The 13 public acts referred to as the Juvenile Waiver Package of Michigan will then be discussed, along with the rationale behind and implications of the law. Following a review of the relevant literature, the research objectives and methods will be stated, and the results of this research will be presented. This thesis will end with a summary of the results and a brief discussion of the implications.

History of the Juvenile Court

The earliest distinctions made between juveniles and adults can be traced back four thousand years to the Code of Hammurabi and early Hebrew law, which recognized runaways and children who disowned their parents (Thomas & Bilchik, 1985). Two thousand years ago Roman civil law made a distinction between juveniles and adults based on an "age of responsibility". The Twelve Tables of Roman law specified that juveniles were to be held criminally responsible for violations of the law, but specified a less severe punishment. For example, whereas adults convicted
of theft were subject to flogging, juveniles were ordered to pay restitution. Eventually Roman law recognized three different stages of childhood, classifying juveniles as infans, proximus infantiæ, or proximus pubertati. Infans were not held criminally responsible, youth determined to be proximus pubertati were held criminally responsible, and youth deemed proximus infantiæ could be classified either way (Cox & Conrad, 1991). Later, in the fifth century A.D. the legal onset of puberty was the point at which criminal responsibility was applied. This was defined as occurring at age fourteen for boys and age twelve for girls. Boys between ages seven and fourteen and girls between ages seven and twelve had criminal responsibility based on their capacity to understand the difference between right and wrong, and children below age seven were not held criminally responsible (Cox & Conrad, 1991).

In English criminal courts, in the eleventh and twelfth centuries, juveniles were defined as a special category of people, and infancy or immaturity was an acceptable legal defense. Recognition was given to the possibility that courts could (and should) excuse the conduct of those people who did not (or could not) appreciate the wrongfulness of their actions. Influenced by Roman law, common law stated that children under the age of seven were doli incapax, lacking criminal capacity. From ages seven to fourteen a rebuttable presumption of this criminal incapacity existed, and infancy or immaturity as a legal defense could be denied. The crucial part in determining whether a juvenile was held criminally responsible rested on their capability of forming criminal intent, mens rea, which had to be proven as existent in order to convict a juvenile if under
the age of fourteen. Juveniles over the age of fourteen had no right to use infancy or immaturity as a legal defense, and were presumed doli capax, having criminal capacity (Cox & Conrad, 1991; Thomas & Bilchik, 1985).

The Chancery Courts of England, created in 1874, contributed two important components of the modern juvenile court. First, it was in the Chancery Courts that the king was given the opportunity to exercise the right of parens patriae (state as father), by allowing the court to act in loco parentis (in place of the parents), for benefit of children (Cox & Conrad, 1991). Second, these courts lacked the formality and rigidity that had been characteristic of other English Courts (Thomas & Bilchik, 1985). These two contributions can be seen in the juvenile court, as it is informal, with a focus on individualized needs and rehabilitation. English Common Law allowed for lenient treatment of juveniles based on age, yet this was not guaranteed for youth above the age of seven. Juveniles were still sent to adult prisons, although they were often physically separated from adults. This was the case until 1788, when Robert Young established the first private institution specifically for juveniles, with the goal of preventing them from entering a life of criminality (Conrad & Cox, 1991).

Due primarily to the impact of English Common Law, early American legal documents took into account the age of those alleged to have violated the law. The changes that led to the eventual creation of the juvenile court are also associated with the establishment of houses of refuge in Massachusetts, New York, and Pennsylvania between 1824 and 1828. These houses of refuge were the first public facilities established exclusively for the care of juveniles. It was here that the origins of the
juvenile justice system planted its roots, separating juveniles from adults in the court and in penal institutions (Thomas & Bilchik, 1985).

In the late 1800s, there was a great deal of change in the social and economic structure of the United States. The existence of the railroad industry enhanced economic growth and changed manufacturing processes, which in turn increased urbanization and immigration. The family was modernized, which resulted in a different cultural conception of childhood. This meant that for an increasing number of youths, their social development took place in an urban industrial society, instead of occurring in a rural agrarian one. With this came new social problems, such as "brothels, alcohol, comic books, amusement parks, and other commercialized vices" which "were seen as a ubiquitous threat to the fragility of youth" (Platt, 1977: p. 91). As a response to these new social problems, the Progressive movement emerged. Children were perceived as corruptible innocents, and the family, specifically women, assumed a greater role in supervising their moral and social development (Feld, 1987). The Progressives introduced a number of reforms to the criminal justice system, including probation, parole, indeterminate sentencing, and finally the juvenile court. These changes shared common elements, all being flexible and discretionary, with the goal of rehabilitation.

As a result of both the Progressive movement and the earlier efforts at separating children from adults, the Illinois legislature in 1899 passed "an act to regulate the treatment and control of dependent, neglected, and delinquent children" (Revised Laws of Illinois, 1899: p. 131-137, as cited in Platt, 1977). The result of this, the Illinois Juvenile Court Act, was the
creation of a separate court and justice system for children. Wisconsin and New York followed Illinois and created their juvenile courts in 1901, and in 1925 all but two of the 48 states had created juvenile courts through legislation. By 1945 the reform movement was complete: all jurisdictions in the country had created some type of juvenile court (Cox & Conrad, 1991; Platt, 1977).

The Juvenile Court

The intent of the juvenile court movement was to remove children from the criminal court and provide them with a separate system of justice with a different underlying philosophy. Under the concept *parens patriae*, the juvenile court had as its goal treatment and rehabilitation, not punishment and retribution as was characteristic of the criminal court (Mlyniec, 1976). The juvenile court sought to control a variety of behaviors associated with premature adulthood, behaviors which countered the normative concept of childhood and adolescence (Feld, 1987). Intervention by the juvenile court was intended to forestall premature adulthood, enforce the dependent conditions of youth, and supervise their moral upbringing (Feld, 1987; Platt, 1977). Whether the behavior in question was criminal or non criminal was unimportant, as the goal of the juvenile court was to treat and rehabilitate, not punish, and proceedings were civil, not criminal, in nature. These behaviors included criminal activities, such as stealing and assault, as well as non-criminal activities, such as smoking, sexuality, truancy, and "living a wayward, idle, and dissolute life" (Feld, 1987: p.476).
Along with the statutorial separation of juveniles came other changes. Intended to separate youth from adults in a number of ways, the juvenile court had different procedures, a unique vocabulary, and a physically separate building. The courtroom was modified to look more like a parlor in the nature of a family conference than a legal setting, the ultimate goal being that it in no way resembled the criminal court (Platt, 1977). Proceedings against the child were initiated by a petition, juries and judges were prohibited, and hearings were informal and confidential. Individual judges were granted large amounts of discretion, primarily concerned with the best interests of the child, with little emphasis placed on the actual criminal act committed. Due process rights granted to adults in the criminal court were denied, as the proceedings were intended to be non-adversarial. Dispositions were given to rehabilitate and treat, intended to deter future delinquency and prevent youth from entering into a life of crime. Dispositions were non-proportional and indeterminate, with the court's supervision intended to continue for the duration of the child's minority (Feld, 1987; Platt, 1977).

According to Flicker (1981), there are three principles that govern the operation of the juvenile court: *parens patriae*, individualized justice, and the best interests of the child. *Parens patriae*, translated as "state as father", is derived from the King of the chancery courts of England, as he assumed the parent or guardian role of all children who needed his protection. This philosophy was adopted in the United States to justify commitment of children to institutions, whether it be for the commission of a criminal act or for abuse or neglect of the child by the parents.
Individual justice obligates a judge to consider all circumstances of the relevant case and all the facts in the defendant's history to arrive at the appropriate disposition. With little focus in the juvenile court on the actual offense committed, individualized justice allows a judge to exercise discretion in making a decision, through consideration of any relevant facts or circumstances unique to each case. The third principle is the best interests of the child, recited as the governing principle in almost all juvenile court statutes. The court, acting on behalf of the child by assuming the role of parent or guardian, is a philanthropic authority attempting to make decisions and implement dispositions in order to be of greatest benefit to the child (Flicker, 1981).

Changes in the Juvenile Court

From the juvenile court's inception, there were criticisms of its handling of juvenile delinquents. Liberal critics challenged the juvenile court with respect to the constitutionality of its procedures, policies, and broad dispositional powers (Thomas & Bilchik, 1985). Public support of the rehabilitative ideal later suffered due to a rise in the juvenile crime rate and evidence that the court was not able to achieve its lofty expectations (Rudman, Hartstone, Fagan, & Moore, 1986). These criticisms and challenges to the court were futile until the 1960s, when the United States Supreme Court handed down a series of decisions regarding juvenile justice.

The first of these cases, Kent v. United States, arose from the concern that youth were being transferred from the juvenile court to the
criminal court arbitrarily and capriciously. Upon reviewing the judicial waiver statute in the District of Columbia, the Court stated that transfer of jurisdiction was an important and critical stage, and mandated a number of procedural safeguards to protect the best interests of the child. The rights that were granted to juveniles included: the right to a hearing that satisfies due process rights, representation by counsel, access to the information used in making the waiver decision, and a written statement of the rationale behind a successful waiver. The Court also established a number of guidelines to assist judges in making the decision to waive a youth, listing the following as criteria a judge might consider: seriousness of the offense, the prosecutorial merit of the case, the sophistication and merit of the child, the child's prior record, the response of the child to prior rehabilitation efforts, and dispositional alternatives available to the public (383 U.S. 541, 1966). The Court's decision was the first of several steps taken in establishing minimum requirements of law in waiver proceedings and in the juvenile court.

One year later, in 1967, the Court handed down another decision that resulted in the most dramatic changes in the juvenile court since its creation (Feld, 1987). In In Re Gault, the Court reviewed the reasons for juveniles historically being denied procedural safeguards, and then rejected them, stating that "unbridled discretion...is frequently a poor substitute for principle and procedure," and that this often resulted in arbitrariness rather than "careful, compassionate, individual treatment" (387 U.S. 13, 1967). Several features of the juvenile justice system were seen as important and deserving of procedural safeguards. First, the
juvenile was being adjudicated and found delinquent for offenses that would be considered criminal if committed by an adult. Second was the stigma attached to a finding of criminality or delinquency. Finally, if judged delinquent, there was the possibility of institutional confinement. For these reasons, especially that of deprivation of liberty, the Court stated that juveniles had the right to advance notice of the charges against them, the right to a fair and impartial hearing, the right to assistance of counsel, and protection against self incrimination. However, the Court did not intend to make the juvenile court and the criminal court essentially the same. Accordingly, it limited the application of these safeguards only to the adjudicatory phase, when the child is judged delinquent, and not to the intake or disposition stages. The application of these safeguards to the juvenile court, placing some limitations on the court's power, was seen as important in order to both determine the truth and preserve individual freedom (387 U.S. 13, 1967).

Shortly thereafter, In Re Winship again equated juvenile court proceedings to those of the criminal court. Rejecting the notion that the juvenile court was a civil system, the Court declared the Fourteenth Amendment Due Process clause to be applicable to the juvenile court, and stated that delinquency must be proven beyond a reasonable doubt (397 U.S. 358, 1970). Five years later the Court established a functional equivalence between delinquency proceedings and criminal trials. In Breed v. Jones, the double jeopardy clause of the Fifth amendment was found applicable to juvenile proceedings, which prevented the criminal court from trying youth following adjudication in the juvenile court. Due
to the anxiety, pressure, and personal strain present in both courts, and considering the consequences of being found delinquent, the Court felt that there was little basis to differentiate delinquency proceedings from traditional criminal trials (421 U.S. 519, 1975). From this point on judicial forum had to be decided before a petition or complaint was filed, due to their functional equivalence.

The sum of these cases, in which the Court stated that the simple status of being a juvenile could not be equated with a total lack of access to fundamental constitutional rights, resulted in a dramatic change in the juvenile court, far removing it from the initial court envisioned by its Progressive creators (Feld, 1987; Mlyniec, 1976). At its inception, the juvenile court was informal, individualized, and primarily concerned with the best interests of the child. By assuring juveniles their due process rights and granting them procedural safeguards, the Court has shifted its focus, becoming more formal and concerned with the proof of commission of a criminal act. While these decisions were not intended to alter the fundamental character of the juvenile court, the legislative and judicial changes required to ensure that the juvenile court was harmonious with Constitutional requirements have contributed to such changes.

