Draft Report?

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JUVENILES IN THE JUSTICE SYSTEMS:

TREATING JUVENILES AS ADULTS

See p. 18 for Waivers.

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JUVENILES IN THE JUSTICE SYSTEMS

The number of juveniles 17 years and under in the juvenile and adult justice systems has grown substantially since the 1980s both in Michigan and nationally. Initially, this growth was a reflection of increasing serious crime by juveniles between the late 1980s up to 1995, but since then the crime rate has declined. However, the rates of incarceration have continued to increase since 1995, especially in the adult system. The growth of juveniles in the Michigan Department of Corrections (DOC) has inadvertently resulted in sharp reductions in the numbers of juveniles in public juvenile facilities operated by the Michigan Family Independence Agency (FIA). Several juvenile facilities have been closed. As of April 2004, there were the following numbers of youth in the juvenile and adult residential program who were committed to either of the two departments for crimes committed before the age of 17 years.

A. YOUTH IN THE MICHIGAN DEPARTMENT OF CORRECTIONS

1. Age

There were at least 1598 individuals committed to the DOC between 1989 and April 2004, who were 16 or younger when they committed the offense for which they were sentenced to the Department. Their median age at offense was 16 years and their median current age is 23. The number of youth committed to the DOC increased sharply during the 1990s following the changes in Michigan statutes in 1988 and 1996.

Table 1: Juveniles in Michigan Department of Corrections under the age of 25 years who were 16 or younger at the time of their offense as of April 2004

Age at Offense	Number
13	6
14	44
15	203
16	505
Total	758

- 50% of the youth committed to the DOC were 17 at the time of their actual commitment because of trial, jail or detention time.

- 67% of those committed to DOC were youth of color while the proportion of youth of color in Michigan is 28% as of 2000.

- Baldwin (MYC) has a population of approximately 480 with the majority between 17 and 19 years. The remaining youth are scattered in adult prisons around the

state. All of the 19 females are in Scott or Western Wayne Correctional Facilities for Women. **Table 2** presents the distribution of the youth in different DOC facilities by size.

Table 2: Facilities Housing Juveniles

Number of Juveniles in Facility	Number of Facilities
5 or less	70
6-25	38
26-50	14
50 or more	4

- At 18 youth are transferred to other facilities, and often there are only 1-2 youth in an adult facility, creating difficulties for education and other rehabilitation services that likely to be essential given their probable age of discharge and their disadvantaged educational backgrounds. The 758 youth under 25 years currently in the DOC fall into the category of needing education and rehabilitation if their re-entry to the community is to be successful.

- Youth prosecuted as adults and sentenced to adult jails or prisons experience more numerous risks than for youth confined in juvenile facilities, such as:

  - 8 times as likely to commit suicide [1]
  - 5 times as likely to be sexually assaulted
  - 50% more likely to be attacked with a weapon[2]
  - 2 times more likely to be assaulted by staff

- Recidivism is higher for youth who have been transferred to adult criminal court and is higher for those incarcerated in adult rather than juvenile facilities.[3]

2. Conviction And Sentencing

- 78% of juveniles are convicted by nolo contender (3.3%) or by plea (74.7%); 5.9% have a court trial and 16.1% have a jury trial. There are substantial differences among the counties as **Table 3** indicates for those with 15 or more convictions of juveniles as adults.

Table 3: Conviction Type by County

	Percent of Convictions	
County	Judicial or Jury Trial	Plea or No Contest
Wayne	41.2	58.8
Oakland	30.2	69.8
Genessee	27.5	72.5
Jackson	27.2	72.8
Saginaw	22.4	77.6
Calhoun	22.0	78.0
Ottawa	17.4	82.6
Macomb	17.0	83.0
Kalamazoo	11.1	83.4
Kent	16.6	83.4
Muskegon	13.1	86.9
Ingham	7.6	92.4
Berrien	5.0	95.0
Tuscola	0.0	100.0

- The median minimum sentence for the current population is 5 years
- The median maximum sentence is 17 years
- There are 182 individuals in this sample who have life sentences for an offense committed as a juvenile.
- 70% of the youth in the DOC have a security classification of # 1 or #2. The entire Baldwin facility is classified for #5 level security inmates although most youth do not fit that classification.
- Scott and Western Wayne facilities have mixed levels of security classification, but many of the females are in #5 level classification.

3. Gender

There were 47 juvenile females committed to the DOC between 1989 and 1996. The majority (93) have been placed at Scott Correctional Facility where they are co-mingled with adult offenders and receive no differential programming because of their age. As Table 4 indicates, most of the females come from a small number of counties.

Table 4: Female Convictions by County, 1989-1996	
Sentencing County	Percent of Convictions
Bay	4.3
Macomb	4.3
Oakland	10.6
Saginaw	10.6
Muskegon	14.9
Wayne	14.9
Kent	14.9
12 counties sending one female each	25.2

- In contrast to the males 55.3% of the females have no prior commitments or probation; 17% had one prior and 27.6% had two or more prior actions.

- 87.6% of the females are classified for Level 1 or 2 security; 10.6% for Level 4 and 2.1% for Level 5. Thus, almost all were classified for a much lower level of security than they had in Scott or Western Wayne.

- The median age at offense was 16.4 years. 9% were 14; 22.7% were 15 and the 69.3% were 16.

- 23.4% had an 8th grade education or below, 65.9% were between the 9th and 11th grade when they entered prison and 6.4% were 12th grade or had a GED.

The commitment offenses of males and females sentenced for offenses committed as juveniles are reported in **Table 5**. 45.4% of the males and 50% of the females were sentenced for Type A or mandatory offenses as prescribed in the 1996 statutes. Many of the youth also had a second offense for having a weapon in possession at the time of their crime. With respect to the non-mandatory offenses, these are crimes for which a juvenile sentence was possible providing there was no judicial waiver. It is probable that many of these crimes did result in a juvenile placement prior to the mid-1980s when there was a pronounced increase in adult commitments. As we shall note subsequently in our discussion of processing, some counties were reluctant to sentence juveniles to adult prisons for non-mandatory offenses although they were concerned that the youth be held in a secure facility. It also should be noted that some of the youth whose offense was in the non-mandatory category may have pled to that offense after being charged with a crime in the mandatory category.

Table 5: Commitment Offense – Male and Female

**Commitment Offense to DOC - Males*
N = 1484 by Percent**

Mandatory - Type A		Non-Mandatory – Type B	
Murder**	6.4	Manslaughter	12.7
Kidnapping**	0.4	Assault with Intent	13.1
Armed Robbery**	23	Unarmed Robbery	2.9
Attempted Murder**	0.2	Home Invasion 1&2	4.5
Arson**	0.9	Breaking and Entering	3.4
Carjacking**	2.4	Felonious Assault	1.9
CSC 1st**	5.3	CSC 2-3 & Assault	7.7
Assault w/ in murder**	6.8	Felony Firearm	1.8
		Man/Del Controlled Sub	2.7
		Other Drug	0.4
		Bank Robbery	0.2
		Receiving & Concealing	0.8
		Attempted Larceny	0.6
		Joyriding/UDAA	1.4
		Other	0.5

*The offense listed is the first or prevailing charge for the sentence of the juvenile to the DOC.
**These are Type A or mandatory offenses for which the prosecutor has initial discretion as the 1996 law states. A judicial waiver requires adult sentence. Without a judicial waiver, some of these non-mandatory offenses could have been eligible for a juvenile sentence.

**Commitment Offense to DOC – Females*
N = 47 by Percent**

Mandatory – Type A		Non-Mandatory – Type B	
Murder**	8.7	Manslaughter	10.9
Armed Robbery**	21.7	Assault with Intent	23.9
Arson**	2.2	Felonious Assault	6.5
Carjacking**	8.7	CSC 2	4.3
CSC 1st**	6.5	Forgery	2.2
Assault w/in murder**	2.2	Joyriding/UDAA	2.1

*The offense listed is the first or prevailing charge for the sentence of the juvenile to the DOC
**These are Type A or mandatory offenses for which the prosecutor has initial discretion as the 1996 law states. A judicial waiver requires an adult sentence. Without a judicial waiver, some of these non-mandatory offenses could have been eligible for a juvenile sentence.

B. YOUTH IN THE MICHIGAN STATE JUVENILE JUSTICE SYSTEM

Data about the actual numbers of youth in the juvenile justice system is more complex than identifying the census in the DOC, because the majority of juvenile delinquents are in private residential facilities or in local county-operated residential programs. There has been considerable change in the numbers of youth in the FIA operated facilities, partly as a consequence of the commitment of juveniles to the adult system and partly as a result of locally operated residential programs in Wayne and several other counties. **Table 6** presents the numbers of youth under FIA supervision in February 1982, before the latter changes occurred.

Table 6: Youth in Michigan Juvenile Justice Facilities, 1982

Placement Type	Number of youth
Public Providers	742
Private Providers	592
Detention & Jail (State, private & county)	430
Other residential	41
Non-residential & AWOL	2231
Total	4036

The Bureau of Juvenile Justice (BJJ) in the FIA is responsible for the operation of the publicly funded state programs for juveniles committed by Circuit Courts to FIA, for supervisions of selected other private residential treatment programs for juvenile delinquents, for maintenance of an information system about youth in the juvenile justice system, and for administration of the federal block grant of JJDPA monies. An overall picture of the total numbers of juveniles in residential placement is provided by the national census of OJJDP. **Table 7** indicates that there were 4324 juveniles in all types of facilities in 1999 with 54.39% in private institutions overall, but 85.6% of status offenders in private facilities in Michigan.

Table 7: Census of Juveniles in Residential Placement Databook Detailed Offense Profile in Public and Private Facilities for Michigan, 1999

		Facility Type			
Most serious offense	All Facilities	Public	% in Public	Private	% in Private
Total	4324	1971	45.6	2352	54.39
Delinquency	3825	1899	49.6	1923	50.3
Status Offense	501	72	14.3	429	85.6
Violent Crime Index*	1149	591	5.14	558	48.6
Property Crime Index**	1011	483	47.7	528	52.2

* Includes criminal homicide, violent sexual assault, robbery, and aggravated assault.

** Includes burglary, theft, auto theft, and arson.

Sickmund, Melissa & Wan, Yi-Chun (2001). "Census of Juveniles in Residential Placement Databook." Available at: http://www.ojjdp.ncjrs.org/ojstatbb/cjrp

As of April 2004, some significant shifts have occurred (see **Table 8**), although the data are not entirely comparable because of the decline in community-based placements. Although the crime rate (see Section C) was lower in 2004 than it was in 1982, there were fewer juveniles in community-based placements, a reflection of changes in public policy regarding intervention with juvenile delinquents. The JJDPA of 1974 placed a priority on community-based over residential programs, but policy shifts in the 1980s and 1990s emphasized closed residential programs and increased length of stay in programs.

Table 8: Youth in Juvenile Justice Facilities, 2004

Type of Facility	Committed to FIA	Referred to FIA	Total
Community-based placement	450	370	820[1]
Private Institutions	457	88	545[2]
Public Institutions	366	13	379[3]
Community Justice Centers	61	0	61[4]
Other Placements (detention, jail)	151	51	202[5]
Totals	1485	522	2007

The period 1999-2004 saw a dramatic decline in the number of FIA supervised youth including those in residential placement. Sean Brady, information analyst for FIA, using the

same protocol, reported that the number fell from 3245 in September 1999, to 1,059 in September 2004 – a 67.4% reduction in 5 years. These counts do not include youth on AWOL or escape status. Among the reasons for the decline: (1) decline in the juvenile crime rate; (2) Wayne County now keeps most of its delinquents in their county system; and (3) lack of county resources to pay the 50% cost for placement in FIA operated facilities.

Placements in public facilities operated by FIA vary widely in their use by counties. As of October 2004, there were 457 public placement facilities used by 56 counties. However the following counties utilized most of the placements:

County	Number of Placements Used
Berrien	16
Genesee	30
Ingham	11
Jackson	19
Kalamazoo	11
Kent	23
Macomb	55
Oakland	101
St. Clair	17
Wayne	45

The issue of the numbers of secure placements in FIA facilities has been raised, and BJJ provided the following information about placements available during 2003:

Table 9: Publicly Operated Residential Treatment Facilities, 2003

Facility Type	Number of Facilities
Hi and Medium Security	264
Low Security	139
Detention	319
Total	722

- In addition to the publicly operated secure facilities there are also secure privately operated facilities. The security level at Maxey Training School (Woodland Center) is of a level that would be satisfactory for all or most of the juveniles when they are sentenced to the DOC.

- The number of juveniles under 25 in the DOC can be compared with the number of youth in FIA facilities. There are 758 in the DOC for offenses committed before the age of 17

while there are 379 juveniles committed to FIA for juvenile offenses. There were 396 youth in the DOC under the age of 21 who had been committed as juveniles. Technically they could still be in the FIA system because they can hold a youth to 21.

- Juveniles can remain in public juvenile justice facilities until the age of 21 so it is possible that their total length of stay will equal or exceed the length of stay of many in the DOC if they were sentenced there for the same offense.

- Academic programs vary widely between the FIA and DOC facilities in that there are accredited secondary school programs in FIA facilities, but only GED and Adult Basic Education (ABE) in the adult facilities. There are vocational programs in both, but the variable quality in the two facilities is unknown. Comprehensive mental health, substance abuse, age-relevant sex offender treatment programs are provided only in the FIA facilities to all residents in need of such.

- Problematic in Michigan is the lack of oversight and quality control of the programs for youth in private facilities. It is necessary that there be monitoring of these facilities placed there by the state and by individual courts. There needs to be a accurate census of all children in juvenile justice programs regardless of their location or operator.

- There need to be more fiscal incentives for effective community-based programs, because they have been shown to as effective or more effective than residential programs in terms of recidivism evaluation and costs.

C. CRIME AND ARRESTS IN MICHIGAN

1. Juvenile Arrest Trends In Michigan

Juvenile arrest data points to a number of important trends that need to be examined in relation to commitments to DOC and FIA. This data was obtained from the Michigan State Police for the period 1980-2002 and includes arrests for individuals under the age of 17 (the jurisdiction of the juvenile court in Michigan does not include 17-year-olds).[6] Generally, it shows that arrests for violent and serious crime have dropped dramatically, but that arrests for non-index (minor) offenses have increased overall from levels in the 1980s. Part of the reason for the increase in non-index and status offenses has been the increasing drift of abused and neglected child welfare clients to the juvenile justice system. These children are often arrested and detained when they truant placements and are detained by court order. In addition, more youth who commit status offenses are being arrested rather than being diverted to Youth Assistance and other similar alternatives.

1. Similar to national trends, Michigan has experienced a decrease in the number of violent[7] and property[8] index juvenile arrests since 1994 (Figure 1). Overall, the number of juvenile index arrests dropped from 18,364 to 9,878 from 1994 to 2002 (46.2% decrease) and represents a total number of index arrests substantially lower than any point during the 1980s and 1990s.

2. Juvenile property index arrests in Michigan (Figure 2) have declined over this period from 15,422 to 8,601 arrests (44.2%). Larceny makes up approximately 70% of the total number of property index arrests.

3. Juvenile violent index arrests in Michigan (Figure 3) also have declined over this period from 2,942 to 1,277 arrests (56.6%) although there was an increase in 1984-88 and in 1991-93. Aggravated assaults make up approximately 75% of the total number of violent juvenile index arrests. Juvenile arrests for murder, rape, and robbery are at their lowest points over the last two decades.

4. Non-index juvenile arrests[9] in Michigan have fluctuated over this period, but are at approximately the same level in 2002 as 1994. Overall, non-index arrests were higher from 1994 to 2002 than from 1980 to 1993.

5. Total juvenile arrests in Michigan were lower in 2002 than at any point over the last two decades. Index arrests made of 52% of this total in 1980, but made up 35% in 2002.

6. It is also expected that the number of juveniles entering both FIA and the DOC are lower as a result of the drop in violent and serious juvenile arrests. Available data indicate that there has been a drop between 1998 and 2003. However, we know that the number of juveniles entering the DOC is currently higher than during the 1980s

when violent and serious juvenile crime was much higher. This is the result of policy and practice changes in the treatment of juveniles as adults.

