

OUT OF TOUCH AND MISGUIDED:  
PROSECUTORIAL DIRECT FILE TRANSFER IN FLORIDA

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Florida juvenile court prosecutors were interviewed via telephone to examine their decision making process as to whether to charge certain offenders in the juvenile justice system or the criminal justice system. Their comments were then explored in relation to the extant literature regarding both the reasoning behind and the effects of transfer. Prosecutors reported believing in both the rehabilitative and the surveillance control aspects of justice systems, with a stronger emphasis on surveillance and control in cases involving more serious offenses. They reported protection of the community as their primary goal but were unsure how to best accomplish that goal. Their opinions differed as to whether juveniles should be held as accountable for their crimes as adults. Generally agreeing that juveniles should be treated more leniently, they had concerns with lenient treatment in cases involving serious offenses. Prosecutors indicated that many serious and violent offenders are not likely to benefit from rehabilitative efforts. They also explained what factors they believe make a juvenile a danger for reoffending, as well as the factors that make him unlikely to benefit from rehabilitative efforts. The interviews and review of the extant literature suggest that prosecutors are not successful in increasing public safety when they transfer youths to

criminal court, and that there may be even greater risk of reoffending when transfer occurs. Reasons for the failure of transfer to prevent and deter crime are discussed as is transfer's inconsistency with the foundation of the juvenile justice system and research findings from both the developmental psychology and forensic assessment literature. Reason for the continued, though limited, use of transfer is provided with suggestions made as to how transfer can more effectively meet justice system goals while taking precautions to minimize the potential harms to transferred youths.

## CHAPTER 1 INTRODUCTION

Founded in Cook County, Illinois in 1899, the juvenile justice system has undergone dramatic changes in the first 110 years of its existence. Founded on the principle of serving the best interests of the child, the primary focus of juvenile justice was rehabilitative in nature. A series of Supreme Court cases beginning in the 1960s and legislative changes beginning in the 1980s resulted in the juvenile justice system becoming increasingly similar in nature to the criminal justice system.

Aggressive in its responding to juvenile crime, the state of Florida has a variety of methods by which youths can be transferred from the juvenile justice system to the criminal justice system. Almost all of the transfers in Florida result from prosecutors filing charges directly in criminal court. There are a number of concerns with direct file transfer. It places the transfer decision in the hands of prosecutors, rather than judges who traditionally have made transfer decisions. Prosecutors traditionally have been more concerned with retribution than rehabilitation; direct file transfer allows transfer without the benefit to the juvenile of a hearing, of counsel, a statement of the reasons for the transfer, or an indication as to why the juvenile is inappropriate for juvenile justice system processing. Transfer questions the very premise of juvenile justice, that youths are less responsible and therefore less accountable for their actions, thus placing them at risk of more severe justice system responses to their offending.

As Florida transfers many youths to the criminal justice system, and allows prosecutors considerable leeway in determining whether or not to transfer many youths, it may be of some utility to examine the process and reasoning prosecutors use in determining whether to charge a youth in the juvenile or criminal justice system. The

examination of the process and reasoning behind such decisions could lead to a better understanding of the goals of transfer, the criteria used in making that decision, how those criteria are conceptualized and assessed, whether transfer is able to achieve its goals, how progress toward those goals and the decision making process behind transfer might be improved, and the future direction of justice systems in responding to serious and violent youthful offenders.

This manuscript is roughly divided into eight sections. The first section describes the historical and philosophical foundations of the juvenile justice system and changes it has undergone since its inception. The second section explores the different methods of transfer, and the arguments for and against transfer. The third section describes and explains interviews conducted with juvenile court prosecutors in the state of Florida. Those interviews explored prosecutors' philosophical orientations toward juvenile justice, their beliefs about factors associated with serious and violent juvenile offending, whether serious and violent offenders' behaviors can be controlled or treated, the impacts that transfer has on crime rates and on youths transferred to the criminal justice system, the advantages and disadvantages of transfer, and the factors prosecutors consider in making the transfer decision. The fourth section outlines the outcomes and effects of transfer, while the fifth section outlines how transfer conflicts with both the founding philosophy of the juvenile justice system and the extant literature from developmental psychology. The sixth section describes the necessity of provisions for transfer. The seventh section explores how more selective transfer could be achieved through the use of forensic assessment. The final section makes recommendations as to how to improve the process and reasoning behind transfer.

## CHAPTER 2 HISTORICAL AND PHILOSOPHICAL BASES OF JUVENILE JUSTICE

### **The Historical Basis**

Only within the past few hundred years have children come to be viewed and treated as drastically different than adults. Prior to this, older children were often treated as adults whereas younger children were often treated with indifference. This was in large part due to high mortality rates among children, with as many as two-thirds of persons dying before reaching twenty years of age. The 1500s and 1600s saw a multitude of changes, among them a decline in the death rate among children. Previously emotionally risky to form emotional attachments to children, society began to view them no longer as miniature adults, but instead as less developed individuals in need of care and protection due to their immaturity. Education also became more widespread. As the knowledge gap between children and adults widened, differences between their maturity and dependence were illuminated. These, as well as a number of other factors, catalyzed the idea that children should be viewed and treated differently than adults. Society also began to view and treat youths committing legal violations differently than adults. Traditional European approaches had been punitive. In the 1600s, there was a shift toward the use of more rehabilitative approaches in recognition of youths being less cognitively developed than adults and thus less capable both of reasoning and of possessing the capacity to appreciate the consequences of their behaviors (Patapis, 2002). By the 1700s, English common law had evolved to incorporate a number of age-based distinctions. Incapable of forming criminal intent, persons under seven years of age were immune from court jurisdiction (Flowers, 2002; Patapis, 2002; Tanenhaus, 2000). Those persons between seven and fourteen years of

age were also presumed incapable of forming criminal intent, but this was a rebuttable presumption with the possibility of the imposition of criminal sanctions (Otto & Borum, 2004). When this capacity was rebutted, such offenders typically received some form of treatment (Patapis, 2002). Those persons fifteen and older, on the other hand, were presumed fully capable of forming criminal intent and thus subject to full court jurisdiction and punishment. Despite society's changing views of wayward youths as immature, lacking guidance, and in need of help, American youths would not be privileged to a separate system of courts than adults until the 1800s, and thus still prone to adult sanctions for their legal transgressions (Agnew, 2009).

### **A Changing America**

America in the 1800s was characterized by both widespread urbanization and an influx of immigrants to the cities hoping to take advantage of newly emerging industrial employment opportunities. Urban slums emerged. These slums were characterized by poor housing, sanitation problems, overcrowding, health problems, and a great deal of crime and vice, creating an unwholesome environment for the youths living in them. Many of these youths often spent time on the streets, stealing and committing other crimes in order to survive. Parents and neighbors seemed unable to control them, yet hope still existed that they might be diverted from a life of crime because of their youthfulness. The recognition that societal conditions play a role in the offending behaviors of youths had emerged (Agnew, 2009; Tanenhaus, 2000).

Different interpretations exist as to the reasons for this concern for wayward youths. Some suggest that it was genuine concern, while others suggest that middle-class and upper-class persons viewed the large concentration of immigrants and lower-class persons as a potentially disruptive force (Agnew, 2009). Regardless of the

reasons, America in the late 1800s recognized children as qualitatively different from adults and as having a lesser degree of criminal culpability. In addition to their lesser culpability, by reason of their developmental immaturity, youthful offenders were seen as more behaviorally and morally malleable than adults and thus as more treatable (Patapis, 2002; Snyder & Sickmund, 2006). These recognitions led to the establishment of the first American juvenile court in Cook County, Illinois in 1899. As a principal goal, this court sought to rehabilitate youthful offenders. By exempting youths sixteen and younger from criminal prosecution, the Illinois legislature implied that criminal intent could not be formed by persons of such age. In doing so, the legislature provided both the legal authority and the structure for juvenile courts to evolve as social service agencies. By focusing on the needs of offenders, rather than their offenses, youths committing vastly different offenses could receive similar rehabilitative responses from the court (Grisso, 1998).

Regardless of the motives, there does seem to be a consensus that the juvenile court's creation resulted from a shift in the social consciousness regarding youths. No longer miniature adults, they had come to be viewed as dependent, in need of guidance, and lacking the mental and physical capacities of adults (Kupchik, 2006). In the next thirty years, most states followed Cook County's example, creating special laws and justice systems in which special rehabilitative services could be provided in response to the needs and misbehaviors of youthful offenders (Flowers, 2002; Grisso, 1998). This creation of juvenile justice systems was accompanied by many other changes in American society due to this recognition of adolescence as a special period of development, as a period of malleability and formation during which the transition to

adulthood could be impacted by external forces. The United States had begun to develop its public educational system, to institute child labor laws, and to develop its child welfare system. Such external forces had the power to direct and redirect development in positive directions as youths had the capacity to adopt moral lifestyles if provided with the appropriate tools to do so (Grisso, 1998; Kupchik, 2006). Youthful offenders were not inherently criminal or evil, but rather subject to the negative influences of pathological environments.

### **Philosophical Foundations of Juvenile Justice**

The British doctrine of *parens patriae* served as the rationale for the juvenile justice system's intervening in the lives of youthful offenders. Due to its benevolent nature, the court could delve deeply into the lives of the youths under its jurisdiction, exploring both legal and extra-legal factors. The court played the role of surrogate parent for youths not receiving appropriate care, supervision, and moral training from their natural parents (Bartol & Bartol, 2004; Kupchik, 2006; Tanenhaus, 2002; Zimring, 2005). The *parens patriae* basis of the court permitted state intervention if in the best interest of the child even if parents objected (Bartol & Bartol, 2004). As the best interest of the child was the focus of the court, judges had great discretion as to the degree of intervention necessary (Zimring, 2005). The impact of this focus on offenders, rather than offenses, and the provision of rehabilitation services, rather than the administration of punishment, was that due process was deemed unnecessary, and perhaps even counterproductive, as juvenile justice objectives did not include restricting individual liberties for retributive purposes. Youths' rights were subordinate to their needs (Grisso, 1998; Flowers, 2002; Kupchik, 2006; Salekin, 2002; Snyder & Sickmund, 2006; Zimring, 2005). Youths appearing before the court were there to be helped and thus not in need

of protection from unfair punishment. The juvenile court was more informal, more beneficent, and less adversarial than the criminal court. In its mission to help, the court focused on not only the specific offenses committed currently and in the past, but also on the personal, familial, school, and peer problems youths encountered. Resultantly, an understanding of youthful offenders was required, not just knowledge of the legal transgressions they had committed (Agnew, 2009; Grisso, 1998; Woolard, 2002).

With high aims, the juvenile justice system's rehabilitate focus dominated its philosophy through the first half of the twentieth century, though it often failed to reach its goal of providing guidance to assist youths in leading conventional lives (Agnew, 2009; Patapis, 2002). This rehabilitative focus was based on assumptions that youths were in need of both protection and supervision due to childhood being a period of both dependence and risk. This rehabilitative focus also postulated that youths were less accountable for their offenses than adults were, and that they were more amenable to rehabilitative efforts than were adults. This permitted judges broad discretion in dispositional options (Bartol & Bartol, 2004; Woolard, 2002; Zimring, 2005).

The juvenile justice system in the second half of the twentieth century and beyond vastly differed from its existence in the first half of the century due to two major sets of reforms. The first involved a landmark set of Supreme Court decisions beginning in the 1960s and fundamentally altering the juvenile justice system to this day. The second involved vast legislative changes in the 1990s in response to a wave of violent youthful offending that had begun during the previous decade (Grisso, 1998; Myers, 2001; Steinberg & Schwartz, 2000; Woolard, 2002). A result of these sets of reforms was a shift from the rehabilitative philosophy of the juvenile justice system with the primary

concern being attending to youths' best interests and well-being to an increased concern for the best interest of the community in terms of safety. While still concerned with guiding and rehabilitating juveniles, the juvenile justice system in the second half of the twentieth century and beyond was characterized by an increased focus on retribution, leading for the need to be more mindful of procedural safeguards for offenders (Flowers, 2002; Myers, 2001; Patapis, 2002).

## CHAPTER 3 THE CHANGING JUVENILE JUSTICE SYSTEM

### **Rehabilitation Versus Due Process-The Supreme Court Cases of the 1960s and 1970s**

The ability of the juvenile justice system to reach its goals came under scrutiny in the 1950s and 1960s. Its rehabilitative goals were not initially under question, but rather the system's efficacy in reaching those goals (Snyder & Sickmund, 2006; Tanenhaus, 2000). Of particular concern was the efficacy of rehabilitative interventions involving youths indefinitely institutionalized while receiving such services (Snyder & Sickmund, 2006). Minor offenders had often been held in custody as long as or even longer than youths committing more serious offenses with their continued confinement being based on the lack of progress toward perceived rehabilitative needs (Grisso, 1998). Also coming under question by critics was the lack of procedural safeguards accorded to youthful offenders. In particular, there was concern regarding the wide discretion afforded to juvenile court judges and the informal nature of court hearings as disposition often reflected a concern for punishment and incapacitation akin to the criminal justice system's concerns (Myers, 2001).

The late 1960s and early 1970s saw a rapid rise in delinquency rates with conservative politicians attacking rehabilitative and prevention programs, and suggesting that crime resulted from bad persons making deliberate choices, not from social problems leading to crime. They suggested that offenders were deserving of punishment, and that punishment would lead to lower crime rates. A series of studies in the 1970s also raised doubts about the effectiveness of rehabilitative services in the juvenile justice system (Agnew, 2009). Recognition of these concerns had a dramatic impact on the character and procedural operations of the juvenile justice system

beginning with five particularly influential Supreme Court decisions. These cases were brought to the attention of the Court on the basis of objections to the denial to juveniles of fair trials and of individual rights (Bartollas, 1997; Snyder & Sickmund, 2006).

*Kent v. U.S.* (1966) was the first occasion in which the Supreme Court dealt with a juvenile court case. Concerned with transfer from juvenile to adult court and procedural due process rights, the Court's decision in the case established a number of rights for youths (Grisso, 1998). Among the most important were the right to an evidentiary hearing if being considered for transfer and the right to counsel with access to social or probation records in order to challenge the transfer decision (Bartol & Bartol, 2004; Bartollas, 1997; Flowers, 2002; Myers, 2001; Patapis, 2002; Snyder & Sickmund, 2006). The impact of the Court's decision in this case was threefold (Tanenhaus, 2000).

First, a listing of determinative factors to be considered in potential transfer cases was attached via appendix to the decision. The factors can be divided into three types of criteria. Offense-related criteria include the seriousness of the offense, whether it was committed against a person, whether it was violent, premeditated or willful, and the prosecutive merit of the case. Respondent-related criteria include the previous record, and the sophistication and maturity of the offender. System-related criteria include the juvenile justice system's ability to protect the public from the offender, and the desirability of disposing of cases with codefendants in the same system (Tanenhaus, 2000). A second impact of the Court's decision was that it focused attention on transfer between the courts, encouraging investigation into the process behind such decisions, as well as the types of youths transferred and what the outcomes of transfer were (Tanenhaus, 2000). Recognizing the rehabilitative goals of the juvenile justice system

and the lesser formality of its procedures as a tradeoff, but that this tradeoff did not negate the need for certain due process rights, the majority opined that the juvenile offender “gets the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children” (Myers, 2001; Otto & Borum, 2004; Steinberg & Schwartz, 2000). In effect, the Court stipulated that the benevolent philosophy of the juvenile justice system was not to provide an open door for procedural arbitrariness (Patapis, 2002). Concerning discretionary judicial transfer, this placed upon the state the burden of establishing for the judge the inappropriateness of youths in question for juvenile justice system processing. This was the third impact of the Court’s decision in *Kent v. U.S.* (1966). Legitimizing the judicial transfer concept and attempting to incorporate the beneficent concept of the juvenile justice system with some of the procedural fairness concerns of the criminal justice system set into motion the beginning of the end of the juvenile justice system envisioned by its founders (Tanenhaus, 2000). Critiques of the juvenile justice system were augmented by another Court ruling the following year.

The Court’s decision in *Miranda v. Arizona* (1966) had established for adults the rights to avoid self-incrimination and to consult with legal counsel (Grisso, 1998). The Court’s decision in *In re Gault* (1967) extended these due process safeguards, as well as written notice of the charges and to confront and cross-examine witnesses, to juveniles facing the possibility of commitment to institutions (Bartol & Bartol, 2004; Bartollas, 1997; Flowers, 2002; Myers, 2001; Patapis, 2002; Snyder & Sickmund, 2006). Displeased with its procedural operations, the Court likened the juvenile court of jurisdiction in the Gault case to a “kangaroo court” (Bartol & Bartol, 2004; Otto & Borum,

2004). The formality of juvenile courts had begun to change and would continue to do so into the 1970s with other Supreme Court decisions. No longer granted the authority to exercise control over youthful offenders without first legally substantiating their guilt, juvenile court proceedings became bifurcated with those proceedings from arrest through adjudication characterized by due process considerations. Dispositional proceedings still remained open to wide judicial discretion in determining the rehabilitative dispositions most appropriate for the needs of adjudicated youths. Previously courts had often acted in an authoritarian manner, making decisions without regard for due process considerations, and often sentencing youthful offenders to reformatories or training schools that served little more than custodial and punitive purposes in the absence of any demonstrable rehabilitative efforts. Youthful offenders were thus in need of constitutional protections against the state's unlawful deprivation of their freedom (Allen, 2000; Bartol & Bartol, 2004; Grisso, 1998). Three Court cases the following decade further clarified and influenced the operations of the juvenile justice system.

*In re Winship* (1970) examined the evidentiary standard required in juvenile court cases. The Court established the entitlement of juveniles to the same beyond the reasonable doubt standard as adults in adjudication proceedings rather than the preponderance of the evidence standard utilized in the civil courts (Bartollas, 1997; Flowers, 2002; Myers, 2001; Patapis, 2002; Snyder & Sickmund, 2006). The *McKeiver v. Pennsylvania* (1971) decision established that youths are not entitled to jury trials in the juvenile justice system, noting that it may make the proceedings more adversarial and disrupt the protective nature of juvenile court proceedings (Bartollas, 1997; Snyder

& Sickmund, 2006). The majority opinion in *Breed v. Jones* (1975) established that cases cannot be transferred from the juvenile to the criminal court once jeopardy attaches. This occurs at the adjudication hearing when evidence is first presented. As juvenile court adjudication is equivalent to criminal court trial, cases may not be transferred post adjudication (Bartollas, 1997; Flowers, 2002; Myers, 2001; Patapis, 2002; Snyder & Sickmund, 2006).

The Supreme Court's decisions in these five landmark cases had the impact of dramatically altering the juvenile justice system, calling for it to be more formal, more like the criminal justice system (Snyder & Sickmund, 2006). Though it did not call for an abandonment of the rehabilitative ideals upon which it was founded, the Court recognized that the juvenile justice's system rehabilitative emphasis had been diminished. It also recognized the often punitive nature of the juvenile justice system, and the need for the extension of at least some of the due process rights afforded to adult offenders to youthful offenders (Agnew, 2009; Grisso, 1998; Otto & Borum, 2004; Woolard, 2002). By not extending all of the procedural due process rights to youthful offenders, the Court granted the juvenile justice system some leeway in meeting its rehabilitative directives.

### **Legislative Changes and the Juvenile Crime Epidemic of the 1980s and 1990s**

While many youthful offenders do commit serious and violent offenses, most juvenile justice system referrals are for minor offenses with a certain amount of delinquency being common in adolescence, perhaps even being a normative response to this developmental period of life (Agnew, 2009; Myers, 2001; Salekin, Salekin, Clements, & Leistico, 2005; Woolard, 2002). Much of this delinquency is either undetected by or not serious enough to warrant official responses from formal systems

of social control, yet many youthful offenders do still come into contact with justice systems (Woolard, 2002). That much youthful offending is not serious in nature is reflected by crime statistics with unlawful acts on the part of juveniles broadly divided into five major categories. The greatest percentage of juvenile court referrals are for crimes against property (45%), then for crimes against persons (23%), then for crimes against the public order (21%), and finally for drug offenses (11%). The fifth category is status<sup>1</sup> offenses (Bartol & Bartol, 2004). The best response to this normative youthful offending may be allowing offenders the normal process of growing up in the community whereas punitive measures such as incarceration are likely to impede their developmental progress (Zimring, 2005).

In 2002, courts with juvenile jurisdiction handled approximately 1.6 million delinquency cases for the estimated population of 33.5 million ten to seventeen year olds (Snyder & Sickmund, 2006). Though most of this youthful offending is minor in nature, youth violence cannot be denied. In 2003, there were an estimated 92,300 law enforcements arrests of persons under eighteen for violent crime index offenses (murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault), and 463,300 arrests for property crime index offenses (burglary, larceny-theft, motor vehicle theft, and arson). The media has exacerbated the public's perception of youth violence as an enormous social problem (Fried & Reppuci, 2002). The mid 1980s to the mid 1990s saw a surge in the juvenile violent crime arrest rate with many of the

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<sup>1</sup>Delinquency offenses differ from status offenses, in that status offenses can only be committed by juveniles and are only eligible for adjudication in the juvenile court. Typical status offenses include curfew violations and running away from home. Delinquency offenses are definitionally comparable to acts considered criminal if committed by adults, acts such as burglary and arson.

crimes receiving massive publicity. That publicity helped to shape the public's perception of youthful offending (Agnew, 2009; Snyder & Sickmund, 2006). This public perception of a juvenile crime epidemic helped to serve as the apex for the second set of legal reforms significantly reshaping the operations and philosophy of the juvenile justice system (Grisso, 1998). The perception of a juvenile crime epidemic helped lead many to alter their views of violent youthful offenders as immature youths lacking guidance and direction, and to make calls for harsher punishment of these hardened offenders deserving to be treated as adult criminals. Immaturity was no longer to be outweighed by lack of will and responsibility. Consequently, numerous state legislatures enacted legislation to diminish the differences between the juvenile and criminal justice systems, with the suggested rationale being that the juvenile system was incapable of adequately handling and responding to these youthful predators—in order to be effective, dispositions of adolescent cases needed to more closely resemble the sentences of criminal cases (Agnew, 2009; Bishop, 2000; Grisso, 1998; Myers, 2001; Otto & Borum, 2004; Redding, 2008; Salekin, 2002; Snyder & Sickmund, 2006; Zimring, 2005).

