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**PROCESS EVALUATION OF RECENT
JUVENILE TRANSFER STATUES IN
VIRGINIA**

VOLUME I

Final Report

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TABLE OF CONTENTS

	<u>Page</u>
I. LITERATURE REVIEW	1
1. BRIEF DESCRIPTION OF THE TRANSFER PROCESS	1
2. EVOLUTION OF CURRENT TRANSFER PRACTICES.....	2
3. IMPLEMENTATION OF TRANSFER PROVISIONS.....	4
4. FACTORS AFFECTING TRANSFER DECISIONS	5
5. DISPOSITIONS AND SENTENCING OUTCOMES.....	7
II. A REVIEW OF RECENT VIRGINIA JUVENILE TRANSFER STATUTES.....	8
1. JUVENILE TRANSFERS TO ADULT COURT.....	8
2. SERIOUS JUVENILE OFFENDER TASK FORCE.....	8
3. GOVERNOR'S COMMISSION ON JUVENILE JUSTICE REFORM.....	9
4. CHANGES TO THE JUVENILE TRANSFER STATUTE	11
III. PROCESS EVALUATION OF RECENT JUVENILE TRANSFER STATUES IN VIRGINIA: INTRODUCTION AND RESEARCH DESIGN	15
1. INTRODUCTION	15
2. OVERVIEW OF RESEARCH PROJECT	15
3. A SIMPLIFIED MODEL OF THE JUVENILE CERTIFICATION PROCESS	18
Step 1: Arrest	18
Step 2: Intake Process	18
Step 3: Notification of the Commitment of Felony	20
Step 4: Decision to Certify.....	20
Step 5: Preliminary Hearing.....	21
Step 6: Grand Jury Hearing.....	21

I. LITERATURE REVIEW

1. BRIEF DESCRIPTION OF THE TRANSFER PROCESS

All States and the District of Columbia have available at least one of three principal mechanisms by which a juvenile's case can be transferred to criminal court: judicial waiver, prosecutorial discretion, or statutory exclusion.

Judicial waiver refers to the process by which a juvenile court judge waives jurisdiction over a case and transfers it to criminal court. This typically occurs in response to a motion by the prosecutor, but can sometimes be initiated by juveniles or their parents. Judges must often take into account statutory criteria such as age, offense seriousness, offense history, and amenability to treatment. The criteria are usually similar to those specified in *Kent v. United States*. Provisions differ in determining the flexibility of the waiver decision. Some States allow for the judge to make an entirely discretionary decision. Others specify circumstances in which a waiver is mandatory. Some States provide for a presumptive waiver in which juvenile offenders must be waived to criminal court unless they can prove that they are amenable to treatment within the juvenile system. In this case, the burden of proof lies with the juvenile. With all types of judicial waiver, a case must originate in juvenile court and cannot be channeled elsewhere without a juvenile court judge's formal approval (Griffin et al., 1998).

Prosecutorial discretion, also called "direct file" or "concurrent jurisdiction," refers to a prosecutor's authority to file certain cases in either juvenile or criminal court. The cases are most often limited by age and offense criteria. The minimum level of offense seriousness required to initiate prosecutorial discretion tends to be lower than that required for statutory exclusion or mandatory or presumptive waiver.

Statutory exclusion, similar to mandatory waiver provisions, occurs when offenders are excluded from juvenile court jurisdiction based on factors such as age and offense seriousness. In this case, the State legislature has predetermined factors that grant criminal courts original jurisdiction over certain cases. The most common excluded offenses include capital murder, murder of other types, and serious crimes against persons.

In addition to the three principal mechanisms of transfer, there are two types of transfer provisions that apply to certain populations of juvenile offenders: "Once an adult, always an adult" provisions and Reverse Waiver. Once an adult, always an adult provisions apply to the group of juvenile offenders that have been previously convicted in criminal court or waived from juvenile court jurisdiction. Under these provisions, any subsequent offenses must be prosecuted

in criminal courts, either through automatic waiver or exclusion. Reverse waiver provisions apply to juveniles that have been statutorily waived or direct filed to criminal court. These provisions allow the criminal court, on a motion from the prosecutor or petition from the juvenile, to transfer the case back to the juvenile court for adjudication and/or disposition.

Reverse waiver provides a method by which a State can ensure that criminal courts consider transferred cases appropriate (Strom et al., 1998).

2. EVOLUTION OF CURRENT TRANSFER PRACTICES

The roots of America's juvenile justice system formed during the 19th and early 20th centuries. The philosophy during this time was one of "*parens patriae*," where the State's powers and responsibilities consisted of acting as a surrogate parent for wayward youth in need of guidance and protection. Age was always a factor in determining culpability, and the needs of juveniles and adults were considered different. This led to an increasingly structured separation between juvenile and adult courts. The primary role of the juvenile system was one of rehabilitation. Though nearly all States established mechanisms to waive juveniles to adult court, these procedures were rarely invoked (Thomas & Bilchik, 1985; Bishop et al., 1996).

During the 1960s and 1970s, a "due process revolution" began to take place. In a series of Supreme Court decisions, most notably *Kent v. United States* (1966), juvenile proceedings were increasingly legalized. The judicial waiver was formalized with guidelines based on amenability to treatment and public safety concerns. Almost simultaneously, philosophies of "just deserts" and "get tough" developed in response to perceptions that crime was worsening, rehabilitation was ineffective, and youthful offenders were responsible for their actions. Critics of the juvenile system maintained that sanctions were not punitive enough, especially for serious and violent offenders, to act as deterrents or to ensure public safety (Bishop et al., 1996; Jensen & Metsger, 1994).

In response to these demands for greater accountability, most States altered their juvenile codes to facilitate the transfer of youthful offenders to criminal courts. There was a move to restrict the jurisdiction of juvenile courts through lowering the age of criminal court jurisdiction, creating more legislative criteria for transfer, and instituting easier methods for transfer such as statutory exclusion and prosecutorial waiver. Due to these emerging policies and philosophies, the number of youths transferred to criminal courts dramatically increased (Bishop et al., 1996).

3. IMPLEMENTATION OF TRANSFER PROVISIONS

All States and the District of Columbia (hereafter included with States) define the upper age of original juvenile court jurisdiction at age 17 or younger. All States allow those classified as juveniles to be prosecuted in criminal court under certain circumstances. Forty-six States allow judicial waiver, 15 States have concurrent jurisdiction statutes, 28 States have at least one statutory exclusion, 15 States have enacted presumptive waiver provisions, 23 States allow reverse waivers, and 31 States have enacted "Once an adult, always an adult" provisions (Snyder et al., 2000; Bilchik, 1998; Strom et al., 1998). Since 1992, all but six States modified or adopted provisions to make it easier to transfer juveniles to adult courts. Legislatures have added significantly to the list of offenses considered serious and/or lowered the age at which certain juveniles can be tried in criminal court. The changes in jurisdictional laws that have affected the most juveniles have been the expansions of statutory exclusion provisions through adding crimes to the list of excluded offenses and lowering the age limit on some or all excluded offenses (Snyder et al., 2000; Torbet et al., 1996).

Most national data available describe cases transferred via judicial waiver. Nationwide, cases waived to criminal court generally represent about 1 percent of the formally processed delinquency caseload (see Exhibit 1). Prior to 1992, property offenses represented the highest numbers of cases waived. After 1992, person offenses have outnumbered property offenses waived to criminal court. Prior to 1992, the cases most likely to be waived were drug offenses. After this period, person offense cases have been the most likely to be waived (1.9% of person offense cases were waived to criminal courts in 1996) (Stahl, 1999).

Further data are available for all juveniles transferred to adult courts in the Nation's 75 largest counties between 1990 and 1994 (see Exhibit 2). Generally, juveniles transferred to criminal court were black males (63%) and were charged with a violent offense. In the nation's 75 largest counties, 92 percent of juveniles in criminal courts were male. About 7 in 10 of those charged with violent offenses in criminal courts were black males. In contrast, white males committed 82 percent of juvenile burglary offenses. Females, who comprised 8 percent of juvenile transfers, were charged with a violent offense in over 70 percent of cases. The majority of transferred cases were age 16 and older (Strom et al., 1998).

EXHIBIT 1: CHARACTERISTICS OF WAIVED CASES BETWEEN 1987 AND 1996

	1987	1992	1996
Total Cases Waived	6,800	10,300	10,000
Most Serious Offense			
Person	28%	39%	43%
Property	55%	41%	37%
Drugs	9%	11%	14%
Public Order	7%	8%	6%
Gender			
Male	95%	96%	95%
Female	5%	4%	5%
Age at Time of Referral			
Under 16 years	7%	12%	15%
16 and older	93%	87%	85%
Race/Ethnicity			
White	57%	47%	51%
Black	41%	50%	46%
Other	2%	3%	3%

Stahl, 1999

EXHIBIT 2: CHARACTERISTICS OF TRANSFERRED CASES IN THE NATION'S 75 LARGEST COUNTIES—1990, 1992, AND 1994

Most Serious Offense	
Violent Offenses	66%
Murder	11%
Rape	3%
Robbery	34%
Assault	15%
Property Offenses	17%
Burglary	6%
Theft	8%
Drug Offenses	14%
Public-Order Offenses	3%
Gender	
Male	92%
Female	8%
Age at Arrest	
14 and under	8%
15	24%
16	27%
17	40%
18 or over	--
Race/Ethnicity	
White	31%
Black	67%
Other	2%

Strom et al., 1998

4. FACTORS AFFECTING TRANSFER DECISIONS

The rationale behind transfer practices is that a certain population of juvenile offenders, typically serious, violent, or chronic ones, are not most appropriately handled within the juvenile justice system. The longer sentences and stronger sanctions of the adult criminal system are generally deemed more suitable for these cases. A combination of offender characteristics such as drug abuse, dysfunctional families, and poor clinical prognoses may also be factored into the rationale to transfer an offender because he/she is not considered amenable to treatment within the juvenile system. For all types of offenders, an additional belief is that applying the harsher sanctions of the criminal system will serve as a deterrent to initial offending and re-offending.

In accordance with these rationales for transferring certain juvenile cases, there are several factors that are taken into account when making transfer decisions. The most significant factors are usually specified by State legislatures, including age, prior offense history (frequency and seriousness), prior placements, current offense seriousness, and amenability to treatment within the juvenile system. Age is linked to culpability and time remaining in the juvenile system for treatment. Extensive and serious prior offense histories/placements indicate a lack of amenability to previous and future rehabilitative efforts. Serious current offenses are understood to reflect a greater danger to public safety, less amenability to rehabilitation, and a need for harsh retribution. Amenability to treatment within the juvenile system is a broader category that applies directly to a central rationale for transferring many types of offenders. States provide different guidelines of varying specificity as to which of these factors must be weighed in making decisions under each available transfer provision (Podkopacz & Feld, 1996; Poulos & Orchowsky, 1994; Sanborn, 1996).

Two of these factors, offense seriousness and amenability to treatment, are so broad that they often allow for the discretionary consideration of several associated elements of the offense and offender. In determining offense seriousness, decision-makers often take into account whether the offense involved person, property, or drugs, whether it could be categorized as a violent offense such as murder or sexual assault, and whether or not a weapon was used (Strom et al., 1998; Sanborn, 1996; Poulos & Orchowsky, 1994). Many States specify which of these conditions must be taken into account in making transfer decisions, leaving less discretion for judges and prosecutors. In addition to these more legal considerations, there are many factors whose significance lies with the decision-makers' discretion. Sanborn (1996) found that juvenile court workers measured the severity of the crime in its broader context. Some of these contextual factors included where the crime occurred, with whom the crime was committed, the timing of the act, who was victimized, the impact of the crime on the victim, the sophistication of

the offender, and the juvenile's degree of participation in the criminal act. As a result, judges and prosecutors may regard legally equivalent felonies or misdemeanors as varying in severity depending on the context. This more subjective perception of offense severity in turn influences the transfer decision.

Amenability to treatment is a second factor that is interpreted in many ways and plays a significant role in determining the jurisdiction of a juvenile offender. Most State laws declare very generally that the decision to transfer should be made when the juvenile is "not amenable to treatment or rehabilitation" (Bilchik, 1998). While age, offense history, prior placements, and offense seriousness are all factors that the States connect to this broader consideration, there are many other aspects of juvenile cases that may influence decision-makers' determinations of amenability to treatment. For example, Podkopacz and Feld (1996) found that psychologists' and probation officers' evaluations of offenders, including recommendations for retention or referral, statistically influenced juvenile courts' transfer decisions. These evaluations directly influenced discretionary decisions regarding which system would be a better psychological fit for the juveniles. Other factors that have been found to play a role in perceptions of amenability to treatment include prior drug or mental health treatment, response to previous rehabilitation, school-related behavior (grades, absenteeism, infractions), family resources (functionality, abuse/neglect, and ability to provide rehabilitation/out-patient supervision), and social history (history of abuse/neglect) (Podkopacz & Feld, 1996; Singer, 1993; Sanborn, 1996; Poulos & Orchowsky, 1994).

Finally, there are many factors that have little association with the rationale or the legislation to transfer juveniles, but still exert a great deal of influence throughout the process. Most of these factors are associated with local court administration and community context. In some cases, the philosophies, policies, and practices of court service personnel, judges, and prosecutors can impact transfer outcomes. Decision makers may have different philosophies on critical issues such as the effectiveness of rehabilitation, the relationship between age and culpability, and the appropriateness of criminal sanctions for juvenile offenders. These philosophies, as well as political ambitions, can come into play in determining how a prosecutor or judge enforces legislation (Podkopacz & Feld, 1996; Sanborn, 1996). Prosecutors in particular typically have the discretion to charge defendants with different offenses or to file in criminal versus juvenile court. In addition, the various plea bargaining practices of prosecutors and judges can result in different patterns of waiver decisions between individuals. Reports and recommendations from court service personnel can also influence the decision-making process (Podkopacz & Feld, 1996). Furthermore, some community-specific characteristics have been found to play a role in the outcomes of transfer decisions, including resources available for the juvenile offender in the community, placement options, safety in jails and prisons, and local

public opinion. There is evidence that urban communities tend to differ from rural communities in terms of these variables, resulting in different patterns of transfer decisions (Sanborn, 1996; Poulos & Orchowsky, 1994). These many individual- and community-level factors add another layer of complexity to the decision-making process. Along with the discretion in judging offense and offender characteristics, they might contribute to a lack of uniform implementation of transfer legislation. They may also mitigate some of the effects of changes in legislation, as recent studies have found that the decision-making process adapts to changing legal conditions and social pressure, resulting in transfer outcomes similar to those prior to legislative changes (Snyder et al., 2000).

5. DISPOSITIONS AND SENTENCING OUTCOMES

Underlying the decision to transfer serious, violent or chronic juvenile offenders is the rationale that the longer sentences and stronger sanctions of the adult system will provide more suitable outcomes for these cases. The research that has been conducted is not definitive on this matter. A few studies have found that youths transferred for property offenses received shorter sentences in criminal court than those adjudicated for similar offenses in the juvenile system; however, those transferred for violent offenses received longer sentences than those adjudicated in juvenile courts (Podkopacz & Feld, 1996; Barnes & Franz, 1989; Thomas & Bilchik, 1985; Fagan, 1990). Other studies found that, in general, transferred juvenile offenders received sentences that were more severe in nature and length than their counterparts in the juvenile system (Rudman et al., 1986; Fritsch et al., 1996). Though it appears that transferred offenders may serve longer sentences than available in the juvenile system, one study found that the actual sentences served averaged only 27 percent of the original sentence (Fritsch et al., 1996). Another study found that a small percentage of transferred juveniles even received these harsh sanctions, with the majority being placed on probation (Champion et al., 1989). Podkopacz and Feld (1996) reported contradictory results, discovering that criminal courts incarcerated at much higher rates than juvenile courts, even with severity of offense controlled. A statistical report covering the nation's 75 largest counties over the years 1990, 1992, and 1994 supports these results. Seventy-nine percent of juveniles convicted of violent offenses in criminal court were sentenced to incarceration while 44 percent of juveniles adjudicated delinquent for violent offenses were sentenced to residential placement by a juvenile court. Fifty-seven percent of juveniles convicted of property offenses in criminal court were incarcerated while 35 percent of those adjudicated delinquent for property offenses were sentenced to placement (Strohm et al., 1998).

II. A REVIEW OF RECENT VIRGINIA JUVENILE TRANSFER STATUTES

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1. JUVENILE TRANSFERS TO ADULT COURT

In determining whether an individual should be tried in juvenile or adult court, States have traditionally used a person's 18th birthday as the cut-off for juvenile jurisdiction. However, it has also traditionally been understood that not every juvenile offender is appropriate for the juvenile court. Juvenile defendants who meet certain criteria—generally age, offense seriousness, offense history, and inability to be appropriately treated by the juvenile justice system—have been considered for transfer from the juvenile courts to adult criminal courts. The accepted rationale for this practice is that the most chronic, serious, and violent juvenile offenders are not receiving appropriate sanctions in the juvenile court. Virginia's juvenile court is a civil court, not a criminal court. Juveniles are not *convicted*, they are *adjudicated delinquent*. The circuit court is a criminal court of record. It is, therefore, believed by many that the public is best served by transferring the most serious juvenile offenders to the circuit court, which can impose longer sentences than are available to the juvenile courts.

2. SERIOUS JUVENILE OFFENDER TASK FORCE

The 1992 Session of the Virginia General Assembly directed the Virginia Commission on Youth to conduct a study of serious juvenile offenders. The Serious Juvenile Offender Task Force was convened by the Commission on Youth to study these offenders, sentencing practices, dispositional programs available to the courts, court processing issues, and the degree to which existing statutes addressed the problem of serious juvenile offenders. The *Serious Juvenile Offender Task Force Report to the General Assembly* (1994) provides the details of the study and its findings.

The Task Force collected data from the Department of Youth and Family Services (DYFS)¹ and the Department of Corrections (DOC). Using these data, they compared transferable arrests per capita with transfers/convictions per capita, finding that from 1988 to 1990, transfer-eligible arrests increased 7 percent, while actual circuit court convictions or transferred juveniles increased 31 percent. From 1988 to 1990, the majority (63%) of juveniles convicted in circuit court were sentenced to prison, and served an average of twice as long as juveniles committed to juvenile learning centers for transfer eligible offenses. However, 22 percent of juveniles convicted in circuit court received no incarceration. In a statistical model of 13 factors, the number of prior property offenses, followed closely by the age of the juvenile, was the strongest predictor of the decision to transfer a juvenile to circuit court.

¹ Agency's name changed to the Department of Juvenile Justice (DJJ) in 1996.

In addition to surveying other States, the Task Force surveyed Virginia officials involved in the transfer process. This included Commonwealth's Attorneys, circuit court judges, juvenile court judges, and public defenders. Survey respondents reported that current offense and prior record were the most important factors in the transfer decision. Respondents also stated a need for increased clarity in the transfer statutes, including more specific, quantifiable criteria. Although more than half of the respondents felt that no change was needed to the existing age criteria, more than 43 percent felt the age should be lowered. Sixty-one percent of Commonwealth's Attorneys felt the age should be lowered.

Based on the results of the surveys and the statistical analysis of data collected from DYFS and DOC, the Task Force made 10 recommendations to change the Virginia's juvenile transfer statute. These changes included:

- Lowering the minimum transfer age from 15 to 14 years
- Expanding the criteria the juvenile courts should consider in the transfer process
- For offenses for which the prescribed punishment is death or life imprisonment, the court should be able to certify the juvenile as an adult without determining amenability to treatment in the juvenile system
- Conviction of a juvenile after transfer terminates the juvenile court's jurisdiction over that juvenile for any future acts (Virginia Commission on Youth, 1994).

3. GOVERNOR'S COMMISSION ON JUVENILE JUSTICE REFORM

A rising fear of juvenile crime, particularly violent juvenile crime, spurred changes to Virginia's juvenile justice system. The juvenile murder arrest rate increased 318 percent from 1987 to 1993. The juvenile arrest rate for rape rose 40 percent in the same time frame, while the juvenile arrest rates for aggravated assault and robbery increased 104 percent and 45 percent, respectively.

The existing juvenile justice system in Virginia was developed in the 1970s and was designed more for dealing with low-level offenders such as vandals and truants. The *Code of Virginia*, in defining the purpose and intent of Juvenile and Domestic Relations District Court Law, stated, "In all proceedings the welfare of the child and the family is the paramount concern of the Commonwealth." This explicit wish to place the interests of the juvenile offender above the safety of the community seemed inappropriate when dealing with murderers, armed robbers, and rapists. Many believed this system was incapable of handling the serious, violent offenders now before the court. In response to these concerns, Virginia's governor appointed then-

Attorney General Jim Gilmore to chair the Governor's Commission on Juvenile Justice Reform. The *Final Report* (1995) of this Commission provides the details of the study and its findings.

The executive order that established the Commission gave it 10 responsibilities related to improving Virginia's system of juvenile justice. One of these responsibilities was "To identify the juvenile offenders for whom incarceration is necessary to protect public safety, including juvenile offenders whose offenses are so heinous or repetitive that it is in the best interest of the Commonwealth for them to be prosecuted and sanctioned in the adult system." After studying Virginia's juvenile justice system, the Commission was convinced of the need for serious juvenile offenders to face prosecution and sentencing in the adult court.

"Based upon the alarming rise in the rate at which juveniles commit serious felony offenses, and highly cognizant of the crowded conditions that exist in State and local secure detention centers, the Commission concludes that the most serious juvenile offenders need to be incarcerated apart from their age counterparts whose criminal histories may be less extensive and whose crimes may not yet have shown a proclivity to violence against the person... In order that [the Department of Youth and Family Services] might successfully continue its historical mandate of combining the elements of punishment and deterrence together with programs designed for reform and reintegration into society, these prisons for violent youthful offenders should be operated by the Department of Corrections." (Governor's Commission on Juvenile Justice Reform, 1995)

The Commission recommended a "sea change in the fundamental nature and philosophy of the juvenile justice system." The individual recommendations contained within their final report were intended to "unequivocally say that society will offer juveniles a chance for reform if they will take it, but that society will no longer tolerate their victimization of others, and that the juvenile will be held accountable for his actions" (Governor's Commission on Juvenile Justice Reform, 1995).

Of the 28 recommendations made by the Commission, four relate specifically to the transfer of juveniles to adult criminal court.

Recommendation 3: Separate the most violent and chronic juvenile offenders from other juvenile delinquents by trying and sentencing them as adults and confining them in separate juvenile facilities.

Recommendation 4: The Commonwealth's Attorney should be given the authority to decide, with judicial review, what other juvenile felons should be tried as adults, and the circuit court should have discretion to sentence those defendants as adults or as juveniles with adult sentences suspended.

Recommendation 5: Once a juvenile has been tried and convicted as an adult, he should be considered an adult in any subsequent criminal proceeding. Also, in the interest of judicial economy, offenses related to the offense that forms the basis of the removal of the matter to circuit court for trial as an adult also should be transferred to the circuit court for trial.

Recommendation 6: Juvenile offenders who are tried and sentenced as adults should be confined in separate programs and facilities operated by the Department of Corrections.

(Governor's Commission on Juvenile Justice Reform, 1995)

4. CHANGES TO THE JUVENILE TRANSFER STATUTE

The recommendations in the Commission's Final Report, together with increased media attention on juvenile crime, encouraged the Virginia General Assembly to pass legislation that dramatically changed Virginia's juvenile justice system. Among the changes made was an expansion of the laws governing transfers from juvenile to adult criminal court. In response to the recommendations by the Serious Juvenile Offender Task Force, the Serious Juvenile Offender Act of 1994 had already lowered the age of transfer to circuit court from 15 to 14 years of age. The Juvenile Justice Reform Package of 1996 produced more widespread changes to the system, which included adding statutory waivers and giving prosecutors the authority to transfer certain cases to the circuit court after a preliminary hearing on probable cause in juvenile court.

As a result of this legislation, there are now three different procedures for transferring a juvenile to adult court. The criterion for determining which procedure to use is the offense with which the juvenile is charged. For that reason, this legislation significantly increased the power of the prosecutor in the transfer decision.

Juvenile transfers to circuit court are governed by § 16.1-269.1 of the Code of Virginia. Prior to the 1996 reform package, the only procedure for transfer was the transfer hearing, which is detailed in what is now § 16.1-269.1(A). Subsection A maintains that "if a juvenile fourteen years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult." A juvenile can only be transferred in this manner if he or she is found not to be "proper person" to remain within the jurisdiction of the juvenile court. Factors that would be considered include "the juvenile's age;" "seriousness and number of alleged offenses;" "whether the juvenile can be

retained in the juvenile justice system long enough for effective treatment and rehabilitation;" "the appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;" "the record and previous history of the juvenile;" "whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;" "the extent, if any, of the juvenile's degree of mental retardation or mental illness;" "the juvenile's school record and education;" "the juvenile's mental and emotional maturity;" and "the juvenile's physical condition and physical maturity" (§ 16.1-269.1(A) of the Code of Virginia). Prior to transferring the juvenile to circuit court, the juvenile court would determine whether there was probable cause to believe the juvenile had committed an offense that would be a felony if committed by an adult.

The 1996 juvenile justice reform package created two new procedures for transferring a juvenile, the automatic certification and the prosecutorial certification, subsections B and C of § 16.1-269.1 of the Code of Virginia, respectively. (Note: although all three procedures involve the transfer of a juvenile from juvenile to circuit court, the use of the term "transfer" is primarily used in reference to the transfer hearing § 16.1-269.1(A), while the term "certify" is used in reference to § 16.1-269.1(B) and § 16.1-269.1(C).) In both the automatic and prosecutorial certification, the juvenile court holds a preliminary hearing to determine probable cause without considering whether the juvenile is a "proper person" for the juvenile court.