7. Overall this data reports positive developments in the behavior of juveniles as reflected through arrests and is similar to trends at the national level. While scholars have yet to agree on the causes of declines in juvenile crime, presumably, it is the result of a variety of factors. As this data indicates, however, juvenile arrests are subject to fluctuations over time. It is quite reasonable to conclude that juvenile arrests will increase at some point over the next decade, particularly if there are substantial reductions in community spending for social welfare and education.

8. Consequently, we feel this is an important time to examine ways that the state can strengthen families, communities, schools, as well as the juvenile justice system, so that we protect against increases in juvenile crime and better promote the pro-social development of children and youth.

Figure 1: Juvenile Total Index Arrests in Michigan, 1980-2002

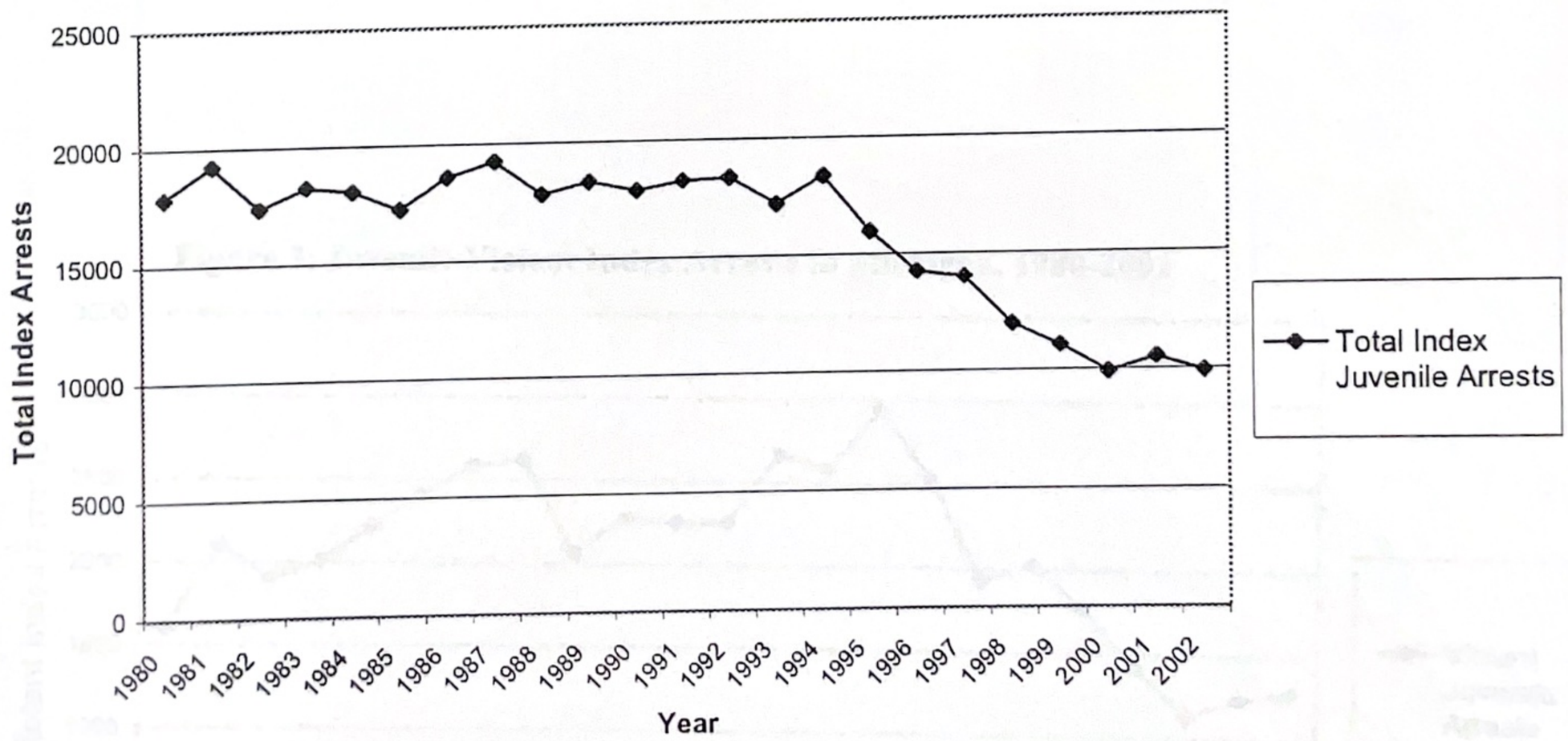


Figure 2: Juvenile Property Index Arrest in Michigan (1980-2002)

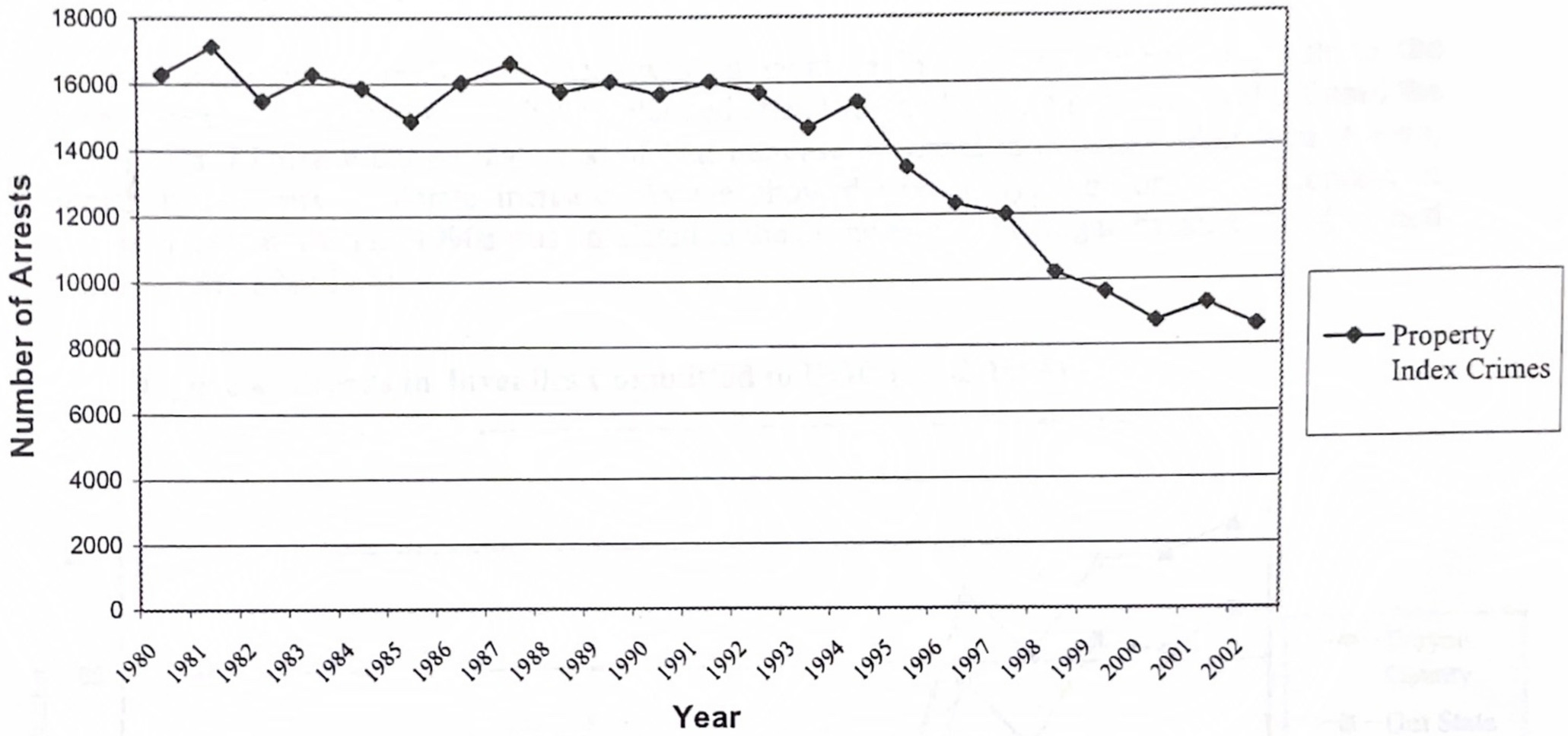
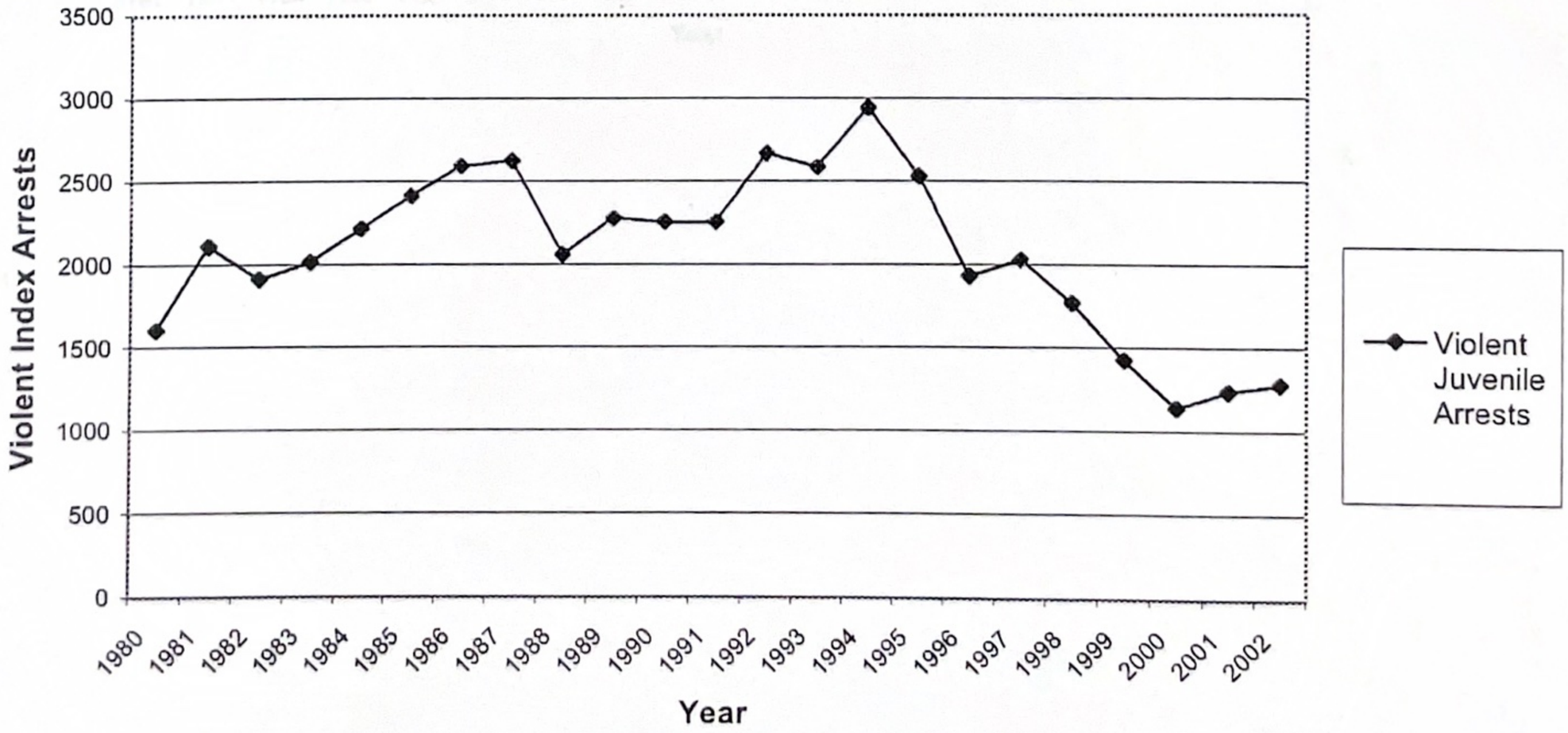


Figure 3: Juvenile Violent Index Arrests in Michigan, 1980-2002



2. Trends In Commitment And Commitment Offense

Beginning in the mid-1980s there was an increase in the commitment of youth to the Department of Corrections, and that accelerated after 1989 and did not begin to level off until the late 1990s. **Figure 4** shows that most of that increase occurred in counties other than Wayne, which had a very moderate increase. As we showed previously, the continued increase in commitments in the late 1990s was unrelated to the crime rate in Michigan because that declined continuously after 1994.

Figure 4: Trends in Juveniles Committed to DOC (1982-1998)

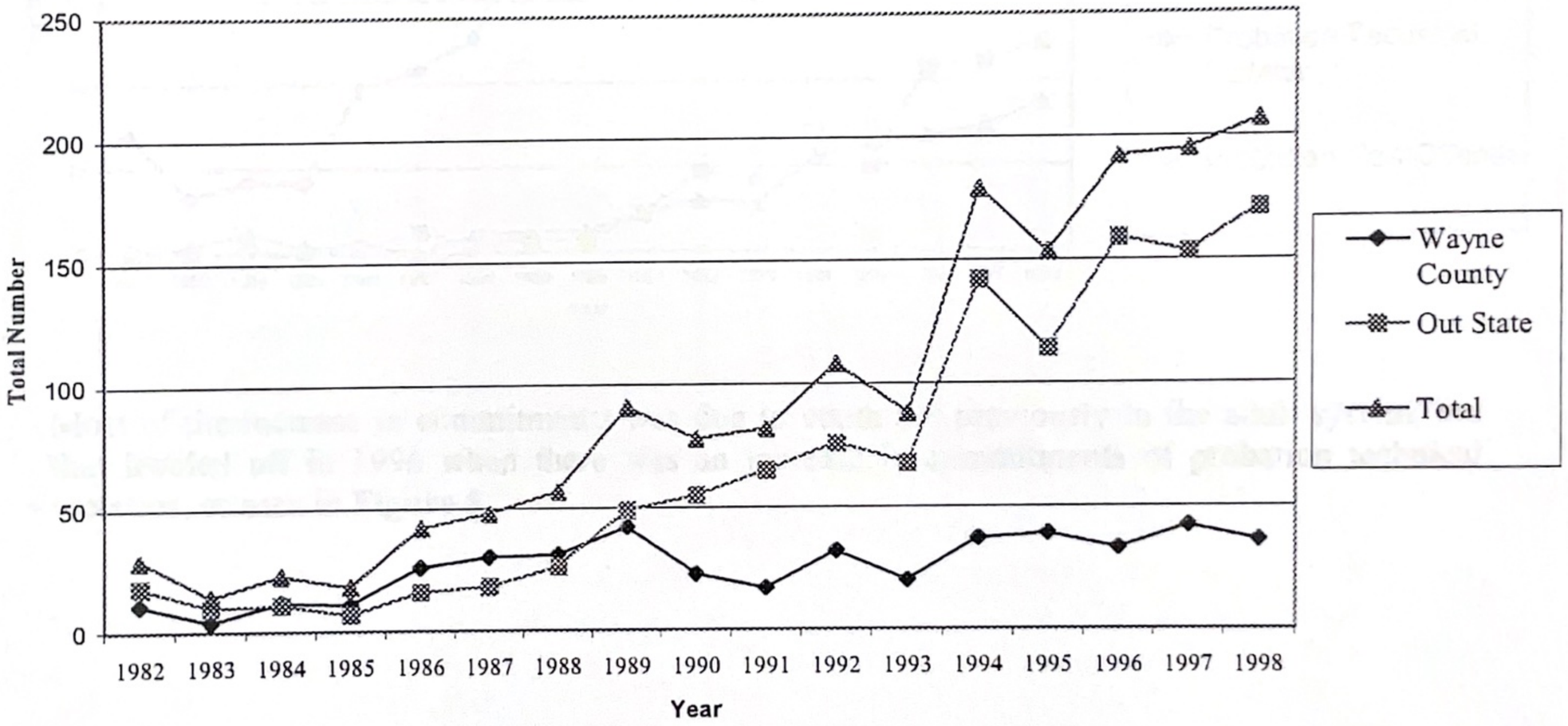
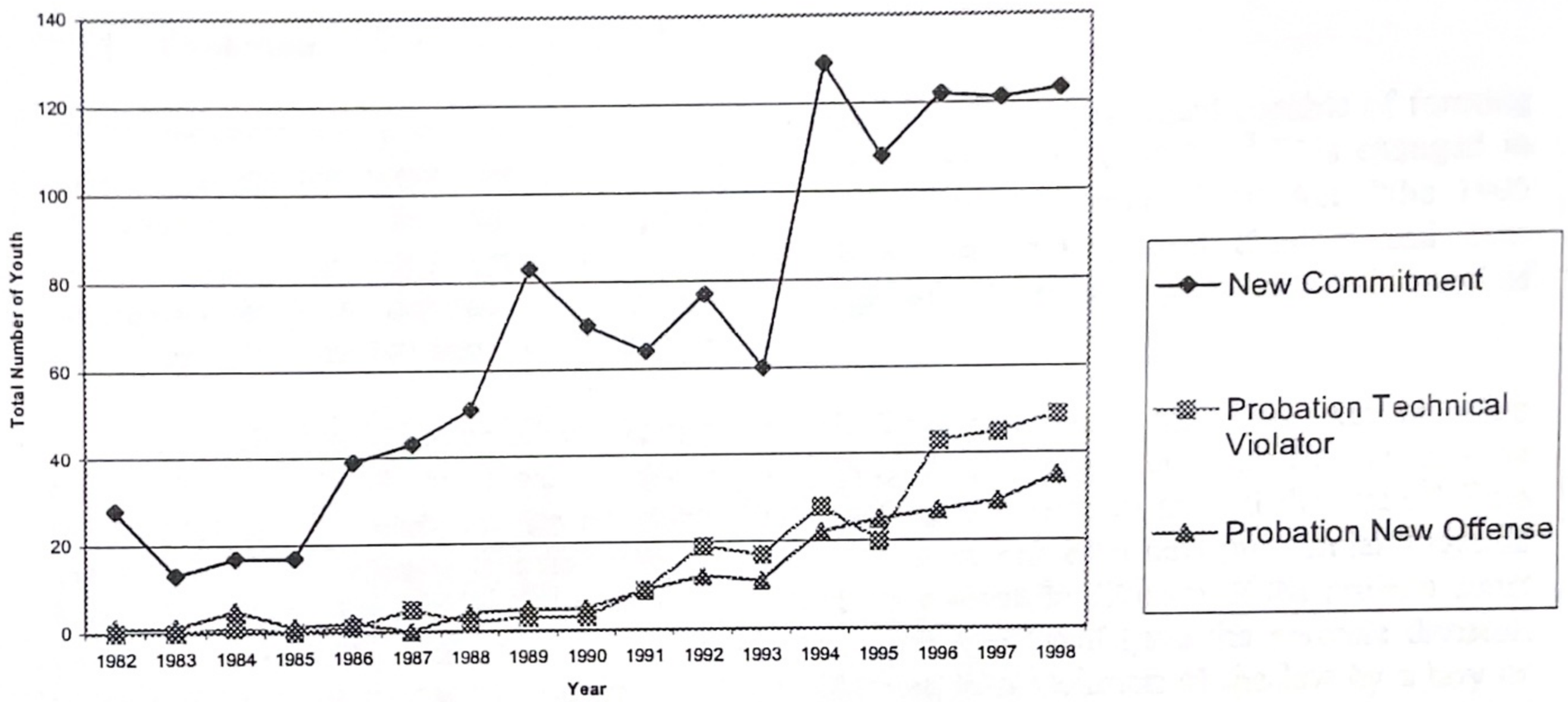