Assertions of the softness and ineffectiveness of the juvenile justice system were made despite this very system handling most juvenile delinquency cases, of both serious and violent and lesser offenders, with most of these offenders, including those serious and violent offenders, not returning to the justice system once passing through the juvenile system (Flowers, 2002). This perception of a juvenile crime epidemic resulted in the juvenile justice system being called upon to shift its focus. Previously primarily rehabilitative in nature, the juvenile justice system's focus on punitive

measures increased, with the protection of the community equaling or surpassing the best interest of the child (Woolard, 2002). Every state provided assistance to the juvenile justice system in moving in this direction by passing legislative changes in the 1990s (Grisso, 1998).

Legislatures in the 1980s and 1990s made this philosophical shift blatant, often rewriting juvenile justice system objectives and emphasizing the need for a balance between system and offender accountability, offender competency development, and community protection (Snyder & Sickmund, 2006). While rehabilitation remained an important goal of the juvenile justice system, youthful offenders, especially older juveniles committing serious and violent offenses, were to be held more accountable for their actions via increased punitive measures. There was to be both an increased focus on direct control by the courts and more severe sanctioning, a movement that has continued throughout recent years (Agnew, 2009; Bishop & Frazier, 2000; Myers, 2001; Salekin, 2002; Steinberg & Schwartz, 2000). Public officials and legislators became more sanguine about punishment to satisfy both retributive and deterrent purposes (Bishop & Frazier, 2000). Juvenile courtroom openness also changed with increases in public and media access to juvenile courts and records (Snyder & Sickmund, 2006).

Legislatures passed laws to facilitate the imposition of harsher sanctions such as extended sentences for juvenile offenders or their removal entirely from the juvenile justice system (Bishop, 2000; Fried & Reppuci, 2002; Grisso, 1998; Kupchik, 2006; Snyder & Sickmund, 2006). This easing of the transition of transfer was in all likelihood the most popular reform (Myers, 2001). Despite these changes, most youths continued to remain under the juvenile court's original jurisdiction (Flowers, 2002). Those

removed from the juvenile justice system, however, were subject to the same dispositional options available to courts sentencing adult offenders (Bartollas, 1997).

### **Adolescence's Disappearance in the Legal System**

With states having increased power to exact retribution upon youthful offenders and a resulting heightened concern for due process considerations, the juvenile justice system had become increasingly criminalized (Grisso, 1998; Steinberg & Schwartz, 2000). The rationale behind this criminalization was that getting tough on crime would deter potentially serious and violent youthful offending (Fried & Reppuci, 2002). Society appeared to be moving away from the fundamental and founding assumption of the juvenile justice system, that the law should treat children differently than it does adults. Childhood's modern era, only recognized for the past few hundred years, seemed to be vanishing along with the primarily benevolent nature of the juvenile justice system (Tanenhaus, 2000). The get tough ideology first encountered in the criminal justice system in the 1970s had begun to permeate the juvenile justice system, calling into question the juvenile justice system's philosophy, structure, goals, procedures, and effectiveness, and also making calls for the increased criminalization of youthful offending (Myers, 2001). With jurisdictional distinctions never bound impermeably, the juvenile justice system's rehabilitative basis had been called into question. This suggested that the psychological distinctions between adolescents and adults, justifying the juvenile justice system's rehabilitative focus, were also being called into question (Steinberg & Cauffman, 2000).

America in the nineteenth and early twentieth centuries had undergone remarkable changes in how it viewed youths. While shifting from an agrarian to an industrial economy, legislators had enacted child labor laws as well as compulsory

education laws. Both formal and scientific recognition of adolescence as a developmental stage had also occurred. These changes and recognitions had the impact of postponing the age at which persons assumed adult roles, responsibilities, and tasks (Otto & Borum, 2004). Such formal recognition of youths as qualitatively different than adults was evidenced by the establishment of a separate court system intended to emphasize rehabilitation to a greater degree and punishment to a lesser degree than the adult court system. That special laws applicable only to juveniles and designed to more closely regulate and control their lives and behaviors were enacted also suggested the recognition of adolescence as a unique and special period of the lifespan (Agnew, 2009). Yet, how quickly this new concept of adolescence had been called into question. As adolescence disappeared from the legal system, increased provisions for youthful offenders' removal from the juvenile justice system became necessary and remain in place today.

## CHAPTER 4 TYPES OF TRANSFER AND ITS INCREASING USE

### **Types of Transfer**

Developed judicially and through legislation, all states have one or more provisions for the transfer of youthful offenders to the criminal justice system from the juvenile justice system or to otherwise face adult sanctions with there being three general mechanisms for transfer (Agnew, 2009; Bartollas, 1997; Otto & Borum, 2004; Patapis, 2002; Snyder & Sickmund, 2006; Zimring, 2000; Zimring, 2005). Most states have two or three coexisting methods of transfer (Redding, 2008).

Discretionary judicial waiver is utilized in forty-five states<sup>1</sup> and is often limited to certain age and offense categories (Agnew, 2009; Snyder & Sickmund, 2006). Historically, transfer has occurred on a case by case basis via discretionary judicial waiver (Salekin, 2002). The most common transfer provision, almost 10,000 cases (approximately 1% of all formally processed cases) were judicially waived in 2004 (Agnew, 2009; Snyder & Sickmund, 2006). Discretionary judicial waiver provides considerable leeway in the transfer decision whereas mandatory and presumptive waiver, each available as a transfer option in fifteen states, require or presume waiver upon judicial confirmation of appropriate statutory criteria being met (Snyder & Sickmund, 2006).

The judicial waiver decision is typically initiated by prosecutors making a transfer request, though juveniles or parents may also initiate the waiver request in many states (Bartol & Bartol, 2004; Snyder & Sickmund, 2006). Judges are responsible for the transfer decision after hearings in which factors believed to be relevant to the transfer

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<sup>1</sup> State information in this discourse includes the District of Columbia.

decision are brought to their attention. The *Kent v. U.S.* (1966) decision suggested eight determinative factors for consideration in transfer decisions with there being some agreement that the most important criteria include amenability to treatment and risk for future dangerousness (Bartollas, 1997; Patapis, 2002; Salekin, 2002; Salekin et al., 2005; Snyder & Sickmund, 2006). Many state statutes do mandate that judges consider a number of factors in the transfer decision, among them the available dispositional alternatives for treating the juvenile, the timeframe available for intervening with the juvenile, public safety, and the best interest of the child (Snyder & Sickmund, 2006). Common prosecutorial arguments for transfer include several prior adjudications for an offender, the failure of previous juvenile court interventions to prevent further offending, or that a youth's offenses are so severe or serious that the juvenile justice system has inadequate time for rehabilitation. Typically unclarified statutorily, factors often considered regarding amenability include offense history and previous dispositional outcomes. Despite the numerous factors to consider in the transfer decisions, judicial waiver decisions seem to often be primarily motivated by consideration of an offender's prior record and seriousness of the instant offense; some may coin this as consideration of community safety (Bartollas, 1997; Salekin, 2002). An important distinguishing feature of discretionary judicial waiver is that it affords the youthful offender the opportunity to influence the judge's decision (Tanenhaus, 2000).

Judicial waivers require hearings to determine that the statutory criteria for transferring youths have been met. In general, states have two sets of legal standards for transfer. The first is a threshold fact standard. This requires that certain minimum criteria, such as age and offense level, be met before proceeding further. The second

set is more subjective in nature and may include such factors as risk of danger to others and amenability to rehabilitation (Grisso, 2000). Conversely, neither prosecutorial transfer nor statutory waiver is prone to judicial oversight, making their use substantially different than judicial waiver which requires a hearing as established in the *Kent v. U.S.* (1966) decision. This lack of judicial oversight in prosecutorial and statutory waiver has been permitted under the guise of the juvenile court being a legislative creation.

Processing through the juvenile justice system is therefore not a right, meaning that so long as it is done fairly, the juvenile justice system's protections can be denied at will (Kupchik, 2004; Kupchik, 2006). State appellate courts have responded to challenges to this rationale by indicating that prosecutorial waiver equates to routine charging decisions made by prosecutors, thus making direct file transfer an executive function, and exempting it from judicial review and the due process standards established by the United States Supreme Court in *Kent v. U.S.* (1966) (Bishop, 2004; Kupchik, 2004; Kupchik, 2006; Snyder & Sickmund, 2006). As such, direct file and legislative waiver conceptually violate, but do not legally violate, the Court's decision (Kupchik, 2006).

Concurrent jurisdiction, also known as prosecutorial waiver or direct file, permits cases meeting established criteria to be filed in either the juvenile justice system or the criminal justice system (Agnew, 2009; Bartol & Bartol 2004; Otto & Borum, 2004; Snyder & Sickmund, 2006; Zimring, 2000; Zimring, 2005). Legislatures have established this as a mechanism for transfer in fifteen states (Agnew, 2009; Snyder & Sickmund, 2006). Concurrent jurisdiction transfer differs from mandatory and presumptive judicial waiver in that charges originate in the criminal court rather than the juvenile court (Snyder & Sickmund, 2006). It also significantly differs from judicial

waiver in that it shifts the discretionary power from judges to prosecutors with the transfer decision not being subject to judicial review (Bartollas, 1997; Otto & Borum, 2004). When the option is available, the number of concurrent jurisdiction transfer cases is believed to far exceed the number of cases transferred via judicial waiver (Agnew, 2009; Myers, 2001).

Statutory waiver, also known as statutory or legislative exclusion or transfer, is permitted in thirty-eight states (Agnew, 2009). It has occurred in three ways, the most extreme being the lowering of the maximum age over which the juvenile court has original jurisdiction (Agnew, 2009; Tanenhaus, 2000). As of 2004, three states had set this age at fifteen, ten states at sixteen, and the remaining thirty-eight states at seventeen (Snyder & Sickmund, 2006). Other manners in which statutory waiver occurs are exclusion based on offense categories and exclusion based on both age and offense categories (Bartollas, 1997; Bartol & Bartol, 2004; Kupchik, 2006; Otto & Borum, 2004; Snyder & Sickmund, 2006; Zimring, 2000; Zimring, 2005). Statutory waiver gives legislatures greater control over the transfer process, limiting the discretion of judges and prosecutors. By delineating mandatory transfer criteria, legislatures can ensure that transfer procedures are characterized by increased uniformity and consistency in practice (Bishop & Frazier, 2000). Statutory exclusion does, however, leave some discretion to prosecutors in the sense that they are responsible for determining the charges to be filed (Kupchik, 2006). Prosecutors could potentially charge lesser offenses in order to avoid transferring certain youthful offenders (Allen, 2000).

Statutory exclusion challenges the rehabilitative philosophy of the juvenile justice system. By rationalizing mandated prosecution of juveniles as adults due to the greater incapacitative ability of the criminal justice system, it ignores consideration of the characteristics of offenders before the court in favor of focusing exclusively on age and/or offense criteria (Bartollas, 1997). It may transfer to the criminal justice system many cases low in prosecution priority and offenders for whom minimal levels of punishment may be acceptable to the community. Such youths may not have otherwise been transferred to the criminal court (Zimring, 2000; Zimring, 2005). Statutory exclusion also ignores the knowledge that youthful offenders differ in terms of their character, the motivations for their offenses and the risk that they pose to society (Fried & Reppuci, 2002). Despite these drawbacks, statutory exclusion transfers more youths to criminal court than either judicial or prosecutorial transfer (Snyder & Sickmund, 2006). Statutory transfer and direct file transfer both have the impact of limiting judicial discretion which has the potential for biased and unequal treatment. Yet, there is no reason to believe that judges' discretionary decisions are worse than those of prosecutors and legislatures in determining appropriateness of youths for transfer. Allowing legislatures and prosecutors greater discretion in the transfer process invites public opinion to serve as a criterion for transfer, a troubling proposition (Kupchik, 2006).

### **The Increasing Use of Transfer**

Founded on the notion that youthful offenders need a special system to account for and respond to their special needs, the philosophy of juvenile courts for the first half century beyond their inception was rehabilitative in nature. Concerns about the first juvenile court being unconstitutional served as an impetus for the Cook County judges

to allow passive transfer by not always asserting the original and exclusive jurisdiction afforded to them for youths sixteen and younger. The provision of mechanisms for transfer, then and now, serves as a defense against accusations of the juvenile justice system as being ineffective, abusing its vast discretion, and coddling serious and violent juvenile offenders (Tanenhaus, 2000). Though it had always been an option, it was not until the late twentieth century that transferring youths to criminal court occurred more than seldomly (Grisso, 2000; Kupchik, 2006; Myers, 2001; Patapis, 2002; Snyder & Sickmund, 2006). Indeed, it had been essential to the success of the early courts to identify youthful offenders likely to benefit from a rehabilitative focus (Tanenhaus, 2000). Despite significant changes in its focus and purpose in the latter half of the twentieth century, the juvenile justice system to this day still maintains a focus emphasizing rehabilitative interventions (Agnew, 2009; Grisso, 1998; Otto & Borum, 2004).

As legislatures responded to the critical level of public concern over juvenile crime in the 1980s and 1990s by facilitating the ease of, or even requiring, transfer in response to the critical level of public concern over juvenile crime, the number of youthful offenders transferred to criminal court dramatically increased (Agnew, 2009; Grisso, 2000; Patapis, 2002). The get tough movement of this time period resulted in major policy changes significantly altering how the juvenile justice system responded to youthful offenders, particularly those believed to be serious and violent offenders. Such policy changes resulted not only in greater numbers of youths being transferred to the criminal court, but also in the imposition of more severe sanctions, and substantial growth in the incarceration rate for youthful offenders (Agnew, 2009). This increased, often wholesale, transfer of youthful offenders without significant inquiry into their

individual circumstances and characteristics directly contrasts the very idea of adolescence as a developmental stage, with the conceptualization of adolescence suggesting that such offenders are less mature, blameworthy, and culpable for their transgressions. Such transfer suggests either a significant ignorance of, or a blatant disregard for cognitive and social development. Less understanding of the law, more prone to peer pressure influences, and more likely to act rashly and with lack of foresight, the least mature youths are likely to commit some of the most egregious offenses. This very lack of maturity conflicts with the notion that youths committing the most egregious offenses should be held the most fully culpable and responsible for their actions (Kupchik, 2006). Disconcerting it is that treating youthful offenders as adults has been increasing in popularity, despite its previous failures in reaching its intended effects, as well as its failure to adequately and appropriately consider the circumstances of youths being considered for potential transfer (Patapis, 2002).

## CHAPTER 5 JUSTICE SYSTEMS AND THE RATIONALE AND COUNTERRATIONALE BEHIND TRANSFER

### **Juvenile and Criminal Models and Justice Systems**

Justice models can be categorized into two types, a juvenile justice model and a criminal justice model. The juvenile justice model is characterized by rehabilitative goals, less formal case processing, and offender-based evaluations. In contrast, the criminal justice model is characterized by goals of punishment and deterrence, more formal case processing, and offense-based evaluations of offenders. The criminal justice model assumes a more adversarial system with interaction thus being subject to greater due process considerations. As all offenders are equally culpable, sentencing factors include prior record and offense severity; sentences are to be meted out proportionately to offense severity. Courtroom workgroups include only judges and attorneys, whereas juvenile courtroom workgroups are virtually unlimited and based on the rehabilitative needs of youths. As a final point of difference, criminal justice systems are much more vulnerable to external scrutiny as they allow jury trials and are more open to the public than are juvenile justice systems (Kupchik, 2006).

The juvenile and adult courts differ perhaps most significantly in their dispositional options with juvenile courts being more limited in the length of time that offenders can be held in custody. Juvenile courts also tend to sentence more mildly than do criminal courts (Agnew, 2009; Kupchik, 2006). In theory, sentencing differences are due to the criminal justice system assuming adults to be autonomous, competent persons fully capable of making decisions about their own behavior and thus deserving to be held fully accountable for their behaviors. In an ongoing state of social and cognitive development, youths are less competent than are adults. This lower level of

competence serves as the basis for viewing them as less accountable and therefore less culpable for their behaviors than adults (Woolard, 2002).

Despite diminishing over the past few decades, the differences between the juvenile justice and criminal justice models in terms of both processing and their goals have remained substantial. While juvenile courts often remain guided by rehabilitative goals with intentions of nurturing and guiding wayward youths, they have come to increasingly emphasize the importance of accountability via the imposition of punitive sanctions, particularly for older, serious, and violent offenders (Agnew, 2009). Transfer has traditionally been justified on there being two classes of offenders inappropriate for the juvenile justice system. The first is seriously violent youths for whom the juvenile justice system is unable to provide measures punitive enough to satisfy the public's desire for harsh sanctioning of heinous crimes. The second is chronically offending youths who have exhausted the juvenile justice system's rehabilitative options yet continue in their offending behaviors. Due to their lack of amenability to treatment, transfer to the criminal justice system serves as a last resort for community safety, with the understanding being that the criminal justice system is more sufficiently equipped to incapacitate such youths (Bishop & Frazier, 2000; Kupchik, 2006).

### **The Rationale and Counterrationale Behind Transfer**

Explicit in their arguments, transfer proponents suggest that the criminal courts are able to subject youths to more offense-based, formal, and punitive interventions than are the juvenile courts. They suggest that juvenile courts were founded upon the notion of working with truants and status offenders, not serious and violent youthful offenders. They also suggest that in today's juvenile justice system, youths appearing before the court are often more serious and violent than in earlier years (Agnew, 2009; Kupchik,

2006). Transfer proponents suggest that the juvenile justice system is all too often unable to adequately respond to the needs of offenders under question and that greater public safety can be achieved through transfer. As punitive sanctions can provide for longer incapacitative periods and greater deterrence, they provide for greater accountability for youthful offenders, as well as enhanced safety for the community from both potential and sanctioned offenders (Allen, 2000; Myers, 2001). They further suggest that subjecting youthful offenders to the same punishments as adults has greater utility in protecting the public from serious and violent offending youths (Bishop, 2004). As a result, the rehabilitative interests of, as well as the best interests of, these more serious, violent, and habitual youthful offenders are secondary to the punitive interests of the court (Kupchik, 2006). In addition to providing more severe punishments than available in the juvenile justice system for deterrence purposes, the criminal justice system has at its disposal more punitive sanctions for the moral purposes and requirements of retribution (Kupchik, 2006).

Transfer proponents' arguments assume that greater punishment, often incarceration, is imposed in the criminal justice system than in the juvenile justice system because transferred youths no longer benefit from the protection of reduced culpability based on individual circumstances and characteristics (Fried & Reppuci, 2002; Kupchik, 2006). A concern with this incapacitative logic and rationale is the difficulty in accurately identifying youths likely to be high-rate offenders without also misidentifying low-risk youths as high-risk youths (Le Blanc, 1998; Lipsey & Derzon, 1998). An additional concern is that incapacitative efforts are expensive. Preventative and rehabilitative efforts are often more cost-effective. Incapacitation also has

detrimental effects on incarcerated youths and their communities. Being labeled an ex-convict impacts life prospects in a number of negative ways. The case can be made that incapacitative efforts may have some utility if they accurately target those offenders posing a significant risk to the community. Even if able to do so, as most offenders eventually return to the community, efforts need to be made to provide for rehabilitative services during periods of incarceration (Agnew, 2009).

If prospects for rehabilitation are low for certain youths, transfer to the criminal court can preserve the juvenile justice system's limited rehabilitation resources for those more likely to benefit from them (Grisso, 2000; Steinberg & Cauffman, 2000). Youths' prospects for rehabilitation must be considered in light of the rehabilitative resources available to the juvenile courts and the time period for which the courts have jurisdiction over the youths. Adequate amenability considerations also necessitate knowledge of youths' individual characteristics and the factors contributing to their offending behaviors, the contexts in which youths are embedded, the efficacy of available interventions, as well as particular youths' impediments to the effectiveness of those interventions (Fried & Reppucci, 2002; Grisso, 1998; Grisso, 2000; Otto & Borum, 2004; Patapis, 2002; Salekin, 2002).

The presumption in dealing with youthful offenders should be that the majority are amenable to rehabilitation and that the juvenile justice system is capable of responding to their needs while also exerting enough control for youths to safely remain in the community while undergoing rehabilitative interventions (Grisso, 1998; Otto & Borum, 2004). This presumption should apply even to offenders committing the most serious offenses (Salekin, 2002). While being cognizant of this, there still exists a subset of

youths posing significant danger to the community based on their likelihood to continue in offending behaviors, and for whom the offending behaviors are not primarily due to transient developmental factors (Otto & Borum, 2004). With this in mind, transfer would serve its purpose by removing those offenders deemed to be beyond the scope of the juvenile justice system, though the criminal justice system should still be obligated to recognize their developmental needs and adequately account for and accommodate the cognitive and psychosocial differences between youths and adults (Woolard, 2002). Transferring only the most deserving youthful offenders can serve to allow the juvenile justice system to be more efficient and to more effectively serve those whom it is capable of helping, thus preserving its limited resources for those more likely to benefit from them while at the same time deflecting the criticism that it coddles serious and violent offenders (Kupchik, 2006). This is an important consideration within the political context of modern penological expectations (Tanenhaus, 2000).

Age is often cited in justifying transfer when youths near the maximum age of original jurisdiction for the juvenile justice system (Myers, 2001). Extended jurisdiction can serve to counter arguments that serious and violent offenders nearing the maximum age of original jurisdiction for the juvenile court lack sufficient time for the provision of effective rehabilitative services. Extended jurisdiction allows the state to provide sanctions and services in the best interests of youths and the public beyond the age of original juvenile court jurisdiction. Juvenile court jurisdiction had been extended to twenty-one years of age in thirty-four states as of 2004's legislative session end (Snyder & Sickmund, 2006). Extended jurisdiction is consistent with literature indicative of crime, including violent crime, peaking in late adolescence and subsequently declining

as extended jurisdiction allows the juvenile justice system to retain control over youthful offenders at a time when they are most likely to offend (Myers, 2001). It may thus dissuade some decision makers from transferring youths to the criminal justice system (Tanenhaus, 2000).

In addition to the public safety and resource allocation arguments, transfer proponents also suggest that the juvenile justice system's responsibility for the welfare of the youths in its custody promotes the need to transfer some youths to the criminal justice system. Hardened youthful offenders should not be placed in the same programs and facilities as wayward youths as they may pose a danger to the wayward youths. Additionally, they may interfere with the effects of the rehabilitative programs being provided to these less hardened youthful offenders who are more capable of being redirected along more prosocial life trajectories (Grisso, 2000).

