

# WAIVING HOPE

AN ANALYSIS OF THE JUVENILE  
WAIVER PROCESS IN NEW JERSEY

JULY 2008

Presented to the Hon. Anne Milgram, New Jersey Attorney General

PRINCETON UNIVERSITY  
**PPIA** 2008 **JSI**  
WOODROW WILSON SCHOOL

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Public Policy & International Affairs  
Junior Summer Institute 2008  
Domestic Policy Workshop  
Woodrow Wilson School of  
Public and International Affairs  
Princeton University  
Princeton, NJ

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## EXECUTIVE SUMMARY

The Public Policy and International Affairs Fellows of Princeton University's Domestic Policy Workshop recommend several strategies to improve waiver procedures and practices in New Jersey's Juvenile Justice Commission.

Due to a shift from a rehabilitative to a punitive philosophy in juvenile justice, states such as New Jersey have pushed for harsher punishments for youth who commit specific crimes. We analyzed whether waiver continues to fulfill the original intent of its legislative creators and ask if waiving a juvenile to the adult court preserves public safety and deters further criminal activity by youth. We have found that waiver does not work in the way it was intended and may have damaging, unintended consequences for the community and for youth.

### THE IMPLICATIONS OF WAIVING JUVENILES TO ADULT COURT

#### ***Juveniles Are Harmed By Detention in Adult Facilities***

Youth incarcerated in adult prisons following conviction in criminal courts face higher rates of victimization, particularly violence and sexual assault, than youths who are sent to juvenile training facilities.

#### ***Waiver Practices Are Inconsistent Across Vicinages***

Our research indicates that the number of waivers granted differs across vicinages, even among those with similar violent crime indices. These discrepancies suggest that current guidelines fail to meet uniform application of the statute.

#### ***The Current Statute Does Not Consider the Rehabilitative Potential for Some Juveniles***

Current waiver law removes from the waiver decision in some cases the issue of whether a juvenile may be rehabilitated by the age of 19. The law formerly allowed for waiver in instances where the probability of rehabilitation outweighed the reasons for a waiver. This probability is not a deciding factor if the offense involves certain serious crimes.

#### ***New Research Highlights Distinctions Between the Juvenile Brain and the Adult Brain***

Scientific studies have shown that adolescent brains are not fully developed; research proves that there is a difference between juvenile and adult brain activity before, during, and after committing a criminal offense. Adolescents, particularly those in their early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Studies of the juvenile brain demonstrate that many adolescents can be rehabilitated and that their ability to think concretely about the consequences of their actions is different from that of adults.

#### ***Minorities May Be Disproportionally Affected by Waiver***

The use of waiver nationally affects minority populations at an unprecedented rate when compared to the white population. There is speculation that there is an unbalanced majority of Black and Latino juveniles who are waived to adult criminal court in New Jersey every year.

## **WAIVER DOES NOT BENEFIT JUVENILES NOR THE COMMUNITY**

Supporters of juvenile waivers claim that transfer is a method used to help protect society from additional harm by transferring juveniles to adult court to receive harsher punishment. They also argue that by demonstrating a “tough-on-crime” stance, the juvenile justice system can deter delinquent youth from further offenses and at-risk youth from ever committing any infractions against their communities. Yet, researchers have not found evidence of either of these outcomes in their studies.

Juveniles treated as adults and incarcerated in adult correctional facilities are at a much higher risk of abuse, rape, and suicide than their peers in juvenile detention. These circumstances cannot serve to rehabilitate the youth, but instead result in hardening and criminalizing them even further, making the juveniles even greater dangers to society than they were before. The overemphasis on punishment rather than rehabilitation has exacerbated rates of recidivism, effectuating results counter to waiver’s goal of community protection. Thus, waiving juveniles to adult court damages the juvenile personally, and increases the likelihood that public safety will be damaged in the future.

## **APPROPRIATE CHANGES CAN BENEFIT BOTH SOCIETY AND JUVENILES**

The following are our primary recommendations. Other recommendations can be found within the report.

- Increase rehabilitation efforts for juveniles in the adult system, including schooling, vocational programs, mental health services, and “sight and sound” protections.
- Establish a commission to examine reasons for the lack of uniform application of waiver guidelines across vicinages.
- Raise the standard of proof needed for waiver from probable cause to clear-and-convincing evidence.
- Retain psychologists to evaluate each juvenile who is motioned for waiver.
- Allow juveniles 16 years old or older to challenge a prosecutor’s waiver motion.
- Study disproportionate minority contact (DMC) of juveniles waived into the adult system.

## **THE IMPLEMENTATION OF THESE SOLUTIONS WILL BENEFIT NEW JERSEY**

Through the implementation of the above recommendations, New Jersey as a whole will benefit. Juveniles will receive more appropriate treatment within adult facilities and the use of waiver will be limited to only the cases where it is truly appropriate.