Figure 5: Type of Commitment (1982-1998)



Most of the increase in commitments was due to youth not previously in the adult system, but that leveled off in 1996 when there was an increase in commitments of probation technical violators, as seen in **Figure 5**.

D. PROVISIONS OF MICHIGAN'S WAIVER LAWS

1. Evolution of Waiver Laws in Michigan

At common law, juveniles at least fourteen years of age were presumed capable of forming criminal intent and were subject to the same criminal penalties as adults.[10] This changed in Michigan in 1905 when the state legislature passed its first Juvenile Court Act ("the 1905 Act"),[11] which provided for jurisdiction over dependent or neglected children and over delinquent children, defined as boys under the age of sixteen and girls under the age of seventeen, who violated any law of the state.[12]

The Michigan Supreme Court almost immediately invalidated the 1905 Act on state constitutional grounds in Hunt v. Wayne Circuit Judge.[13] The Court struck the law as unconstitutional because it could not properly be applied consistently around the state.[14] Two years later, in response to this decision, the state legislature passed a new but similar Juvenile Court Act ("the 1907 Act").[15] This time it provided for a juvenile division of the probate court (with the same right to a jury trial set out in the earlier act)[16] and gave the juvenile division exclusive jurisdiction over 'delinquency,' which it defined as a violation of the law by a boy or girl under the age of seventeen.[17] Allowing what we would now call the 'automatic waiver' of youths older than fourteen, the legislature amended the 1907 Act in 1915 (providing specifically for the trial of youths over fourteen who were charged with felonies in adult court).[18]

Then in 1923, it permitted the juvenile courts to 'waive' its jurisdiction over certain children over the age of fifteen and charged with felonies. Accordingly, judges could exercise discretion to waive jurisdiction upon the motion of the prosecutor and after an investigation and examination of the allegations presented.[19] Practically speaking, this meant these cases would be filed initially in juvenile court, and the prosecutors would have to request a waiver hearing for those cases they believed should be sent to criminal court. During the waiver hearing, the juvenile court judge would decide whether to waive the case to criminal court. This is Michigan's first 'waiver' statute.

In 1985, the Michigan Supreme Court decided the case of Jeffrey Dunbar. Jeffrey, at sixteen, was charged with first-degree felony murder and armed robbery.[20] After being waived for trial in the adult court by the Wayne County Juvenile Court,[21] he was tried and convicted of first-degree felony murder.[22] He received a mandatory life sentence without a possibility for parole.[23] Finding the waiver to the adult court improper, the Court reversed the conviction and discharged Jeffrey. As it held, the trial court should not have granted waiver based solely on the seriousness of the offense and a belief that Jeffrey would receive better vocational training in the adult system. The Court reasoned as follows:

> Here the probate judge believed that rehabilitation was possible and placed the defendant in a setting that would provide the best vocational program. This attempt was pointless, however, since the judicial system gave vocational training with one hand while taking away with the other hand any possibility that the

> vocational training would ever be used. This defendant has been sentenced to live in prison until he dies. Of what use is his vocational training?[24]

This opinion evidences Michigan's emphasis on rehabilitating juveniles rather than punishing. Subsequent judicial and legislative efforts, though, severely limited the availability of options that foster rehabilitation in the juvenile system and implanted mechanisms that punish in adult courts.

Like it reacted in 1907, the Michigan legislature responded to the state Supreme Court's Dunbar decision by 'simply' amending the state's Juvenile Code and Code of Criminal Procedure.[25] The 1988 Acts, in short, created another legal mechanism for waiving juveniles into adult court. They allowed prosecutors to directly file in adult court, without the traditional procedure, if the juvenile was alleged to have committed any of nine specific offenses. This 'prosecutorial' waiver policy required Circuit and Recorder's Courts to try juvenile cases but provided discretion to judges to commit the juvenile to the adult corrections system or to the state juvenile justice system under the Youth Rehabilitation Services Act. Juveniles between the ages of fifteen and seventeen could now be charged with certain serious felonies[26] and tried in an adult criminal court if the prosecutor chose to charge them by warrant.[27]

Under this 'reverse waiver' procedure, the adult court would decide whether the sentence would be the prescribed adult sentence or a period of probation and commitment to a state juvenile institution or agency.[28] The criteria used to make this decision placed an emphasis on the seriousness of the offense, amenability and potential for treatment, potential dangerousness at age twenty-one and the best interests of the public welfare and the protection of public security.[29]

In 1996, and in reaction to media images of 'violent young predators' and political hype about gun violence and teenagers being out of control,[30] the legislature transformed its waiver system into one of the harshest packages of delinquency reform legislation in the country. Specifically, it amended the 'automatic waiver' statute to require that any juvenile, charged with and convicted of certain offenses, must be sentenced as an adult.[31] It also lowered the age of automatic waiver to fourteen. As a result, the prosecutor can make the decision whether a youth between the ages of fourteen and seventeen can be tried and, if convicted, sentenced as an adult.[32] The circuit courts no longer have the discretion to determine whether many convicted juveniles should be sentenced as adults.[33] The packages also include the designation provisions, which allow youth to be tried as an adult in the juvenile court--at any age--subjecting them to the potential of an adult sentence.

2. Juvenile Proceedings In Michigan Today

Michigan Legislature has made available to prosecuting attorneys four types of proceedings that can lead to a criminal conviction for a juvenile: "traditional waiver,"[34] "automatic waiver,"[35] prosecutor-designated,[36] and court-designated.[37] Each of these proceedings has its own characteristics regarding offense types heard, requirements for hearings and notice, commitment, sentencing, etc.

Delinquency Proceedings.

Delinquency proceedings involve juveniles under age 17 charged with either a violation of a criminal law or ordinance or a status offense.[38] Delinquency proceedings occur within the Family Division. If the juvenile is found responsible for the offense following a plea or trial, the court may order a juvenile disposition, such as placing the juvenile on probation or committing the juvenile to the custody of the state. He or she may be required to remain under the jurisdiction of the Family Division until age 19, with possible extension of jurisdiction until age 21. Because delinquency proceedings are not criminal proceedings, the juvenile who is found responsible for an offense in a delinquency case may not be sentenced as an adult.

Pursuant to MCR 6.938, however, the sentencing court retains jurisdiction over juveniles who have been committed to the custody of the state after her delinquency proceeding. Within 42 days before the juvenile's nineteenth birthday, the sentencing court must conduct a hearing to determine whether the child has been rehabilitated and whether she presents a serious risk to public safety.[39] If it is deemed the juvenile in fact presents a serious risk to public safety,[40] jurisdiction shall be continued or the judge may commit the juvenile to the Department of Corrections.[41]

Traditional Waiver.

Judicial waiver applies to children who are at least fourteen years old and who are charged with a felony.[42] Under Michigan's judicial waiver provision, the prosecution files a petition in the family division of the circuit court and then files a motion requesting the court to waive its jurisdiction to the adult division of circuit court.[43] While this provision remains part of the Michigan Juvenile Code, it is rarely used. The 1996 amendments lowered the age for judicial waiver from fifteen to fourteen, although it maintained the requirement that the child be charged with a felony before judicial waiver may be utilized.[44] The statutory provision providing for judicial waiver requires a two-step process. During the 'first' phase of the proceeding, the judge determines whether there is probable cause that the juvenile committed an offense, which, if committed by an adult, would be a felony.[45] If the judge either finds the requisite probable cause or the child waives the 'probable cause' phase of the waiver, the judge then must determine whether the interests of the juvenile and the public would best be served by granting the motion for waiver of jurisdiction.[46] That decision is based upon the following criteria:

> (1) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect upon any victim;

(2) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

(3) the juvenile's prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(4) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(5) the adequacy of punishment or programming available in the juvenile justice system; and

(6) the dispositional options available for the juvenile.

Before 1996, greater emphasis was placed on the juvenile's rehabilitative potential. No single factor was to be given more weight than any other.[47] Now the court must give greater weight to the seriousness of the offense and the juvenile's prior delinquency record.[48] Finally, the court must now consider "aggravating factors recognized by the sentencing guidelines."[49]

Prosecutorial (Automatic) Waiver.

Sometimes referred to as 'direct file,' prosecutorial waiver allows the prosecutor to simply file certain charges with the adult criminal court rather than in the family court.[50] As part of the 1996 amendments, Michigan lowered the age of prosecutorial waiver from fifteen to fourteen years of age. Those amendments also expanded the list of offenses for which prosecutorial waiver is available and added provisions that permit the prosecutor to automatically waive for attempt, conspiracy, solicitation, lesser-included offenses and any violation "arising out of the same transaction."[51]

Accordingly, the circuit court has jurisdiction over a juvenile, fourteen years of age or older, charged with "a specified juvenile violation," unless the prosecutor files a petition in the family court, rather than filing a complaint and warrant in the criminal court. "Specified juvenile violations" include: (1) arson of a dwelling house; (2) assault with intent to murder; (3) assault with intent to maim; (4) assault with intent to commit armed robbery; (5) attempted murder; (6) first-degree murder; (7) second-degree murder; (8) kidnapping; (9) first-degree criminal sexual conduct; (10) armed robbery; (11) carjacking; (12) bank, safe, or vault robbery; (13) manufacture, sale, possession, or delivery of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine; (14) first-degree home invasion; (15) assault with intent to do great bodily harm if armed with a dangerous weapon; (16) escape or attempted escape from a medium or high security juvenile facility; (17) any attempt or conspiracy to commit any of the above crimes; (18) any lesser-included offenses arising out of the same transaction as one of the above offenses; and (19) any other violation arising out of the same transaction if the juvenile is charged with one of the above offenses.[52]

Any 'automatically-waived' juvenile convicted of the following offenses must be sentenced as an adult: (1) arson of a dwelling; (2) assault with intent to murder; (3) assault with intent to maim; (4) attempted murder; (5) conspiracy; (6) solicitation; (7) first-degree murder; (8) second-degree murder; (9) kidnapping; (10) first-degree criminal sexual conduct; (11) armed robbery; and (12) carjacking.[53]

If the juvenile is not convicted of one of these offenses, the presiding judge must hold a hearing to determine whether "the best interests of the public" would be served by sentencing the juvenile as an adult to the Department of Corrections, or by committing the child to a juvenile institution or agency.[54] In order to make this determination, the sentencing judge must consider all of the same criteria used by the family court in the second-phase of traditional waiver proceedings.

While the legislature has provided the court with minimal guidelines upon which to exercise its authority to permissively waive a child into the adult system beyond the offense charged, county prosecutors have unfettered discretion to simply charge children as adults. According to Professor Vandervort, "there appear to be no guidelines written by either the Prosecuting Attorney's Association of Michigan or individual county prosecutor's offices for determining whether to bring charges in family court or criminal court."[55] Moreover, the appellate courts have made plain that they will not seriously examine charging decisions.[56]

Designation Proceedings

The most far-reaching change in Michigan's juvenile sentencing law is creation of the designation proceeding. In this proceeding a juvenile of any age can be tried 'in the same manner as an adult' in the family court.[57] The juvenile receives all the legal and procedural protections provided in adult criminal trials, including the right to a 12-person jury.[58] A juvenile judge presides over the trial, but the procedures themselves are identical to those used in the adult criminal courts. The conviction has the same effect as one obtained in a criminal court.[59] There are two types of designation cases: the prosecutor-designated case and the court-designated case.[60]

Prosecutorial Designation.

The designation provision permits the prosecutor to designate a child to be tried under the same procedural rules and subject to the same penalties as an adult.[61] What distinguishes a designated case from a case of waiver is that a child of any age may have his case designated, as there is simply no lower age limit. The class of offenses that the prosecutor may designate a child younger than fourteen is identical to the offenses for which the prosecutor could waive if the child were at least fourteen years of age.[62]

In order to designate the case, the prosecutor must charge the child with a 'specified juvenile violation.'[63] With respect to any non-specified violation, the prosecutor is required to ask a family court judge to designate the case.[64] When the prosecutor asks the court to designate a case involving a non-specified violation, the court must hold a hearing to determine whether to try the juvenile as an adult in family court. There are no other criteria for prosecutorial designation of a child to be tried as an adult. As with waiver, there appear to be no guidelines available from the

Prosecuting Attorneys Association of Michigan or within individual prosecuting attorneys' offices to guide designation decision making.

Following a conviction in a designation case, the court can impose an adult sentence, or may delay imposition of a prison sentence and place the juvenile on probation in a juvenile facility.[65] This delay does not deprive the court of jurisdiction to sentence the juvenile as an adult, at any time during the delay.[66] In determining whether to impose juvenile probation or an adult sentence, the court considers the same criteria used to determine whether to waive jurisdiction over the juvenile in traditional waiver proceedings.[67] The prosecuting attorney bears the burden of establishing by a preponderance of the evidence that the best interests of the public require adult sentencing.[68] A juvenile in a designation proceeding may not be committed to the Department of Corrections if convicted of a 'non-specified violation.'[69]

Judicial Designation.