With transfer clearly being a complex issue with a number of logical arguments for its use, as well as a number of arguments contraindicating its use, it may be informative to examine how discretion is structured by decision makers. It may be particularly informative to examine how it is structured in those instances when decision makers have broad discretion, and when that broad discretion is loosely structured statutorily.

## CHAPTER 6 THE PRESENT STUDY-WHY STUDY FLORIDA?

Responding seriously to youthful offending, Florida's juvenile justice system is characterized by high rates of detention, commitment, and transfer (Bishop & Frazier, 2000). The state's aggressive response to youthful offending is not limited to only the most serious and violent of youthful offenders. Of the state's 2003 custodial population, 36% were property offenders, 34% person offenders, 9% drug offenders, 14% technical violators, and less than 1% status offenders. The state's no-nonsense response to offending is also evidenced by its open access to delinquency hearings, as well as media access to youthful offenders' identities in most cases (Snyder & Sickmund, 2006).

Florida is unique in that it not only has some of the most aggressive transfer policies in the nation, but also in the variety of transfer options that it employs (Redding, 2008; Snyder & Sickmund, 2006). It is one of only fifteen states allowing for prosecutorial direct file transfer, and one of only seven states to allow for judicial, prosecutorial, and legislative waiver (Snyder & Sickmund, 2006). This variety of transfer options available makes Florida unique in its organizational and legal structure for getting youthful offenders into criminal court. As for discretionary transfer, Florida uses prosecutorial waiver almost exclusively. Direct file transfer provisions are inclusive of a broad range of offenders, many of whom are neither serious nor chronic (Bishop & Frazier, 2000). Data regarding transferred youths in Florida suggest that they are no more serious, and sometimes even less serious, than non-transferred youths (Lanza-Kaduce, Frazier, & Bishop, 1999). The extant literature also suggests that many youthful offenders in Florida are transferred without having received the benefit of prior

rehabilitative opportunities, and are sometimes even first-time offenders (Annino, 2000; Redding, 2008). Such transfers still occur despite youthful offenders in Florida reporting greater benefits from intensive juvenile placements than either adult prison or mild juvenile sanctions (Lane, Lanza-Kaduce, Frazier, & Bishop, 2002).

Florida provides for original juvenile court jurisdiction until the age of eighteen, with the state providing for extended jurisdiction until the age of twenty-two. There is no statutory declaration of a minimum age of original jurisdiction. The state does grant criminal court judges, but not juvenile court judges, inclusive blended sentencing authority. This permits criminal court judges to sentence discretionarily transferred youthful offenders to either juvenile or adult sanctions, allowing youths to avoid criminal convictions and the resultant civil disabilities ordinarily imposed. If the youthful offenders are found by the Department of Juvenile Justice to not be suitable for commitment, juvenile probation, or treatment programs, they may be returned to the criminal court system for the imposition of adult sanctions. In essence, criminal court blended sentencing allows for the suspension of adult sanctions, and the imposition of juvenile sanctions, pending good behavior (Florida Statutes Annotated Chapter 985.565; Snyder & Sickmund, 2006). It is important to remain cognizant, however, that mandatorily transferred offenders in Florida are not provided with this potential safeguard; there is no mechanism by which they can demonstrate that they are suitable for juvenile handling. This consideration is important as Florida does not provide for reverse waiver, though the state does stipulate that mandatory transfer may be voided if the state attorney has good reason to believe that exceptional circumstances preclude just transfer (Florida Statutes Annotated Chapter 985.557; Snyder & Sickmund, 2006).

The ineligibility of mandatorily transferred offenders for juvenile sanctioning is made even more important because of there being no minimum age for transfer via statutory exclusion, and because there are a number of offenses for which youths age sixteen or older must be transferred to the criminal justice system (Florida Statutes Annotated Chapter 985.557). Once transferred to the criminal justice system, unless then sentenced as a juvenile under blended sentencing laws, all subsequent legal violations must be prosecuted in the criminal justice system, regardless of any changes in the offender's character or circumstances since the original transfer offense(s) (Florida Statutes Annotated Chapter 985.565). Florida's mandatory transfer of certain youthful offenders to the criminal justice system solely on the basis of their offenses, and thus without consideration for their individual and contextual circumstances, fundamentally rejects the idea of adolescence as a period of immaturity, development, and growth (Kupchik, 2006).

While Florida's mandatory transfer provisions stipulate a number of offenses that must be transferred to the criminal justice system, its discretionary transfer provisions are even broader, with Florida's statutory schemes being among the broadest of those states providing for direct file transfer. In fiscal year 2001, Florida transferred more than 2,000 youthful offenders via prosecutorial direct file, whereas fewer than 6,000 cases were transferred nationally that year via judicial waiver. The importance of this finding becomes even more pronounced when considering that, in twelve states, judicial waiver is the only available method of transfer (Snyder & Sickmund, 2006). Youthful offenders ages sixteen and seventeen are eligible for direct file transfer for any felony offense when the state attorney's discretion suggests that adult sanctions should be

considered or imposed in the interest of public safety. This same discretion can be used to guide decisions regarding misdemeanor youthful offenders, if they have had two previous adjudications or adjudications withheld for delinquent acts provided that one of those acts involved a felony offense. This same discretion can be used to guide decisions for youthful offenders ages fourteen and fifteen for approximately twenty different offenses, all of which differ from those offenses necessitating mandatory transfer (Florida Statutes Annotated Chapter 985.557). When ineligible for discretionary direct file transfer, youthful offenders fourteen years of age and older remain eligible for discretionary judicial waiver if the state attorney files such a motion (Florida Statutes Annotated Chapter 985.556).

Florida's Department of Juvenile Justice received 144,705 delinquency referrals during the 2007-2008 fiscal year for 89,776 youths, reflecting 7.1% and 9.9% reductions in the number of referrals and the number of referred youths from fiscal year 2003-2004. This reflects a 4.7% referral rate for Florida's estimated population of 1.92 million youths ages ten to seventeen years of age. Of the referrals, 43,818 or 30.1% were for felony offenses. Of the referred youths, 6,616 were committed to residential delinquent treatment facilities, at the rate of 7.4%, a 16.5% decrease from the 8.9% placement rate of fiscal year 2003-2004. Of the referred youths, 3,592 were transferred to the criminal justice system, reflecting a 4.0% transfer rate. Fiscal year 2003-2004 saw 2,481 youths transferred, reflecting a 2.5% transfer rate. This corresponds to a 60.7% increase in the transfer rate. As for serious and violent offending patterns, there were increases in referrals for murder/manslaughter (54.8% from 84 to 130), attempted murder/attempted manslaughter (50.0% from 46 to 69), and armed robbery (102.5% from 708 to 1,434).

There were decreases in referrals for auto theft (12.4% from 3,132 to 2,744), burglary (16.0% from 13,217 to 11,100), aggravated assault and battery (15.4% from 10,091 to 8,542), and felony sex offenses (27.0% from 2,011 to 1,469). Overall, serious and violent offenses accounted for 18.8% of referrals in fiscal year 2003-2004, and for 17.6% of referrals in fiscal year 2007-2008, reflecting a 6.3% decrease in the serious and violent offense referral rate (Florida Department of Juvenile Justice, 2008).

In short, Florida's juvenile justice system handled approximately 7% fewer referrals and 10% fewer youths in fiscal year 2007-2008 than in fiscal year 2003-2004. Approximately 30% of referrals in fiscal year 2007-2008 were for felony offenses. Placement rates decreased by approximately 17% from fiscal year 2003-2004 to fiscal year 2007-2008, while the overall serious and violent offense rate decreased by 6.3%. Yet transfer rates increased by more than 60% during this same time period.

Florida is a unique state in terms of both the quantity of youths transferred and the methods available for transfer. Prosecutors are provided with vast discretion in deciding which youthful offenders should be transferred via prosecutorial transfer with this discretion requiring no explanation, and not being subject to any external review. It is of interest that legislators have stipulated that when youthful offenders are discretionarily transferred to the criminal justice system via direct file, criminal court judges may sentence them as if they had been charged in the juvenile justice system. Yet, legislators have also stipulated that those youthful offenders transferred via statutory exclusion may not be sentenced to juvenile sanctions in the criminal justice system. While legislators have given prosecutors vast discretion in deciding which youthful offenders should be transferred to the criminal justice system, they have, in essence,

created a mechanism by which criminal court judges can override this decision by imposing juvenile sanctions and foregoing criminal convictions in favor of juvenile adjudications. While granting prosecutors vast discretion as to direct file transfer, they have created a sort of safety valve for judges to utilize when they disagree with those transfer decisions, but have provided no mechanism for judges to do so in those cases in which legislatures mandate transfer based on age and/or offense criteria. Provisions allowing for reverse waiver in mandatory transfer situations could accomplish this. Because Florida is so unique in its variety and use of transfer, because Florida may serve as a model for other states wishing to modify their use of transfer, and because Florida transfers so many youthful offenders to the criminal justice system, thus placing them at risk of the most severe and lengthy sanctions available to either the juvenile or criminal justice system, it may be of considerable utility to examine which factors Florida prosecutors use in deciding whether or not to charge youthful offenders in the criminal justice system rather than the juvenile justice system, and the thought and the administrative processes behind such decisions.

There also exist a number of other reasons that Florida may provide for an interesting case study of direct file transfer. Because there have been a number of studies conducted examining the state's use of transfer, its use of direct file transfer has been documented historically. Changes made since some of the early research include more expeditious placement of youthful offenders into residential programming and allowances for extended jurisdiction. There have also been attempts made to have transfer standards published. Another change has been Florida's Department of Juvenile Justice becoming an independent agency, becoming a separate entity from the

child welfare system. In recent years, the department has emphasized the use of evidence-based practices, as exemplified by the development of an actuarial risk assessment instrument. With the historical record as a basis, it may be possible to track changes over time in transfer trends, policies, and effectiveness, and to speculate as to the reasons for those changes while considering the political, media, and intellectual climates of the times.

## CHAPTER 7 THE PRESENT STUDY-DATA COLLECTION AND PARTICIPANTS

Florida's justice system is divided into twenty judicial circuits, each having its own state attorney's office. Attempts were made to speak with either the juvenile division chief in each of those circuits, or another prosecutor charged with filling a similar role. In many of the circuits, the chief position was divided at the county rather than the circuit level, resulting in there being multiple juvenile division chiefs for the circuit. Juvenile division chiefs were sought because they were assumed to be in significant ways responsible for setting and overseeing compliance with policies regarding transfer in their jurisdictions. They were also assumed to be responsible in part for helping to create and/or maintain any informal working standards or policies and cultures that may vary by circuit. All but one of the interviewed prosecutors indicated that attorneys working under their supervision must submit potential transfer cases to either them or another supervisor for review prior to charging youthful offenders as adults. This suggested that the chiefs had significant input into and power in the discretionary decisions for those cases being transferred to the criminal justice system.

The juvenile division chiefs were contacted via telephone and also via electronic mail when available. They were asked to participate in a telephone interview lasting no more than forty-five minutes and examining their reasoning in deciding whether or not to charge juvenile offenders in the juvenile justice system rather than the criminal justice system, their knowledge of the effects of transfer on juvenile crime rates, as well as their knowledge of the factors predicting further offending by juveniles. They were advised that they would not have to answer any questions they did not wish to answer, could stop the interviews at any time, and that their identities would be kept confidential. They

were advised that an electronic mail version of the interview was also available if preferred, but that it would likely require a more substantial time investment than the telephone interview option.

Confirmed contact was made with fifteen prosecutors, with thirteen agreeing to participate. Telephone interviews were conducted with seven of those thirteen. Approximately half of the interviews were conducted at the time of the initial telephone contact. The remaining interviews were conducted as scheduled appointments. Two of the prosecutors with whom interviews had been scheduled were either unavailable or chose not to cooperate at the time of the scheduled call. One had asked for, and been provided with, a copy of the interview schedule prior to the scheduled interview time. Both of these prosecutors were unresponsive to follow-up telephone and electronic mail messages. The other four prosecutors who had agreed to participate in the survey indicated that they would do so via electronic mail. None of the four completed and returned the survey. One of those three contacted the investigator indicating an inability to participate in the survey. The prosecutor failed to provide a reason why, and was thereafter unresponsive to follow-up telephone calls and electronic mail messages. Two of the other prosecutors who had agreed to complete the survey were unresponsive to follow-up telephone and electronic mail messages to gauge their progress in survey completion. The fourth prosecutor contacted the investigator nearly a month after receiving the survey, indicating that he had the survey partially completed and would provide the completed version as soon as possible. More than a month later, and at the time of the submission of this manuscript, the investigator had yet to receive it. Prosecutors from the other five judicial circuits were unresponsive to telephone and

electronic mail messages requesting their participation in the survey. The other two prosecutors with whom confirmed contact was made, but who declined to participate, indicated that not only were juvenile cases confidential, but that they were also unable to discuss office policies and procedures. Despite assurances that there would be no questions regarding specific cases or offenders, and that their responses would only be reported confidentially, they both still declined to participate.

Of the seven participating prosecutors, five were white males, and two were white females. They ranged in age from thirty-four to sixty-three, with a mean age of forty-six years. Their length of experience as assistant state attorneys ranged from six months to thirty years, with the mean length being thirteen years. Their length of experience working in the juvenile division varied from six months to twenty-nine years, with the mean length being eleven years. Their length of experience as juvenile division chiefs ranged from six months to 11.5 years, with the mean length being 8.5 years. Only one had ever worked as a defense attorney in the juvenile justice system. In addition, only one was charged with any duty involving adult offenders. That prosecutor indicated that 95% of his workload consisted of juvenile cases with the other 5% involving adult mental health and substance abuse cases.

The interview schedule was initially eight pages in length, approximately two-thirds being open-ended questions, and the remaining one-third being fixed response questions. After the initial interview and because of the low response rate thus far, the interview schedule was reduced to five pages, four pages consisting of open-ended questions and one page consisting of fixed response questions<sup>1</sup>. This was done both to

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<sup>1</sup> A copy of the original schedule of interview questions is included in the appendix material.

limit the length of the telephone interviews and because of the inability to conduct statistical analyses on the fixed response questions because of the small sample size. One of the four surveys provided for electronic mail participation consisted of the original interview schedule; the other three consisted of the revised interview schedule. The length of time to complete the interviews ranged from a low of twenty minutes to a high of fifty minutes. The investigator took notes on all open-ended responses, checking for accuracy by incorporating key phrases and points back into the interview, providing opportunities for confirmations and corrections.

Because discretionary direct file is a much more common method of transfer in Florida than discretionary judicial waiver, and because prosecutors have little discretion in statutory exclusion transfer, other than which charges to file, questions regarding transfer focused primarily on decision-making in discretionary direct file cases. Due to the lack of explicit criteria as to which eligible youthful offenders are most appropriate for discretionary direct file transfer, the primarily open-ended question format was advantageous as prosecutors are not required to justify their decisions in such cases. But in these interviews, they were asked to describe their rationale in making such decisions, as well as the decision making and administrative processes they employ in such cases. Open-ended questioning also proved advantageous when asking prosecutors about their beliefs regarding the purposes and roles of the juvenile justice system, their opinions regarding the availability, efficacy, and appropriateness of the rehabilitative and surveillance and control options available to the juvenile and criminal justice systems, and their opinions regarding risk factors for youths' likelihood of committing serious and violent acts, as well as those factors making them unlikely to

benefit from intervention efforts. This more qualitative, exploratory approach to prosecutorial decision making was advantageous in that open-ended questioning did not provide prosecutors with a probe that altered or affected the ways in which they thought about and discussed transfer issues. Rather than providing Likert-type responses, prosecutors were required to explain in their own words how they make decisions, thus also requiring them to provide their own thoughts as to the advantages and disadvantages of transfer, as well as to the reasons why certain youthful offenders commit serious and violent offenses, and how justice systems might best be able to respond to such offenders.

While the low response rate was disappointing, prosecutors did report several common themes, concepts, and ideas. It also seemed that the participating prosecutors spoke openly. The only time prosecutors chose not to answer a specific question was when the investigator asked for a Likert-type response indicating how well they felt the presence of various factors predicted serious and violent offending at later time periods. Two prosecutors chose not to answer these questions, one indicating a lack of knowledge on the topic and thus not being able to answer accurately. The other prosecutor choosing not to answer these questions expressed discomfort with answering any questions in a Likert-type response format. As such, he also chose not to answer how importantly the eight factors delineated in the *Kent v. U.S.* (1966) ruling are considered in decisions regarding the potential transfer of youthful offenders.

CHAPTER 8  
THE PRESENT STUDY-INTERVIEWS WITH PROSECUTORS

**Youths' Perceptions of the Juvenile and Criminal Justice Systems**

Despite Florida's aggressive approach to youthful offending, many youthful offenders have described Florida's juvenile courts as benevolent in nature, reporting that juvenile court judges were interested in their problems and well-being, and believed that those judges wished to assist them. While transferred youths have described their experiences in the juvenile justice system similarly, their descriptions of their experiences in the criminal justice system are vastly different. They have described judges as being disinterested in them and their problems, with many describing the goals of Florida's criminal justice system as punitive in nature, with punishment often being based on the personal characteristics of offenders, rather than on the nature of their offenses. That transferred youths have commonly expressed a sense of injustice and beliefs that judges' sentencing decisions are based on judges' personal animosities towards offenders is not surprising. What is surprising is that while they described their experiences in Florida's criminal courts this way, transferred offenders have reported feeling differently about their experiences in Florida's juvenile courts (Bishop & Frazier, 2000).

Perhaps the more relevant consideration for youthful offenders transferred to the criminal justice system and whether they have been treated fairly is how prosecutors decided to charge them in the criminal court, rather than the juvenile court. If treated fairly, the goals and impacts of transfer should coincide. The characteristics of transferred youths should match the characteristics of offenders that prosecutors report considering as important factors in transfer. Transferred youths should pose a risk for

future serious and violent offending and should have low rehabilitative potential. As such, they might be considered to be beyond the scope of the juvenile justice system and to thus necessitate transfer to the criminal justice system with its increased punitive and control measures in order to provide for public safety. Interviews with prosecutors shed considerable light on these considerations of fairness and whether prosecutors do consider such relevant factors in transfer decisions.

### **Models of Justice and Offense Severity**

Prosecutors espoused a modified justice model, reflecting the idea that the control of youthful offending should be largely accomplished by providing youths with the tools necessary to lead prosocial lives through rehabilitative efforts delivered within a legal context, but that surveillance and control measures are also necessary, with sanctioning efforts being used to achieve utilitarian goals such as deterrence (Corrado, 1992; Empey, 1982). One prosecutor went so far as to suggest that punishment can be a part of treatment.

But, the model of justice espoused changed with the type of offending. With more serious offenses, prosecutors espoused justice or just deserts and crime control models. With more serious offenses, prosecutorial concerns shifted to how to appropriately legally respond to the acts, not to offenders, and to the use of surveillance and control methods to provide for public safety (Corrado, 1992; Empey, 1982). Several prosecutors reported that the severity of offenses is determined statutorily, based on the degree of the charges, with the degree being dependent on such factors as the degree of harm to victims, and the degree of damage to property. They also suggested that offenses were more serious when committed against persons, rather than property, when offenses involved either weapons or violence, when more

dangerous weapons were involved, when offenses involved victim injury or the possibility of victim injury, and when there was an increased risk of confrontation with victims. The most common responses as to how prosecutors determine offense severity were the involvement of weapons and statutory definition as to the degree of the charges.

### **Identifying and Achieving Juvenile Justice Goals**

As for the goals of the juvenile justice system, many prosecutors reported the protection of the community as their primary concern. Several also mentioned helping youths to get back on track as another goal; one reported the primary goal as protecting society from offenders, and as a secondary goal helping youths, which would then provide for and result in societal protection. Another prosecutor suggested, again as a secondary goal, helping youths to get back on track if they were worth saving, but that system losses should be cut if youths were not going to change. Another reported the purpose of helping youths to get back on track as being to help them to develop into productive citizens, to obtain adequate education, schooling, and employment, and to succeed in the world. He was the only prosecutor making suggestions reflecting the explicit consideration of the impacts that justice system responses can have on the possible long-term benefits to youths' life chances.

Only one prosecutor specifically suggested that the juvenile justice system should help youths to change their lives so as to avoid returning to the system. Other prosecutors' focuses were not on the benefits individual offenders might reap from justice system responses to their behaviors, but rather the benefits that society might reap instead. Prosecutors reported that societal protection could be achieved by preventing youthful offenders from reoffending, but were unsure how to achieve this

goal. They indicated that appropriate responses to reduce the risk of recidivism necessitate considering youths on a case by case basis. One prosecutor suggested utilizing the recommendations of both school and Department of Juvenile Justice officials in determining the most appropriate responses to individual youths. Another suggested that the juvenile justice system should focus on strengthening offenders' families by providing for family counseling and services. Another suggested providing weekly or even daily contact between youths and persons able to serve as positive influences, suggesting that such persons could encourage youths to improve their educations and their lives in general. Another suggested that rehabilitative services might be appropriate for first time offenders new to the system, but that rehabilitative services can only do so much, that the provision of rehabilitative services becomes irrelevant as the youth's involvement in the juvenile justice system lengthens. On the other hand, another agreed with rehabilitative services being appropriate for youthful offenders, but also recognized that youths change dramatically from year to year, negating the notion that the appropriateness of providing for rehabilitative services varies as a function of the length of one's involvement in the juvenile justice system.

### **Malleability and Responsivity**

Another point of difference between prosecutors was the extent to which they believed that youthful offenders may be responsive to rehabilitative efforts and to what extent those services should be provided to them. One indicated that he felt that rehabilitative services worked well with youthful offenders, that those who slipped through the cracks were untreatable to start with; this was similar to another's response reflecting his feeling that youthful offenders were more amenable to rehabilitative efforts as a matter of age, but that whether offenders reoffend or not is determined by their first

court experiences. Those refraining from reoffending are impacted strongly enough by their first courtroom experiences so as not to reoffend, that that very first court experience is determinant of whether any particular youth will reoffend.

