



Juvenile Justice Reform: Waiver/Transfer Hearings

National Conference of State Legislatures

Juvenile Justice Policy Roundtable

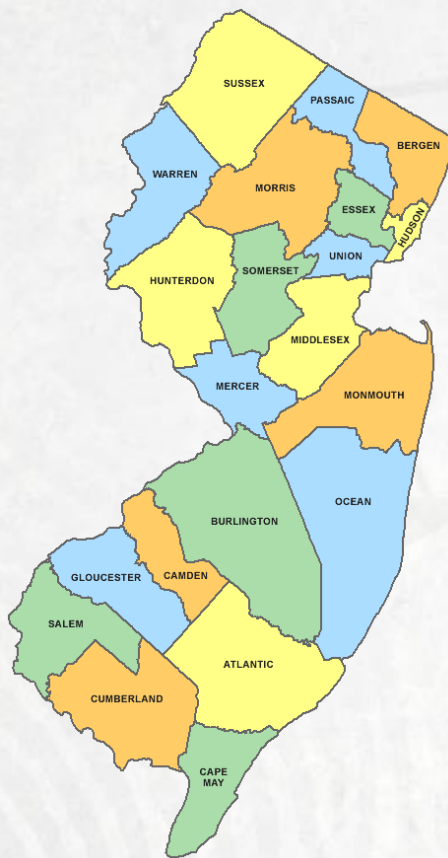
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Prosecutor's Perspective

Prosecutors support improved systems and system change!



Prosecutor's Perspective

Despite the picture that is often depicted





- ▶ There are *many examples* from around the country where prosecutors have supported, initiated and led reform.
 - ▶ Risk Screening Tool in New Jersey
 - ▶ Detention Reform
 - ▶ Diversion Programs/Specialty Courts



Prosecutor's Perspective

(Bad things happen)

- Advancing the reform efforts in your State
 - Include prosecutors
 - Consider the practical implications
 - Be critical of the information being provided
 - Do not change for change's sake
 - The unfortunate reality



Prosecutor's Perspective

(Bad things happen)

- Include Prosecutors in the legislative process....Why?
- Necessary to establish successful reform
 - Practical implications are critical
 - Is the new policy *actually* going to be better
 - Reverse waiver/the juveniles left behind
 - Placement/subjective factors/disparate treatment
 - Extended terms/press and media
 - But.....choose the right prosecutors
 - Experienced juvenile prosecutors



Prosecutor's Perspective

(Bad things happen)

- ✦ Be critical of the research/data being provided and ask questions
 - ✦ *Everyone* has an agenda
- ✦ Example...
 - ✦ Is your juvenile system actually doing well
 - ✦ are you getting the clear picture
(VOP data, recidivism data, placement success)
 - ✦ Are there enough facilities/ placements/ probation officers, judges, etc. Does capacity exist
 - ✦ Are young offenders actually doing better in the adult system



Prosecutor's Perspective

(Bad things happen)

- Do not change for change's sake
- The unintended consequences
 - adults in juvenile facilities
 - science dictating results
 - lose individuality
 - create disparity
 - evaluations, factors, etc.





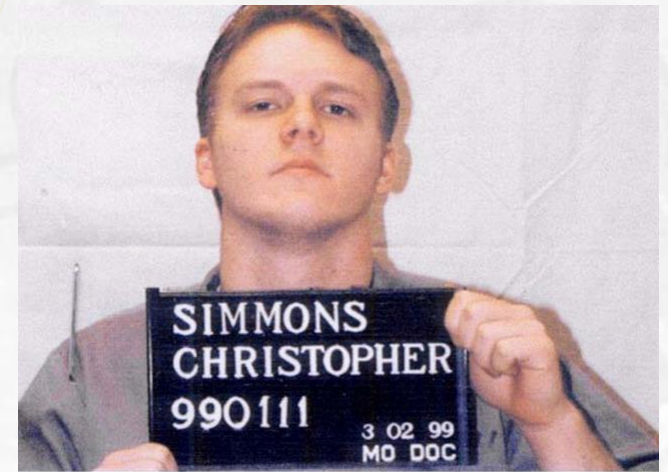
The Unfortunate Truth





Prosecutor's Perspective

(Bad things happen)