The automatic certification is detailed in § 16.1-269.1(B). That subsection states "The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with" capital murder, first degree murder, second degree murder, lynching, or aggravated malicious wounding. At the preliminary hearing, the juvenile court decides whether there is probable cause to believe the juvenile committed the offense.

The prosecutorial certification is detailed in § 16.1-269.1(C). That subsection states "The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with" felony murder, felonious injury by mob, abduction with intent to defile, abduction of a child under 16 for immoral purposes, abduction for material benefit, malicious wounding, malicious wounding of a law enforcement officer, poisoning or adulteration of products with intent to kill, robbery, carjacking, forcible rape, rape through mental incapacity, intercourse with a child under 13, sodomy with a child under 13, forcible sodomy, object sexual penetration with a child under 13, and forcible object sexual penetration, "provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection." Again, at the preliminary hearing, the juvenile court decides whether there is probable cause to believe the juvenile committed the offense.

Subsection D of § 16.1-269.1 states that “Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court. If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court.”

In summary, automatic and prosecutorial certifications (subsections B and C of § 16.1-269.1 of the Code of Virginia) both sidestep any consideration of whether the juvenile is a “proper person” to remain in the jurisdiction of the juvenile court. In the case of the prosecutorial certification, the juvenile court conducts a hearing on probable cause if the prosecutor informs the court that he or she intends to proceed pursuant to § 16.1-269.1.B. In the case of the automatic certification, the hearing on probable cause is held automatically.

Neither the automatic nor the prosecutorial certification require a hearing to determine whether or not the juvenile is a “proper person” to be considered by the juvenile court. Both procedures require only that the juvenile be charged with specific offenses. The implication is that juveniles charged with offenses that are eligible for automatic certification are predetermined to be inappropriate for consideration by the juvenile court. Further, juveniles charged with offenses that allow a prosecutorial certification can be determined to be inappropriate for the juvenile court by the prosecutor alone.

This legislation therefore made the prosecutor’s decision to charge a juvenile even more critical than it already was. The prosecutor’s decision (based on the evidence presented) to charge a juvenile with aggravated malicious wounding rather than malicious wounding can allow the prosecutor to have a case certified without having to make a public motion. Conversely, a prosecutor can decide (based on the evidence presented) to charge a juvenile with malicious wounding rather than aggravated malicious wounding and still make a motion to certify, thereby ensuring that the circuit court hears the case but still limiting the maximum penalty that could be imposed. At some point in the decision to charge a juvenile with a specific offense, the prosecutor – consciously or unconsciously – is deciding whether or not the juvenile is a proper person for the juvenile court. If the decision is that the juvenile is not a proper person for juvenile court, and if the circumstances of the crime allow it, the prosecutor has the power to charge the juvenile with an offense that will guarantee a transfer to the adult court. The circuit

court will decide whether to commit the juvenile to the Department of Juvenile Justice as a juvenile offender or to sentence the juvenile as an adult.

III. PROCESS EVALUATION OF RECENT JUVENILE TRANSFER STATUTES IN VIRGINIA: INTRODUCTION AND RESEARCH DESIGN

1. INTRODUCTION

Few acts trouble our nation's conscience as much as children committing acts of violent crime. The appropriate response to acts of heinous violence by children remains unclear to policy-makers and practitioners in the criminal justice community. A number of States, including Virginia, have enacted legislation to try juveniles in adult courts in an attempt to deter and punish such acts. This movement towards the criminalization of the juvenile court can perhaps best be viewed as a part of a broader change in criminal law that has been termed the "new penology (Feeley & Simon, 1992)."

Three key aspects of the new penology include: crime control strategies that "rationally" target the most severe and chronic offenders; a move away from rehabilitation to a greater reliance on "just deserts" philosophy (Thomas & Bilchik, 1985); and replacement of an individualized system of justice by an "aggregate classification system" for purposes of surveillance, confinement, and efficient control (Gordon, 1991; Feeley & Simon, 1992). However, the debate about juvenile transfers to adult courts goes beyond questions of efficient punishment or rational crime control. As stated by Bishop et al. (1996, p. 184): "transfer denotes more than process and procedures. It is symbolic of status transformation from 'redeemable youth' to 'unsalvageable adult'."

2. OVERVIEW OF RESEARCH PROJECT

As discussed in chapter 2, in response to the growing trend of violent juvenile crime, the Virginia legislature enacted the Serious Juvenile Offender Act of 1994 and the 1996 Juvenile Justice Reform Package, both of which facilitate the transfer of juveniles to adult courts (see Exhibits III-1 and III-2). One of the primary motivations for legislation in Virginia and other States is that a majority of violent crimes are committed by a relatively small number of chronic offenders. Proponents of juvenile transfers argue that such laws result in a significant crime reduction by removing these chronic offenders from the community.

Previously, the only procedure available to transfer a juvenile to circuit court was the transfer hearing, detailed in subsection A of §16.1-269.1 of the *Code of Virginia*. This procedure could be used for any juvenile age 14 to 17 charged with a felony. During the transfer hearing, the juvenile court would decide whether the juvenile was a "proper person" to remain in the jurisdiction of the juvenile court. The court would also establish that there was probable cause to

EXHIBIT III-1

**A BRIEF SUMMARY OF RECENT CHANGES IN VIRGINIA LEGISLATION
PERTAINING TO TRANSFER OF JUVENILES TO ADULT COURTS**

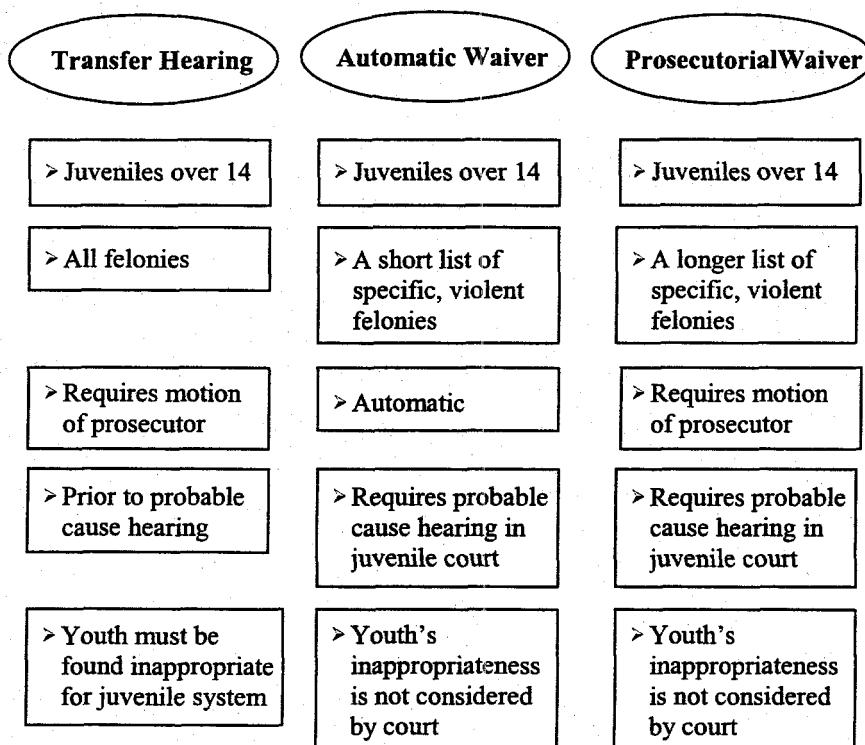
- The Serious Juvenile Offender Act of 1994 lowered the age of transfer to circuit court from 15 to 14.
- The Juvenile Justice Reform Package of 1996 also made it easier to transfer dangerous juvenile offenders. For example:
 - Juveniles, age 14-17, who are charged with capital, first and second degree murder, mob lynching or aggravated malicious wounding are automatically certified to circuit court, pending a finding of probable cause.
 - Juveniles, age 14-17, who are charged with felony murder; felonious mob injury; abduction with intent to defile; malicious wounding; felony poisoning; adulteration of products with intent to injure or kill; robbery; car jacking; forcible sodomy; forcible rape; or object sexual penetration, can be certified to circuit court on motion of the prosecutor, pending a finding of probable cause. If probable cause is not found, or if the charge is dismissed, the Commonwealth's Attorney may seek direct indictment in circuit court.
 - On all other felonies, the prosecutor may still proceed on a motion to transfer, as was previously the case.
 - If a circuit court convicts a juvenile offender of a violent felony, the court can choose to suspend the adult sentence, requiring instead the successful completion of a juvenile sentence, such as commitment to a juvenile correctional center.
 - If charges in addition to the transferring violent felony exist, the court has the following options: the court may sentence the offender on a nonviolent felony as either an adult or a juvenile, including disposition as a serious offender or if a circuit court convicts a juvenile offender for misdemeanors only, the court may only order a delinquency disposition.

believe the juvenile committed the offense with which he was charged. (For a more detailed description of the transfer hearing, and the other transfer procedures, see Chapter 2.)

The 1996 Juvenile Justice Reform package created two new classes of transfers: automatic and prosecutorial certifications (subsections B and C of § 16.1-269.1 of the *Code of Virginia*). (Note: although all three procedures involve the transfer of a juvenile from juvenile to circuit court, the use of the term "transfer" is primarily used in reference to the transfer hearing § 16.1-269.1(A), while the term "certify" is used in reference to § 16.1-269.1(B) and § 16.1-269.1(C)). In the case of automatic certifications, § 16.1-269.1(B), juveniles, age 14 to 17 years, who are charged with capital murder, first degree murder, second degree murder, lynching, or aggravated malicious wounding are "automatically" certified to circuit (adult criminal) court, pending a hearing on probable cause. In the case of the prosecutorial certification, § 16.1-269.1(C), juveniles, age 14 to 17, who are charged with violent juvenile offenses (less serious than those that fall under automatic certification), can also be certified directly to circuit court on the motion of the prosecutor.¹ Once the prosecutor makes that

¹ See chapter 2 for a full list of the felonies.

EXHIBIT III-2
VIRGINIA JUVENILE TRANSFER PROCESS



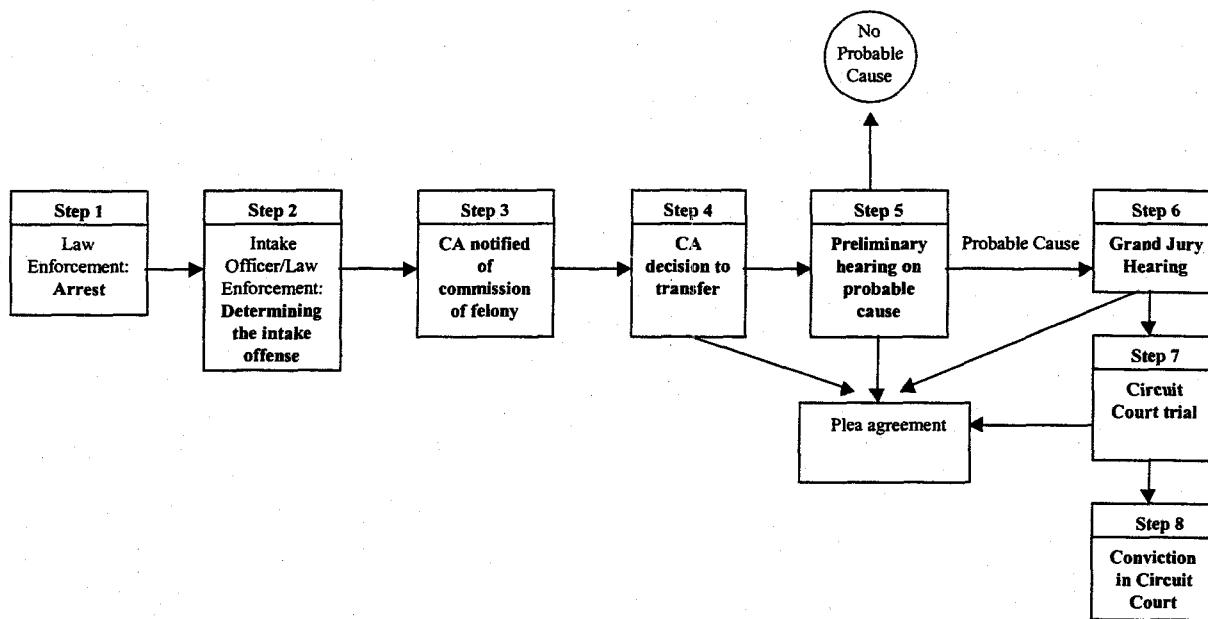
motion, the case follows the same procedure as the automatic certification. Therefore, if the prosecutor feels the case should be tried in circuit court, he can arrange this without going through the transfer hearing. However, the prosecutor can, and often does, choose to try the case in juvenile court. In all transfer cases, the circuit court retains the ability to sentence juveniles to the same juvenile sanctions available to the juvenile court, as well as the ability to impose adult sanctions.

This research project is divided into two parts: the first part attempts to understand the concordance between the Virginia Code requirements and transfer decision making practice. Some of the questions we address are: Are there clear differences between juveniles who are certified and those who are retained in the juvenile court? Does the transfer decision making practice follow the intent of the 1994-1996 amendments to the juvenile transfer statutes? What are some of the difficulties involved in the implementation of the statutes? Given the significant role prosecutors and judges play in the certification process, it is essential that a study of juvenile transfers include a survey of prosecutors and judges. In addition, through site visits to a few of Virginia's localities, we examine actual certification practices in greater detail. In addition, one of the potentially innovative features of our study is that we examine the influence of juvenile

Step 2: Intake Process

Following the arrest, the law enforcement officer brings the juvenile to the intake officer. The intake officer has powers similar to a magistrate, with regard to determining the offense with which a juvenile is charged. The intake officer files a petition stating the “specific facts which

EXHIBIT III-3 A SIMPLIFIED MODEL OF THE JUVENILE CERTIFICATION PRACTICE



allegedly bring the child within the purview of this law. If the petition alleges a delinquent act, it shall make reference to the applicable sections of the Code which designate the act a crime (*Code of Virginia § 16.1-262.4*). The “specific facts” of the alleged acts would be determined by consulting with the law enforcement officer regarding the reasons for which the juvenile was taken into custody. The reasons and procedures for taking a juvenile into immediate custody are governed by the *Code of Virginia § 16.1-246*, which includes “When there is probable cause to believe that a child has committed an offense which if committed by an adult would be a felony (subsection F).” Therefore, the “specific facts” which the law enforcement officer relates to the intake officer should provide probable cause to believe that the juvenile has committed the offense in question. After filing the petition, “The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult (*Code of Virginia § 16.1-260*, subsection F).”

Step 3: Notification of the Commitment of Felony

The Commonwealth's Attorney (prosecutor) receives notification of the commission of a felony from the intake officer, along with a copy of the petition filed. The petition details the "specific facts" of the alleged acts, and the sections of the *Code of Virginia* which are alleged to have been violated.

Step 4: Decision to Certify

If the offenses meet the criteria for the *prosecutorial* certification (§ 16.1-269.1(C) of the *Code of Virginia*), the prosecutor must now decide whether or not to certify the case to circuit court, pending a preliminary hearing on probable cause. To make this decision, the prosecutor is likely to confer with the detective assigned to the case. They will discuss issues such as the severity of the offense (e.g., malicious intent, degree of injury) and the legal merits of the case. If the prosecutor determines that the case should be certified to circuit court, he must give "written notice of his intent to proceed pursuant to" § 16.1-269.1, subsection C, which gives the prosecutor this authority. Notice must be filed with the court and the juvenile's parent or guardian must be informed at least seven days prior to the preliminary hearing.

If the offenses meet the criteria for the *automatic* certification (§ 16.1-269.1(B) of the *Code of Virginia*), the juvenile court will automatically hold a preliminary hearing to determine probable cause. However, the prosecutor may still confer with the detective assigned to the case, and make the same considerations he would make if the offense fell under the prosecutorial certification. For reasons discussed below, the prosecutor may choose to amend the juvenile's charges downward, and keep the case within the jurisdiction of the juvenile court.

Frequently, the prosecutor will choose not to certify the case to circuit court. This may be due to the prosecutor's belief that the evidence presented does not warrant certification. Additionally, the prosecutor may work with defense counsel to negotiate a guilty plea in juvenile court.

If the prosecutor believes the evidence does not warrant certification, he could choose to retain the case in the juvenile court. If the charges fall under § 16.1-269.1(C), the prosecutorial certification, this is accomplished simply by the prosecutor's choosing not to give notice of his intent to proceed to a preliminary hearing on probable cause to certify the case to circuit court. If the charges fall under § 16.1-269.1(B), the automatic certification, the prosecutor would need to amend the charges downward. A hypothetical example of how this might occur is if the law enforcement and intake officer determined the juvenile's charge to meet the criteria of second

degree murder (automatic certification), but the prosecutor later determined that the evidence could only support the lesser charge of felony murder (prosecutorial certification). The prosecutor would then have the discretion to either move to a preliminary hearing on probable cause or retain the case in juvenile court.

Conversations with intake officers, prosecutors, and other court staff indicate that the prosecutor's discretion (taking into consideration the evidence) is the key step in the transfer of a juvenile to the adult system. However, this is also the step in which obtaining data for a process evaluation is most difficult.

Step 5: Preliminary Hearing

Whether the juvenile's charges fell under subsection B or C of § 16.1-269.1, the prosecutor must establish probable cause to believe that the juvenile has committed the offense. At the preliminary hearing, the juvenile court judge hears the facts of the case and rules on probable cause. "Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges (§ 16.1-269.1, (D) of the *Code of Virginia*).” At this point, the juvenile is no longer within the jurisdiction of the juvenile court.

If the juvenile court “does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant, or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court (§ 16.1-269.1, subsection D).” Therefore, the prosecutor may proceed directly to the grand jury if the juvenile court does not find probable cause. The grand jury would then hold its own hearing on probable cause.

Step 6: Grand Jury Hearing

Once probable cause is established, the case is certified to the grand jury. The grand jury will then decide whether or not to render an indictment. If the grand jury renders an indictment, the case will be tried in circuit court.

Step 7: Circuit Court Trial

“In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as

otherwise provided with regard to sentencing. Upon a finding of guilty of any charge other than capital murder, the court shall fix the sentence without the intervention of a jury (§ 16.1-272(A) of the *Code of Virginia*).” A jury can determine the juvenile’s guilt or innocence, but the judge imposes the sentence.

The circuit court has more options for sentencing a juvenile than are available either to the juvenile court or to the circuit court when sentencing an adult. “If a juvenile is convicted of a violent juvenile felony, the sentence for that offense and for all ancillary crimes shall be fixed by the court in the same manner as provided for adults, but the sentence may be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case (§ 16.1-272(A.1) of the *Code of Virginia*).”

“If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court...or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case (§ 16.1-272(A.2) of the *Code of Virginia*).”

“If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court (§ 16.1-272(A.3) of the *Code of Virginia*).”

If the circuit court handles the case in the same manner as the juvenile court, “and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer (§ 16.1-272(B) of the *Code of Virginia*).” Although the juvenile is tried and convicted in adult circuit court, he can still receive the same juvenile sentence he would have received in juvenile court. Therefore, a juvenile’s transfer or certification to circuit court does not automatically mean that he will be sentenced like an adult and placed in an adult prison.

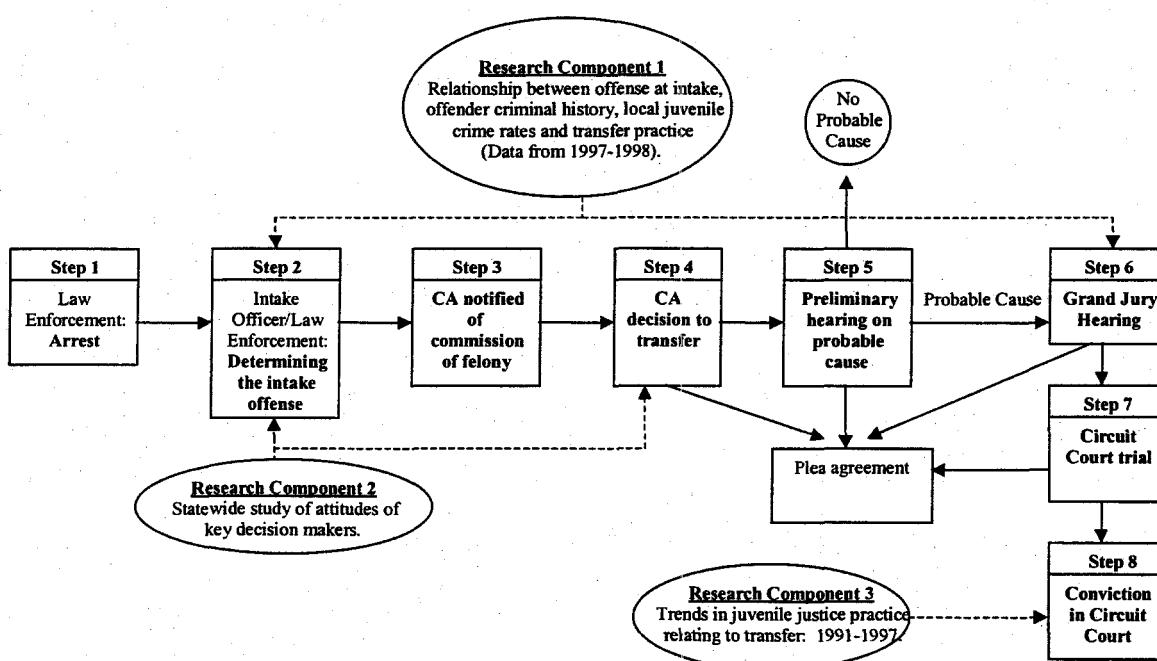
4. RESEARCH QUESTIONS

The research questions addressed in this project are closely linked to the simplified model described above. We pose three research problems relating to the recent transfer statutes in Virginia (see Exhibit III-4).

Component 1: Relationship Between the Intake Offense, Offender Criminal History, Local Juvenile Violent Crime Rates, and the Certification Decision

We explore the relationship between the intake offense, the offender's criminal and social history, and the decision to certify the case to circuit court. Essentially, we relate step 2 to step 6 in Exhibit III-3. Juvenile offenses in Virginia are reported to intake officers at the district court service units (CSU). Juveniles charged with certifiable offenses are first referred to these CSUs. To study the juvenile certification process, investigators visited selected CSUs to track

EXHIBIT III-4 RELATING THE RESEARCH QUESTIONS TO THE SIMPLIFIED MODEL OF JUVENILE CERTIFICATION PRACTICE



certifiable cases from intake to sentencing for fiscal years 1997 and 1998. With limited resources, it was unreasonable to attempt to visit every CSU in the State of Virginia. The Virginia Department of Juvenile Justice is divided into three administrative regions: western, northern, and eastern. The CSU sites were also chosen to ensure an even balance of sites across the regions. Eleven CSU's that spanned more than 40 jurisdictions (counties and cities) were selected. During the site visits, we were able to retrieve 1,148 juvenile records.² Information was collected on a number of measures on the juvenile's current offense, criminal, and social history. The analysis examines the differences in legal and extra-legal measures between the

² The analysis was conducted using 1,073 records—about 75 cases had missing information on the dependent measure.

juveniles who are certified to circuit court and retained by the juvenile court. In addition, using multilevel models (Bryk & Raudenbush, 1992), we examine the relationship between juvenile violent crimes at the CSU-level (and jurisdiction-level) on juvenile certification practice. The contribution of this component of the research design to the process evaluation was a deeper understanding of decision making for prosecutorial and automatic certification cases under the recently enacted transfer statutes.

Component 2: Attitudes of Key Decision Makers

A second component of the study was a statewide study of key decision makers—Transfer decisions in Virginia are primarily made by prosecutors and judges. For certain violent felonies, prosecutors may request a preliminary hearing on probable cause. Once probable cause is found, the case is certified to circuit court for adult criminal prosecution. For other offenses that would be felonies if committed by an adult, the juvenile court judge makes a transfer decision on the motion of the prosecutor.

Given the significant role prosecutors and judges play in the transfer process, we administered a statewide survey of prosecutors and judges. Our survey builds on another done by Virginia's Serious Juvenile Offender Task Force in 1994. The results of that survey helped to shape lawmakers' understanding of the transfer process and what factors are considered when deciding whether or not to transfer or certify a juvenile defendant. Virginia's juvenile transfer statute has changed significantly in the intervening years. Since that survey, the minimum transfer age has been lowered from 15 to 14, the court has been required to hold preliminary hearings on probable cause for a few specific violent offenses, and prosecutors have been given the authority to petition for a preliminary hearing on probable cause for certain other offenses. A second survey would provide important information about how these changes have affected the transfer decision-making process for the key players. (Note: as used here, the phrase "transfer decision" refers to decisions regarding either transferring or certifying a juvenile to circuit court.)

The survey was administered to juvenile and domestic relations court judges, circuit court judges, Commonwealth's Attorneys, and Assistant Commonwealth's Attorneys. These groups each hold an annual conference, and the survey was initially administered at the meetings. In addition, to increase the response rate, the surveys were also mailed to judges and prosecutors. Overall, we obtained a response rate of 66 percent for the judges and about 45 percent for the prosecutors. The survey had multiple goals. First, it sought to determine what factors of a case are most influential in making transfer decisions. In addition, the survey examined the respondents' perceptions about certain key issues related to juvenile transfers to circuit court. These include concern for the juvenile's safety in an adult facility, treatment options in the

juvenile system that are unavailable in adult corrections, the punitive nature of transfers, and public opinion about juvenile crime. The statewide survey was complemented with qualitative interviews of a few stakeholders involved in the transfer decision. The sample for the qualitative survey consisted of 18 respondents, including 8 court service personnel, 6 judges, and 4 prosecutors. The qualitative interviews helped us to corroborate the results of the survey and to provide a more detailed understanding of the context of the transfer decision.