Several prosecutors indicated that rehabilitative services should be offered to a greater extent to youthful offenders than to adult offenders with many citing a differing degree of malleability as the primary reason. Several reported a general understanding that persons become more set in their ways with age, that adolescents are modifiable with modifiable behavioral tendencies, and that change becomes less likely with age. One indicated that youths are easier to change, that adults' problems had built up over the years, that their original problems had led to larger and more numerous problems, that their problems had exacerbated themselves. Another suggested that adults are more capable of being responsible for themselves, that they are in a better position to obtain services for themselves, and that in many cases youthful offenders are reliant on their parents or guardians to assist them in obtaining services. Because of this, there exists a greater obligation to provide youths with rehabilitative services, especially when their parents or guardians do not assist them in obtaining such services. Another suggested that youths are more deserving of opportunities and chances to make things right for themselves while another expressed concern about the long-term impacts if the state failed to provide adequate rehabilitative services. He suggested that as many offenders eventually return to society, there needs to be a greater focus on the provision of aftercare services. Another expressed his concern of being unable to adequately judge amenability, that such judgments are often based on conversations with youths

when initially brought in on charges, that third parties would be better, more honest, and more accurate sources of information when such factors are being assessed.

### **Predictors of Risk and Lack of Amenability**

Perhaps the more relevant questions regarding transfer are whether the causes of serious and violent offending can serve as effective targets of intervention, and what factors prosecutors felt likely to be predictive of, or cause, serious and violent offending in adolescence and adulthood. As a group, prosecutors were ambivalent in responding to these questions.

One indicated that serious and violent offenders are inappropriate for rehabilitative services because as crime increases in direness, it warrants punishment increasing in direness. Several indicated that some serious and violent offenders may benefit from rehabilitative services. One suggested that certain environmental factors, such as neighborhoods plagued by drugs and violence, are much more difficult to overcome than other factors such as having recently divorced parents. Another reported that youths committing serious and violent offenses are less likely to benefit from rehabilitative services because of their responsiveness to rehabilitative efforts being determined by such factors as offense severity, type of offenses committed, and criminal histories. Several prosecutors reported that exposure to violence makes youths more likely to commit serious and violent offenses, suggesting that either having witnessed or having been a part of violence in the home predicts serious and violent offending. One suggested that this creates feelings of having no one or anything, of not being responsible for one's actions, of having no sense of goals, and that these characteristics are difficult to learn on one's own, that guidance is needed to do so. A small number of prosecutors reported that lack of parental support increases the risk of

serious and violent offending. Two mentioned social environments or peer groups as relevant factors, while another expressed concern about youths returning to unwholesome environments upon their release from custody or placement with there being no support mechanisms in place for them upon their return. Yet another suggested that exposure to violence in video games, television, and music makes youths more likely to be serious and violent offenders.

Regarding factors negatively impacting youths' likelihood of benefitting from rehabilitative services, several prosecutors reported that they were unsure, one indicating that perhaps they are just bad kids, or that perhaps they do not benefit because of mental reasons. A small number suggested lack of family support. Another again mentioned youths returning to unwholesome environments after their release from custody or treatment and only having the tools learned during that time for support. Another cited antisocial peer groups, while another suggested uncooperative parents who are responsible for such matters as transporting youths to treatment appointments as an impediment to the benefits of rehabilitative services. Another suggested what he deemed as a variety of internal factors, such as the lack of a conscience and compassion for others, and mental health and substance abuse issues, as well as environmental factors being difficult obstacles to overcome. Another reported that a lack of amenability to treatment results from an unwillingness to cooperate, to remain at home, and to attend rehabilitative services, essentially youths simply being unwilling to cooperate with intervention efforts.

### **Capacity and Culpability**

Prosecutors were also asked whether they felt that youths and adults differed in the extent to which they choose and cause their own behaviors, and whether youths

should be held less accountable and proportionately less punishable for their offenses. Similar to the responses as to the goals of the juvenile justice system, many prosecutors indicated that while youths may be proportionately less punishable based on lesser accountability considerations, such decisions are dependent on the facts and circumstances of individual cases, with the seriousness of the crime seemingly being the most important consideration.

One prosecutor indicated that because many youths may be salvageable, they should be provided with rehabilitative services with hopes of them becoming productive citizens, that youths and adults absolutely differ in the extent to which they choose and cause their own behaviors, and that youths often commit crime as part of a group, that they start acting in a stupid manner because of the group thrill. Similarly, another suggested that youths are more impulsive and reactive than adults, that impulse control is learned over time, but again that circumstances such as the use of firearms negate reduced accountability and punishment considerations. He indicated that a sixteen year old and a twenty-one year old pulling a firearm on a victim should be treated similarly. Another reported mixed feelings about reduced accountability and punishment, but felt that punishment for youthful offenders should be quick because of their differing time perspectives, and explained that six months to a thirteen or fourteen year old feels much different than six months to a thirty year old. Another suggested that while younger persons are often less sophisticated and not fully appreciative of the impact of their decisions, reduced accountability and punishment should depend on the youths' ages and types of offenses, with those offenses involving firearms and risk of confrontation with victims being more punishable. But, in general, he felt that juveniles

should be allowed to be juveniles, to make mistakes, but that this could only be permitted to a certain degree. Another indicated that while all persons choose their own behavior, the ability to make appropriate choices may depend on such factors as maturational levels and brain development, and that reduced culpability lessens as seriousness of the crime increases. He reported this converse relationship between level of culpability and offenses seriousness as being out of concern for public safety and fairness to the victim. In contrast, another prosecutor suggested that those youths ages sixteen and older have the same mental capacity as adults, but that younger offenders may differ in the extent to which they choose and cause their own behaviors as a result of their lesser mental capacities.

Again, prosecutors consistently reported that the facts and circumstances of individual cases impact accountability and punishment considerations. One reported having encountered many very adult-like offenders who had extensively planned their crimes. Another indicated youths and adults are no different in the causes of their offending, that those behaviors are due to a general disregard for other persons and the consequences of their offenses on others. Yet, this prosecutor still indicated that lesser culpability may be appropriate in that youths are still learning how to act toward others, but that their lesser culpability should not excuse their crimes. He indicated, however, that as a result of their youthfulness, juveniles should always be provided with some services that might include education, anger management, planning, and self-improvement.

### **Transfer Criteria**

Of particular interest is what factors prosecutors consider in deciding whether or not to charge youthful offenders in the juvenile or criminal justice system, as well as the

sources of information prosecutors consult in making those decisions. Several prosecutors reported as a primary consideration the facts and circumstance of the case. Aspects more indicative of a tendency toward transfer included whether the offense was violent, whether it involved a weapon, often specifically a firearm, whether the youth was a gang member or involved in a gang-related offense, whether there was victim injury or the potential of victim injury, and the wishes of the victim as to potential transfer.

Many prosecutors reported considering the age of the defendant in their transfer decisions, with many reporting that that this was at least partially in relation to the amount of time left to work with the offender under juvenile justice jurisdiction. Prosecutors also often mentioned offenders' prior records. Approximately half indicated that they considered the defendant's opinion, with many reporting that youthful offenders often prefer to be transferred to criminal court rather than being required to complete often intensive services if retained by the juvenile justice system. A fair number also mentioned whether the offender had been provided with rehabilitative services previously as an important consideration in their decisions.

Several prosecutors indicated that the safety of the community was a primary concern, and gauged offenders' threats to the community by legal factors such as whether they had previous commitments, whether there had been escalation in the level of offending behaviors, and the severity of the instant and prior offenses. One of the prosecutors indicated that he kept youthful offenders in the juvenile justice system whenever feasible with providing for public safety being the paramount concern. Another made a similar claim, explaining that if an offender had exhausted all services

and the juvenile justice system was unable to provide anything for him, why would he be retained in the juvenile justice system? Another reported a similar feeling, indicating that the transfer decision is made very quickly and primarily seeks to answer whether the juvenile justice system has adequate resources and ability to protect the community.

Prosecutors reported commonly obtaining information relevant to transfer decisions primarily from police reports, and victim and witness statements. Three indicated using risk assessment instruments such as the Positive Achievement Change Tool in their decisions. One indicated that he also reviewed any available school psychological reports. Another reported considering whether the offender displayed any empathy as a consideration in his decisions. Several also indicated that when considering youths for transfer, they would notify the public defender, so that he could present them with mitigating factors.

### **Adequacy of Transfer Provisions and Age of Jurisdiction**

Prosecutors were asked how they felt about the adequacy of transfer provisions, and who they thought was best qualified to consider and make recommendations as to whether youthful offenders should be transferred. They were nearly unanimous in their responses. All but one indicated that, without exception, prosecutors should make the transfer decision. They indicated that they were front-line workers, working in the trenches. They indicated they were the best decision makers because they know the facts and circumstances of the cases, review the evidence, try the cases, and get sanctions imposed. Two indicated that judges should not make transfer decisions because in doing so, they would be going outside their judicial role, creating conflict as to the separation of powers. One suggested that parties deciding whether or not to transfer youths should not be the parties that sentence those youths. The other

suggested that judges should call balls and strikes, but that they should not throw pitches. Prosecutors also seemed generally pleased with the adequacy of transfer provisions. Many indicated that the provisions provide for a great deal of discretion, with several commenting that they had never encountered an offender that they wished to be able to transfer, but had been unable to, and had thus never sought, or even seen, transfer via judicial waiver.

There was some disagreement as to appropriate ages of jurisdiction. One proposed that extended jurisdiction should not end at twenty-two years of age for commitment cases, while another indicated he would like to see extended jurisdiction for probation cases raised from nineteen to twenty years. Another reported satisfaction with the nineteen year old standard, provided that provisions remained in place for jurisdiction to be extended until twenty-one years of age for certain classes of offenders, such as serious and habitual offenders.

### **Persistence of Offending and the Advantages and Disadvantages of Transfer**

Prosecutors were also asked whether they thought that serious and violent offenders were likely to continue such offending into adulthood and if transfer might have any impact on this likelihood. There was widespread agreement that such offenders would continue, and that transfer is unlikely to make a difference. One reported that it was because such offenders are unlikely to desist from offending that they are transferred, thus making the main benefit of transfer the incapacitative effect. Another indicated that because such offenders are likely to continue into adulthood, they need to be provided with aftercare services upon their return to their previous environments. Another prosecutor suggested that he was unsure if such offenders are likely to continue, but that it was not a risk he could take. He went on to suggest that

repeat offenders are likely to continue in their offending behaviors, but that many of the serious and violent offenders are only one-time offenders.

Prosecutors were also asked what they felt both the advantages and disadvantages of transfer were. Several indicated as advantageous the public safety provided for via the criminal justice system's increased incapacitative abilities. One suggested that transfer provides for a wider array of punishment, treatment, and control options to prevent further crime, while another reported the wider array of options as beneficial in that they can provide for enhanced retributive measures.

Interestingly, many of the prosecutors indicated that transfer offered no real advantages or disadvantages. One suggested that the provision of jury trials for transferred offenders could be beneficial to youths, while another reported that being permitted bond when transferred to adult court is more fair to youths than being held in pretrial juvenile detention at the same time adult codefendants are eligible for release on bond. Another suggested that when weak evidentiary cases are transferred to the criminal justice system, they drain time and resources away from cases more likely to result in convictions. Another suggested that criminal justice system prosecutors might become upset when cases are filed via transfer for charges not normally filed upon in adult court; another mentioned that transfer pays lip service to the rehabilitative ideals of the juvenile justice system.

In a similar vein, another reported that the criminal justice system might not attempt any rehabilitative efforts with transferred offenders. Another indicated that he felt that the criminal justice system is poorly equipped to deal with juvenile offenders, that criminal court judges are unfamiliar with the juvenile justice system and what it can

do, that they lack knowledge regarding youths, and that caseload considerations prevent the criminal justice system from handling youthful offenders as well as they might otherwise. He also indicated that he was aware of extant literature suggesting that transfer may result in transferred offenders' escalating to more serious crime, and of transfer's worsening impact on offenders. He did report, however, that he was unsure of the quality of the research behind the literature.

### **The Abuse Potential and Consistency of Transfer**

Prosecutors were also asked if there are mechanisms in place to protect transferred offenders from the potential harms of the criminal justice system, and for their thoughts as to whether transfer laws have the potential for abuse. Two of the prosecutors reported blended sentencing options as a protective mechanism. On the other hand, another prosecutor suggested that offenders are not going to turn their lives around anyways, so having protective mechanisms in place does not make much difference and is not necessary.

For the most part, prosecutors suggested that their use of sound judgment and adherence to statutory criteria keeps the potential abuse of transfer laws from occurring. One indicated that statutory regulations, such as age and crime restrictions regarding potential transfer cases, prevent abuse from occurring, while another suggested that guidelines submitted to the state yearly regarding each circuit's transfer policy prevent prosecutors from abusing transfer provisions. Another reported that taking the time to evaluate the cases helps to protect against the potential for abuse, as does notifying the public defender of potential transfer cases.

Prosecutors were also asked whether they thought that there should be greater consistency in the types of youths and/or offenses transferred within the state. Only

one disagreed, indicating that transfer cases should be decided on a case by case basis, that as each case is so offender-specific and so offense-specific, that blanket transfer policies are inappropriate, that it is more appropriate to consider youths individually. Another indicated that there should be greater consistency, but that inconsistencies are likely to remain due to there being different types of prosecutors in different circuits. Another prosecutor suggested that there should be greater consistency, that statutory criteria should promote such consistency, but that those criteria are very subjective. Another prosecutor also indicated that ideally there would be greater consistency, but that the quintessential question is whether the juvenile justice system can deal with an individual offender, and that this would likely differ by circuit due to each circuit having its own strengths and weaknesses. He did suggest that greater consistency might be gained by enhanced communication with other circuits and clearer policies outlining the transfer process.

### **What Happens to Transferred Offenders?**

Florida prosecutors were also asked for their opinions as to the effects of transfer. Many suggested that transfer, when resulting in incarceration, serves an incapacitative function. Several indicated that they do not have any idea as to the effects of transfer on recidivism, in whether it achieves the desired specific deterrence effect. One prosecutor relayed that he expected transferred youths are likely to be convicted and placed on probation, that, in general, youthful offenders rarely reoffend, but that as those youths being considered for transfer do, he imagines that transferred offenders also reoffend at high rates. Another prosecutor reported it as unlikely that transfer impacts recidivism rates in his circuit, because the youthful offenders he transfers are already at the point that they are likely to reoffend and are not likely to benefit from

rehabilitation. Another prosecutor indicated that violent offending in his circuit had decreased substantially after the criminal court prosecution of six to eight gang-involved youths.

Approximately half of the prosecutors indicated that many transferred youths are placed on probation. One suggested that in such cases transferred youth often do not have to complete any programming, and thus prefer transfer to the criminal justice system. Approximately half of the prosecutors indicated that the typical sentences imposed vary based on the criminal court judge assigned to the case, as well as the evidence in the case, with probation being a frequent sentencing outcome. One suggested that after youths are placed on criminal court probation, they are more likely to be incarcerated upon subsequent transfers to the criminal justice system. One of the prosecutors reported that transferred offenders often receive harsher sanctions and are subject to greater control in the juvenile justice system than they are in the criminal justice system. In contrast, another prosecutor indicated that he expects transferred youth to serve a lengthy period of incarceration, usually many years. He indicated that if youths are going to be placed on probation by the criminal courts, then they should remain in the juvenile justice system where they are more likely to have to participate in services, whereas criminal court involves little more than following rules.

Of all the prosecutors interviewed, only one indicated that there is any kind of follow-up as to the effects of transfer or the characteristics of transferred youths. At minimum, a dispositional outcome sheet is run annually in that circuit. When asked, no other follow-up or how such follow-up might be useful was mentioned by prosecutors.

Only one prosecutor indicated that follow-up information as to the effects of transfer would not be helpful.

### **Rehabilitation, Surveillance, and Control Options**

Prosecutors were also asked for their opinions regarding the rehabilitative and control and surveillance options for the juvenile and criminal justice systems. A common response was there being a lack of resources available. They suggested that juvenile justice systems were limited in the surveillance and control options available to them with several prosecutors expressing concerns as to the high caseloads of probation officers. Many also expressed concerns about probation policies allowing much non-compliance because of lax and hands-off departmental policies. One prosecutor described his commitment manager as a wuss, suggesting that youths in his circuit fear the prosecutor but think of the commitment manager as a joke. Another concern expressed was the inability to hold a juvenile in pretrial detention for more than twenty-one days, this being an issue as very few contested cases can be resolved that quickly. The expressed concern was that released offenders commit new offenses while waiting for trial in the juvenile courts.

While one prosecutor noted that the possibility of increased surveillance and control options is part of the decision-making process in potential transfer cases, he indicated that the juvenile justice system sometimes imposes more harsh and restrictive conditions than does the criminal justice system. Overall, prosecutors' impressions seem to be that the juvenile justice system needs to be strengthened in terms of resources and in the severity of its dispositional options, that harsher punishments are sometimes needed. One prosecutor indicated that he felt juvenile justice was moving in a social work direction, but that it needs to be more in your face and utilize a tough love

philosophy because of today's youth being more violent than youths of years past. He suggested that both the carrot and the stick are needed.

Prosecutors generally reported that they felt that the rehabilitative programs available to them did well in treating offenders. One prosecutor expressed his preference for the use of immediate and juvenile sanctions in hopes of youths seeing that they are screwing up and being stupid. Most prosecutors reported that, in general, rehabilitative resources are not abundant enough, with one prosecutor characterizing juvenile justice as performing well in its rehabilitative philosophy but performing poorly in practice because of the system's financial and resource constraints. Most prosecutors generally felt that the system does well in its utilization of the available resources. One questioned however, why when services are utilized they do not impact crime rates. Prosecutors indicated that rehabilitative resource considerations do not impact transfer considerations, but that youths seemingly amenable to rehabilitation are more likely to remain in the juvenile justice system. One prosecutor reported his preference for minimal transfers but that budget cuts make it difficult to express this desire to be lenient. Many prosecutors expressed concern that when rehabilitative services are available, families often do not utilize them to the fullest and most appropriate extent that they should.

### **External Pressures and System Considerations**

Prosecutors were also asked to what extent media, political, and public pressures influence their transfer decisions. Only two prosecutors indicated they had any impact. One pointed out that while standards for transfer had remained stable, there had been variations in the transfer rate with higher transfer rates when crime rates were high, as well as when crime was violent and known to the public. Prosecutors varied in their

responses as to how the public felt about punishment and rehabilitation for juveniles. Approximately half indicated that the public felt that youths were given free rides and could get away with anything, with the public feeling that punishment should be more widely used with youthful offenders due to rehabilitative efforts not being effective. Another suggested that the public's view changes over time, that with a lower crime rate at present, the media has been suggesting the use of rehabilitative and preventative efforts with the public following suit. A different opinion was that public opinion differs by locality with rural areas espousing punitive approaches. More populous areas, in contrast, were suggested to be more open to rehabilitative efforts because of the greater availability of services.

Prosecutors were also questioned regarding a number of system considerations. Opinions regarding the threat of transfer as a plea bargaining tool varied widely. One prosecutor reported notifying the public defender of intentions to transfer as a professional courtesy, but that such cases are not plea bargained unless the youth has something to offer in return for the plea or if there is some compelling reason to retain the youth in the juvenile justice system. In contrast, another prosecutor notifies the public defender of his intentions to transfer in order to allow the public defender to provide mitigating factors for consideration. A few prosecutors indicated being open to allowing youthful offenders to plea to juvenile court charges if offenders were willing to take responsibility for their actions. One prosecutor suggested that the threat of transfer was acceptable as a plea bargaining tool, but could not be used on weak evidentiary cases.

One prosecutor indicated that he sometimes files lesser charges to avoid mandatory transfer. In contrast, other prosecutors expressed ethical concerns about filing anything other than the highest and best charges, suggesting that it would be unethical to charge anything other than what the probable cause warranted as the best and highest charge. One prosecutor indicated that the filing of lesser charges is not necessary because of an existing provision for exceptional circumstances allowing mandatory transfer charges to not be filed as such. Two prosecutors reported that the ease of obtaining a conviction in the juvenile justice system versus the criminal justice system affects their transfer decisions. One described this consideration as the jury factor, essentially whether the charges can be proved in adult court.

### **A Recap**

Generally speaking, prosecutors endorsed modified justice models. In responding to more serious offenses, however, prosecutors expressed preferences for just deserts and crime control models. They suggested that youths are malleable, but that this malleability is lessened when youths have committed serious and/or violent offenses. In determining seriousness of offenses, prosecutors consider such factors as whether the offenses are against persons or property, the amount of harm, particularly if victim injury is involved, whether weapons are involved, particularly if firearms are involved, and the statutorily determined degree of the charge. They reported public safety as their primary goal, often with getting youths back on track reported as a secondary goal. While indicating that transfer decisions should consider individual youths on a case by case basis, prosecutors seemed more concerned with how responses to youthful offenders impact society, rather than the impact on the offenders before them.

In determining whether or not to charge youthful offenders as juveniles or adults, prosecutors reported that they consider the seriousness of the crime, the length and severity of prior records, and victim and defendant opinions. They reported that when considering transfer, they review witness and victim statements, police reports, and information public defenders provide to them. They suggested that prosecutors are the most appropriate parties to make such decisions, thinking of themselves as front-line workers and thus as familiar with the cases and their participants. They suggested that judges should not make transfer decisions due to separation of powers concerns, and because judges often only have police report information available to them.

Prosecutors were generally pleased with age of jurisdiction and transfer provisions, indicating that they are provided with broad enough discretion to transfer any youths that they feel are appropriate for transfer. They suggested that potential abuse of this broad discretion is prevented by statutory and other guidelines for transfer. They agreed that there should be greater consistency in transfer, suggesting that this could be achieved by clearer policies and guidelines, as well as enhanced communication.

Prosecutors seemed to believe that rehabilitative services can be effective, but that they are lacking in availability. They indicated that access to services does not impact transfer decisions, but that youths amenable to treatment are more likely to remain in the juvenile justice system. There were suggestions made that, even if incarcerated, some form of treatment should be provided as almost all transferred offenders eventually return to society. There were mixed feelings as to whether the causes of serious and violent offending could serve as targets of intervention. Some felt that they could, while others felt that they could not. Prosecutors also differed in their

beliefs as to the causes and predictors of serious and violent offending. Some factors they believed relevant included witnessing or having been a part of violence in the home, lack of parental support, exposure to violence in the media, and having antisocial peers. As for factors suggesting that youthful offenders are not amenable to rehabilitation, prosecutors suggested as relevant lack of family support, uncooperative parents, antisocial peers, lack of a conscience and compassion for others, and an unwillingness to cooperate with rehabilitative efforts.