**Judicial Waiver**

The oldest and most prevalent way of transferring jurisdiction, dating back to the Illinois Juvenile Court, is by judicial waiver (Bishop, Frazier, & Henretta, 1989). Reflective of the juvenile court, a judge may transfer jurisdiction after a hearing in which the child's dangerousness
and amenability to treatment are assessed, and the criminal court is
determined to be the appropriate place for proceedings against the
juvenile (Feld, 1987). Prior to Kent there were no criteria for a judge to
utilize when making this decision and judicial waiver statutes were seen
as broad and standardless grants of discretion (Feld, 1978). In Kent, the
United States Supreme Court provided some substantive criteria on which
to base such decisions, thereby formalizing waiver decisions. While all
states have different criteria to consider for transferring jurisdiction,
specified with varying degrees of precision, most use the Kent criteria in
some form (Feld, 1987).

Just as maximum age of juvenile court jurisdiction varies across
states, so does the minimum age of eligibility for adult prosecution. The
maximum age of juvenile court jurisdiction is typically 17 or 18, with some
states having 16 as the maximum age. The minimum age at which youth
are eligible for waiver ranges from no minimum age requirement, such as
in Arizona, to 16, as in South Carolina. There also exist differences with
regard to offenses which are eligible for waiver. Arizona, the most lenient
state, allows waiver of jurisdiction for any offense, in conjunction with no
minimum age requirement. Some states, such as Indiana, set minimum
age at 14 for any offense, but will allow youth 10 years of age to be waived
if charged with murder. Forty of the fifty states, and the District of
Columbia, have adopted Kent criteria in some form to serve as guidelines;
only ten states have no criteria incorporated into their statutes. The
predominant judicial waiver statute is one with a minimum age
requirement, usually between 14 and 16, a limitation on offenses, typically
felonies or Class 1 index crimes, and some form of *Kent* criteria to consider (Feld, 1987). Class 1 index crimes include criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, automobile theft, and arson. *Kent* criteria include the seriousness of the offense, the prosecutorial merit of the case, the sophistication and merit of the youth, the youth's prior record, the response of the youth to prior rehabilitative efforts, and the dispositional alternatives available to the public.

Since its creation in Michigan, the juvenile court has allowed for a judicial waiver of jurisdiction (Duranczyk, Harp, & Minock, 1988). If a child who has reached the age of 15 years is accused of an act which would be a felony if committed by an adult, the judge of probate in the county where the offense is alleged to have been committed may waive jurisdiction over the juvenile upon motion of the prosecuting attorney (MCL 712A.4(1)). After the juvenile has been waived, it is legal to try the youth in the court having general criminal jurisdiction of the offense. However, before the juvenile court can waive jurisdiction, the judge first has to determine that there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult, and also probable cause to believe that the child subject to waiver committed the offense. After the court has determined this, it then has to conduct a waiver hearing to determine if the best interests of both the child and the public would be served by waiving jurisdiction, and must consider the following criteria:

a. The prior record and character of the child, his or her physical and mental maturity, and his or her pattern of living.

b. The seriousness of the offense.
c. Whether the offense is part of a repetitive pattern of offenses which would lead to one of the following determinations:
   1. The child is not amenable to treatment.
   2. That despite the child’s potential for treatment, the nature of the child’s delinquent behavior is likely to disrupt the rehabilitation of other children in the treatment program.

d. Whether despite the child’s potential for treatment, the nature of the child’s delinquent behavior is likely to render the child dangerous to the public if released at the age of 19 or 21.

e. Whether the child is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.

f. Whether it is in the best interests of the public welfare and the protection of the public security that the child stand trial as an adult offender (MCL 712A.4(4)(a)-(f)).

After such a hearing, the court then enters a written order, either granting or denying the motion to waive jurisdiction, stating the facts and conclusions arrived at to justify the decision made. If the motion for waiver is granted, this written order must be sent to the court having general criminal jurisdiction (MCL 712A.4(7)). The youth is then arraigned on an information filed by the prosecutor in the court of general criminal jurisdiction, at which point the juvenile court is removed from the process, the youth legally being an adult. If he or she is subsequently convicted of the charges sought, the sentence is served in the adult criminal justice system, the Michigan Department of Corrections.

Legislative Waiver

The second mechanism used to transfer jurisdiction is the legislative waiver. As the juvenile courts were created in statute, state legislatures are free to modify their jurisdiction in this way. In redefining the juvenile court’s jurisdiction, state legislatures have either chosen a legislative exclusion of offenses, the prosecutorial waiver, or a combination
of both (Bishop, Frazier, & Henretta, 1989). Legislative offense exclusion is a waiver method whereby, solely on the present offense charged, the juvenile court is denied jurisdiction of a particular juvenile offender (Feld, 1987). The second form of legislative waiver is the prosecutorial waiver, where the juvenile court and criminal court have concurrent jurisdiction, with specified age and offense limitations, and the prosecutor is allowed to determine judicial forum by filing either a complaint or a petition. Those states that have enacted both forms, Florida for example, allow for a prosecutorial waiver with offense limitations for youth up to a specified age, and a legislative waiver, with offense limitations for youth below that specified age.

As of June 30, 1986, 23 states and the District of Columbia had enacted some form of legislative waiver, be it legislative offense exclusion or prosecutorial waiver. The minimum age of eligibility for waiver is typically 14 to 16, yet six states have no minimum age requirement. Seven states allow for concurrent jurisdiction (prosecutorial waiver), and 22 use offense exclusion to waive jurisdiction. Offenses that are subject to these waiver methods vary from any offense charged, such as in Nebraska, to only those youth who are charged with murder, as in Pennsylvania. In those states that allow concurrent jurisdiction, only two do not have limitations on the offense charged, the remaining five specify offenses that are eligible, typically Class 1 Index Crimes. Those states that mandate offense exclusion typically focus on Class 1 Index Crimes, and six of the 15 states require a prior felony conviction in addition to a present felony offense charge to qualify for waiver (Feld, 1987).
The Michigan Juvenile Waiver Package

During the 1988 session of the Michigan legislature, a sixty-eight bill crime package was introduced that dealt with the handling of juveniles charged with serious crimes. Critics of the juvenile justice system felt that the juvenile court was unable to rehabilitate these young, chronic, and violent youth, nor was it able to punish or incapacitate them. These critics stated that such youth should automatically be tried and sentenced as adults. Still other critics argued that the judicial waiver of jurisdiction was not being used enough, because the waiver criteria were too difficult to satisfy (Duranczyk, Harp, & Minock, 1988). Under the traditional judicial waiver, prosecutors had to petition a juvenile court judge in order to charge the youth as an adult, a procedure that was criticized by law enforcement officials and legislators, who felt the juvenile court was being too lenient with juvenile offenders (Nowlin, 1989). They held that if a juvenile is charged with a specified offense(s), he or she should be subject to the criminal justice system, unless able to prove himself or herself amenable to treatment in the juvenile justice system (Duranczyk, Harp, & Minock, 1988).

The legislature rejected this sixty-eight bill package, instead creating a new, hybrid waiver system. Referred to as the Juvenile Waiver Package, it consists of 13 Public Acts which allows the prosecutor more discretionary power and restricts the jurisdiction of the juvenile court. This prosecutorial waiver method, referred to in Michigan as the automatic waiver, was implemented and works in conjunction with the
traditional judicial waiver method. If the prosecuting attorney has reason to believe that a juvenile, 15 years of age but less than 17 years of age, has violated one or more of nine specified offenses, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile in the court having general criminal jurisdiction. The offenses that are eligible for prosecutorial waiver include first degree murder; second degree murder; attempted murder; armed robbery; armed assault with intent to rob or steal; first degree criminal sexual conduct; manufacture, delivery, or possession with intent to manufacture or deliver 650 grams or more of any schedule one or two controlled substance; and possession of 650 grams or more of any schedule one or two controlled substance (MCL 712A.2(a)(1)). Each of these offenses are Class 1A felonies and punishable by up to life in prison. This legislation gives the prosecutor the discretion in deciding which court the youth in question should be tried in, either criminal or juvenile. If the judicial forum is the adult court, and the youth has been tried and convicted, the judge still retains the option of sentencing him in either the criminal justice system or the juvenile justice system, dependent on which is found to be in the best interests of both society and the youth. In making this determination at the juvenile's sentencing hearing, the judge must consider the same criteria that are considered at the traditional judicial waiver hearing, which were listed previously (MCL 769.1(3)(a)-(f)).

After the Juvenile Waiver Package was passed, it was thought to be the appropriate response to violent youth crime. Critics of the traditional judicial waiver system, notably Wayne County personnel, felt the new
method of waiver to be an appropriate response to serious juvenile crime, being a way to ensure harsher punishment for chronic and violent juvenile offenders, thereby allowing for greater protection of the general public through incarceration. In passing this legislation, Michigan became the second state, Nebraska being the first, to give jurisdictional power to the prosecuting attorney without first having his or her decision advocated judicially (Nowlin, 1988).

The Juvenile Waiver Package was not without problems, and opponents of the revised waiver statute say that it is not the answer to reducing the juvenile crime rate in Michigan. An informal survey of Kalamazoo area attorneys and judges by the Kalamazoo Gazette brings attention to some of these problems. First, depending on the offense the youth was convicted of, he or she may spend less time in prison than if sentenced in the juvenile court for the same offense. This is not what was expected, as the intent was harsher punishment within the adult system. Second, the Department of Corrections offers few services designed to rehabilitate juveniles placed in prisons. This is no surprise, as the adult system, unlike the juvenile system, does not have rehabilitation as a goal. What is of concern is youth being placed in prisons with adult criminals, then being returned to the community after completing their sentence. Not only might they do less time in the adult system, but the time that they do serve is going to be more detrimental than comparable time served in the juvenile system. Finally, more than half of the youths convicted under the discretionary waiver method at the time this survey was conducted had been committed to the Department of Social Services, the
juvenile justice system, instead of the Department of Corrections, the adult justice system, as was the intention. This means that most juveniles waived are being sent to training schools anyway, which is where they would have been sent in the first place (Nowlin, 1989). Robert Cleland, president of the Michigan Prosecuting Attorneys Association says that the "general trend in sentencing by adult judges runs counter to the intent of the Michigan Legislature when they passed the law. The intent was to commit juveniles who have taken adult risks and exhibited adult criminal behavior to adult prisons" (as quoted in Nowlin, 1989: p. 13). Cleland continues, saying that "if over the long haul, like one or two more years, we find that 70 to 80 percent of these cases are being referred back to the juvenile justice system, then I think we're going to have to take a serious look at how this law is being utilized by the justice system" (as quoted in Nowlin, 1989: p. 13). It is the intent of this research to determine how the Juvenile Waiver Package is being used in practice, and whether the goal of harsher punishment for violent youth offenders is being met.
CHAPTER II

LITERATURE REVIEW

Introduction

As previously stated, there has been in recent years an increase in the number of states that are restricting the juvenile court's jurisdiction. The rehabilitative ideals of the court are being questioned as to their effectiveness, and legislatures are turning to the criminal court as a solution to the problem of juveniles not being rehabilitated by the juvenile court (Braithewaite & Shore, 1981; Champion, 1989). The waiver of jurisdiction is being used for predominantly two reasons. First is to identify youth that are considered dangerous and intractable. Second is to provide greater protection for the general public through harsher punishment, via incarceration in the adult court, than is possible in the juvenile court (Bortner, 1986).

Determinants of the Waiver Decision

As the waiver method is being used with greater frequency, it is important to know the reasoning on which such decisions are based. Fagan and Deschenes (1990) conducted a study to determine whether waiver decisions are based on standards derived from statutory criteria or from extra-legal discretionary factors. The data were collected from four urban courts (Boston, Detroit, Newark, and Phoenix) from 1981 to 1984 on
201 youth for whom prosecutors had filed motions for transfer. In order to be eligible, the youth had to be charged with a violent crime and have one or more prior felony convictions; the only exception being a current charge of first degree murder, in which case no prior felony convictions were necessary. Of those youth in the sample, 38% were waived to criminal court, the remainder being retained in the juvenile court. Data from police reports, juvenile court records and court histories, along with statutory criteria used in each court were then examined to identify any differences between those youth waived and those retained.