This component of the research project was crucial to the process evaluation because it provided a better understanding of the key decision makers' attitudes towards juvenile transfer, including the problems they have had in implementing the legislation.

Component 3: Trends in Juvenile Justice Measures Relating to Juvenile Transfer

We also examine the changes in juvenile justice measures relevant to juvenile transfer. We were ideally interested in studying changes in juvenile transfer rates in Virginia. However, one serious limitation is the non-availability of databases in Virginia that can track the movement of juveniles through the system. This makes calculating juvenile transfer rates extremely difficult. We instead focused on changes in trends in juvenile intakes, as well as juveniles convicted in the circuit court between 1991 and 1998. Virginia has an automated juvenile intake database that has the capability of assessing changes in patterns of juvenile offenders being processed at intake over time. The intake database allowed us to examine changes in the number of juveniles charged with certifiable offenses, between 1991 and 1998. Virginia also has a well-developed pre-sentence investigation (PSI) database that collects very detailed information on all convicted offenders who have been tried at the circuit courts. The PSI database allowed us to examine the changing patterns in the number of juveniles convicted in circuit court.

5. OUTLINE OF CHAPTERS IN VOLUME I

The three key analytical chapters are chapters 4, 5 and 6. Chapter 4 focuses on some key trends in juvenile justice relating to the transfer process. Chapters 5 and 6 are the heart of the process evaluation. In chapter 5, the relationships between measures of the offenders social and criminal history, present offense, and the decision to certify are examined. The multilevel relationship between juvenile violent crime rates and certification practice is also examined. Chapter 6 discusses the results of the statewide survey with judges and prosecutors and the intensive qualitative interviews with prosecutors, judges, court service unit directors and probation officers. The policy implications of our evaluation are explored in chapter 7.

IV. TRENDS IN JUVENILE TRANSFER PRACTICE

IV. TRENDS IN JUVENILE TRANSFER PRACTICE

This chapter examines trends in measures of juvenile justice relating to juvenile transfers. Its goals are to provide a better understanding of the context of juvenile transfer decision making and to provide some early indication of the impacts of transfer statutes. We specifically focus on two databases: the *Juvenile Intake Database* to study changes in intake patterns between 1993 to 2000, and the *Pre/Post Sentence Investigations Database* to study changes in patterns of juveniles convicted in the circuit court between 1991 to 1997. Both of these databases, while useful, still have important limitations. Notably, Virginia does not have an automated database to keep track of juveniles being processed through the system. As a result, studying changes in transfer rates becomes exceedingly difficult.

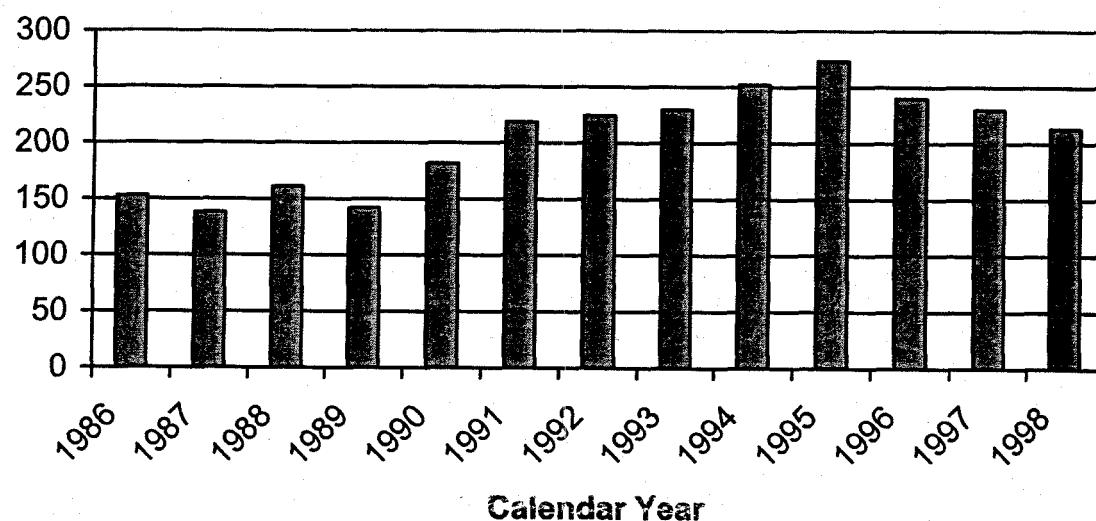
The Department of Juvenile Justice's intake database captures important information about juveniles taken into custody. In addition to identifying information about the juvenile, the database details the offenses the juvenile is alleged to have committed, the locality in which the offense occurred, whether or not a petition was filed, and whether or not a detention order was filed. On the other hand, the juvenile intake database does not tell us much about the decision of outcome at the different stages of movement through the juvenile justice system. In the absence of such information, it is difficult to study changes in transfer rates about juvenile intake practice. We use the juvenile intake database to track the changes in the transfer *eligible* population between 1993 and 2000.

The Pre/Post-Sentence Investigation (PSI) database maintained by the Virginia Department of Corrections and the Department of Criminal Justice Services contains information on all felony convictions in Virginia since 1985. More than 200 factors are automated from the PSI reports, which are completed by probation officers. The PSI database contains one record for each convicted offender. That record can contain information on multiple counts and/or multiple offenses sentenced on the same day. The PSI is a very rich source of information in studying the patterns of juvenile offenders who have been convicted in the circuit court. However, at this stage, there is considerable delay in data entry—the latest available database that was available was calendar year 1997 (the 1998 database was as yet incomplete). We used the PSI database to study differences in the type of convicted offenders who were being transferred between 1991 to 1997.

1. WAS THIS LEGISLATION LIKELY TO INCREASE THE NUMBERS OF JUVENILES TRANSFERRED TO CIRCUIT COURT?

On the face of it, the legislation creating the automatic and prosecutorial certifications made it easier to transfer juveniles to adult court. Perhaps more accurately, it moved the discretion from the judge to the prosecutor. It is important to stress that all of the cases eligible to be transferred under prosecutorial and automatic certification could also have been transferred under the earlier system (under judicial transfer hearings before 1996): it does not necessarily imply a "net-widening." However, the discretion would be with the judge and not the prosecutor. If prosecutors were more likely to transfer than judges, an increase in juvenile transfers may be expected. However, in reality, there were other criminal justice trends that may have impeded this phenomenon in Virginia. Most notably, the juvenile violent arrest rate has been steadily decreasing since 1995, with a 7.2 percent decrease from 1997 to 1998. The juvenile arrest rate for part I violent felonies peaked in 1995 at 273.3 arrests per 100,000 juveniles (see Exhibit IV-1).¹

**EXHIBIT IV-1
PART I VIOLENT OFFENSE ARREST RATE
JUVENILES AGE 10-17**



¹ Part I violent offenses include murder, non-negligent manslaughter, forcible rape, robbery, and aggravated assault.

2. TREND INFORMATION FROM THE JUVENILE INTAKE DATABASE

Exhibit IV-2 describes the numbers of offenders who met both the age and offense criteria for prosecutorial and automatic certification between 1993 and 2000. Note: The automatic and prosecutorial certifications became effective in fiscal year 1997 (starting July 1, 1996). Although data are shown in Exhibit IV-2 for offenders who were "eligible" under prosecutorial or automatic certification prior to 1997, the numbers before 1997 in Exhibit IV-2 correspond to juveniles who committed offenses that *would have been* certifiable under automatic or prosecutorial certification. It is worth reiterating that these juveniles could still have been transferred prior to July 1, 1996, under the judicial transfer hearing process.

As described in chapter 2, in fiscal year 1995 the minimum age of transfer was lowered from 15 to 14. As a result of this decrease, the number of intakes meeting age and offense criteria for automatic or prosecutorial certification increased by 400 between 1994 and 1995. Note: Exhibit IV-2 does not indicate an increase in actual transfers, just an increase in transfer-eligible intakes. The number of intakes eligible for prosecutorial certification actually decreased by 174 from 1997 to 2000. This decrease perhaps reflects the declining juvenile violent crime rates. The number of juveniles eligible for automatic certification has remained relatively stable over time.

Exhibit IV-3 describes the age distribution of the juveniles who were certifiable between 1993 to 2000. Prior to 1994, 14-year-olds were not transferred. 14- and 15-year-olds consistently comprise about 40 percent of the transfer eligible offenders. Only a small percentage of the offenders are 18-year-olds. Note: the numbers between Exhibits IV-2 and IV-3 may not exactly match because some juveniles do not have their precise date of birth in the juvenile intake database (this information was required in Exhibit IV-3).

EXHIBIT IV-2
**INTAKES MEETING THE AGE AND OFFENSE CRITERIA FOR AUTOMATIC OR
PROSECUTORIAL WAIVER**

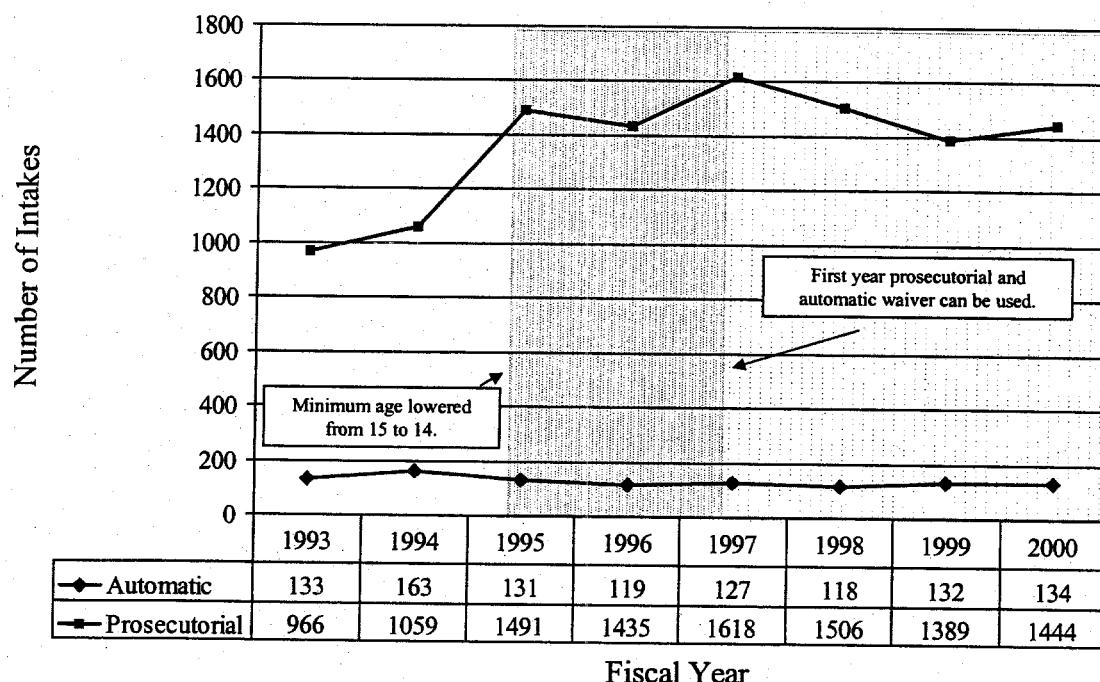
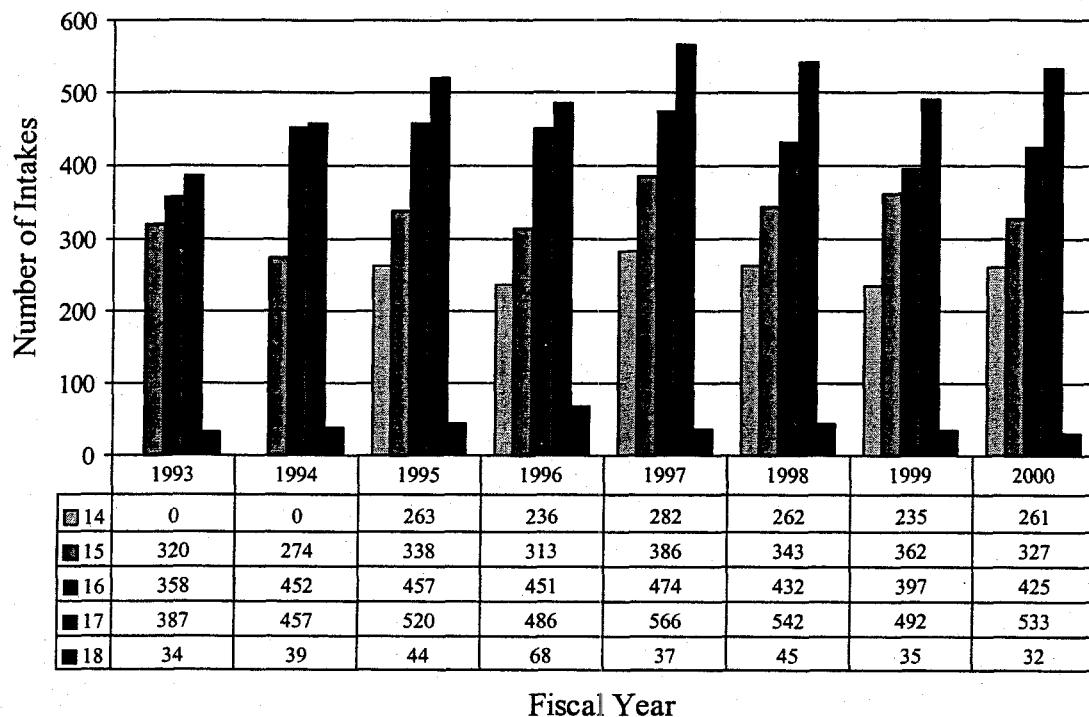


EXHIBIT IV-3
**AGES OF INTAKES THAT MET THE AGE AND OFFENSE CRITERIA FOR AUTOMATIC
OR PROSECUTORIAL WAIVER**
FISCAL YEARS 1993-2000



3. EVIDENCE FROM THE PSI DATABASE

The results of the descriptive analysis from the PSI database are described in Exhibits IV-4 through IV-10. All of the results for the PSI are for the calendar year. The analysis in this section includes trends in all three kinds of transfer processes: transfer hearing, automatic certification, and prosecutorial certification.

Exhibit IV-4 describes the total number of juveniles who were convicted in circuit court who are under the age of 18. As can be seen, the total number of transferred convicted juvenile offenders increased from 447 in 1996 to 540 in 1997. Exhibit IV-5 describes the changes over time in the convicted juvenile offenders tried in circuit court for a range of felony offenses. Robbery has the most striking increase: the actual number of juveniles transferred rose from 37 offenders in 1991 to 173 in 1997.

EXHIBIT IV-4
TRENDS OF TOTAL CONVICTED TRANSFERRED OFFENDERS
(1991-1997)

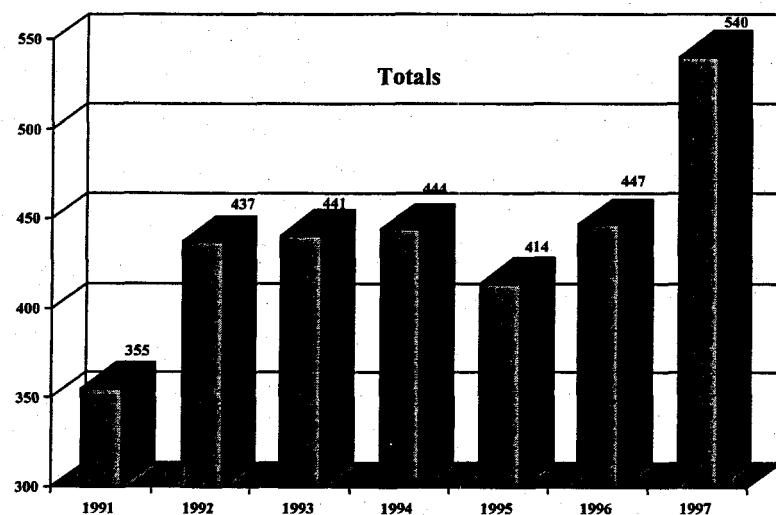
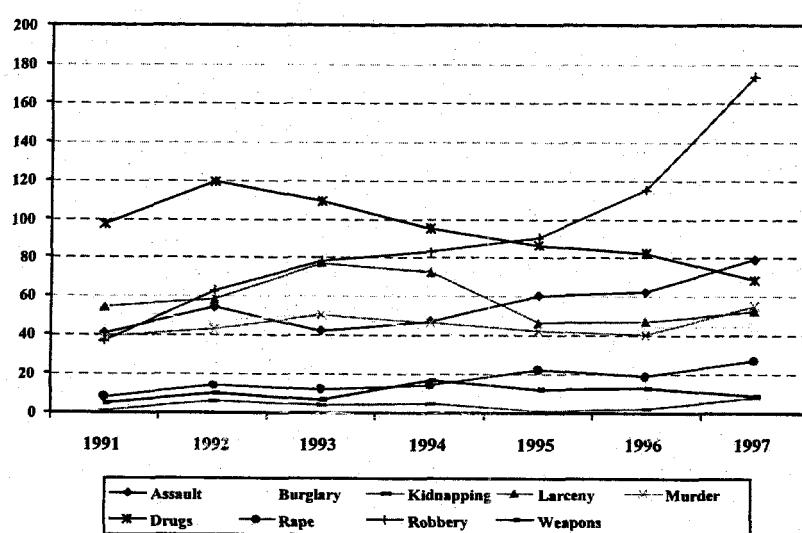


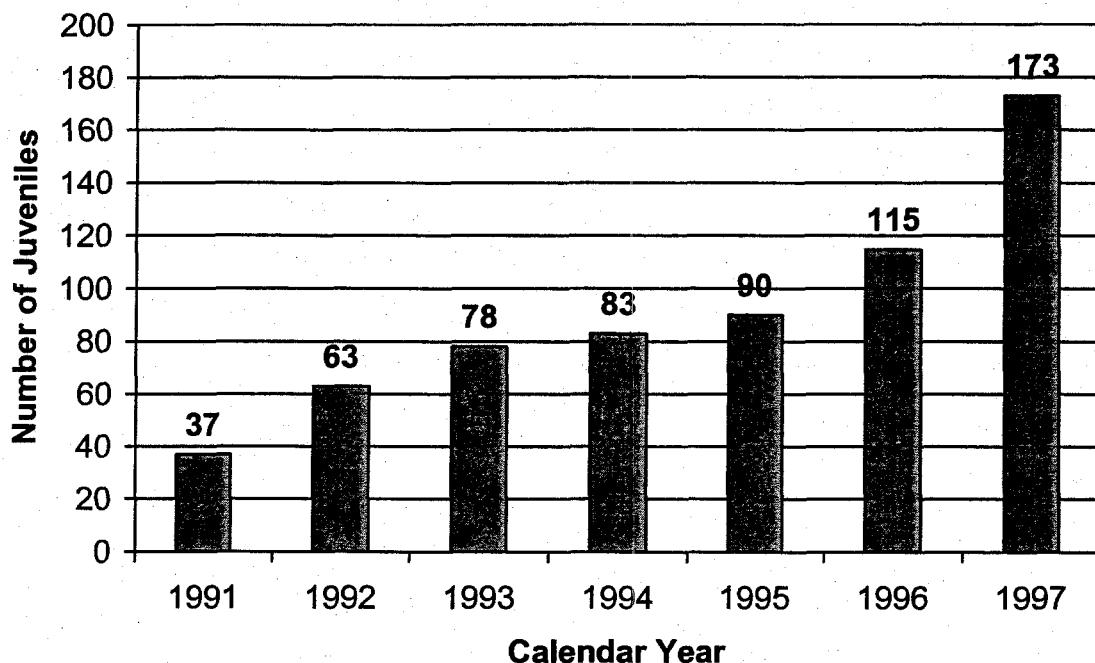
EXHIBIT IV-5
TRENDS (BETWEEN 1991 AND 1997) OF CONVICTED TRANSFERRED OFFENDERS
BY KEY OFFENSE CATEGORIES AND TOTALS
(INFORMATION FROM THE PRE-SENTENCE INVESTIGATION DATABASE)



Given the steep increase, a closer look at robbery is warranted. The rate that juveniles were transferred to circuit court with robbery as their most serious offense had been fairly constant between 1993 and 1994, only increasing by 6 percent. The Serious Offender Act, effective in July 1994, changed the age that a juvenile could be transferred from 15 to 14. Juveniles transferred to circuit court for robbery as their most serious offense increased by 39 percent from 1994 to 1996. The Juvenile Justice Reform Package, effective in July 1996, gave prosecutors more discretion in the decision to transfer a juvenile to circuit court. Juveniles transferred to circuit court for robbery as the most serious offense increased by 50 percent from 1996 to 1997.

EXHIBIT IV-6

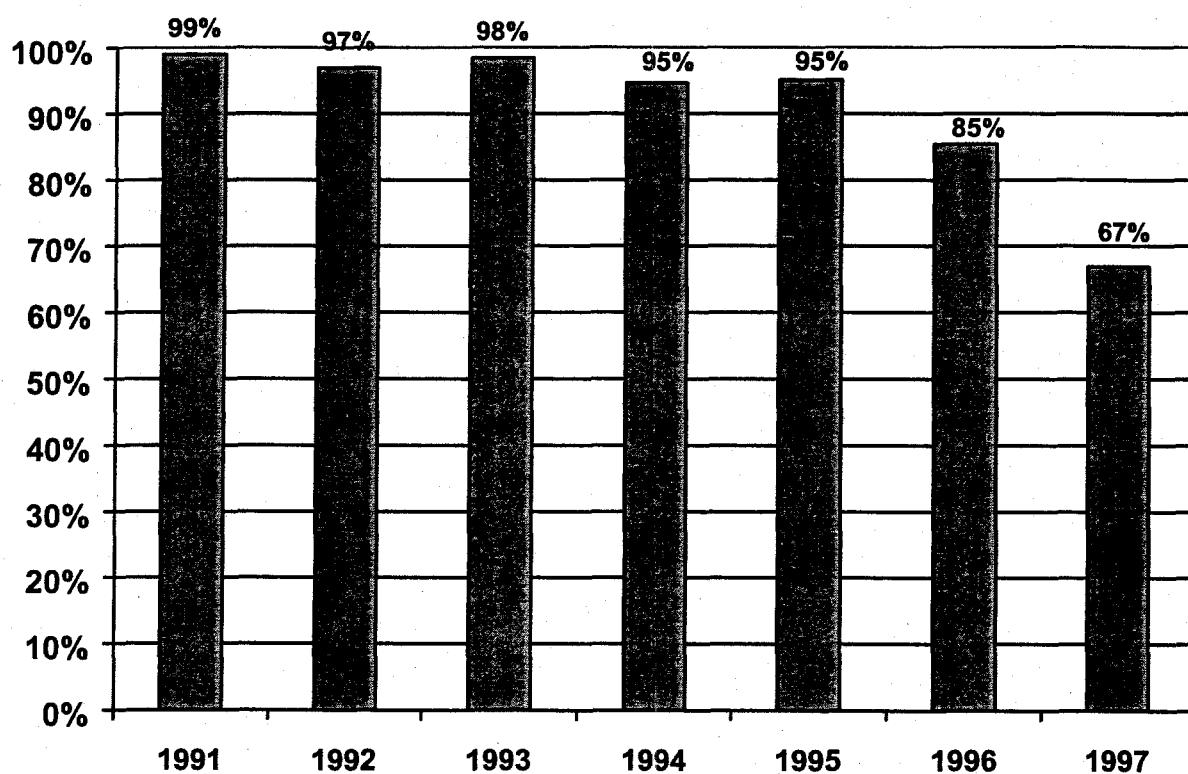
NUMBERS OF CONVICTED OFFENDERS FOR TRANSFERRED ROBBERY OFFENSES



Perhaps one of the more interesting results is that the type of juvenile offender likely to be transferred has changed over the past few years. The percentage of convicted juveniles in circuit court with delinquent records decreased significantly between 1995 and 1997. This suggests that other factors, such as current offense, have come to have a greater bearing on the transfer decision. This trend is likely connected to a reduction in use of the judicial transfer hearing process, which considers factors such as prior history, as the new legislation came into effect. The reduction in transfer hearings has resulted in the reduced number of transfer reports. Transfer reports are prepared by court service units to provide juvenile court judges with the

information they need to make a decision to either transfer or retain a juvenile offender. These reports are necessary in the case of transfer hearings, because the court must determine a juvenile's appropriateness for the juvenile court. These reports are not prepared in the case of prosecutorial or automatic certification. The number of transfer reports prepared dropped 57 percent from 1996 to 1997.