# INTRODUCTION

## *THE HISTORY OF JUVENILE JUSTICE AND WAIVERS IN NEW JERSEY*

For much of the 20th century, the United States perceived juvenile offenders to be children in need of care and rehabilitation. But once the fourth, fifth, and sixth amendments were granted to juveniles by the 1960s, the priority of rehabilitation for juvenile offenders changed. Key Supreme Court decisions such as *Kent v. United States* (383 U.S. 541, 1966)<sup>1</sup>, *In re Gault* (387 U.S. 1, 1967)<sup>2</sup> and *In re Winship* (397 U.S. 358, 1970)<sup>3</sup> raised questions about how society viewed juvenile offenders' levels of culpability in cases involving violent crimes. Such reform quickly gave way to the just deserts era of the 1980s, and spawned the threat of the emerging juvenile super predator.<sup>4</sup>

The juvenile court was created in 1899, as a result of debate in the Illinois legislature about whether full due process rights and the rights of habeas corpus should be extended to juvenile offenders. The juvenile court was created to "act in the best interest of the child." Legal safeguards that applied to the adult criminal procedure, such as due process rights, were thought to be unnecessary. Therefore, these rights were not made available to juvenile offenders.<sup>5</sup> Instead, the Court's mission was to direct the child into adulthood rather than punishing them.

The 1899 Act also prohibited the incarceration of juvenile offenders under the age of 12, and declared that children over the age of 10 should be placed in State detention. Specifically, the statute stated:

When any child shall be sentenced to confinement in any institution to which adult convicts are sentenced it shall be unlawful to confine such child in the same building with such adult convicts, or to confine such child in the same yard or enclosure with such adult convicts, or to bring such child into any yard or building in which such adult convicts may be present.<sup>6</sup>

This statute precedes the sight and sound separation regulation of today, which physically separates a juvenile offender from adults in both sight and sound in transfer cases, thus creating a prison within a prison for juveniles. By 1910, thirty-two states had a separate juvenile court system, and by 1925 all but two states created separate courts for juvenile.<sup>7</sup> Over the following 50 years, the American Juvenile Court system exercised exclusive jurisdiction over all juvenile offenders under the age of 18. It was only through the court's use of jurisdictional waivers that a youth could be transferred to criminal court. These waivers were made on a case-by-case basis and at the discretion of the Juvenile Court Judge. The decision for waiver was made using the "best interest of the child and the public standard, and were thus in the realm of individualized justice."<sup>8</sup> Also under the exclusive control of the Juvenile Court was the intake process. Unlike in criminal court where prosecutors select the cases that would go to trial, juvenile courts could consider both legal as well as extra-legal factors in the handling of cases. The court handled youthful offender cases using either a formal or informal proceeding, in which due process rights were deemed unnecessary for juveniles. In fact, in the early days of the court, attorneys representing both the state and the juvenile were excluded from the process. Disposition options were used at the judge's discretion and were based on what was viewed to be in the best interest of the child. The treatment prescribed lasted until the youth was rehabilitated or until he or she turned 21, whichever came first.<sup>9</sup> As questions arose regarding the role of the juvenile court in curbing



youth crime, numerous tough federal reforms were initiated, including landmark Supreme Court decisions and the Juvenile Justice and Delinquency Prevention Act of 1974.

Specifically, a 1966 Supreme Court decision dramatically changed the procedure for juvenile court transfer cases. *Kent v. United States* (383 U.S. 541, 1966)<sup>10</sup> established that due process rights are applicable to juveniles. For the first time, the Supreme Court agreed that juveniles should be entitled to the same constitutional rights afforded to adults in criminal courts. Morris Kent, a 16 year old boy, was “denied his due process rights by the failure of the trial judge to hold a hearing prior to transferring the 16 year old to the adult court for trial, and without giving Kent’s lawyer access to the social information relied on by the court.”<sup>11</sup> In reaction to Kent, Justice Fortas wrote that “the child receives the worst of both worlds: that he gets neither the protection accorded to adults, nor the solicitous care nor regenerative treatment postulated for children.”<sup>12</sup> As a result of the Kent decision, it is required that Juvenile Court Judges hold a formal hearing before waiving jurisdiction and transferring juvenile offenders to criminal courts.