Evident from examining the statutory criteria, the standards used in a waiver motion varied, providing a mix of both specific and non-specific criteria. Generally, the criteria that judges considered in making the decision were discretionary, as was the extent to which the judge must rely on such criteria. There was a relationship between the psycho-social development of youth, the age at onset of delinquency, and subsequent delinquency and aggression. The more mature the youth, the earlier the age of onset of delinquency, and the longer his or her record since onset increased the likelihood of waiver. Also affecting the waiver decision was the number of co-participants and victims. That is, the greater the number of co-participants and victims, the more likely a waiver. The age at offense itself was only associated with transfer in Phoenix, a finding that was mirrored by Bortner (1986). The time from the juvenile's age at offense to the juvenile court jurisdictional limit was found to be related in all courts except Newark. To wit, the closer the youth was to the juvenile court's jurisdictional age limit, the more probable a successful waiver
motion. The type of offense committed was found to be a determinant, as was the number of victims and co-participants: the more heinous the crime and the larger the number of victims the greater the likelihood of transfer. One important indicator with regard to the statutory criteria considered was the length of the juvenile's delinquent career and age at onset of delinquency: a lengthier record and earlier age at onset of delinquency resulted in a greater likelihood of transfer. In summation, Fagan and Deschenes (1990) found that the most consistent contributors for a waiver of jurisdiction were age at offense, age at onset of delinquency, and having a current charge of murder. Transfer was not biased by age or motivated by race, with past record and proximity to juvenile court jurisdictional limit having the strongest relationship to waiver.

Fagan, Forst, and Vivona (1987) used the same data as Fagan and Deschenes (1990) to examine any racial differences present in the waiver decision. The goal was to determine if the transfer decision, based on the dangerousness of the youth and his or her being beyond the rehabilitative capabilities of the juvenile court, varied by race. Two samples were used, both consisting of violent youth, the only difference being whether or not the youth was considered for transfer. The findings did not support the hypothesis that youth were waived at different rates due to race. Of those for whom the prosecutor sought a waiver of jurisdiction, there was no significant difference between minority and white youth, and only a slight difference in those successfully waived versus those retained. This difference was found only for the number of victims: minority youth who
were successfully waived had fewer victims in the offense charged than did white youth. However, this was stated to not be a determining factor in the waiver decision. The determinants of the transfer decision across all four sites were the same, being age at onset of delinquency, age at offense, or a present charge of murder. Age and offense criteria were consistent determinants of a decision to waive jurisdiction. Judges were primarily concerned with specific types of offenses, and the closer a youth was to the maximum age of juvenile court jurisdiction the more likely a motion of waiver (Fagan, Forst, & Vivona, 1987).

The findings of Fagan and Deschenes (1990) and Fagan, Forst, and Vivona (19987) are consistent with those of Barnes and Franz (1990), who found that legal criteria were the determining factors in waiver motions. This study collected data from two courts, for 206 waiver motions filed between March, 1978, and December, 1983. The contributions of three variables were examined: demographic, organizational and legal. Demographic variables included gender and race; organizational variables included the use of plea bargaining; and legal variables included the seriousness of the present offense charged and the juvenile's past record. The variables that were found to result in a waiver motion were the legal ones considered, which included the seriousness of the present offense, the number and nature of prior offenses, and previous attempts at rehabilitation. The contribution of demographic and organizational variables was determined to not noticeably contribute to a waiver decision (Barnes & Franz, 1989).
Identifying the Dangerous and Intractable

One objective of waiver is to identify those youth that are dangerous and intractable, in order to remove them from the general public for its own protection (Bortner, 1986). Bishop, Frazier, and Henretta (1989) analyzed Florida's waiver law, which consists of the traditional judicial waiver and a prosecutorial waiver, and found the waiver of jurisdiction was seldom used for the youth for whom it was intended. After reviewing a total of 583 cases of waiver in two Florida counties, the authors came to the following conclusions. If the criterion of dangerousness used is the commission of a violent felony, only 29% of those waived could be considered as dangerous. The majority of the youth waived, 55%, were charged with property felonies, of which half were grand theft, the remainder being burglaries of automobiles and unoccupied dwellings. The question that arises is whether or not these same youth were intractable, which the findings do not support. Of those youth waived, only 35% had previously been committed to a residential facility, the majority having been only placed on probation or ordered to community service or to pay restitution. In 23% of the cases, youth were transferred for a first offense. Bishop, Frazier, and Henretta (1989) stated in summation that these youth were not as a whole intractable, nor could those waived be considered dangerous.

Bortner (1986) also found that the dangerous and intractable were not identified in her study of youth subject to waiver. Using the same criterion as Bishop, Frazier, and Henretta (1989) to assess dangerousness, it was found that the juveniles waived were more likely to be charged with
property offenses. The study examined 214 youth subject to waiver in a large metropolitan county during the years 1980 and 1981. Case histories were examined to provide an analysis of the decision making process, along with interviews of juvenile court personnel. Only 55% of the juveniles were charged solely with felonies against persons (violent felonies), and 61% were charged solely with property felonies. After examining the prior records of these same juveniles, Bortner (1986) stated that there is nothing to suggest that they are distinguishable from other juvenile offenders, and therefore intractable. For example, 48.3% of the youth waived to adult court had fewer referrals than did those juveniles committed to the juvenile division of the department of corrections at the time. These findings by Bishop, Frazier, and Henretta (1989) and Bortner (1986) were consistent with those of Champion (1989).

Champion (1989) found not only that the number of waiver hearings is increasing in recent years, which is closely associated with the public's rejection of the rehabilitative ideals of the juvenile court, but also that the wrong population is being targeted and then waived. His research examined the use of waiver in Tennessee, Virginia, Mississippi, and Georgia, for the years 1980 through 1988. Also, it identified and charted the punishments imposed upon conviction in the criminal court. Data were not available on the length of sentence received, only on the type of disposition given. The findings showed that there is a trend towards an increased use of the waiver for less serious property offenses and a decrease in use of the waiver for violent offenses such as rape, robbery, and homicide. It needs to be clarified that the number of waiver hearings
for all offenses increased over the eight year period, it was the percentages of the offenses waived which accounted for an overall increase in property offenses and a proportionate decrease in violent offenses. In summation, Champion (1989) states that if a goal of waiver is to identify those youth deemed dangerous and intractable, then the wrong population is being targeted for waiver.

In Minnesota there exists a law which subjects youth to the adult court if they satisfy age, offense, and prior record requirements, all of which are intended to presume them unfit for the juvenile court. Osburn and Rode (1984) found that this law is also identifying the wrong population. One hundred and forty five court files were examined for youth waived, both prior to the legislative waiver taking effect and after it was implemented. They found that only one third of the youth met the requirement for waiver after the law was implemented, and only 45.5% of these were actually waived. The conclusion was that the law identifies as fit for waiver youth who should remain in the juvenile court, and fails to identify youth who should be transferred (Osburn & Rode, 1984).

Providing for Greater Public Protection

A second rationale for waiver is that, by identifying the dangerous and intractable youth, it will provide greater protection for the public by allowing for harsher punishment in the adult court than is possible in the juvenile court. Bortner (1986) found to the contrary: waiver does not identify those youth who are dangerous and intractable, nor does it result in greater public protection. Of the 214 cases analyzed, there was a
conviction rate in the adult court of 95.2%, with the most common disposition being probation, which accounted for 63.1% of the sample. Of these cases in which probation was the primary disposition received, less than half (47.4%) received jail sentences as a condition of probation. Those incarcerated, either in prison or jail, accounted for 31.7% of the sample, with the majority of them receiving prison sentences (30.8%). Additionally, not only is there an absence of high incarceration rates, there is also an absence of long periods of incarceration. The typical sentence received for those who were incarcerated was less than nine months in jail or five years in prison. As a significant number of juveniles waived are returned to the community immediately or shortly after conviction, it is clear that the intended goal of greater public protection is not being met (Bortner, 1986).

This is similar to findings in Florida by Thomas and Bilchik (1985), where the average sentence length of youth waived and given a prison sentence was 47.6 months, or slightly less than four years. This accounted for 66.5% of those convicted, with the remaining 32.1% of those found guilty placed on probation. The conviction rate in Florida, for the cases analyzed that went to trial, was also high, being 90.4%. Thomas and Bilchik (1985) stated that the ultimate dispositions handed down in Florida were neither harsh nor lenient for the offense charged, and did not make a reference to the perceived public protection provided.

Champion (1989) found somewhat different results than Thomas and Bilchik (1985) for those waived and convicted. In his study of waiver use and outcome in four states over a eight year period, 74% of the youths
in question received probation, with 15% receiving jail or prison sentences, which is nearly opposite the findings of Thomas and Bilchik (1985). The remainder received split sentences, such as probation or home incarceration with jail as a condition of probation. This can be interpreted as the waiver not providing greater public protection, as a clear majority of those waived remained in the community (Champion, 1989).

Consistent with Champion (1989) is a study done of the New York Juvenile Offender Law. In passing this law, which is a legislative exclusion waiver method, it was hoped that it would remove violent youth from the juvenile court and, through incarceration of the same, lower juvenile crime rates. Singer and McDowall (1988) found, however, that the law did not have any effect on juvenile crime rates, accordingly not providing any greater protection of the public. To determine the effect of the law, the authors used an interrupted time series analysis, comparing crime levels before and after the law was passed. Monthly juvenile arrests for homicide, rape, robbery, assault, and arson were analyzed, with arrest data coming from the Uniform Crime Reports for youth aged thirteen to fifteen. It was concluded by Singer and McDowall (1988) that the Juvenile Offender Law did not have an effect on the rates of homicide, assault, rape or arson. The best case for the law having a deterrent effect was on the rate of robberies: while it did not decrease the rate of robberies, it did prevent an anticipated increase in that rate. As the law did not have any deterrent effect on violent juvenile crime rates, it can be stated that it did not provide greater public protection (Singer & McDowall, 1988).
Gillespie and Norman (1984) also found that the waiver of jurisdiction was not providing any greater protection to the public. Data was examined from 1967 to 1980, for 132 youth waived to criminal courts in Utah. The predominant reason for a waiver motion was to protect the public after all the rehabilitative options in the juvenile court have failed, yet this goal was not being met. Of those cases analyzed for dispositions, there was a conviction rate of 76% in the adult system. Forty-seven percent of these were sentenced to prison, with 20% serving their time in the county jail. Of those sent to prison, half were released after serving an average of 2.74 years. This means that only 23% of those waived were removed from the community for more than 2.74 years, which supports the authors' conclusion that society is not well protected by use of the waiver in the state of Utah.

Concluding Remarks

As is evident from the preceding studies, the waiver of jurisdiction is not identifying those youth deemed dangerous, violent, and intractable, nor is it providing any greater protection to the general public through harsher punishment. There are several explanations for the wrong population, namely property offenders, being waived. First, many of the juveniles subject to waiver motions are recidivists or chronic delinquents who have histories of minor offenses. Therefore the waiver is used more as a way of dealing with recidivists than with violent juveniles (Champion, 1989). Second, Bishop, Frazier, and Henretta (1989) found that juveniles who had not committed serious, violent felonies, nor had lengthy offense
histories, were waived because they were nearing the maximum age of juvenile court jurisdiction. It should be stated that in Michigan the prosecutorial waiver does not allow for a waiver of jurisdiction for youth charged with property offenses: six of the eight offenses which are eligible for waiver are violent felonies, the remaining two being felony drug offenses. For this reason, the fear of waiver not targeting the intended population is minimized, as it is only possible to waive violent offenders in the state of Michigan. It is possible, however, that the law can be abused with regard to identifying the intractable. Whether those youth waived in Michigan are in fact intractable, based on their offense histories and previous attempts at rehabilitation, is not of primary importance for this research. Of primary interest is the notion of harsher punishment, which is intended to provide greater protection for the public, and whether the Michigan Juvenile Waiver Package is meeting its intended goal of harsher punishment for youth waived under the discretionary waiver method.
CHAPTER III

METHODOLOGY

Introduction

The present research will examine the use of the Michigan Juvenile Waiver Package, also referred to as the automatic waiver, in Wayne County, Michigan over a five year period beginning October 1, 1988 when the law took effect and ending October 1, 1993. The following sections will discuss the research objectives and the sample, and provide a definition of the variables. This will be followed by a brief discussion on the data collection method. Finally, descriptive statistics of the data that was collected will be presented.

