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The purpose of this research is to examine youth aged 13 through 15 eligible for waiver to Superior Court in North Carolina between 2005 and 2007 to determine if waivers vary by gender, race, and age when controlling for the legal variables of offense seriousness and prior record. Using the population of all youth eligible for waiver during that period, I examine the relationship between each of the independent variables and waiver, and then again when controlling for each of the legal variables. The results suggest that the most operative factors in determining waiver are the legal variables of offense seriousness and prior record, although a juvenile's race and age also affect the likelihood of waiver.

AN ANALYSIS OF YOUTH WAIVED TO SUPERIOR  
COURT IN NORTH CAROLINA

By

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## CHAPTER I

### INTRODUCTION

Over the last century, the American public's perception of juvenile crime and juvenile offenders has changed dramatically (Bishop and Frazier 1991; Feld 1998; Kupcheck 2006). A separate system of juvenile justice was developed after reformers recognized that children and adolescents are not fully capable of understanding their actions in the same manner as adults and therefore should not be held criminally responsible for those actions (Kupcheck 2006). Initially, the juvenile system focused on the offender and his/her needs, rather than the offense and retributive penalties (Feld 1998; Jordan 2006; Kupcheck 2006; McCord, Widom, and Crowell, 2001). Rehabilitation, not punishment, was the primary goal of the system in hopes that the juvenile could grow into a productive and positive adult member of society.

During the 1980s and '90's, an increase in juvenile crime brought the juvenile justice system under scrutiny. Increases in violent crime committed by juveniles, fueled by media sensationalism, caused the public to demand increased penalties for youthful offenders, believing that juveniles were treated too leniently when committing violent "adult" crimes (Bishop and Frazier 1991;



Feld 1998; Feld, 2001; Jordan 2006; McCord, Widom, and Crowell, 2001).

Phrases such as “adult crime, adult time” became popular in the media, and lawmakers responded to these demands. In the 1990s, almost all states enacted laws making it easier to try youth in adult courts (Feld 2001; Urbana 2005).

North Carolina is no exception in enacting new, more punitive sanctions for juvenile offenders. According to state statute, juveniles age 16 and older are automatically transferred into criminal court if they are charged with committing a misdemeanor or felony. Only three states - North Carolina, New York, and Connecticut - automatically waive youth at age 16, and of those three, North Carolina is the only one without reverse waiver, a process that allows a juvenile to petition for a return to juvenile court jurisdiction (The National Center for Juvenile Justice 2006). In North Carolina, children as young as 13 may be transferred or waived into Superior Court if they meet certain statutory requirements, and must be transferred if probable cause exists to believe they have committed a Class A felony. Prosecutors and juvenile court judges have considerable discretion in applying these requirements, a practice that in theory allows the justice system to consider an individual's particular situation, but in reality may allow for discrimination against juveniles based on age, race, gender, or socio-economic characteristics. Numerous studies have examined the practice of waiver to determine if older, male, minority youth are disproportionately waived given their overrepresentation among waived juveniles. Although these studies have yielded mixed results, some studies reveal little, if

any, effect of race and gender on the waiver process when accounting for a juvenile's prior record and seriousness of the offense. This suggests that other factors, such as patterns of offending, may account for the overrepresentation of black males in the population of waived youth.

Because waiver has serious detrimental consequences for the remainder of a juvenile's life chances, it is important to continue to examine the potential impact of race and gender in the waiver process. This is particularly true in a state such as North Carolina where youth as young as 13 may be sent to Superior Court, and, once waived, cannot be reverse waived back to the juvenile system for any future offenses. This study will consider all children in North Carolina from 2005 to 2007 who were between the ages of 13 and 15 at the time of their alleged offense and were charged with a crime that, if committed by an adult, would have been considered a felony, with the exception of first degree murder. This study examines: Do waivers to Superior Court vary by gender, race, age, offense seriousness, and past criminal history of the juvenile, and if so, which of these factors are more operative in the decision whether or not to transfer a case to Superior Court? I hypothesize that although greater numbers of minority male juveniles are actually waived to Superior Court, race and gender do not affect the likelihood of waiver when controlling for current offense and past criminal history. I also anticipate a positive correlation between age and waiver, with older youth being more likely to be waived.

## CHAPTER II

### HISTORY OF JUVENILE JUSTICE

Prior to the nineteenth century, children were not seen as significantly different from adults and were subject to the same penalties as adults for engaging in criminal acts. Some consideration may have been given to an offender's age, but no formalized process was in place to separate youthful offenders from adults in either the judicial or correctional phases of the legal system. In the early 1800's, this view of children began to change, partially due to widespread societal change during the Industrial Revolution. Reform groups began examining overall social conditions with an emphasis on the welfare of children (Jordan 2006). Previous beliefs that free will was the sole cause of criminal behavior also came into question during this time, and the idea that social environments could contribute to an individual's decision to commit crimes began to be accepted (Jordan 2006). The idea of adolescence emerged. "Youth," while more developed than young children, were perceived as "future adults" who, despite engaging in criminal behavior, could be salvaged if corrective action was taken (Myers 2005). Houses of Refuge and reform schools were opened, representing the first attempts to treat children differently from

adults (Myers 2005). The Houses were based on the belief that providing delinquent youths a structured environment for rehabilitation would allow them to learn appropriate socialization skills and responsibility before returning to society. Although no formal waiver process was in place, such a system operated informally, as the children sent to Houses of Refuge were those who were seen as having the potential to reform and then return to society. Children perceived as “unsalvageable” continued to be punished through adult courts and correctional facilities (Jordan 2006; Myers 2005; Singer 1996).

Initially, Houses of Refuge were seen in a positive light, as institutions designed to raise children to be responsible members of society, instilling the correct values when their biological parents could not. In this way, the state had adopted the role of parent, or “*parens patriae*,” which was upheld by the Pennsylvania Supreme Court in the 1839 case of *Ex Parte Crouse* where a child who had not committed a crime was committed to a House of Refuge due to the poverty of her parents. In this case, the court viewed the intentions of the House of Refuge to help the child as a more positive step than returning the child to her parents (Jordan 2006; Myers 2005). In a time when public education was beginning to be seen as an answer to urban disorder, the initial concept of the House of Refuge was an option for less seriously delinquent youth who held promise (Singer 1996).

Not long after their inception, however, Houses of Refuge were no longer seen as positive places instilling proper social values in children. Over time,

they became state run organizations that could not be selective about the types of delinquents they accepted. By having to house youth who had committed more serious crimes and who might otherwise have been sent to prisons, the Houses became more like prisons themselves with corporal punishment and manual labor as the main forms of rehabilitation (Myers 2005; Singer 1996). The Houses had become institutions performing dual functions, serving as juvenile prisons at a time when no alternative placement for serious and violent juvenile offenders was available while maintaining their original purpose of education and reform for youth committing minor offenses. By housing these two different juvenile populations together, Houses of Refuge moved away from their original mission of socialization and rehabilitation toward a more penal atmosphere and fell out of favor with reformers and lawmakers.

The Illinois Supreme Court demonstrated dissatisfaction with the condition of the Houses with its 1870 ruling in *O'Connell v. Turner*. In direct opposition to the *Crouse* ruling of only thirty years earlier, the Illinois Court determined that the good intentions of the parent outweighed the poor actual performance of the House of Refuge. Additionally, this court ruled the child had been denied the right of due process although the decision did not immediately result in the implementation of due process safeguards for juveniles (Jordan 2006; Meyers 2005).

Reformers continued to seek more appropriate ways to deal with delinquent juveniles, and in 1899 the Illinois Juvenile Court Act was passed,

establishing the first juvenile court in the United States. The Act determined the age at which a juvenile was to be considered an adult and defined neglect, dependency, and delinquency. It also established a separate court for youth with its own procedures that were different from those used in adult court.

Additionally, it prevented children under age 12 from being detained in jails and required separation of incarcerated youth and adults.

Other states followed Illinois, and by 1945 all states had established separate court systems for juvenile offenders (Jordan 2006; Meyers 2005). These newly established systems differed significantly from adult judicial and correctional systems by focusing on individual youth and his/her needs rather than the offense. Since juvenile crimes were seen as symptomatic of a youth's socialization needs, the seriousness of the crime did not affect the type or length of intervention the court imposed on the juvenile (Feld 1998), and retribution was not a consideration (Kupchick 2006). Juvenile justice systems were designed to be flexible and individualistic, focusing on rehabilitation and supervision rather than punishment (Feld 1998). Even the terminology of the court differed: juveniles committed delinquencies rather than crimes, and were adjudicated delinquent rather than found guilty.

Although separate juvenile justice systems were an improvement from the House of Refuge concept, they were not without flaws. By the middle of the twentieth century, concerns mounted about the juvenile court systems. Still founded on the idea of "parens patriae," these courts had been given

considerable latitude in determining what type and length of treatment was best for particular youth. Accusations surfaced that the courts did not have enough procedural safeguards and were denying juveniles their basic constitutional rights as well as discriminating against some. The intention of juvenile rehabilitation was not at issue, rather the lack of guidelines for implementation was in question. The wide discretion characteristic of juvenile court resulted in juveniles being subjected to treatment that was not necessarily in their best interests. Although no longer accomplished by sending juveniles to prison-like institutions, the juvenile system still provided a mechanism for upper and middle class segments of the population to control children of the lower classes relatively indiscriminately (Meyers 2005). Several Supreme Court cases in the 1960s and 1970s provided mandates for juvenile courts, increasing protections for the rights of the youth who appeared before the court.

*Kent v. the United States* (1966) established the right of due process in waiver proceedings. As a result of *Kent*, juveniles must have a hearing in order to be waived to adult court, and they have the right to an attorney during the hearing. Judges must provide a written statement of the reasons justifying the transfer, and the youth's attorney must be allowed access to all materials the judge considered when making the waiver decision (Jordan 2006).

Due process rights for juveniles were expanded by the Supreme Court in 1967 with *In re Gault*. The notion of "parens patriae" was rejected, as the court believed that Gault was being punished rather than helped by the juvenile court.

In cases where incarceration is a possible outcome, the court determined that juveniles have the right to counsel, to question witnesses, notice of charges, and protection against self-incrimination (Jordan 2006).

Two additional cases in the 1970s expanded the rights of juveniles. *In re Winship* rejected the practice of using “preponderance of evidence” as the burden of proof in juvenile cases. “Reasonable doubt” was established as the standard of proof in all adjudicatory hearings (Jordan 2006). Finally in *Breed v. Jones*, the Court ruled that if a youth is to be considered for transfer to adult court, the decision must be made before evidence is presented at the adjudicatory stage of juvenile court. According to the Court, once evidence is presented at the adjudication hearing, jeopardy attaches, and to waive a youth to adult court after that time constitutes double jeopardy. By attaching jeopardy to the adjudication hearing, the Court recognized that juvenile court proceedings were no longer social welfare proceedings, but rather criminal proceedings (Jordan 2006).

Despite recognizing juvenile court actions as criminal proceedings, the Supreme Court declined to bestow on juveniles all rights accorded to adult offenders. In *McKiever v. Pennsylvania*, the Court rejected the idea that juveniles were entitled to a jury trial, and in *Scahill v. Martin* juveniles were denied the right to bail, making preventative detention allowable.