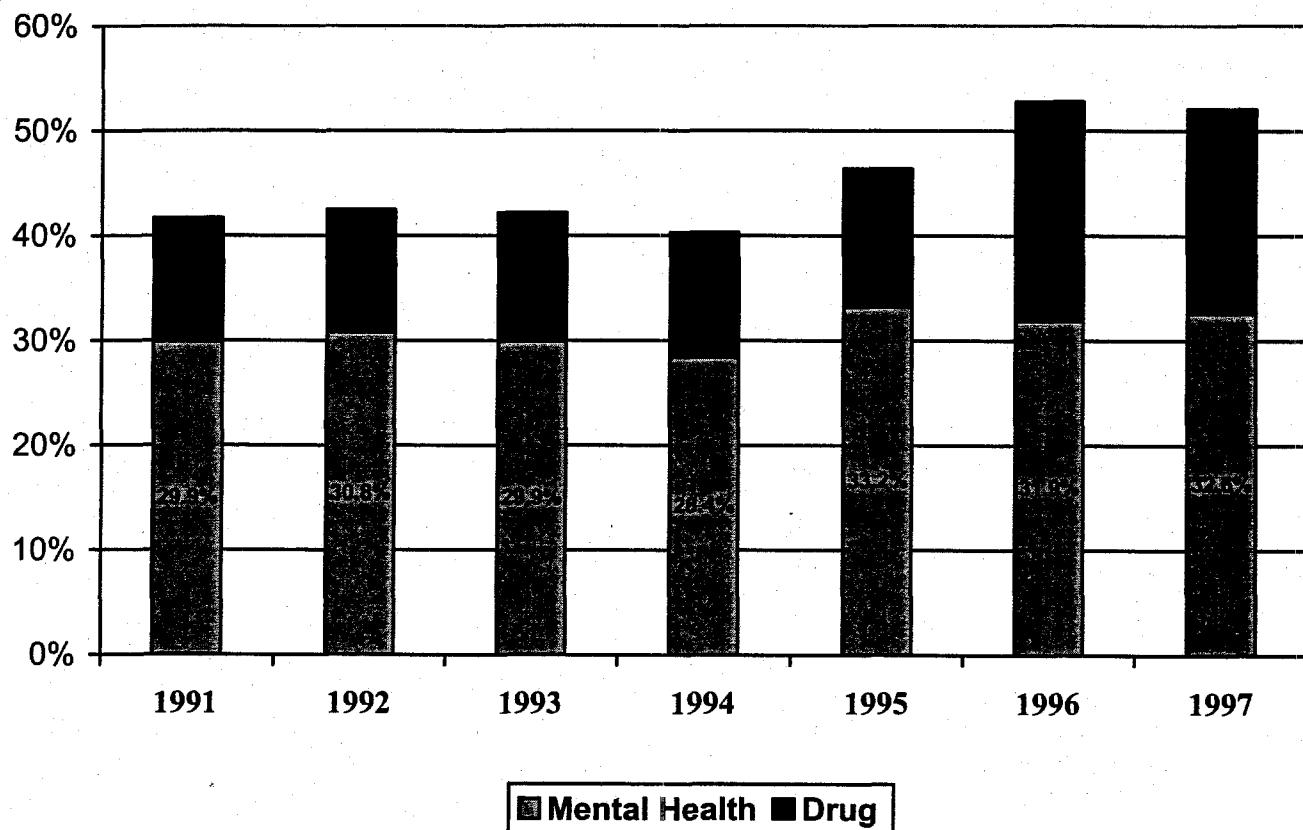
EXHIBIT IV-7
**PERCENTAGE OF JUVENILE TRANSFERS (CONVICTED) WITH DELINQUENT
RECORDS**



Another change in transferred offenders between 1991 and 1997 is that greater percentages of juveniles convicted in circuit court have undergone mental health and drug treatment (Exhibit IV-8). Factors considered by the court in a judicial transfer hearing include the extent of mental illness of a juvenile, and the appropriateness and availability of treatment in the adult and juvenile systems. Participation in mental health or drug treatment would generally indicate a need for services provided by the juvenile system, and could diminish chances of transfer. Results from the survey of judges and prosecutors (see chapter 6) indicate that a significant number of judges and prosecutors feel that an offender's substance abuse history would influence them to keep the case in juvenile court. Under the prosecutorial and automatic

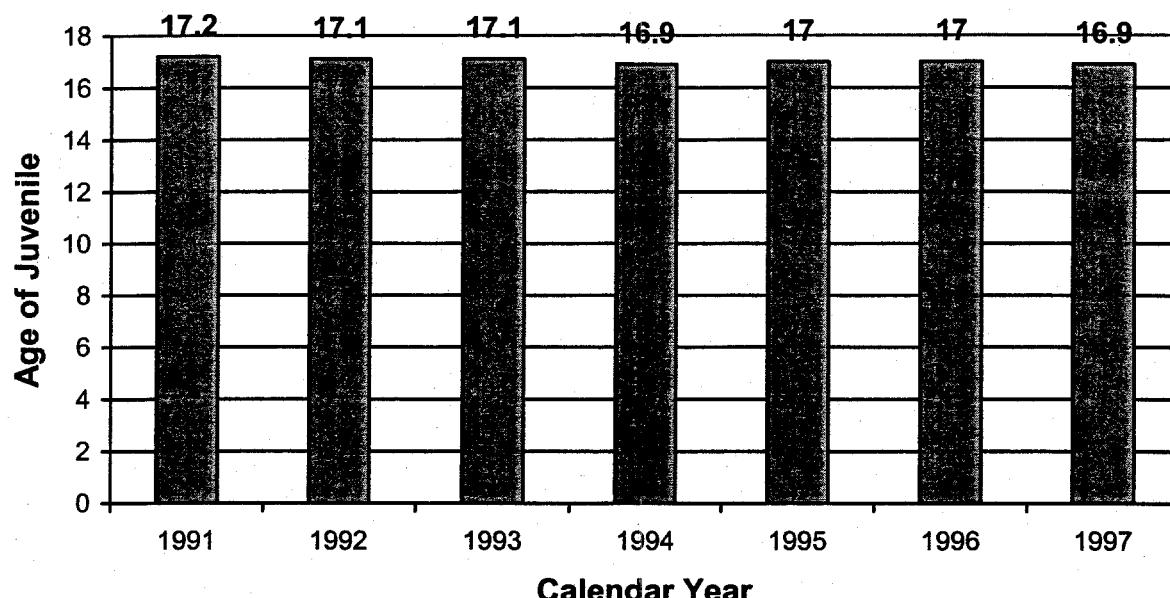
certification provisions, these factors are not specified for consideration, perhaps leading to the greater instances of juveniles in circuit court who have received treatment. It should be noted that the circuit court does have access to the same range of juvenile sanctions as are available to the juvenile court. However, circuit court judges are less likely than juvenile court judges to be familiar with all of the available juvenile justice programs and services available in a locality.

EXHIBIT IV-8
**PERCENTAGE OF (CONVICTED) TRANSFERRED OFFENDERS WHO HAVE
UNDERGONE MENTAL HEALTH OR DRUG TREATMENT**



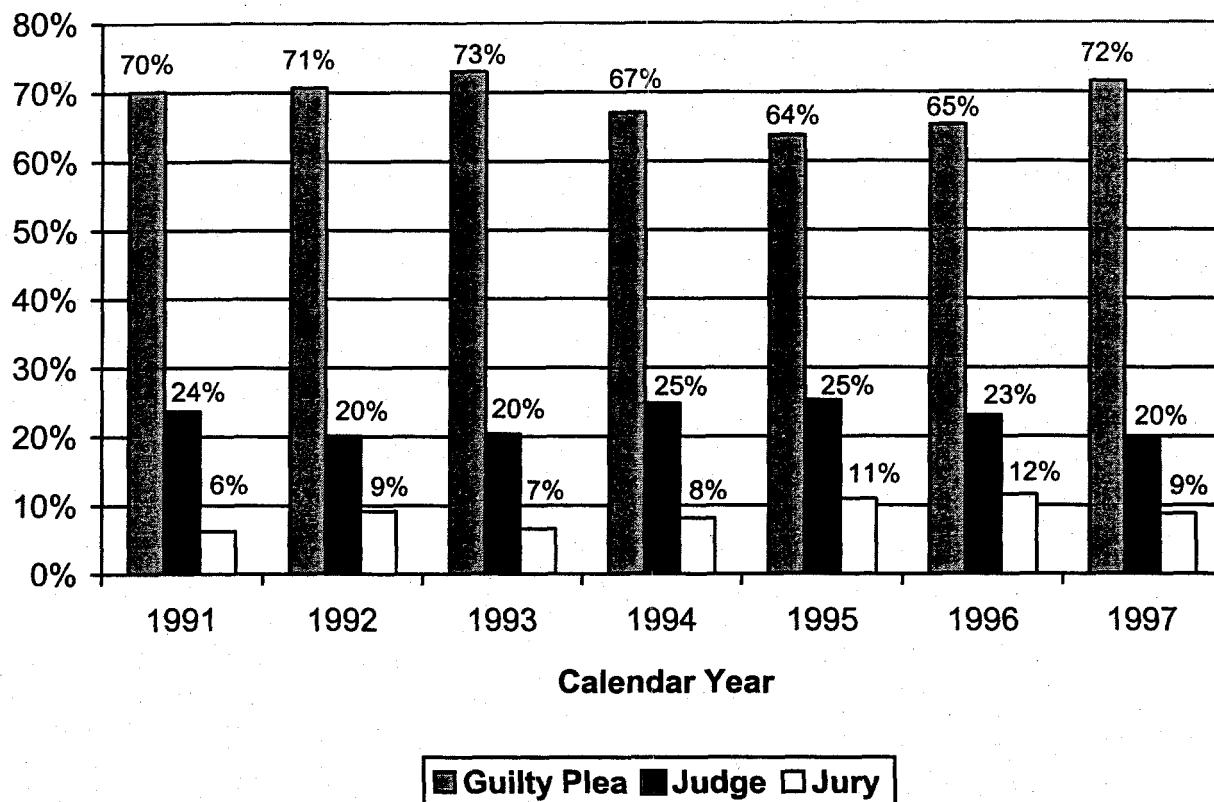
The average age of juveniles transferred to circuit court has remained stable from 1991 to 1997, despite 1994 legislation lowering the transfer eligible age from 15 to 14 (see Exhibit IV-9).

EXHIBIT IV-9
**AVERAGE AGE AT TIME OF OFFENSE OF (CONVICTED) TRANSFERRED
OFFENDERS**



In addition, the method of adjudication for convicted juvenile offenders in the circuit also has remained stable between 1991 and 1997 (see Exhibit IV-10). The majority of juveniles (close to 70%) convicted in circuit court pled guilty. Close to 20 percent of the juveniles transferred to circuit court between 1991 and 1997 were adjudicated by a judge. Close to 10 percent of the juveniles transferred to circuit court between 1991 and 1997 were adjudicated by a jury.

EXHIBIT IV-10
METHOD OF ADJUDICATION—JUVENILES CONVICTED IN CIRCUIT COURT



4. CONCLUSIONS

This chapter provided descriptive information on measures relating to juvenile transfer practice. First, with the increase in crime rates, the number of violent crime arrest rates have been down since 1995. The numbers of those who were transfer eligible for automatic waiver has been fairly stable—this is generally a small number, the numbers eligible for prosecutorial waiver has actually been down since 1997 (perhaps reflecting a declining crime rate). The number of convicted offenders under 18 in the circuit court went up between 1996 and 1997. The biggest increase (in raw numbers) was in robbery. The type of offender who is being convicted in the circuit court is changing: the percentage of juveniles in circuit court with prior delinquent records decreased significantly between 1996 and 1997.

V. FACTORS INFLUENCING TRANSFER DECISIONS IN VIRGINIA

V. FACTORS INFLUENCING CERTIFICATION DECISIONS IN VIRGINIA

1. INTRODUCTION

In this chapter, we examine factors related to automatic and prosecutorial certifications in Virginia. As described in the earlier chapter, in the case of automatic certification, juveniles, age 14 to 17 years, who are charged with capital murder, first degree murder, second degree murder, lynching, or aggravated malicious wounding are automatically waived to circuit (adult criminal) court, pending a hearing on probable cause. For prosecutorial certification, juveniles, age 14 to 17, who are charged with certain violent offenses, can be waived directly to circuit court on the motion of the prosecutor, pending a hearing on probable cause.¹

The creation of these laws could be seen as a movement towards greater mechanization in juvenile justice laws and a consequent movement away from juvenile justice's traditional focus on individualized decision making. Further, these laws could be viewed as a part of a new penology (Feeley & Simon, 1992) whose focus is more on managing large groups of offenders and less on individualized justice and treatment for the offender. The new penology focuses on aggregate techniques of justice: "These techniques target offenders as an aggregate in place of traditional techniques for individualizing or creating equity (Feeley & Simon, 1992)."

This chapter examines how this new legislation is implemented, how it is interpreted by prosecutors, and what factors influence the decision-making process. As described by Feld (2000, p. 126): "Proponents of the direct-file strategy claim that prosecutors can act as more neutral, balanced, and objective gatekeepers than either 'soft' judges or 'get tough' legislators (McCarthy, 1994)." The present chapter provides an opportunity to examine such a claim. In addition, it also provides an opportunity to *describe* certification practice under prosecutorial and automatic certification. Some of the research questions that arise when considering automatic or prosecutorial certification include: Are a majority of "certifiable" offenders² actually certified? Are there a systematic set of factors used in deciding whether to certify or retain a juvenile? What mechanisms do the key decision makers use in order to retain a certifiable offender in the juvenile court? Note: Although juveniles charged with any felony can be transferred to circuit court, juveniles charged with felonies other than those identified for automatic and prosecutorial certification must first go through a transfer hearing that determines their appropriateness for

¹ The offenses that allow a prosecutorial certification are felony murder, felonious injury by mob, abduction with intent to defile, abduction of a child under 16 for immoral purposes, abduction for material benefit, malicious wounding, malicious wounding of a law enforcement officer, poisoning or adulteration of products with intent to kill, robbery, carjacking, forcible rape, rape through mental incapacity, intercourse with a child under 13, sodomy with a child under 13, forcible sodomy, object sexual penetration with a child under 13, and forcible object sexual penetration.

² In the context of this chapter, the term "certifiable" refers to the intake stage.

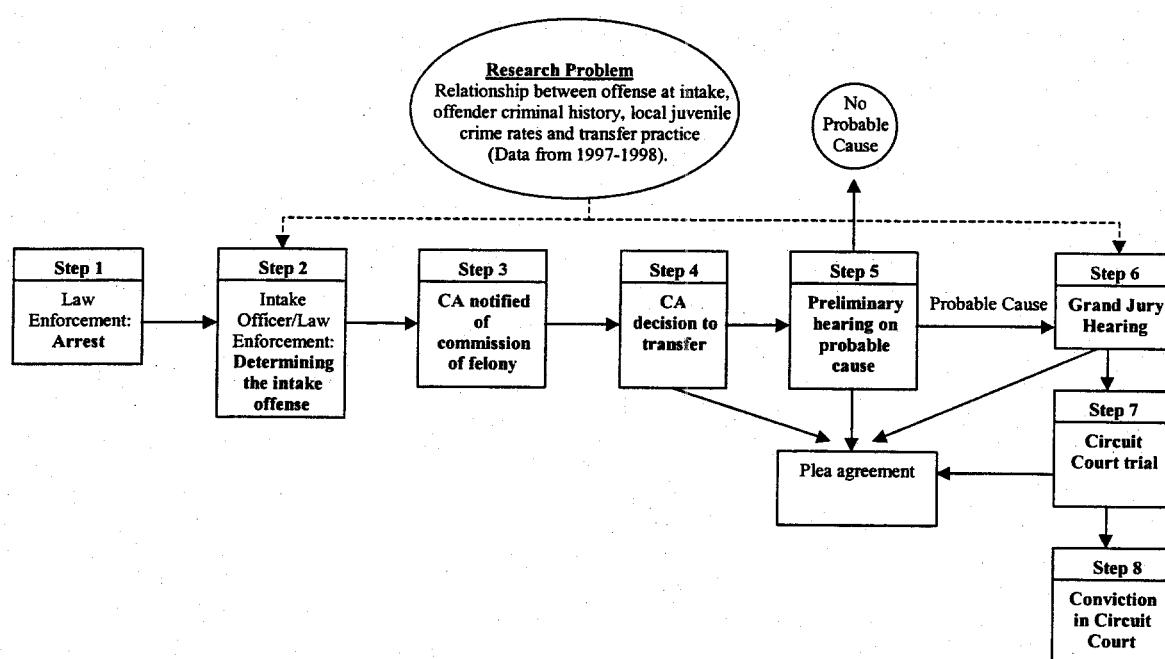
transfer. Therefore, where the term certifiable is used below, it is referring specifically to eligibility under the automatic or prosecutorial certification.

A good starting point to answer these questions is the case flow chart exhibit discussed in Chapter 3. As described in Exhibit V-1, one of the real difficulties in studying prosecutorial and automatic certification cases is that some of the key decision making involved in transferring a juvenile is not "visible." As an example from Exhibit V-1, at every step (especially step 4), obtaining data that provides reliable measuring of the multiple factors that underlie the actual prosecutorial practices is difficult. Instead, our focus is on studying the relationship between the intake offense (step 2 in Exhibit V-1) with the decision to certify (step 7 in Exhibit V-1)—such a focus will provide us some means of understanding the decision making process that characterizes the automatic and prosecutorial certification cases.

As described in Exhibit V-1, the automatic and prosecutorial certification statutes provide multiple mechanisms for exercising discretion. In the prosecutorial certification cases, such flexibility is possible through the discretion of prosecutors to file the motion to transfer. In automatic certification cases, the decision to amend the petition can be used to retain the youth in juvenile court. Because prosecutors do not certify every case that meets the offense criteria for prosecutorial certification, they are obviously considering some additional factors when making their decision to transfer. The survey data in Chapter 6 discuss some of the "*stated criteria*" used by prosecutors in deciding to file a motion to transfer. On the other hand, the data in this chapter describe some of the "*revealed criteria*" used by prosecutors, based on actual decisions.

The present analysis focuses on certification practices in 11 court service units (CSUs) in Virginia. The CSUs, which are part of the Department of Juvenile Justice, provide intake, probation, parole, report preparation, and other services to the juvenile and domestic relations courts. The intake services are of interest in this study, as they represent the first formal filing of a criminal complaint in a juvenile delinquency case. In this chapter, the key dependent measure is the decision to certify. In addition to certification information, we have collected data from Virginia court service units (through site visits) on several factors that have previously been linked to the outcomes of transfer decisions. The data included information on the current offense, the offender's prior history, information on victim injury, as well information on the juvenile's social history.

**EXHIBIT V-1
RESEARCH PROBLEM**



We examine three substantive issues relating to automatic and prosecutorial certification in Virginia:

Mechanistic interpretation of statutes. Under a strict and narrow interpretation of the statutes, an argument can be made that both the automatic and prosecutorial certification decisions are based solely on the current offense. Other factors such as the juvenile's prior record and pertinent information on the victim (such as victim's age) should *not* influence the certification decision at all in with regard to the automatic certification, and are not required to be considered in the prosecutorial certification. Such a view is driven primarily from a *narrow* interpretation of the just deserts perspective. As Andrew von Hirsch has written (1976): "On a rationale emphasizing proportionality and deserts, the factor primarily relied upon is the seriousness of the offender's present crime." It should be noted that, although these non-offense factors are not considered as part of the certification decision, they can be considered by the circuit court when it makes its decision. The circuit court can choose to sentence the juvenile offender as an adult or take advantage of the same juvenile justice programs available to the juvenile court.

An individualized system of transfer. A second view of the certification laws can be that despite the rhetoric, the actual implementation of the laws heavily weighs each offender's circumstances (including factors such as prior record and social history). The actual implementation of these laws might depend a lot on the discretion of the prosecutor. A prosecutor may be more or less inclined to believe that a juvenile offender can rehabilitate himself in the juvenile system. The prosecutor may consider the seriousness of the offense before all else, but since some juveniles charged with an offense that meets the criteria for prosecutorial certification are transferred while others are not, prosecutors are clearly considering something other than the current offense. As an example, the prosecutor's decision to charge a juvenile with either malicious wounding or aggravated malicious wounding, while obviously guided in large part by the circumstances of the crime, could also be influenced by the prosecutor's opinion that an offender could still be amenable to treatment in the juvenile system. In such a case, the prosecutor might choose the lesser charge, which would not cause an automatic certification to circuit court. Despite the almost automatic nature of both certification categories, it seems likely that key decision makers (prosecutors) weigh the seriousness of the offense and the offender in a broader context (Feld, 2000; Zimring, 2000). Sanborn (1996) found that juvenile court workers measured the severity of the crime in its broader context: some of these contextual factors include where the crime occurred, with whom the crime was committed, the timing of the act, who was victimized, the impact of the crime on the victim, the sophistication of the offender, and the juvenile's degree of participation in the criminal act. A broader interpretation of the just deserts perspective allows room for the individual's context:

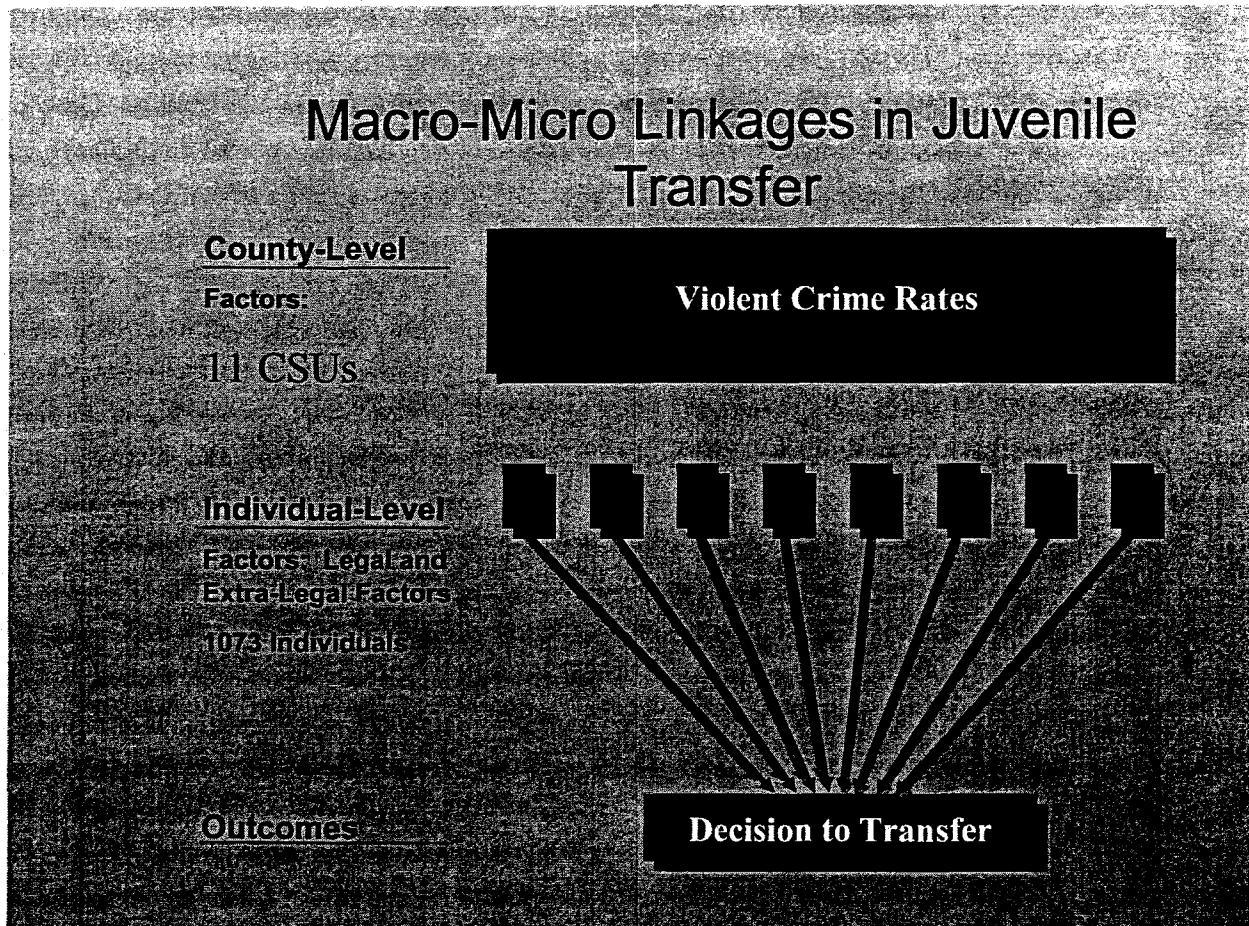
"But offenders who have produced comparable harms differ greatly in culpability. A system grounded on "just deserts" need not—indeed should not—focus primarily upon harm (Alschuler, p. 909, 1991)." In addition to criminal history factors, factors that have been found to play a role in perceptions of amenability to treatment include prior drug or mental health treatment, response to previous rehabilitation, school-related behavior (grades, absenteeism, infractions), family resources (functionality, abuse/neglect, and ability to provide rehabilitation/out-patient supervision), and social history (history of abuse/neglect) (Podkopacz & Feld, 1996; Poulos & Orchowsky, 1994; Sanborn, 1996; Singer, 1993).³ The present research problem provides an opportunity to assess the impact of measures of present offense, prior record, social history and demographic factors on automatic and prosecutorial certification decisions in Virginia.

The macro-context of juvenile certification—relationship between juvenile violent crime rates and certification practice. There has been a more limited focus on the macro-context of juvenile transfer⁴—specifically the relationship between juvenile violent crime rates and certification practice. The research question we pose is: Are juvenile certifications more likely to occur in court service units with high levels of juvenile violent crime rates? In other words, are prosecutors more likely to use certifications in communities that have a high level of juvenile violent crime? The assumption (to be examined empirically) is that certification decision making is influenced by broader contextual factors such as violent crime rates. There has been very limited research on the impact of juvenile violent crime rates on transfer practice. There has been more extensive research on the effect of transfer practice on violent crime rates—as an example, interrupted time series designs were used to study the effects of transfer on juvenile crime rates in the Singer and McDowall (1988) and Jensen and Mestger (1994) studies of New York and Idaho. In both cases, they found very weak effects of legislative transfer on violent crime rates. In our study, we implement multilevel models (Bryk & Raudenbush, 1992) that combine both CSU-level violent crime information and individual-level information in a single model (see Exhibit V-2). In this chapter, we empirically examine the relationship between juvenile violent crime rates (at the court service unit level) and certification rates.

³ For the standard juvenile transfer, in addition to any discretionary factors that may influence transfer decisions in Virginia, the legislation specifies that courts consider school record, mental/emotional/physical maturity, treatment available in the adult and juvenile system, and mental retardation/illness when determining the appropriateness of an offender for the juvenile system.

⁴ Most studies of sentencing have focussed on the urban-rural differential—"Applying Weberian theories of bureaucratic organization, rural-urban differences are attributed to the rationalization and bureaucratic administration of justice found in urban courts as opposed to the lack of bureaucratic administration in rural courts (Dixon, pp. 1164-1665)."