Objectives

The goals of this research are to determine the following: the conviction rate for youth tried in criminal court following an automatic waiver; the outcome of the case following waiver and conviction; and how the outcome varies with respect to age, race, sex, and the offense charged.

Sample

Data were collected at the Recorder's Court in Wayne County, Michigan. Wayne County was used as the site for this research for two reasons. First, as mentioned in Chapter I, it was in Wayne County that
the waiver law was seen as an appropriate response to serious juvenile crime. Second, according to a study done by the Office of Children and Youth Services, Wayne County alone accounts for approximately half of all waivers in the state of Michigan in any given year, and will be the only county in Michigan from which a large sample can be drawn (Gutske, 1990). Youth were considered eligible for inclusion in this study if they met two requirements: they were waived to adult court via the discretionary waiver method and subsequently tried; and the date of the motion for waiver was between October 1, 1988, and October 1, 1993.

Variables

Year

The year of waiver was one of the following: 1988, 1989, 1990, 1991, 1992, or 1993. This time frame was used in order that changes in the use of waiver over time can be analyzed. As the law took effect on October 1, 1988, there is only a three month period of that year that can be examined. The four years that follow are complete years. Data were collected in 1993 through October 1 which allowed for a full five year time period. It should be noted that data collection stopped on October 1, 1993 not only because of the five year time period, but also because at the time data were being collected, few, if any, of those youth waived in the last four months of 1993, had been tried or even gone to trial.
Age

The age of the offender was recorded, and was either 15 or 16 years of age. Youths under age 15 are ineligible for waiver regardless of the offense charged, and youths aged 17 or older are no longer under the jurisdiction of the juvenile court. This information will allow the researcher to determine if the age of the offender has any effect on the offense charged or the outcome.

Race

The race of the offender was collected and coded as either white, black, or other. Youths listed as "other" include Native American, Hispanic, Asian, and all others that are not classified as either white or black. The researcher will then use this information to determine if the offense charged or the outcome varies with respect to the race of the offender.

Sex

The sex of the offender was recorded, and listed as either male or female. The researcher will use this information to determine if the offense charged or the outcome varies with respect to the sex of the offender.
**Offense Charged**

The offense charged was one of seven felonies that are eligible for waiver of jurisdiction. These include: murder; assault with intent to commit murder; robbery, armed; assault with intent to rob, armed; criminal sexual conduct; possession of 650 grams or more of a Type I Controlled Substance; and possession with intent to deliver of 650 grams or more of a Type I Controlled Substance. These are all Class 1A felonies, punishable by up to life in prison. The offense charged was collected to determine the number of waivers for each offense, and how age, race, sex, and outcome varied with respect to this variable.

**Outcome**

The outcome was recorded to allow the researcher to determine its variation with respect to age, race, sex, and offense charged. The outcome can range from dismissal to commitment to the Department of Social Services (DSS) until the youth reaches the age of 21, or commitment to the Department of Corrections (DOC). For youths sentenced to DOC, the sentence received was noted as either probation or the minimum number of years that must be served (minimum sentence).

One of the objectives of the research is to determine how the outcome varies with respect to age, race, sex, and offense charged. Additionally, the researcher wanted to determine, for youth sentenced to DOC, if the sentence received upon conviction was similar to, with respect to the minimum sentence, that received by youth sentenced to DSS. To do this, and make this comparison, the minimum sentence received in DOC
was listed as less than five years, six to ten years, and so on in five year increments. The logic behind this is that any youth with a minimum sentence of five years or less in DOC would be confined no longer than if he or she had been sentenced to DSS. To wit, if a youth aged fifteen or sixteen is sentenced as a juvenile, either in the criminal or juvenile court, the longest period that he or she can be held is to age 21, or five years (an absolute maximum of six years if arrested, convicted, and sentenced on the day of his or her fifteenth birthday). While there will be a difference in the maximum amount of time that could be served in DSS, with age at offense being the determining factor, it is the researcher's belief that this difference is minimal, and for the sake of simplicity is stated as five years.

Data Collection Method

To obtain the sample, two steps were taken. First, a list of youths waived to the adult court was obtained from the Wayne County Prosecuting Attorney's Office. This list consisted of all youths who were waived to the adult court, either by the traditional judicial waiver or by the discretionary waiver. From this list, those youths waived via the discretionary waiver method were extracted. A separate list was also supplied from the Recorder's Court, by way of the mainframe computer, and included all youths waived via the discretionary waiver method. These lists were then compared and cross referenced to ensure that a complete listing of all eligible youths was provided. It should be noted that there were instances in which a youth's name appeared on the
prosecutor's list and did not appear on the Recorder's Court list. These youth were omitted, as there was no record of any trial having occurred.

The final list of all youths waived via the discretionary waiver method consisted of 361 cases. The individual's name was entered onto the Recorder's Court computer to arrive at a case number for the youth in question. After obtaining the case number for each youth, the legal file for each was obtained to collect the necessary information. In those instances where there was more than one person by the name in question, the appropriate case number was obtained by cross referencing the case number with the date of birth and the offense charged. The necessary information from the legal file was then entered on the data collection instrument (See Figure 1).

Descriptive Statistics of Data Collected

Data were collected on 361 youths waived to the Recorder's Court between October 1, 1988, and October 1, 1993. Table 1 shows the distribution of waivers over the five year period. The use of the discretionary waiver was at its highest immediately following the law's implementation in 1989. The use of waiver then decreased dramatically and leveled off for the remainder of the five year period.

The age of the offender was either 15 or 16 years of age. Youths aged 15 accounted for 29.6% (n =107) of all youth waived, with youths aged 16 accounting for the remaining 70.4% (n =254) of the sample (See Table 2).
Case File Number __________ Name ___________

Date of Birth __________ Date of Waiver __________

Race ______ White
    ______ Black
    ______ Other

Sex ______ Male
    ______ Female

Offense Charged: ______ Murder
    ______ Assault with Intent to Commit Murder
    ______ Robbery, Armed
    ______ Assault with Intent to Rob, Armed
    ______ Criminal Sexual Conduct
    ______ Possession of 650 Grams or more of a Type I Controlled Substance
    ______ Possession of 650 Grams or More of a Type I Controlled Substance with Intent to Deliver

Outcome ______ Dismissed
    ______ Not Guilty
    ______ Guilty, Department of Social Services to Age 21
    ______ Guilty, Department of Corrections

    Sentence Received: __________

Figure 1. Data Collection Instrument.
### Table 1
Distribution of Waiver by Year

<table>
<thead>
<tr>
<th>Year</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>11</td>
<td>3.0</td>
</tr>
<tr>
<td>1989</td>
<td>113</td>
<td>31.2</td>
</tr>
<tr>
<td>1990</td>
<td>58</td>
<td>16.0</td>
</tr>
<tr>
<td>1991</td>
<td>73</td>
<td>20.2</td>
</tr>
<tr>
<td>1992</td>
<td>54</td>
<td>14.9</td>
</tr>
<tr>
<td>1993</td>
<td>52</td>
<td>14.2</td>
</tr>
<tr>
<td>Total</td>
<td>361</td>
<td>100.0</td>
</tr>
</tbody>
</table>

### Table 2
Distribution of Waiver by Age

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>107</td>
<td>29.6</td>
</tr>
<tr>
<td>16</td>
<td>254</td>
<td>70.4</td>
</tr>
<tr>
<td>Total</td>
<td>361</td>
<td>100.0</td>
</tr>
</tbody>
</table>
The race of the offender was either white, black, or other. Those youths listed as white comprised 14.4% \((n = 52)\) of the sample, with blacks consisting of 83.1% \((n = 300)\) of the sample, and youths listed as other consisting of the remaining 2.5% \((n = 9)\) of the sample (See Table 3). The distribution of youth waived by race is similar to the overall juvenile court racial distribution, with blacks occurring in greater frequency as the severity of the offense charged increases. In the Wayne County Juvenile Court Records, 65.2% of the juveniles were black, and 66.7% of youths who had a formal hearing were black. Examining all felony offenses, 74.8% of the youths were black. Narrowing the scope, 82.6% of the youths charged with personal felonies were black. Youth listed as white or other consisted of the remaining 17.4% (Bynum, Wordes, & Corley, 1993). This is nearly identical to the racial distribution of youths waived, in which 83.1% were black and 16.9% were white or other.

### Table 3

<table>
<thead>
<tr>
<th>Race</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>52</td>
<td>14.4</td>
</tr>
<tr>
<td>Black</td>
<td>300</td>
<td>83.1</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
<td>2.5</td>
</tr>
<tr>
<td>Total</td>
<td>361</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The sex of the youth waived was either male or female, with a disproportionate number of offenders being male. Of 361 youths waived,
only 0.6% \((n=2)\) were female. The remaining 359 youths were male (See Table 4). The distribution of waiver by sex is dramatically different than the distribution of personal felonies by sex in the juvenile court, where females accounted for 16.1% of those charged with personal felonies (Bynum, Words, & Corley, 1993). In making these comparisons, it needs to be stated that the two categories being compared, youth waived to the Recorder's Court and youth charged with personal felonies in the juvenile court, are not identical. It is not known how many of the females charged in juvenile court with personal felonies were in fact eligible for waiver, although it was expected to be somewhat higher. Due to limitations in the data used to make these comparisons, a more specific comparison on the distribution of waiver by sex is not possible.

Table 4
Distribution of Waiver by Sex

<table>
<thead>
<tr>
<th>Sex</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>359</td>
<td>99.4</td>
</tr>
<tr>
<td>Female</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>Total</td>
<td>361</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The offense charged was one of six: murder; assault with intent to commit murder; robbery, armed; assault with intent to rob, armed; criminal sexual conduct, or possession of 650 grams or more of a Type I Controlled Substance. It should be noted that the law stipulates there are seven waivable offenses, with possession of 650 grams or more of a Type I
Controlled Substance accounting for two of the seven, the difference being possession or possession with intent to deliver. However, the Recorder's Court did not make a distinction between these two offenses, leaving only six different charges (See Table 5). The most common charge for which waiver occurred was murder, accounting for 45.0% of all cases of waiver. The second most prevalent charge was one of assault with intent to commit murder (21.7%), followed closely by robbery, armed (20.5%). Criminal sexual conduct charges accounted for 9.1% of the sample, and assault with intent to rob, armed accounted for 3.1%. Finally, possession of 650 grams or more of a type I controlled substance had two occurrences, accounting for 0.6% of all waivers.

The possible outcomes consisted of one of the following: not guilty; dismissed; guilty, sentenced to DSS (until age 21); guilty, sentenced to DOC with probation; guilty, sentenced to DOC for confinement of five years or less; guilty, sentenced to DOC for confinement of six to ten years; guilty, sentenced to DOC for confinement of eleven to fifteen years; guilty, sentenced to DOC for confinement of sixteen to twenty years; and guilty, sentenced to DOC for life. The most common outcome was DSS, accounting for 43.3% \( (n =145) \) of the sample. Those youth sentenced to DOC accounted for 34.3% \( (n =115) \) of the sample. The remaining youth were found not guilty or had their case dismissed (See Table 6).
Table 5
Distribution of Waiver by Offense Charged

<table>
<thead>
<tr>
<th>Offense</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>158</td>
<td>45.0</td>
</tr>
<tr>
<td>Assault with Intent to Commit Murder</td>
<td>76</td>
<td>21.7</td>
</tr>
<tr>
<td>Robbery, Armed</td>
<td>72</td>
<td>20.5</td>
</tr>
<tr>
<td>Assault with Intent to Rob, Armed</td>
<td>11</td>
<td>3.1</td>
</tr>
<tr>
<td>Criminal Sexual Conduct</td>
<td>32</td>
<td>9.1</td>
</tr>
<tr>
<td>Possession of 650 Grams or More of A Type I Controlled Substance</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>351</strong>*</td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

* The total number of waivers does not equal 361 cases due to incomplete case file information on the Recorder’s Court computer.