### **THE INTENT OF THE JUVENILE JUSTICE SYSTEM HAS CHANGED IN RECENT YEARS**

In the late 1980s and early 1990s, national and state legislatures sought to enact new laws expanding the types of crimes that qualify under transfer provisions because of the fear that a juvenile crime wave was emerging. These laws made it easier to transfer juveniles to adult criminal court. Rep. Bill McCollum brought before Congress the Violent Juvenile and Repeat Offender Act of 1997, which specifically included the following actions:

1. Allow teenagers arrested for crimes to be housed in adult jails for indefinite periods of time;
2. Allow status offenders arrested for acts like truancy, curfew violations and running away from home to be jailed with adults for 24 hours or longer on weekends and holidays;
3. Make juvenile felony arrest records available to colleges to which teenagers apply later in life, even if the youths were never convicted following those arrests;
4. Earmark funds for punishment and detention facility construction but not for prevention;
5. Require that states expel teenagers from high school for up to 6 months for regular use of tobacco; and
6. Give federal prosecutors sole, non-reviewable discretion to try juveniles as adults for all felonies.<sup>13</sup>

The Violent Juvenile and Repeat Offender Act of 1997 rewarded states with \$1.5 billion block grants for enacting harsher penalties on delinquents and for transferring more juveniles into the adult system.<sup>14</sup> According to a 1997 New York Times article:

In order to qualify, states would have to allow most juveniles 15 and older who commit serious violent crimes to be tried in adult courts. They would also have to impose graduated penalties on repeat offenders, establish tracking systems for minors who commit second crimes, make their

records public and allow juvenile court judges to punish parents who fail to supervise convicted minors.<sup>15</sup>

This legislation sought to create a federal framework, which levied harsher penalties on violent juvenile offenders. Senator Orrin Hatch (R-Utah) stated, “[p]eople are expecting us to do something about these violent teenagers. We’ve got to move on this.” His remarks encapsulate the public fear and its effect on the passage of such legislation.

The new national attention on juvenile ‘get-tough policies’ mirrored the changes in punitive policies on the state level. In many states the juvenile court’s maximum age of jurisdiction was lowered, as well as the minimum age for transfer. This allowed courts to more easily transfer younger offenders, in some states juveniles as young as 10 years old were transferred. In lowering the maximum age of jurisdiction, many violent offenders are now considered adults and may be automatically transferred to criminal court systems without adhering to the procedural safeguards of waiver hearings in Juvenile Court. Several states also sought to create uniform and centralized systems of juvenile justice similar to the California Youth Authority model, which bring the courts, probation services, and social services all under one statewide umbrella.<sup>16</sup>

Specifically, state legislatures sought reform in the following five areas. These five focal points were thought to reduce juvenile violent crime and delinquency. Between the years of 1992-1997, every state with the exception of three, adopted new laws in one or more of these five areas:

1. Transfer Provisions (45 States): Laws made it easier to transfer juvenile offenders from the juvenile justice system to the criminal justice system;
2. Sentencing authority (31 States): Laws gave criminal and juvenile courts expanded sentencing options;
3. Confidentiality (47 States): Laws modified or removed traditional juvenile court confidentiality provisions by making records and proceedings more open;
4. Victim Rights (22 States): Laws increased the role of victims of juvenile crime in the juvenile justice process; and
5. Correctional Programming: As a result of new transfer and sentencing laws, adult and juvenile correctional administrators developed new programs.<sup>17</sup>

Such changes resulted in states treating juvenile offenders akin to adult criminals. State-based reforms began to change the character of the juvenile justice system, moving it away from the rehabilitative model that considered best interest of the child, and more towards a punitive model that sought to protect the safety of society as a whole.

Through our research, the issue of waiver is examined with a focus on its potential adverse impact upon the juvenile and society. Though initially created to protect society from violent juvenile offenders and to discourage future violent crimes committed by youth, waiver has not lived up to its original purpose. Issues of juvenile mental health, access to educational and social services, as well as increased recidivism rates for youth who have been waived all highlight the negative implications of transferring youth to adult facilities.

## *THE IMPLICATIONS OF WAIVING JUVENILES TO THE ADULT SYSTEM*

The most recent amendment to the New Jersey juvenile waiver statute has raised many concerns about whether the current system meets the goal of waiver to ensure public safety. The following reforms would address the issue of overemphasis on punishment rather than rehabilitation in the waiver process.

1. Increase rehabilitation efforts for juveniles in the adult system;
2. Allow blended sentencing options;
3. Advocate for non-harmful “sight-and-sound” separation for juveniles in adult prisons for juveniles until age 19;
4. Grant parole instead of longer sentences in adult facilities; and
5. Require educational or vocational programs within adult facilities for waived juveniles until age 19 using resources already existing in each facility.