For all charges other than 'specified juvenile violations,' the court may designate a case to be handled like an adult proceeding.[70] To do so, designation must first be requested by the prosecution in the petition.[71] As with judicial waiver, the court must hold a hearing before designating a case.[72] The legislative criteria for designation are identical to those for waiver, again weighing 'the seriousness of the alleged offense and the juvenile's prior delinquency record.'[73] If a case is designated, either by prosecutorial or judicial action, it is handled just as an adult criminal proceeding would be handled until the time of sentencing.[74] If a child's case is designated for trial as an adult and the child is found guilty or pleads guilty, the court has three sentencing options.[75] First, the court may enter a disposition, treating the case dispositionally as a delinquency matter. The law presumes that this is the appropriate sanction 'unless the court determines that the best interests of the public would be served by sentencing the juvenile as an adult. '[76] Second, the court may immediately enter an adult sentence.[77] Finally, the court may delay the imposition of the adult sentence and enter a disposition pursuant to the juvenile code.[78] If the court exercises its third option, it must review that decision periodically.[79] If the child violates the terms and conditions of the disposition, the court may impose an adult sentence at any time. If such a violation is based upon the commission of a felony or a misdemeanor punishable by more than a year in prison, the court must impose an adult sentence.[80]

E. DISPROPORTIONATE REPRESENTATION OF YOUTH OF COLOR AND ISSUES OF GENDER IN THE JUSTICE SYSTEM

Youth of color are increasingly overrepresented in the juvenile and adult criminal justice system relative to their proportion in the total youth population. Youth of color account for one third of the U.S. juvenile population, but they are two-thirds of the juvenile detention and corrections population. **Table 10** shows that there has been a steady growth in over-representation of youth of color.

Table 10: Youth of Color in Detention and Correctional Facilities

Year	% Total Youth	Secure Detention	Secure Corrections
1983	32	53	56
1991	32	65	69
1995	32	68	68
1999	34	62	67

Source: Sickmund,M., Snyder, and Poe-Yamagata,1997 and Snyder& Sickmund, 1999.

In the state of Michigan 28% of the total youth population were youth of color in 2000, 62% of those in secure detention were youth of color and 67% of those in adult prisons were youth of color.

Disportionality is greater among juveniles than among adults in adult criminal justice. In eleven states the proportion of youth of color in state training schools exceeds 80%. Congress acknowledged the issue of disproportional representation in 1988 when it amended the Juvenile Justice and Delinquency Prevention Act of 1974 and again in 1992 when it elevated DMC to a core requirement of the JJDP Act. Again in 2002 the Act was further amended to require intervention strategies that include delinquency prevention and systems improvement. States are to assess the problem, ascertain causes and then implement programs to reduce over-representation. Although efforts are being made, disproportionality continues to grow despite the fact that self-report and victimization surveys do not support the level of over-representation.

While numerous study findings support the argument that youth of color are punished for crimes at disproportional rates, different explanations are provided about the causes of disproportionality:

- Youth of color are said to have higher rates of offending, especially for more serious and violent crimes.[81]

- Crime levels are higher in neighborhoods where poor people and people of color live and police are likely to do more surveillance.[82] Bynum, Wordes & Corley

showed that the degree of concentration of people of color in an area was correlated with increases in apprehension, even when controlling for crime rates.[83]

- Factors used in decision making to confine reflect the lack of opportunity for minority youth in education and employment, the quality of life in inner city ghettos, the pervasiveness of the drug culture and housing segregation.[84]

- Juvenile justice agencies treat minority youth more severely than non-minority youth, particularly in the early stages of processing.[85]

- The application of structured decision making may inadvertently result in the disproportionate confinement of minority youth. There may be discriminatory attributions about the behavior of minority youth[86] or about the characteristics of their families (e.g. single female-headed families).[87] Bridges & Steen found that the attitudes probation officers held toward juveniles were significantly influenced by the race of the offender.[88]

- Nunn argues that the oppression of African American youth (especially males) appears normal because we have been socialized to undervalue the lives and realities of African Americans. He uses this hypothesis in his conception of "otherness" that some persons are viewed as different or alien. Consequently, "the other is a … threat even if the other poses no threat at all, and as a threat, the other must be controlled."[89]

- Diversion and similar community-based programs are more frequently available in suburban communities that have lower proportions of youth of color. The lack of such programs in inner city areas results in more youth there being processed in the formal justice system and institutionalized.[90]

Obviously not all of the above explanations apply in every situation but they do have a cumulative effect on the state systems in most states in the U.S. today.

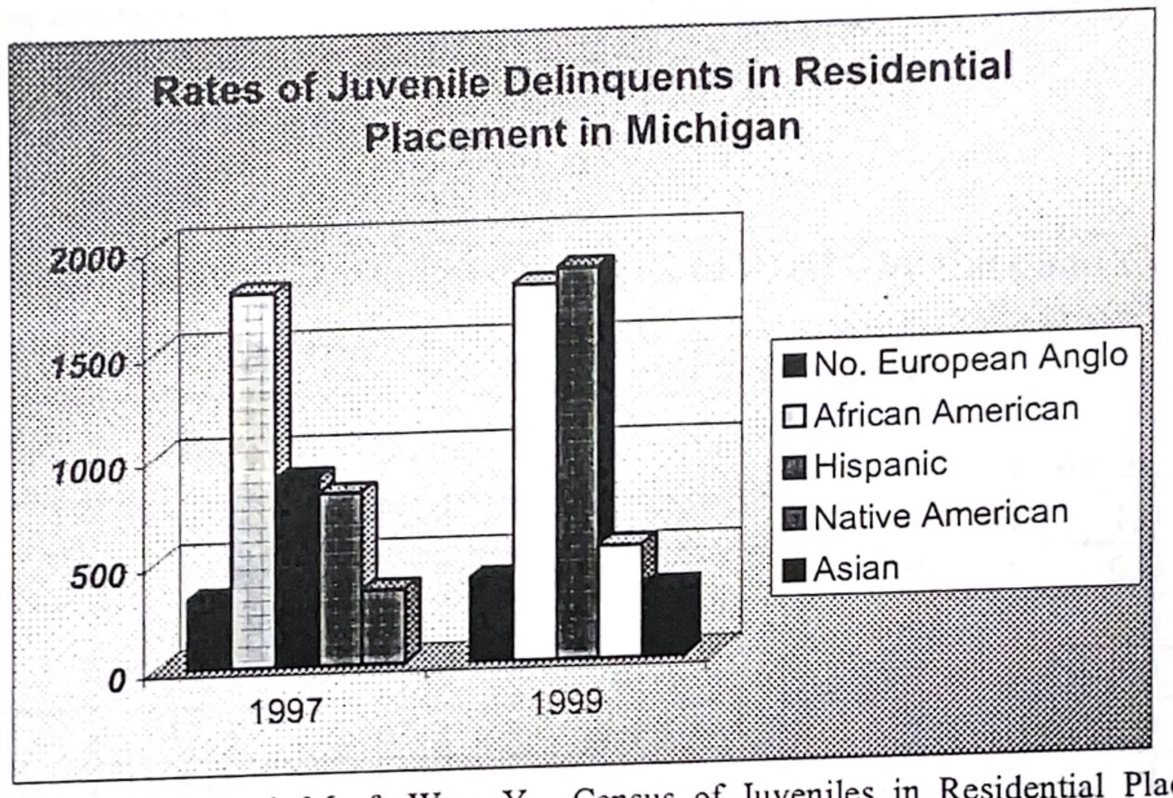
Congress has also mandated greater attention to the policies and services affecting females because they received relatively little attention in programming or regarding their incarceration for extended periods for status offenses. Females of color are over-represented in adult prisons in Michigan, but they are co-mingled with adult prisoners and receive no differential programming as the males do in adult facilities such as Baldwin. **Table 11** presents the most recent census of juveniles in residential placement in Michigan in 1999.

Table 11: Census of Juveniles in Residential Placement Databook Age on Census Date by Sex and Race/Ethnicity for Michigan, 1999

Female							
Age	Total	White	Black	Hispanic	Native American	Asian	Other
Total	672	318	264	63	12	9	3
12 & Younger	18	9	9	0	0	0	0
13 Years	54	30	18	3	0	0	0
14 Years	114	48	45	18	0	0	0
15 Year	195	108	66	15	3	3	0
16 Years	168	75	63	21	6	3	0
17 Years	99	42	42	9	3	3	0
18 & Older	21	6	15	0	0	0	0
Male							
Age	Total	White	Black	Hispanic	Native American	Asian	Other
Total	3654	1623	1578	342	21	33	60
12 & Younger	99	48	33	15	0	0	3
13 Years	180	90	63	18	3	0	6
14 Years	438	216	165	51	0	3	6
15 Year	756	360	309	63	6	9	12
16 Years	948	420	399	96	6	12	15
17 Years	744	321	336	66	6	3	12
18 & Older	489	168	270	33	3	3	6

In 2003 the Disproportionate Minority Committee of the Michigan Committee on Juvenile Justice constructed 281 index scores for comparisons and found that African Americans were the most over-represented group in Michigan, but that depending on the county there were overrepresentations of Hispanics and Native Americans. Anglos were not overrepresented in any county. **Figure 6** illustrates the changes in rates of residential placement by color between 1997 and 1999. The sharp increase in Hispanics probably is due to their more accurate identification in 1999 along with some continued increase.

Figure 6: Youth in Residential Placement, 1997 & 1999



Source: Sickmund, M. & Wan, Y. Census of Juveniles in Residential Placement Databook. Available at: http://www.ojjdp.ncjrs.org/ojstatbb/cjrp.

In 1998 we correlated Michigan county juvenile arrest rates, youth poverty, dropout and unemployment rates with the proportion of youth of color who were committed from each county to the state juvenile correctional facilities. Most of the variance shown in **Table 12** is explained by the percent of youth of color who are committed fro placement from the various counties. Poverty and unemployment explain less that would be expected as does school dropout rate.

Table 12: Total Commitments by Youth Arrest, Poverty, Minority Rates, School Drop-out and Unemployment*

	R^2	B	T	Sig.T
Youth Arrest Rate	.0042	- 005888	- 740	.4617
Youth Poverty Rate	.0120	11.7888	.099	.9213
Youth Minority Rate	.4525	1090.5409	8.037	.0000
School Drop-out Rate	.0299	23.241529	1.579	.1181
Unemployment	.0059	- 2.744909	- .695	.4893

*Youth arrest rate is for Part I or serious crimes only. The rate was also calculated for total arrest rates also, and nearly identical results were obtained.

Source: Sarri, R.; Rollin, J., et. al. (Nov. 1998, p. 30). Minority Overrepresentation and Outcomes in Juvenile Justice in Michigan. Ann Arbor: University of Michigan, Institute for Social Research.

There is considerable overlap in the counties who have had large numbers of commitments to FIA facilities and to the DOC. **Table13** presents the information on the race distribution of juveniles sentenced to DOC facilities. (See Appendix for Majority/Minority Commitments) Overall, youth in the DOC are 67% youth of color.

Table 13: Juveniles Sentenced to DOC – by Race and County

Race Distribution by County						
County	White	Black	Hispanic	Asian	Native American	Other
Berrien	26.2	70.9	.7	.7	1.4	0.0
Calhoun	48.0	50.0	0.0	2.0	0.0	0.0
Genessee	25.5	71.6	2.9	0.0	0.0	0.0
Ingham	26.4	58.5	9.4	3.8	0.0	1.9
Jackson	52.3	43.2	4.5	0.0	0.0	0.0
Kalamazoo	5.6	94.4	0.0	0.0	0.0	0.0
Kent	24.2	65.6	9.1	0.0	1.1	0.0
Macomb	31.7	56.1	4.9	2.4	2.4	2.4
Muskegon	22.4	73.7	2.6	0.0	0.0	1.3
Oakland	33.3	63.5	0.8	0.0	0.8	1.6
Ottawa	56.5	8.7	21.7	8.7	0.0	4.3
Saginaw	23.4	70.1	6.5	0.0	0.0	0.0
Tuscola	70.0	20.0	10.0	0.0	0.0	0.0
Van Buren	50.0	50.0	0.0	0.0	0.0	0.0
Washtenaw	28.6	61.9	0.0	4.8	4.8	0.0
Wayne	12.1	86.2	1.4	0.0	0.0	0.3

Source: Michigan Department of Corrections, 2004.

While examining the processing of juveniles of color to the DOC or FIA facilities, we noted that there are a limited number of counties in Michigan who commit most of the youth of color. One the other hand there are counties with similar proportions of youth of color who commit none or very few youth. We do not have explanations for these differences, but think that there should be a careful study of the differential patterns of responding to juvenile delinquency.

F. FUNDING OF PLACEMENTS

Decision making with regard to treating juveniles as adults in the justice system varies partly as a consequence of who has to pay the cost for placement – the county, FIA or DOC. The policies and procedures are complex but they do have significant consequences for the affected juveniles. By way of illustration, a juvenile who is charged with homicide can be tried as a juvenile, as a "designated" case or as an adult. Depending upon the way a juvenile is tried and convicted, there are different sentencing options. Sentencing options have substantially different cost implications for the county depending upon the choice made. Thus these implications can be a major consideration for county officials, especially in counties with limited resources. The average institutional cost to a county for placement at Maxey is $60,000 per year (50% of $119,359) and $52, 360 at Adrian Training School ($104, 755).

Let us consider, for example, a 16-year-old youth charged and convicted of homicide as a juvenile. If the youth is sentenced as a juvenile s/he will be kept at the juvenile facility until 21 years and the total cost for the county would be nearly $300,000. The state would pay 50% of the cost so the total for 5 years would be approximately $600,000 to the state and county. On the other hand, if the youth is sentenced as an adult the cost to the county would be $0. The entire cost is borne by the state. The state per annum cost at Baldwin facility is $54,000 per year, but it is substantially less at other DOC facilities, so the total cost to the state is difficult to ascertain. However, if the youth received a life sentence, the cost to the state would be far greater for an adult placement. Under some circumstances juveniles tried as designated cases can receive "blended" sentences and be placed at private secure facilities. This provision provides the benefit of giving the juvenile one more opportunity in a juvenile program while also serving to protect public safety by retaining the possibility of an adult sentence. In those instances 50% of the cost would be borne by the county and 50% would be charged to the Child Care fund.

If the county places an adjudicated delinquent in a community-based or low security facility, the cost may be covered with 4E funds at the 100% level. If the court places a juvenile in a medium secure facility (private or public) child care fund dollars must be used and the county must pay 50% of the cost.

In our interviews with county officials we were told that cost differentials were an increasingly important factor in their decision making. This issue also arises for youth adjudicated for less serious crimes where the options are more extensive.

G. WAIVER

This section of the report presents our research on decisions to treat juveniles as adults in four different counties in Michigan. Using county and state level data, the goal of the section is to assess the practice of treating juveniles as adults and to identify factors that influence these decisions. As we discuss below, our conclusions are somewhat limited by the available data. However, the findings we present are important because they provide critical insight into decisions to treat juveniles as adults and the implications of the 1988 and 1996 legislative reforms.

1. County Selection

Selection of the sampled counties involved two steps. The first step involved deciding on selection parameters based on specific socio-demographic and economic characteristics that are related to variation in decision making.[91] Based on these characteristics, we decided to sample:

- the largest county in the state;
- a county that has and devotes considerable resources to juvenile justice; and,
- two counties that have and devote limited resources to juvenile justice.

We also sought to include some diversity among specific socio-demographic characteristics, such as race and ethnicity. The purpose of these selection parameters is to provide a sample of counties that allows us to gain a better understanding of how court and community contextual characteristics influence decisions to treat juveniles as adults.

The second step involved insuring that sampled counties had a sufficient number of cases for analysis and that they represented the geographic diversity of Michigan. Using data from the Department of Corrections we were able to identify seven counties in Michigan that each accounted for 5% or more of the total juvenile admissions to DOC and, together, accounted for approximately 70% of juvenile admissions to DOC during the period from 1989 to 2004. All of these counties fit one of the criteria chosen as part of our selection parameters. Unfortunately, these counties were largely confined to central and southern Michigan and did not include any northern counties. They do, however, include a variety of geographic regions that permit us to isolate the effects of contextual characteristics. We then chose four counties from within this group of seven as our selected counties.

For confidentiality purposes, we do not specifically name the counties. They are referred to as follows: County A, County B, County C, and County D. **Table 14** presents basic demographic characteristics for these counties based on 2000 census data. This table provides a brief overview of these counties and shows that they differ across some key characteristics.