As responses to juvenile offenders moved from the initial focus on decriminalization of offenses toward a pattern of recriminalization, juveniles were



granted more procedural rights shared by adult offenders. Theoretically, the primary objective of the juvenile system remained to rehabilitate juveniles whenever possible, returning them to society as positive, law abiding persons capable of avoiding further criminal activity as adults. However, in the late twentieth century, the idea that certain juveniles could not be rehabilitated and returned to society began to emerge. Juvenile court was perceived as too soft on offenders (Meyers 2005) who had a license to commit crimes with relative impunity until they were 18, resulting in chronic young offenders.

In response to the perception of increases in juvenile crime and the emergence of chronic and violent juvenile offenders, in the late 1970s and early 1980s almost half of states passed laws regarding serious and chronic juvenile offenders. These laws included lowering the age of waiver, mandating that certain crimes be tried in adult court, rather than juvenile court, and mandatory minimum sentencing guidelines (Jordan 2006; Kupcheck 2006; Meyers 2005). By the 1990s, almost all states had made some type of legislative change to address these juvenile offenders.

### Contemporary Juvenile Justice

In the mid 1980's, the public and policymakers began to question the effectiveness of the juvenile justice system. Arrest rates for juveniles surged in the mid 1980's, and rates of juvenile homicide and other violent crimes increased more rapidly than those of similar adult crimes (Feld 1998). In addition, the

average age of juvenile offenders decreased, while their use of handguns increased during this time period (Feld 1998). Between 1985 and 1994, the arrest rate for violent crime committed by juveniles increased approximately 75%, the rate for murder more than doubling (Jordan 2006; Meyers 2005). These trends, along with the increased use of guns, emerging crack cocaine industry, and development of an urban black underclass (Feld 2001) led to a focus on young black offenders who dominated the crack cocaine trade of the 1980s. Stories about young black men involved with gangs and drugs while committing violent crimes with the use of a handgun became popular in the media who portrayed adolescents as the major crime threat in the United States (Krisberg 1994). These “highly visible, serious, and violent offenses” fueled fears of middle class white America and caused public outrage that these individuals would be charged as juveniles when they were perceived as “mature and sophisticated offenders” (Feld 1998) who were fully cognizant of the seriousness of their actions. Many of these juveniles had histories with the juvenile justice system and continued to break the law, increasing the pressure to treat repeat offenders differently, as rehabilitative efforts clearly had not been successful.

The juvenile justice system was perceived to be incapable of responding appropriately to these new types of violent offenders (Krisberg, 1994; Meyers 2005). Lawmakers found it difficult to support continued rehabilitative efforts for previously unresponsive juveniles, as well as for those first offenders who committed serious violent crime (Bishop & Frazier 1991). Juvenile offenders

committing violent, serious, and repeat offenses, particularly when linked to gang or drug activity, were thought to be extremely dangerous and became known as “super-predators” (Jordan 2006). The public feared these offenders and believed that the heinous nature of many juvenile crimes demonstrated adult motivations and comprehension, and therefore offenders should receive their “just desserts” (Jordan 2006). The concepts of personal responsibility and accountability, formerly reserved for adult offenders, began to garner widespread support for juvenile offenders as well. The phrase “adult crime, adult time” became popular in the media and as an expression of public opinion.

As society began to demand more accountability for the actions of this new kind of youthful offender, the focus of juvenile justice shifted away from rehabilitation and the individual circumstances of the offender and towards the goals of accountability and punishment, more typically aligned with the criminal justice system. Juvenile justice began to place more emphasis on the seriousness of the current offense as well as a youth’s prior record (Feld 1998). Surveys from the early 1990’s showed a majority of adults in favor of violent youth being tried in adult courts (Meyers 2005). Lawmakers responded to public pressure by passing laws mandating certain types of youth to be tried as adults and providing prosecutors and judges discretionary mechanisms of prosecuting juveniles as adults, thereby assuaging the public’s outrage and demand for accountability while still protecting the intent of the juvenile justice system for less serious offenders.

## Types of Waivers

The process of transferring an adolescent from juvenile to adult court is referred to as a waiver and generally occurs in one of four scenarios. First, a juvenile may be waived to adult court as a result of statute requiring transfer due to the offense or age of the youth at the time of the offense. If transfer is not legislatively mandated, a juvenile also may be waived when the prosecutor or the court believes that the juvenile system will not be able to respond to the juvenile and his offense in an appropriate manner. In the second scenario, the potential sanctions available to juvenile court may not be deemed adequate to address the severity of the offense committed. In the third situation, the juvenile may have an extensive prior record demonstrating no positive outcomes from past encounters with the juvenile system; and in the final circumstance, the juvenile may be close to the maximum age of the juvenile court's jurisdiction, therefore providing an inadequate amount of time for the juvenile system to work with the offender.

Three types of waivers are available: judicial, prosecutorial, and legislative waiver. Each type of waiver considers different combinations of factors regarding the juvenile and the offense when making the decision to transfer. In addition, many states automatically transfer any youth who has a prior conviction in criminal court. Most jurisdictions use some combination of types of waiver.

### *Judicial Waiver*

The most widely used method to transfer a juvenile to adult court is the judicial waiver. Some form of judicial waiver has been a part of juvenile justice

since the Houses of Refuge era. A judicial waiver leaves the decision to shift the offender to adult court entirely in the hands of the juvenile court judge who considers case specific features of the juvenile and the offense. Typically, the judge seeks to determine two factors regarding the juvenile, his/her amenability to treatment and his/her perceived dangerousness to society. Age is only considered as it plays into the amount of time the juvenile will have available to complete treatment.

#### *Prosecutorial Waiver*

Similar to judicial waiver in its discretionary aspect is the prosecutorial waiver. This method allows the prosecutor rather than the juvenile court judge to make the decision regarding which court will try the youth. Prosecutors are typically less concerned with the juvenile's amenability to treatment than with determining the appropriate type of retribution (Bishop & Frazier, 2001). Because prosecutors' focus is primarily on the crime and adequate punishment, rather than the offender and appropriate treatment, prosecutors typically focus on the type of crime committed, previous record, and age of the offender (to ensure the youth will not age out of the juvenile system before being adequately punished). In addition, since prosecutors are elected officials, they may be more responsive to public pressure than the needs of the particular offender (Feld 1998).

### *Legislative Waiver*

Under legislative waiver, also known as statutory exclusion, lawmakers establish legal guidelines that determine when a juvenile will be transferred to adult court. These laws exclude certain juveniles from the jurisdiction of the juvenile court, automatically transferring them to adult court. Typically, laws set certain age limits combined with types of crimes and aggravating factors. For example, all persons 15 or older who commit murder, or persons 16 and older who commit a crime against a person with the aggravating factor of using a firearm, may be mandated to transfer to criminal court. These laws typically address only serious offenses, repeat offenders, or a combination of the two since by trying the youth in adult court the focus will be on punishment, not rehabilitation. Statutory exclusion seeks to establish universal guidelines regarding which types of juveniles will be waived, addressing claims that other types of waiver allow too much discretion on the part of judges and prosecutors. However, since prosecutors determine the charges against particular youth, legislative mandate does not counteract as much discretionary decision-making as it may appear (Feld 1998; Kupchik 2006).

### *Once an Adult, Always an Adult*

In addition to the three types of waiver, thirty-one states have a provision that allows the justice system to automatically shift a youth into the criminal court (Jordan 2006). If a juvenile was previously waived and convicted in adult court, all future prosecutions will be conducted in adult court, regardless of any other

mitigating factors of the offense. Most of the states that employ this provision require a conviction in criminal court for subsequent transfers to occur. Three of these states require that the conviction be a felony conviction. However, a few states do not require a conviction at all, using the rationale that if the juvenile was previously deemed inappropriate for treatment by the juvenile court, he would still be inappropriate at a later time, and therefore automatically waived for any offense.

#### *Reverse Waiver/Decertification*

Some states allow a juvenile who has previously appeared in criminal court to have subsequent court hearings be reverse waived back to juvenile court. The decertification hearing is typically conducted by the criminal court judge who has initial jurisdiction over the youth. Reverse waiver hearings are guided by similar principles as waiver hearings and seek to determine which justice system can most appropriately serve a particular juvenile.

## CHAPTER III

### LITERATURE REVIEW

Waiving a youth to adult court has a serious impact on the future life chances of that juvenile. Youth who remain in the juvenile system are guaranteed a degree of confidentiality, cannot be incarcerated in adult facilities while awaiting trial, and if found guilty, may only be kept in custody until the maximum age of juvenile jurisdiction. They are less likely to suffer the social and legal stigmas attached to a convicted criminal once attaining adulthood (Bishop & Frazier 1991). Theoretically, waiver should be a last resort and implemented only for those youth who cannot benefit from the rehabilitative nature of the juvenile court system. However, due to media sensationalism, changing patterns of offending, public perception, and public policy officials' desires to appear tough on crime, large numbers of youth began to be waived in the 1980s as the focus on juvenile crime began to move further toward criminalization and retribution and farther from rehabilitation, in spite of detrimental effects on individual youth. During the 1980s, the practice of waving youth increased by over 400 percent (Steiner 2005).

The practice of transferring such a large number of youth with no apparent effect on deterrence or public safety (Urbina 2005) has prompted questions



regarding waiver on many grounds. Various studies have examined patterns in the types of youth who are waived to adult court. Prior record, age, and offense seriousness are the strongest predictors of transfer (Barnes & Farnz 1989; Clement 1997; Fagan and Deschenes 1990; Houghtalin and Mays 1991; Jordan 2006; Kinder et al.; Meyers 2001; Podkopacz and Feld 1996). Although the majority of waived youth are minority males, studies employing multivariate analysis have not consistently found evidence of a race or gender effect in transfer decisions (Barnes and Franz 1989; Fagan 1990; Jordan 2006; Kinder et al. 1995; Podkopacz and Feld 1996; Poulos and Orchowsky 1994).

#### Factors Affecting Waiver - Offense Seriousness, Prior Record, and Age

Studies reveal that the likelihood of waiver increases for juveniles charged with more serious offenses who have prior records and are older (and, thus, closer to aging out of the juvenile court's jurisdiction). In a study of waived youth in Florida, the majority of youth were 16 or 17 years old and charged with burglary or some form of robbery (Thomas and Bilchik 1985). In addition, approximately 60% had a prior record, possibly indicating that they were previously non-responsive to the rehabilitative efforts of juvenile court. Bishop and Frazier (1991) also examined waived youth in Florida and found that the majority of juveniles waived were 17 years old and 84% of youth were charged with violent or property felonies. A study examining Texas youth found that 76% of those waived were charged with a violent offense (Fritsch, Caeti, and

Hemmens, 1996). Houghtalin and Mays (1991) also found older youth to be more likely to be transferred, with juveniles 17 years old accounting for 60% of transfers, and 16 year olds accounting for another 30%. The majority of the youth had at least one prior offense and were charged with a serious crime as measured by the Uniform Crime Report (Part I Index offenses, violent personal or property crimes, or Part II person offenses). A more recent study of Virginia youth found 81% of transfers were 17 years old, and an additional 18% were 16 (Clemment 1997). All youth waived had some type of prior criminal record.