Prosecutor's Perspective

(Bad things happen)

- A *well balanced* approach incorporates waiver/transfer as a tool of the juvenile justice system
- Should be the most important decision a juvenile prosecutor makes, but it should not be barred or impossible to achieve
- Should have clear and articulate standards of judicial review, but not absolute judicial control
- Should not stymie plea negotiations or completely take away discretion
 - attorneys may know what a good deal is



Questions?



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Age of Waiver Eligibility

Waiver Eligibility on Motion by the Prosecutor will begin at 15 years old

- ✦ Eliminates waiver by the prosecutor of all juveniles 14 years old and younger



Waiver Eligible Offenses

- Criminal Homicide (except Death by Auto)
- Strict Liability Drug Induced Deaths
- Robbery (First Degree)
- Carjacking
- Aggravated Sexual Assault
- Sexual Assault
- Aggravated Assault (Second Degree)
- Kidnapping
- Aggravated Arson



Waiver Eligible Offenses

- Possession of Firearm unlawful purpose against person or Possession of Firearm while committing or attempting to commit, including the immediate flight therefrom, Aggravated Assault, Aggravated Criminal Sexual Contact, Burglary or Escape
- Leader of a Narcotics Trafficking Network (2C:35-3)
- Maintaining and Operating a CDS Production Facility (2C:35-4)
- Weapon Possession while committing certain CDS offenses (2C:39-4.1)
- An attempt or conspiracy to commit any of these enumerated crimes
- A crime committed at a time when the juvenile previously had been sentenced and confined in an adult correctional facility



Waiver Eligible Offenses

These are now all “crime” based

- ▶ Priors not important at this stage
- ▶ Aggressive, violent or willful manner of crime analysis removed
- ▶ Continuing criminal activity analysis removed

Prior to this statute, there are secondary options available for waiver based upon these other factors



Prosecutor's Filings

State will have 60 days after receipt of the complaint to file waiver motion

- ▶ Allowing more time for prosecutor to evaluate the requisite factors
- ▶ Can be extended for good cause shown
 - ▶ *practically this may be an application on behalf of defendant in an effort to obtain documentation, evaluations, etc...*



Prosecutor's Filings

Statement of Reasons required by Statute

(codifies State in the interest of RC)

- ▶ **Statement of Reasons must be:**
 - ▶ Written statement
 - ▶ Clearly sets forth the facts used in assessing the waiver factors
 - ▶ Explanation as to how evaluation of those facts support waiver
 - ▶ Particularized for each juvenile
 - ▶ All factors must be given weight (is it equal weight?)



What are the Factors?

- Nature and Circumstances of the offense
- Whether the offense was against person or property, allocating more weight for crimes against the person
- Degree of juvenile's culpability
- Age and maturity of the juvenile
- Any classification that the juvenile is eligible for special education (to the extent this information is provided to the prosecution by the juvenile or by the court)
- Degree of Criminal Sophistication exhibited by the juvenile



What are the Factors?

- Nature and extent of any prior history of delinquency of the juvenile and dispositions imposed for those adjudications
- If the juvenile previously served a custodial disposition in a JJC facility and the response to the programs provided at the facility to the extent this information is provided to the prosecution by the JJC
- Current or prior involvement of the juvenile with child welfare agencies
- Evidence of mental health concerns, substance abuse, or emotional instability of the juvenile to the extent this information is provided to the prosecution by the juvenile or by the Court
- If there is an identifiable victim, the input of the victim or victim's family