As stated previously, the goals of this research are to determine the following: the conviction rate for youth tried in the criminal court following a discretionary waiver; the outcome following waiver and conviction; and how the outcome varies with respect to age, race, sex, and offense charged. With the above described data on the age, race, sex, offense charged, and outcome for all youth waived to adult court over a five year period in Wayne County, MI, an analysis will be done to realize these goals.
Table 6
Distribution of Waiver by Outcome

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed</td>
<td>42</td>
<td>12.5</td>
</tr>
<tr>
<td>Not Guilty</td>
<td>33</td>
<td>9.9</td>
</tr>
<tr>
<td>DSS</td>
<td>145</td>
<td>43.3</td>
</tr>
<tr>
<td>DOC Probation</td>
<td>2</td>
<td>0.6</td>
</tr>
<tr>
<td>DOC 1-5</td>
<td>26</td>
<td>7.8</td>
</tr>
<tr>
<td>DOC 6-10</td>
<td>37</td>
<td>11.0</td>
</tr>
<tr>
<td>DOC 11-15</td>
<td>11</td>
<td>3.3</td>
</tr>
<tr>
<td>DOC 16-20</td>
<td>18</td>
<td>5.4</td>
</tr>
<tr>
<td>DOC Life</td>
<td>21</td>
<td>6.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>335</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

* The total number of waivers does not equal 361 cases due to incomplete case file information on the Recorder's Court Computer.
CHAPTER IV

RESULTS

Introduction

The following discussion will present the results of the data analysis, as well as some initial substantive findings. First to be presented will be the distribution of waiver by year, followed by the distribution of waiver by age, race, and sex. This was done to determine changes in the use of waiver over time, and also to ascertain whether waiver varied with respect to age, race, and sex. Following this, the offense charged will be examined, to allow a determination of how individual offenses varied in frequency of waiver over the five year period being examined. Next to be presented will be the distribution of the different outcomes, to realize any changes in the occurrence of such outcomes over time. Finally, the results of several cross tabulations that were performed, to determine any relationship that existed between age, race, charge, and outcome, will be presented.

Distribution of Waiver

Distribution of Waiver by Year

The total number of juveniles waived from October 1, 1988, when the discretionary waiver law took effect, through October 1, 1993, the end
of the five year period being examined, was 361. The number of waivers fluctuated each year, from a high of 113 cases in 1989, the first full year the law was in effect, to a low of 54 cases in 1992, the last full year the law has been in effect. The rate of waiver for the years 1988 and 1993 was such that had a full year elapsed, the number of waivers would have been neither the highest nor the lowest for any of the five years examined. The highest number of waivers occurred just after the law took effect, in 1989. The use of waiver then decreased dramatically and leveled off over the next 4 years (See Table 1).

Distribution of Waiver by Offense Charged and by Age, Race, and Sex

Youth aged 15 at time of waiver accounted for 107 cases, comprising 29.6% of youth waived. The remaining 70.4%, consisting of 253 youth, were aged 16 (See Table 2). The distribution of age for each offense was similar, with murder, assault with intent to commit murder, robbery, armed, and criminal sexual conduct all within a three percentile range of the average (See Table 7). There were two exceptions: assault with intent to commit robbery, armed, showed an older age distribution, with 81.8% of youths aged 16; and possession of 650 grams or more of a type I controlled substance had two occurrences, with both youth aged 16. That the majority of youths waived were age 16 was expected, it being consistent with the findings of previous research. Youths aged 16 at the time of offense are within one year of the juvenile court’s jurisdictional age limit in Michigan, and as stated in Chapter II, the closer a youth is to the
jurisdictional age limit of the juvenile court, the more likely it is that he or she will be waived (Bortner, 1986; Champion, 1989).

Table 7

<table>
<thead>
<tr>
<th>Offense Charged</th>
<th>Age 15</th>
<th>Age 16</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% (n)</td>
<td>% (n)</td>
</tr>
<tr>
<td>Murder</td>
<td>31.0 (49)</td>
<td>69.0 (109)</td>
</tr>
<tr>
<td>Assault with Intent to Commit Murder</td>
<td>26.3 (20)</td>
<td>73.7 (56)</td>
</tr>
<tr>
<td>Robbery, Armed</td>
<td>31.9 (23)</td>
<td>68.1 (49)</td>
</tr>
<tr>
<td>Assault with Intent to Rob, Armed</td>
<td>18.2 (2)</td>
<td>81.8 (9)</td>
</tr>
<tr>
<td>Criminal Sexual Conduct</td>
<td>31.3 (10)</td>
<td>68.8 (22)</td>
</tr>
<tr>
<td>Possession of 650 Grams</td>
<td>0.0 (0)</td>
<td>100.0 (2)</td>
</tr>
<tr>
<td>Total</td>
<td>100 (104)</td>
<td>100 (247)</td>
</tr>
</tbody>
</table>

With respect to race, 82.9% of the youth waived (n =300) were black, and 14.4% (n =52) were white. The remainder of the sample, nine youth equating to 2.5% of all youth waived, were classified as other, which includes Native American, Hispanic, Asian, etc. (See Table 3). As only nine youth were classified as other, these youths were then combined with those originally classified as white into a non-black category. This was done for several reasons. First, there was not a large enough sample of youths classified as other from which to draw any conclusions after the
offense charged and outcome were taken into account. Second, with only 16.9% of the youths being non-black, and a clear majority (82.9%) being black, the comparison between the two is apparent. The analysis will accordingly classify youths waived as being either black or non-black, with the non-black category containing those youths previously listed as white or other.

Overall, non-blacks comprised 16.9% of the sample, and blacks the remaining 82.9%. Three of the seven offenses, murder, assault with intent to commit murder, and robbery, armed, were within a three percentile range of the average racial distribution (See Table 8). Assault with intent to rob, armed consisted of 90.9% black and 9.9% non-black, which was close to the average distribution by race. Criminal Sexual Conduct is the one offense that has a considerably larger number of non-black youths waived, 34.4% of the total, with black youths accounting for only 65.6% of those charged with criminal sexual conduct. This is noticeably different than the overall distribution by race, and will be discussed in greater detail later in Chapter IV.

Virtually all of the waivers over the five year period were of males, with only 2 instances of female waivers occurring (See Table 4). The first was for armed robbery, the second for assault with intent to rob, armed. As only two waivers over the five year period were for females, consisting of less than 1% of the total, the discussion and analysis that follows will not be discussed by sex, as there are not enough females in the sample to warrant such a discussion.
Table 8
Distribution of Percent Waived by Offense Charged and Race

<table>
<thead>
<tr>
<th>Offense Charged</th>
<th>Non-Black % (n)</th>
<th>Black % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>15.8 (25)</td>
<td>84.2 (133)</td>
</tr>
<tr>
<td>Assault with Intent to Commit Murder</td>
<td>13.2 (10)</td>
<td>86.8 (66)</td>
</tr>
<tr>
<td>Robbery, Armed</td>
<td>16.7 (12)</td>
<td>83.3 (60)</td>
</tr>
<tr>
<td>Assault with Intent to Rob, Armed</td>
<td>9.9 (1)</td>
<td>90.9 (10)</td>
</tr>
<tr>
<td>Criminal Sexual Conduct</td>
<td>34.4 (11)</td>
<td>65.6 (21)</td>
</tr>
<tr>
<td>Possession of 650 Grams</td>
<td>50.0 (1)</td>
<td>50.0 (1)</td>
</tr>
<tr>
<td>Total</td>
<td>100 (60)</td>
<td>100 (291)</td>
</tr>
</tbody>
</table>

Distribution of Percent Waived by Offense Charged, Across Years

The most common offenses for which waiver occurred were murder (n =158), assault with intent to commit murder (n =76), and robbery, armed (n =72). Murder charges accounted for 45.0% of all waivers, assault with intent to commit murder charges accounted for 21.7% of all waivers, and robbery, armed charges accounted for 20.5% of all waivers. The remaining waivers were for, in decreasing order, criminal sexual conduct, assault with intent to rob, armed, and possession of 650 grams or more of a Type I Controlled Substance. Criminal sexual conduct waivers occurred
32 times over the five year period, accounting for 9.1% of waivers, followed by assault with intent to rob, armed consisting of 11 cases equal to 3.1%, and possession of 650 grams or more of a type I controlled substance, with two instances equating to 0.6% of all waivers (See Table 5). The distribution of offenses is as expected, in that the most serious charges account for the highest number of waivers. Murder, assault with intent to commit murder, and robbery, armed, are arguably the most serious and violent offenses that occur, and accordingly accounted for the greatest number of waivers. These three offenses combined accounted for 87.2% of all waivers (See Table 5).

To determine how charges varied in their frequency of occurrence over time, individual offenses were examined by year for each of the five years for which data was collected. Murder charges fluctuated from a low of 27.3% of all waivers in 1988 to a high of 57.0% of all waivers in 1989. In the remaining four years murder accounted for approximately 40% of all waivers (See Table 9). As can be seen in Figure 2, charges of murder increased dramatically after the waiver law took effect, then decreased and remained steady for the remaining four years. Assault with intent to murder charges had its lowest rate of occurrence in 1992, and its highest rate in 1988 (4 of the 11 waivers that year). Assault with intent to commit murder charges decreased gradually over time, only to increase in frequency in the last year. A charge of robbery, armed fluctuated from 10.8% to 30.8% of waivers in a given year. Robbery, armed charges have gradually increased over time, and in 1993 were the second most common waiver charge. For the charge assault with intent to rob, armed, there
Table 9

Distribution of Percent Waived by Offense Charged, Across Years

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% (n)</td>
<td>% (n)</td>
<td>% (n)</td>
<td>% (n)</td>
<td>% (n)</td>
<td>% (n)</td>
</tr>
<tr>
<td>Murder</td>
<td>27.3 (3)</td>
<td>57.0 (63)</td>
<td>37.9 (22)</td>
<td>40.3 (27)</td>
<td>42.3 (22)</td>
<td>40.4 (21)</td>
</tr>
<tr>
<td>Assault with Intent to Murder</td>
<td>36.4 (4)</td>
<td>23.4 (26)</td>
<td>27.6 (16)</td>
<td>21.0 (14)</td>
<td>9.6 (5)</td>
<td>21.2 (11)</td>
</tr>
<tr>
<td>Robbery, Armed</td>
<td>18.2 (2)</td>
<td>10.8 (13)</td>
<td>19.0 (11)</td>
<td>22.4 (15)</td>
<td>30.8 (16)</td>
<td>28.5 (15)</td>
</tr>
<tr>
<td>Assault with Intent to Rob, Armed</td>
<td>0.0 (0)</td>
<td>0.9 (1)</td>
<td>3.4 (2)</td>
<td>7.5 (5)</td>
<td>1.9 (1)</td>
<td>3.8 (2)</td>
</tr>
<tr>
<td>Criminal Sexual Conduct</td>
<td>9.1 (1)</td>
<td>6.3 (7)</td>
<td>12.1 (7)</td>
<td>9.0 (6)</td>
<td>15.4 (8)</td>
<td>5.8 (3)</td>
</tr>
<tr>
<td>Poss. of 650 Grams</td>
<td>9.1 (1)</td>
<td>0.1 (1)</td>
<td>0.0 (0)</td>
<td>0.0 (0)</td>
<td>0.0 (0)</td>
<td>0.0 (0)</td>
</tr>
<tr>
<td>Total</td>
<td>100 (11)</td>
<td>100(111)</td>
<td>100 (58)</td>
<td>100 (67)</td>
<td>100 (52)</td>
<td>100 (52)</td>
</tr>
</tbody>
</table>

were only a handful of cases each year, with nearly half of the total occurring in 1991. Criminal sexual conduct charges occurred once in 1988, three times in 1993, and averaged seven per year for the years in between. Both assault with intent to rob, armed, and criminal sexual conduct cases have fluctuated in frequency, increasing and/or decreasing yearly (See Figure 2).
For the charge possession of 650 grams or more of a type I controlled substance, there were only two waivers, one in 1988, and the second in 1989 (See Table 9). There are several possible reasons as to why there were only two youths waived on this charge. First, possession of 650 grams or more of a type I controlled substance is not a violent, personal crime, unlike any of the other waivable offenses. Second, this particular law is intended for those individuals who are selling or in possession of large quantities, over 650 grams, of illegal drugs. Those individuals who possess or sell only small amounts (arguably the majority of juveniles who possess or sell illegal drugs) are therefore not eligible for waiver on drug charges. Since possession of 650 grams or more of a type I controlled substance accounts for less than 1% of all waivers, it will be excluded from further analysis. The discussion that follows will center on the remaining five offenses.