While the previously mentioned studies do provide valuable information concerning the population of waived offenders, they are limited in that they only included juveniles who already have been waived. Without a comparison group, it is not possible to conclude which factors are most operative in the decision to waive youth. To improve on the limitations of this research, numerous comparative studies have been conducted. These studies reinforce the finding noted above that seriousness of offense, prior record, and age are statistically significant in the decision to transfer youth to criminal court.

One such study compared violent youth who had transfer petitions filed with those who did not (Fagan 1990). The results of the study indicated that the seriousness of the offense and the age of the juvenile were significant when predicting if a transfer petition would be filed. Older youth charged with more serious offenses, particularly murder, were more likely to receive a waiver petition. This study did not find a juvenile's prior record significant; however, age

at onset of delinquency was used in the model, which dismissed the strength of the relationship between prior record and transfer.

Barnes and Franz (1989) examined juveniles eligible for waiver in California and also found that the more serious the offense, the more likely a youth would be waived. In addition, their study showed a relationship between previous offenses and waiver, with youth having more extensive records being more likely to be transferred. In this particular study, age was not found to be significantly associated with the likelihood of waiver. Although older youth were more likely to be waived, the relationship was not statistically significant. However, the lack of statistical significance may have been affected by the small sample size.

In a study of youth in Missouri, Kinder et al. 1995 did find the age of a juvenile to have a positive effect on his/her chance of being waived. Nearly 74% of the transferred youth were 16 or 17, whereas 70% of the youth who were retained in the juvenile system were 14 or 15. Juveniles who were charged with a violent crime also had an increased chance of being waived.

Poulos and Orchowsky (1994) conducted a study comparing all youth eligible for waiver in Virginia. The juvenile's prior record was significant, with those having more previous offenses being more likely to be transferred. The single strongest predictor of waiver was the number of prior felony property offenses, followed by prior felony offenses against persons. In addition, older

youth faced an increased probability of waiver. Juveniles who used a firearm were more likely to be transferred than those who did not.

Other studies also have shown the use of a weapon to increase the chance of waiver. (Podkopacz and Feld 1996). Although they did not find that offense seriousness affected the chances of waiver, as felony person and property offenses were not waived differently, the use of a weapon significantly increased the probability of a youth's being waived. This study also found age to be a strong predictor, with older juveniles more likely to be waived, as well as those with four or more previous offenses.

#### The Effects of Race and Gender – Inconsistent Findings

The literature is inconsistent in determining if race and gender play significant roles in determining which youth are waived. Purely descriptive studies that only examine youth who already have been waived consistently show an overrepresentation of minority males. Thomas and Bilchik (1985) found 68% of the youth in their study were minority group members and nearly 95% were male. Other studies (Clement 1997) have found almost all waived juveniles to be African-American (96.8%) males (98.9%).

Unlike descriptive studies which give the appearance of a race/gender effect, research that controls for offense seriousness, previous record, and age, has most often found no statistically significant effect of race on waiver decisions. Although a greater percentage of minority youth were waived, Fagan and

Deschenes (1990) did not find race to be statistically significant when controlling for legal variables (offense seriousness and previous record) and age.

Podkopacz and Feld (1996) had similar findings in that, although more minority youth were waived, after controlling for age and legal variables, the race effect was not significant.

Not all studies that controlled for legal variables found that race effects were eliminated. Barnes and Franz (1989) determined that even after including information on current offense and prior record, race was still a significant predictor of transfer. However, the effect of race was not as strong as that of seriousness of the current offense or an individual's prior record.

Fewer studies have focused specifically on gender as a significant predictor of transfer, possibly due to the consistently small numbers of females eligible for waiver. However researchers have examined gender to determine if outcomes within the juvenile system vary by gender, and if so, if the variations are significant. Peterson (1988) found that being female had a statistically significant effect on outcomes within the juvenile justice system, with females receiving increased leniency at all stages of the system. Tittle and Curran (1998) also found an inverse relationship between females and sentencing severity, with the exception of status offenses where the effect was no longer statistically significant. Other studies have found no difference in the treatment of males and females at any stage in the juvenile system (Dannfer and Schutt 1982; McCarthy and Smith 1986).

Both descriptive and comparative studies show that the majority of waived youth are African-American males; however, the prevalence of this demographic in the population does not in and of itself demonstrate that these two factors influence waiver, and the body of research is inconclusive. Why then do minority male youth, particularly African American male youth, account for the majority of waived juveniles? It is difficult to determine a conclusive answer, particularly when only studying one outcome of the juvenile justice system, such as waiver.

#### Continuum of Juvenile Justice

A waiver decision is the end of the line in the continuum of the juvenile justice system that may begin with a call to police. Decisions throughout the legal process affect which juveniles are eventually eligible for waiver. Bias may operate at any point throughout the legal system, beginning with the response of the police when called to the scene of the crime. National data indicate that African American juveniles are arrested and charged with different types of crimes than white juveniles (Podkopacz and Feld 1995). With the increase in gun-related youth homicides, arrests of African American youth increased sharply. During a seven-year period beginning in 1986, arrest rates for African American juveniles increased 278% while that of white youth increased only 40% (Sickmund, Snyder, and Poe-Yamagata 1997). Although self-reports of offending show a higher offense rate by blacks, this difference is significantly less than the discrepancy in arrest rates (McCord, Wisom, and Crowell, 2001). By

choosing to arrest certain youth and not others, the police make the initial determination of which juveniles will eventually be subject to waiver decisions. Because police may focus their attention on lower class, minority neighborhoods, minority youth may be more likely to be arrested and therefore possess a more extensive juvenile record beginning at an earlier age than juveniles from predominately white middle and upper class neighborhoods (Jordan 2005).

Prosecutors also influence the sample of youth included in studies as eligible for transfer by determining what charge to levy against a particular youth. By choosing to file a less serious charge against certain types of youth, prosecutors can ensure that some youth are treated as juveniles throughout the justice process and are never candidates for waiver. Judges only have the option to waive eligible cases presented to them, and by choosing to charge a youth with a misdemeanor, a prosecutor may remove the option of waiver for that youth (Podkopacz and Feld 1996). Each stage in the legal process provides an opportunity for discretionary decisions to affect whether or not a particular youth ultimately will be in a position to be considered for waiver. It is difficult to capture the cumulative results of the numerous discretionary decisions made throughout the juvenile justice process. Through the life of a particular juvenile, many small decisions are made where race (or gender) is not a statistically significant factor; however, when these changes are amplified throughout the entire system, the end result may be racially impacted (or impacted by gender) (Feld 1988).

Bishop and Frazier's (1996) investigation of juvenile cases in Florida from the point of referral to the juvenile justice system through the final outcome reveals how decisions made throughout the process can result in discriminatory outcomes. They found that numerous well-intended agency policies were inadvertently discriminatory and resulted in more minority and economically disadvantaged youth experiencing the full continuum of the juvenile justice system. For example, parental involvement and perceived parental buy-in are requirements for youth to participate in diversion programs. While on the surface this is logical since a youth's chances of success in a diversionary program are increased with parental involvement and support, many minority and working class parents may be single, working multiple jobs, or lack transportation to meetings with juvenile justice staff. Barriers to parental involvement may be misconstrued as parental disinterest by those recommending diversionary programs, and therefore minority and lower class youth will continue through the formal juvenile justice process (Bishop and Frazier 1996). Although this study did not examine waiver decisions per se, it provides a framework for understanding how minority and economically disadvantaged youth eventually makeup a significant portion of the youth available for waiver.

Just as multiple discretionary decisions prior to the waiver stage in juvenile justice processing affect the racial composition of youth available for waiver, so do these decisions have a similar impact on the gender of youth facing waiver. Between 1981 and 1994, the arrest rate for females committing violent crime



increased by 120% (McCord, Widom, and Crowell, 2001). Bishop and Frazier (1992) conducted a study to examine the cumulative impact of discretionary decisions on female juveniles. They did not look at waiver decisions, but rather the steps prior to waiver to determine if females were equally likely to be recommended for prosecution. They found that not only were police less likely to arrest females for person or property crimes, but also once arrested for criminal offenses (as opposed to status offenses), male youth are significantly more likely to be formally charged than females. Consistent with other studies, older, African-American juveniles also had an increased probability of being formally charged in the juvenile system. Of these three variables, Bishop and Frazier found that gender was the most significant variable affecting the decision to formally charge youth – approximately one and a half times the effect of being black, and approximately an equal effect of a two-year increment in age (as older youth have an increased chance of being waived). Although this study did not directly examine possible gender bias in waiver decisions, it is consistent with Podkopacz and Feld's conclusions that although greater numbers of certain types of youth are actually waived, it cannot necessarily be attributed to discrimination during waiver decisions and may be a result of decisions made throughout the criminal justice system before a youth reaches the point of a waiver hearing.

These studies reveal that the impact of race and gender on waiver decisions is often difficult to isolate given the interaction of these factors with

other variables such as patterns of offending, victim characteristics, and multiple discretionary decisions made throughout the juvenile justice process. Due to the inconsistency of these findings, it is important to continue to investigate the potential impact of race and gender, in addition to offense severity, prior record, and age, on waiver decisions.

## CHAPTER IV

### THEORETICAL FRAMEWORK

Social control theory proposes that individuals are socialized to adhere to the generally accepted norms and beliefs of society (Shoemaker, 2000).

According to Donald Black, social control is “the normative aspect of social life, or the definition of deviant behavior and the response to it” (Black 1976, p.12). The majority of people conform to societal norms without threat of formal sanctions.

However, some acts of deviance are met with formal legal sanctions. Laws provide the guidelines for formal sanctions, and the criminal justice system determines which members of society are subject to these sanctions and to what degree.

The application of law cannot be separated from the society within which it operates. In addition to legal characteristics, every case also has social characteristics, which vary according to the individuals involved. The social characteristics of the victim, defendant and any other players constitute the social structure of the case which affects each legal decision made throughout the life of that case (Black 1989). Unlike a jurisprudential model of law, which regards law as a logical process applied universally to all legally similar cases in

an identical manner, a sociological model of law assumes that law is variable, changing based on the social characteristics of the parties involved in each particular case (Black 1989). The jurisprudential model is used to examine how cases should be decided whereas the sociological model is used to examine how cases are actually decided (Black 1989).

If decisions to waive juveniles were based purely on legal variables, such as the seriousness of the current offense and a juveniles' previous criminal record, studies that control for these legal variables should consistently find no effects of a youth's race, gender, or age on the probability of being waived. However, the research is not consistent, with some studies finding significant effects of race, gender, and age at the point of waiver. In addition, all descriptive studies demonstrate that the population of waived youth is overwhelmingly African-American and male. One possible explanation of the disproportionate number of minority males experiencing waiver can be found in social control theory.

Donald Black's theory of social control is applicable to the application of law by the criminal justice system without regard to the psychology of individuals. Black argues that law is governmental social control and can be represented as a quantitative variable (Black 1976). Law increases and decreases, depending on the setting and the persons involved in a particular situation. For example, the social control imposed by law increases when social control imposed by the family decreases. Therefore, a deviant juvenile in a single parent home who is

potentially subject to less familial social control may be more likely to become involved with the criminal justice system than a comparably deviant juvenile with two parents in the home (Black 1976).