EXHIBIT V-2



Our choice of the court service unit as a level for analysis is clearly debatable—a convincing argument can be made that the focus ought to be on the county level. Prosecutors are elected at the county level, and it makes sense that the practices might be more readily influenced by violent crime rates in their counties. However, our choice of CSU was made due to many practical and organizational considerations: a number of counties (especially the rural counties) had very few certifiable cases (less than 5). Second, organizationally the Department of Juvenile Justice is divided into court service units. From an organizational perspective, it may be reasonable to assume that the decision making within a CSU might be similar. As a test of the robustness of the results we also re-estimated the multilevel models at the county-level.

2. SAMPLING INFORMATION

Sites were selected for data collection in active consultation with policy staff at DJJ. Certifiable cases for each site were identified using the offense information for juveniles brought into intake. Juveniles charged with specific offenses, meeting the criteria for prosecutorial or automatic certification, were selected. Of the 1,321 juveniles identified at the 11 selected CSUs, researchers found 1,148 (87%) files at the selected CSUs. The percentage of files found varied among CSUs.

In April 1998, the Department of Juvenile Justice's information services section identified 2,675 cases that came into intake in fiscal years 1997 and 1998 that met the criteria for either automatic or prosecutorial certification to circuit court. Those criteria included the offender's age (the minimum age of transfer is 14 years) and the offenses charged at intake. As discussed earlier, a short list of violent offenses meet the criteria for automatic certification, and a slightly longer list of violent offenses allow the prosecutor to waive the case to adult court.

After identifying the population of certifiable cases from fiscal years 1997-1998, researchers chose a single court district to use for initial testing of the data collection instrument. The Henrico County court service unit (CSU) allowed DJJ researchers to examine the files of all certifiable intakes from 1997. This initial testing, followed by conversations with Henrico County judges, prosecutors, and court service unit personnel, helped to improve the data collection instrument. A list of factors were added after they were identified as important in conversations with various court personnel.

Following the validation of the data collection instrument, researchers identified CSUs across the State for data collection purposes. First, DJJ research staff met with experienced DJJ personnel who could identify CSUs that would be of interest and provide a diverse representation of districts. It was important to policy staff that a broad spectrum of the State be examined, including rural, urban, and suburban areas. These areas were also diverse in terms of availability of local juvenile justice programs. In addition, practical considerations—such as location, availability of research assistants in the district, and travel expenses—also had to be considered. DJJ was fortunate to find a handful of research assistants who had the time and ability to travel across the State to collect data, and who lived close enough to several sites to reduce travel costs, so this final consideration of practicality did not require changes in any selected sites. Eleven CSUs, from rural, urban, and suburban areas, were selected.

The majority of the data were collected by one research assistant who traveled to various sites. She was already working as an intern in one selected CSU, and therefore was very familiar

with the files that needed to be reviewed. A few other CSUs also had such interns, and they were able to collect the data for those sites. Their familiarity enhanced both the speed and the quality of the data collection. The research assistants were provided detailed instructions on the data collection process, and DJJ research staff was available to answer questions as necessary. The data collected were reviewed by DJJ researchers to ensure that they were collected properly. DJJ researchers also collected data from one site to ensure that the form was working. The familiarity gained by this experience made it easier to answer questions from the field.

For the 1,321 juveniles identified in the 11 selected CSUs, 1,148 files (87%) were found. A file could be missing for one of several reasons. The most obvious reason is that it was misplaced. With thousands of cases in each CSU, some will inevitably be improperly filed. A file could also be unavailable simply because it is in use by a probation officer elsewhere. Files could also be in storage. When a CSU closes an inactive file (the juvenile is no longer on probation or parole), it may move the files to an off-site storage facility. Files could be retrieved from storage, but it can be a very slow process. A file could also be inactive if a juvenile were transferred to circuit court and sentenced to an adult facility.

Another possible problem is the misidentification of a case by the DJJ intake database. This database has been improved significantly in recent years, but errors may have existed when the data was retrieved in April 1998. The database now identifies more certifiable cases for fiscal years 1997-1998 than it did over two years ago. However, all of the cases identified in 1998 are still identified in the intake database. Out of 1,148 cases 75 had missing information on the transfer decision. The analysis conducted in this chapter is based on 1,073 cases.

3. MEASURES

The protocol that was used to collect the data is included in Appendix A. The measures that were used in the analysis include (the variable names are highlighted):

3.1 Individual-level Measures

Dependent Measure

Transfer to circuit court. A dummy measure (*transfer*) that indicates whether or not the juvenile was certified to circuit court. Certifications to the circuit court are coded as 1. This is the dependent measure. A score of 1 indicates that Juvenile and Domestic Relations District Court found probable cause to believe the juvenile had committed the offense (step 5 in Exhibit V-1), a grand jury had indicted the juvenile (step 6), and the case was heard in circuit court (step

7). It is also possible that probable cause was not found by the juvenile court, but that the prosecutor exercised his right to direct file to a grand jury, but this is uncommon.

Independent Measures

The independent measures could be divided into four sets of measures: present offense factors, prior record factors, social history and demographic factors.

Present Offense Factors

- **Current offense.** We had information on (up to) 15 current offenses. The seriousness level of each of the offenses is measured by the statutory maximum penalty (set by the Virginia Legislature). Two measures were developed—a sum total of the seriousness weights of all the current offenses. In addition, the most serious current offense (corresponding to the current offense with the highest statutory penalty) was included. In the regression models developed in this chapter, a principal component scale (*present offense seriousness*) that included the two measures was developed.
- **Automatic/prosecutorial certification.** The variable *automatic offense at intake* measures if the offender committed a current offense that could be automatically waived to adult courts. About 8 percent of the offenders had an intake offense that could be automatically waived to adult courts.
- **Weapon use.** Measures if and how the offender used a weapon to commit the current offense. The variable *weapon used to injure* and *weapon used to threaten* measure the intent of weapon use—about 29 percent of the offenders used a weapon to injure, while 20 percent used a weapon to threaten. The variable *knife* measures if a knife was used to commit the current offense (about 8% of offenders used a knife). The variable *firearm* measures if a firearm was used to commit the current offense—about 26 percent of the offenders used a firearm.
- **Victim injury.** The variable *serious physical injury* measures if the victim received serious physical injury while *death of victim* measured if the victim died. Four percent of the victims died, while 13 percent received serious physical injury.

- **Victim age.** The variable *victim adult* measures whether the victim was a minor or an adult. The variable *victim adult* was coded as 1 if the victim was an adult and 0 if the victim was a minor. About 38 percent of the victims were adults.
- **Victim/offender relationship.** This variable measures the type of relationship between victim and offender using the following categories: strangers, acquaintances, family, police or correctional officer, and unknown. Three dummies were used—*victim stranger* measures if the victim was a stranger (24% of the victims were strangers), *victim acquaintance* measures if the victim was an acquaintance (45% of the victims were acquaintance), while *victim family* measures if victim was a family member (9% of the victims were family members).

Prior Record Factors

- **Prior offense.** We had information on (up to)15 prior offenses. Following a procedure similar to the current offense, we defined two measures—the most serious prior offenses and the total seriousness weight of all prior offenses. A principal component scale (*prior offense seriousness*) that included the total seriousness weight and the most serious prior offense was used in the regression models in this chapter.
- **Prior juvenile correctional placement.** The variable *prior juvenile correctional placement* indicates whether or not the offender has ever been placed in a juvenile correctional center. Twenty-one percent of the offenders had been in a prior juvenile correction placement.
- **Escaped from juvenile facility.** The variable *escaped from juvenile facility* measures if the juvenile has a history of running away, or escaping, from residential facilities. This factor has been found to play a role in transfer decisions in a previous study (Sanborn, 1996). About 7 percent of the offenders had escaped from a juvenile facility.

Social History Factors

We also obtained a number of social history measures. These items were added following discussions with Henrico County court personnel after the initial testing of the data collection instrument. Unfortunately, social history information was not always easily identifiable in the files. The organization and completeness of file records varied both by CSU

and by probation officer. In some cases, social histories either did not refer to the issues of interest, or were written so long before the intake of interest that they could not provide relevant information.

- **Substance abuse.** The variable substance abuse history indicates whether or not a youth has a history of substance abuse problems. Poulos and Orchowsky (1994) found that juveniles with a history of drug or alcohol treatment were more likely to be retained in juvenile court, most likely due to the need for treatment services provided by juvenile facilities. About 52 percent of the offenders had a substance abuse history.
- **Child abuse or neglect.** The variable victim of child abuse measures whether or not an offender has a history of child abuse or neglect. About 25 percent of the offenders were victims of child abuse and neglect.
- **Family crime.** The variable family incarceration measures whether or not the juvenile has parents or siblings that have been incarcerated or placed on probation in the past three years. About 41 percent of the offenders had a family member who had been incarcerated or placed on probation in the past three years.
- **Delinquent peers.** The variable delinquent peers measures if the youth has peers that are known to be delinquent. About 70 percent of the offenders had delinquent peers.
- **Mental health needs.** The variable mental health needs measures whether or not the youth has an identified mental health need (about 27% of the offenders had identified mental health needs).
- **Mental health treatment.** The variable mental health treatment identifies if the juvenile has received mental health treatment. Studies have found that the youth's treatment needs are often taken into account when making the decision to retain or transfer the offender. A history of mental health treatment can increase the chances that an offender is retained in the juvenile system (Sanborn, 1996; Poulos & Orchowsky, 1994). About 27 percent of the offenders had received mental health treatment

Demographic Factors

- **Age of offender at time of offense.**

- **Offender race.** Race designations include Asian, Black, Hispanic, Indian, Other, White, and Unknown. A majority of the offenders (close to 98%) were either black or white. For the analysis, blacks were coded as 1, while other races were coded as 0.
- **Offender sex.** The variable *male* represents the gender of the offender. About 85 percent of the sample is male. For the analysis, males are coded as 1, while females are coded as 0.

3.2 CSU-level Measure

- **Juvenile violent crime arrest rate.** Violent crimes include the total number of arrests of juveniles (less than 18 years old) for murder, forcible rape, robbery, and aggravated assault. These data are based on a calendar year and are collected monthly from contributing law enforcement agencies. This rate is calculated as the number of arrests in the counties comprising the CSU/population in the counties comprising CSU (ages 12-17) * 1000.

4. METHODOLOGY

We used a three-pronged strategy to analyze the data in this chapter:

- **Descriptive Statistics.** Basic descriptive statistical techniques such as means of certification rates and bivariate correlations are first implemented to study who gets certified.
- **Binary Logistic Regression.** As the dependent measure (decision to certify) is binary, logistic regression is used to model the certification decision. We entered the above four factors (present offense, prior record, social history and demographic factors) using a hierarchical procedure: Model 1 included the present offense measures, Model 2 included both the present offense and prior record factors, Model 3 included social history factors in addition to present offense and prior record factors, Model 4 included demographic factors in addition to measures of present offense, prior record, and social history. The four models were compared on their fit and classification accuracy measures. Also, the statistical significance of improvements in goodness-of-fit using each of the above four set of factors were assessed using chi-squared tests. One of the primary methodological concerns was that of missing cases. As described above, of the 1,148 files obtained, 75 had missing information on the dependent measure (giving a total of 1,073 cases). However, information was missing on some of the covariates (especially the social history measures). In order to model the missing cases we followed the following steps:

- The logistic model was initially run with the missing values deleted from the analysis
 - A second logistic model was developed with the missing values replaced by the respective series mean
 - The missing values were also imputed using the EM algorithm. Logistic regression models were rerun with the missing values imputed.
- **Multilevel Models.** The relationship between CSU-level juvenile violent crimes and certification to circuit court are examined using multilevel models (DiPrete & Forristal, 1994). The advantage of the multilevel methodology is that both individual and CSU-level information can be modeled in the same system of equations (Bryk & Raudenbush, 1992). These models are built at two levels. First, a CSU-specific model of juvenile certification is modeled for each of the CSUs. This part of the model examines the individual level predictors of juvenile certification. A second component of the model examines the *between-CSU* differences in juvenile violent crime rates—we model if the differences in juvenile violent crimes *between* CSUs were associated with juvenile certification practices². Given the binary nature of the dependent measure, hierarchical logistic regression (a binomial sampling model with a logit link; see Bryk et al., 1996:120) was used to model the relationships.

Given the complex nature of the hierarchical logistic model, we discuss the formulation of the model using hierarchical linear models (Bryk & Raudenbush, 1992). The individual-level model had the following formulation:

$$Y_{ij} = \beta_{0i} + \sum \beta_{kj} X_{kj} + r_{ij} \dots\dots\dots(1)$$

Where “i” is the subscript for the individual and “j” is the subscript for the CSU, Y_{ij} measures if the “ith” individual at the “jth” CSU was certified to circuit court. X_{kj} ($k=1,2,\dots,22$) are individual-level predictors that are hypothesized to affect the certification decision. In the equation above, r_{ij} is the unexplained variation at the individual level.⁵

The effect of the violent crime rates at the CSU level are modeled using the between-CSU model described in the system of equations below (see Bryk & Raudenbush, 1992). Three effects of the juvenile violent crimes are examined: the direct effect of juvenile violent crime rate on the certification decision; the interactive effect between CSU-level juvenile violent crime rate and the youth’s present offense seriousness measure on the juvenile certification decision;

⁵ Following Horney et al. (1995), the effects of individual level factors on the juvenile transfer decision are modeled as deviations from the mean.

and the interactive effects between CSU-level juvenile violent crime rates and the youth's prior offense seriousness measure on the juvenile certification decision.

In the equation below, W measures the juvenile violent crime rate at the CSU level, γ are level-2 coefficients, and u_{0j} are level-2 random effects. We focus in our discussions on three coefficients from equation 1 above— β_{0j} is the intercept in equation 1, β_{1j} measures the effect of the present offense seriousness scale, while β_{2j} measures the effect of the prior offense seriousness scale on the certification decision at the individual-level. The CSU-level model consists of the following equations:

$$\beta_{0j} = \gamma_{0,0} + \gamma_{0,1}W + u_{0j} \quad (2)$$

$$\beta_{1j} = \gamma_{1,0} + \gamma_{1,1}W \quad (3)$$

$$\beta_{2j} = \gamma_{2,0} + \gamma_{2,1}W \quad (4)$$

γ_{01} measures the mean effect of the juvenile violent crime rate on the certification decision. γ_{11} measures the interactive effect between the present offense seriousness scale and the CSU-level juvenile violent crime rates on the certification decision. γ_{21} measures the interactive effect between the prior offense seriousness scale and the CSU level juvenile violent crime rates. The coefficients for the other individual level factors are modeled as fixed across the CSUs (see Bryk & Raudenbush, 1992).

5. RESULTS

Only about 24.5 percent of the certifiable offenders were certified. The percentage differed little for the two certification categories—about 24.2 percent of the eligible offenders were certified under prosecutorial certification, while about 28.4 percent of the certifiable were certified under automatic certification.

Forty-six percent of offenders who used a weapon to threaten their victims were certified, versus 20 percent of those who did not threaten with a weapon. A stronger difference was found between offenders who did or did not use a firearm to commit the offense. Fifty-one percent of those who used a firearm were certified, as compared to 16 percent of those who did not. When an offense resulted in the death of a victim, it had a considerable impact on certification rates. The majority (77%) of offenses related to a victim's death were certified, while only 23 percent of offenses that did not result in victim fatality were certified. Offenders with a history of substance abuse were slightly more likely to be certified (26% certified) than those with no such

history (18% certified). Similarly, offenders with a history of child abuse or neglect were only slightly more likely to be certified (25% certified) than those without this history (21% certified). In addition, there were no large differences between those with or without identified mental health needs. Twenty-five percent of juveniles with mental health needs were certified, versus 22 percent with no identified needs. A difference in certification rates was found between offenders who did or did not have prior placements in juvenile correctional centers: 39 percent of those with prior placements were and 20 percent of those without prior placements were certified.

Bivariate Analysis

Exhibit V-3 compares the mean of the covariates between those who were retained in the juvenile court (*no transfer group*) and those who were certified to the adult court (*transfer group*). Statistically significant differences were obtained (at the 0.05 level of significance) for the following measures: *weapon used to injure*, *weapon used to threaten*, *firearm use*, and all of the victim measures including: *death of victim*, *serious physical injury*, *victim adult*, *victim stranger*, *victim acquaintance*, and *victim family*. Thirty-four percent of those who were certified to the adult court used weapons to injure (compared to 27% for those retained by the juvenile court). Thirty-seven percent of those who were certified to the adult court used a weapon to threaten (compared to 15% of those who were not certified). The differences between the groups were especially strong in firearm use—52 % of those who were certified used a firearm (compared to 17% firearm use for those who were not certified). In the *transfer group*, 64 percent of the victims were adults, 39 percent were strangers, and 36 percent were acquaintances. In the *no transfer group*, 33 percent of the victims were adults, 21 percent of the victims were strangers, 50 percent of the victims were acquaintances, and 11 percent were family.

EXHIBIT V-3
MEANS OF COVARIATES BY CERTIFICATION DECISION

	Certified to Circuit Court		
	No.	Yes	Total
Black	.72	.78	.74
Males	.86	.83	.85
Age at Offense	16.08	16.01	16.06
Weapon Used to Injure	.27	.34	.29
Weapon Used to Threaten	.15	.37	.20
Firearm Use	.17	.52	.26
Knife Use	.08	.10	.08
Death of Victim	.01	.12	.04
Victim—Serious Physical Injury	.12	.18	.13
Victim—Adult	.31	.58	.38
Victim—Stranger	.20	.36	.24
Victim—Acquaintance	.49	.34	.45
Victim—Family	.11	.03	.09
Substance Abuse History	.49	.61	.52
School Drop-out	.17	.32	.21
Escaped from Juvenile Facility	.07	.08	.07
Victim of Child Abuse	.24	.29	.25
Family Incarceration	.41	.43	.41
Delinquent Peers	.68	.76	.70
Prior Juvenile Correctional Placement	.17	.35	.21
Mental Health Needs	.23	.26	.24
Mental Health Treatment	.26	.30	.27
Automatic Offense at Intake	.07	.09	.08
Present Offense Seriousness	-.10	.32	.00
Prior Offense Seriousness	-.10	.29	.00

Differences were also found between the *transfer* and the *no transfer* group in the social history measures, including *substance abuse history*, *school dropout*, and *delinquent peers*. Sixty-one percent of those who were certified had a substance abuse history while 49 percent of those who were not certified had a substance abuse history. Thirty-two percent of those who were certified had dropped out of school compared to 17 percent for the *no transfer* group. Seventy-six percent of those who were certified had delinquent peers compared to 68 percent of the no transfer group.

Statistically significant differences were found in both the prior record measures and the present offense seriousness measures. Thirty-five percent of those who were certified had a prior juvenile correctional placement, compared to 17 percent of the group that had not been certified. The average score on the present offense seriousness scale was 0.32 for the *transfer* group, and -0.10 for the *no transfer* group. Similarly the average score for the prior offense seriousness scale was 0.29 for the *transfer* group, and -0.10 for the *no transfer* group.⁶

The above results were also confirmed by running bivariate correlations between the covariates and the certification measure. Exhibit V-4 describes the results of the correlation between the certification measure and the covariates.

⁶ As discussed earlier, principal component analysis was used to develop these scales—this scale had a mean of 0 and a standard deviation of 1.

EXHIBIT V-4
CORRELATIONS BETWEEN COVARIATES AND OUTCOME MEASURE

	Certified to Circuit Court		
	Pearson Correlation	Sig. (2-tailed)	N
Black	.05	.07	1073
Males	-.04	.25	1073
Age at Offense	-.02	.42	1073
Year of Offense	-.07	.03	1073
Weapon Used to Injure	.07	.03	981
Weapon Used to Threaten	.24	.00	981
Firearm Use	.36	.00	987
Knife Use	.04	.18	983
Death of Victim	.24	.00	1007
Victim—Serious Physical Injury	.08	.01	1007
Victim—Adult	.24	.00	642
Victim—Stranger	.17	.00	1007
Victim—Acquaintance	-.13	.00	1007
Victim—Family	-.12	.00	1007
Substance Abuse History	.10	.00	856
School Drop-out	.15	.00	856
Escaped from Juvenile Facility	.02	.51	864
Victim of Child Abuse	.05	.18	848
Family Incarceration	.02	.57	860
Delinquent Peers	.07	.05	864
Prior Juvenile Correctional Placement	.18	.00	1004
Mental Health Needs	.04	.29	862
Mental Health Treatment	.04	.25	860
Automatic Offense at Intake	.03	.40	1073
Present Offense Seriousness	.18	.00	1073
Prior Offense Seriousness	.17	.00	1073

Multivariate Analysis

Binary Logistic Regression

Exhibit V-5 describes the results of the logistic regression (the missing cases were dropped from the estimated model in Exhibit V-5). The second and third columns indicate the results of model 1 (including only present offense factors). Columns four and five describe the results of model 2 (both present offense and prior record factors are included). Model 3, which included present offense, prior records and social history factors is described in columns six and seven. The final two columns describe model 4, which includes demographic factors (in addition to the present offense, prior record, and social history factors). The final complete model (model 4) is also described in Exhibit V-6.

Exhibit V-7 also describes the fit and classification accuracy statistics for the above four models. The chi-squared tests testing the improvement in the fit of the model incorporating the blocks of the four factors are described in Exhibit V-8. From the tests of the significance of improvements of chi-square statistic, including the present offense and prior record factors (models 1 and 2 respectively) significantly improves the fit of the models. However, including social history and demographic factors does not change the fit measures significantly. The classification measure for all the four measures are about the same – part of the problem is that the classification measures are calculated for a predicted probability of transfer cutoff of 0.5. As only about 25% of the sample are actually transferred, other cutoffs for predicted probability of transfer need to be considered. Based on this, we conclude that most of the variation is explained by factors relating to prior record and present offense. The addition of social history and demographic factors explains little variation in the decision to transfer. As described below, the only social history factor that turned out to be significant was *school drop out*.

Statistically significant predictors of the certification decision include *firearm use, knife use, death of victim, serious physical injury to victim, school drop out, prior juvenile correctional placement, present offense seriousness, and prior offense seriousness*. All of these measures were associated with increased odds of certification.

The models were re-run with the missing values replaced by the respective series mean, and the missing cases imputed using the EM algorithm. These results further confirmed the pattern observed in Exhibit V-6.

EXHIBIT V-5
**RESULTS OF THE BINARY LOGISTIC MODEL USING A HIERARCHICAL
LOGISTIC PROCEDURE**

	Model 1: Present Offense Factors		Model 2: Present Offense and Prior Record Factors		Model 3: Present Offense, Prior Record, and Extra-Legal Factors		Model 4: Complete Model	
	B	S.E.	B	S.E.	B	S.E.	B	S.E.
Present Offense Seriousness	.234**	.106	.223**	.108	.242**	.111	.249**	.113
Knife Use	.760*	.447	.913**	.455	.915**	.460	.991**	.465
Death of Victim	1.170*	.603	1.180*	.604	1.168*	.614	1.107*	.617
Victim—Serious Physical Injury	.638**	.317	.564*	.323	.604*	.327	.576*	.330
Victim—Adult	.489**	.241	.434*	.245	.351	.251	.343	.251
Victim—Stranger	.038	.301	.072	.307	.027	.312	.071	.315
Victim—Acquaintance	-.245	.295	-.176	.302	-.189	.305	-.152	.308
Victim—Family	-.824	.509	-.714	.520	-.764	.528	-.714	.532
Automatic Offense at Intake	-.345	.397	-.489	.408	-.625	.424	-.561	.428
Weapon Used to Injure	-.021	.348	-.079	.353	-.100	.357	-.112	.358
Weapon Used to Threaten	.252	.424	.065	.434	.045	.438	.020	.441
Firearm Use	1.339**	.383	1.427**	.390	1.442**	.395	1.460**	.400
Prior Offense Seriousness			.252**	.109	.260**	.109	.254**	.110
Prior Juvenile Correctional Placement			.732**	.237	.685**	.242	.657**	.243
Escaped from Juvenile Facility			-.228	.432	-.317	.441	-.305	.442
Substance Abuse History					.333	.234	.335	.235
School Drop-out					.455*	.256	.481*	.257
Victim of Child Abuse					.105	.263	.110	.264
Family Incarceration					-.176	.228	-.182	.229
Delinquent Peers					-.063	.253	-.034	.255
Mental Health Needs					-.101	.410	-.130	.415
Mental Health Treatment					.203	.381	.216	.385
Black							.112	.266
Males							-.165	.301
Age at Offense							-.108	.092
Constant	-2.061**	.290	-2.246**	.306	-2.390**	.370	-.652	1.499

** p < 0.05

* p < 0.10

	B	S.E.	Wald	df	Sig.	Exp(B)
Present Offense Seriousness	.249**	.113	4.835	1	.028	1.283
Knife Use	.991**	.465	4.534	1	.033	2.694
Death of Victim	1.107*	.617	3.220	1	.073	3.027
Victim—Serious Physical Injury	.576*	.330	3.055	1	.080	1.779
Victim—Adult	.343	.251	1.865	1	.172	1.409
Victim—Stranger	.071	.315	.051	1	.821	1.074
Victim—Acquaintance	-.152	.308	.244	1	.621	.859
Victim—Family	-.714	.532	1.801	1	.180	.490
Automatic Offense at Intake	-.561	.428	1.722	1	.189	.570
Weapon Used to Injure	-.112	.358	.097	1	.755	.894
Weapon Used to Threaten	.020	.441	.002	1	.963	1.020
Firearm Use	1.460**	.400	13.351	1	.000	4.308
Prior Offense Seriousness	.254**	.110	5.303	1	.021	1.289
Prior Juvenile Correctional Placement	.657**	.243	7.300	1	.007	1.929
Escaped from Juvenile Facility	-.305	.442	.478	1	.489	.737
Substance Abuse History	.335	.235	2.034	1	.154	1.399
School Drop-out	.481*	.257	3.500	1	.061	1.618
Victim of Child Abuse	.110	.264	.173	1	.677	1.116
Family Incarceration	-.182	.229	.634	1	.426	.833
Delinquent Peers	-.034	.255	.018	1	.893	.966
Mental Health Needs	-.130	.415	.098	1	.754	.878
Mental Health Treatment	.216	.385	.314	1	.575	1.241
Black	.112	.266	.177	1	.674	1.118
Males	-.165	.301	.301	1	.583	.848
Age at Offense	-.108	.092	1.389	1	.239	.898
Constant	-.652	1.499	.189	1	.664	.521

** p < 0.05

* p < 0.10

	Exhibit V-7			
	FIT AND CLASSIFICATION ACCURACY			
	(CUT-OFFS ARE 0.5 FOR THE CLASSIFICATION MEASURES)			
	Model 1	Model 2	Model 3	Model 4
Chi-Squared	110.0 (12)	125.4 (15)	132.3 (22)	134.2 (25)
-2 (Log-Likelihood)	578.9	563.5	556.6	554.7
Nagelkerke R Square	0.237	0.267	0.281	0.284
Sensitivity	95.3%	95.3%	94.6%	94.8%
Specificity	30.8%	30.1%	35.7%	32.2%
Overall Accuracy	81.3%	81.2%	81.8%	81.2%

Degrees of Freedom in parentheses.