Table 14: County Demographic Characteristics						
County	Median Income	Children's Poverty	Unemployment	Youth Population	Youth of Color	High School Dropout Rate
County A	$48,805	28.5%	4.2%	28.0%	58.8%	10.0%
County B	$47,303	13.4%	3.1%	28.3%	26.6%	4.1%
County C	$38,567	23.0%	4.0%	26.0%	31.6%	6.7%
County D	$38,637	24.6%	4.4%	26.6%	38.4%	4.4%

2. Data

The data used in this section were collected from both state and county level sources. Unfortunately, our analysis and discussion are limited by the availability of information and data to which we were able to gain access from state and county level sources. In many ways, one of the most important findings of our study is the limited quantity and poor quality of information kept on decisions to treat juveniles as adults. Necessary data is not collected and maintained to provide a sufficient understanding of this practice in Michigan. At the state level, the Supreme Court Administrator's Office (SCAO) keeps aggregate statistics on youth tried as adults. Our discussions with county and state officials raised some questions about the reliability and validity of their numbers. Even if accurate, these statistics merely serve as very limited and general indicators of trends in the treatment of juveniles as adults and do not provide enough information to derive meaning about the practice of treating juveniles as adults. In fact, the type and amount of information collected by the SCAO differs substantially from what is found in other states, such as Minnesota, which keep fairly extensive information on this practice. Because of these data limitations, it is not possible to do state level analyses on decisions to treat juveniles as adults in Michigan.

In addition to the state level data available from SCAO, we submitted data requests to FIA and DOC for more extensive information on juveniles in both the juvenile and adult systems. In addition, we requested information from the state police with regard to juvenile arrests. The purpose of these requests was to obtain data that would allow us to gain a better understanding of trends in the number of youth entering the state juvenile and adults systems, as well as to conduct analyses of the differences between youth entering these two systems, their experiences in the systems, and their experiences upon release from these systems. We also requested a sample of adults admitted to DOC in order to compare their characteristics with those of youth in the DOC. Because some of these data requests have not yet been fulfilled, we are unable to present our full analyses. However, we do have sufficient data to present some key findings pertaining to the patterns and characteristics of youth admitted to DOC. In doing this, we draw on aggregate data obtained from FIA, two individual-level data sets on juveniles admitted to DOC, and juvenile arrest data from the state police. One of the data sets from DOC includes all youth admitted between 1982 and 1998, which we obtained as part of a prior research project, and the other

includes all youth admitted between 1989 and April 2004, which was obtained in conjunction with the Michigan Council on Crime and Delinquency.

Data collection at the county level was necessary both because of the limited state level data on decision making and case processing and because of our desire to gain an understanding of the specific community and court contextual characteristics that influence decisions to treat juveniles as adults. This practice occurred in two steps. We began with one county, seeking to develop a model from which to proceed in the remaining counties. Through the cooperation of various actors and agencies, we were able to collect extensive quantitative and qualitative data from this county during the period from 2001 to 2003. This was a time consuming and labor intensive effort, beginning two years prior to the start of our funding for this project (we were partly funded by a small pilot grant from the University of Michigan). These efforts were important, however, because they allowed us to identify many key factors that influenced decision making and case processing. Further, the data we collected from this county enabled us to compare the characteristics of juvenile waived to the criminal court with the characteristics of designated juveniles and juveniles who were retained in the juvenile court.

Using our experiences in the first county, we refined our data collection efforts in the remaining counties. Given the time and resources invested in the data collection in the first county, we determined that we needed to streamline our efforts in order to focus on key pieces of data, including interviews with key officials and quantitative data on juveniles tried as adults. Primarily, we were interested in interviewing key judges, prosecutors, defense attorneys, and court administrators, as well as collecting individual-level data on youth *eligible* to be tried as adults and those who were actually tried as adults for the period 1997-2003. Data collection, however, was somewhat limited by the quality and quantity of information maintained in these counties, particularly with regard to the quantitative data. In one county, we were only able to obtain aggregate data, as there was a general unwillingness to participate further in the study. In a second county, we were able to obtain individual-level data for juveniles waived to the criminal court for three years and aggregate-level data for the remaining years (we are still attempting to collect additional information). In the third county, we were able to obtain the necessary individual-level data for juveniles waived to the criminal court for the period 1997-2002, as well as information on the outcomes of juveniles tried in the criminal court over the period of 1984-2003. Unlike in the original county, we were not able to collect data that would allow us to compare the characteristics of juveniles transferred with those designated and retained in the juvenile court.

Overall, we were frustrated by the quality and quantity of data available at both the state and county levels. In fact, one of our key recommendations is for the development of a better information system in order to track these cases and to gain a better understanding of the characteristics that decision makers use to decide that a juvenile should be treated like an adult. The data that we were able to collect, however, do allow us to make a number of different comparisons to further understandings of decisions to treat juveniles as adults in Michigan. In particular, in all of our selected counties we were able to examine the following: juvenile crime rates, waiver rates, differences in the use of judicial and prosecutorial transfer, the use of designation, the characteristics of adjudicated juveniles, the sentencing of juveniles in the criminal court, and characteristics of the decision-making process. Further, by comparing the

counties, we were able to gain insight into the factors that influence decisions to treat juveniles as adults.

3. Juvenile Arrest Rates

When referring to juvenile crime, most official sources focus on youth between the ages of 10 to 17 years old. In Michigan, this figure is somewhat misleading because 17-year olds are not within the jurisdiction of the juvenile court, yet account for a disproportionate share of arrests for the 10-17 year-old-age group. Thus, reports of juvenile crime that include 17-year olds often represent a higher rate of juvenile crime than is true for the 10-16 year-old population. Using data from the state police and population data on the number of youth who are 10-16 years old in each of these four counties, we present juvenile arrest rates for 10-16 year olds.

The purpose of presenting juvenile arrest rates is that they provide an important indication of the flow of cases that decision makers consider when deciding to treat a juvenile as an adult. In particular, violent index arrests represent the types of offense that are covered within the prosecutorial discretion provision. Violent index arrests also include assaultive crimes that are not covered by the prosecutorial discretion provision yet might be considered for judicial transfer. Property index arrests are also presented because they might provide an additional indicator of cases that are considered for transfer. The overall contribution of property index arrest rates to waiver rates is questionable, however, due to the fact that property index offenses consist overwhelming of larceny and breaking and entering.

As is clear from the previous discussion of juvenile arrest trends, violent and serious juvenile crime dropped dramatically in Michigan between 1994 and 2002. This is consistent with national trends, which show a dramatic decline in violent and serious juvenile crime beginning around 1994. While total violent arrests did increase somewhat between 2000 and 2002, this increase was driven by arrests for aggravated assaults, rather than for murder, robbery, or rape. Property arrests also declined, leading to a substantial decrease in violent and serious crime in Michigan over this period.

These trends are not as clear in all of the four selected counties. **Tables 15** and **16** present the violent and property index arrest rates in each of the selected counties for the period from 1997 to 2002. These tables allow us to examine trends in juvenile arrests in each of these counties, as well as provide a comparison between counties in order to examine differences in the flow of violent and serious juvenile cases into these courts.

Table 15: Violent Crime Index Per 100,000
Youth Age 10 – 16, 1997-2002

	County A	County B	County C	County D
1997	307	537	191	106
1998	230	454	244	101
1999	162	267	226	79
2000	104	101	64	167
2001	105	138	203	141
2002	95	186	273	216

Table 16: Property Crime Index Per 100,000
Youth Age 10 – 16, 1997-2002

	County A	County B	County C	County D
1997	996	2,523	2,291	374
1998	623	2,666	1,844	396
1999	636	2,229	1,902	449
2000	513	1,499	1,328	506
2001	472	1,923	1,856	537
2002	444	1,965	2,018	537

With regard to arrest rate trends, several patterns emerge from these tables.

- In County A, both violent and property index arrest rates dropped each year between 1997 and 2002 to levels that were substantially lower than in 1997.

- In County B, violent and property index arrest rates dropped dramatically between 1997 and 2000, but rose somewhat between 2000 and 2002. They remain, however, substantially lower in 2002 than in 1997.

- In County C, violent juvenile arrest trends present no clear discernable pattern. Overall, violent juvenile arrests were higher in 2002 than in 1997. With regard to property index arrests, the rates decreased between 1997 and 2000 before increasing from 2000 to 2001.

- County D offers a similar picture to County C. Violent arrest rates varied over this period and are currently higher in 2002 than in 1997. Property index arrest rates essentially increased each year during this period.

Assessing differences across these counties is a somewhat more difficult task because of the variation in crime rates across years. Several key points, however, can be drawn from comparing these counties that inform a discussion of decisions to treat juveniles as adults.

- No one county has violent crime rates that are consistently and substantially higher than other counties over this period. While violent crime rates in these counties do vary and are higher in some counties over different years, these differences do not suggest that one county will consistently have a higher transfer rate.
- In County A, 48% of all violent index arrests were for murder, robbery, or rape whereas these more serious crimes accounted for between 25% and 29% of all violent index arrests in the other 3 counties. This leads us to expect that the percentage of violent offenses that are waived to the criminal court will be higher in County A as a result of the severity of these offenses.
- Counties A and C have substantially lower property crime rates than the other counties. We interpret this difference as a likely effect of police behavior rather than of differences in juvenile behavior in these counties and do not expect this difference to have a major impact on waiver rates because property index arrests largely consist of breaking and entering and larceny. If these crimes are considered for transfer, however, we might expect these different arrest rates to have some effect on waiver rates in these counties.

4. Comparison of Waiver Decisions in the Four Counties

Similar to juvenile arrest rates, waiver rates in these four counties varied over the years. Unlike arrest rates, however, clear differences were observed between these counties with regard to the practice of sending juveniles to the adult criminal court. **Table 17** presents the waiver rates per 100,000 juveniles 10-16 years old in each county for the period of 1997-2002.

Table 17: Transfer Rate per 100,000 Youth Age 10 – 16, 1997-2002

	County A	County B	County C	County D
1997	43	87	203	81
1998	19	71	168	63
1999	19	68	220	50
2000	10	67	110	86
2001	17	19	151	27
2002	9	13	180	95
2003	10	19	151	81

As this table shows:

- County A consistently had the lowest waiver rate of these four counties and it actually decreased over these years.

- County C consistently had the highest waiver rate. In fact, the waiver rate of County C is between 5 and 20 times higher than that of County A across these years and at least twice as high as the other counties across many of these years.

- County D's waiver rates were also considerably higher than those of County A across many of these years but were substantially lower than those of County C.

- County B showed the most dramatic change with regard to waiver rates. From 1997 to 2000, County B's waiver rates were substantially higher than those of County A. Starting in 2001, however, its waiver rates decreased considerably and were relatively similar to those of County A.

This table demonstrates that the practice of sending a juvenile to the criminal court differs substantially across these counties. Given the previous discussion of juvenile crime, it is apparent that these differences are not explained by juvenile arrests. These differences indicate that decisions to treat juveniles as adults are not merely dependent on the characteristics of the offender and offense, but are influenced by characteristics of the specific courts and communities in which these decisions are made.

The relationship between decisions to treat juveniles as adults and characteristics of the court and community is further demonstrated by differences in the use of prosecutorial and judicial waiver in these four counties.

- In County A, judicial waiver was not used during the period from 1997 to 2003. All waivers to the criminal court during this period were done by the prosecutor.

- County B used judicial transfer quite extensively during the period from 1997 to 2000. From 2001 to 2003, however, judicial transfer was not used very frequently and the majority of the waivers were done by the prosecutor, which may help explain the dramatic drop in waiver that occurred. Our analyses also revealed that judicial transfers were not used frequently prior to 1995.

- County C used judicial transfer extensively across the entire period from 1997 to 2002. In fact, none of the youth waived between 2001 and 2003 were prosecutorial transfers and 90% of waivers over this entire period were judicial waivers. Prior to 1994, only a relatively small number of juveniles were waived through the judicial waiver mechanism.

- County D presents a case that is almost the opposite of that of County B. Prior to 2002, it relied extensively on prosecutorial waiver. From 1997 to 2001, approximately 12% (total of 68 waivers during this period) of all waivers were judicial. In 2002 and 2003, however, judicial waivers made up 59% (total of 39 waivers over these two years) of all waivers. Consequently, this county shows an increasing reliance on judicial waiver over the last several years.

As these findings indicate, these four counties differ tremendously in their use of judicial and prosecutorial waiver. One county only uses prosecutorial waiver while another uses judicial waiver extensively. The other two counties use more of a mix of prosecutorial and judicial waiver, although the use of judicial waiver was heavy during specific periods and fairly low in other periods.

5. Comparison of Designation Decisions in the Four Counties

As discussed previously, the enactment of the designation provision serves as a fundamental change in juvenile justice policy and administration by allowing juveniles to be tried as adults in the juvenile court and subjecting them to the potential of an adult or blended sentence. In many ways this provision was intended to serve as an additional tool for juvenile courts to deal with violent, serious, and repeat juvenile offenders, particularly by allowing juveniles of any age to be treated as adults. Consequently, this provision can be expected to increase the number of juveniles treated as adults. At the same time, it is clear that the designation provision has the potential to serve as an alternative to treating juveniles as adults because it provides juvenile courts with more flexibility to handle violent and serious juvenile offenders in the juvenile court, thereby reducing the number of youth waived to the criminal court. Consequently, examining how this provision is used is important for gaining a better understanding of the implications of the 1996 juvenile reform legislation.

Similar to their use of prosecutorial and judicial waiver, these four counties varied substantially with regard to their use of the designation provision between 1997 and 2002. Because our data on the use of designation were not consistent across these counties and were limited in some cases, we can only present summary results on this practice in the four counties based upon both qualitative and quantitative data:

- In County A, designations increasingly served as an alternative to transfer during the period from 1997 to 2003, evidenced in part by the decline in waiver rate demonstrated previously. Between 1997 and 1999, approximately 33% of all designations were under 14 years of age, but between 2000 and 2002 only between 2% and 5% of designations were less than 14 years old. The vast majority of designations in this county were prosecutorial designations, although there were several judicial designations during this period. At one point, it appeared as though youth were being designated who previously were retained as juveniles, but that result seemed to disappear the following year.

- County B seems to use the designation provision somewhat similarly to County A, particularly from 2001 to 2003 when the number of judicial transfers dropped substantially. Many of the designations in this county appear to be prosecutorial as opposed to judicial designations. While we need to collect additional data to better understand the practice of designations in County B, the indications are that County B uses designations in specific instances to give juveniles another chance before sending them to the criminal court, particularly for younger juveniles who have less extensive prior records in the juvenile system.

- County C uses the designation provision extensively. This is particularly interesting given that County C also has the highest rates of waiver among these four counties. It appears from the data that we obtained that many of these transfers are judicial as opposed to prosecutorial transfers. This indicates that the designation provision does serve as an alternative to transfer in this county, but instead has served to increase the number of juveniles treated as adults.

- County D uses the designation provision in fairly limited circumstances. The data that we have show that there were a relatively small number of designations during the period from 2001 to 2003. In County D, it is apparent that decision makers were reluctant to use the designation provision as an alternative to transfer in many cases.

Overall, these findings indicate that three of the counties in our sample use designations relatively frequently as a means for handling juvenile offenders, while one county does not use the provision much at all. In Counties A and B, decision makers reported that they liked the flexibility of the designation provision. In particular, prosecutors in these counties reported that the designation provision served as a "hammer" over a juvenile's head and that it provided an opportunity for the court to gain a better idea about a case before the ultimate decision is made about whether to treat a juvenile as an adult. This includes gaining more information about the offense and the characteristics of the juvenile, as well as having more options for dealing with the juvenile. In addition to flexibility, we found that prosecutors like the designation provision because it gives them more power over a case by providing a tool to force a plea in order to avoid the possibility of an adult sentence.

In this way, designation differs considerably from both prosecutorial and judicial waiver, where adult sentences are now mandatory for the vast majority of offenses, because of the flexibility that it provides and the fact that it keeps the case in the juvenile court. In County D, however, decision makers did not view the designation provision as favorably as in Counties A and B. One legal actor felt that it did not add anything that was not available through the waiver provisions. This actor described one situation where a judicial waiver motion was filed, but they ended up designating the youth. The reason cited for the change was that the youth came from a "good family" and had a number of siblings who were successful. Consequently, the determination was made that the youth should have one more chance. According to this actor, however, this situation was rare in County D.