Black's theory may be used to examine outcomes in the juvenile justice system. When a juvenile is discovered to have committed a deviant act, many actions can be taken against that juvenile. These actions can be placed on a continuum, ranging from the lowest quantity of law to the highest. Law enforcement may not become involved, and the juvenile's parents may work out restitution with the victim. If law enforcement is summoned, the juvenile begins interaction with the formal legal system. The quantity of law imposed on the juvenile increases with each phase through the system from an official citation, to criminal charges leading to probation, to diversion into some type of therapeutic day camp, to placement in a juvenile detention center, to waiver to Superior Court to face adult criminal charges. Other specific outcomes are possible at various locations on the continuum; however, the highest quantity of law that may be imposed on a juvenile is to transfer him/her to Superior Court where he/she will be tried and sentenced as an adult. As long as the youth remains in the juvenile system, he/she will be subject to a more therapeutic style of law, but once waived will be subjected to the penal style of law characteristic of adult corrections.

Although this study does not seek to test Black's theory, his theory provides a useful framework for examining the forces of social control guiding the

actions of the juvenile justice system. Black's theory provides a lens through which to understand how age, gender, and race, as components of the social characteristics of waiver cases, may impact waiver decisions, even when controlling for legal variables.

## CHAPTER V

### METHODS

The literature regarding waiver is inconsistent in determining a significant relationship between race and gender and waiver decisions. In every study cited in this study, the majority of transferred youth were minority males. Because of the large numbers of minority male youth transferred, and the irreversible effects of waiver decisions on the remainder of a juvenile's life, it is important to continue to examine the role of race and gender in waiver decisions.

In North Carolina, statutes allow for youth to be transferred to Superior Court as young as 13 years old. Once transferred, juveniles are treated as adults in all future criminal proceedings. This study describes youth in North Carolina who were eligible for transfer between 2005 and 2007. It will reveal if waivers to Superior Court vary by age, race, gender, offense seriousness, and past criminal history of the juvenile, and, if so, which of these factors are more operative than others in the decision to transfer a case to Superior Court.

#### North Carolina Statutes

North Carolina law allows for the use of all three types of waiver and is one of the thirty-one states with the “once an adult, always an adult” provision.

North Carolina statute defines a juvenile as “a person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States (G.S. 7B-101).” Delinquent juveniles are defined as any juvenile “less than 16 ... but at least 6 years of age (who) commits a crime or infraction (7B-1501 7).” North Carolina statutes mandate that persons sixteen and older who commit any crime will be subject to prosecution as an adult.

In addition to legislative mandates automatically transferring youth over the age of sixteen to criminal court, Statute 7B-2200 includes provisions for judicial and prosecutorial waiver. The prosecutor, the juvenile’s attorney<sup>1</sup>, or the judge may motion to transfer a youth age thirteen or older to criminal court if the alleged offense was one which would have been a felony if committed by an adult (7B-2200). If the alleged offense is a Class A felony<sup>2</sup>, and a finding of probable cause exists, the case automatically will be transferred to Superior Court and the juvenile tried as an adult. If probable cause is found and transfer

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<sup>1</sup> According to North Carolina Statute 7B-2000, any juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. All juveniles shall be presumed to be indigent, and counsel shall be appointed for them unless they retain their own counsel.

<sup>2</sup> Currently, North Carolina statute includes only two crimes that constitute a Class A felony. Statute 14-17 defines homicide meeting the definition of a Class A felony as “A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony.” Statute 14-288-22 defines the remaining Class A felony as the willful injury of another by the use of a nuclear, biological, or chemical weapon of mass destruction.



is not required because the offense is not a Class A felony, the juvenile court will hold a transfer hearing where the court will determine if the needs of the juvenile and the protection of the public are best served by transferring the juvenile to Superior Court (7B-2202e). Legislation requires the following eight factors to be considered when making a waiver determination: the juvenile's age; maturity; intellectual functioning; prior record; prior attempts at rehabilitation; programs and facilities available to the court to rehabilitate the juvenile in the amount of time remaining in the Juvenile Court's jurisdiction<sup>3</sup> and the likelihood that the juvenile will benefit from such treatment or rehabilitation programs; whether the offense was committed "in an aggressive, violent, premeditated, or willful manner;" the severity of the offense and if public protection requires prosecution of the juvenile as an adult (7B-2203). Once a juvenile has been transferred to and convicted in Superior Court, any subsequent criminal proceedings will automatically be held in Superior Court (7B –1604). In other words, once an individual is convicted as an adult, he/she will automatically be treated as an adult in any future criminal proceeding, regardless of age or other circumstances of the alleged offense.

North Carolina does not include a provision for reverse waiver or decertification;

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<sup>3</sup> According to North Carolina Statute, the age at which the Juvenile Court's jurisdiction over a youth expires is dependent on the crime for which the youth was convicted. According to Statute 7B-2513, if the juvenile is convicted of an offense that would have been first degree murder (pursuant to G.S. 14-17), first degree rape (pursuant to G.S. 14-27.2), or first degree sexual offense (pursuant to G.S. 14-27.4) if committed by an adult, that age is twenty-one. If the juvenile is convicted of a crime that would be considered a Class B1, B2, C, D, or E felony if committed by an adult (other than first degree rape or sexual assault), the maximum age of jurisdiction for the Juvenile Court is nineteen. For all other offenses, the maximum age is eighteen. Since first degree murder is a Class A felony, the juveniles considered in this paper (age thirteen to fifteen) would be automatically transferred to Superior Court if they were alleged to have committed first degree murder and therefore those juveniles are not considered in the study.

therefore, once a juvenile is waived and convicted as an adult, all future criminal proceedings will be held in Superior Court.

## Present Research

### *The Population*

Data for this research project are taken from records provided by the North Carolina Department of Juvenile Justice and Delinquency Prevention (NCDJJD). Staff at DJJD provided information on all juveniles eligible for waiver to Superior Court in the state of North Carolina between 2005 and 2007. The Department changed its data collection database in 2004 which is why 2005 is the starting point for this study. Based on NC Statutes, this population includes juveniles aged 13 to 15 at the time of the eligible offense who were charged with a crime that, if committed by an adult, would have been a felony. This excludes juveniles charged with Class A felonies, which are automatically waived. This dataset represents the complete population of juveniles eligible for waiver from 2005 to 2007.

The researcher completed the NCDJJD's Research Request form as well as the agency's Pledge of Researcher's Confidentiality and Ethical Behavior protocol. After receiving and reviewing these requests, NCDJJD provided the information to the researcher in the form of a deidentified data set. At no time was the researcher aware of the names or any other unique identifiers (such as social security numbers) of any of the juvenile offenders in the dataset. Due to

the fact that the data were deidentified at the time of receipt, this project was able to receive an expedited approval from the UNCG Institutional Review Board.

Several records were eliminated from the original dataset. Deleted records include cases in which one of four dispositions occurred: 1) the charge was dismissed, 2) the juvenile had multiple charges and was waived for some charges, but remained under the jurisdiction of juvenile court for others, 3) the juvenile was automatically transferred to adult court for first degree murder, and 4) the juvenile was automatically transferred to adult court because once a juvenile has been transferred, all future offenses are automatically tried in Superior Court. The remaining dataset includes 1550 offenses committed by 1108 juveniles.

#### *Independent Variables*

Based on the data available, this study examines demographics of the offender, offense seriousness, and past criminal history. Ideally, this study would include information about the victim; however, that information is not captured in the NCDJJP database. Incorporating victim information into the analysis would require a much more in-depth examination of actual case records of the juveniles included in the population. Due to time constraints of this project and the level of approval to access identifiable juvenile criminal records, obtaining victim information is not practical.

##### a. Demographics of the Offender

Demographic characteristics available from NCDJJDP include the juveniles' gender, race, and age at the time of the eligible offense. Gender is coded as female and male. Race was determined by the NCDJJDP staff during intake. Race is coded as black, white, and other youth of color<sup>4</sup>. Age is coded in year intervals (13,14 and 15). These demographics are presented in Table 1.

**Table 1 – Demographics of Youth Eligible for Waiver**

N = 1108

|        |                      |              |
|--------|----------------------|--------------|
| Gender | Male                 | 1007 (90.9%) |
|        | Female               | 101 (9.1%)   |
|        |                      |              |
| Race   | Black                | 709 (64.0%)  |
|        | White                | 309 (27.9%)  |
|        | Other Youth of Color | 90 (8.1%)    |
|        |                      |              |
| Age    | 13                   | 222 (20.0%)  |
|        | 14                   | 337 (30.4%)  |
|        | 15                   | 549 (49.6%)  |

b. Seriousness of Offense (Current Offense Type)

The seriousness of a juvenile's offense is measured by the variable "current offense type," which is divided into two broad categories – crimes against persons and non-person crimes. Crimes against persons (such as kidnapping, robbery, and rape) are divided into "multiple person offenses," which includes juveniles charged with two or more person crimes simultaneously, and

<sup>4</sup> This category includes Asian (5), Latino (55), Multi-racial (14), Native American (15) and Unknown (1) youth. These categories are collapsed into "other youth of color" due to the small numbers of each of the above racial classifications.

“single person offenses,” which captures juveniles charged with only one person crime. Crimes against persons are deemed more serious than non-person crimes, which include property crimes and crimes against the state (such as arson and the manufacture or sale of illegal drugs). “Multiple person offenses” are considered the most serious, followed by “single person offenses” and then “property crimes/crimes against the state.” Drug crimes are classified as property crimes/crimes against the state because they do not have a victim in the same sense as a crime against a person. The individual choosing to purchase illicit drugs is a voluntary participant in the crime, unlike a robbery victim who does not request to be robbed.

No juveniles in this population were charged with multiple property crimes/crimes against the state. Neither were any juveniles charged with a person offense and a property crime/crime against the state simultaneously. All crimes are felonies, because only by committing a felony is a youth eligible for waiver. The categories are determined as the most satisfactory way to combine similar types of offenses which is necessary due to the relatively small data set. The category of “multiple person offenses” includes juveniles simultaneously charged with between two and eleven person offenses. For a listing of the specific charged offenses in each category, see Appendix A. The total numbers of juveniles in each category are displayed in Table 2.

**Table 2 – Number of Offenses by Category**

|                                    |     |         |
|------------------------------------|-----|---------|
| Property Crime/Crime Against State | 32  | (2.9%)  |
| Single Person Offense              | 838 | (75.6%) |
| Multiple Person Offenses           | 238 | (21.5%) |

c. Past Criminal History (Prior Record of the Juvenile)

A juveniles' past criminal history is captured by the variable "prior record," which is divided into the categories: "no prior record," "status offenses only," "single misdemeanor only," "single felony only," "multiple misdemeanors," and "multiple felonies." Due to the small number (21) of youth whose prior records consisted of status offenses only, the category "status offenses" includes juveniles with only a single status offense, as well as those with multiple status offenses. "Single misdemeanor only" includes youth who had only one prior misdemeanor offense, and "single felony only" consists of youth with only one prior felony offense. The category of "multiple misdemeanors" includes juveniles with prior records containing multiple charges, the most serious one of which was a misdemeanor. In other words, this category includes youth with one or more status offenses and a misdemeanor, as well as youth with no status offenses but multiple misdemeanor offenses. "Multiple felonies" includes cases in which youth committed multiple types of offenses where the most serious prior charge was a felony. Due to the small sample size, this breakdown was deemed the most appropriate to capture both the quantity and severity of a youth's prior record. If the original charge was pled down or otherwise reduced in some way, the final

adjudicated charge is used for analysis since the adjudicated charge becomes part of the juvenile’s record. Charges that were dismissed are not included. The number of cases per prior record category is shown in Table 3.