**Distribution of Waiver by Outcome**

The overall conviction rate for youth waived and tried in the adult court for any offense was 77.6% over the five year period. In examining the different outcomes, regardless of the offense charged, 12.5% resulted in a dismissal, 9.9% were found not guilty, 43.3% were sentenced to DSS, 0.6% received DOC probation, and 7.8% received sentences of DOC 1-5 years (See Table 6). As mentioned previously, one of the goals was to determine the percentage of youths who, upon waiver, would be subject to confinement for periods no longer than if they had not been waived. This
Figure 2. Distribution of Percent Waived by Offense Charged, Across Years.
includes youths who had their case dismissed, were found not guilty, or were found guilty and sentenced either to DSS, DOC probation, or DOC 1-5. These five sentences combined accounted for 68% of the outcomes after waiver. For the remaining youths, 11.0% were given sentences of DOC 6-10, 3.3% received sentences of DOC 11-15, 5.4% received sentences of DOC 16-20 years, and 6.3% were given sentences of DOC Life. Youth waived and given minimum sentences in excess of five years accounted for only 26% of all cases of waiver. Sentencing information was not available for 6.0% of waivers (n =26). Of these, nine involved waivers that occurred in 1993 and youths who had yet to be sentenced at the time data was being collected. For the remaining 17 cases, sentencing information was not available.

An examination of the original outcomes by year shows a relatively sparse distribution, with 22% of the cells either empty or having less than two cases in them (See Table 10). For this reason, the possible outcomes were recoded and collapsed. First, those youths who had their cases either dismissed or were found not guilty were combined into a not guilty/dismissed category, as both outcomes equated to youths no longer being under the court's jurisdiction. Second, the two cases of DOC Probation were combined with the DOC 1-5 category. DOC Probation accounted for less than 1% of all outcomes, and was similar to DOC 1-5 in several respects: it was the most lenient sentence possible after being sentenced to DOC, and if a violation of probation occurred, confinement in the Wayne County Jail for a short period of time (less than 5 years) would
Table 10

Distribution of Percent Waived by Outcome, Across Years

<table>
<thead>
<tr>
<th>Outcome</th>
<th>1988 % (n)</th>
<th>1989 % (n)</th>
<th>1990 % (n)</th>
<th>1991 % (n)</th>
<th>1992 % (n)</th>
<th>1993 % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed</td>
<td>36.3 (4)</td>
<td>9.3 (10)</td>
<td>6.1 (9)</td>
<td>9.7 (6)</td>
<td>9.4 (5)</td>
<td>18.2 (8)</td>
</tr>
<tr>
<td>Not Guilty</td>
<td>0.0 (0)</td>
<td>9.3 (10)</td>
<td>7.1 (4)</td>
<td>9.7 (6)</td>
<td>15.1 (8)</td>
<td>11.4 (5)</td>
</tr>
<tr>
<td>DSS</td>
<td>9.1 (1)</td>
<td>33.6 (36)</td>
<td>64.3 (36)</td>
<td>43.5 (27)</td>
<td>49.1 (26)</td>
<td>43.2 (19)</td>
</tr>
<tr>
<td>DOC: Probation</td>
<td>0.0 (0)</td>
<td>1.9 (2)</td>
<td>0.0 (0)</td>
<td>0.0 (0)</td>
<td>0.0 (0)</td>
<td>0.0 (0)</td>
</tr>
<tr>
<td>DOC: 1-5</td>
<td>9.1 (1)</td>
<td>8.4 (9)</td>
<td>10.7 (6)</td>
<td>8.1 (5)</td>
<td>3.8 (2)</td>
<td>6.8 (3)</td>
</tr>
<tr>
<td>DOC: 6-10</td>
<td>27.3 (3)</td>
<td>20.2 (22)</td>
<td>0.0 (0)</td>
<td>8.1 (5)</td>
<td>7.5 (4)</td>
<td>6.8 (3)</td>
</tr>
<tr>
<td>DOC: 11-15</td>
<td>0.0 (0)</td>
<td>3.7 (4)</td>
<td>0.0 (0)</td>
<td>6.5 (4)</td>
<td>3.8 (2)</td>
<td>2.3 (1)</td>
</tr>
<tr>
<td>DOC: 16-20</td>
<td>9.1 (1)</td>
<td>6.5 (7)</td>
<td>0.0 (0)</td>
<td>6.5 (4)</td>
<td>5.7 (3)</td>
<td>6.8 (3)</td>
</tr>
<tr>
<td>DOC: Life</td>
<td>9.1 (1)</td>
<td>8.4 (9)</td>
<td>1.8 (1)</td>
<td>8.1 (5)</td>
<td>5.7 (3)</td>
<td>4.5 (2)</td>
</tr>
<tr>
<td>Total</td>
<td>100 (11)</td>
<td>100 (109)</td>
<td>100 (56)</td>
<td>100 (62)</td>
<td>100 (53)</td>
<td>100 (44)</td>
</tr>
</tbody>
</table>
be the result. DOC 1-5 is similar in terms of the length of confinement to being sentenced to DSS, yet remains different in terms of the conditions of confinement. Therefore it was combined with DOC probation, and kept as a separate outcome. DOC 6-10, DOC 11-15, DOC 16-20, and DOC Life were all combined into one category, DOC 6-Life, as all result in longer periods of confinement than is possible if given an outcome of DSS.

Table 11 shows the distribution of possible outcomes after they were recoded and collapsed. Dismissed/Not Guilty outcomes fluctuated by year, ranging from 18.3% to 36.4% of the total. DSS outcomes had a large range of variation by year, ranging from 9.1% to 64.3%. The use of DOC 1-5 remained rather low overall, ranging from a low of 3.9% to a high of 10.7% of all outcomes. It's frequency of occurrence was rather consistent until 1992, when it decreased dramatically in usage. Similar to DSS, DOC 6-Life had a wide range, accounting for a low of 1.8% of all waivers to a high of 45.5%. As the Michigan Juvenile Waiver Package was a way by which prosecutors could try juveniles in the adult court, and logically have them sentenced to DOC, it comes as a surprise that overall 43.3% of all youths convicted are returned to DSS upon conviction. And, as 22.4% of these youths either had their cases dismissed or were found not guilty, only the remaining 26% were sentenced to DOC for a period of confinement longer than what is possible in DSS (see Table 11).

Figure 3 shows the different use for each outcome by year. Dismissed/Not Guilty outcomes decreased after the first year, and then remained somewhat consistent, although there was some variation. DSS also fluctuated: its use dramatically increased until 1990, then did the
Table 11
Distribution of Percent Waived by Outcome, Across Years, Collapsed

<table>
<thead>
<tr>
<th>Sentence</th>
<th>1988 % (n)</th>
<th>1989 % (n)</th>
<th>1990 % (n)</th>
<th>1991 % (n)</th>
<th>1992 % (n)</th>
<th>1993 % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed/</td>
<td>36.4 (4)</td>
<td>18.3 (20)</td>
<td>23.2 (13)</td>
<td>19.4 (12)</td>
<td>24.5 (13)</td>
<td>29.5 (13)</td>
</tr>
<tr>
<td>Not Guilty</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DSS</td>
<td>9.1 (1)</td>
<td>33.6 (36)</td>
<td>64.3 (36)</td>
<td>43.5 (27)</td>
<td>49.1 (26)</td>
<td>43.2 (19)</td>
</tr>
<tr>
<td>DOC 1-5</td>
<td>9.1 (1)</td>
<td>10.1 (1)</td>
<td>10.7 (6)</td>
<td>8.1 (5)</td>
<td>3.9 (2)</td>
<td>6.8 (3)</td>
</tr>
<tr>
<td>DOC 6-Life</td>
<td>45.5 (5)</td>
<td>38.0 (42)</td>
<td>1.8 (1)</td>
<td>29.0 (18)</td>
<td>23.5 (12)</td>
<td>20.5 (9)</td>
</tr>
<tr>
<td>Total</td>
<td>100 (11)</td>
<td>100 (109)</td>
<td>100 (56)</td>
<td>100 (62)</td>
<td>100 (53)</td>
<td>100 (44)</td>
</tr>
</tbody>
</table>

opposite, gradually decreasing for the remaining time period. The largest variation was from 1989 to 1990, when the percentage of youths sentenced to DSS nearly doubled. The outcome of DOC 1-5 was the most stable of the four, there being no changes in its use by year as dramatic as the other possible outcomes. This is not surprising, as a majority of the youths sentenced to DOC were for charges of murder, arguably the most serious of the waivable offenses, and the offense that accounted for most of the DOC 6-Life outcomes. In the years immediately following the law’s implementation, DOC 6-Life showed a large amount of variance, reaching a low in 1990, with only 1 person receiving said outcome. In the final three years of analysis its use became more consistent (See Figure 3).
Figure 3. Distribution of Percent Waived by Outcome, Across Years, Collapsed.
Cross Tabulations

To determine if any relationship existed between age, race, charge and outcome, cross tabulations were done on the following: age by charge, race by charge, age by outcome, race by outcome, and charge by outcome. The following section discusses the findings of these cross tabulations.

Age by Charge

The offense charged did not vary by the age of the offender, with individual charges remaining within a three percentile range of the overall average for both ages. The distribution of the five offenses was similar for youths aged either 15 and 16, with there being no significant relationship \( x^2 = 1.45231; p = .84 \) (see Table 12).

Race by Charge

Blacks had a slightly higher representation across the charges of murder, assault with intent to commit murder, and assault with intent to rob, armed. For the charge of robbery, armed, both blacks and non-blacks had a nearly identical representation. Criminal sexual conduct charges were the exception: 7.2% of blacks were charged with criminal sexual conduct, and 18.6% of non-blacks had such a charge. Non-blacks were more than twice as likely to have a charge of criminal sexual conduct than were their black counterparts. Whereas in other offenses charged there was no appreciable difference, criminal sexual conduct charges show a
Table 12
Cross Tabulation of Age by Charge

<table>
<thead>
<tr>
<th>Offense Charged</th>
<th>Age 15</th>
<th>Age 16</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td></td>
<td>(n)</td>
<td>(n)</td>
</tr>
<tr>
<td>Murder</td>
<td>47.1</td>
<td>44.5</td>
</tr>
<tr>
<td>(49)</td>
<td></td>
<td>(109)</td>
</tr>
<tr>
<td>Assault with Intent to Commit Murder</td>
<td>19.2</td>
<td>22.9</td>
</tr>
<tr>
<td>(20)</td>
<td></td>
<td>(56)</td>
</tr>
<tr>
<td>Robbery, Armed</td>
<td>22.1</td>
<td>20.0</td>
</tr>
<tr>
<td>(23)</td>
<td></td>
<td>(49)</td>
</tr>
<tr>
<td>Assault with Intent to Rob, Armed</td>
<td>1.9</td>
<td>3.7</td>
</tr>
<tr>
<td>(2)</td>
<td></td>
<td>(9)</td>
</tr>
<tr>
<td>Criminal Sexual Conduct</td>
<td>9.6</td>
<td>9.0</td>
</tr>
<tr>
<td>(10)</td>
<td></td>
<td>(22)</td>
</tr>
</tbody>
</table>

\[ n = 349 \]
\[ x^2 = 1.45231 \]
\[ p = .83505 \]
\[ \text{gamma} = .02198 \]

noticeable change in the distribution of offenses by race \( (x^2 = 8.832484; p = <.10) \). While this relationship is significant, it is also weak \( (\text{gamma} = -.140441) \), indicating that there are other elements of the crime(s) involved aside from race alone. The only details known about this charge is that it was in the first degree: in the absence of greater detail (i.e., were they acts of rape or molestation, the age of the victim, whether or not weapons were involved, etc.), it is impossible to ascribe any meaning to non-blacks having a higher representation (See Table 13).
Table 13