In County C, the use of designations is markedly different than in the other 3 counties. In this county, it is clear that designations served to expand the number of youth treated as adults. This result is corroborated by waiver data from the period 1991 to 1996 for this county. From 1991 to 1993, only a handful of youth were transferred to the criminal court. Beginning in 1994, the number of youth transferred to the criminal court increased to levels similar to the period 1997 to 2003. Starting in 1997, however, County C started designating, as well as waiving, a very high rate of juveniles. Thus, it is apparent that the designation provision has served to increase the number of youth treated as adults in this county.

6. Characteristics of Cases Tried as Adults in Two Counties

Demographic and prior history information on juveniles treated as adults is important for gaining a better understanding of the specific characteristics that predict decisions to treat juveniles as adults. We currently have information on juveniles treated as adults for two counties. In County A, we were able to collect extensive data on juveniles waived to the criminal court, juveniles designated to be tried as adults in the juvenile court, and youth retained in the juvenile court who were between the ages of 14 and 16 at the time of their offense and considered for transfer (detained). Because County A only used prosecutorial transfer during this period, we report on the characteristics of cases charged with offenses that were eligible to be waived or transferred by the prosecutor. There are several key characteristics of the overall population:

- The mean age for this population is 15.75 years old. Ninety-four percent of these youth were males and 87% were youth of color.

- Armed robbery/carjacking was the most common charge (42%) followed by 1st degree criminal sexual conduct (22%). Murder accounted for approximately 7% of all cases.

- Approximately 41% of juveniles had no prior delinquency petitions and approximately 79% had two or fewer prior delinquency petitions. The mean number of prior delinquency petitions was 1.62 and the median was 1. This suggests that many youth who are charged with a waiveable offense have not had extensive prior contact with the juvenile justice system

- Only 12% of youth charged with a waiveable offense were previously committed and only 27% were previously on probation. Overall, approximately 33% of these youth were previously committed and/or on probation. This shows that two-thirds of the juveniles charged with a waiveable offense were not previously on probation or committed.

Overall, we found a number of differences in the characteristics of waived, designated and retained cases. These differences demonstrate that there are specific offense and offender characteristics that indicate how a case will be handled.

- The mean age of transferred juveniles was 16.22 years old, compared to 15.85 for designated cases and 15.53 for retained cases.

- 84% of waived cases were youth of color compared to 89% of retained cases and 88% of designated cases.

- 98% of waived cases were male compared to 95% of designated cases and 92% of retained cases.

- Designated (mean = 2.25 prior petitions) and transferred (mean = 2.13 prior petitions) cases had more prior contact with the juvenile system than retained cases (mean = 1.27 prior petitions).

- Designated cases were more likely to have a prior commitment (21%) than both waived (17%) and retained (8%) cases.

- Waived cases (34%) were more likely to have previously been on probation than designated (31%) and retained (23%) cases.

- Approximately 76% of all murder cases were waived, compared to 28% of robbery/carjacking cases, 24% of assault with intent to murder cases, and 13% of CSC cases.

- Youth charged with a weapons offense were more likely to be waived (52%) than designated (46%) or retained (26%).

- Waived cases (83%) were more likely to be convicted/adjudicated than designated (71%) or retained (55%) cases, suggesting that the strength of the case is an important factor in waiver/designation decisions.

In order to further examine the relationships of these offense and offender characteristics to decisions to treat juveniles as adults, we used multivariate methods that allowed us to control for specific characteristics in attempting to isolate those that predict decisions to treat juveniles as adults. Our analysis of these data indicates that:

- The **age** of the juvenile is a very strong predictor of decisions about whether to waive, designate, or retain a case in the juvenile court. In particular, age was a strong predictor of the waiver/ designation decision.

- Controlling for a variety of characteristics, waived juveniles were significantly older than those who were designated or retained.
- Further, designated juveniles were significantly older than retained juveniles.

- Characteristics of the **offense** are also strong predictors of whether to waive, designate, or retain a case in the juvenile court.

  - Juveniles charged with a weapons offense were significantly more likely to be waived or designated than to be retained as juvenile cases.
  - Juveniles charged with more counts of waiveable offenses were also more likely to be waived or designated than retained.
  - With regard to individual offenses, murder cases were more likely to be waived than retained in the juvenile court than were robbery/carjacking cases.
  - Murder cases, however, were *not* more likely to be waived than designated when compared with robbery/carjacking cases. This corroborates a trend in County A to increasingly designate murder cases.
  - Robbery/carjacking cases were more likely to be waived than retained in the juvenile court than were criminal sexual conduct (CSC) and assault with intent to murder cases.

- Prior history in the juvenile justice system was not a significant predictor of how these cases were handled. This is particularly interesting because a primary justification of transfer is that the placements and services available in the juvenile justice system are not sufficient for these youth. Consequently, one would expect that waived youth would have more extensive histories in the juvenile system.

In summary, what this analysis shows is that cases retained as juveniles are younger and are charged with less serious offenses than designated and waived cases. The main difference between designated and waived cases is age. Older juveniles are more likely to be waived than designated in this County A.

In County D, we were able to collect individual case information only for juveniles waived to the criminal court between 1997 and 2003. Because of differences in the way that courts handle cases, as well as in the way that they code and report data, this information is not directly comparable to that presented for County A. Further, while these data are limited in the respect that they do not provide comparisons with youth retained in the juvenile court, they do enable us to present some important findings.

- Among youth waived by the prosecutor, slightly more than 50% had less than a 10^{th} grade education (median = 9^{th} grade).

- Sixty-two percent of youth waived by the prosecutor were 16 years old at the time of their offense, 33% were 15 years old and 5% were 14 years old. The mean age of these juveniles was 16.1 years old.

- Among youth waived by the prosecutor, 60% had 3 or fewer delinquency petitions prior to their waived offense.

- Slightly more than 50% of youth waived by the prosecutor were not previously on probation and none of these youth were previously committed.

- For youth waived through the judicial waiver mechanism, 33% had less than a 10^{th} grade education and 50% had a 10^{th} grade education (median = 10^{th} grade).

- Sixty-seven percent of youth waived judicially were 16 years old at the time of their waived offense, 27% were 15 years old, and 6% were 14 years old. The mean age of these juveniles was 16.3 years old.

- Approximately 33% of youth waived judicially had 3 or fewer prior delinquency petitions and slightly less than 25% were not previously on probation. None of these youth had a prior commitment.

These results show that there are some differences in the characteristics of juveniles waived through the prosecutorial and judicial discretion provisions. Juveniles transferred through the judicial discretion provision are likely to have a more extensive record in the juvenile justice system compared to juveniles waived by the prosecutor. They are also somewhat older and have attained a lower education level. Juveniles transferred through the prosecutorial discretion provision are more likely to be charged with a serious person offense. These differences are consistent with other research that shows that juveniles waived for more serious offenses are likely to have a less extensive prior history in the juvenile system while those with less serious offenses are likely to have a more extensive prior history in the system.

7. Decision Making Process

In attempting to determine the implications of the 1989 and 1996 reforms, it is important to gain an understanding of the process through which these decisions are made, including the type of information considered and the role of various actors in the process. Because one of the main functions of these reforms was to remove a large part of the decision-making process from courtrooms and place it into the prosecutor's office, we primarily focus on prosecutorial discretion decisions. This shift has a number of implications for the decision-making process. First, it moved discretion from a neutral party (judge) to an interested party (prosecutor). Second, it eliminated criteria and the opportunity for appellate review. Third, the 1996 reforms further expanded the power of the prosecutor by removing sentencing discretion from judges for many of the offenses contained in the provision. Fourth, it largely eliminated the role of other actors in the decision-making process. Finally, it eliminated the opportunity for a systematic evaluation of the juvenile prior to making the decision, thereby focusing the decision primarily on the offense as opposed to on the individual.

Using qualitative data on the decision-making process collected from three different courts, we gained substantial insight into these effects. In particular, these data allow us to expand upon the latter two implications. What we learned from these data is that prosecutors have a five-day period in which to make transfer decisions. The decision largely occurs within the prosecutor's office, without input from other actors who may be able to give insight into a particular case. In each of these cases, the ultimate decision is either made by the chief or deputy chief prosecutor, often in consultation with prosecutors from the juvenile division. Information available to prosecutors typically includes details of the offense, the prior record and history of the juvenile, and basic demographic information such as age, gender, race, etc. At times, the prosecutor may request additional information about a juvenile from other actors, but this depends on the specific case and the degree to which other information exists. In many cases, additional information is not available because the youth has no or a limited prior history in the system.

In effect, this process does not include a comprehensive evaluation of the needs, risk, and competency of the juvenile. This type of evaluation is important because it can provide substantial insight into a youth and assist in determining whether he/she should be tried as an adult. Instead, prosecutors generally focus on the offense and age of a juvenile in making the determination. This information is supplemented by the prior history of the juvenile in the system and whatever prior information is available about the youth. In many cases, there is not additional information available because of the limited prior history of the youth in the system. Further, the fact that other parties are not involved in the decision-making process means that the interpretations of the prosecutor's office go unchallenged. Consequently, it is important that the current system be reviewed to determine whether a more extensive evaluation and more inclusive decision-making process is necessary to insure that appropriate decisions are made.

8. Sentencing Outcomes for Juveniles Tried as Adults

An understanding of decisions to treat juveniles as adults also requires an analysis of the outcomes of cases in which juveniles were tried as adults. As discussed previously, the 1996 juvenile reform legislation removed a substantial amount of power from criminal court judges to order a juvenile sentence in cases in which a juvenile is waived through the prosecutorial discretion provision. In essence, this change enhanced the power of prosecutors in determining the outcome by requiring a mandatory adult sentence for the majority of offenses and allowing the option for a juvenile sentence for some cases. We collected data from three counties that provide a better understanding of sentencing outcomes. In two counties, we also have data for the period from 1989 to 1996, allowing us to gain a better understanding of the impact of the 1989 and 1996 juvenile reform legislation.

Table 18 presents the criminal court sentencing outcomes of convicted cases in each of these counties during the period from 1997 to 2003 (for County B we only have data for the period from 2001 to 2003). As this table indicates, the majority of juveniles convicted in the criminal court received a prison sentence during this period. County A has the highest percentage of cases sentenced to prison as well as of cases receiving a juvenile sentence. This is the result of the fact that County A only uses prosecutorial waiver, meaning that offenses waived in this county are

likely to be more serious than in the other counties. In County B, prosecutors reported that they recently instituted a new plea policy that takes into account the fact that juveniles are different than adults. This plea policy allows some juveniles to accept a plea to a sentence of probation and/or jail as a last chance before prison. Prosecutors reported that they were likely to use this plea policy for juveniles charged with less serious offenses and who have less extensive records in the juvenile system. In County D, approximately 66% of all probation/jail sentences involve cases where the juvenile is transferred through the judicial discretion provision. Sixty-four percent of all cases transferred through the prosecutorial discretion provision result in a prison sentence, compared to 20% receiving a juvenile sentence and 16% receiving a probation/jail sentence.

Table 18: Outcomes of Juveniles in the Criminal Court, 1997-2003*

	County A	County B	County D
Prison	63%	59%	55%
Probation/Jail	12%	31%	31%
Juvenile	25%	0%	14%

*We only have data for the period from 2001 to 2003 for County B.

Table 19 shows the outcomes of convicted cases where a juvenile sentence is an option in these counties. This table is important because it indicates what courts decide when they have the option for a juvenile compared to an adult sentence. As this table indicates, in Counties A and D, juvenile sentences are fairly common when the option is available. In County B, however, none of the youth tried in the criminal court received a juvenile sentence. In large part, this may be the result of the plea policy enacted by the prosecutor's office. There are two interesting findings to note in Counties A and D. In County A, the prosecutor's office became less willing to offer a plea to juveniles that would provide the option for a juvenile sentence. In County D, none of the 16 total juvenile cases tried in the criminal court received a juvenile sentence in 2002 and 2003. This is in contrast to between 14% and 40% of all cases that were waived by the prosecutor and convicted receiving a juvenile sentence during the period 1997 to 2001.

Table 19: Outcomes of Cases Where a Juvenile Sentence is an Option			
	County A	County B	County D
Prison	16%	50%	23%
Probation/Jail	27%	50%	38%
Juvenile	57%	0%	39%

Sentencing data prior to 1997 from County A and County D allow us to further examine some of the effects of the mandatory adult sentencing provision contained in the 1997 juvenile reform legislation. As discussed several times previously, this change removed substantial discretion from judges to enact a juvenile sentence. Interestingly, in County D, the change did not seem to have much of an effect on the percentage of cases waived by the prosecutor that received a juvenile sentence. Prior to that change, approximately 15% of these cases received a juvenile sentence compared to 19% of the cases following the change. In County A, however, the change had a substantial effect. Between 1989 and 1996, 55% of convicted cases transferred through the prosecutorial discretion provision received a juvenile sentence compared to 25% following the enactment of the 1996 reform legislation. Legal actors in this county reported that the change in sentencing discretion restricted the power of judges and expanded the power of prosecutors by giving them substantial control over individual cases, thereby leading to a much smaller percentage of cases receiving a juvenile sentence.

The data we collected also allow us to calculate minimum and maximum sentence lengths for these youth in order to provide an estimate of when many of these youth will be able to return to the community. In County A, the median minimum length of sentence for juveniles ordered to prison was 5 years and the median maximum sentence length was 17 years. Given that the median age of these youth was 17 at the time of the sentence and that the median amount of credit for time served was approximately 4 months, it is possible to estimate that many of these youth will be eligible for release prior to the their 22nd birthday and that the vast majority will be eligible for release by the time they are 25 years-old. In County B, the median minimum sentence length was only 4.5 years and the median maximum sentence length was 20 years. In County D, the median minimum sentence length was 4.5 years and the median maximum sentence length was 15 years. However, for prosecutorial discretion transfers, the median sentence length was 5 years and for judicial discretion transfers it was 2 years.

Currently, we only have extensive outcome information on designated cases for one county (County A). These data show that adult sentences in designated cases are extremely rare despite the fact that there were a substantial number of designated cases during this period (adult sentences were given for designated cases only three times during the period from 1997 to 2003). Blended sentences were also fairly rare, occurring in approximately 17% of all adjudicated cases. One reason for this is that in a significant number of cases, the designation is dropped as part of the plea agreement. In others, it is the result of the dispositional decision of the judge.

Qualitative data from County B indicate that prosecutors will often pursue a blended sentence as opposed to an adult sentence in most designated cases. One area that we do not have any data on is the decision of judges regarding whether enact the adult sentence when a youth has received a blended sentence. We uncovered several instances in County A where the adult sentence was enacted because the juvenile was picked up a subsequent felony. We do not have data, however, that provide a better understanding of this decision-making process.

9. Explaining Variation in Decisions to Treat Juveniles as Adults

These findings provide evidence that youth are treated differently across these four counties. In several instances, they also point to the fact that youth are treated differently within these counties. While some degree of variation in decision making is expected, the tremendous variation both across and within these counties raises important questions of fairness and equality. Although we cannot conclude for certain that this variation is not the result of differences in the characteristics of the offense and individual offender (juvenile), we do feel that the degree of variation, particularly with regard to the different types of waiver and with regard to the use of designation, provide strong evidence that these differences are not merely the result of the different characteristics of juveniles. Consequently, we assert that these differences are the result of different practices that exist across these counties.