**Table 3 – Number of Prior Record Types by Category**

|                                   |     |         |
|-----------------------------------|-----|---------|
| No Prior Record                   | 608 | (54.9%) |
| Status Offenses Only <sup>5</sup> | 21  | (1.9%)  |
| Single Misdemeanor Only           | 50  | (4.5%)  |
| Single Felony Only                | 52  | (4.7%)  |
| Multiple Misdemeanors             | 130 | (11.7%) |
| Multiple Felonies                 | 247 | (22.3%) |

#### *Dependent Variable*

The dependent variable is waiver status. This variable has two possible values, “waived” and “not waived.” “Waived” indicates that a youth was transferred to Superior Court to be tried as an adult whereas “not waived” signifies that the youth remained under the jurisdiction of the juvenile court system.

#### *Method of Analysis*

Crosstabulation and multivariate contingency table analysis are appropriate for this study because of the type and distribution of variables (Newton and Rudestam 1999). The study includes one discretely distributed

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<sup>5</sup> The North Carolina Department of Juvenile Justice and Delinquency Prevention (2007) defines status offenses as “offenses such as truancy that would not be crimes if committed by a person 16 years or older.”

dependent variable (waiver to Superior Court), a small number of independent variables (gender, race, and age), and two control variables (offense seriousness and prior criminal history), also discretely distributed. Relationships between variables that have only a small number of categories are revealed in crosstabs tables. Separate tables are presented for each independent variable showing its relationship to the dependent variable. Control variables are then added to the initial crosstabulations as a layer variable to test if its initial relationships were specious.

This study examines the complete dataset of all juveniles eligible for waiver in North Carolina between 2005 and 2007, rather than a sample. Due to the small size of the dataset and the fact that it represents a complete population of youth, rather than a sample, tests of significance, such as Chi-Square were not appropriate. Therefore all differences in categories of variables are actual differences rather than inferential. Some offender groups were of such a small size that meaningful discussion of the percentages is not possible; however, the actual number of each outcome is noted in the initial analysis.



## CHAPTER VI

### RESULTS

This study is designed to answer the following questions: Do waivers of youth in North Carolina vary by age, race, and gender when controlling for the seriousness of the offense and a juvenile's past criminal history? If so, what factors are more operative in waiver decisions? Based on my review of the literature, I hypothesize that when controlling for the legal variables of offense seriousness and past criminal history, gender and race will not have a n important effect on waiver decisions; however, age will, with older juveniles more likely to be waived.

#### An Overview of Waivers

It is relatively unlikely that a youth in North Carolina will be waived. Table 4 presents the percentages of juveniles waived in each category of the independent and control variables. Only four categories of youth were waived more than ten percent of the time: other youth of color (11.1%), youth aged 15 (10.7%), those who committed multiple person offenses (23.1%), and those with a prior record consisting of multiple felonies (15.4%). Of those categories, the

legal variables of offense seriousness, multiple person offenses (23.1%) and prior record with multiple felonies (15.4%) revealed a larger percentage of waivers than did the demographic variables of race (11.1%) or age (10.7%). No youth were waived for a property crime/crime against the state.

#### *Demographic Variables - Gender, Race, and Age*

Male juveniles were more likely to be waived than female juveniles. Of the total population of 1108 youth, only 101 were female. The small number of females in the juvenile population eligible for waiver was a common element of almost all studies in the literature. Of the 88 juveniles waived, 96.6% were male. Although the percentage of females waived (3%) is shown in Table 4, females were not included in further analysis. The number of cases is too small to allow meaningful discussion of the results.

White juveniles are the least likely to be waived (4.2%). Other youth of color face the highest risk of waiver, with 11.1% waived. Black juveniles are waived more often than white youth, but not as often as other youth of color. The percent of youth waived who are both black (9.2%) and other youth of color (11.1%) is more than twice that of white youth

**Table 4 – Percentage of Juveniles Waived by Independent Variable**

|                                    | Not Waived  | Waived     |
|------------------------------------|-------------|------------|
| <b>Gender</b>                      |             |            |
| Male                               | 91.6% (922) | 8.4% (85)  |
| Female                             | 97.0% (98)  | 3.0% (3)   |
|                                    |             |            |
| <b>Race</b>                        |             |            |
| Black                              | 90.8% (644) | 9.2% (65)  |
| White                              | 95.8% (296) | 4.2% (13)  |
| Other Youth Of Color               | 88.9% (80)  | 11.1% (10) |
|                                    |             |            |
| <b>Age</b>                         |             |            |
| 13                                 | 95.9% (213) | 4.1% (9)   |
| 14                                 | 94.1% (317) | 5.9% (20)  |
| 15                                 | 89.3% (490) | 10.7% (59) |
|                                    |             |            |
| <b>Seriousness of Offense</b>      |             |            |
| Property Crime/Crime Against State | 100.0% (32) | None       |
| Single Person Offense              | 96.1% (805) | 3.9% (33)  |
| Multiple Person Offenses           | 76.9% (183) | 23.1% (55) |
|                                    |             |            |
| <b>Prior Record</b>                |             |            |
| No Prior Record                    | 94.1% (572) | 5.9% (36)  |
| Status Offenses Only               | 95.2% (20)  | 4.8% (1)   |
| Single Misdemeanor Only            | 94.0% (47)  | 6.0% (3)   |
| Single Felony Only                 | 98.1% (51)  | 1.9% (1)   |
| Multiple Misdemeanors <sup>6</sup> | 93.1% (121) | 6.9% (9)   |
| Multiple Felonies <sup>7</sup>     | 84.6% (209) | 15.4% (38) |

The percentage of waived youth by age steadily increases with age.

While just over four percent (4.1%) of youth aged 13 are waived, the percentage

<sup>6</sup> This category also may include less serious offenses (status offenses); however, all youth in this category have two or more previous adjudications, the most serious one of which was a misdemeanor.

<sup>7</sup> This category also may include less serious offenses (status offenses and misdemeanors); however, all youth in this category have two or more previous adjudications, the most serious one of which was a felony.

increases to 5.9% for youth aged 14 and rises to 10.7% for youth aged 15. Not only does the percentage of youth waived increase steadily from age 13 to 15, but the absolute numbers of youth eligible also increases with age. A total of 222 juveniles age 13 are eligible for waiver; the number of eligible 14 year old juveniles is 337, and the number of eligible youth increases to 549 for juveniles age 15.

*Legal Variables – Seriousness of Offense and Prior Record*

During the time period covered by this study, no North Carolina youth were waived to Superior Court for property crimes/crimes against the state. Less than four percent (3.9%) of youth were waived when charged with a single offense against a person; however, the percentage increases to 23.1% for juveniles charged with multiple person-related offenses. The fact that no youth were waived for property crimes and the highest percentage of all waiver cases were for multiple person crimes does suggest that offense seriousness shapes waiver decisions.

Youth with no prior record (5.9%) were waived more often than youth with a prior record consisting only of status offenses (4.8%) or a single felony (1.9%) and only slightly less than youth with a single misdemeanor (6.0%). However, it should be noted that the categories of “status offenses,” “single felony only” and “single misdemeanor only” are small, and in the case of “status offenses” and “single felony only,” only one youth was waived in each category. Youth having a prior record of multiple misdemeanors were somewhat more likely (6.9%) to be

waived than youth with no prior record or a record including a single offense. A youth with a prior record consisting of multiple felonies was the most likely to be waived (15.4%). When considering each of the independent variables relation to waiver, youth with a previous record of “multiple felonies” were the second most frequently waived category overall, again suggesting that prior record has an impact on waiver decisions in North Carolina.

#### Relationships Between Dependent and Control Variables on Waivers

As previously mentioned, some categories of youth were so small that meaningful discussion of the percentages waived was not possible. Although all youth were reported in the descriptive information above, when adding a control variable to the crosstabulation, I deleted or combined some of these very small categories. Females were removed from the secondary analysis as there were only a total of 101 females in the population. Eliminating females left a population of 1,007 juveniles. Property crimes/crimes against the state also were eliminated as no youth were waived for that category of crime during the study period. When females were removed, only 17 juveniles remained who had a prior record consisting of status offenses only. Since status offenses would not even be a crime had they been committed by an adult, they were determined to be the least serious type of prior record other than “none.” Therefore, in the secondary analysis, prior records that were status crimes only were combined with the category “no prior record.” Several other categories of prior record had

very small counts; however, they remained in the analysis. These include the categories of “single misdemeanor only,” “single felony only,” and “multiple misdemeanors.” Although the counts by race and age for some of these categories were small, with some categories having no youth who were waived, it was important to maintain these categories. Misdemeanors and felonies are quite different types of crimes, and, I believe, the justice system considers a juvenile who has previously committed one misdemeanor as being quite different from one who has committed a prior felony. If the juvenile justice system recognizes a meaningful distinction between these categories, it is not appropriate to combine them for analysis.

#### *Waivers by Offense Type*

When the legal variable of offense type is added to the analysis as a control, the patterns of youth waived by race do not change from the initial analysis. White youth remain the least likely to be waived for both a single person offense and multiple person offense while other youth of color are the most likely to be waived, regardless of whether the offense was a single or multiple person offense. The racial differences are more pronounced for multiple person offenses with black juveniles more than twice as likely (25.8%) to be waived as white youth (12.0%) and other youth of color more than three times as likely (36.8%) as whites (see Table 5).

**Table 5 – Percentage of Youth (by Race) Waived by Offense Type**

|                                 | <b>Not Waived</b> | <b>Waived</b> |
|---------------------------------|-------------------|---------------|
| <b>Single Person Offense</b>    |                   |               |
| Black                           | 95.3% (450)       | 4.7% (22)     |
| White                           | 97.3% (216)       | 2.7% (6)      |
| Other Youth of Color            | 95.1% (58)        | 4.9% (3)      |
|                                 |                   |               |
| <b>Multiple Person Offenses</b> |                   |               |
| Black                           | 74.2% (118)       | 25.8% (41)    |
| White                           | 88.0% (44)        | 12.0% (6)     |
| Other Youth of Color            | 63.2% (12)        | 36.8% (7)     |

Note that for Table 5 and Table 6, the N is reduced from the original 1108 to 983. This is due to removing females from the analysis, as well as males who were charged with property crimes/crimes against the state.