Cross Tabulation of Race by Charge

<table>
<thead>
<tr>
<th>Offense Charged</th>
<th>Non-Black % (n)</th>
<th>Black % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>42.4 (25)</td>
<td>45.9 (133)</td>
</tr>
<tr>
<td>Assault with Intent to Commit Murder</td>
<td>16.9 (10)</td>
<td>22.8 (66)</td>
</tr>
<tr>
<td>Robbery, Armed</td>
<td>20.3 (12)</td>
<td>20.7 (60)</td>
</tr>
<tr>
<td>Assault with Intent to Rob, Armed</td>
<td>1.7 (1)</td>
<td>3.4 (10)</td>
</tr>
<tr>
<td>Criminal Sexual Conduct</td>
<td>18.6 (11)</td>
<td>7.2 (21)</td>
</tr>
</tbody>
</table>

n = 349  
$x^2 = 8.832484$  
$p = .08638$  
$gamma = -.140441$

Age by Outcome

There was a relationship with respect to the age of offender and the outcome of the case ($x^2 = 16.63421; p = <.01$). Youths aged 15 were more likely to receive outcomes of Dismissed/Not Guilty than youths aged 16 (27.5% vs. 20.2), and also to receive outcomes of DSS (53.9% vs. 38.6%). Youths aged 16 were more likely to receive outcomes of DOC 1-5 than youth aged 15 (10.7% vs. 2.9%) and received DOC Life outcomes twice as much (30.5% vs. 15.7%). These findings are what one would expect: the older the offender, the more likely (s)he is to be sentenced more severely.
This is consistent with earlier findings: just as youths nearing the jurisdictional age limit are more likely to be subject to waiver, so too are they more likely to be sentenced more severely. Younger offenders were treated more leniently, as over half of them remained in the juvenile justice system after conviction in the adult court (See Table 14). However, while the relationship is significant, it is only of moderate strength ($\gamma = .31389$), which indicates that age alone is not the primary determinant of outcome.

Table 14
Cross Tabulation of Age by Outcome

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Age 15</th>
<th>Age 16</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% (n)</td>
<td>% (n)</td>
</tr>
<tr>
<td>Dismissed/Not Guilty</td>
<td>27.5 (28)</td>
<td>20.2 (47)</td>
</tr>
<tr>
<td>DSS</td>
<td>53.9 (55)</td>
<td>38.6 (90)</td>
</tr>
<tr>
<td>DOC 1-5</td>
<td>2.9 (3)</td>
<td>10.7 (25)</td>
</tr>
<tr>
<td>DOC Life</td>
<td>15.7 (16)</td>
<td>30.5 (71)</td>
</tr>
</tbody>
</table>

$n = 335$
$x^2 = 16.63421$
$p = .00084$
$\gamma = .31389$
Race by Outcome

In looking at the relationship between race and outcome, there was no significant overall relationship, but there were some interesting findings nonetheless ($x^2 = 2.58797; p = .46$). Non-blacks and blacks received outcomes of Dismissed/Not Guilty with relatively the same frequency (20.7% and 22.7%, respectively), with black's representation only slightly higher. For outcomes of DOC 6-Life, again the frequencies were relatively the same for non-blacks and blacks (27.6% and 25.6%, respectively), although here non-blacks had a slightly higher representation. The interesting findings are in the outcomes of DSS and DOC 1-5: non-blacks were more likely to be sentenced to DSS than blacks (48.3% vs. 42.2%), and less likely to be sentenced to DOC 1-5 (3.4% vs. 9.4%). In other words, blacks were three times more likely to be sentenced to DOC 1-5 than non-blacks, and less likely to receive an outcome of DSS (See Table 15).

Charge by Outcome

As expected, there was a relationship between the offense charged and outcome, in that the more serious the offense charged, the more severe the outcome of the waiver ($x^2 = 51.59268; p < .01$). Murder charges were the most likely to receive outcomes of DOC 6-Life, with 39.2% of such charges receiving this outcome. DOC 6-Life was more than twice as common for a charge of murder than for any other charge, and three times as likely in most cases. Murder charges were also the least likely to have outcomes of DSS and DOC 1-5. The remaining four offenses were quite
Table 15  
Cross Tabulation of Race by Outcome

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Non-Black % (n)</th>
<th>Black % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed/ Not Guilty</td>
<td>20.7 (12)</td>
<td>22.7 (63)</td>
</tr>
<tr>
<td>DSS</td>
<td>48.3 (28)</td>
<td>42.2 (117)</td>
</tr>
<tr>
<td>DOC 1-5</td>
<td>3.4 (2)</td>
<td>9.4 (26)</td>
</tr>
<tr>
<td>DOC 6-Life</td>
<td>27.6 (16)</td>
<td>25.6 (71)</td>
</tr>
</tbody>
</table>

\[ n = 335 \]
\[ x^2 = 2.58797 \]
\[ p = .45960 \]
\[ \text{gamma} = .00055 \]

different: all four had approximately half of the youth convicted committed to DSS, with the remainder of youth distributed over the remaining three outcomes. For the charges of robbery, armed, assault with intent to rob, armed, and criminal sexual conduct, there were only between 10.8% and 12.9% of these youths given sentences of DOC 6-Life. A clear majority of youth with these charges did not receive sentences any more severe after being waived than they would have if waiver had not occurred. Assault with intent to murder charges resulted in 17.8% of youth receiving sentences of DOC 6-Life, and while they were twice as likely to receive such an outcome than all other charges except murder, it was used relatively infrequently given the severity of the offense charged (See Table 16). It needs to be noted that while this relationship is
significant, it is also weak ($\gamma = -.17430$), which indicates that charge alone does not account for outcome.

Table 16
Cross Tabulation of Offense Charged by Outcome

<table>
<thead>
<tr>
<th>Offense Charged</th>
<th>Dismissed/ Not Guilty % (n)</th>
<th>DSS % (n)</th>
<th>DOC 1-5 % (n)</th>
<th>DOC 6-Life % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>22.9 (35)</td>
<td>35.3 (54)</td>
<td>2.6 (4)</td>
<td>39.2 (60)</td>
</tr>
<tr>
<td>Assault with Intent to Commit Murder</td>
<td>24.7 (18)</td>
<td>46.6 (34)</td>
<td>11.1 (8)</td>
<td>17.8 (13)</td>
</tr>
<tr>
<td>Robbery, Armed</td>
<td>15.4 (10)</td>
<td>55.4 (36)</td>
<td>18.5 (12)</td>
<td>10.8 (7)</td>
</tr>
<tr>
<td>Assault with Intent to Rob, Armed</td>
<td>11.1 (1)</td>
<td>44.4 (4)</td>
<td>33.3 (3)</td>
<td>11.1 (1)</td>
</tr>
<tr>
<td>Criminal Sexual Conduct</td>
<td>32.3 (10)</td>
<td>51.6 (16)</td>
<td>3.2 (1)</td>
<td>12.9 (4)</td>
</tr>
</tbody>
</table>

$n = 331$
$x^2 = 51.59268$
p = .0000
$\gamma = -.17430$

It was found that the majority of youths waived are aged 16, black, and charged with either murder, assault with intent to commit murder, or robbery, armed. Of those convicted, a surprising number are returned to DSS. There was a significant relationship found between age and outcome.
and charge and outcome, yet both relationships were weak, indicating that other factors are involved. In an attempt to discover and explain the interaction between these variables and better explain the outcome, other relationships between age, race, charge, and outcome were examined. These analyses did not result in any significant findings, hence they will not be reported.
CHAPTER V

CONCLUSION AND DISCUSSION

Introduction

Evident from the results presented earlier, there were a number of expected and unexpected findings that appeared in the data analysis. These findings will be reviewed below, and then related to the previously stated research objectives. Following this will be a discussion of the limitations of this research. In concluding, the implications of this research will be presented.

Review of Findings

The use of waiver, in terms of the absolute number of youths waived, varied over the years, reaching it highest point immediately following the law's implementation. This is possibly due to the ease at which waiver could be accomplished and the prosecutor's perception that he or she should waive eligible youth in light of the law's implementation. Prosecutorial use of the discretionary waiver then decreased and remained rather constant for the remainder of the time period examined. Youth aged 16 accounted for the majority of waivers, with there being no significant variation among the individual offenses. This is consistent with other findings, which have shown that the closer one is to the
jurisdictional age limit of the juvenile court, the more likely waiver is to occur (Champion, 1989).

The racial distribution of youths waived was expected, it being similar to the overall racial distribution of the Wayne County Juvenile Court. Prior research found that in the juvenile court, 65.2% of the youths in court records were black, and that the proportion of blacks increased as the severity of the offense increased, with blacks consisting of 82.6% of those charged with personal felonies (Bynum, Words, & Corley, 1993). This is nearly identical to the percentage of blacks waived on Class 1A felonies (all of which are personal felonies, with the exception of possession of 650 grams or more of a type 1 controlled substance, which was not included in the preceding analysis). The distribution of youths waived with respect to sex was quite different than what would be expected in comparison to the juvenile court records. In the juvenile court, 16.1% of the youths charged with personal felonies were female, yet only 0.6% of the waiver population was female. While it is not known how many of the females charged with personal felonies in the juvenile court were in fact eligible for waiver, as the specific offense charged in the juvenile court was unknown, the number of females waived is lower than expected. On its surface, it appears that females are not considered as the serious and chronic juvenile offenders for which the waiver law was intended, and that, by implication, they are not responsible for serious juvenile crime. However, such speculation must be considered carefully, as the number of females that were eligible for waiver yet retained in the juvenile court is unknown: it is possible, although unlikely, that there
were in fact only two females eligible for waiver over the five year period examined.

The three offenses that accounted for the majority of waivers were murder, assault with intent to commit murder, and robbery, armed, accounting for 87.2% of all waivers. While all of the offenses that are eligible for waiver are Class 1A felonies, punishable by up to life in prison, these three offenses, murder, assault with intent to commit murder, and robbery, armed, are arguably the most serious, and accordingly account for the majority of waivers. The single most common offense for a waiver of jurisdiction was a charge of murder, which represented 45.0% of all waivers.

The distribution of waiver by outcome was not as expected, in that only 26% of all youths waived were confined for a period longer than is possible in DSS. As explained earlier, one of the objectives of this research was to determine if, following waiver and conviction, youths were subject to longer periods of incarceration than is possible in DSS. Possible outcomes were then analyzed accordingly, with DSS and DOC 1-5 being comparable in terms of length of confinement. As the previous analysis has shown, 43.3% of the youths waived and convicted were sentenced to DSS following conviction. Furthermore, 22.4% of the youths had their cases dismissed or were found not guilty, and 8.4% were given probation or sentenced to DOC 1-5 years. These outcomes combined account for 71.1% of all cases of waiver. Of the 335 youths waived for which sentencing data was available, 260 were convicted. Of these, 145 youths, equating to 55.8% of those convicted, were returned to the juvenile justice
system (DSS) for sentencing. Twenty-eight youths, 10.8% of those convicted, were given sentences of DOC 1-5. The remaining 87 youths, 33.5% of those convicted, were given sentences in excess of five years.

Summary of Research Objectives

As listed in Chapter III, the goals of this research were to determine the following: the conviction rate for youth tried in criminal court following a discretionary waiver; the outcome following waiver and conviction; and how the outcome varies with respect to age, race, sex, and offense charged.