Further, we assert that these practices are influenced by specific court and community contextual characteristics. In particular, we found that the following characteristics influence decisions to treat juveniles as adults in these counties:

a. **Policies of the prosecutor's office with regard to both prosecutorial and judicial waiver.** Prosecutors hold substantial power and discretion to make decisions to treat juveniles as adults or to file motions for judicial transfers/designations, particularly given that the prosecutorial discretion provision does not require that specific criteria be considered and that no appellate review is provided. They also hold increased power and discretion over sentencing outcomes given legislative changes. Numerous legal actors reported that decisions to treat juveniles as adults were largely the result of the specific policies and practices of the prosecutor's office. Our research uncovered a number of examples of the effects of these policies on decisions to treat juveniles as adults. Without more regulation of decisions to treat juveniles as adults, it is likely that decision-making will continue to vary both across and within counties given the different decision-making policies and practices employed by prosecutors' offices.

b. **Centralization of decision making**. This refers to the degree that the discretion to make decisions to treat juveniles as adults is centralized in the prosecutor's office and/or judiciary. With regard to prosecutorial discretion, the degree of autonomy that individual prosecutors have to make these decisions can lead to variation. As discussed previously, prosecutorial discretion decisions are ultimately made by the chief prosecutor or a high level assistant. In two of the counties in our sample, Assistant Prosecuting Attorneys (APAs) in the juvenile division play a major role in the decision, but it is ultimately

approved at a higher level. With regard to decisions to file a motion for a judicial waiver/designation, APAs in the juvenile division have substantial discretion to make these decisions. In two of the counties that have used this mechanism, it was reported that decisions to file motions are not reviewed. In one county, it was reported that several prosecutors have the authority to file these motions. Decentralization of this type is likely to produce some variation both within and across counties. The same is true with regard to judges. When a variety of judges are involved in waiver/designation and/or sentencing decisions, the likelihood of variation increases.

c. **Changes in decision makers (workgroup stability).** Stability in the workgroup that makes these decisions is also an important determinant of decisions to treat juveniles as adults. Stable workgroup membership makes it more likely that specific decision-making patterns will emerge, as decision makers determine the specific criteria that will be applied in decision making and become familiar with norms, rules, and protocols that influence decisions to treat juveniles as adults in specific local contexts. When membership in this workgroup changes, it becomes more likely that variation will occur in decision making. A prime example of this is County B. Prior to 1995, this county had a relatively small number of waivers. This number increased substantially between 1995 and 2000, before decreasing from 2001 to 2003. When discussing this with legal actors in County B, many pointed to the role of the different APAs who were in charge of the juvenile division during these periods. According to these respondents, these APAs handled decisions to treat juveniles as adults differently, leading to the substantial variation in these decisions. We also uncovered examples of the importance of workgroup stability in other counties.

d. **Role of the decision maker.** Judges, prosecutors, defense attorneys, and service providers all play substantially different roles in the juvenile justice system. These roles can influence the way that they interpret cases. With regard to waiver/designation decisions, the shift of power from judges to prosecutors means that discretion has shifted from a neutral party to an interested party. One particular implication concerns the fact that the role of the prosecutor is to "make a case." Consequently, it becomes more likely that prosecutors will look at factors such as strength of case in making this determination. Another implication is that prosecutors may be more influenced by political factors. In addition, institutional role is also related, in part, to ideology. Using a sample of 665 court professionals (judges, prosecutors, defense attorneys, probation officers), we found that prosecutors are significantly more likely to believe both that more juveniles should be eligible for waiver and that more juveniles should be waived.

e. **Flow of cases into the court and the types of issues faced by the court.** Different courts face a range of different problems and issues with regard to case volume and the needs of the population. In some counties courts routinely deal with violent and serious juvenile crime while in others violent and serious juvenile crime is fairly rare. In some counties, courts deal with a high volume of cases, including abuse and neglect cases. In some counties, courts deal with a population where a large proportion of its youth face poverty and other social disadvantages and/or where a large percentage of the population is youth of color. These different factors can influence the way that decision makers

perceive the needs of and threat posed by youth and are likely to produce variation in the way that decision makers interpret both youth and cases.

f. **Degree of threat perceived by decision makers**. A strong thesis has emerged in writings about the increasing trend to treat juveniles as adults, which focuses on the role of race and class in generating perceptions of threat posed by juvenile offenders. The basic argument is that conceptions of juveniles as 'superpredators' are based on unacknowledged considerations of race and class and that these conceptions have facilitated support for punitive policies toward youth. Several scholars have also pointed to the way that decision makers perceive specific populations, particularly poor youth and youth of color, as presenting an increased threat to social order. Perceiving youth as a threat to social order is likely to lead to a greater willingness to treat juveniles as adults. This perception is likely to be influenced by local values and circumstances, as well as the presence of leaders to challenge prevailing perceptions of youth.

g. **Availability of alternative dispositional options for juveniles**. In attempting to understand differences across these four counties, this factor is one of the most important that we uncovered. This factor involves a number of different aspects. First, it pertains to perceptions of the effectiveness of juvenile placements and services. Respondents in each county discussed specific options that they felt were effective. Some reported, however, that access to these options was not always available. This leads to the second aspect of alternatives, the cost of dispositional options. As discussed previously, the funding structure in Michigan requires counties to pay substantially more to send a youth to a juvenile placement than to DOC. With regard to youth charged with violent and serious offenses, this means that counties may face a substantial bill for committing these youth to juvenile facilities for a several year period. While resources are not unlimited in any of these four counties, in two of the four counties it was reported that sufficient resources were available to keep youth in the juvenile system. In the two other counties, it became apparent that a lack of resources does influence these decisions. For example, in County D, respondents noted that the recent increase in judicial transfers was the effect of limited resources for dealing with these youth in the juvenile justice system. This can also be seen in the sentencing practices in the criminal court. The situation was similar in County C. The third aspect involves a perception of the accountability of these dispositional alternatives. An example is the designation provision. In County A, decision makers reported that the flexibility of the blended sentence option served the dual purpose of giving a youth one last chance while holding a "hammer" over his/her head. As discussed previously, decision makers in County B also thought that this provision provided a good alternative to sending juveniles to the criminal court in some cases. The same was not true in County D.

h. **Norms against treating juveniles as adults**. Another important factor involves prevailing norms concerning the treatment of juveniles as adults. Throughout our work, we uncovered an increased willingness to treat juveniles as adults in the justice system. This willingness, however, varied across counties. For example, in one county numerous respondents reported that there was a general tradition of keeping youth in the juvenile justice system. We did not uncover this type of tradition in other counties. The

importance of this type of tradition is that it can facilitate direct and indirect challenges to decisions to treat juveniles as adults. These challenges can influence the way that decision makers interpret cases. For example, in counties where judges and defense attorneys consistently challenge cases, prosecutors are likely to be more selective in the cases that they transfer. Another example involves sponsorship. In counties where legal actors, such as judges, service providers, or administrators, are willing to act as sponsors for youth in the juvenile system, it becomes more likely that a greater proportion of youth will be kept in the system.

i. **Power**. Justice systems have been described as a negotiated order, where actors and agencies compete over ideology, values, resources, and power. This competition occurs both within the court (internally) and outside of the court (externally). Internally, this competition largely involves prosecutors, judges, court administrators, and defense attorneys and is most likely to concern policies, rules, norms, and protocols. Externally, the competition involves a broader set of actors and agencies. For example, because both judges and the prosecutor are elected, they must take into account prevailing sentiments of the public. These sentiments can shape the way that they interpret cases and the decisions that they make. Consequently, gaining an understanding of decisions to treat juveniles as adults requires an understanding of the broader political context in which they are made.

H. RE-ENTRY AND REINTEGRATION

The median age of Michigan youth who enter adult corrections is nearly 17 years although they have committed the crime for which they are sentenced at a younger age. Their median length of stay is 6.5 years so they are about 23-25 years of age when they leave prison. In most instances today, they probably have not received the educational and vocational training that are essential to succeed in U.S. society today. Unless they receive effective reintegration services, they are likely to recidivate and often with a more serious crime.[92] Much of their difficulty in returning home is the community's perception of their felon status, their serious lack of education – both academic and vocational, their lack of family support and the conditions of the community or neighborhood to which they return. We do not have information about the programs that each offender successfully completes in prison, but we have some information from other studies which indicates the seriousness of their handicaps:

1. A study by Sarri, Rollin, et al., in 1997 reported that 56% of juveniles entering juvenile residential programs tested no higher than the 5th grade level in verbal and math tests. Those who achieved higher academic levels had lower recidivism rates following release.

2. This study also indicated that there were marked differences among the counties in the availability, accessibility and effectiveness of reintegration. There was very limited state or federal funding available for re-entry services.

3. Released youth reported that they failed to receive concrete assistance in education, employment, housing and substance abuse. Those youth who received adequate reintegration assistance had lower rates of recidivism even when they had been convicted of a serious felony.

4. Michigan established several pilot juvenile correctional programs in the 1980s that included short-term residential treatment followed by 6-9 months of intensive in-home care. Programs with the longest in-home care reported the lowest rates of recidivism.

5. Findings from several research studies have documented that recidivism rates for similar offenses are far lower in juvenile than adult facilities.

Recent research by Holzer and his colleagues at Michigan State University indicate that employers are hesitant and not enthusiastic about employing ex-offenders without appropriate education for the job to be filled.[93] Another important finding with respect to the population of ex-juvenile offenders is the high likelihood of present or past incarceration of their parents and siblings. This problem is particularly serious for youth of color as was recently noted by Califano and his colleagues in their study of juvenile offenders.[94]

Governor Granholm has stated that there is a need for more employees trained at the college level, but Michigan is releasing thousands of adult and juveniles into the community with high school education or less. The educational status for secondary school students in several Michigan cities is bleak as the recent report from Orfield and his colleagues at Harvard and the Urban Institute indicate. Much money is spent on all levels of incarceration, but very little on rehabilitation and reintegration programs. Serious study of program priorities and policies is essential so that funding for reintegration becomes available. The services of most of the young adults in prison today will be needed as workers for the future.

Table 14: High School Graduation Rates

District	Enrolled	% Min.	Total	Native American	Asi an	Hispanic	Black	White
Detroit	162194	96.3	*	*	*	37.0	*	31.8
Utica	27786	4.4	91.5	*	*	*	*	88.7
Grand Rapids	25625	67.3	26.6	*	46.7	19.3	20.4	*
Flint	22532	80.0	38.8	5.9	*	56.5	38.0	42.8
Livonia	18347	7.0	88.7	53.6	*	69.8	61.9	89.2
Lansing	16610	58.4	44.9	*	53.7	*	44.6	45.2
Dearborn	17169	5.0	73.6	*	*	38.0	17.7	76.8
Ann Arbor	16539	30.7	79.5	*	89.7	*	53.2	84.9
Plymouth-Canton	16518	14.4	80.4	33.3	91.4	86.7	84.8	78.8
Warren Consolidated	14602	6.5	86.6	*	*	*	*	87.3

*data not reported

Source: *Losing Our Future: How Minority Youth Are Being Left Behind by the Graduation Rate Crisis* Gary Orfield, Daniel Losen, & Johanna Wald; The Civil Rights Project at Harvard University Christopher Swanson; The Urban Institute (2004).

[1] Flaherty, M.G. (1980). An assessment of the national incidence of juvenile suicide in adult jails, lockups, and juvenile detention centers. Urbana-Champaign: University of Illinois.
[2] Forst, M., Fagan, J., & Vivona, T.S. (1989). Youth in prison and training schools: Perceptions and consequences of the treatment-custody dichotomy. Juvenile & Family Court Journal, 40, 1-14.
[3] Bishop, D.M., Frazier, C.E., Lanza-Kaduce, L., & Winner, L. (1996). The transfer of juveniles to criminal court: Does it make a difference? Crime and Delinquency, 42, 171-192.
[1] 168 are in foster care and the remainder were with parents, relatives, legal guardian or independent living.
[2] This number understates the total no. of juvenile delinquent facilities because many are referred directly by the courts and there is no total state record of that number for juvenile justice only.
[3] Of the numbers in public institutions, 189 are in Maxey, approx. 90 in Adrian and the remaining in Bay Pines, Nokomis and Shawono. Some youth in Bay Pines and Shawono are classified as detention clients.
[4] Youth are in five low-security centers: Academy Hall, Arbor Heights, Flint House, Parmenter House and Pine Lodge.
[5] Approximately 111 are in detention; 21 in adult jails; and 28 out-of-state; the remaining are awol.
[6] Data was obtained from the Michigan State Police.
[7] Includes murder, rape, robbery, and aggravated assaults.
[8] Includes burglary, larceny, motor vehicle theft, and arson.
[9] Includes simple assaults, drug violations, vandalism, status offenses, etc.
[10] People v. Hana, 443 Mich. 202, 209-210 (1993), cert. denied, 510 U.S. 1120 (1997).
[11] Mich. P.A. 1905, No. 312.
[12] Mich. P.A. 1905, No. 312, § 1. This law also provided for juries of six in all cases, id. § 2, prohibited the placement of any child under twelve-years-old in jail, and required that all children in institutions be separated from adults, id. § 7, and that large counties designate one courtroom as the 'juvenile court room,' id. § 3.
[13] 105 N.W. 531 (Mich. 1905).
[14] The Court also struck the law because judicial responsibilities could not be vested in non-judicial personnel. Id. accord, Hooper v. McKenzie, 105 NW 541 (Mich. 1909).
[15] P.A. 1907, No. 324; P.A. 1907, Ex. Sess. No. 6 (which superceded P.A. 1907, No. 324); see People v. McFarlin, 208 N.W.2d 504, 507 n.1 (Mich. 1973).
[16] P.A. 1907, Ex. Sess. No. 6.
[17] Id. § 1.
[18] CL. 1915, § 2012. The statute used the 'purpose clause' that has survived in similar form to this day, but added this exclusion allowing adult trials of certain youths charged with felonies, by saying, 'this act shall not prevent the trial by criminal procedure in the proper courts of children over fourteen.'
[19] P.A. 1923, § 6.
[20] People v. Dunbar, 377 N.W.2d 262 (Mich. 1985).
[21] See Mich. Comp. Laws Ann. § 712A.4.
[22] Dunbar, 377 N.W.2d at 263.
[23] Dunbar, 377 N.W.2d at 263.
[24] Id. at 269. But see People v. Hanna, 504 N.W.2d 166 (Mich 1993) (reinstating a waiver decision which had been reversed by the court of appeals).
[25] See, e.g., Mich. Comp. Laws Ann. § 750.83, assault with intent to commit murder; Mich. Comp. Laws Ann. § 750.316, first degree murder; Mich. Comp. Laws Ann. § 750.317, second degree murder; Mich. Comp. Laws Ann. § 750.520b, first degree criminal sexual conduct; Mich. Comp. Laws Ann. § 750.529, armed robbery.
[26] See, e.g., Mich. Comp. Laws Ann. § 750.83, assault with intent to commit murder; Mich. Comp. Laws Ann. § 750.316, first degree murder; Mich. Comp. Laws Ann. § 750.317, second degree murder; Mich. Comp. Laws Ann. § 750.520b, first degree criminal sexual conduct; Mich. Comp. Laws Ann. § 750.529, armed robbery
[27] P.A. 1988, No. 52; Mich. Comp. Laws Ann. § 600.606; P.A. 1988, No. 53, Mich. Comp. Laws Ann. § 712A.2; P.A. 1988, No. 78, Mich. Comp. Laws Ann. § 764.1, Mich. Comp. Laws Ann. § 769.1, Mich. Comp. Laws Ann. § 769.1b.

[28] Mich. Comp. Laws Ann. § 769.1(3).

[29] Comp. Laws Ann. § 769.1(3)(a)-(f). The intent of the legislation was to 'treat juvenile offenders who engage in serious criminal activity more harshly by providing adult penalties for certain crimes. ' People v. Veling, 504 N.W.2d 456, 458 (Mich. 1993). These adult penalties were, of course, already available under the old discretionary waiver system. Mich. Comp. Laws Ann. § 712A.4.

[30] See, generally, House Legislative Analysis, HB 4037 et al., July 22, 1996.

[31] P.A. 1996, 247; Mich. Comp. Laws Ann. § 769.1. The offenses are: arson of a dwelling, assault with intent to commit murder, assault with intent to maim, attempted murder, conspiracy to commit murder, solicitation to commit murder, first degree murder, second degree murder, kidnapping, first degree criminal sexual conduct, armed robbery, and carjacking.

[32] See People v. Conat, 605 N.W.2d 49 (Mich. Ct. App. 1999). P.A. 1996, No. 255, amending Mich. Comp. Laws Ann. § 764.1f.

[33] Compare Miller, 503 N.W.2d at 91; see People v. Haynes, 502 N.W.2d 758 (Mich. Ct. App. 1993) (companion case); see also, People v. Dilling, 564 N.W.2d 56 (Mich. Ct. App. 1997) (where the appellate court found no violation of due process where a youth was initially charged as a juvenile, the prosecution successfully moved to dismiss the juvenile charges, and the youth was subsequently charged, tried and sentenced as an adult); People v. Perry, 554 N.W.2d 362 (Mich. Ct. App. 1996); People v. Cheeks, 549 N.W.2d 584 (Mich. Ct. App. 1996); People v. Black, 513 N.W.2d 152 (Mich. Ct. App. 1994); People v. Launsburry, 551 N.W.2d 460 (Mich. Ct. App. 1996) (finding that mandatory sentence of life in prison, without the possibility of parole, was not cruel and unusual punishment). See People v. Hazzard, 522 N.W.2d 910 (Mich. Ct. App. 1994) (where an adult sentence was reversed by the Michigan Court of Appeals).