When controlling for offense type, waiver patterns change slightly when examining the age of youth waived (see Table 6). Initial examination of ages of youth waived showed a consistent positive relationship between age and likelihood of waiver. However, when controlling for offense type, a slightly larger percentage of youth aged 13 (2.8%) are waived for single person offenses than youth aged 14 (2.2%). It should be noted that the absolute numbers of 13 and 14 year old youth are very small (4 and 5 respectively) and a change in the outcome of one youth would alter the percentages significantly. Youth aged 15 remain the most likely to be waived for single person offenses, more than double the percentage (5.8%) that of youth aged 13 or 14.

A consistently positive relationship between age and likelihood of waiver for juveniles committing multiple person offenses is shown in Table 6. Youth aged 13 were waived 8.0% of the time, while the chances of waiver more than

double for youth aged 14 (20.9%). Juveniles aged 15 are the most likely to be waived (32.4%) with nearly a third of all 15 year olds committing multiple person crimes waived.

**Table 6 – Percentage of Youth (by Age) Waived by Offense Type**

|                                 | <b>Not Waived</b> | <b>Waived</b> |
|---------------------------------|-------------------|---------------|
| <b>Single Person Offense</b>    |                   |               |
| 13                              | 97.2% (139)       | 2.8% (4)      |
| 14                              | 97.8% (227)       | 2.2% (5)      |
| 15                              | 94.2% (358)       | 5.8% (22)     |
|                                 |                   |               |
| <b>Multiple Person Offenses</b> |                   |               |
| 13                              | 92.0% (46)        | 8.0% (4)      |
| 14                              | 79.1% (53)        | 20.9% (14)    |
| 15                              | 67.6% (75)        | 32.4% (36)    |

*Waivers by Prior Record*

Two patterns emerge when controlling for the legal variable of a juvenile’s past criminal history, or prior record (see Table 7). For juveniles with no prior record and those with a past criminal history involving multiple crimes including at least one felony, other youth of color are most likely to be waived. White youth are least likely to be waived if they have no prior record (5.3%), followed by black youth (6.0%). For youth in the “multiple felony” category, the trend is the same, but the difference in percentages is more pronounced. White youth are actually less likely to be waived for multiple felonies (4.7%) than if they have no prior record (5.3%); however, black youth are almost three times more likely to be



waived for multiple felonies (17.9%) than if they have no previous offenses (6.0%). One fourth (25.0 %) of other youth of color who previously committed multiple felonies are waived, more than double the percent of other youth of color waived with no prior record (11.3%), and more than five times the number of white youth waived with a prior record of multiple felonies.

The second pattern to emerge is that only black youth are waived when prior record includes a single crime (either a misdemeanor or felony) or multiple misdemeanors. No white or other youth of color are waived for any of these three categories of prior record. This pattern must be viewed with caution, however, as the number of white and other youth of color in these categories is very small. Compared to the 32 black youth with a prior record of a single misdemeanor, the population includes only 9 white youth and 4 other youth of color. Of juveniles with a previous single felony charge, 31 are black, 18 white, and only 1 is other youth of color. For multiple misdemeanors, 27 are white youth and 9 are other youth of color, compared to 78 black juveniles.

These results indicate that other youth of color are more likely to be waived for a first offense as well as for multiple felonies than any other racial group. Black juveniles are more likely to be waived than whites or other youth of color when they have a prior record consisting of a single offense or multiple misdemeanors. White youth are the least likely to be waived for a first offense or multiple felonies, are no more likely than youth of color and less likely than blacks to be waived for single offense or multiple misdemeanors.

**Table 7 – Percentage of Youth (by Race) Waived by Prior Record**

|                                | <b>Not Waived</b> | <b>Waived</b> |
|--------------------------------|-------------------|---------------|
| <b>No prior record</b>         |                   |               |
| Black                          | 94.0% (299)       | 6.0% (19)     |
| White                          | 94.7% (179)       | 5.3% (10)     |
| Other Youth of Color           | 88.7% (47)        | 11.3% (6)     |
|                                |                   |               |
| <b>Single Misdemeanor Only</b> |                   |               |
| Black                          | 90.6% (29)        | 9.4% (3)      |
| White                          | 100.0% (9)        | None          |
| Other Youth of Color           | 100.0% (4)        | None          |
|                                |                   |               |
| <b>Single Felony Only</b>      |                   |               |
| Black                          | 96.8% (30)        | 3.2% (1)      |
| White                          | 100.0% (18)       | None          |
| Other Youth of Color           | 100.0% (1)        | None          |
|                                |                   |               |
| <b>Multiple Misdemeanors</b>   |                   |               |
| Black                          | 89.7% (70)        | 10.3% (8)     |
| White                          | 100.0% (27)       | None          |
| Other Youth of Color           | 100.0% (9)        | None          |
|                                |                   |               |
| <b>Multiple Felonies</b>       |                   |               |
| Black                          | 82.1% (147)       | 17.9% (32)    |
| White                          | 95.3% (41)        | 4.7% (2)      |
| Other Youth of Color           | 75.0% (12)        | 25.0% (4)     |

Note that for Table 7 and Table 8, the N is reduced from the original 1108 to 1007. This is due to removing females from the analysis.

Prior criminal history does not change the direction of the relationship initially observed between age and waiver. In all categories of prior record, older youth have an increased chance of waiver, as shown in Table 8. The likelihood of waiver increases with each age group for youth with no prior record, from 4.5% for youth aged 13, to 6.0% for youth aged 14, to 7.4% for youth aged 15. The percentage waived also increases for each age for a prior record of multiple

misdemeanor (from no waivers at age 13 to 11.1% at age 15) as well as multiple felonies, which waive 5.7% of youth aged 13, 12.1% of youth aged 14, and 20.0% of youth aged 15. No youth age 13 or 14 having a prior record consisting of only one misdemeanor or one felony were waived. Interestingly, youth age 15 were more than twice as likely to be waived with a prior record of a single misdemeanor (10.7%) than with a single felony (4.5%).

**Table 8 – Percentage of Youth (by Age) Waived by Prior Record**

|                                | <b>Not Waived</b> | <b>Waived</b> |
|--------------------------------|-------------------|---------------|
| <b>No prior record</b>         |                   |               |
| 13                             | 95.5% (128)       | 4.5% (6)      |
| 14                             | 94.0% (171)       | 6.0% (11)     |
| 15                             | 92.6% (226)       | 7.4% (18)     |
|                                |                   |               |
| <b>Single Misdemeanor Only</b> |                   |               |
| 13                             | 100.0% (5)        | None          |
| 14                             | 100.0% (12)       | None          |
| 15                             | 89.3% (25)        | 10.7% (3)     |
|                                |                   |               |
| <b>Single Felony Only</b>      |                   |               |
| 13                             | 100.0% (13)       | None          |
| 14                             | 100.0% (15)       | None          |
| 15                             | 95.5% (21)        | 4.5% (1)      |
|                                |                   |               |
| <b>Multiple Misdemeanors</b>   |                   |               |
| 13                             | 100.0% (14)       | None          |
| 14                             | 97.3% (36)        | 2.7% (1)      |
| 15                             | 89.9% (56)        | 11.1% (7)     |
|                                |                   |               |
| <b>Multiple Felonies</b>       |                   |               |
| 13                             | 94.3% (33)        | 5.7% (2)      |
| 14                             | 87.9% (51)        | 12.1% (7)     |
| 15                             | 80.0% (116)       | 20.0% (29)    |

## Conclusions

During 2005, 2006, and 2007, North Carolina's juvenile justice system did not waive large numbers of youth. Of the total population of 1108 youth, only 7.9% (88 youth) were waived. Only three females were waived during the period. The data show that females were less likely to be waived, and, consistent with other studies, the total population of females is too small to allow any further conclusions regarding the effect of gender on waiver decisions. Before controlling for the legal variables of offense seriousness and prior record, other youth of color were most likely to be waived, followed by blacks, with white youth least likely to be waived. As age increases so does the likelihood of waiver, as older youth have less time remaining under the jurisdiction of the juvenile court.

The results indicate that the seriousness of the offense and a youth's prior record are influential in waiver decisions. When looking at the relationship of the independent and control variables to waiver individually, the highest categories of waived youth were those with multiple person offenses and those with a prior record of multiple felonies. The commission of multiple person offenses indicates a high degree of severity of the offense, and a prior record of multiple felonies suggests that the juvenile was not responsive to previous attempts at rehabilitation by the juvenile system. No youth were waived for property crimes/crimes against the state, the least severe category of offense type.

Other youth of color are most likely to be waived before the introduction of control variables and remain the most likely racial category to be waived when controlling for offense seriousness. They also are most likely to be waived when they have no prior record or a prior record of multiple felonies. White juveniles are the least likely to be waived overall, for a first offense or for a previous record of multiple felonies. The likelihood that a black youth will be waived overall and when controlling for offense seriousness is greater than whites, but less than other youth of color. Black youth are most likely to be waived when the prior record includes one previous crime or multiple misdemeanors. In fact, black youth were the only youth waived in those categories during this study.

Although not a consistently positive relationship across all categories, when controlling for legal variables generally, as age increases, so does a juvenile's chance of waiver. For each category of offense seriousness and prior record, youth age 15 were always the most likely to be waived. Committing a single person offense was the only situation where youth aged 13 had a greater likelihood of waiver than those aged 14. For prior records consisting of a single crime (misdemeanor or felony), all youth waived were age 15.

Although the actual percentages of waivers by race and age change when legal variables are inserted as controls, the categories of youth most likely and least likely to be waived do not. This suggests that the legal variables of offense seriousness and prior record are the most operative in waiver decisions in North

Carolina; however, race and age also are predictive of which youth have a greater chance of being waived.

## CHAPTER VII

### DISCUSSION

The ability to waive some youth to Superior Court allows the juvenile justice system to preserve its rehabilitative focus by providing a mechanism for removing youth who have committed particularly violent or calculated offenses, or who have failed to respond to previous attempts at treatment. An overall waiver rate of less than eight percent suggests that North Carolina adheres to the intent of waiver, using it selectively for those youth who are not perceived as amenable to treatment options within the juvenile justice system. Waiver decisions must involve a certain amount of discretion, as the specific factors in each case must be taken into account in determining the most appropriate means of responding to an individual youth's offense(s). As with any discretionary policy, unintentionally discriminatory treatment of certain groups may result.

The body of research on waiver decisions consistently finds that seriousness of offense, prior record, and age are the strongest predictors of waiver. Seriousness of offense and prior record are both legal factors in a waiver hearing; therefore, it is logical they would have a significant impact on waiver decisions. If the juvenile system did not incorporate waiver as a "safety valve,"

public faith in the entire juvenile system would be jeopardized when juveniles who repeatedly committed serious and violent offenses were treated with more leniency and were released back into society for no other reason than reaching a particular age. In some respects, age becomes a quasi-legal variable, as the maximum age the North Carolina juvenile system has jurisdiction over the most severe offender is 21. If the juvenile's crime was clearly premeditated and violent, judges may be reluctant to allow even a first time offender to remain in the juvenile system because of the short amount of time available for treatment before the offender "ages out" and has to be released.