The conviction rate for juveniles charged with Class 1A felonies and waived to the adult court was 77.6%. This includes those youths found not guilty as well as those who had their cases dismissed. Of those youths waived and tried, excluding those youths whose cases were dismissed, 11.3% were found not guilty, which equates to a conviction rate of 88.7% following a waiver of jurisdiction. Following waiver and conviction, a surprisingly large number of youths, 55.8% of those for whom sentencing data was available, were sentenced to DSS. As the waiver of jurisdiction was intended to ensure harsher punishment for serious juvenile offenders, the fact that over half of those waived were returned to the juvenile justice system following conviction came as a surprise.

The outcome did vary by age, race and offense charged. With respect to age, younger offenders were treated more leniently, although the relationship was weak, which indicates that other factors need to be taken into account. This could possibly be explained by examining the
prior records of youths waived, with younger offenders being treated more leniently due to less extensive criminal records. With respect to race and outcome, it was determined that, while there was no significant relationship between race and outcome, non-blacks were more likely to be sentenced to DSS and less likely to be sentenced to DOC 1-5. Blacks had a three times greater chance of receiving DOC 1-5 than did their non-black counterparts, and a lower probability of receiving an outcome of DSS. Finally, the offense charged had a significant relationship on the outcome of the case. A charge of murder was most likely to result in an outcome of DOC 6-Life, and least likely to result in an outcome of DSS. For all other offenses, approximately half of the youths charged and convicted received outcomes of DSS, and only a small number received outcomes more severe than is possible if they had not been waived. Similar to the relationship of age and outcome however, the relationship between offense charged and outcome was weak, indicating that there are other factors involved in addition to those examined.

Limitations

There are some limitations of this research which must be taken into account, due to the actual data that were collected and specific characteristics of the area where the data were collected. First, the researcher was unable to obtain any information on the prior record of individual youths or characteristics of the various offenses charged, both of which might offer an explanation as to why a surprising number of youths were returned to DSS upon conviction. The prior record of youths
waived could very well help explain the disparities in sentences that appear to exist: it is possible that those youths sentenced to DSS following conviction had no significant criminal record, whereas those youths sentenced to DOC had a lengthy or repetitive criminal history. Also of importance are characteristics of the offense, including but not limited to: the number and age of victim(s), the use of a weapon or the type of weapon used, the nature and extent of injury to the victim (physical, emotional, or monetary), and other offenses charged. Finally, it in unknown how the outcomes of each case varied among different trial judges, be it a bench or jury trial, and among different sentencing judges. There are numerous judges hearing waiver cases in Wayne County, and there exist both bench and jury trials for youths subject to waiver. Furthermore, often times a different judge was used at sentencing than at trial. All of these aforementioned factors may account for some of the variation in individual waiver cases.

The second limitation is that the Recorder's Court is located in Wayne County, Michigan, in the heart of Detroit, Michigan. Detroit is the largest metropolitan area in Michigan, and by virtue of this, different than any other county or geographic area in Michigan. For this reason, the use of waiver may be noticeably different than in other areas of the state, both with respect to the youths waived and the outcome of the trial. For example, a youth charged with robbery, armed and waived to adult court in Detroit will be viewed differently than a similar case in a small rural area. In a rural area, there may only be one robbery, armed charge per year, with the result being the filing of a waiver motion, whereas in
Detroit, youths with a charge of robbery, armed are more commonplace, and not all youths with such charges are in fact waived. For this reason, generalizing the findings of this research, in regards to waiver use in the Recorder's Court, to locations outside of Wayne County should be done with caution.

Implications

After the Juvenile Waiver Package was passed by the Michigan Legislature in 1988, it was thought by many, notably critics of the judicial waiver, to be the appropriate response to serious juvenile crime. By allowing the prosecutor to waive juveniles meeting specific age and offense requirements, without first having to gain judicial support, more youths could be waived, with greater ease, with this in theory having an impact on serious juvenile crime. What could not have been anticipated was that the majority of these youths would only be returned to the juvenile justice system after conviction, the very system that they were removed from based on the seriousness of the offense they were alleged to have committed.

There is an apparent discrepancy with respect to who should determine the court of jurisdiction for juveniles charged with Class 1A felonies. The prosecutor is waiving to the adult court a large number of youths who (s)he feels should be tried in the adult court. Yet upon conviction, the judge is returning these same youths to the juvenile justice system to serve their sentences. In not sentencing these juveniles to the Department of Corrections, opting instead for the Department of Social
Services, the judge is essentially sending the message that (s)he would not have waived these same youths if originally given the opportunity to determine the judicial forum. It is here that the discrepancy lies: the prosecutor feels that a waiver of jurisdiction is necessary, while the judge holds that a large number of these same youths are better suited for the juvenile justice system.

The question now arises regarding who should have the power to determine the court of jurisdiction for serious juvenile offenders. In answering this question, there are several factors that must be considered. First, the prosecutor, in deciding jurisdiction, is only bound by law to consider the age of the offender and the offense charged. If (s)he finds that the accused is aged 15 or 16, and allegedly committed a Class 1A felony, the youth can be waived automatically. The prosecutor is not bound to consider any of the criteria resultant from the *Kent* decision when deciding the court of jurisdiction, nor is the youth in question guaranteed any due process rights. Judges on the other hand, are bound by law to make the decision granting or denying waiver only after a hearing in which juveniles are guaranteed their due process rights and in which *Kent* criteria are considered.

Second, it was found by Bishop and Frazier (1989) that the ease at which waiver was accomplished alone contributed to its use. That is, the easier it is for prosecutors to waive eligible youths, the greater the likelihood of a subsequent waiver. This results in a large number of youths waived to the adult court via the prosecutor who, had the waiver motion not been as effortless, would still be in the juvenile court.
Supporting this notion, that the prosecutor is waiving to the adult court a number of youths still fit for the juvenile court, are the results of this study, in that over half of the youths waived and convicted were returned to the juvenile justice system. The alternative, the judicial waiver, is more cumbersome, in that there is a trial to determine jurisdiction, with this alone serving as a possible deterrent for motions of waiver that are unlikely to be granted.

A third factor to consider is one of bias. In an adversarial system of criminal justice, the prosecutor is only one side of the equation. In this role, (s)he represents the state, and is interested in a conviction, not in being a neutral arbiter or in defending the accused. Accordingly, the prosecutor, because of legal position, is biased. The judge on the other hand, is in theory intended to be the neutral arbiter, examining all sides of the issue at hand and making a decision from this neutral, objective standpoint. In this position, the judge is potentially free from any bias that may exist with respect to whether or not a youth should be waived.

The final factor to consider is political pressure. In Michigan, both the prosecuting attorney and the judge are public figures, and dependent upon the general public for their job security and re-election. Naturally, they will react to public pressure and criticism in the performance of their jobs. However, the prosecutor is more likely to be affected by such pressure, simply by the public's perception of his or her duty: the prosecutor is to represent the state in securing a conviction, whereas the judge represents the state in a neutral manner, serving as an arbiter between the prosecution and the defense.
Whether the judge or the prosecutor is better suited for determining the judicial forum has been the subject of debate. Yet, faced with the option of either a prosecutorial or judicial waiver, it is the researcher's belief that this decision is better left to a judge, after a full hearing in which due process rights are afforded and Kent criteria are considered. This is consistent with previous research: Bishop and Frazier (1989), after examining the use of prosecutorial waiver in Florida, stated that the decision to waive is best left to a judge, using Kent criteria. Also, in making a decision between the two, Mlyniec (1976) stated that a judicial review of the decision to waive should be mandatory in all instances, in order to preserve the guaranteed due process rights of juveniles.

A second question that arises is whether there is any utility or practical value in the Michigan Juvenile Waiver Package, or if it is just symbolic of the general public's desire to get tough on crime and criminals. As Bortner (1986) stated after examining the use of waiver, it appears to be more of a "public placating safety valve" rather than an actual solution to the problem of serious juvenile crime. To answer this question, it is necessary to distinguish between the instrumental and symbolic functions of law.

Gusfield (1967) makes a distinction between the instrumental and symbolic functions of law, and how this in turn affects behavior. The instrumental function of a law is dependent on the law's enforcement and it's subsequent effect on behavior, whereas the symbolic function is an end in itself, there being less importance attached to its actual impact or effect. Continuing, he states that "law can thus be seen as symbolizing the
public affirmation of social ideals and norms as well as a means of direct social control", and that the symbolic significance of a law lies only in its affirmation, i.e., its being carried into effect, not in its implementation, i.e., its effect on behavior (Gusfield, 1967: p. 86).

With respect to the waiver of jurisdiction, the instrumental effect of the law would be the waiver of juveniles and their subsequent conviction and incarceration for longer periods than are possible in the juvenile justice system. The symbolic effect of the law, however, is not dependent on its enforcement, and is already realized simply by its being put into effect. The public has sent a message of being tough on juvenile offenders, with the goal of reducing the amount of serious juvenile crime. Whether or not the waiver law realizes any instrumental effect is unimportant, as society's norms and values have been affirmed by the passing of this law. As this research has shown, the prosecutorial waiver method in Michigan is not realizing its intended goal of harsher punishment for serious juvenile offenders, it's instrumental effect, as over half of those waived and convicted are returned to the juvenile justice system. While the waiver law has not had an instrumental effect, it has realized its symbolic effect, in that society has affirmed and stated its position with respect to such serious juvenile offenders.

There still remain several unanswered questions which need to be addressed in future research. First and foremost are the long term consequences of waiver. Clearly the majority of juveniles waived and convicted will eventually return to the community, which raises the question of what should be done with these offenders in the meantime. If a
15 or 16 year old youth is going to be incarcerated for a period of time and then returned to the community, should (s)he be housed with juvenile offenders under a philosophy of rehabilitation, or with adult offenders under a philosophy of retribution or incapacitation? Related to this issue is the question of whether or not the criminal justice system has the facilities and programs for individuals who are subject to waiver and convicted. Can the Department of Corrections feasibly deal with an influx of individuals who are essentially children, provide the support that is needed for them, and at the same time serve the needs of other individuals who are incarcerated? Future research is needed to assess the impact of waiver on the Department of Corrections, and the long term effects of a waiver to the adult court.

Conclusion

At its inception in Cook County, Illinois, in 1899, the juvenile court operated under two basic principles, *parens patriae* and individualized justice. Over time, however, the juvenile court has come to resemble more and more the adult court. The best interests of the child are no longer of primary concern, these having been replaced with, in regards to waiver, the protection of the public by identifying the dangerous and intractable. Treating a youth aged 15 or 16 as an adult, however, is not the answer to the question of what should be done about serious juvenile crime. Except in a court of law, an individual does not go to bed a child and wake up an adult. Rather, youths are constantly maturing, becoming adults over time, not over night. Determining if a youth is an adult cannot be done by only
examining age and offense, as there are a host of other factors, including emotional, physical, and intellectual maturity, that are involved. As all of these factors need to be examined in determining the court of jurisdiction, such a decision should occur only after a hearing in which the juvenile is afforded his due process rights and Kent criteria are considered.

The findings of this study, in that the majority of youths waived via the prosecutorial waiver method in Wayne County, Michigan were returned to the juvenile justice system following conviction, also suggests that the law is merely symbolic. By simply implementing the waiver law, the public's desire to get tough on crime and criminals, and feel good about themselves in doing just that, was affirmed, without there ever having to be any real effect as a result of the law. The Michigan Juvenile Waiver Package, which allows prosecutors to waive to the adult court select juveniles accused of violent crimes, is a "feel good" law, symbolic of the public's desire to "get tough" on crime, with there being no dramatic change in the treatment of serious and violent juvenile offenders as a result of the prosecutorial waiver.
Appendix A

Protocol Clearance From the Human Subjects
Institutional Review Board
This letter will serve as confirmation that your research project entitled "The Michigan Juvenile Waiver Package: Does waiver result in harsher punishment?" has been approved under the exempt category of review by the Human Subjects Institutional Review Board. The conditions and duration of this approval are specified in the Policies of Western Michigan University. You may now begin to implement the research as described in the application.

You must seek reapproval for any changes in this design. You must also seek reapproval if the project extends beyond the termination date.

The Board wishes you success in the pursuit of your research goals.

Approval Termination: December 2, 1994

cc: Caulfield, Soc.
BIBLIOGRAPHY


In Re Gault, 387 U.S. 1 (1967).