Practically for the Prosecution

- ✦ This motion should take some time and effort
- ✦ Goal is to truly file waivers that the State intends to pursue
 - ✦ *This has practical implications all by itself*
- ✦ Canned style applicable vs. inapplicable consideration of factors will not withstand scrutiny
- ✦ Individualized assessments should be done
 - ✦ *Language that Armed Robbery is a serious crime alone should not be sufficient*
- ✦ Must consider all factors where information is provided and available (qualitative analysis)



Practically for the Defense

- What information do you want to give the prosecutor?
- No affirmative obligation on the prosecutor to seek out special education services, JJC records, mental health or substance abuse records
- How do these reports help if turned over to the prosecutor (at the hearing and thereafter)
- Ineffective claims for strategy, either by providing too much or not enough information
- Who pays for all these evaluations if they do not exist or are not recent enough (how much weight will [or should] an older evaluation be given)



Scope of Court's Review

- ▶ Every waiver is now a Prosecutorial Discretion waiver with court review
 - ▶ No more two prong waivers
- ▶ Standard is Probable Cause for one of the delineated crimes
- ▶ Court reviews the Statement of Reasons filed and shall waive unless:
 - ▶ The court is clearly convinced that the prosecution has abused its discretion in the consideration of the factors



Scope of Court's Review

- Rehabilitation is no longer considered in the same manner as before
- No longer required to use services, facilities or programs available to the court to show rehabilitation by a certain age
- No longer required to show that the interests of the public require waiver

These factors should now all be woven throughout the prosecutor's statement of reasons



Scope of Court's Review

Abuse of Discretion is a well established standard

- How does the language “clearly convinced” effect the statute
- V.A. writes of a “heavy abuse of discretion standard”- - - Is that still the law
- These are considerations when making a decision on what evidence to present, the manner in which it is presented and the decision to appeal



Reverse Waiver Provision

- After conviction to a non-delineated crime
- With the consent of the defense and prosecutor



Reverse Waiver Provision

After conviction to a non-delineated crime

- ✦ If the juvenile is not convicted of a delineated crime, the matter shall be deemed a juvenile adjudication and be remanded to the Family Part
- ✦ Disposition is in accordance with the juvenile sentencing structure
- ✦ All records related to the act of delinquency shall be subject to the confidentiality of the juvenile code



Reverse Waiver Provision

- ✦ What will this do to plea negotiations
 - ✦ No NERA, No Graves, No PSL or CSL
- ✦ What will happen to the records already released prior to the conviction
 - ✦ Trial coverage, newspaper articles, internet, OPRA requests
- ✦ Case Processing Time in juvenile court
 - ✦ Trial may have taken 2-3 years. What disposition do you give a 20 year old in juvenile court
 - ✦ Is there a need for more hearings - - - PCR's or appeals if convicted of a lesser offense



Reverse Waiver Provision

With the consent of the defense and prosecutor the case can be remanded to the Family Part if it appears that:

- ✦ The interests of the public and the best interests of the juvenile require access to programs or procedures uniquely available to that court and
- ✦ The interests of the public are no longer served by waiver



Reverse Waiver Provision

- These provisions have an incredible impact on decision making throughout the process
 - Do you fight waiver only to get a max offer in adult?
 - Do you accept a juvenile sentence to protect the identity of your client?
 - Adult co-defendants and providing cooperation



Extended Term Provisions

- Shall not exceed 3 additional years for crimes of the first degree
- Shall not exceed 2 additional years for a crime of the second degree
- Juvenile sentences are indeterminate
- *Prosecutors may be willing to not waive for these type of sentences especially in light of the place of confinement provisions*
- That may need to take place prior to the filing of the notice of motion because of the lengthy process
- May be circumstances to consider extending the waiver deadline even beyond the 60 days



Place of Confinement

- Presumption that juveniles, even after waiver and conviction, will serve their sentence JJC custody up until the age of 21
- May continue beyond age 21 in the discretion of the JJC and with consent
- May be helpful for negotiating purposes