The effects of race on a juvenile's likelihood of waiver are more difficult to isolate. Although other youth of color have the highest likelihood of being waived (11.1%), they are only 11.3% of the total population of waived youth. An examination of the total population of waived youth in North Carolina shows them to be predominately male (96.6%), black (73.9%), and age 15 (67.0%). Because a larger number of black youth (709) are eligible for waiver, black youth represent the largest category of youth actually waived despite the fact that the percent of black youth actually waived is less than for other youth of color. These data prompt two distinct questions: why are youth of color the most likely to be waived and why are larger numbers of black youth eligible for waiver?

Black's theoretical assumption that law does not operate in a social vacuum and that the social characteristics of all parties involved influence legal outcomes offers possible explanations for both questions. By conceptualizing



law and the legal system as variable means of social control operating within the larger society, Black's theory offers insight into the social forces that impact all aspects of juvenile justice from the initial commission of deviant behavior until the point of a waiver decision. Individuals who are lower on the social strata are at risk of being subjected to a higher quantity of law. If the racial groups included in other youth of color are drawn from lower social classes than the black or white youth, this could explain why a higher percentage of these youth are waived. Or, this could be explained as sheer discrimination against other youth of color moreso than against black or white youth. However, both of these explanations are speculative at this point. Given that this study does not include measures of social status, outside of race, the actual impact of social class cannot be assessed. The same can be said for evidence of discrimination. Variation does not necessarily mean discrimination. Thus, evaluation of additional evidence would be necessary before a claim of discrimination could be supported.

The literature offers some insight into why a higher number of black youth are eligible for waiver to begin with. Social characteristics affect each decision along the continuum of the juvenile justice process, not just at the point of waiver. The decisions made throughout the juvenile justice process affect the youth eventually eligible for waiver. According to the literature, African American juveniles are arrested and charged more often for different types of offenses than white youth (Podkopacz and Feld 1995). Police are more likely to focus their attention on lower class minority neighborhoods, putting certain youth at higher

risk of arrest (Jordan 2005). Bishop and Frazier (1996) also find that many well-intended juvenile justice policies are inadvertently discriminatory as they do not allow equal opportunities for economically disadvantaged youth, many of whom are African American.

Although social factors may affect other youth of color and black youth differently within the juvenile justice system, any differences between these two groups and risk of waiver are relatively small compared to the overall difference between the risk of waiver for these two groups as compared to whites. Thus, the more important story here is that *all* youth of color (black youth and those in the other youth of color category) are more than twice as likely to be waived than white youth. When black and other youth of color are combined into a single category, “youth of color,” the differential outcomes for all youth of color become clear when examining absolute numbers of youth eligible for waiver, absolute numbers of youth actually waived, and likelihood of waiver (percent waived) (see Table 9). Even after controlling for the legal variables of offense seriousness and prior record, the percent of all youth of color waived is notably higher than for white youth. All youth of color are overrepresented in the population of waived youth. For multiple person offenses, the percent waived for youth of color (27.0%) is more than twice that of white youth (12.0%), and for a prior record consisting of multiple felonies, youth of color are nearly four times as likely to be waived (18.5%) as white youth (4.7%).

**Table 9 – Percentage of Youth of Color and White Youth Waived**

|                                       | <b>Not Waived</b> | <b>Waived</b> |
|---------------------------------------|-------------------|---------------|
| <b>Race</b>                           |                   |               |
| Youth of Color                        | 89.9% (648)       | 10.1% (73)    |
| White                                 | 95.8% (274)       | 4.2% (12)     |
| <b>Seriousness of Current Offense</b> |                   |               |
| <b>Single Person Offenses</b>         |                   |               |
| Youth of Color                        | 95.3% (508)       | 4.7% (25)     |
| White                                 | 97.3% (216)       | 2.7% (6)      |
| <b>Multiple Person Offenses</b>       |                   |               |
| Youth of Color                        | 73.0% (130)       | 27.0% (48)    |
| White                                 | 88.0% (12)        | 12.0% (6)     |
| <b>Prior Record</b>                   |                   |               |
| <b>No prior record</b>                |                   |               |
| Youth of Color                        | 93.3% (346)       | 6.7% (25)     |
| White                                 | 94.7% (179)       | 5.3% (10)     |
| <b>Single Misdemeanor Only</b>        |                   |               |
| Youth of Color                        | 91.7% (33)        | 8.3% (3)      |
| White                                 | 100.0% (9)        | None          |
| <b>Single Felony Only</b>             |                   |               |
| Youth of Color                        | 96.9% (31)        | 3.1% (1)      |
| White                                 | 100.0% (18)       | None          |
| <b>Multiple Misdemeanors</b>          |                   |               |
| Youth of Color                        | 90.8% (79)        | 9.2% (8)      |
| White                                 | 100.0% (27)       | None          |
| <b>Multiple Felonies</b>              |                   |               |
| Youth of Color                        | 81.5% (159)       | 18.5% (36)    |
| White                                 | 95.3% (41)        | 4.7% (2)      |

Contrary to most of the literature, even when controlling for legal variables, this study indicates that race influences the likelihood of waiver in North Carolina.

From the data available and the analytical techniques used in this study, it is not possible to offer definitive conclusions regarding the effect of race; however, some informed speculations may offer some guidance for further research in North Carolina.

It is possible that more youth of color are waived as a result of discrimination, either unintentional or intentional. Because the juvenile system is designed to be more responsive to the needs of individual youth than the adult justice system, it includes more discretionary policies at all stages of the system. Discretionary decision-making may result in inadvertent discrimination against some types of youth. Alternatively, the same discretionary policies may be used as a way to explain away differential outcomes when in reality blatant discrimination was a determining factor in decision-making. It is not possible to determine from endpoint data alone if racial discrimination has occurred, nor if it was unintentional or deliberate.

Another possible reason for finding race to be predictive of waivers in this study may be a regional effect. Other studies reviewed did not conduct research in the southeastern United States, where race may have a unique effect. In particular in the southeastern United States, race may be linked to social class. Although this study did not examine any data indicative of social class, it is possible that this variation by race is as much a class effect as a race effect; however, this is purely speculative. Finally, it is possible that within the state of North Carolina, regional variations affected the outcomes. North Carolina has

several large urban areas; however, the far eastern and western parts of the state are very rural. The norms and values of communities influence the local response to crime. Rural counties may be likely to respond differently to offenders than large urban areas. The racial makeup of the state also varies geographically. For example, the far western part of the state is rural with a very small African American population; however, a Native American reservation is located in western NC. The eastern part of the state also is rural, but with a much larger African-American population. Certain groups of youth of color may be viewed differently in the far western and far eastern parts of the state depending on their prevalence in the local population. In addition, urban communities may treat youth of color differently than rural counties. Again, this is purely speculative.

Patterns of offending also may contribute to the appearance of a race effect in North Carolina. Studies that did find some race effect (Barnes and Franz 1989) suggest that this effect may have been correlated with offense type. Because of the number of different offenses levied against the juveniles in this population, the offenses were combined into a small number of categories to ensure enough data in each category for analysis. For example, voluntary manslaughter and first degree child rape are in the same category of “crimes against persons.” However, these two crimes may be viewed quite differently by judges determining waiver. If offense type varies by race, the effect of offense

type may have been masked by the way in which that category was constructed for the purposes of this particular study.

### Limitations of the Study and Opportunities for Future Research

While this study was able to support the hypothesis of a positive correlation between age and waiver, it did not support the hypothesis that the effect of race is eliminated when controlling for legal variables of offense seriousness and prior record. Due to the small sample, I was unable to draw meaningful conclusions regarding gender. More advanced statistical techniques could possibly examine the relationships between these variables in more detail. For example, initially it seems odd that white youth would be more likely to be waived when they had no prior record than when they had a prior record of multiple felonies. If more layers of analysis were possible, this finding could be discussed further. In addition, because an entire population, rather than a sample, was studied, I did not conduct significance tests.

A larger population also would allow for more analysis, perhaps showing clearer relationships. As previously mentioned, due to the small number of females overall, they were eliminated from the secondary analysis. All crimes against persons also were collapsed into a single category. Judges facing waiver decisions may consider some of the crimes in this category to be legally different than others. More data would allow these offense type categories to be further analyzed. Another example of the small dataset affecting categories

available for analysis can be seen with the category of offense seriousness labeled “multiple person offenses.” This category includes juveniles charged with as few as two and as many as eleven person offenses. It is likely that a judge does not consider the juvenile with two person offenses in the same manner as one committing eleven. However, subdividing this category any further would have made the number of cases in each category too small for significant observations. Similar concerns emerged with the “multiple misdemeanor” and “multiple felonies” categories. If the North Carolina Department of Juvenile Justice and Delinquency Prevention maintains the current data collection system for years to come, more in-depth analysis may be conducted to expand on these findings and draw more definitive conclusions as the population available for analysis increases.

Access to victim data, as well as more socio-economic data regarding the offender, would allow for much more depth of analysis. Using Blacks’ theory as a guide, analysis of offender information only is not as meaningful as when the relationship of the offender and victim are considered together (Black 1989). Basic demographic information regarding the victim and more in-depth information regarding the offender (such as his/her household composition and educational status) would allow for more detailed analysis using Black’s theory as a guiding framework.

## CHAPTER VIII

### CONCLUSION

In this study, I sought to determine if waivers to Superior Court in North Carolina vary by gender, race, and age when controlling for the legal variables of offense seriousness and a juvenile's prior record. North Carolina law allows youth as young as 13 to be waived to Superior Court, and once convicted they will be treated as an adult for all future criminal proceedings regardless of their age. The process of transferring a juvenile to Superior Court and trying and sentencing him/her as an adult has serious negative consequences for the future life chances of the juvenile; therefore, it is important to have an accurate awareness of the factors that are most operative in waiver decisions.

A review of the literature established that while nearly all populations of waived youth are disproportionately older, male and youth of color, this alone does not indicate that waiver is implemented in a discriminatory manner. The body of research consistently finds age, seriousness of offense, and prior record of the juvenile to be the strongest predictors of waiver; however, the research is not consistent when examining the effects of race and gender. In order to determine if waivers in North Carolina vary by gender, race, and age, I examined the total population of waived youth between 2005 and 2007.



I found that male juveniles of color (other than African-American) aged 15 were most likely to be waived when waivers were examined solely by demographic categories. Overall, the results did not change when the legal variables of offense seriousness and prior record were added to the analysis. In some categories of prior record, black youth were more likely to be waived than other youth of color; however, the total population in these categories is of such a small size that results must be interpreted with caution. The combined category of “all youth of color” proved to be the most central in understanding the role of race in waiver decisions as youth of color are more than twice as likely than white youth to be waived across all categories of the legal variable controls. Youth aged 15 always were the most likely to be waived. Males were more likely to be waived as well; however, the population of females was so small that they were excluded from secondary analysis. The largest percentages of waived youth were those who committed the most serious crimes and had a prior record of multiple crimes including at least one felony. A juvenile’s chance of waiver was higher when considering the legal variables than demographic variables. These results indicate that the legal variables of offense seriousness and prior record are the strongest predictors of waiver in North Carolina; however, the juvenile’s age and race also affect his/her chances of being waived to Superior Court. I therefore supported my hypothesis with regards to the positive relationship between age and waiver, but did not support my hypothesis that race would not have an effect with the introduction of legal variables as controls.