	Exhibit V-8		
	Increase in Chi-square	df	Significance
Model 1	110.04	12	0.000
Model 2	15.38	3	0.002
Model 3	6.88	7	0.441
Model 4	1.91	3	0.592

To check for multicollinearity concerns, we implemented the multicollinearity diagnostics developed for Ordinary Least Squares procedures. In the software program we used (SPSS for Windows), multicollinearity diagnostics are not available for logistic regression. However, as the independent relationships involve relationships between independent variables, the diagnostic procedures for Ordinary Least Squares can also be used. The multicollinearity diagnostics are described in Exhibit V-9. The tolerance values reveal that each variable has at least close to 34 percent of its variation independent of other predictors. Most variables have tolerance well above 0.5 to 0.6. Based on the tolerance values (and other multicollinearity diagnostics including variance inflation factors and condition index), we conclude that multicollinearity does not pose a serious problem in the models described in Exhibit V-9.

EXHIBIT V-9
TOLERANCE VALUES OF THE INDEPENDENT MEASURES

Variable	Tolerance
Black	.943
Males	.922
Age at Offense	.940
Weapon Used to Injure	.567
Weapon Used to Threaten	.342
Firearm Use	.345
Knife Use	.708
Death of Victim	.774
Victim—Serious Physical Injury	.819
Victim—Adult	.710
Victim—Stranger	.507
Victim—Acquaintance	.470
Victim—Family	.605
Substance Abuse History	.825
School Drop-out	.901
Escaped from Juvenile Facility	.905
Victim of Child Abuse	.849
Family Incarceration	.899
Delinquent Peers	.884
Prior Juvenile Correctional Placement	.866
Mental Health Needs	.362
Mental Health Treatment	.368
Automatic Offense at Intake	.866
Present Offense Seriousness	.823
Prior Offense Seriousness	.951

A Dependent Variable: Certified to Circuit Court

Exhibit V-10 presents the results of the multilevel model. These models were run using the Hierarchical Linear Model software (Bryk & Raudenbush, 1992). These tables further confirm the results shown in the previous table. Exhibit V-10 describes the results of the complete model introduced in the earlier section. As can be seen there is little evidence for either the direct or the indirect (interactive) impact of juvenile violent crime rates on juvenile certification practice. Further, the models were rerun without including the juvenile violent crime rates as predictors. The results obtained are consistent with the earlier results. In addition, we also re-ran the multilevel model using data at the county level. Once again, no support for the effect of juvenile violent crime on certification practice was obtained.

EXHIBIT V-10
ESTIMATION OF FIXED EFFECTS—INCLUDES CSU-LEVEL
JUVENILE VIOLENT CRIME MEASURE

		γ	Standard Error	T-Ratio
Intercept	$\gamma_{0,0}$	-0.75	0.69	-1.09
Juvenile Violent Crime	$\gamma_{0,1}$	-0.09	0.10	-0.88
Black	$\gamma_{1,0}$	0.01	0.24	0.05
Males	$\gamma_{2,0}$	-0.20	0.28	-0.74
Age at Offense	$\gamma_{3,0}$	-0.07	0.09	-0.80
Year of Offense	$\gamma_{4,0}$	-0.01	0.14	-0.04
Weapon Used to Injure	$\gamma_{5,0}$	0.06	0.32	0.19
Weapon Used to Threaten	$\gamma_{6,0}$	0.16	0.40	0.40
Firearm Use	$\gamma_{7,0}$	1.41**	0.37	3.82
Knife Use	$\gamma_{8,0}$	0.62	0.43	1.45
Death of Victim	$\gamma_{9,0}$	1.14*	0.60	1.91
Victim-Serious Physical Injury	$\gamma_{10,0}$	0.66**	0.32	2.09
Victim-Adult	$\gamma_{11,0}$	0.15	0.24	0.63
Victim-Stranger	$\gamma_{12,0}$	0.14	0.31	0.44
Victim-Acquaintance	$\gamma_{13,0}$	-0.24	0.29	-0.80
Victim-Family	$\gamma_{14,0}$	-0.54	0.45	-1.20
Substance Abuse History	$\gamma_{15,0}$	0.26	0.22	1.21
School Drop-out	$\gamma_{16,0}$	0.50**	0.25	1.99
Family Incarceration	$\gamma_{17,0}$	-0.27	0.22	-1.23
Delinquent Peers	$\gamma_{18,0}$	0.15	0.24	0.60
Prior Juvenile Correctional Placement	$\gamma_{19,0}$	0.62**	0.23	2.69
Automatic Offense at Intake	$\gamma_{20,0}$	-0.58	0.39	-1.47
Present Offense Seriousness	$\gamma_{21,0}$	0.30	0.19	1.59
Juvenile Violent Crime	$\gamma_{21,1}$	0.00	0.02	-0.22
Prior Offense Seriousness	$\gamma_{22,0}$	0.27	0.23	1.15
Juvenile Violent Crime	$\gamma_{22,1}$	0.00	0.03	-0.06

** p < 0.05

6. DISCUSSION

The analysis conducted in this chapter focussed only on the more serious juvenile offenses in Virginia. A number of present and prior record factors were found to be significantly related to the certification decision. These included the seriousness level of the present offense, a number of victim-related factors, weapon use, and the offender's prior record information. These results corroborated data from the interviews with judges and prosecutors (see Chapter 6), where respondents listed harm done to the victim, weapon use, and prior record as factors for consideration in conjunction with offense seriousness. These findings suggest that the

prosecutors do weigh the individual's prior record in addition to the seriousness levels of the present offense in the certification decision. The only social history factor that was found to be significant was dropping out of school -- this was associated with increased odds of certification.⁷ Again, this result is further supported by our survey data, where stakeholders were more likely to certify school dropouts. Interestingly, age was not a statistically significant predictor of the certification decision (also a finding within the survey data, see Chapter 6).⁸ Also, statistically significant relationships were not observed between race, gender and the certification decision.

Equally important was the result that these models only explained a small amount of the variation in the decision to certify. As an example, all of the logistic regression models explained less than 30% of the variation in the transfer decision-- the highest values of the Nagelkerke pseudo R² measure was 0.28 (this measure has a maximum value of 1). The models discussed in this chapter included many factors -- however, despite the large number of factors included, only a small portion of the variation in the transfer decision was explained.

One of the more surprising results was that many of the cases identified as having an offense that could be automatically waived to adult court were not certified. Typically, the intake officers and police officers charge a juvenile with the most serious offense he or she is believed to have committed. This is due to the fact that a prosecutor can amend a juvenile's charges downward very easily, but has to go through more work to add additional, more severe charges. This indicates that, in many cases, although an initial examination by the intake officer suggested the juvenile committed an offense that would be automatically waived to circuit court, the prosecutor later amended the charge downward. The prosecutor may or may not have actually considered whether the offender was appropriate for the juvenile system, but by amending the charge to one that was not an automatic certification, the prosecutor was indicating that the juvenile was not *prima facie* inappropriate for the juvenile system. Further, in all likelihood, this denotes that a plea agreement may be reached even before it reaches the transfer hearing stage in a number of cases.

We also examined the relationship between CSU-level juvenile violent crimes and the decision to certify. We did not find evidence of either a direct or indirect effect of juvenile violent crimes on the certification decision. Since it is possible that the CSU level might be too broad a level to observe the macro-context, we re-estimated these models at the county level.

⁷ This confirms Singer (1993) study: "interviews with prosecutors reveal that they routinely call school officials to ask about the arrested juvenile offenders school-related behavior."

⁸ Dummy measures corresponding to the ages in the samples were also included in the logistic regression models. No support was found for the direct influences of age of offender on transfer decision.

Once again, we did not find evidence of the influences of juvenile violent crime rates on certification practice. Our research focused only on the relationship between juvenile violent crime rates and certification practice. Another potentially fruitful direction for future research is to focus on the organizational context of judicial and prosecutorial decision making at the county and CSU-levels. As an example of such a work, Dixon (1995) examined the organizational context of adult sentencing using the dimensions of judicial and prosecutorial complexity and decentralization on sentencing decisions.

Perhaps the most important resulting research question is why the laws are not applied more frequently (only about a quarter of our sample had been certified). Two explanations can be offered:

- Informal relationships between key decision makers at the local level can explain some of the variation in application. Some of the interviews with court service personnel (described in chapter 6) provide illustrations of possible informal arrangements that might exist between the key decision makers. For example, one judge reported that he makes off-the-record deals with prosecutors to minimize transfers. If a prosecutor will withdraw his or her request for a prosecutorial certification, the judge will guarantee that an offender serves three years in a juvenile facility charged as a serious offender (i.e., give the juvenile a determinate sentence, rather than the more common indeterminate sentence). Another judge remarked that prosecutors in their district may state a desire to transfer at the arraignment, yet almost always retain the offender in the juvenile system. The respondent believed this occurrence was due to prosecutors conferring with the probation officers after the arraignment. A few respondents stated that, in general, individual decision makers' philosophies on the functions and benefits of transfer practices could have an impact on transfer outcomes. In cases of a seemingly rigid policy such as the automatic and prosecutorial certification, such local relationships could actually create an informal system of checks and balances. The prosecutor's discretion, a locality's juvenile justice resources, and a juvenile's history could lead to different results for juveniles charged with similar offenses. Although this could lead to inappropriately inconsistent sentencing, it could also ensure that the individual's context, an intrinsic part of the juvenile justice system, is not completely removed from the transfer process. Such informal relationships are also related to Singer's (1996) notion of loose coupling. Loose coupling "creates a justice system in which individual case processing decisions are structured by inter-organizational negotiations, thus reducing the chance that a single policy initiative will have a consistent effect on crime" (Butts & Mitchell, 2000).
- A second explanation could be that these certification statutes serve a pragmatic purpose, setting an implicit *boundary* on the kind of offense and offender that are outside the purview of the juvenile courts. The prosecutor is left to decide, since the specific charge cannot convey all of the many details of an offense and offender. The

prosecutor may recognize that one robbery offense is far more serious than another, though their charges are equivalent. The prosecutor has the discretion to say that the context of a particular offense and offender is so heinous that the offender must be removed from the juvenile system. Our results did find systematic differences between the groups who get certified and the group that gets retained in the juvenile system. As described by Zimring (2000, p. 219): "So prescriptive transfer standards that move entire crime categories into criminal court are unprincipled and overbroad: the best that can befall such systems is prosecutorial discretion being exercised to select only the most serious of within-crime charges to process in the criminal courts." For the most part, our study provides support for the claim that it is the more serious offenders who are getting certified.

While the legislation on both the prosecutorial certification and automatic certification is not explicit about the discretionary nature of the decision, it is possible that this was perhaps intentioned by the legislator. As described by Feld (2000, 117): "Because offense categories are necessarily crude and imprecise indicators of the 'real' seriousness of any particular offense, prosecutors inevitably exercise enormous sentencing discretion when they decide whether to charge a youth with an excluded offense rather than a lesser included offense, or to select the forum in a direct-file jurisdiction. Despite the extensive lists of excluded offenses and the ascendance of get-tough policies, it seems unlikely that state legislators intend prosecutors to charge every theoretically eligible youth in criminal court."

A limitation of this study is that it examines cases that were charged with prosecutorial and automatic certification offenses at intake, rather than cases brought to the court under the same charges. A good follow-up to this study would be to track a sample of cases from when they were first charged by the prosecutor to their final disposition. Such a study would provide a more detailed understanding of the discretion underlying automatic and prosecutorial certification cases. This limitation should not distract from the important finding in this chapter of the wide range of discretion that actually exists for automatic and prosecutorial certification cases (Singer, 1996).

Another limitation is that our choice of sites was driven by a mix of policy and budgetary considerations. While we do think that our sample 1,073 individuals provide a good understanding of juvenile certification practice in Virginia, we urge some caution in generalizing the results of the model to all of Virginia. One final caution to note is that we were unable to locate about 13% of the identified files from the juvenile intake database. As the mechanisms underlying this missing patterns of files is largely unknown, it would be prudent to treat our results with caution.

VI. A QUALITATIVE AND QUANTITATIVE STUDY OF ATTITUDES TOWARDS TRANSFER OF KEY DECISION MAKERS

VI. A QUALITATIVE AND QUANTITATIVE STUDY OF ATTITUDES TOWARDS TRANSFER OF KEY DECISION MAKERS

1. INTRODUCTION

In Chapter 5, we examined the factors that influence the transfer decision based on actual transfer practice. In this chapter, we summarize the results of both qualitative interviews and quantitative surveys with key decision makers involved in the transfer decision. The quantitative survey is a statewide survey of juvenile court judges and prosecutors. The qualitative survey involved more detailed discussion with a few prosecutors, juvenile court judges, probation officers and court service unit directors. The key goals of this chapter are to: understand the context of the transfer making in greater detail; understand some of the difficulties involved in implementing the statutes; and obtain feedback from key decision makers to improve the transfer process. Although the role of judges and probation staff in the prosecutorial and automatic certification is small, they were surveyed to provide greater insight into the practice of juvenile transfers as a whole, including both transfer hearings and certifications. In this chapter, when the term "transfer" is used, it refers to the transfer process as a whole, including all three forms of transfer/certification.

The present study complements the analysis conducted in Chapter 5 (which analyzes official data collected from site visits). Sanborn (1996, pp. 99-100) makes a strong case for moving beyond an exclusive focus on official records: "Virtually all of the empirical studies have addressed only a limited number of factors and have been based on data from official records, which rarely capture the dynamics of the disposition hearing and which frequently ignore, misrepresent, or both, a number of factors that are critical to it. Research that has analyzed sentencing in multiple juvenile courts is even more problematic in that important, measurement defying characteristics generally have been overlooked."

Understanding the transfer decision-making process is a difficult problem—our approach combines interviews with key decision makers with an analysis of official records. Such an approach will be helpful in more comprehensively understanding the juvenile transfer decision process. One distinction between this chapter and Chapter 5 is that, in this chapter, we focus on all the juvenile transfer categories in Virginia (the data in Chapter 5 focuses only on automatic and prosecutorial certification cases).

The complexity involved in evaluating Virginia's transfer decision can be appreciated by recognizing that there is limited consensus even on the goals of transfer. Understanding the "substantive ends" is critical in conducting an evaluation. As described by Feeley and Simon (1992, p. 457): "Yet in the end, the inclination of the system to measure its success against its

own production processes help lock the system into a mode of operation that has only an attenuated connection with the social purposes of punishment. In the long term it becomes difficult to evaluate an institution critically if there are no references to substantive ends (Feeley & Simon, 1992, p. 457)."

2. SAMPLING FOR THE QUANTITATIVE AND QUALITATIVE SURVEYS

The survey and interviews of judges and prosecutors was conducted using two sources. The first was a structured written survey of juvenile court judges and prosecutors. Appendix A includes a copy of the survey protocol used in this study. The second source was an open-ended structured interview of judges, prosecutors, probation officers, and court service unit directors. Appendix A includes a copy of the interview protocol. Although Virginia law gives most of the power in the transfer process to the prosecutor, these other players were able to offer insight as well.

The structured survey targeted all of the juvenile court judges ($N=101$) and prosecutors ($N=565$) in Virginia. The survey was conducted in two stages. In the first, a one-page survey was distributed at each group's statewide 1999 spring meetings. Researchers obtained permission from the conference organizers to distribute the survey as part of the conference materials. The judges and prosecutors were asked to return their surveys using the self-addressed stamped envelopes provided. The response rate for the surveys distributed in this stage was very low. As a result, in the second stage, researchers mailed surveys to each judge and prosecutor, again including a self-addressed stamped envelope. The mailed survey included a second page of items that were identified after discussing the first survey with several respondents. The response rate for the mailed survey was significantly improved. The overall response rate for the survey (conferences and mailing) was 66 percent for judges and 45 percent for prosecutors.

After analyzing the results of the structured survey, researchers decided it would be beneficial to conduct less-structured interviews with some key decision makers in the transfer process. Discussions with policy staff at DJJ identified two additional players who could offer useful insight into the process. Those were probation officers, who write the transfer reports reviewed by the judges in transfer hearings, and court service unit directors, who have a good overall knowledge of the workings of their district's court. Further discussions with senior policy staff at DJJ identified judges and court service unit directors who could be expected to provide a beneficial perspective on the process. The three DJJ regional administrators each identified probation officers in their regions who were experienced in preparing transfer reports. Prosecutors were then selected according to their localities, according to the direction of DJJ.

policy staff. The sample was selected to ensure representation from rural, urban and suburban areas. The individuals were selected with the intention of obtaining differing perspectives on juvenile justice, from punitive to rehabilitative. The sample for the qualitative survey consisted of 18 respondents, including 8 court service personnel, 6 judges, and 4 prosecutors.

3. RESULTS

In this section, we discuss the results of the statewide survey and the qualitative interviews. We have presented the obtained results along the following themes:

- Rationale for transfer
- Factors influencing the transfer decision
- Variations in attitudes towards transfer between key decision makers
- Regional differences in attitudes towards transfer
- Problems in implementation
- Key decision makers in the transfer process
- Recommendation.

Our discussion synthesizes the results from the structured survey and the open-ended interviews along the above themes.

3.1 Transfer Rationale

One main question from both surveys was targeted at the rationale and function of juvenile transfers to the adult system. On the written survey, prosecutors and judges were asked to designate the primary function(s) for juvenile transfers among the following choices: deterrence, incapacitation of the offender/public safety, punishment, and justice for the victim. During the interviews, stakeholders were asked to discuss the rationale for transfer.

The frequency distribution of the rationale for transfer obtained from the quantitative statewide survey is described in Exhibit VI-1. A majority of the written survey respondents (77%) chose incapacitation and punishment of the offender/public safety as a primary function of juvenile transfers. Slightly more than half of the quantitative sample chose deterrence as a primary reason to transfer. This rationale did not emerge from the qualitative data, indicating

that deterrence may not be as salient a justification to respondents as the quantitative data suggest. One respondent remarked that deterrence is merely the public's rationale and that the deterrent effect does not exist in reality.

EXHIBIT VI-1			
FREQUENCY DISTRIBUTION OF TRANSFER RATIONALE			
	No.	Yes	Total
Deterrence	43.3%	56.7%	100.0%
Incapacitation	22.7%	77.3%	100.0%
Punishment	23.1%	76.9%	100.0%
Justice for victim	63.9%	36.1%	100.0%

Sample size is 321. Respondents checked more than one rationale if applicable.

Only a small percentage (36%) chose justice for the victim as a function of transfers. An absence of this category within the qualitative data confirms that this is not a significant reason for transferring juveniles to adult court.

The majority of interview respondents spoke of their beliefs that the rationale to transfer is that the offender is not amenable to treatment within the juvenile system. Specifically, they felt that transfer legislation served the purpose of *managing* offenders for whom there was little hope of rehabilitation and who had exhausted the resources of the juvenile system. Other functions of transfers that emerged from the interview data were protection of constitutional rights, adhering to a philosophy that juveniles are *as* culpable as adults, and satisfaction of political or public demands.

3.2 Factors Influencing the Transfer Decision

Both the written survey and the interview asked for information on the primary factors considered when making the transfer decision. The written survey asked respondents to rate on a scale of 1 to 5 whether they agreed or disagreed that they considered a set of specific factors in making a transfer decision. The specific factors listed included capacity of juvenile correctional centers, seriousness of offense, offense history, age of defendant, ability and willingness of juvenile's family to assist in rehabilitation, overburdened juvenile courts, inadequacy of sanctions available to the juvenile court, community norms, and the permanent record provided by conviction in circuit court. A similar question on the written survey asked prosecutors and judges to assess the intensity of influence of the specific factors in their decision making processes. They were asked to indicate *how influential* certain factors were in their decision to transfer a juvenile offender to circuit court. They indicated their responses on a scale from 1 to 5, 1 being not at all influential and 5 being very influential. The factors included safety of the

juvenile in adult prison, treatment options available in juvenile court, stiff penalties available in circuit court, seriousness of the offense, age of the offender, and community desire for stiff penalties. In the qualitative interview, the respondents were asked to list and discuss both formal and informal factors that affected their decision making processes.

Exhibit VI-2 describes the frequency distributions corresponding to the strength of agreement of factors influencing transfer decisions. A majority of respondents agreed or strongly agreed that the following factors affect the transfer decision: *offense seriousness* (close to 97%), *offenders' history* (close to 96%), *inadequate sanctions in juvenile court* (close to 74%), and *defendant's age* (close to 69%). Factors from the written survey that respondents generally felt were *not* considered in making the transfer decision include: *capacity of juvenile correctional centers*, *ability and willingness of juvenile's family to assist in rehabilitation*, and *overburdened juvenile courts*.

	EXHIBIT VI-2 STRENGTH OF AGREEMENT WITH FACTORS INFLUENCING TRANSFER DECISION					
	Strongly Disagree	2.00	3.00	4.00	Strongly Agree	Total
Juvenile Correctional Center capacity	65.1%	15.7%	12.3%	2.8%	4.1%	100.0%
Offense seriousness	1.9%	.3%	.6%	1.9%	95.3%	100.0%
Offender history	1.6%	.6%	1.9%	11.6%	84.4%	100.0%
Defendant's age	2.8%	5.6%	23.1%	36.6%	31.9%	100.0%
Family help	20.7%	24.1%	39.2%	10.7%	5.3%	100.0%
Overburdened courts	75.2%	16.9%	4.4%	1.6%	1.9%	100.0%
Inadequate sanctions in juvenile court	5.0%	6.9%	14.4%	29.2%	44.5%	100.0%
Community norms	21.3%	17.5%	38.7%	16.8%	5.7%	100.0%
Convictions part of permanent record	13.5%	16.6%	24.1%	24.1%	21.6%	100.0%

Sample size is 321.

Exhibit VI-3 describes the intensity of influence of factors that influence the transfer decision. The results in Exhibit VI-3 both corroborate and add further depth to the results observed in Exhibit VI-2. About 89 percent of the sample consider *offense seriousness* to be influential or very influential. Close to 65 percent of the sample consider *stiffer penalties* to be influential or very influential in the transfer decision. The intensity of age was less important than the agreement scale obtained above—less than 40 percent of the sample considered *age* to be influential or very influential. About 51 percent considered *treatment options available in the juvenile court* to be an influential or very influential a factor. Only about 26 percent of the sample considered *community wants* to be an influential or very influential factor. Perhaps one of the most surprising results was that less than 8 percent of the sample considered *juvenile's*

safety an influential or very influential factor in the transfer decision. Some of the judges commented on the fact that they were not cognizant of what the adult system comprises, except anecdotally, and this may be a reason why a juvenile's safety in the adult system was not a consideration.

EXHIBIT VI-3						
INTENSITY OF INFLUENCE OF FACTORS INVOLVED IN THE TRANSFER DECISION						
	Not at all Influential	2.00	3.00	4.00	Very Influential	Total
Juvenile's safety	38.0%	26.6%	27.5%	7.3%	.6%	100.0%
Treatment options	7.5%	8.8%	32.4%	29.6%	21.7%	100.0%
Stiffer penalties	5.4%	9.1%	19.9%	24.6%	41.0%	100.0%
Offense seriousness		1.9%	9.4%	20.6%	68.1%	100.0%
Age of offender	8.1%	14.1%	39.1%	32.5%	6.3%	100.0%
Community wants	17.2%	23.8%	33.2%	18.8%	6.9%	100.0%

Sample size is 321.

Age clearly seems to play a complex role in the decision making process—the results from Exhibit VI-2 indicate that this is a factor that is taken into consideration, however Exhibit VI-3 indicates that it does not weigh strongly. In the interview, two stakeholders remarked that they are more likely to transfer older juveniles because older offenders typically have a longer criminal history and previous contact with the system. Stakeholders also added that age can be a "jurisdictional concern." A 13-year-old charged with forcible rape might seem appropriate for the juvenile system, because he could spend several years receiving treatment in the juvenile correctional centers and then continue to receive treatment and supervision from the juvenile system after his release. However, a 17-year-old charged with the same offense will be beyond the reach of the juvenile system on his 21st birthday. He can be committed to the State juvenile system and receive sex offender treatment. When he is released, he can only be supervised until his 21st birthday. The adult court would have the option of giving the offender a *juvenile* commitment until his 21st birthday, to be followed by *adult* probation supervision that could last as long as necessary. This ability of the circuit court to deliver both juvenile and adult sanctions is one reason why a case might be transferred, according to one juvenile court judge's interview. From these data, age alone does not seem to be a factor for consideration, but rather a correlate with other factors considered (e.g., offense history and amenability to treatment).