Prosecutors seemed ambivalent as to whether youths and adults choose and cause their own behavior to the same extent and whether youths should be held less accountable and punishable for their offenses. Prosecutors' endorsements of such suggestions waned when considering youthful offenders who had committed serious and/or violent offenses. Offhandedly, they often suggested that having committed a serious offense had somehow transformed youthful offenders into more mature and developed persons in terms of their legal accountability.

Reported advantages to transfer included the increased availability and severity of sanctions, particularly incarceration. There were few concerns or disadvantages reported regarding transfer, perhaps that it pays lip service to the rehabilitative ideal of juvenile justice and that youths might not receive treatment in the criminal justice system. Prosecutors suggested that youthful offenders often prefer transfer due to probation being a common sentence in the criminal justice system, and little, if any, required participation in programming and services. Overall, prosecutors reported being unaware of the actual sentences imposed upon transferred offenders in criminal court,

and also being unaware of transfers' effects on recidivism and general offense rates. They reported very little, if any, follow-up regarding such matters.

## CHAPTER 9 THE PRESENT STUDY-THE LOW RESPONSE RATE: A CAVEAT OR A FINDING?

Going into the study, there was concern about the likelihood of a low response rate among contacted prosecutors. With this in mind, attempts were made to coordinate efforts with state officials in contacting prosecutors in the hope of eliciting a greater response rate. The investigator attempted contact with various parties in the Florida Prosecuting Attorney's Association, the Attorney General's Office, the Office of the State Courts Administrator, and the Department of Juvenile Justice. When contacting these agencies, the investigator explained the rationale behind the study, and inquired whether there was some party with whom efforts could be coordinated in contacting prosecutors, or barring that, at least a listing of juvenile division chiefs, and their contact information if available. The agencies either did not respond to these attempted contacts, or were unable to suggest appropriate parties with whom to coordinate efforts and also did not have even a listing of the juvenile division chiefs for the circuit courts or an idea as to where to obtain such information. This finding was concerning as it suggested a significant lack of communication between these agencies regarding current practices and policies, and as such a disregard for the importance of disseminating new research findings and implementing best practices. While these agencies might have some apprehension in sharing prosecutors' contact information with the public, it seems counterproductive to shield prosecutorial decision making from academic scrutiny, especially when that scrutiny is meant to serve the purpose of examining current policies and practices, and to make suggestions that might enhance the functioning of juvenile and criminal justice systems, as well as the safety of the

public and the well-being of youths coming to the attention of Florida's juvenile and criminal justice systems.

The low response rate and other forms of lack of cooperation with this study, especially among those who initially agreed to cooperate but then declined upon seeing the range of questions to be answered, may be a telling finding in and of itself. The idea that this finding may be telling is augmented by two of the prosecutors indicating that office policies and procedures were not open for discussion. When considering the lack of explicit statutory criteria for transfer, other than those cases in which transfer is mandated by statutory exclusion, and that prosecutors' decisions in discretionary transfer are not subject to external review and require no justification, it is of some concern that so many prosecutors were unwilling to participate, especially after agreeing to do so, and subsequently failed to provide any explanations for their changes of mind, even in response to follow-up inquiries.

Assistant state attorneys are public officials charged with performing a public duty, and work under state attorneys who serve at the will of the public as elected officials. Prosecutors have vast power to have a profound impact on the lives of youthful offenders; adolescent youths are often in a vulnerable state of their lives, may have little or no family or other sources of support, are typically unable to support themselves, and often do not have the financial, social, or intellectual resources to ensure that they are treated fairly or justly. While presumably juvenile court prosecutors would do so, their lack of cooperation and the lack of transparency in their decision making create significant cause for concern. Prosecutorial decision making regarding transfer should not occur in a vacuum immune from review as to the thoughtfulness and

appropriateness of those decisions, as well as prosecutors' effectiveness in reaching their reported goals, especially when such decision making power carries with it such considerable potential for abuse. Poor and/or unethical decision making may place youthful offenders at significant risk for impaired developmental progress and life chances. Prosecutors' failure to cooperate with external review raises questions of whether such individuals refusing even the slightest transparency as to how they make decisions utilize appropriate criteria in making transfer decisions, and whether they make those decisions in a manner appropriate and relevant to the goals of the juvenile and criminal justice systems, or whether such decisions may be made more on the basis of personal, professional, and political gains.

It could be the case that if the investigator had been a person with some political clout, or had been in some position to publicly criticize the agencies and prosecutors, there may have been enhanced cooperation with the study. Regardless of the reasons why, it is concerning that prosecutors shield themselves from scrutiny as to their decision making. It is also concerning that while the Department of Juvenile Justice is responsible for keeping both the leadership of the agency, as well as the general public and other relevant stakeholders, apprised of the effectiveness of juvenile justice actions funded by the state, they apparently do not have even a listing of the juvenile division chief prosecutors for each of the twenty circuit courts. It seems that persons charged with the duty of prosecuting youthful offenders are relevant stakeholders, and that there should be an open dialogue of communication with them. How can there be communication without knowing who juvenile court prosecutors are, without having appropriate contact information for those prosecutors, and also without any idea as to

who might have such information? It is also disappointing that when contacted by the investigator, these agencies were not more interested in the topic at hand. If they had been, they could have made efforts to assist in obtaining contact information for prosecutors and finding parties perhaps able to assist in coordinating those contact efforts so as to enhance the response rate and shed additional light on the decision making processes involved in transfer.

The lack of cooperation with prosecutors and agencies raises a number of other concerns. When and under what circumstances would they be more apt to cooperate? Why were they unwilling to cooperate—was it a matter of structural organization, a lack of time or knowledge, or a desire to shield themselves from outside scrutiny? Is Florida unique in this regard? Would prosecutors in other states be more apt to discuss such matters; would agencies in other states be more apt to have contact information and regular dialogue with other agencies and persons responsible for the well-being of both youthful offenders and the general public? What efforts could be made to enhance openness to communication, and to enhance openness to scrutiny in order to both hold publicly funded agencies responsible for their actions and to improve and inform their practices? After all, this study was qualitative and exploratory in nature, with the goals being a greater understanding of how prosecutors structure their discretion and whether they are effective in meeting justice system goals, as well as identifying possible ways to improve upon the meeting of these and other goals and objectives.

## CHAPTER 10 SENTENCING OUTCOMES AND THE EFFECTS OF TRANSFER

### **Common Themes**

Despite the low response rate to this study, several common themes emerged from the interviews, providing some insight into Florida juvenile justice prosecutors' goals and beliefs, as well as their decision-making processes regarding transfer. Specifically, they reported believing in the rehabilitative aspect of the juvenile justice system on a general level, but were more endorsing of control and retributive efforts in responding to youths committing serious and violent offenses. Seeming to believe that serious and violent offenders are not likely to benefit from rehabilitative services and that they are likely to continue their offending behaviors into adulthood, prosecutors endorsed transfer because of the increased possibility of not only incarceration, but lengthy incarceration, because of its ability to serve an incapacitative function and to provide for increased public safety. There appears to be no follow-up by either the circuit courts or Florida's Department of Juvenile Justice regarding the sentences imposed upon transferred youths or those youths' recidivism rates. Proceeding logically, the inference can then be made that neither prosecutors nor the Department of Juvenile Justice are knowledgeable as to whether transfer is meeting its reported goals. Because transfer places youth in peril of lengthy periods of incarceration and has the potential to impede their achievement of normative developmental milestones, particularly those relevant to areas relating to social and emotional functioning, significant concern is raised as to whether prosecutorial transfer achieves greater public safety; it would be judicious to not only review and consider the findings from the extant

literature as to the sentencing outcomes and effects of transfer, but to then determine whether these findings are also applicable to Florida.

### **Sentencing Outcomes**

Youthful offenders transferred in the latter stages of the twentieth century often were treated more leniently by the criminal courts than the juvenile courts (Tanenhaus, 2000). Despite its increased use in recent decades, transfer remains relatively infrequent. Concerning, however, is that transferred offenders are not always the most serious or uncontrollable and untreatable (Bartollas, 1997; Bishop, 2000; Bishop & Frazier, 2000; Zimring, 2000; Zimring, 2005). Early research suggested that most transferred youth were transferred for property offenses. More recent research suggests a shift with more transferred youths now being charged with personal or violent offenses (Myers, 2001).

Research also suggests that conviction rates for transferred youths are high, generally in the 75-95% range (Myers, 2001). The likelihood of incarceration is greater for serious youthful offenders, as well as the likelihood of lengthier incarceration, if sentenced in the criminal court rather than the juvenile court (Agnew, 2009; Kupchik, 2006; Myers, 2001). In general, transferred youths receive longer sentences than those sentenced in juvenile court for similar crimes. This is particularly true for those convicted of violent offenses (Redding, 2008). When sentenced to periods of incarceration, transferred youths commonly receive lengthy sentences, often ranging from one to four years (Myers, 2001). Transferred youths are more likely to receive prison sentences, and longer prison sentences, than their adult counterparts in the criminal court, as well as longer sentences than those imposed by juvenile courts (Bishop & Frazier, 2000; Bishop, 2004; Myers, 2001). Yet, when incarcerated,

transferred youths are at heightened risk of recidivism (Bishop & Frazier, 2000). It is seemingly clear that harsher sentencing practices are not effective in deterring violent criminal behavior (Fried & Reppuci, 2002).

### **Transfer's Impact on Specific and General Deterrence**

The basis of the deterrence argument is that the fear of punishment increases with increases in the certainty and severity of punishment (Agnew, 2009). The specific deterrence argument suggests that the processing of youthful offenders in the criminal justice system will reduce their likelihood of recidivism (Myers, 2001; Redding, 2008). While logically feasible that specific deterrence could be achieved through increased punishment, rather than supporting the expected specific deterrence effect, the empirical literature suggests that transferred youths are rearrested and reincarcerated at greater rates, more quickly, and are involved in more serious crime than their non-transferred counterparts. Research finds few, if any, deterrent effects of criminal court prosecution relative to juvenile court prosecution (Agnew, 2009; Bishop & Frazier, 2000; Kupchik, 2004; Kupchik, 2006; Myers, 2001). Youths committing similar crimes but processed in criminal court often have higher recidivism rates (Redding, 2008). The idea that transfer is often counterproductive is supported by the convergence of a number of studies, varying widely in their methodologies and measures of recidivism, and conducted in different jurisdictions with different methods of transfer (Bishop & Frazier, 2000; Fagan, 1996; Fagan, Kupchik, & Liberman, 2003; Lanza-Kaduce, Lane, Bishop, & Frazier, 2005; Myers, 2001; Myers, 2003; Winner, Lanza-Kaduce, Bishop, & Frazier, 1997). These findings suggest that more severe punishment's results run contrary to the intentions of the get tough movement (Agnew, 2009; Myers, 2001).

Transfer may fail to achieve specific deterrence for a number of reasons. Many youthful offenders are not very responsive to punitive sanctions and may not be very rational in their offending behaviors, instead acting impulsively with little or no forethought as to the consequences of their actions. They may feel that they have little to lose by continuing to offend, that the threat of punishment is not particularly threatening to them. It may be that punishment does little, if anything, to address the causes of their offending behaviors. Punishment provides for the direct control, but not the needs of youths. More severe punishments may have iatrogenic effects. Incarceration of youthful offenders may lead to their social learning of crime from more experienced offenders. It may also increase the strain offenders feel due to the informal social controls imposed upon them when they return to the community, such as the lack of employment opportunities available to them based in part on their criminal records and reputations (Agnew, 2009).

The general deterrence argument suggests that processing youthful offenders in the criminal justice system will deter potential offenders from committing criminal acts, that the impact of the threat of transfer, and thus of greater punishment, is to scare potential offenders into compliance with the law. The research on transfer suggests that it has no general deterrent effect (Bishop & Frazier, 2000; Redding, 2008). Rather, the extant literature suggests that prosecuting larger numbers of youthful offenders in the criminal justice system either has no effect on crime rates, or even increases them, and that transferring larger numbers of youthful offenders is a mistake (Kupchik, 2004; Kupchik, 2006; Redding, 2008).

Increasing the certainty of punishment may have some moderate effect on delinquency in the general population. Increasing the severity of punishment seems to have no effect on delinquency in the general population. Despite these findings, the get tough approach advocates the increased severity approach. It is clear from the extant literature that such approaches do little to provide for general deterrence (Agnew, 2009). There may be a number of reasons for increased punishment's failure to provide for general deterrence. There may be a substitution effect with other offenders taking the place of incarcerated offenders. A group effect may account for the failure; as many juvenile offenses are committed in groups, removal of one offender from that group may have little impact on the group's offending rate. Another reason may be that increased punishment results in the removal or incarceration of youths unlikely to persist in their offending behaviors. Their offending behaviors would have ceased regardless of justice system interventions (Agnew, 2009).

In short, the research on deterrence suggests that the imposition of increased penalties upon transferred offenders provides for neither specific nor general deterrence, that criminal justice system processing may instead result in increased, more serious, and quicker recidivism for transferred youths regardless of sentence type or length, that incapacitative gains from transfer are quickly offset by the increased recidivism among transferred youths, that many of the youths transferred are young, non-violent, and charged with minor crimes, and that transferred youths are made vulnerable due to their exposure to a host of unfortunate experiences and outcomes (Bishop, 2000).

When considering prosecutors' statements, as well as the extant literature, it appears that prosecutors were either unaware or dismissive of the available evidence as to the effects of transfer and its impact on both public safety and in getting youths back on track, the two main goals of transfer reported by prosecutors. Prosecutors suggested that advantages to transfer include the possibility of greater sanctions, particularly incarceration. They suggested that the incapacitative effect provides for greater public safety. Yet systematically, prosecutors are unaware of the types of sentences transferred offenders receive. Many suggested that those offenders retained in the juvenile justice system are sentenced more harshly than those transferred to the criminal justice system. Many also suggested that many offenders prefer to be transferred to the criminal justice system as they perceive the sanctioning and sentencing as lighter. Transfer is unlikely to have any specific deterrent effect when offenders consider it a lighter sentence than what is received in the juvenile justice system. Additionally, when the severity, but not the certainty of punishment, is increased, there is unlikely to be any general deterrent effect. Prosecutors also seem to ignore or be unaware that incapacitative gains are quickly outweighed by transferred offenders' quicker, more serious, and more frequent recidivism than non-transferred offenders, that the very act of criminal court processing seems to enhance, not mitigate, youths' risk for future offending. It is clear that, in general, transfer seems to offer little, if anything, to increase public safety. As for getting kids back on track, the second major goal reported by prosecutors, it is also unclear how transfer meets this goal in any manner. Transferred offenders' cases are randomly assigned to criminal courts and prosecutors. Not a single prosecutor indicated that transferred offenders are provided

with the benefit of sentencing by judges having experience with youthful offenders or having special awareness of youths' risks and developmental needs. Likewise, no prosecutor indicated that transferred cases were assigned to criminal court prosecutors or defense attorneys with juvenile experience or awareness.

### **Transfer's Impacts on the Justice System**

Transfer impacts not only youths, but also the criminal justice system. Already strained by limited resources in dealing with adult offenders, criminal prosecutions of youthful offenders are more taxing of these limited justice system resources than are juvenile prosecutions of youthful offenders. Criminal proceedings are characterized by greater numbers of hearings, at least twice the processing time as comparable juvenile court cases, greater attorney preparation, investment of more investigative resources, and are more likely to result in jury trial. In addition to its impact on the criminal justice system, direct file provisions require prosecutors to make decisions about transfer while often having little information on offenders. Subjective in nature, such decisions are likely to exhibit inconsistency between and among prosecutors (Bishop, 2000; Bishop & Frazier, 2000).

Juvenile court prosecutors often utilize the juvenile court as a training ground before transitioning into the criminal court and are thus often younger and less experienced than are juvenile court judges. Relative to juvenile court judges, prosecutors are less aware of the control mechanisms and rehabilitative interventions available in the juvenile justice system (Bishop, 2004). This unawareness of available control mechanisms and rehabilitative interventions might predispose prosecutors to see youths as less amenable to rehabilitation and as posing a greater risk to the community in comparison to judges assessing such factors. Prosecutorial transfer is

also less likely than judicial waiver to make use of psychological evaluations for consideration in the transfer decision. Prosecutors often make transfer decisions with little or no knowledge of the offenders considered for transfer, in essence making decisions in a factual vacuum. Their knowledge of the offenders may be limited to that information found in police and court reports of the offenses and prior court records of offenders (Bishop, 2004).

Upon reviewing the extant literature, there remains significant concern as to whether transfer in Florida meets the greater public safety goal. In general, transfer appears to have iatrogenic effects as transferred youths' risk of recidivism seems to increase. Transferred youths reoffending more often, more quickly, and in a more serious manner as the result of criminal court processing rather than juvenile court processing does not bode well for the efficacy of transfer in enhancing public safety. The incapacitative gains are short-lived and outweighed by transfer's enhancement of recidivism.

With significant changes to transfer provisions over the past few decades, it is unsettling that state legislatures passed such laws without examining more deeply how youths transferred from juvenile to criminal courts fare, as well as the general deterrence effects of transfer. The easing of the transfer of youthful offenders from juvenile to adult courts is an organizationally and politically expedient strategy that appeases the public's desire for harsher treatment of serious and violent youthful offenders. This easing of transfer provisions in recent years has led to the transfer of more youths, rather than the transfer of the worst youths (Kupchik, 2006). Decisions regarding such important issues as transfer should be based on the logical assessment

of rehabilitation potential and public safety, not a desire to satisfy the public's desire for retribution (Grisso, 1998). It is even more unsettling that many direct file transfer provisions were enacted after the early 1990s when juvenile crime rates were dramatically dropping. It thus seems that they were created not because of a practical need, but rather to serve a symbolic purpose, that they were created as a solution in search of a problem (Kupchik, 2004). Or, equally unsettling, an alternative explanation is that increased transfer was utilized because of beliefs that adolescents and adults do not differ sufficiently to warrant separate treatment by the law. The essence of this argument is that either adolescents are not sufficiently different from adults or that they are not deserving of differential treatment (Steinberg & Cauffman, 2000). If serving practical, rather than symbolic purposes, transfers would only occur after arguments for and against transfer were presented to impartial parties qualified to make such decisions. Discretionary judicial waiver seems more likely to result in informed and unbiased decisions than other transfer mechanisms (Allen, 2000)

Prosecutors' suggestions that they are in the best position to make decisions regarding transfer also seem misguided. They suggest that they are the best decision makers because they are on the front line, working in the trenches, and thus know the cases and their participants. Yet, when reporting the sources of information they consider in transfer decisions, prosecutors indicate that they utilize victim and witness statements, police reports, and information that the public defender brings to them. It hardly seems that prosecutors obtaining their information primarily from victim and witness statements and police reports are in an appropriate position to determine the level of risk that a juvenile poses to the community, as well as whether that risk might be

mitigated by the rehabilitative and control efforts available within the juvenile justice system. Prosecutors consistently reported being unaware of the characteristics making certain youthful offenders unamenable to rehabilitative efforts. If unsure of the characteristics making certain youths unamenable to rehabilitative efforts, how are prosecutors able to determine whether or not youths are amenable to rehabilitative efforts available within the juvenile justice system?

## CHAPTER 11 INCONSISTENCY OF TRANSFER WITH JUSTICE SYSTEM GOALS, ADOLESCENCE, AND MATURATIONAL DEVELOPMENT

### **Why Doesn't Transfer Work?**

It is concerning that regardless of sentence type or length, criminal court processing has iatrogenic effects on the likelihood of recidivism of transferred youths. The very matter of processing youths through the criminal justice system rather than the juvenile justice system seems to increase transferred youths' risk. Possible explanations include that criminal justice system processing increases risk and promotes subsequent offending, that juvenile court processing decreases risk and promotes conventional behaviors, or a combination of the two (Bishop, 2000; Bishop & Frazier, 2000). It may be that juvenile courts promote conventional behaviors by their ability to provide better treatment options (Myers, 2001). A substantial body of research speaks to the effectiveness of some rehabilitative programs in reducing recidivism (Bishop, 2000; Bishop & Frazier, 2000). As adolescence is an important developmental period characterized by fluidity and rapid changes in intellectual, emotional, and social capacities, changes in the familial, peer group, school, and community settings can affect the course of development. This makes adolescents potentially malleable with effective interventions having the potential to transition them along positive and prosocial developmental trajectories (Steinberg & Cauffman, 2000).

There exist a number of reasons why transfer may be ineffective in reducing recidivism. There may be stigmatization and labeling effects with offenders struggling to be reintegrated back into the community (Redding, 2008; Salekin, 2002). Offenders may struggle to become involved with conventional groups and activities. Their access to social networks may be limited because of their criminal records. This limited access

may negatively impact such positive and conventional activities as meeting romantic partners and prospective friends. Lack of involvement with prosocial others in prosocial activities and gainful employment may negatively impact life course trajectories. Community application of informal sanctions is also a cause for concern. Offenders may lose, have suspended, or be restricted from obtainment of professional and occupational licenses. This, along with having to report criminal convictions, may negatively impact their opportunities for gainful employment (Bishop & Frazier, 2000; Redding, 2008). They are also subject to a number of civil disabilities, among them being unable to serve in the military, to vote, to hold public office, or to sit on a jury. Such consequences may hinder the likelihood of offenders reforming along prosocial routes (Bishop & Frazier, 2000; Redding, 2008).

Transferred youths may feel resentful and as if they have been treated unjustly, that they have been treated differently than other youths similar to them, and that more punitive court responses have been unfairly applied to them. Additionally, they may not perceive the sanctioning as legitimate, and may lack strong social bonds to the sanctioning agent and the community (Myers, 2001; Redding, 2008). The extant empirical literature suggests that offenders are more obedient of the law when they believe that criminal sanctions have been administered in a fair manner (Myers, 2001). It may be the case that criminal justice system actors communicate in ways suggesting their condemnation of the offender, rather than his behavior, whereas juvenile justice system actors may communicate messages of caring. As youthful offenders have often failed to develop close and significant attachments to others, such messages may help to promote the formation of social bonds. Signs of interest and concern from justice

system actors do often seem to register with youthful offenders with punishment and signs of condemnation being more effective and having more resonance when granted legitimacy by their recipients (Bishop, 2000; Bishop & Frazier, 2000).