Although initially it is encouraging that the legal variables of offense seriousness and prior record are most operative in waiver decisions, followed by the quasi-legal variable of age, with a juvenile's race being the least predictive of the four variables, the effect of race on waiver in North Carolina is difficult to isolate. Other youth of color have the highest percentage of youth waived; however, black youth make up the highest numbers of youth actually waived. It is not possible in this limited study to determine the reasons for the different outcomes for the two racial groups, although social forces may have a more pronounced negative impact on black youth during decisions prior to the waiver decision, but affect other youth of color primarily at the point of the waiver decision. Either way, all youth of color are at a disadvantage relative to white youth in waiver decisions. Although the data are not available in this study to support these speculations, it is possible that the differential waiver rates could be due to discrimination, geographical effects, patterns of offending, or some combination of the above.

This research is limited for several reasons, each of which provides an opportunity for future expansion of this study. Victim information was not available in the dataset provided and would require a more in-depth research protocol. However, access to victim characteristics, as well as additional social characteristics of the offenders, would allow further analysis within the framework of Black's theoretical perspective. In addition, the small population of youth, particularly that of females, prevented meaningful discussion of some categories

of offenders. As North Carolina continues to collect information regarding juvenile offenders and the population grows, more opportunities for advanced analysis will present themselves. More sophisticated analytical techniques also may be used to illustrate more complex relationships between variables.

## REFERENCES

Barnes, C.W. and Franz, R.S. (1989). Questionably Adult: Determinants and effects of the juvenile waiver decision. *Justice Quarterly*, 6 (1), 117-135.

Bishop, D.M., and C.E. Frazier, (1992). Gender bias in juvenile justice processing: Implications of the JJDP Act. *The Journal of Criminal Law and Criminology* 82(4): 1162-1186.

Bishop, D.M., and C.E. Frazier, (1996). Race effects in juvenile justice decision making: findings of a statewide analysis. *Journal of Criminal Law and Criminology*, (86)2: 392-413.

Bishop, D.M., and C.E. Frazier, (1991). Transfer of juveniles to criminal court: A case study and analysis of prosecutorial waiver. *Notre Dame Journal of Law, Ethics, and Public Policy*, 5(2): 281-302.

Black, Donald, (1989) *Sociological Justice*. New York, NY, Oxford University.

Black, Donald, (1976). *The Behavior of Law*. San Diego, CA, Academic Press.

Clement, M.J. (1997). A five-year study of juvenile waiver and adult sentences: Implications for policy. *Criminal Justice Policy Review* 8 (2-3): 201-219.

Dannefer, Dale, and Schutt, Russell, K., (1982). Race and Juvenile justice processing in court and police agencies. *The American Journal of Sociology*, 87 (5): 1113-1132.

Fagan, J. (1990). Social and legal policy dimensions of violent juvenile crime. *Criminal Justice and Behavior*, 17 (1): 93-133.

Fagan, J. and Deschenes, E. P. (1990). Determinants of judicial waiver decisions for violent juvenile offenders. *The Journal of Criminal Law and Criminology*, 81 (2): 314-347.

Feld, B.C. (1998). Juvenile and criminal justice systems' responses to youth violence. *Crime and Justice*, 24: 189-261.

Feld, B.C (2001). Race, youth violence, and the changing jurisprudence of waiver. *Behavioral Science and the Law*, 19(1): 3-22

Fritsch, E.J., Caeti, T. J., and Hemmens, C. (1996). Spare the needle but not the punishment: The incarceration of waiver youth in Texas prisons. *Crime and Delinquency*, 42 (4): 593-609.

Houghtalin, M. and Mays, G. L. (1991). Criminal dispositions of New Mexico juveniles transferred to adult court. *Crime and Delinquency* 37 (3): 393-407.

Jordan, Kareem, L., (2006). *Violent youth in adult court: the decertification of transferred offenders*. LFB Scholarly Publishing LLC.

Kinder, K., Veneziano, C., Fitcher, M., and Azuma, H. (1995). A comparison of the dispositions of juvenile offenders certified as adults with juvenile offenders not certified. *Juvenile and Family Court Journal*, 26: 37-42.

Krisberg, Barry. (1994). Distorted by fear: the make believe war on crime (Crime and Justice in the Clinton Era). *Social Justice*, 21(3): 38-50.

Kupcheck, Aaron. (2006). *Judging juveniles: prosecuting adolescents in adult and juvenile courts*. New York, New York University.

McCarthy, Belinda, R., and Smith, Brent, L., (1986) The conceptualization of discrimination in the juvenile justice process: The impact of administrative factors and screening decisions on juvenile court dispositions. *Criminology* 24(1): 41-64.

McCord, Joan, Widom, Cathy Spatz, and Crowell, Nancy A., (eds) (2001). *Juvenile crime juvenile justice*. Washington DC, National Academy Press.

Meyers, D. L. (2001). The recidivism of violent youth in juvenile and adult court: A consideration of selection bias. *Youth Violence and Juvenile Justice*, 1 (1): 79-101.

Meyers, David, L. (2005). *Boys Among men: trying and sentencing juveniles as adults*. Westport, Praeger Publishers.

Newton, Rae, R. and Rudestam, Kjell, Erik. (1999). *Your Statistical Consultant: Answers to your data analysis questions*. Thousand Oaks, Sage Publications, Inc.

Peterson, Ruth, D., (1988) Youthful offender designations and sentencing in the New York criminal courts. *Social Problems* 35 (2); 111-130.

Podkopacz, M.R., and B.C. Feld (1995). Judicial waiver policy and practice: Persistence, seriousness, and race. *Law and Inequality*, 14: 74-178.

Podkopacz, M.R., and B.C. Feld (1996). The end of the line: An empirical study of judicial waiver. *Journal of Criminal Law and Criminology*, 86(2): 449-492.

Poulos, Tammy Meredith, and Orchowsky, Stan. (1994). Serious juvenile offenders: predicting the probability of transfer to criminal court. *Crime and Delinquency* 40 (1): 3-17.

Robertson, Ian. (1989). *Society A Brief Introduction*. New York, Worth Publishers, Inc.

Shoemaker, Donald, J. (2000). *Theories of Delinquency An Examination of Explanations of Delinquent Behavior*, Fourth Ed. New York, Oxford University Press.

Sickmund, M., Snyder, H.N., and Poe-Yamagata, E. (1997). *Juvenile Offenders and Victims: 1997 Update on Violence*. United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention: Washington, DC.

Singer, Simon, I. (1996). *Recriminalizing delinquency: violent juvenile crime and juvenile justice reform*. New York, Cambridge University Press.

Steiner, Benjamin, (2005). Predicting sentencing outcomes and time served for juveniles transferred to criminal court in a rural northwestern state. *Journal of Criminal Justice*, 33: 601-610.

The National Center for Juvenile Justice (2006, March). *State Juvenile Justice Profile*. <http://www.ncjj.org/stateprofiles/overviews/upperage.asp>.

The North Carolina Department of Juvenile Justice and Delinquency Prevention (2007). *2007 Annual Report*. <http://www.ncdjjdp.org/statistics/annual.html>

Thomas, C. W., and Bilchi, K. S., (1985). Prosecuting juveniles in criminal courts: A legal and empirical analysis. *The Journal of Criminal Law and Criminology*, 76 (2): 439-479.

Tittle, Charles, R., and Curran, Debra, A., (1998) Contingencies for dispositional disparities in juvenile justice. *Social Forces*, 67 (1): 23-58.

Urbana, Martin, G., (2005) Transferring juveniles to adult court in Wisconsin: Practitioners voice their views. *Criminal Justice Studies*, 18(2): 147-172.

### **Cases Cited**

*Breed v. Jones*, 421 U.S 519 (1975).  
*Ex Parte Crouse*, 4 Wharton 9, 11 (Pa. 1838).  
*In re Gault*, 387 U.S. 1 (1967)  
*In re Winship*, 397 U.S 385 (1970).  
*Kent V. United States*, 383 U.S 541 (1966).  
*McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)  
*O'Connell V Turner*, 55 Ill.280, 283-84, 287 (1870)  
*Schall v. Martin*, 467 U.S 253 (1984).

## Appendix A

### Listing of Original Offenses

(as charged by NC Department of Juvenile Justice and Delinquency Prevention)

| <b>Re-coded category</b>      | <b>Original Offense</b>  |
|-------------------------------|--|
| <b>Crimes against Persons</b> | Assault Law Enforcement officer/Parole Officer/Other with a Firearm                                  |
|                               | Assault with a Deadly Weapon Inflicting Serious Injury   |
|                               | Assault with a Deadly Weapon with intent to Kill   |
|                               | Assault with a Deadly Weapon with intent to Kill Inflicting Serious Injury                           |
|                               | Discharge weapon occupied property   |
|                               | Discharge weapon occupied property in operation inflicting serious bodily injury                     |
|                               | First degree burglary <sup>8</sup>   |
|                               | First degree kidnapping  |
|                               | First degree rape  |
|                               | First degree rape child  |
|                               | First degree sex offense child   |
|                               | First degree sexual exploitation of a minor  |
|                               | First degree sexual offense  |
|                               | Incest where the victim is < 13 years of age and the perpetrator is >= 4 years older than the victim |
|                               | Malicious assault in secret  |
|                               | Robbery with a dangerous weapon  |
| Second degree kidnapping      |  |

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<sup>8</sup> First degree burglary is categorized as a Crime against a Person based on the legal definition of the crime. According to NC Statute G.S. 14-51 the crime of burglary is in the first degree when the dwelling is occupied at the time of the burglary. Because there were persons inside the dwelling during the commission of the crime, I decided to include First Degree Burglary in the Crimes against Person section. NC Statute G.S. 14-51 defines second degree burglary as burglary of a dwelling that was not occupied at the time of the crime. If there had been any juveniles in this population charged with second degree burglary, that crime would have been categorized as a Property Crime/Crime Against the State.



| <b>Re-coded category</b>                        | <b>Original Offense</b>   |
|---|---|
|   |   |
| <b>Crimes against Persons</b>                   | Second degree murder  |
|   | Second degree rape  |
|   | Second degree sexual offense  |
|   | Statutory Rape/ Sex Offense Defendant > 4 - < 6 Years   |
|   | Statutory Rape/ Sex Offense Defendant > = 6 Years   |
|   | Voluntary Manslaughter  |
|   |   |
| <b>Property Crimes/Crimes Against the State</b> | Adulterated or misbranded food  |
|   | Breaking out of dwelling/house burglary   |
|   | Burn church/religious building  |
|   | Distribution of certain food at Halloween and all other times prohibited – any poisonous chemical or compound or any foreign substance which might cause death, serious physical injury or serious physical pain and discomfort |
|   | First degree arson  |
|   | Manufacture/sell/deliver/possess controlled substance at child care center  |
|   | Obtain or attempt to obtain property false pretenses >= \$100,000   |
|   | Possess with intent to manufacture, sell, or deliver controlled substance on or near a playground   |
|   | Promote drug sales by a minor   |
|   | Sell/deliver controlled substance within 300 ft. of school  |
|   | Trafficking in Cocaine >= 400 grams   |