A smaller percentage (46%) from the written survey indicated the fact that *convictions in circuit court being a part of offenders' permanent records* affected their decision. This factor was not discussed during the interviews. Respondents may not have rated this factor highly since the Juvenile Justice Reform Package in 1996 changed the Code of Virginia regarding confidentiality of court records in juvenile court. §16.1-305 allows:

"Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court; however, for the purposes of preparation of a presentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, shall have access to an accused's or inmate's records in juvenile court and for the purpose of preparing the discretionary sentencing guidelines worksheets as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and the probation officer shall have access to the defendant's records in juvenile court."

Since juvenile records are no longer expunged on the juvenile's 21st birthday, this factor may no longer be pertinent to the decision to transfer a case.

A more informal issue that arose as a factor for consideration in both surveys was public opinion, or community norms. Some of the interview respondents remarked that an offense with a large amount of notoriety where "people are up in arms" can be treated differently than less prominent offenses. Only about 26 percent of the quantitative survey respondents felt that a *community's desire for stiffer penalties* had an influence on their decisions. This factor may have been too specific to encompass the influence they felt from general community norms.

Another set of questions that was asked within the quantitative survey probed more deeply if certain social and criminal history factors influenced respondents to retain an offender in juvenile court, transfer an offender, or had no impact on the decision (see page 2 of survey in Appendix A). The factors included youth's petition records, history of substance abuse, school records, history of running away from facilities, victim of abuse or neglect, incarcerated family members, and delinquent peers (see Exhibit VI-4). Factors that most influenced decision makers toward adjudication of offenders in juvenile court were *history of substance abuse, truancy problems, and youth is a victim of child abuse or neglect*. The factors with greatest influence towards transfer to adult court included *first petition at age 13 or younger, previous petitions for violent felonies, previous petitions for drug-related felonies, school expulsions, youth is a dropout, and escapes from residential facilities*. Factors that appeared to have little impact on the decision were *previous petitions for misdemeanors, incarcerated parents or siblings, and delinquent peers*.

EXHIBIT VI-4
CRIMINAL AND SOCIAL HISTORY FACTORS INFLUENCING TRANSFER DECISION

	Influences Toward JDR	Influences Toward Circuit	No Impact	Total
1st petition age less than 13	15.1%	39.9%	45.0%	100.0%
Petitions for violent felonies	1.5%	77.8%	20.7%	100.0%
Petitions for property felonies	15.8%	41.0%	43.2%	100.0%
Petitions for drug felonies	7.0%	61.0%	32.0%	100.0%
Petitions for misdemeanors	29.8%	18.5%	51.6%	100.0%
History of substance abuse problems	41.5%	24.7%	33.8%	100.0%
Truancy problems	40.9%	13.1%	46.0%	100.0%
Expelled from school	21.4%	37.0%	41.7%	100.0%
Dropped out of school	17.2%	40.9%	42.0%	100.0%
History of escaping from residential facilities	15.3%	58.4%	26.3%	100.0%
Youth is a victim of abuse and neglect	59.9%	.7%	39.4%	100.0%
Family incarcerated in past three years	12.0%	6.2%	81.8%	100.0%
Youth has delinquent peers	8.7%	17.0%	74.3%	100.0%

Sample size is 276.

3.3 Variations in Attitudes towards Transfer between Key Decision Makers

Within the quantitative survey, judges and prosecutors responded significantly differently on several questions. Chi-squared tests were conducted to study the differences in attitudes between judges and prosecutors—Exhibits VI-5 to VI-9 summarize the key differences between judges and prosecutors on the attitudes towards transfer.

EXHIBIT VI-5			
FREQUENCY DISTRIBUTION OF TRANSFER RATIONALE BY GROUP			
	No	Yes	Total
Prosecutor			
Deterrence	43.7%	56.3%	100.0%
Incapacitation	20.9%	79.1%	100.0%
Punishment	23.6%	76.4%	100.0%
Justice for victim	63.0%	37.0%	100.0%
Judge			
Deterrence	41.8%	58.2%	100.0%
Incapacitation	29.9%	70.1%	100.0%
Punishment	20.9%	79.1%	100.0%
Justice for victim	57.2%	32.8%	100.0%

Sample size is 321. There are 254 prosecutors and 67 juvenile court judges in the sample.

Though judges and prosecutors responded similarly on the rationale to transfer juvenile offenders (see Exhibit V-5), they differed on how various factors influenced their decisions. From Exhibit V-6, statistically significant differences between judges and prosecutors on a

number of factors including: *defendant's age, family help, inadequate sanctions in juvenile court, community norms, and conviction part of permanent record*. Age was more of an important factor in the decisions of judges (48% strongly agreed vs. 28% prosecutors), while inadequate sanctions of juvenile court were more important to prosecutors' decisions (49% strongly agreed vs. 27% judges). In addition, prosecutors were more likely to take into account the fact that circuit court convictions were a part of the offender's permanent record.

EXHIBIT VI-6
FREQUENCY DISTRIBUTION OF STRENGTH OF FACTORS INFLUENCING
TRANSFER DECISION BY GROUP

	Strongly Disagree	2.00	3.00	4.00	Strongly Agree
Prosecutor					
Offense seriousness	2.0%			1.6%	96.5%
Offender history	1.6%	.4%	1.6%	10.6%	85.8%
Defendant's age	3.1%	5.5%	25.2%	38.6%	27.6%
Family help	24.5%	26.1%	38.7%	8.7%	2.0%
Overburdened courts	74.4%	17.3%	5.5%	1.2%	1.6%
Inadequate sanctions in juvenile court	2.4%	5.5%	12.6%	30.4%	49.0%
Community norms	18.8%	17.2%	38.4%	19.2%	6.4%
Convictions part of permanent record	8.3%	13.8%	25.3%	27.7%	24.9%
Judge					
Offense seriousness	1.5%	1.5%	3.0%	3.0%	90.9%
Offender history	1.5%	1.5%	3.0%	15.2%	78.8%
Defendant's age	1.5%	6.1%	15.2%	28.8%	48.5%
Family help	6.1%	16.7%	40.9%	18.2%	18.2%
Overburdened courts	78.5%	15.4%		3.1%	3.1%
Inadequate sanctions in juvenile court	15.2%	12.1%	21.2%	24.2%	27.3%
Community norms	30.8%	18.5%	40.0%	7.7%	3.1%
Convictions part of permanent record	33.3%	27.3%	19.7%	10.6%	9.1%

Sample size is 321. There are 254 prosecutors and 67 juvenile court judges in the sample.

Exhibit VI-7 describes the differences in intensity of influence of factors between prosecutors and judges. *All of the factors in Exhibit VI-7 were statistically significant.* When rating how influential various factors were on their decisions, judges were more likely to rate treatment options available to the juvenile court and age of the offender as more influential. Prosecutors were more likely to rate stiff penalties of the adult system, offense seriousness, and community opinion as more influential. They were also much less likely to rate juvenile safety in the adult system as influential upon their decision to transfer. These results were validated from the interview data. Judges spoke of maturity of the offender, availability of services and treatment options, and safety as among the influential factors. In contrast, prosecutors noted the importance of punishment and longer supervision available within the adult system. Court service personnel differed from both prosecutors and judges in that they were more likely to

discuss offense and offender context (e.g., behavior in school and with family, who else and how many were involved in the crime).

EXHIBIT VI-7 INTENSITY OF INFLUENCE OF FACTORS BY GROUP					
	Not at all Influential 2.00	3.00	4.00	Very Influential	
Prosecutor					
Juvenile's safety	42.8%	25.6%	26.0%	5.6%	
Treatment options	9.1%	11.1%	36.9%	27.0%	15.9%
Stiffer penalties	2.0%	5.6%	15.9%	27.9%	48.6%
Offense seriousness		.4%	9.1%	19.4%	71.1%
Age of offender	9.1%	15.4%	39.9%	31.6%	4.0%
Community wants	11.5%	20.2%	37.7%	22.6%	7.9%
Judge					
Juvenile's safety	19.7%	30.3%	33.3%	13.6%	3.0%
Treatment options	1.5%		15.2%	39.4%	43.9%
Stiffer penalties	18.2%	22.7%	34.8%	12.1%	12.1%
Offense seriousness		7.5%	10.4%	25.4%	56.7%
Age of offender	4.5%	9.0%	35.8%	35.8%	14.9%
Community wants	38.8%	37.3%	16.4%	4.5%	3.0%

Sample size is 321. There are 254 prosecutors and 67 juvenile court judges in the sample.

Exhibit VI-8 describes the differences between judges and prosecutors with perceived problems in implementing the juvenile transfer statutes. Statistically significant factors included access to treatment/counseling facilities and access to intermediate facilities. Judges rated access to treatment facilities and access to intermediate facilities as slightly greater impediments to implementing transfer statutes than did prosecutors.

	No Problem	EXHIBIT VI-8			Serious Problem
		2.00	3.00	4.00	
EXTENT OF PROBLEMS IN IMPLEMENTATION OF STATUTES BY GROUP					
Prosecutor					
Juvenile correctional center access	55.8%	17.5%	17.1%	5.0%	4.6%
Overcrowding in the juvenile correctional centers	49.6%	20.4%	19.6%	6.3%	4.2%
Agency coordination	47.1%	21.8%	24.8%	5.0%	1.3%
State-level support	44.9%	19.1%	27.1%	6.4%	2.5%
Access to treatment/counseling facilities	36.9%	17.8%	28.0%	14.0%	3.4%
Access to intermediate facilities	36.8%	19.7%	27.2%	10.0%	6.3%
Judge					
Juvenile correctional center access	59.1%	21.2%	9.1%	6.1%	4.5%
Overcrowding in the juvenile correctional centers	53.0%	21.2%	16.7%	4.5%	4.5%
Agency coordination	54.5%	22.7%	21.2%	1.5%	
State-level support	45.5%	25.8%	16.7%	9.1%	3.0%
Access to treatment/counseling facilities	30.8%	12.3%	23.1%	20.0%	13.8%
Access to intermediate facilities	30.8%	12.3%	23.1%	21.5%	12.3%

Sample size is 321. There are 254 prosecutors and 67 juvenile court judges in the sample.

Exhibit VI-9 describes the differences between judges and prosecutors in the influence of criminal and social history factors in the transfer decision. All of the factors except history of escaping from residential facilities and dropped out of school were significant at the 0.05 level of significance. Dropped out of school was significant at the 0.10 level of significance.

EXHIBIT VI-9 CRIMINAL AND SOCIAL HISTORY FACTORS INFLUENCING TRANSFER DECISION BY GROUP				
	Influences Towards Juvenile Court	Influences Toward Circuit	No Impact	Total
Prosecutor				
1st petition age less than 13	12.6%	41.9%	45.6%	100.0%
Petitions for violent felonies	.5%	86.7%	12.8%	100.0%
Petitions for property felonies	13.4%	46.3%	40.3%	100.0%
Petitions for drug felonies	5.1%	68.8%	26.0%	100.0%
Petitions for misdemeanors	28.4%	22.0%	49.5%	100.0%
History of substance abuse problems	36.8%	25.0%	38.2%	100.0%
Truancy problems	35.8%	13.8%	50.5%	100.0%
Expelled from school	17.7%	38.2%	44.1%	100.0%
Dropped out of school	14.6%	42.0%	43.4%	100.0%
History of escaping from residential facilities	13.7%	59.4%	26.9%	100.0%
Youth is a victim of abuse and neglect	56.8%	.5%	42.7%	100.0%
Family incarcerated in past three years	9.1%	5.0%	85.8%	100.0%
Youth has delinquent peers	5.5%	18.6%	75.9%	100.0%
Judge				
1st petition age less than 13	25.0%	32.1%	42.9%	100.0%
Petitions for violent felonies	5.3%	43.9%	50.9%	100.0%
Petitions for property felonies	24.6%	21.1%	54.4%	100.0%
Petitions for drug felonies	14.0%	31.6%	54.4%	100.0%
Petitions for misdemeanors	35.1%	5.3%	59.6%	100.0%
History of substance abuse problems	60.0%	23.6%	16.4%	100.0%
Truancy problems	60.7%	10.7%	28.6%	100.0%
Expelled from school	35.7%	32.1%	32.1%	100.0%
Dropped out of school	27.3%	36.4%	36.4%	100.0%
History of escaping from residential facilities	21.8%	54.5%	23.6%	100.0%
Youth is a victim of abuse and neglect	72.2%	1.9%	25.9%	100.0%
Family incarcerated in past three years	23.2%	10.7%	66.1%	100.0%
Youth has delinquent peers	21.4%	10.7%	67.9%	100.0%

Sample size is 276.

Prosecutors were more likely than judges to transfer a case to the adult system in the presence of previous petitions for violent, property, or drug offenses. While prosecutors generally felt a history of misdemeanors did not impact their decisions, they were slightly more likely than judges to transfer these cases. Judges were more likely than prosecutors to retain offenders in the juvenile system when they had a record of petitions for property felonies, truancy problems, expulsions from school, or the youth had incarcerated family members or delinquent peers.

A possible explanation for these differences between prosecutors and judges is that they play different roles in the transfer process. The prosecutor serves as the advocate for the State. Whenever there is evidence that an individual is guilty of a crime, the prosecutor's job is to seek to have that individual punished. A prosecutor may be more inclined to think that the appropriateness of a punishment is determined more by the offense than by the offender's individual context. If his or her client, the State, has a case, it is the prosecutor's duty to make that case in court. It is the judge's duty to weigh all the factors of a case when making a ruling. Juvenile court judges in particular are expected to consider the individual circumstances of a crime before making a decision. In the case of juvenile transfers to adult court, judges can only make decisions in cases that require a transfer hearing. In those cases, they are instructed by the Code to consider a variety of individual factors to determine if the juvenile is an appropriate person for the juvenile court. The prosecutor's decision making role in transfers is very different. The prosecutor can see that a case is certified to adult court simply on the basis of the offense for which the juvenile is charged. That is, the only factors the Code requires the prosecutor to consider is the seriousness of the offense. They obviously can consider other factors in the case of the prosecutorial certification, but they are not required to do so.

3.4 Regional Differences in Attitudes towards Transfer

Exhibits VI-10 to VI-13 summarize the regional differences in attitudes towards transfer. Perhaps a little surprisingly, very few regional differences were uncovered in the transfer rationale, influence of factors in the transfer decision, the problems considered in the transfer decision, and problems in implementing the juvenile statutes. The diversity in the challenges facing each region identified in Virginia may have led researchers to anticipate attitudinal differences in the decision to transfer a juvenile's case. The northern region consists mostly of urban localities and is located near the District of Columbia. The western region is mainly rural and is populated with the least number of juveniles in the at-risk age range. The eastern region has a large number of urban localities, many of which are places tourists visit. The eastern region is also home to the highest number of juveniles in the at-risk age range. Statistically significant differences were obtained for two factors that measure the problems in implementing the statutes: access to juvenile correctional centers and overcrowding in the juvenile correction centers (see Exhibit VI-13). Access to correctional centers posed more of a problem to implementation of transfer statutes for stakeholders in the western region and less of a problem for those in Eastern Virginia. Those in the western region also experienced more of a problem with overcrowding of correctional centers than those in the other two regions. Finally, (at the 0.10 level of significance) respondents from Western Virginia were more likely to indicate that a juvenile's record of school dropout had no impact on their decision, while stakeholders in other regions were more likely to transfer these cases to circuit court (table not included).

EXHIBIT VI-10
RATIONALE FOR TRANSFER BY REGION

Region	No	Yes
Western		
Deterrence	43.6%	56.4%
Incapacitation	26.6%	73.4%
Punishment	20.2%	79.8%
Justice for victim	62.8%	37.2%
Northern		
Deterrence	44.2%	55.8%
Incapacitation	20.4%	79.6%
Punishment	23.0%	77.0%
Justice for victim	62.8%	37.2%
Eastern		
Deterrence	42.1%	57.9%
Incapacitation	21.9%	78.1%
Punishment	25.4%	74.6%
Justice for victim	65.8%	34.2%

Sample size is 321 cases. There are 94 respondents from the western region, 113 in the northern region and 114 in the eastern region.

EXHIBIT VI-11
STRENGTH OF AGREEMENT WITH FACTORS INFLUENCING
TRANSFER DECISION BY REGION

	Strongly Disagree	2.00	3.00	4.00	Strongly Agree
Western					
JCC capacity	64.9%	14.9%	11.7%	4.3%	4.3%
Offense seriousness	3.2%		2.1%	3.2%	91.5%
Offender history	3.2%		3.2%	13.8%	79.8%
Defendant's age	4.3%	8.5%	20.2%	38.3%	28.7%
Family help	21.5%	18.3%	43.0%	8.6%	8.6%
Overburdened courts	70.2%	18.1%	4.3%	4.3%	3.2%
Inadequate sanctions in juvenile court	5.3%	9.6%	16.0%	31.9%	37.2%
Community norms	19.4%	20.4%	31.2%	20.4%	8.6%
Convictions part of permanent record	9.6%	21.3%	21.3%	25.5%	22.3%
Northern					
JCC capacity	59.5%	16.2%	16.2%	2.7%	5.4%
Offense seriousness	1.8%			1.8%	96.4%
Offender history	.9%	.9%	.9%	13.4%	83.9%
Defendant's age	1.8%	2.7%	26.8%	35.7%	33.0%
Family help	14.3%	22.3%	43.8%	13.4%	6.3%
Overburdened courts	73.0%	18.9%	6.3%	.9%	.9%
Inadequate sanctions in juvenile court	6.3%	6.3%	14.3%	25.9%	47.3%
Community norms	19.4%	13.0%	48.1%	13.0%	6.5%
Convictions part of permanent record	17.0%	15.2%	25.0%	22.3%	20.5%
Eastern					
JCC capacity	70.8%	15.9%	8.8%	1.8%	2.7%
Offense seriousness	.9%	.9%		.9%	97.4%
Offender history	.9%	.9%	1.8%	7.9%	88.6%
Defendant's age	2.6%	6.1%	21.9%	36.0%	33.3%
Family help	26.3%	30.7%	31.6%	9.6%	1.8%
Overburdened courts	81.6%	14.0%	2.6%		1.8%
Inadequate sanctions in juvenile court	3.5%	5.3%	13.3%	30.1%	47.8%
Community norms	24.6%	19.3%	36.0%	17.5%	2.6%
Convictions part of permanent record	13.3%	14.2%	25.7%	24.8%	22.1%

Sample size is 321 cases. There are 94 respondents from the western region, 113 in the northern region and 114 in the eastern region.

EXHIBIT VI-12					
INTENSITY OF INFLUENCE OF FACTORS BY REGION					
	Not at all Influential	2.00	3.00	4.00	Very Influential
Western					
Juvenile's safety	35.9%	22.8%	32.6%	7.6%	1.1%
Treatment options	7.5%	9.7%	33.3%	29.0%	20.4%
Stiffer penalties	4.3%	6.5%	26.9%	22.6%	39.8%
Offense seriousness		2.1%	11.7%	19.1%	67.0%
Age of offender	9.6%	13.8%	43.6%	26.6%	6.4%
Community wants	16.1%	22.6%	28.0%	26.9%	6.5%
Northern					
Juvenile's safety	31.3%	29.5%	27.7%	10.7%	.9%
Treatment options	8.8%	9.7%	32.7%	30.1%	18.6%
Stiffer penalties	9.0%	6.3%	18.9%	25.2%	40.5%
Offense seriousness		2.7%	9.7%	22.1%	65.5%
Age of offender	10.6%	12.4%	41.6%	30.1%	5.3%
Community wants	18.6%	23.0%	35.4%	15.9%	7.1%
Eastern					
Juvenile's safety	46.4%	26.8%	23.2%	3.6%	
Treatment options	6.3%	7.1%	31.3%	29.5%	25.9%
Stiffer penalties	2.7%	14.2%	15.0%	25.7%	42.5%
Offense seriousness		.9%	7.1%	20.4%	71.7%
Age of offender	4.4%	15.9%	32.7%	39.8%	7.1%
Community wants	16.8%	25.7%	35.4%	15.0%	7.1%

Sample size is 321 cases. There are 94 respondents from the western region, 113 in the northern region and 114 in the eastern region.

EXHIBIT VI-13					
EXTENT OF PROBLEMS IN IMPLEMENTATION OF STATUTES BY REGION					
	No Problem	2.00	3.00	4.00	Serious Problem
Western					
Juvenile correctional center access	42.9%	23.1%	15.4%	8.8%	9.9%
Overcrowding in the juvenile correctional centers	37.4%	23.1%	19.8%	9.9%	9.9%
Agency coordination	45.6%	24.4%	23.3%	6.7%	
State-level support	37.8%	24.4%	23.3%	11.1%	3.3%
Access to treatment/counseling facilities	27.8%	23.3%	31.1%	12.2%	5.6%
Access to intermediate facilities	33.0%	24.2%	23.1%	13.2%	6.6%
Northern					
Juvenile correctional center access	63.5%	14.4%	17.3%	3.8%	1.0%
Overcrowding in the juvenile correctional centers	55.8%	22.1%	18.3%	2.9%	1.0%
Agency coordination	49.0%	19.2%	26.0%	3.8%	1.9%
State-level support	46.6%	21.4%	24.3%	5.8%	1.9%
Access to treatment/counseling facilities	37.3%	10.8%	29.4%	17.6%	4.9%
Access to intermediate facilities	35.9%	16.5%	26.2%	14.6%	6.8%
Eastern					
Juvenile correctional center access	61.3%	18.0%	13.5%	3.6%	3.6%
Overcrowding in the juvenile correctional centers	55.9%	17.1%	18.9%	5.4%	2.7%
Agency coordination: Extent of problem	50.9%	22.7%	22.7%	2.7%	.9%
State-level support: Extent of problem	49.5%	16.5%	26.6%	4.6%	2.8%
Access to treatment/counseling facilities	40.4%	16.5%	21.1%	15.6%	6.4%
Access to intermediate facilities	37.3%	14.5%	29.1%	10.0%	9.1%

Sample size is 321 cases. There are 94 respondents from the western region, 113 in the northern region and 114 in the eastern region.

3.5 Problems in Implementation

One of the survey questions asked respondents to indicate the degree to which certain factors posed problems in implementing juvenile transfer statutes. The factors included access to juvenile correctional centers, coordination among State and local agencies, State-level support, access to treatment/counseling facilities, and access to intermediate facilities. They were required to use a scale from 1 to 5, where 1 represents no problem and 5 represents serious problem (see Exhibits VI-8 and Exhibit VI-13). For each factor, the majority of prosecutors and judges rated the degree of problems from 1 to 3. As discussed earlier, while some differences were found between judges and prosecutors, for the most part, it appears that none of these factors had a serious impact on transfer decision making.

3.6 Key Decision Makers in the Transfer Process

Respondents to the qualitative survey were questioned as to whom they considered to be the most influential players in the transfer decision. A large majority listed prosecutors as playing key roles in the decision making process. Typically, the prosecutors are the ones to decide which charges to file, as well as initiate transfers, so they have a great deal of power in determining the outcomes of the transfer process. A large majority of stakeholders also spoke of probation officers as playing critical roles in the transfer decision. In most jurisdictions, the probation officer prepares a transfer report on offenders at the direction of the court when the prosecutor has made a motion to transfer a case that does not meet the criteria for automatic or prosecutorial certification. This report contains information such as the social history of the offender, an assessment of mental competence, and a recommendation to transfer or retain the juvenile. This is an important document to be used by the judge in cases for which a transfer hearing is required. Cases that meet the requirements for either the automatic or prosecutorial certification do not require a transfer report, because the decision is made either by statute or by the prosecutor, not by the judge. Although the report is not officially used in the case of a prosecutorial certification, the probation officer can still have a significant role as an advisor to the prosecutor. When the prosecutor makes the decision to motion for a transfer (in cases eligible for a prosecutorial certification), he or she will want to have a good understanding of the juvenile's appropriateness to the juvenile court. The probation officer is frequently the best person to advise the prosecutor on that question, because the probation officer will likely have prepared social history reports that describe the juvenile's home life, school behavior, physical and emotional health, and other individual factors. The prosecutor is not bound by the probation officer's advice, but some interviewees indicated that prosecutors in their districts would work closely with the probation staff. Because probation officers access and prepare this valuable contextual information on juvenile offenders, they can be highly influential with those who have more direct control over the transfer decision (mainly the prosecutors). A third actor whom many felt influenced transfer decisions was the juvenile court judge. Like the probation officers, the judge's most significant role is in a transfer hearing. In cases of prosecutorial or automatic certification, the judge can only rule on the question of probable cause. This represents a large shift from how the transfer process has previously functioned, where judges were the primary decision makers. Other individuals stakeholders listed as playing a role in the decision included the victims, law enforcement, service providers (e.g., treatment staff, psychologists), and court service unit directors.

3.7 Recommendations

In the stakeholder interviews, respondents were prompted to discuss any recommendations they had for changes to the transfer process. Responses were diverse and ranged in substance. Some felt that the process operated sufficiently well already, while others would like to return to the process previous to the new legislation. A few respondents suggested eliminating the prosecutorial certification and others suggested returning the eligible age to 16.

A few judges indicated they would like to know more about what happens to juveniles in the adult system once they are transferred. Some of the judges remarked that they are not aware of what the adult system comprises. The lack of such information within the juvenile system indicates that decision makers may not be completely informed as to the effectiveness or justification for their decisions. One judge stated that his effort to educate himself as to the effects of transfers and the state of adult facilities resulted in his adamant opposition to use of the transfer mechanism.