It may also be that the learning of criminal mores and behaviors as a result of their exposure to greater criminality in the criminal justice system than they would have experienced in the juvenile justice system enhances transferred youths' criminalities (Redding, 2008). This exposure to antisocial others may instill upon them domination, exploitation, and retaliation as appropriate norms of conduct. This may occur in part due to the few means available to incarcerated offenders to achieve status other than through illegitimate activities such as proving toughness through violent or antisocial behavior (Bishop, 2000; Bishop & Frazier, 2000). This may have the impact of providing for the learning of new techniques for committing crimes, as well as how to more effectively avoid detection by authorities (Bishop & Frazier, 2000).

Only one prosecutor reported being aware of research suggesting that transfer may worsen offenders. Not a single prosecutor suggested that transfer might have detrimental impacts on youths' life chances or negatively impact their developmental progress. Only a small number suggested that the possibility of transferred offenders not receiving rehabilitative services serves as a disadvantage to transfer. There seems to be little prosecutorial recognition of the negative impacts that transfer has on youths' legal and life outcomes or of the positive effects that rehabilitative efforts can have on youths. While it is concerning that some prosecutors reported there being no real advantage to transfer, it is even more concerning that, as a whole, the potential

negative consequences to youths of transfer do not register with or even occur to prosecutors making transfer decisions.

### **Transfer as Inconsistent with Adolescence as a Developmental Stage**

Many scholars argue that the transfer of youthful offenders from juvenile to criminal court conflicts ideologically with not only the founding principles of the juvenile justice system, but also the child development literature. While not fully developmentally mature, transferred offenders are to be held fully accountable when they commit serious and violent offenses; their commission of serious and violent offenses somehow transforms them into rational adults to be punished with the fullest weight of the law (Tanenhaus, 2000). Transfer legislates maturity upon transferred offenders (Zimring, 2005). Facilitating the ease of the imposition of and the increased severity of punitive measures is representative of changing views regarding how adult-like youthful offenders are.

Wholesale transfer such as statutory exclusion essentially redefines youths as adults for justice processing purposes based on offense and/or age criteria with there being two explanations for such transfer. The first is that punishment benefits youthful offenders. The second is that youths eligible for such transfer are not immature, or if they are, it is simply irrelevant with legislators having no objections to the jeopardies transferred youths face (Bishop & Frazier, 2000; Steinberg & Schwartz, 2000; Woolard, 2002). These notions directly contrast the very idea of adolescence as a developmental stage, the idea that adolescents are qualitatively different from adults rather than miniature versions of adults.

Adolescents, by definition, are immature. They are greater in their cognitive, emotional, and behavioral capacities than are children, but are lesser in these abilities

than are adults (Otto & Borum, 2004). Less able than adults to control themselves and to exercise free will, they often require guidance and assistance in knowing right from wrong, in fully appreciating the nature and potential benefits and harms of their actions, and in making decisions (Agnew, 2009; Otto & Borum, 2004). Their immaturity results from this very lack of experience in decision making. It is this very lack of experience that sometimes leads to poor judgments—maturity takes practice (Agnew, 2009; Zimring, 2005). Adolescent immaturity also results in youths being more prone than adults to influence by others, both peers and adults (Agnew, 2009). This influence can be in either prosocial or antisocial directions.

Youths deserve to be treated as less culpable than adults and thus deserve to be subject to a diminished responsibility standard for a number of reasons (Bishop, 2004). It is because of these reasons that common law, as well as the very foundation of the juvenile justice system, was predicated on the recognition of the impropriety of holding children as responsible and culpable for their wrongdoings as adults are held (Otto & Borum, 2004). That offenders have both caused harm and are culpable is at the root of the philosophy of American justice. Criminal punishment necessitates both more and harm with few exceptions (Bishop 2004). By virtue of their immaturity, youths are less culpable than adults. That a developmental context should be utilized in the consideration of the wayward actions of youths and how society should best respond was at the very core of the foundation of juvenile justice, yet the more modern idea that youthful offenders should be sanctioned as harshly as more competent adults refutes the very concept of adolescence (Otto & Borum, 2004).

Prosecutors suggest that somehow, by virtue of having committed serious and/or violent offenses, youthful offenders should no longer be treated as if they are not yet fully developmentally mature. By its very definition, adolescence is a period characterized by lesser cognitive, behavioral, and emotional capacities than adulthood. Yet the need for guidance in exercising free will and self-restraint somehow disappears when youths commit serious and/or violent offenses. What remains unclear after interviews with prosecutors is how they have come to impute maturational status upon immature offenders based solely on the offenses youths have committed. Those offenses arguably often result from youths' errors in sound decision making, likely due largely in part to their lack of experience in making difficult decisions in often stressful and peer-influenced situations, yet somehow prosecutors believe that these immature youths are more fully aware of their actions and both the short-term and long-term consequences of those actions when they have committed serious and/or violent offenses.

### **Maturational Development**

Several scholars suggest that, provided that adolescents are of at least average intelligence, adolescents and adults differ rather minimally cognitively past fourteen years of age. Some scholars suggest, however, that substantial differences exist in their capacities for sound decision making in some contexts (Fried & Reppuci, 2002; Steinberg & Cauffman, 2000). These claims are consistent with suggestions that even mid-teens have lesser abilities than adults in processing information and considering alternatives, and that these differences become more pronounced in stressful situations. Neuroscience supports such claims. It is not until late adolescence to early adulthood that the brain mechanisms for planning and impulse control mature fully. Adolescents

thus have lesser volitional control over their behaviors than do adults (Bishop, 2004). For these reasons, and many more, adolescents are less mature and hence less culpable than adults.

Psychosocial maturity encompasses both social and emotional functioning, both of which impact the use of cognitive capacities. Psychosocial maturity may be thought of in three developmental categories (Cauuffman & Steinberg, 2000; Steinberg & Cauuffman, 2000). Responsibility involves such characteristics as self-reliance, clarity of identity, and healthy autonomy. Responsible persons are more able to resist external pressures in decision making and judgment. Perspective taking involves understanding the entirety of a situation, its complexity and its place in a broader context. It involves the ability to consider others' points of view, as well as understanding and envisioning both short-term and long-term implications of decisions. Temperance involves the ability to exercise self-restraint by limiting and controlling impulses, and evaluating situations prior to taking action (Cauuffman & Steinberg, 2000; Otto & Borum, 2004). What emerges from the developmental literature is that psychosocial maturity continues to develop throughout late adolescence, beyond the developmental point when the purely cognitive maturational abilities of adolescents are similar to those of adults. Both cognitive and psychosocial maturity impact youths' abilities to exercise sound judgment and make good decisions. These immaturity factors are always present in immature youths, and may affect judgments in situations when adolescents must make decisions having potentially serious ramifications (Cauuffman & Steinberg, 2000).

Age does not serve as a reliable marker of maturity. Age no longer predicts judgment upon controlling for psychosocial maturity factors (Steinberg & Cauuffman,

2000). In general, youths are more influenced by peer pressure than are adults, tend to differ from adults in temporal perspective by thinking in short-term rather than long-term consequences, and are less aware of risks than adults are (Bishop, 2004). That many of the differences in judgment and decision making between youths and adults are developmental and temporary in nature serves as a rational basis for the use of a paternalistic response to youthful offending, rather than a more punitive response (Salekin, 2002). A paternalistic response calls for the recognition that the interpretation and the application of laws needs to vary for those youths limited in maturity and still developing. Justice system decision makers need to recognize that severe punishments impact immature youths differently than they impact more mature youths and adults (Steinberg & Cauffman, 2000).

It is disturbing that if justice systems recognize that adults and youths are developmentally different, this leads some to believe that this eliminates the accountability of youthful offenders. The juvenile justice system has the capacity to provide for accountability while still recognizing the developmental differences between youths and adults. It is the case that the juvenile justice system should become more responsive to youths' developmental needs in ways that redirect their behaviors prosocially. Transfer proponents' suggestions that the juvenile justice system is generally insufficient in responding to youthful offenders do not justify its abolition or the more wholesale transfer of youths to the criminal justice system. Transfer proponents have not indicated how the criminal justice system is more capable than the juvenile justice system of responding to the needs of youthful offenders. Instead of their elimination, it remains important to maintain the differences between the juvenile and

criminal justice systems as the juvenile justice system still pays some credence to and recognizes the importance of developmental differences between youthful and adult offenders. Likewise, providing for increased due process safeguards, as well as increased accountability in the juvenile justice system, does not negate the ability or the responsibility of the court to attempt to provide for the best interests of youths in dispositional decisions, while also being mindful of the need to provide for the safety of the community from youthful offenders (Zimring, 2005).

It is obvious that youths and adults differ in their psychosocial maturational levels. Yet for some reason prosecutors suggest that transferred offenders are either more mature than other offenders, or that their immaturity is irrelevant because of the nature of their crimes. Regardless of the reason, the desired result is the same-greater accountability for transferred offenders. Prosecutors, however, have not articulated how the criminal justice system is able to hold transferred offenders more accountable for their actions while the juvenile justice system is unable to hold non-transferred offenders accountable. Also lacking among prosecutors is the recognition of the need for the criminal justice system to provide for and to attend to the developmental needs of those youthful offenders who are transferred.

### **Getting Youths Back on Track-A Secondary Goal for Florida's Juvenile Prosecutors**

It does not seem that transfer in Florida is likely to provide for greater public safety. Because of the broad discretion given to them regarding discretionary direct file transfer, prosecutors will likely have less time to review individual cases and youths in depth before deciding whether or not to transfer those youths to the criminal justice system. It seems that because of this limited time frame in which to make decisions,

prosecutors will likely base decisions on easily determined criteria, such as prior and instant offense characteristics, rather than more in-depth considerations of individual youths and their contextual and situational circumstances. When having to consider transfer on a great number of potential cases and youths, and the status quo being the extensive use of transfer, it seems unlikely that prosecutors will be made more apt to retain youths in the juvenile justice system, particularly if their prosecutorial role calls for them filing the highest and best possible charges, and to provide for public safety by seeking maximum incapacitation. Transferring more youths to the criminal justice system based primarily on offense characteristics, rather than more inclusive considerations, is unlikely to result in greater public safety. If not achieving greater public safety, perhaps transfer could be justified if it benefitted transferred youths in some way. This does not appear to be the case.

When discussing transfer, prosecutors did not mention any significant benefits to youths in terms of redirecting them toward more prosocial lifestyles or improving their long-term life chances and prospects. The benefits they mentioned were the reduced likelihood of conviction because of the right to jury trials in the criminal justice system and the potential for release on bond while pending trial. Rather than supporting the beneficial effects of transfer, the extant literature suggests a number of undesirable effects and outcomes. In consideration of transfer neither providing for public safety nor improving youths' lives, there appears to be a vast disconnect between scientific reality and the beliefs of prosecutors in how to best act to achieve their goals regarding serious and violent youthful offenders.

Prosecutors endorsed reduced culpability for juveniles in comparison to adults to a degree, but this endorsement wanes as offenses increase in severity. While recognizing that youths differ from adults, these differences are no longer relevant when youths have committed serious and violent offenses. The acceptance of reduced culpability for youthful offenders also wanes as a function of age. The scientific literature suggests, however, that psychosocial maturity continues to develop through late adolescence, and that this affects decision making and judgment. Neither age nor offense severity is indicative of judgment once controlling for psychosocial maturity. Rather than being the most culpable, it may be that some of the most egregious offenders may be some of the most immature offenders. When considering that many risk factors for subsequent offending may be transient and developmental in nature, it may be that the most immature and egregious offenders are some of the most malleable offenders. Adolescence is a period in which changes in familial, school, peer group, and community settings can impact life-course trajectories because of the developmental fluidity associated with this time period. Failure to consider youths' individual characteristics and contexts is a mistake, as is making transfer decisions based on strictly legal criteria, such as the severity of an offense as determined primarily by whether weapons were involved and the extent of victim injury. Such criteria say nothing as to the malleability and potential of offenders. If transfer does not achieve prosecutors' primary goal of public safety, it should at least meet their secondary goal of providing assistance to offenders in redirecting their lives in prosocial directions and improving the likelihood of positive life outcomes. Despite prosecutors reporting this as a goal, they failed to identify any ways in which transfer helps in

achieving this goal. Other than the possibility of blended sentencing, they also failed to identify any ways in which transferred youths might be protected from the potential harms of criminal justice system processing. As transfer does not provide for public safety, and appears to impair, rather than enhance youths' chances for success in life, the arguments that transfer has some efficacy, other than providing for retribution, quickly lose credence.

CHAPTER 12  
WHY TRANSFER IS NECESSARY AND OTHER REASONS FOR ITS CONTINUING  
USE

**Why Transfer Is Still Used**

Prosecutors, often serving as elected officials, are charged with the duty of protecting the public. The public perception that the juvenile justice system is soft on crime may increase the likelihood of prosecutors being more apt than juvenile court judges to transfer youthful offenders. In discretionary judicial waiver cases, judges hear arguments from both prosecutors and defense attorneys as to the transfer decision, whereas direct file transfer provisions place the burden of the transfer decision on biased and partial prosecutors, prosecutors charged with the duty of rigorously prosecuting criminals. Direct file transfer provisions fail to provide for the external review of both how transfer decisions are made and the frequency with which prosecutors bypass the juvenile justice system (Kupchik, 2004; Kupchik, 2006). Prosecutors may feel pressured to make decisions based on concerns of achieving maximum incapacitation, rather than making decisions based on rehabilitative and public safety logic (Grisso, 1998). In contrast, those juvenile court judges who are aware of transfer's failure in general to reduce recidivism and to provide for public safety may be less likely to approve transfer. This suggests that educating juvenile justice decision makers as to the effects of transfer may result in the lesser use of discretionary transfer such as direct file and judicial waiver. It is also possible that educating legislators could result in the revision of statutes that mandate transfer when certain blanket criteria are met (Redding, 2008).

## **A Utilitarian Perspective**

Criminal behavior is characterized by an immense range of human conduct committed by vastly different individuals across all ages, ethnicities, and social classes. As such, a primary focus should be identifying and intervening with that subset of persons most likely to be persistent in serious and/or violent offending (Bartol & Bartol, 2004). Youthful offenders, as a group, tend to grow out of or mature out of their offending behaviors. It is also true that a small group, estimated at 5-6%, is responsible for a large proportion of juvenile crime. This is consistent with adult literature suggestions that 5-6% of offenders are responsible for a minimum of 50-60% of known crimes (Bartol & Bartol, 2004; Lipsey & Derzon, 1998; Salekin, 2002). The extant literature also suggests that 6-8% of the male population commits 60-85% of serious violent crime, and that even among frequently offending youths, less than 30% have ever been arrested for violent offenses. It is clear that even among aggressive and frequently offending youths, violent offending remains relatively rare (Fried & Reppuci, 2002). It is of significant concern in attempting to identify those youths likely to persist in serious and violent offending to consider the fluid nature of adolescence. Over the life span, developmental patterns tend to be transient and in a constant state of flux. This is particularly true during the adolescent years as demonstrated by attempts to diagnose psychopathy in youths (Bartol & Bartol, 2004). Many youths temporarily demonstrate behavioral patterns and personality characteristics, such as egocentricity and lack of empathy, demonstrative of a psychopathy diagnosis for a number of reasons, but these characteristics are often fleeting and change over time with maturation suggesting that they are perhaps more a reflection of, or an adaptation to, a difficult developmental period than they are indicative of psychopathy (Salekin, 2002).

This suggests that the accurate identification of youths posing long-term offending risks is a difficult task due to the often transient status of adolescent characteristics.

While transfer provisions redefining juveniles as adults for the purposes of justice system response and processing may satisfy the public's desire for harsher treatment of youthful offenders, it is not only rational, but also only fair, to expect that the response, as well as the process in reaching that response, is fitting of both the crime and the offender's maturity level (Woolard, 2002). It is clear from the developmental literature that, as a whole, youths are not as cognitively, socially, and emotionally mature as adults, but that there is also significant variation within and between individual youths, as well as youth populations, as to both their emotional maturities and decision making abilities (Bartol & Bartol, 2004; Otto & Borum, 2004; Steinberg & Cauffman, 2000; Zimring, 2005).

Decisions regarding culpability and disposition should be informed by considerations of sophistication and maturity. Guidelines as to the methods for making such judgments are unclear in the justice systems (Otto & Borum, 2004; Patapis, 2002). This is disappointing. Clarification as to the legal meaning of these concepts could provide for meaningful guidance in decision making in the juvenile justice system (Patapis, 2002). What is clear is that offense severity and/or age guidelines often impute adult status on youthful offenders. Offense severity neither validly predicts recidivism nor signifies maturational status. A youth's commission of a violent or serious offense does not elevate his cognitive, social, and emotional capacities to an adult level. Adolescence is a period prone to violence on a relatively frequent basis, yet most youths committing violent acts in adolescence do not persist in such behaviors into

adulthood (Otto & Borum, 2004). Mandating prosecution of youthful offenders as adults based not on the characteristics of the youths but rather on the characteristics of their offenses and offense histories is misguided (Salekin, 2002). Doing so is likely to result in the transfer of many youths at relatively low risk for reoffending and amenable to rehabilitative efforts. Providing for evaluative standards could result in the more accurate identification of those youths appropriate for transfer, as well as those appropriate to remain in the juvenile justice system. Doing so would provide for the more efficient allocation of limited justice system resources (Patapis, 2002).

The empirical literature suggests that different state and jurisdictional standards have in the past impacted the administration of juvenile justice, and that they continue to do so with variations between states and even localities within the same state strongly impacting the transfer lottery that is currently reality. The troubling implication is that transfer decisions may be more dependent upon the locality where the decision is made, rather than upon the characteristics of the case, and thus may often violate constitutional equal protection guarantees or similar provisions of state laws (Bishop & Frazier, 2000; Tanenhaus, 2002). This implication is supportive of the need for the delineation of guidelines for assessing such relevant criteria in transfer decisions as offenders' risk to the community, sophistication-maturity, and amenability to treatment.

Prosecutors suggest that they use transfer out of utilitarian purposes suggesting that the increased sanctioning ability of the criminal justice system, particularly in terms of the likelihood and length of incarceration, provides for public safety via incapacitative and deterrent effects. Despite public safety being the primary goal of transfer, prosecutors are unaware of whether or not it provides for public safety. They do not

know whether transferred offenders are incarcerated, which could provide for greater public safety through an incapacitative effect. They also do not know how transfer affects general offense rates among the juvenile population or recidivism rates among transferred offenders. There is little, if any, attempt to examine the efficacy of transfer in achieving public safety. This is troubling.

If prosecutors do not examine whether transfer provides for public safety, it may be that they use it for other purposes, perhaps symbolic purposes in response to public, media, and political pressure. Very few prosecutors indicated that transfer decisions are based at all on such considerations. This seems unlikely. Several prosecutors suggested that the public feels that the juvenile justice system is soft on crime, and that the media portrays the juvenile justice system in a similar fashion. One even mentioned that even though transfer standards remain largely the same, transfer rates tend to increase when juvenile crime, particularly violent crime, receives media attention. If genuinely concerned primarily with public safety, prosecutors should be aware of the effects of transfer in achieving that goal. As they are not, and also seem unable to identify any ways in which transfer helps youths to get back on track, it is likely that transfer serves more than these two reported purposes. It seems that transfer decisions may just as often be based on outside pressures. Unfortunately while isolating themselves from the influences of social science advances, prosecutors have seemingly failed to isolate themselves from the influences of political, media, and public pressures. Such pressures should not take precedence in transfer decisions over social science recommendations and findings as to evidence-based practices.

## CHAPTER 13 MORE SELECTIVE TRANSFER

### **The Case for More Selective Transfer**

Due to its potential as the most severe disposition a youthful offender can encounter, transfer is not without its critics (Myers, 2001). The stakes of guilty findings are much higher in the criminal court than in the juvenile court, often involving the potential for lengthy periods of incarceration (Grisso, 1998; Steinberg & Cauffman, 2000). Critics of transfer suggest that it is overused, consigning more youths than necessary to the criminal justice system with its increased focus on punishment. They suggest that such decisions are not justified, especially when the juvenile justice system places a greater value on rehabilitating and changing youths. Transfer places youthful offenders at greater risk of negative legal and life outcomes than those youths remaining in the juvenile justice system. Transferred youths are subject to public proceedings, to a publicly accessible criminal record, and to greater periods of incarceration, possibly even in adult prison. It may be the case that those deemed inappropriate for rehabilitative services available in the juvenile justice system are unlikely to be provided with rehabilitative services in the criminal justice system (Bartol & Bartol, 2004). Another argument against transfer is that the treatment of youthful offenders as adults may worsen them, essentially producing more criminally disposed and motivated youths (Myers, 2001). This argument is augmented by the extant literature being clearly indicative of the counterproductive effects of transfer in terms of more frequent, quicker, and more serious offending after receiving criminal rather than juvenile sanctions and interventions (Fried & Reppucci, 2002; Kupchik, 2004; Kupchik, 2006; Myers, 2001).

Since its beginning, the juvenile justice system has always retained the option of transferring youthful offenders to the criminal justice system in recognition of being incapable of responding adequately to the needs of every single youth coming before it. Reserving the transfer option for serious and violent youthful offenders posing a high risk for future offending and who are unlikely to respond to juvenile justice system interventions permits allocation of limited resources to those more likely to benefit from them. It allows for greater direct control of those youthful offenders in need of such increased control, and serves to insulate the juvenile justice system from criticisms that it is lenient and coddling. Selective transfer can serve as a safety valve for filtering out cases inappropriate to be retained in the juvenile justice system. This makes the transfer question a relative, rather than an absolute question. It is not whether transfer is always inappropriate that is at issue, but rather a question of overreach (Grisso, 1998; Grisso, 2000; Kupchik, 2004; Kupchik, 2006; Tanenhaus, 2000). The gist of the argument is that transfer often has unwanted effects, but is necessary as a crime control measure for that select group of offenders who are beyond the control and rehabilitative reaches of the juvenile justice system. Transfer in the past has been applied only to those offenders for whom it was deemed necessary because of their extreme nature. It is only with the more selective use of transfer that its retributive and incapacitative benefits can be fully realized (Bishop, 2000).