[34] MCL 712A.4(1) sets forth the requirements for initiating a "traditional waiver" proceeding. That provision states as follows: "If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the family division of the circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense."

[35] Under MCL 712A.2(a)(1), the Family Division has jurisdiction over a juvenile 14 years of age or older who is charged with a "specified juvenile violation" only if the prosecuting attorney files a petition in the Family Division instead of authorizing a complaint and warrant and proceeding in district court. MCL 600.606(1) states that "[t]he circuit court has jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and less than 17 years of age." Although MCL 600.606(1) assigns jurisdiction to "circuit court" and the Family Division is within the circuit court, "automatic waiver" cases are heard in the Criminal Division of Circuit Court. See MCL 600.601(3) and 600.1021(1)(e), limiting the Family Division's jurisdiction to cases under the Juvenile Code, MCL 712A.1 et seq. MCR 6.903(C) defines "court" as the circuit court as provided in MCL 600.606, but not including the Family Division of Circuit Court.

[36] MCL 712A.2d(1) states: "(1) In a petition or amended petition alleging that a juvenile is within the court's jurisdiction under [MCL 712A.2(a)(1)] for a specified juvenile violation, the prosecuting attorney may designate the case as a case in which the juvenile is to be tried in the same manner as an adult. An amended petition making a designation under this subsection shall be filed only by leave of the court."

[37] MCL 712A.2d(2) states in part: "In a petition alleging that a juvenile is within the court's jurisdiction under [MCL 712A.2(a)(1)] for an offense other than a specified juvenile violation, the prosecuting attorney may request that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult. The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult."

[38] Although the Michigan Court Rules include proceedings involving status offenders within the definition of "delinquency proceeding," there are important differences between the two. A status offender, for instance, may only be placed in a secure (locked) facility in limited circumstances.

[39] MCR 6.938. New MCR 6.938 implements MCL 769.1b(5)-(6), providing for a final review hearing preceding the end of the period for which the juvenile is on probation and committed to state wardship. At the hearing, the court is to determine, using criteria drawn from MCL 769.1b(1), whether to sentence the juvenile as though an adult.

[40] In determining whether the juvenile has been rehabilitated or still presents a serious risk to public safety, the court must consider: (a) the extent and nature of the juvenile's participation in education, counseling, or work programs; (b) the juvenile's willingness to accept responsibility for prior behavior; (c) the juvenile's behavior in his or her current placement; (d) the prior record and character of the juvenile and his or her physical or mental maturity; (e) the juvenile's potential for violent conduct as demonstrated by prior behavior; (f) the recommendations of the state

institution or agency charged with the juvenile's care for the juvenile's release for continued custody; and (g) other information the prosecuting attorney or juvenile may submit. MCR 6.938.

[41] MCR 6.938.

[42] Mich. Comp. Laws Ann. §712A.4(1).

[43] Id.

[44] Mich. Comp. Laws Ann. § 712A.4(3).

[45] MCR 5.950(B)(1) and MCL 712A.4 (3); MSA 27.3178(598.4).

[46] MCR 5.950(B)(2) and Mich. Comp. Laws Ann. §712A.4(4).

[47] Prior to the 1996 amendments, this provision of the statute required the court to assess a number of criterion 'giving each weight as appropriate to the circumstances.'

[4848] MCR 5.950(B)(2)(d)(i)-(vi), MCL 712A.4(4)(a)-(f); MSA 27.3178(598.4 (4)).

[49] Mich. Comp. Laws Ann. §712A.4(a).

[50] Mich. Comp. Laws Ann. §712A.2(a)(1).

[51] Mich. Comp. Laws Ann. §712A.2(a)(1)(A)-(I).

[52] MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)91). MCL 600.606(2); MSA 27A.606(2), and MCL 764.1f(2); MSA 28.860(6)(2).

[53] MCL 769.1(1)(a)-(l); MSA 28.1072(1)(a)-(l).

[54] MCL 769.1(3); MSA 28.1072(3).

[55] Frank E. Vandervort, William E. Ladd. The Worst Of All Possible Worlds: Michigan's Juvenile Justice System And International Standards For The Treatment Of Children. 78 U. Det. Mercy L. Rev. 203, 244 (Winter 2001).

[56] See Conat, 522 N.W.2d 910 (Mich. Ct. App. 1994); In re Hawley, 606 N.W.2d 500 (Mich. Ct. App. 1999).

[57] MCL 712A.2d(3); MSA 27.3178(598.2d)(3); MCR 5.903(A)(20).

[58] MCL 712A.2d(3); MSA 27.3178(598.2d)(3), MCR 6.903(D)(9).

[59] MCL 712A.2d (7); MSA 27.3178(598.2d)(7).

[60] MCR 5.903(D)(3).

[61] Mich. Comp. Laws Ann. §712A.2d(1).

[62] Compare Mich. Comp. Laws Ann. §712A.2d(9) with Mich. Comp. Laws Ann. §712A.2(a)(1)(A)-(I).

[63] Id.

[64] MCR 5.914(D).

[65] MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n); MCR 5.903(D)(7).

[66] MCL 712A.18i(1); MSA 27.3178(598.18i)(1).

[67] MCL 712A.18(1)(n)(i)-(vi); MSA 27.3178(598.18)(1)(n)(i)-(vi); MCR 5.955(A)(1)-(6).

[68] MCR 5.955(B).

[69] MCL 712A.18h; MSA 27.3178(598.18h).

[70] Mich. Comp. Laws Ann. §712A.2d(2).

[71] Id.

[72] Id.

[73] Id.

[74] Mich. Ct. R. 5.954.

[75] Mich. Comp. Laws Ann. §712A.18(1)(n); Mich. Ct. R. 5.955.

[76] Mich. Ct. R. 5.955(B).

[77] Mich. Ct. R. 5.955(C).

[78] Mich. Ct. R. 5.955(D); Mich. Comp. Laws Ann. §712A.18.

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[91] See Sarri, R., Shook, J. J., Ward, G., Creekmore, M., Albertson, C., Goodkind, S.,,Soh, J. (2001). Decision making in the juvenile justice system: a comparative study of four states. Ann Arbor, MI: Institute for Social Research.

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APPENDIX

Michigan's Treatment of Juveniles as Adults
Juvenile Waiver, Legislative History

Legislative Action	Rationale	Sources Cited
1988 Amendments		
Generally • Gave the adult criminal court jurisdiction over juveniles charged with serious felonies • Authorized prosecutors to proceed in either juvenile or criminal court when a juvenile was charged with any of a number specified serious felonies • Authorized criminal court to place juvenile with DSS following trial • Revised criteria for making a decision to waive a juvenile to criminal court • Extended the age of continuing jurisdiction for the juvenile court from age 19 to age 21 for youths who committed certain offenses	**Juveniles & Crime** • "Violent and hardened juvenile offenders" (H.B. 5203 & S.B. 137, 12-16-87) • Number of hardened juvenile offenders are higher than ever (H.B. 4731 et al., 7-26-88; H.B. 5203, 3-8-88), according to police, prosecutors, case workers, and the courts (H.B. 5203 & S.B. 137, 12-16-87) • Too many juveniles know the limitations of the juvenile system and work those limitations to their advantage (H.B. 4731 et al., 7-26-88; H.B. 5203, 3-8-88) **Courts** • Some criminal court judges sentence juveniles to probation or to shorter terms than might be expected because of prison overcrowding (H.B. 4731 et al., 7-26-88; H.B. 5203, 3-8-88) • Interpretations of criteria regarding waiver determinations are creating impediments to waiver (H.B. 4731 et al., 7-26-88) according to testimony before the House Ad-Hoc Special Committee on Youthful Offenders and the House Judiciary Subcommittee on Juvenile Justice (H.B. 5203, 3-8-88) **Wayne County** • The need to deal with hardened young criminals is perceived to be the greatest in Wayne County where juvenile crime is the highest but the percentage of waiver petitions granted has been, incongruously, substantially lower (half or less) than elsewhere in the state (Id.)	Police, prosecutors, case workers, and courts

Legislative Action	Rationale	Sources Cited
1996 Amendments		
Generally • Lowered the age for traditional and automatic waiver to 14 years of age • Allowed courts and prosecutors to designate certain juveniles to be tried as adults before the probate (now family) court • Expanded the list of crimes allowing for automatic waiver • Placed the burden of proof on a juvenile to prove, before he or she is released, that he or she no longer presents a threat to society • Required juveniles who used firearms while committing crimes be committed automatically to a detention facility for a specified period of time • Created the new felony of escape from a juvenile facility • Made sentencing in criminal court less discretionary	**Juveniles & Crime** • There has been a significant increase in both the overall number of crimes committed by juveniles and, worse, in the level of violence involved in these crimes (S.B. 281 et al. and H.B. 4037 et al., 5-8-96 (First Analysis), 5-14-96 (First Analysis-Revised), and 7-22-96 (Second Analysis)) • The rate of murders committed by 16 year olds increased by 138 percent between 1985 and 1992 (Id.) • The murder rate for juveniles has jumped 150 percent in the last decade (Id.) • There exists a growing population of juvenile offenders who are without remorse or compassion, and pose an increasing threat to average citizens (Id.) • Those in leadership positions in gangs take advantage of the perceived leniency of the juvenile system by compelling younger members to commit those crimes which carry the most severe penalties for adults (Id.) • Because of the system's leniency, society is confronted with an increasing number of serious juvenile offenders (Id.) • Too many juveniles know the limitations of the juvenile system and work those limitations to their advantage (Id.) • Some violent youthful offenders are not amendable to rehabilitation (Id.) • There is a dire need to respond to the threat provided by the increasing number of dangerously violent juvenile offenders (Id.) • Two youths escaped from Maxey in January 1996 (S.B. 866 et al., 3-14-96) **Courts** • In spite of the current waiver provisions, many of those juveniles tried and convicted at the circuit court level are not sentenced as adults (S.B. 281 et al. and H.B. 4037 et al., 5-8-96 (First Analysis), 5-14-96 (First Analysis-Revised), and 7-22-96 (Second Analysis)) • Statewide, 1/3 of those juveniles convicted as adults of committing one of the listed serious crimes are still placed in the juvenile system rather than sentenced as adults (Id.) • The average teen murderer in any part of the state currently receives only about three years in prison (Id.) • Juvenile courts continue to place greater emphasis on counseling, social casework, detention, probation, and other specialized services (Id.) **Wayne County** • According to the Governor's office, only 1/3 of those juveniles tried and convicted as adults in Wayne County are sentenced as adults (Id.) • Ninety percent of the most dangerous and violent juvenile offenders are still being sentenced as juveniles (Id.)	**National Institute of Justice Journal** • 'That young people commit crime at a high rate is no revelation. Age is so fundamental to crime rates that its relationships to offending is usually designated as the 'age-crime curve.' This curve, which for individuals typically peaks in the late teen years, highlights the tendency for crime to be committed during an offender's younger years and to decline as age advances.' (S.B. 281 et al. and H.B. 4037 et al., 5-8-96 (First Analysis), 5-14-96 (First Analysis-Revised), and 7-22-96 (Second Analysis), quoting NIJJ Aug. 1995)) • Since 1985 there has been a significant increase in the number of murders committed by individuals under the age of 18 (Id.) **Michigan State Police Uniform Crime Reports** • Juvenile arrest rate for serious violent crimes in Michigan increased by 36 percent between 1983 and 1993 (Id., citing UCR) Juvenile murder rate increased by 160.6 percent, the aggravated assault rate increased 71.4 percent, and the arson rate increased 56.1 percent—all increases are higher than those of adult offenders (Id.)

Juvenile Justice Reform in Michigan: A Summary

Types of action/Age of Minor	Court	Crimes or Offenses Covered	Manner of Initiation	Trial or Adjudication Procedure	Sentence or Disposition	Post-Sentence or Disposition
Automatic waiver Ages 14-16 Specified juvenile violations requiring mandatory adult sentencing	Circuit: Criminal Division	• Arson of a dwelling • Assault w/i to murder • Assault w/i to maim • Attempted murder • Conspiracy to commit murder • Solicitation to commit murder • Murder 1st • Murder 2nd • Kidnapping • CSC 1st • Armed Robbery • Carjacking	Prosecutor discretion Complaint and warrant	Adult criminal trial	Mandatory adult sentence	None
Specified juvenile violations not requiring adult sentencing	Circuit: Criminal Division	• Assault w/i to rob – armed • Assault w/i to GBH – armed • Bank/safe robbery • Escape from facility • Home invasion 1st- armed • Attempts, conspiracy & solicitation to commit and lesser included offenses of above • Drug possession 650 grams • Drug delivery 650 grams – narcotics	Prosecutor discretion Complaint and warrant	Adult criminal trial	Hearing to determine if adult or juvenile sentence Court considers only best interests of public, but may order 25 + years in lieu of mandatory life for 650 grams	Review hearings (if juvenile disposition) May order changes in probation, including commitment to Dept. of Corrections
Traditional waiver Ages 14-16	Circuit: Family Division	Any felony	Prosecutor motion Phase I & II hearings (Court shall waive if probable cause & previously waived) Court considers best interests of juvenile and public	Adult criminal trial in Criminal Division	Adult sentence But may order 25 + years in lieu of mandatory life for 650 grams	None

Types of action/Age of Minor	Court	Crimes or Offenses Covered	Manner of Initiation	Trial or Adjudication Procedure	Sentence or Disposition	Post-Sentence or Disposition
Juvenile docket Any age	Circuit: Family Division	Specified juvenile violations	Prosecutor may designate unilaterally	Probate Court trial conducted as trial of adult (including 12 person jury & preliminary exam)	1. Adult sentence 2. Juvenile disposition 3. Delay imposition of sentence Court considers best interests of juvenile and public	Review hearing if juvenile disposition May order changes, including imposition of adult sentence if delayed
Juvenile docket Any age	Circuit: Family Division	Any other felonies or misdemeanors	Prosecutor may request designation Court hearing, required Court may designate on its own motion	Probate Court trial conducted as trial of adult (including 12 person jury & preliminary exam)	1. Adult sentence 2. Juvenile disposition 3. Delay imposition of sentence	Review hearing if juvenile disposition May order changes, including imposition of adult sentence if delayed

Source: Debra Gutierrez and Dan McGuire. Representing Juveniles Tried As Adults Under The 1996 "Juvenile Justice Reform" Legislation Criminal Defense Newsletter, Vol. 22, No. 3. December 1998.

Specified Juvenile Offenses

The starred offenses are those for which juveniles must be sentenced as an adult, or for which an adult sentencing is possible after analysis of criteria (those factors listed infra, pp. 17-18).

*Arson of a dwelling	750.72
*Assault with intent to murder	750.83
Assault with intent to do great bodily harm less than murder with a weapon	750.84
*Assault with intent to kill or maim	750.86
Assault with intent to rob or steal while armed	750.89
*Attempted murder	750.91
Breaking and entering/home invasion with a weapon	750.110a
*Conspiracy to commit murder	750.157a
*Solicitation to commit murder	750.157b
Escape or attempted escape**	750.186a
*First-degree murder	750.316
*Second-degree murder	750.317
*Kidnapping	750.349
*First-degree criminal sexual conduct	750.520b
*Armed robbery	750.529
*Carjacking	750.529a
Bank, and safe or vault robbery	750.531
*Manufacture, Sale, Delivery or Possession of 650 grams Controlled Substance	333.7401; 333.7403

("*" denotes offenses that require an adult sentence)

In addition, attempt, conspiracy or solicitation to commit one of the above specified offenses, or a lesser included offense of above specified charged offenses, or any other violation arising from the same transaction as a charged specified offense, also constitute a specified juvenile offense.

** Adult sentence limited to escape from a high or medium security facility operated by the Family Independence Agency or a privately run high security juvenile facility.

Source: Patrick Clark, 1996 Juvenile Justice Reform Legislation. Available at http://www.cj.msu.edu/~outreach/jj/jjdoc.html, last visited October 13, 2004.