Another recommendation made by a couple of the respondents was that a three-tiered placement system be established within the adult system whereby offenders are separated by age and maturity. Again, there is the sense that the adult system as it stands is not an appropriate alternative to the juvenile system for transferred offenders. Another suggestion was to create a way to extend the commitment of offenders retained in the juvenile system. One reason that some juveniles are being transferred is not because they would be more appropriately handled in the adult system, but because they cannot be committed to the juvenile system for an extended period of time due to their age. Other suggestions made by different stakeholders included creating transitional facilities within the juvenile system, requiring more in-depth transfer reports, creating a way to deal with attempted crimes, allowing adequate punishment for dealing cocaine, stalling the Commonwealth Attorney's office in order to make more rational decisions, formalizing the Youthful Offender Program, and requiring more exploration of the circumstances surrounding the crimes.

To gain more insight into the decision making process, stakeholders were asked to discuss what should be in place in the adult system for them to feel like the transfer process was serving its purpose. This question is especially relevant since the majority of respondents felt that a main rationale for transfer was that certain juvenile offenders were not amenable to treatment in the juvenile system. This implies the need for an adult system that is more suitable for these offenders. The stakeholders provided a wide range of answers for what they would desire or expect from the adult system for it to help justify the transfer decision. Two or more

respondents reported that the adult system should have age-appropriate treatment, physical separation by age and maturity, individual counseling, substance abuse treatment, rehabilitative programs, sex offender treatment, severe sanctions, educational/vocational programs, treatment staff for mentoring. Overall, it seemed stakeholders believed the adult system should have some customization for this special class of juvenile offenders, while still providing services different than the juvenile system.

4. DISCUSSION

In their 1994 study of Virginia's juvenile justice system, the Serious Juvenile Justice Task Force surveyed juvenile judges and prosecutors on a variety of issues. One of those issues was transfer to circuit court. At that time, judges and prosecutors both felt the most important factor in their decision was the type of offense with which the juvenile was charged. The second most frequently cited factor was prior offenses. For prosecutors, these two factors represented 98 percent of the response. For judges, however, the two factors combined to represent only 73 percent of the factors cited. Other factors included treatment history, age, victim concerns, use of a weapon, presence of codefendants, cooperation/attitude of the offender, family/home environment, and the transfer report prepared by the court service unit.

This pattern is consistent with the findings reported in our more recent survey. Both prosecutors and judges were more likely to agree strongly that offense seriousness, more than any other consideration, was a factor in their decision. Once again, offender history was the second most frequently cited factor; and, once again, judges were more likely to agree or strongly agree that factors such as age and family were important factors.

The results of this chapter both complement and add to the results obtained in Chapter 5. As in Chapter 5, offense seriousness and prior criminal history were found to be important in influencing the transfer decision. However, there was evidence of a much richer (and sometimes contradictory) set of factors that might influence the transfer decision. As an example from Exhibit VI-4, close to 60 percent of the respondents felt that youth being a victim of child abuse and neglect would influence the decision to retain the offender in juvenile court (Note: youth being a victim of child abuse and neglect was not related to the transfer decision for the data from the official records). However, at the same time, only 8 percent of the respondents felt that juvenile safety was an influential or very influential factor in the transfer decision. The interplay between the punitive rationale of transfer and considerations of the social history background was subtle.

We found strong differences in attitudes towards transfer between judges and prosecutors (see Exhibits VI-5 through VI-9). At the same time, the biggest impact of this legislation was that it moved the discretion (especially in the more serious cases) from the judge to the prosecutor. As our data indicated, while the judges and prosecutors did not differ significantly in their views about rationale for transfer, they differed significantly in the factors they considered important in the transfer decision. Judges were more willing to consider the individual's context in the transfer decision. Therefore, changes in transfer practice may have resulted from this shift in discretion from judges to prosecutors.

We did not find strong regional variations in attitudes towards transfer. The western region had more of a problem with access to juvenile correctional center and juvenile correctional overcrowding. However, for the most part the story here was the lack of variation in attitudes across the region.

The overall response rate for the quantitative survey was 66 percent for the judges and about 45 percent for the prosecutors. While our sample size permits us to generalize across Virginia, we are unsure if the respondents differed significantly from the group that had not responded. Hence, we urge some caution in generalizing from the quantitative survey.

VII. LESSONS LEARNED

VII. LESSONS LEARNED

In this chapter, we both summarize key findings from our study and discuss a number of avenues for future study of juvenile transfer practice in Virginia.

1. SIGNIFICANT FINDINGS

Several key findings from this study contribute to an understanding of transfer practices in Virginia. Our research focused primarily on automatic and prosecutorial certification categories.

Both present offense and prior record factors mattered. We found support for a system of certification in which a number of present offense and prior record factors influenced the certification decision. While the most significant factors affecting the certification decision (offense seriousness and prior history) are generally specified within the legislation, our results indicated that dropping out of school also influenced the decision to certify.

Infrequent application of transfer laws. A majority of offenders eligible for prosecutorial or automatic certification at intake were, in fact, not certified. There are a number of possible explanations for this phenomenon, including a consideration of contextual factors, a loose coupling effect within the system, and the use of statutes merely as guidelines within an area of great discretion. It is difficult to determine whether changes made to the charges were due to evidentiary concerns, over-charging by an intake officer, plea bargains, or other considerations made by the prosecutor. As described below, more detailed information is needed on charging practices to understand why some offenders are not being certified.

Differences between judges and prosecutors. Decision makers varied on their attitudes towards the transfer process, possibly due to the different roles they play within the system. The different roles are likely to encourage different perspectives. One would expect prosecutors to be primarily concerned with the offense and the evidence, whereas judges could be expected also to be concerned with details about the offender that were not directly part of the offense. The surveys and interviews discussed in Chapter 6 provided support for this claim. Judges tended to focus more on the offender context, while prosecutors placed more emphasis on the offense. Both groups considered the current and prior offense to be the most important factors in a case, but judges were more likely to be concerned about treatment options, the offender's age, and the juvenile's safety in adult correctional facilities.

Majority of automatic certification cases not transferred. One of the more surprising results was that many of the cases identified as having an offense that could be automatically

certified to adult court were not transferred. This indicates that, in many cases, although an initial examination by the intake officer suggested the juvenile committed an offense that would be automatically certified to circuit court, the prosecutor later amended the charge downward.

Juvenile violent crime at the CSU-level does not impact the transfer practice. We also examined the relationship between CSU-level juvenile violent crimes and the decision to transfer. We did not find evidence of either a direct or indirect effect of juvenile violent crime rates on the transfer decision.

Changes in patterns of juveniles likely to be transferred. From the PSI database, we focused on the patterns in the types of juveniles convicted in circuit court between 1991 to 1997. One of the more striking results was that the percentage of convicted juveniles in circuit court with delinquent records decreased significantly between 1995 and 1997.

Limited differences in attitudes towards transfer across the three regions. We did not find strong regional variations in attitudes towards transfer. The western region reported that limited access to juvenile correctional centers and center overcrowding were more of a problem than the other regions reported. Only the smallest, least secure correctional center is located in the western region, and some survey respondents may have concerns regarding the abilities of families in remote areas being able to visit their incarcerated children. For the most part, however, no strong differences were found in attitudes of decision makers across the three regions.

Information systems to follow the flow of transfer cases through the system. A few judges indicated they would like to know more about what happens to juveniles in the adult system once they are transferred. The lack of such information within the juvenile system indicates that decision makers may not be completely informed as to the effectiveness or justification for their decisions. Other suggestions made by different stakeholders included creating transitional facilities within the juvenile system, better customizing the adult system to handle juveniles, requiring more in-depth transfer reports, creating a way to deal with *attempted* crimes, allowing adequate punishment for dealing cocaine, formalizing the Youthful Offender Program, and requiring more exploration of the circumstances surrounding the crimes.

2. AREAS FOR FUTURE STUDY

This study has identified a number of issues that will be of interest for a follow-up study.

Determinate commitments to juvenile correctional centers. In addition to lowering the minimum age for transfer from 15 to 14, the Serious Offender Act of 1994 also created a new form of commitment to the Department of Juvenile Justice. Previously, the only form of commitment available to the court was an *indeterminate* commitment. Under such a commitment, the court could not say how long the juvenile would remain with the Department. The youth's length of stay would be determined by DJJ policy. The 1994 act created a *determinate* commitment. Wards who met the criteria for this commitment type could be sentenced to a specific amount of time in a juvenile correctional center. This length of time could be up to seven years, or the youth's 21st birthday. Prior to the enactment of this legislation, judges indicated in a survey that they would use the determinate commitment in up to 25 percent of their commitments. In practice however, only about 5 percent of commitments to DJJ are determinate. Because this form of commitment would solve one of the main concerns raised by survey and interview respondents—that the juvenile system did not hold the offenders long enough—it is possible that greater use of determinate commitments might reduce transfers to adult court. A potential follow-up to this study would be a study to determine why courts are not taking greater advantage of this statute.

Criteria for determinate commitment. One factor that may be impeding the use of the determinate commitment is the code's description of the criteria for a determinate commitment. Currently the code says that a court can determinately sentence a juvenile: "In the case of a juvenile 14 years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (1) the juvenile is on parole for an offense which would be a felony if committed by an adult, (2) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding 12 months, (3) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (4) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of 20 years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community."

This definition may be overly complicated. A clearer definition, listing specific offenses for which a determinate commitment would be appropriate, might make it easier for courts to

identify appropriate cases. One possible revision is to give determinate commitments the same offense criteria as the automatic and prosecutorial certification. That list of offenses is well known to legislators as a result of the 1996 juvenile justice reform legislation. These offenses have already been determined by Virginia's General Assembly to be so serious as to be deserving of special consideration. This clarification, because of its clear link to the transfer statute, could impact the use of both the determinate commitment and the transfer to circuit court. A follow-up study could examine how judges and prosecutors would react to such a change in the determinate commitment criteria.

Charges by the prosecutor. As is noted elsewhere, one weakness of this study is that it tracks charges from *intake*, rather than the charges brought by the prosecutor. Intake and police officers may be more likely to choose more serious charges at this stage, because it is easier for the prosecutor to have charges reduced than to add new charges. Therefore, this sample probably included many youth that the prosecutor would not have considered for transfer. A good follow-up to this study would be to track a sample of cases from the intake through the charging phase and the final disposition. Such a study would allow us to examine in greater detail the differences between juveniles who are transferred to circuit court and those retained in juvenile court. In addition, such a study would highlight the basic mechanisms that prosecutors use in determining the appropriate court for juvenile offenders.

Programs for young offenders in the adult correctional system. Several judges indicated a desire to know more about the treatment options for juveniles transferred to circuit court and sentenced to adult prisons. A good follow-up to this study would be to track a matched sample of offenders in both the adult and juvenile correctional system. Their length of stay, treatment programming, and physical, mental, and emotional health could be examined.

The macro-context of juvenile transfer practice. In the present study, we examined the relationship between juvenile violent crime rates and juvenile transfer practice. A good follow-up to this study would be obtain more detailed measures that could measure the organizational context of judicial and prosecutorial decision making (Dixon, 1995). Such a study can further highlight the macro factors that influence individual transfer decisions.

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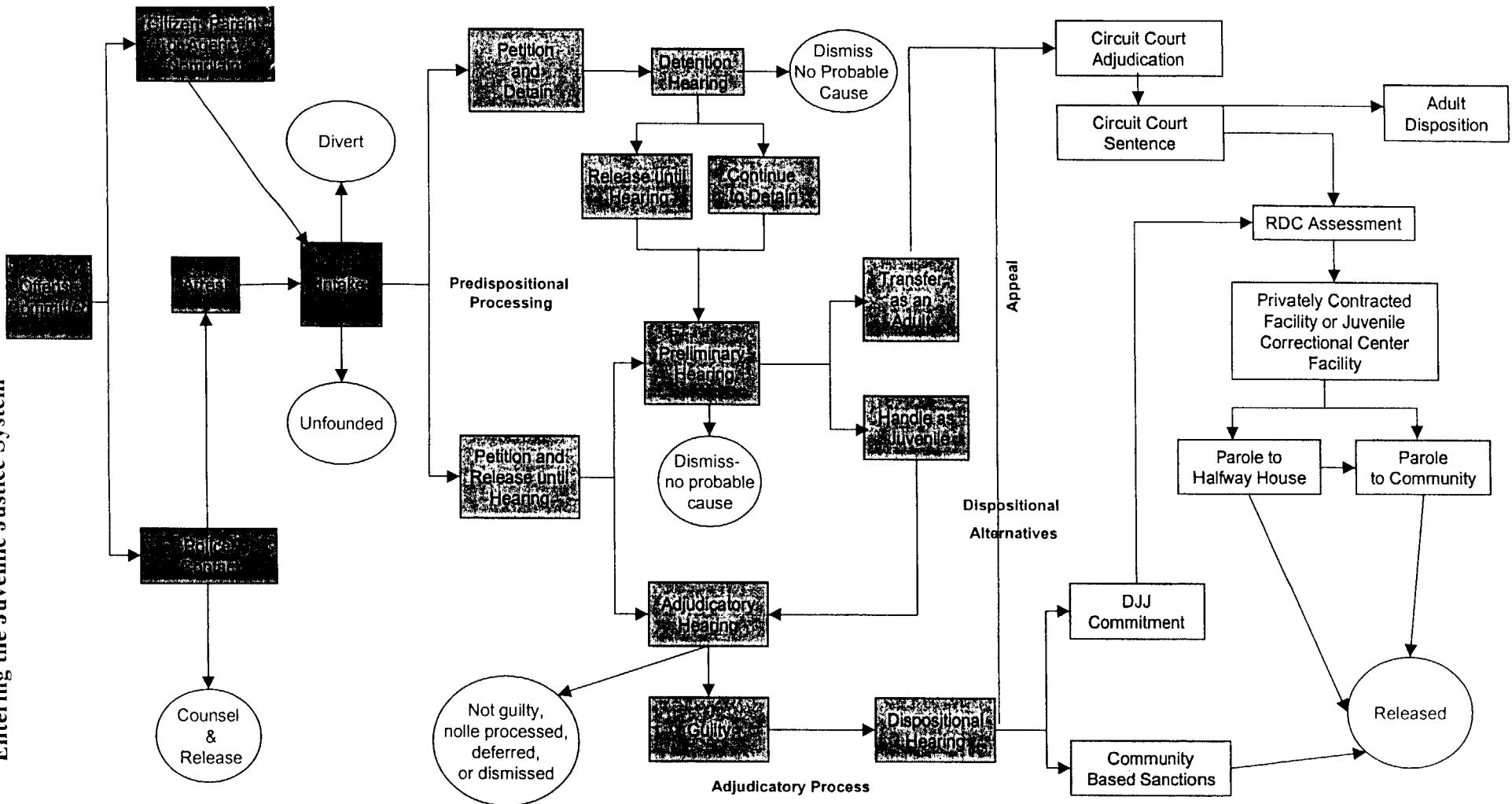
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APPENDIX A

STEPS IN THE JUVENILE TRANSFER PROCESS

Entering the Juvenile Justice System



SITE VISIT CODING FORM

CSU _____ Juvenile Number _____ Case Number _____

Last Name _____ First Name _____ Middle Initial _____

Date of Birth _____ Date of Offense _____

Race of the Offender _____

Sex of the Offender _____

- A ASIAN
- B BLACK
- H HISPANIC
- I INDIAN
- O OTHER
- W WHITE
- X UNKNOWN
- 9 MISSING

- M MALE
- F FEMALE

Prosecutor _____

Number of Co-defendants _____

Current Offense Code

Prior Offense Code

Site of the Offense

- 1 OFFENDER'S RESIDENCE
- 2 VICTIM'S RESIDENCE
- 3 OTHER RESIDENCE
- 4 MOTOR VEHICLE
- 5 PLACE OF BUSINESS
- 6 OUTDOORS
- 7 PLACE OF EMPLOYMENT
- 8 SCHOOL
- 9 CHURCH
- 10 HOSPITAL

Weapon Use

- 1 NONE USED
- 2 USED TO INJURE
- 3 USED TO THREATEN

Weapon Type

- 1 FIREARM
- 2 KNIFE
- 3 EXPLOSIVE
- 4 SIMULATED WEAPON
- 5 OTHER

Crime Against Person Victim Information

- 1 APPLICABLE
- 2 NOT APPLICABLE

Age of the victim

- 1 MINOR
- 2 ADULT

Sex of the victim

- 1 MALE
- 2 FEMALE

Race of the victim

- A ASIAN
- B BLACK
- H HISPANIC
- I INDIAN
- O OTHER
- W WHITE
- X UNKNOWN
- 9 MISSING

Victim/Offender Relationship

- 1 STRANGER
- 2 ACQUAINTANCE
- 3 FAMILY
- 4 POLICE/CORR. OFFICER
- 5 UNKNOWN

Injury to victim

- 1 DEATH
- 2 SERIOUS PHYSICAL
- 3 PHYSICAL
- 4 EMOTIONAL
- 5 THREATENED
- 6 N/A

Age of youth at first petition _____

The following characteristics refer to the youth's status at the time of the transfer eligible offense:

- Yes No Youth's record includes petitions (not adjudications) for violent felonies.
- Yes No Youth's record includes petitions (not adjudications) for property felonies.
- Yes No Youth's record includes petitions (not adjudications) for drug-related felonies.
- Yes No Youth's record includes petitions (not adjudications) for misdemeanors.
- Yes No Youth has a history of substance abuse problems.
- Yes No Youth has truancy problems.
- Yes No Youth has been expelled from school.
- Yes No Youth has dropped out of school.
- Yes No Youth has a history of running away from (escaping) residential facilities.
- Yes No Youth is a victim of child abuse or neglect.
- Yes No Youth has a parent or sibling who has been incarcerated or placed on probation in the past three years.
- Yes No Youth has known delinquent peers.
- Yes No Youth has a prior placement in a juvenile correctional center.
- Yes No Youth has an identified mental health need.
- Yes No Youth has received mental health treatment.

Was this case transferred to Circuit Court?

Yes No

Disposition of offense

- 1 NOT GUILTY
2 GUILTY

Judge _____

Sentence

- 1 ADULT PROBATION
2 JUVENILE PROBATION
3 INDETERMINATE COMMITMENT - JUVENILE OC
4 DETERMINATE SENTENCE - JUVENILE OC
5 INCARCERATION - DOC
6 INCARCERATION - JAIL
7 BOOTCAMP
8 OTHER _____
9 POST-DISPOSITIONAL

SURVEY OF JUDGES AND PROSECUTORS

Juvenile Transfers to Adult Court

Department of Juvenile Justice Survey

- 1) In your view, is the primary function of juvenile transfers to circuit court (circle all that apply):
- a) Deterrence (discouraging others from committing similar offenses)
 - b) Incapacitation of the offender/ Public safety
 - c) Punishment
 - d) Justice for the victim
 - e) Other, please specify _____
- 2) The Office of Juvenile Justice and Delinquency Prevention has cited several factors that might be considered when deciding whether or not to transfer a juvenile to adult criminal court. **On a scale of 1 to 5, with 1 indicating "Strongly Disagree" and 5 indicating "Strongly Agree,"** please indicate whether you agree or disagree that you consider each of the following factors when deciding to file a case involving a juvenile offender in circuit court.
- | | | | | | |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | A) Capacity of juvenile correctional centers |
| 1 | 2 | 3 | 4 | 5 | B) Seriousness of offense |
| 1 | 2 | 3 | 4 | 5 | C) Offender's history |
| 1 | 2 | 3 | 4 | 5 | D) Age of defendant |
| 1 | 2 | 3 | 4 | 5 | E) Ability and willingness of juvenile's family to assist in rehabilitation |
| 1 | 2 | 3 | 4 | 5 | F) Overburdened juvenile courts |
| 1 | 2 | 3 | 4 | 5 | G) Juvenile court does not offer adequate sanctions |
| 1 | 2 | 3 | 4 | 5 | H) Community Norms |
| 1 | 2 | 3 | 4 | 5 | I) Convictions in circuit court are part of offender's permanent record |
| 1 | 2 | 3 | 4 | 5 | J) Other (please specify) _____ |
- 3) Using the appropriate letters from the factors listed above, please rank the three most influential factors in your decision-making process.
1. _____ 2. _____ 3. _____
- 4) **On a scale of 1 to 5, with 1 indicating "Not at All Influential" and 5 indicating "Very Influential,"** please indicate the degree to which the factors below influence your decision to transfer a juvenile offender to circuit court:
- | | | | | | |
|---|---|---|---|---|--|
| 1 | 2 | 3 | 4 | 5 | A) Concern for the safety of the juvenile offender in an adult prison or jail is a part of my decision to file a case involving a juvenile offender in circuit court or retain the case in juvenile court. |
| 1 | 2 | 3 | 4 | 5 | B) Treatment options available to the juvenile court are a factor in my decision to file a case involving a juvenile offender in circuit court or retain the case in juvenile court. |
| 1 | 2 | 3 | 4 | 5 | C) Prosecution in circuit court leads to stiffer penalties for juvenile offenders. |
| 1 | 2 | 3 | 4 | 5 | D) The seriousness of the offense before the court should be the main concern when deciding to file a case to circuit court. |
| 1 | 2 | 3 | 4 | 5 | E) The age of the offender before the court should be the main concern when deciding to file a case to circuit court. |
| 1 | 2 | 3 | 4 | 5 | F) The people in my community want juvenile offenders to receive a stiff penalty. |
- 5) **On a scale of 1 to 5, with 1 indicating "No Problem" and 5 indicating "Serious Problem,"** please indicate whether the following factors posed problems in implementing the juvenile transfer statute (as amended in 1994 and 1996 by the Virginia General Assembly).
- | | | | | | |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | A) Access to juvenile correctional centers (within reasonable distance from jurisdiction) |
| 1 | 2 | 3 | 4 | 5 | B) Overcrowding in the juvenile correctional centers |
| 1 | 2 | 3 | 4 | 5 | C) Coordination among state and local agencies |
| 1 | 2 | 3 | 4 | 5 | D) State-level support |
| 1 | 2 | 3 | 4 | 5 | E) Access to treatment/counseling facilities |
| 1 | 2 | 3 | 4 | 5 | F) Access to intermediate facilities (such as boot camp) |
| 1 | 2 | 3 | 4 | 5 | G) Other, please specify _____ |

Additional Factors

The following have been suggested as possible factors in deciding whether to transfer a youth to circuit court.
Using the scale below, please indicate whether a factor:

- A – Influences toward adjudication in Juvenile and Domestic Relations Court.
- B – Influences toward a transfer to Circuit Court.
- C – Does not impact transfer decision.

6. A B C Youth's first petition was at age 13 years or younger.
7. A B C Youth's record includes petitions (not adjudications) for violent felonies.
8. A B C Youth's record includes petitions (not adjudications) for property felonies.
9. A B C Youth's record includes petitions (not adjudications) for drug-related felonies.
10. A B C Youth's record includes petitions (not adjudications) for misdemeanors.
11. A B C Youth has a history of substance abuse problems.
12. A B C Youth has truancy problems.
13. A B C Youth has been expelled from school.
14. A B C Youth has dropped out of school.
15. A B C Youth has a history of running away from (escaping) residential facilities.
16. A B C Youth is a victim of child abuse or neglect.
17. A B C Youth has a parent or sibling who has been incarcerated or placed on probation in the past three years.
18. A B C Youth has known delinquent peers.

QUALITATIVE INTERVIEW PROTOCOL

Interview Protocol for Process Evaluation of Juvenile Transfer to Criminal Courts in VA

Thank you for meeting with us today. DJJ and Caliber Associates have been tasked to perform a process and outcomes evaluation of juvenile transfers to criminal courts in Virginia. Through these interviews, we are hoping to gain insight into the transfer process, what factors influence juvenile transfers, and how the process functions in various contexts.

Let's first discuss the legal and extra-legal factors that are associated with the transfer decision.

1. What *legal* factors do you consider to be important in deciding whether or not to transfer a juvenile to criminal court?

Probes:

Role of age?

Impact of changes in minimum age as a result of the recent legislation?

Type of Offense?

Prior delinquency?

Drug use?

Weapon use?

Do plea negotiation strategies enter into the decision process?

Did recent legislation affect consideration of factors?

2. What *extra-legal* factors influence the decision to transfer a juvenile offender to a criminal court?

Probes:

Functionality of the juvenile's family?

Whether or not the family supports rehabilitation or is capable of out-patient supervision? Whether or not the juvenile has been abused?

Prior treatment for substance abuse or psychological disorders? Clinical evaluations of juvenile?

How influential is school-related behavior?

Behavior of the juvenile in court?

Juvenile employment?

Public opinion? Publicity?

3. In your judgement, what needs to be in place before you transfer a juvenile to the adult system?

Probes:

Treatment availability in the adult system

Ensuring safety: Needs of the juvenile? Safety of juvenile in an adult facility?

Exemplars of ideal adult facilities

Are there juvenile alternatives that replicate the punitiveness of adult system?

4. In your jurisdiction, what individuals influence the transfer decision at any stage of the process?

Probes:

Prosecutors? Probation officers? Court psychologists?

Roles of the various decision makers?

Any unique arrangements relationships in the locality?

What is the extent of your own influence?

We are also interested in gaining your opinions on the transfer process, juvenile crime, and relevant legislation.

5. In your opinion, what is the rationale for transferring a juvenile offender to criminal court?

Probes:

Public safety?

Juvenile Justice System not equipped to deal with serious offenders?

Limited resources in the juvenile system?

Rehabilitation in juvenile system is ineffective?

Increased sanctions in criminal court?

Are there appropriate alternatives (besides juvenile transfers) for offenders that are not amenable to treatment in the juvenile system?

Better range of treatment facilities

6. What recommendations would you make for changes to current legislation and policies in this area?

Probes:

Do you have suggestions for possible alternatives to the current system of handling juvenile offenders?

How would you incorporate local community resources and agencies into policy decisions?

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