While get tough measures may appease the public, they may also place the public at greater risk. A utilitarian perspective advises against the use of publicly appeasing practices that have the impact of increasing rates of offending. Practices such as harsher sanctioning make little sense other than from a retributive perspective

(Steinberg & Cauffman, 2000). As such, decision makers should be more cognizant and mindful of whether the goals of the criminal and juvenile justice systems include retribution when the primary impact of that retribution seems to be reducing public safety. Harsher punishment and transfer all too often make ineffective and misleading symbolic points. Rather than providing for public safety via specific and general deterrence, they promote life-course criminality by increasing recidivism rates and having little, if any, impact on the offense rates of the juvenile population (Redding, 2008). In addition, when dealing with youthful offenders, courtroom decision makers in the criminal justice system may filter courtroom and sentencing practices, thus reintroducing the very juvenile justice elements that transfer was intended to null (Kupchik, 2006).

Perhaps a more appropriate alternative to transfer might be enhancing the abilities of the juvenile justice system to utilize effective deterrence measures while not being excessively punitive (Redding, 2008). A counterargument is that the juvenile court was founded on the premise of rehabilitation, not punishment. Due to its decreased focus on punishment, the juvenile justice system may not be the best forum for imposing severe sanctions upon the most serious and violent youthful offenders as doing so might create considerable conflict with one of its core missions, the sparing and protection of the future life chances of youthful offenders (Kupchik, 2006). This desire to limit punishment is both the appeal and the drawback of the juvenile justice system. Juvenile justice proponents suggest that a focus on rehabilitation, not punishment, is the most appropriate role for the juvenile justice system. Its critics suggest that it is this

very lack of willingness and desire to punish youthful offenders that necessitates transfer to the criminal justice system (Zimring, 2000; Zimring, 2005).

Transfer has always been an option, serving as a safety valve to filter out those offenders beyond the reach of the juvenile justice system. Because of its potentially severe disruption to youths' developmental and life chances, as well as its counterproductive effects in terms of providing for public safety, many suggest that it should be used much more selectively, only for the worst offenders, those whose risk cannot be mitigated by the rehabilitative efforts and control mechanisms available to the juvenile justice system. Prosecutors seem unaware of both the practical and symbolic effects of transfer of youthful offenders from the juvenile justice to the criminal justice system. They also seem unaware of the deleterious effects transfer may have on the life chances of transferred offenders. By transferring not only the very worst and most dangerous youths, prosecutors are calling into question the very reasons for the existence of the juvenile justice system. Created out of the ideas that adolescents differ from adults and are in need of guidance and direction, that many offenses are committed because of a lack of maturity and experience in decision making, and that youths are in a transient state of their lives with changes in their environments and circumstances having the potential to profoundly impact their developmental trajectories in both prosocial and antisocial directions, the juvenile justice system was created with the intention of not just responding to the needs of minor offenders, but also to the needs of more serious and violent offenders capable of being redirected along more prosocial routes. When decision makers fail to consider the individual and situational characteristics of serious and violent offenders, and instead focus solely on the

seriousness of youths' past and instant offenses, they are treating youthful offenders as if they were adult offenders; juvenile prosecutors in Florida consistently reported seriousness of past and instant offenses as their most important considerations in transfer decisions.

### **A More Rational Approach to Transfer**

To the extent that transfer is a necessary option for the continued existence of the juvenile justice system, the most rational approach currently available is discretionary judicial waiver. Transfer decisions should be based upon more than offenders' ages and the seriousness and frequency of their instant and past offenses, yet such factors seem to serve as the primary, if not the only, basis of consideration in discretionary direct file and statutory exclusion transfer. The maturity of youthful offenders should be considered, as well as their threat to society, and the potential of rehabilitative and control measures to contain and mitigate that threat. Judges should hear arguments from both prosecutors and defense attorneys as to the merits of transferring and retaining individual youths. Decision makers should have access to forensic resources assisting them in being more competent decision makers and should also keep abreast of developments emerging from the developmental and forensic psychology fields regarding such important areas as dimensions of maturity, assessment techniques, and the validity of assessments of risk and treatment amenability (Bishop, 2004).

Adolescence is a developmental stage serving as a significant learning period for youths. As they seem to be both more malleable and amenable to treatment than adults are, special care should be taken to ensure that they are able to navigate through the legal system with their life chances still intact and that they are directed toward more prosocial lifestyles (Salekin, 2002; Zimring, 2005). An important focus should be

minimizing the harms youths inflict upon both themselves and the community.

Punishments often threaten to interrupt their development. Providing youthful offenders with additional chances to transform their lives and having faith in their abilities to become productive citizens serves as an investment that may reap vast rewards when youthful offenders transition into prosocial adults. The expectation is that youths will err and make mistakes, that this is how they learn how to take responsibility for and utilize their increasingly adult-like freedoms and capacities (Zimring, 2005).

The juvenile court can serve to protect youths from the harms of criminal punishment. Criminal punishment is often harsh, confining, corrupts innocent youths, and confirms potential deviants' antisocial pathways. Regardless of the effectiveness of rehabilitative and benevolent aims, diverting youths from the harms of the criminal justice system alone may help achieve social good. In addition, interventionist justifications exist for the juvenile justice system. Effective rehabilitative programs can protect the community and also help treat youths (Zimring, 2005).

It is disappointing that while prosecutors seem to be genuinely concerned with public safety, they seem misguided in how to best provide for it. It is unclear why prosecutors are so unaware of the effects of transfer, especially when so much research is so clear on its effects. Numerous prosecutors suggested that they had never really thought about many of the issues raised in the interviews. Many suggested that greater communication and clearer policies might be beneficial. One indicated being unaware of the practices of other circuits largely because of there being no real forum in which to discuss such issues. Considering that Florida is among the most aggressive states in the nation in transfer with a 4.0% transfer rate in fiscal year 2007-

2008, that the rate of transfer increased 60.7% between fiscal years 2003-2004 and 2007-2008, and the potentially high costs, in terms of both human and financial capital, as well as to both public safety and to the well-being of youthful offenders, it is inexcusable that the state provides for not only no follow-up as to the effects of transfer, but also very little guidance in structuring decisions regarding those offenders who should be transferred or how to make those decisions, and also no forum in which such issues might be discussed. While prosecutors appear to be isolated from social science advances, rather than providing information and opportunities to discuss such advances and implement policy recommendations, the state allows this isolation to continue. There appears to be no effort to integrate prosecutorial decision making with evidence-based practices resulting from social science research and advances. Why there is not greater dissatisfaction regarding transfer is also concerning. It suggests that relevant stake holders are either unaware of or uninterested in the impacts of transfer. If the lack of dissatisfaction is due to a lack of awareness, this is suggestive of the need for greater transparency amongst public officials in their decision making processes and the impacts of the decisions that they make and the dissemination of that information to interested parties. If the lack of dissatisfaction is due to a disinterest, this may suggest a greater fundamental shift in the views of adolescence and how justice systems should most appropriately respond to their legal transgressions.

CHAPTER 14  
FORENSIC ASSESSMENT'S ROLE IN MORE RATIONAL TRANSFER-THE RISK OF  
DANGEROUSNESS

**The Benefits of Evaluation**

Evaluations can be used to provide decision makers with information relevant to legal decisions about cases (Grisso, 1998; Grisso, 2000). While legally relevant criteria have to be considered in decisions, they may serve as inadequate and unfortunate considerations. For example, neither the prosecutorial merit of a case nor the desirability of trying cases with youthful and adult codefendants in the same court system relates to such concepts as amenability to rehabilitation and risk of future harm to others. If conducted without appropriate safeguards and professional standards, assessments may contribute to injustice for youths. If conducted appropriately, however, they have the potential to help decision makers make better decisions, and for future laws and statutes to become more rational (Grisso, 2000). Clarifying transfer criteria and how such criteria are conceptualized could permit a return to case by case waiver that considers individual youths and their circumstances, rather than the more wholesale transfer methods currently employed by juvenile justice systems. Transferring youths utilizing clearer transfer criteria and with clarification as to how those criteria are conceptualized could assist in insulating from the criminal justice system those youthful offenders at lower risk for reoffending, of greater amenability to rehabilitation, and those too immature to be held fully culpable for their actions (Grisso, 2000; Salekin, 2002). Due to the profound impacts on youthful offenders' lives and liberties, it seems appropriate that legal norms to guide and contain legal discretion be better articulated (Allen, 2000).

Assessment can also help decision makers by providing for a structured process and framework in which transfer decisions are made more accurately and rationally as to the legally relevant criteria for transfer (Grisso, 2000). Assessment may also assist in examining the higher recidivism rates for transferred youths. If substantial differences between transferred and non-transferred youths can be identified via forensic assessment methods, it suggests that assessment can perhaps more accurately identify high-risk youths. Improvements in the ability to determine risk level could provide for the transfer of high-risk youths rather than the mass wholesale transfer of youths of all risk levels based on such broad criteria as age and offense considerations (Myers, 2001). This could assist justice systems in avoiding the lengthy incarceration of low-risk youths. Such incarceration wastes youths' lives and poses an unnecessary and substantial financial cost to society (Grisso, 2000).

Prosecutors pay lip service to the idea that serious and violent youthful offenders should be considered in their greater individual and contextual circumstances. While some prosecutors suggested that they do consider youths in a broader context, they reported the essential criteria in transfer decisions being the seriousness of the offense, the frequency and severity of prior offenses, and the wishes of victims and defendants. While several suggested that they consider other factors, those other factors do not seem to be of primary concern, or even much concern for that matter. Even when readily available and in a structured and standardized format, broader contextual information tends to be ignored with favor being given to the consideration of legal records. Consider prosecutors' use of the Positive Achievement Change Tool for example. It is administered at intake to all youths referred to Florida's Department of

Juvenile Justice and identifies risk levels of youths, as well as their risk factors and criminogenic needs that may serve as targets for intervention, yet few prosecutors report using such information in transfer decisions. Rather than using this readily available tool to supplement the information contained in youths' legal records, prosecutors disregard it.

### **The Risk of Dangerousness**

Risk of dangerousness refers to the likelihood of recidivism or future acts of violence by youthful offenders (Salekin et al., 2005). Awareness of the characteristics distinguishing serious and violent offenders may enable identification of those youthful offenders at greater risk for later offending behaviors. It can also inform such decisions as release conditions pending trial, and appropriate levels of security and control (Otto & Borum, 2004). It is true that serious and violent offending is predicted by earlier onset and escalation of offense seriousness, but many such youths desist from crime; it is also true that a number of other variables improve predictive ability (Fried & Reppuci, 2002; Grisso, 1998). Clear from the empirical literature is that a number of variables are statistically predictive of serious and violent offending by youths. Important for assessment purposes is that youths identified as high risk on the basis of such variables are likely to be serious and violent offenders. It is also important that assessment using such variables identifies a significant portion of youths going on to commit serious and violent offenses as being at high risk for such behaviors. These needs are made more difficult by the low base rate of serious and violent offending among youthful offenders in general. Prediction is made more difficult due to many juvenile offenders desisting from their offending behaviors as they age out of adolescence (Grisso, 1998; Grisso, 2000; Lipsey & Derzon, 1998; Snyder & Sickmund, 2006). Of youths committing violent

acts by eighteen years of age, only two to three of every ten are arrested in adulthood for violent acts, suggesting that many youths violent in adolescence are not likely to pose substantial long-term risks for violent offending (Grisso, 1998). There are several questions relevant to transfer decisions that evolve from these findings. Which predictors have the strongest empirical relationship with subsequent serious and violent offending, and are they sufficiently predictive to be used in identifying those youthful offenders posing the greatest risk to the safety of the community? Another concern is to what extent the predictive factors are malleable and can serve as targets for intervention (Hawkins, Herrenkohl, Farrington, Brewer, Catalano, & Harachi, 1998; Lipsey & Derzon, 1998).

Variables predicting serious and violent offending can be categorized using Bronfenbrenner's (1979) social ecological model with there being risk factors at all levels of youths' social ecologies. Serious and violent offending occurs as a result of interactions between and among the systems in youths' social ecologies (Fried & Reppuci, 2002; Hawkins et al, 1998). Macro/exosystem factors relate to cultural and societal level influences, whereas microsystem factors relate to family, peer, school, and neighborhood influences. Individual level factors involve biological, cognitive, and emotional variables (Fried & Reppuci, 2002). Interventions are most easily targeted at youths' microsystems and individual factors.

Meta-analytic review suggests that many of the variables predicting serious and violent offending among youths ages fifteen to twenty-four are indeed malleable and thus appropriate targets for intervention. This is particularly true for those variables having the most predictive validity. Meta-analytic review also indicates that predictor

variables vary by age (Le Blanc, 1998; Lipsey & Derzon, 1998). Serious and violent offending for youths ages fifteen to twenty-four are best predicted between the ages of six and eleven by general offenses and substance use, then by gender, family socioeconomic status, and having antisocial parents. Aggression and ethnicity follow in predictive ability. Psychological conditions, parent-child relations, social ties, problem behaviors, school attitude/performance, medical/physical problems, intelligence quotient scores, and other family characteristics also have some predictive ability, followed by coming from a broken home, and having abusive and antisocial peers. In contrast, the most important predictors of serious and violent offending at ages fifteen to twenty-four present in youths ages twelve to fourteen are social ties and antisocial peers followed by general offenses. Aggression, school attitude/performance, psychological conditions, parent-child relations, gender, and physical violence make up the third tier of variables in rank order of predictive ability. These predictors are followed by having antisocial parents, having committed crimes against persons, problem behaviors, and intelligence quotient scores. The final set of predictor variables for this age group includes coming from a broken home, family socioeconomic status, having abusive parents, other family characteristics, substance use, and ethnicity. Worth noting is the diagnostic value of problematic social and peer relationships strength in older youths as to the predicting of subsequent serious and violent offending. It suggests that the disruption of antisocial networks and those networks' support for the commission of antisocial behaviors may be promising in both tertiary interventions with older youths and in preventative interventions with younger youths (Lipsey & Derzon, 1998).

When considering risk factors, it is also important to consider the role of protective factors. Protective factors are those factors cancelling or attenuating risk factors' influences. Some protective factors include appropriate supervision/disciplinary practices, good parent-child relations, social competence, intelligence, positive peer relations and response to authority, good educational performance and commitment to school, and effective use of leisure time (Grisso, 1998; Salekin, 2002).

Interviews with prosecutors were indicative that they are not likely to be particularly adept at identifying those youthful offenders at high risk for subsequent offending. Despite this, prosecutors endorsed their abilities to make clinical judgments by suggesting that they should be decision makers because they know youths better than other justice system participants. They attributed this greater knowledge to working in the trenches and being on the front lines of cases. Actuarial instruments designed to assess risk of dangerousness are not frequently used by prosecutors in transfer decisions despite their widespread availability. This is out of touch with social science findings showing actuarial assessment to be not only relatively accurate in assessing juvenile risk, but also superior in efficacy to clinical methods of risk assessment (Andrews & Bonta, 2006; Andrews, Bonta, & Wormith, 2006; Hoge, 2001).

If prosecutors want to enhance public safety, they need to transfer only the most extreme offenders as transfer not only fails to provide for general deterrence, but also fails to provide for specific deterrence and often even results in transferred offenders reoffending more quickly, with greater frequency, and in a more serious manner than non-transferred offenders. Thus, it seems that the only benefits to be gained from transfer occur when only those youths beyond both the rehabilitative and control scope

of the juvenile justice system are transferred to the criminal justice system. While actuarial instruments exist to assist in identifying those youths, prosecutors still rely on their own clinical assessment despite actuarial assessment's superiority.

### **Florida Prosecutors and the Utilitarian Perspective**

A utilitarian perspective suggests a limited role for transfer. Transfer could provide for meeting the goal of greater public safety by the selective identification and removal from the juvenile system of those youthful offenders beyond its rehabilitative and control scope. The effect will only be seen, however, if the criminal justice system is better able to either contain an offender's risk, or to otherwise mitigate that risk. To be effective would require that only the most inappropriate offenders be removed from the juvenile justice system. This is problematic. Serious and violent offending is relatively rare among youthful offenders. Low base rates make identification of those likely to continue in such behaviors difficult. A concern in attempting to provide for greater public safety by identifying those offenders most likely to reoffend is to accurately identify those at high risk as being high risk without misidentifying lower risk youths as high risk. Another consideration is the ability to mitigate and contain risk. Even if offenders are high risk, they may be less likely to reoffend if effective rehabilitation programming is provided to them or if effective control and surveillance options are utilized that prevent them from reoffending.

There is a disconnect between the factors that Florida prosecutors and the extant literature identify as predictive of serious and violent offending in late adolescence and early adulthood. Prosecutors suggested that having witnessed or been a part of violence in the home, exposure to violence in the media and video games, lack of parental support, and involvement with antisocial peer groups predict serious and

violent offending. Meta-analytic review suggests that most of the predictors cited by prosecutors ranked at the lower end of factors rank-ordered in predictive ability. When interviewed, many prosecutors suggested that serious and violent offenders are not likely to benefit from rehabilitative services. They indicated that by virtue of having committed serious and violent offenses, youthful offenders were no longer amenable to treatment efforts. The extant empirical literature refutes this belief. Many of the strongest risk factors are not only diagnostic of serious and violent offending in late adolescence, the point in time at which violent crime often peaks, but are also malleable and can thus serve as targets for rehabilitative efforts.

Only a small number of prosecutors indicated that they base transfer decisions at least in part on information contained in assessment reports despite all youths referred to the Department of Juvenile Justice undergoing assessment at intake via the Positive Achievement Change Tool. The assessment is meant to identify youths' risks and needs, and to provide a structure guiding treatment recommendations in order to enhance the likelihood of youths becoming involved in appropriate programs and services based on their risks and needs. The failure of prosecutors to utilize such information already readily available to them may be indicative of a larger problem. Prosecutors have isolated themselves from outside review as to how they make decisions regarding direct file transfer. Unaware of sentencing outcomes, as well as the effects of those sentences on the offense rates of the general juvenile population, as well as the recidivism rates of transferred youths, prosecutors have also insulated themselves from significant gains in the social science world, particularly those from the developmental psychology and forensic assessment fields. On the other hand, it could

be that they disagree with the new found knowledge of these fields, are aware of the gains but simply do not care enough to change their practices, or simply prefer to make decisions on a clinical level as they see fit and possibly as it benefits them, rather than on an actuarially guided and evidence-based practices level.

CHAPTER 15  
FORENSIC ASSESSMENT'S ROLE IN MORE RATIONAL TRANSFER-  
SOPHISTICATION-MATURITY AND TREATMENT AMENABILITY

**Conceptualization of Sophistication-Maturity and Treatment Amenability**

In addition to risk to society, transfer decisions should pay particular attention to the factors of sophistication-maturity and amenability to treatment. When making decisions, court actors should make clear how relevant constructs are measured and the role that those constructs played in the transfer decision (Otto & Borum, 2004). There is a need for delineation of how these constructs are presently measured in transfer decisions, as well as continuing delineation of how they should be measured in the future as social science advances their understanding.

Sophistication-maturity refers to emotional and cognitive maturity with its assessment being a difficult endeavor (Salekin et al., 2005). Sophistication-maturity suggests greater involvement in advanced criminality, intellectual and emotional intelligence, the understanding of behavioral norms, the ability to identify alternative actions, and the ability to consider situations and potential consequences of actions within a larger context (Salekin, 2002).

Treatment amenability refers to the likelihood of responsiveness to treatment in consideration of treatments available in the community at the time of adjudication for legal purposes (Salekin et al., 2005). In contrast, developmental psychology's consideration of amenability focuses on the potential for change, regardless of either exposure to intervention or the type of intervention (Steinberg & Cauffman, 2000). Clearly, there exist different standards in the legal and developmental psychology fields. Like sophistication-maturity, the assessment of amenability to treatment often poses a significant challenge. Some characteristics that have been suggested to imply some

degree of amenability include being intelligent, verbal, anxious about the offense, insightful, aware of difficulties, motivated to change, cooperative, compliant with rules, expressing empathy, knowing right from wrong, and having a stable and supportive family (Salekin, 2002). Age may also be considered in amenability considerations with the personality trait literature suggesting that individuals become less malleable with age, but not suggesting that change is impossible. The psychological literature, while suggesting that early intervention is often more successful than later intervention, does not suggest that amenability varies as a function of age. As such, the psychological literature does not suggest that there is an appropriate cut-off age for the denial of rehabilitative services on the basis of a lack of amenability to such services (Steinberg & Cauffman, 2000).

Interviews with prosecutors suggest unawareness, disagreement, or disregard for much of the social science literature regarding the potential for change. Many prosecutors suggest that youthful offenders may be more malleable and responsive to intervention efforts than adult offenders, but that these differences dwindle, disappear, or are no longer relevant once youths commit serious and/or violent offenses. They suggest that the very fact that youths commit serious and/or violent offenses suggest that they are not amenable to treatment, that the causes of such actions cannot be altered or addressed by rehabilitative efforts. Yet the social science literature suggests that many of the most predictive variables as to subsequent serious and violent offending are the most malleable. Prosecutors fail to specify how it is that malleable factors cease to be malleable once serious and violent offenses have been committed.

Prosecutors also suggest that the availability of rehabilitative services does not impact transfer decisions. How can this be? If prosecutors are charged with protecting the public, and rehabilitative services are not available in the juvenile justice system, this suggests that non-transferred youths receive no services, while also being subject to the lesser control mechanisms available to the juvenile justice system. It is unlikely that prosecutors believe that providing for neither the adequate rehabilitation nor the adequate control of youthful offenders achieves greater public safety, yet they suggest that the availability of rehabilitative services does not factor into transfer decisions.

If the availability of rehabilitative services does not factor into transfer decisions, it follows that amenability to treatment also does not factor into transfer decisions. Consideration of amenability to treatment in transfer decisions necessitates an awareness of the treatments available in the community at the time of adjudication. This is consistent with prosecutors' indications as to the factors that they take into account when deciding whether to charge a youthful offender in the juvenile or criminal justice system. There was little, if any, mention of the availability of treatment resources, or the amenability of youthful offenders to treatment, as transfer considerations.

Some prosecutors suggested that greater consistency as to both the types of youths and offenses transferred would be desirable. They suggested that this might be achieved via clearer policies and guidelines regarding those youths to be transferred. Prosecutors are granted broad discretion in transfer decisions, with very vague guidelines as to the criteria for transfer, as well as to how those criteria are to be assessed. The threshold criteria for transfer for any felony offender sixteen or

seventeen years of age is whether the prosecutor determines that it would be in the interest of public safety to consider or impose adult sanctions. Statutes provide no guidelines as to how prosecutors are to determine what would be in the interest of public safety. This creates considerable potential for abuse of transfer provisions and vastly different transfer policies by circuit. What clearly emerges from this extremely broad provision for discretion in direct file transfer is another advantage of more standardized assessment of relevant constructs and clearer delineation of how those constructs are to be assessed and utilized in decision making. Such assessment provides for a greater likelihood of consistency across decision makers and situations (Hoge, 2008).

An effort to conceptualize the constructs of risk of dangerousness, sophistication-maturity, and treatment amenability and to formulate an instrument for their assessment can be seen in the Risk-Sophistication-Treatment Inventory (Salekin, 2004). The Risk-Sophistication-Treatment Inventory consists of forty-five items grouped into clusters of three that are then grouped into the three constructs. Clusters for the risk construct include violent and aggressive tendencies, planned and extensive criminality, and psychopathic features. Clusters for the sophistication-maturity construct include autonomy, cognitive capacities, and emotional maturity. Clusters for the treatment amenability construct include psychopathy, responsibility and motivation to change, and consideration and tolerance of others. Instruments such as the Risk-Sophistication-Treatment Inventory attempt to gather meaningful and relevant information and to relay it in a format clearly demonstrating its relationship to potentially relevant legal constructs

in order to provide assistance to courtroom decision makers in disposition and transfer decisions (Salekin et al., 2005).

### **Some Additional Considerations Regarding Transfer Criteria and Sanctions**

An additional consideration in forensic assessment is the selection of resources used to inform the legally relevant criteria. In conducting evaluations, multiple sources of information should be considered. Assessors should take into account not only what youths say, but also what collateral informants such as family members and teachers say (Grisso, 1998; Le Blanc, 1998; Otto & Borum, 2004). It is important to speak with youths regarding their offenses and circumstances. While they may distort or minimize events, they may also provide more information than can be learned from other sources (Grisso, 1998). Interviews with youths may benefit from interviewers probing for information pertaining to relevant risk and protective factors, as well as factors relevant to sophistication-maturity and treatment amenability considerations. Legal, social service, treatment, and school records can also serve as valuable sources of information. Assessors should also be cognizant of youths' situational, i.e., social and contextual, factors. Having multiple sources of information from multiple settings allows for greater consideration of situational factors and how they impact youths' risk levels (Grisso, 1998; Otto & Borum, 2004). Antisocial behaviors occur partly as a function of not only the individual characteristics of youths, but also partly as a function of the social contexts in which they live and to which they react. There is a reciprocal relationship between youths and their environments. Behavior varies based not only on what youths bring to their situations, but also those situations' particular contingencies and social conditions (Grisso, 1998).

This is another area in which Florida prosecutors perform poorly. In making transfer decisions, they report utilizing police reports, and victim and witness statements as their primary sources of information. While a few did mention utilizing assessment reports provided by the Department of Juvenile Justice, many indicated that they would consider mitigating factors if brought to them by the public defender or another party with an interest in the youth remaining in the juvenile justice system. There was little mention of speaking with offenders, their families, or other parties familiar with the youths and having insights into areas of youths' strengths and weaknesses. Despite the serious nature of potential transfer to the criminal justice system and its potential for severe disruption of youths' development and legal and life outcomes, prosecutors failed to suggest that the consideration of protective and/or mitigating factors might be important. There was even a suggestion made that it is not within prosecutors' duties and obligations to consider such factors; rather it is the job of the public defender to provide that type of information if it is to be considered. While the Department of Juvenile Justice endorses a balanced approach which focuses on public safety, departmental accountability, and providing youths with the chances to become productive adults, juvenile prosecutors appear to be out of touch with these guiding principles. While they have a duty to protect the public, they should also be charged with a duty to consider the well-being of those youths over whom they have such great power.

In addition to the need for the clarification of transfer criteria and how those criteria are to be measured and the sources used, also in need of delineation are how the severity and the context of penal sanctions should be provided for and administered

within the juvenile courts, as well as the criminal courts, especially when direct file and legislative exclusion transfers have come to supersede the traditional role of discretionary judicial transfer. The criminal justice system in particular needs to establish the standards for diminished culpability resulting from a lack of maturity for those youthful offenders transferred from the juvenile justice system to the criminal justice system. Also in need of clarification is why youthful offending is considered in isolation from other areas of law pertaining to developmental concerns. Crime policies are inconsistent with otherwise widely accepted policies and assumptions about age and maturity in other regulatory domains. Non-adults in other domains, the same youths can be adults in the criminal domain. How this can be requires not only explanation, but also justification (Zimring, 2005).

## CHAPTER 16 CONCLUDING REMARKS AND FUTURE DIRECTIONS FOR RESEARCH AND PRACTICE

The provisions increasing and easing the transfer of youthful offenders from the juvenile justice system to the criminal justice system counter cultural and psychological conceptions of childhood and adolescence. Considering youths' cognitive and psychosocial maturational capacities, it makes little sense to hold them as fully culpable for their legal transgressions as adults are held. Transferring greater number of youths, youths often not beyond the rehabilitative and direct control options available within the juvenile justice system, negatively impacts their life chances. As such transfer tends to result in transferred youths reoffending more often, more seriously, and more quickly, and having greater chances for later incarceration than non-transferred youths, it seems logical then, that transfer should be used more selectively and with greater consideration for the individual and contextual characteristics of youths on a case by case basis. Placing the transfer decisions in the hands of biased parties such as legislatures and prosecutors is unwise and irresponsible, particularly if there are not provisions in place to examine the effects and impacts of the decisions made by such parties. This is an area in which Florida needs particular improvement. Prosecutors ultimately determine whether or not to file charges in juvenile or criminal court, yet the Department of Juvenile Justice neither requires any information from prosecutors as to the number of or rationale behind transfers, nor does it examine and disseminate to prosecutors the impact of such transfers on public safety or the well-being of transferred youths. This needs to change. At minimum, prosecutors should be required to explain why the youth is inappropriate for juvenile justice system processing and how the public interest is better served by criminal justice system processing. They should also be

required to suggest what criminal justice system services may be most appropriate so as to lessen the potential harms of processing youthful offenders in the adult system. Also needing to change is the Department of Juvenile Justice having little, if any, recognition of who the juvenile justice prosecutors are that it should be educating and how to contact them.

The lack of communication between the Department of Juvenile Justice and juvenile court prosecutors may be indicative of a greater lack of interagency communications and operations in the state in general; there may be a lack of interrelations between those Florida agencies dealing with youths and society with the state essentially permitting them to operate in limbo. If this is the case, while it may be consistent with the often decentralized decision making seen in juvenile justice systems, it is no wonder that Florida's juvenile justice system actors fail to incorporate recent social science developments and evidence-based practices into their decision making and dispositional processes. That prosecutors make transfer decisions based primarily on the seriousness of the instant and past offenses, whether weapons were involved, and the age of offenders, with a lack of knowledge as to whether or not those characteristics place youths at greater risk for future offending, and with a seemingly blatant disregard for or unawareness of extended jurisdiction provisions, is unfortunate for youths in that it inappropriately transfers many better served by the juvenile justice system to the criminal justice system, and also unfortunate for the public in that such transfer provides for a lesser degree of public safety.

These concerns lead to several questions that may be worth further exploration. How does the structural relationship between circuit court juvenile prosecutors and the

Department of Juvenile Justice affect how they relate to and work with one another? Are prosecutors allowed to function without oversight in the area of transfer with the understanding that they will be prone to more oversight in other areas, perhaps areas less prone to political, public, and media pressures? Is Florida's Department of Juvenile Justice even able to oversee the actions of juvenile court prosecutors or set aims and directions for what they hope to accomplish when it does not know who they are or have contact information for them? How does it expect to be able to disseminate information to them regarding these goals or advances in social science and how to incorporate evidence-based practices into their daily decisions; is this even an aim of the Department of Juvenile Justice? Given what is known about development and the negative impacts of transfer on both public safety and the life outcomes of transferred youths, why is there such a disconnect between prosecutorial practice and the social science findings, and how can this disconnect be remedied? Under what circumstances is this disconnect currently diminished in practice and how can that be extended to other justice system actors and situations? For example, why do certain prosecutors seem to be more aware of and willing to consider actuarial assessment findings than others? Has there somehow been a better flow of information to these prosecutors as to the ability of such instruments to inform decisions about the extent to which youths need surveillance, control, and rehabilitative interventions? Under what circumstances and how often do criminal court judges exercise their inclusive blended sentencing authority? What is the rationale behind such decisions and do the developmental and criminal tendency outcomes differ for such transferred youths? Another consideration regarding transfer might be whether prosecutorial discretion regarding transfer should

be diminished and granted more broadly to legislatures if the primary reasons for transfer include seriousness of the instant and prior offenses, use of weapons, and the age of charged youths. These considerations do not require discretion in their assessment. It may also be informative to determine whether youths transferred via statutory exclusion fare better in life outcomes or criminal tendencies than those transferred via direct file transfer.

Considering the high stakes transferred youths are subject to, arguments should be heard both for and against transfer when transfer is being considered. Unbiased and impartial parties should make such decisions especially when other parties such as prosecutors are so reluctant to having their discretion reviewed. Florida's current statutory arrangements permit great prosecutorial discretion in transfer decisions, yet provide few, if any provisions, for the review of such decisions. The rationale behind such discretionary decisions is held close to the vest by Florida's juvenile court prosecutors with there seeming to be little current interest by the state in understanding this rationale. This lack of interest pervades despite prosecutorial discretion and beliefs often leading to seemingly poor decisions and detrimental outcomes for both transferred youths and society.

Judges might be able to fill the role of more appropriate decision makers provided that they have access to appropriate resources to assist in such decision making, resources such as forensic assessment referral and continuing education opportunities in such areas as developmental psychology and forensic assessment techniques and tools. The state should provide for this. A return to case by case discretionary judicial waiver with greater consideration for youths and their individual contexts and

circumstances could provide for more equitable justice for youthful offenders, as well as enhancing their life chances, while also providing for the greater safety of the community.

APPENDIX A  
ORIGINAL SCHEDULE OF INTERVIEW QUESTIONS

**Demographics**

Name  
Position  
Circuit  
Age  
Gender  
Race  
Ethnicity  
Length of time as an assistant state attorney  
Length of time in juvenile division  
Length of time as division chief  
Ever a juvenile defense attorney  
Proportion of caseload that is juvenile

**Philosophical Orientation**

How would you describe your personal philosophy regarding how justice systems should respond to juvenile offenders? How is this consistent with and different from the philosophy in your circuit, as well as Florida's justice system as a whole?

What distinctions do you see between the juvenile and criminal justice systems? Should they continue to differ or should efforts be made to eliminate those differences? Why or why not?

What are appropriate maximum ages of original and extended jurisdiction for the juvenile court?

How does age relate to the danger an offender poses to the community, to an offender's amenability to treatment, to an offender's psychological maturity?

What should be the goals of the juvenile justice system and how can they best be achieved? Do the goals differ for serious and violent offenders? Do the ways in which we achieve these goals differ for serious and violent offenders?

How effective is the juvenile justice system in meeting those goals for serious and violent offenders? How might it be made more effective? What are your thoughts on the criminal justice system's ability to meet those goals?

Do juveniles and adults differ in the extent to which they choose and cause their own behavior? If so, how?

Some suggest that juveniles should be held less accountable and proportionately less punishable for their offenses than adult offenders. How do you react to such claims?

## **Rehabilitative Services**

How do juveniles and adults differ in their malleability toward potential interventions available?

To what extent should rehabilitative services be offered to juveniles in contrast to adults?

Do you believe that serious and violent offenders can benefit from rehabilitative programs available in the juvenile justice system; can the causes of serious and violent offending serve as targets of intervention-why or why not?

How effective are those services in addressing the causes of serious and violent offending?

How available to your circuit are rehabilitative services for serious and violent offenders?

How does your circuit's access to programming options compare to the options available to other circuits?

What changes would you like to see in program options available to your circuit?

How familiar are you with the rehabilitative services available to your circuit for serious and violent offenders?

How does your circuit's access to programming options impact the likelihood of transfer to criminal court?

How likely are transferred offenders to receive rehabilitative services in the criminal justice system?

How would you describe the differences in the rehabilitative services available to the juvenile and criminal justice systems in your circuit?

How do the surveillance and control options available in the juvenile justice system affect your decisions regarding potential transfer cases?

## **Spheres of Influence**

What are the views of the general public on rehabilitation for serious and violent offenders? What about punishment?

Describe how public opinion, media attention, and political considerations/pressure affect your decision making regarding potential transfer to criminal court.

## System

Who makes the transfer decision? Who prosecutes transferred cases? If the criminal court prosecutor does not wish to file on it, is it returned to the juvenile court prosecutor? Is the transfer decision driven in part by what the criminal court will file on?

What proportion of eligible cases do you transfer via direct file and how do caseload considerations impact this decision?

Do you ever consider filing lesser charges to avoid statutory exclusion transfer? Do you think this happens often in your circuit? What about in other circuits?

What are your thoughts on threat of transfer as a plea bargaining tool? How often do you think transfer is used as a plea bargaining tool in your circuit? What about in other circuits?

Does the ease of obtaining a conviction in juvenile versus criminal court impact transfer decisions? If so, how?

Discretion regarding transfer can be taken away by the legislature or given more broadly to either judges or prosecutors. Who do you think should most often decide who is transferred?

What are the strengths and weaknesses of statutory transfer, of judicial transfer, of prosecutorial transfer? When might you use judicial waiver instead of direct file?

If considered on a case by case basis, how likely is it that offenders transferred via statutory, judicial, and prosecutorial transfer would be the same offenders? What accounts for these differences; what different considerations impact these decisions?

How do offenders transferred in your circuit compare to those transferred in other circuits? What accounts for the similarities and differences?

Should more or fewer juveniles be transferred to the criminal justice system? Why? How has your view on this changed during your time as a juvenile prosecutor?

How adequate are direct file transfer provisions and should they allow for younger offenders and/or a broader range of offenses to be transferred?

How well equipped is the criminal justice system to deal with juvenile transfers? How does your circuit protect juveniles from the potential harms of the criminal justice system?

## **Intervention Options**

How would you describe the juvenile justice system's ability to punish and sanction offenders in comparison to the criminal justice system's ability to do so? How does this impact transfer decisions?

How should punishment and sanctioning be used with serious and violent offenders?

What are the goals and actual effects of punishment and sanctioning with serious and violent offenders?

How do rehabilitative efforts differ in their goals and actual effects with serious and violent offenders?

What advantages does transfer to criminal court regarding rehabilitative, control, and incapacitative options have in comparison to retaining serious and violent offenders in juvenile court? What disadvantages does transfer have?

What are the goals of transferring offenders to criminal court? How effective is transfer in meeting those goals and does this impact your decision making regarding potential transfers?

How likely are serious and violent offenders to continue such behaviors into adulthood? How does transfer impact this likelihood? How might providing for a criminal record be beneficial?

## **Policy**

How would you describe your circuit's formal policy regarding direct file transfer? Who developed the policy and how? What parties were involved?

How would you describe any informal policies or guidelines regarding direct file transfer?

Does direct file transfer in practice differ from formal policy? If so, how?

What are the differences and similarities between your circuit's policy and those of other circuits? What are the advantages and disadvantages?

How hard is it to fairly implement transfer procedures to offenders?

Some suggest that transfer laws have the potential for abuse. How do you react to such statements? How does your circuit control for potential abuse of direct file transfer?

Should greater consistency be promoted regarding transfer practices? How could this be done?

## **Judgment and Assessment**

How effective are juvenile court judges and juvenile probation officers in accurately identifying the rehabilitative and control and surveillance needs of serious and violent offenders, and making appropriate referrals?

What sources of information do you consider in transfer decisions? With whom do you confer regarding potential transfers?

Do you have access to adequate information regarding potential transfers?

What factors do you consider, and how important are they in deciding whether or not to transfer offenders? How do you assess those factors? How capable are you of assessing such factors?

How clear are the criteria serving as the basis for transfer decisions? Would evaluative standards assist in making transfer decisions?

Some suggest that differential treatment of offenders based on individual and contextual considerations is problematic and unfair. How do you react to such statements? How do you control for this?

Is it more appropriate to use social or legal criteria in transfer decisions? Why?

How likely would you be to use assessment tools in evaluating social criteria in potential transfer cases? What might the advantages and disadvantages be?

Should direct file transfer be subject to contention by offenders? Why or why not?

Of eligible offenders, what cases are you most likely to transfer/least likely to transfer and why?

## **Familiarity**

How important is the youth's developmental progress and needs in your decision about transfer? How well do you understand their developmental progress and needs of youths?

How familiar are you with risk factors for serious and violent offending? Are these incorporated into your decision about transfer?

How familiar are you with protective factors that inhibit serious and violent offending? Are these incorporated into your decision about transfer?

What individual and contextual factors increase the risk of serious and violent offending?

What individual and contextual factors make an offender criminally sophisticated?

What individual and contextual factors make an offender mature?

What individual and contextual factors make an offender inamenable to rehabilitative efforts available in the juvenile justice system?

How does transfer generally impact recidivism rates and serious and violent offending by the juvenile population?

What happens to transferred youths in terms of conviction rates and sentencing? In comparison to similar juveniles and adults, are they more likely to receive harsher sanctions, be incarcerated, or be incarcerated for longer periods? What accounts for differences?

Is there any follow-up regarding transfer cases in your circuit, other circuits, state-wide? If not, should there be? If so, how are these results disseminated and how do they impact your decision making?

What are the benefits and problems of transferring offenders and how do these impact your decisions?

### **Scale Questions**

On a 1-5 scale, with 1 being not at all and 5 being very much so, how would you rank the juvenile justice system's effectiveness in meeting the following goals:

- general deterrence
- incapacitation
- maintaining social order
- protection of society
- punishment
- rehabilitation
- specific deterrence

On a 1-5 scale, with 1 being not at all important and 5 being very important, how important are the following factors when making transfer decisions:

- amenability to rehabilitation
- desirability of disposing of cases with codefendants in the same court
- prior offense history
- prosecutive or prosecutorial merit of the case
- public safety/offender's threat to the community
- seriousness of the offense
- sophistication and maturity of the offender
- whether the offense was violent, premeditated, or willful

What makes a case have greater prosecutive or prosecutorial merit?

How do you determine offense severity?

On a 1-5 scale, with 1 being not at all important and 5 being very important, how important are the following factors when making transfer decisions:

- age
- availability of more severe punishments in the criminal justice system
- available services in the juvenile justice system
- dispositional alternatives in the juvenile justice system
- family resources
- family stability
- family willingness to comply with control measures
- family willingness to comply with rehabilitative services
- history of family abuse or neglect
- length of prior record
- media pressure
- mental illness
- mental retardation
- nature of prior offenses
- offense severity
- overcrowding in juvenile justice facilities
- overcrowding in juvenile justice programs
- physical health
- physical maturity
- political pressure
- prior commitments
- prior rehabilitative services involvement
- psychosocial maturity
- public pressure
- public safety
- rate of violent crime
- record of substance use/abuse
- response to prior rehabilitative services
- restitution potential
- retributive potential
- school attendance
- school disciplinary records
- school grades
- school record
- substance abuse
- type of offense
- victim preference

How important are the following in determining offense severity, 1 being not at all important and 5 being very important:

- drug-related offense
- extent of victim injury

- gang-related offense
- offense against person
- possession of firearm during offense
- possession of weapon during offense
- premeditated or willful offense
- property offense
- violent offense

In what percentage of potential transfer cases, do you check:

- academic functioning
- intellectual functioning
- juvenile court records
- personality factors
- school records
- social service records
- substance use/abuse
- vocational functioning

In what percentage of potential transfer cases do you confer with:

- colleagues
- criminal prosecutors
- judges
- the offender
- the offender's parent(s) or guardian(s)
- other family members
- previous treatment providers
- school officials
- supervisors

With 1 being not at all and 5 being very much, how strongly do you agree with the following:

- The primary goals of transferring offenders include:
  - to provide for better treatment options for serious and violent juvenile offenders
  - to provide for greater retribution
  - to provide for public safety via general deterrence
  - to provide for public safety via incapacitative effects
  - to provide for public safety via specific deterrence
  - to provide for severe punishment of serious and violent offenders

With 1 being not at all and 5 being very much, how strongly do you agree with the following:

- Transfer benefits include:
  - accountability
  - additional rights granted to juveniles to ensure against wrongful conviction
  - better chances of effective rehabilitation for serious and violent offenders
  - criminal records for offenders

freeing of scarce resources for other juveniles in need  
good social control mechanisms to alleviate public fear of juvenile crime  
harsher sanctioning  
longer potential periods of direct control  
longer periods of probation monitoring  
longer sentences  
lower crime rates through general deterrence  
lower crime rates through specific deterrence  
more accessible rehabilitative services  
public appeasement and satisfaction  
public safety  
retribution  
sending a message as to practical consequences of crime  
sending a message as to the intolerance of serious and violent offending  
serving as an effective mechanism to provide for victim satisfaction  
swifter and harsher consequences  
swifter consequences for violations of supervision terms  
transfer of offenders to facilities more adequately prepared to handle them than available in the juvenile justice system

With 1 being not at all and 5 being very much, how strongly do you agree with the following:

Problems of transfer include:

basing decisions on age rather than rehabilitative needs  
decisions being based on lack of funding for programs in the juvenile justice system  
failure to address the problems leading to criminal behavior  
failure to consider offenders in the totality of their circumstances  
failure to consider psychological maturity  
focusing on offenses rather than offenders/failure to consider all relevant criteria  
impediments to normative proceeding through the maturational process  
inability of criminal justice system personnel to understand and resolve youth problems  
its use as a threatening tool to induce plea bargaining  
limited rehabilitative options  
loss of civil rights  
negative effects on employment prospects  
permanent record for the offender  
the dumping of difficult offenders into the criminal justice system so that human services personnel do not have to deal with them

On a 1-5 scale, with 1 being not at all, and 5 being very well, how strongly does the presence of the following variables in early and middle adolescence (12-14) predict serious and violent offending in late adolescence and early adulthood (15-24):

aggression  
antisocial peers

coming from a broken home  
ethnicity  
family socioeconomic status  
gender  
general offense history  
having abusive parents  
having antisocial parents  
having committed crimes against persons  
intelligence  
parent-child relations  
physical violence  
problem behaviors  
psychological conditions  
school attitude/performance  
social ties  
substance use

Do you have any additional comments or suggestions that you would like to share?

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