The juvenile justice system was created on the premise that youth could be rehabilitated from their delinquent or criminal behavior if given the right mixture of guidance, resources, and support. The Office of the Attorney General’s Juvenile Justice Commission (JJC) mirrors this belief with its purpose to “develop and implement strategies for the punishment and rehabilitation of youth.”<sup>18</sup> In the interest of protecting public safety and quality of life in New Jersey communities, which is the overarching mission of the Attorney General’s office, in recent years there has been more emphasis on punishing juveniles than rehabilitating them. A study from 2002 showed that sixty-three percent of Americans believed all juveniles to be capable of rehabilitation, regardless of the crimes that they committed.<sup>19</sup> Despite these figures, the State of New Jersey amended its statute on the issue of juvenile waiver to eliminate the opportunity of juveniles, aged 16 or 17 accused of serious offenses, to prove that they could be rehabilitated via the court’s services by the age of 19.<sup>20</sup> The amendment also expanded the list of crimes for which juveniles could be waived.<sup>21</sup>

This change was an attempt to use judicial and prosecutorial resources more efficiently by expediting the transfer hearing process for juveniles who are more than likely to be waived.<sup>22</sup> However, the amendment devalues the mission of the juvenile justice system by denying particular youths the opportunity to redeem themselves and by increasing the probability that juveniles will be transferred to the adult criminal justice system. The overemphasis on punishment rather than rehabilitation has exacerbated rates of recidivism, effectuating results counter to waiver’s goal of community protection.

### **WAIVING JUVENILES TO ADULT COURT MAY NOT INCREASE PUBLIC SAFETY**

Supporters of juvenile waivers claim that transfer is a method used to help protect society from additional harm by transferring juveniles to adult court to receive harsher punishment. They also argue that by demonstrating a “tough-on-crime” stance, the juvenile justice system can deter delinquent youth from further offenses and at-risk youth from ever committing any infractions against their communities.<sup>23</sup> Yet, researchers have not found evidence of either of these outcomes

in their studies. Critics of waivers have questioned whether juveniles actually receive harsher punishments when transferred to adult courts. A 1996 study concluded that approximately 92 percent of waived youth were convicted, but only 43 percent of them were sentenced with incarceration in the adult system. Nearly half were given probation without access to the rehabilitative programs and services that could have been provided through the juvenile system. Therefore, youth that are deemed incapable of redemption are given few opportunities to prove that accusation wrong once they are waived to adult court. The standard of probable cause, used in the decision to waive youth, is too low to determine a juvenile's guilt or even his/her likelihood of guilt, which has led the cases of many transferred youth to be dismissed in adult court.<sup>24</sup>

Nationally, juveniles are more likely to be incarcerated if they are waived for a violent offense, but the sentences that they receive have not proven to be lengthier than those imposed upon adjudicated juveniles for the same crimes.<sup>25</sup> Once again, waiving juveniles has not proved to have a significant effect on the treatment of juveniles in court or an increase in public safety. In fact, it may produce an adverse effect. Juveniles treated as adults and incarcerated in adult correctional facilities are at a much higher risk of abuse, rape, and suicide than their peers in juvenile detention. These circumstances cannot serve to rehabilitate the youth, but instead result in hardening and criminalizing them even further, making the juveniles even greater dangers to society than they were before.<sup>26</sup>

## REHABILITATION CAN HELP OFFSET RECIDIVISM

Once transferred to the adult system, delinquents are not given the services needed for them to be successfully rehabilitated. A study done by the University of Colorado entitled, "Juvenile Waivers," reported: "There are fewer treatment opportunities for juveniles who are incarcerated in the adult facilities than for those youths who are held in juvenile correctional facilities."<sup>27</sup>

Delinquents given full treatment provided by the juvenile system are less likely to recidivate. Juveniles who do not receive adequate services, such as education, vocational training or substance abuse treatment, are likely to perpetuate the cycle of recidivism. According to a report by the University of Colorado, "Juveniles waived to criminal court are more likely to recidivate, with more serious offenses."<sup>28</sup> Again, keeping juveniles within the juvenile secure facilities, where they are given certain services, would likely lower their chances to recidivate.

The adult prison system creates barriers for a juvenile to obtain an education. Once out of the juvenile system, mental health, substances abuse, and vocational/ educational services are no longer guaranteed. According to a report by Campaign for Youth Justice entitled, "Jailing Juveniles", "Jails do not have the capacity to provide the necessary education and other programs crucial for the healthy development of adolescents."<sup>29</sup> Even though juveniles are legally guaranteed an education in the juvenile system, few jails provide appropriate education to youth (2007). Education is critical to a successful reentry into society. Without a high school education, GED, or vocational training, many of these juveniles are not able to find employment and become productive citizens.

## JUVENILES FACE DANGEROUS CONDITIONS IN ADULT PRISONS

Youth incarcerated in adult prisons following conviction in criminal courts face higher rates of victimization, particularly violence and sexual assault, than youths who are sent to juvenile training facilities.<sup>30</sup> Many adult jails do not have room for these delinquents who have been waived, nor have the resources to accommodate them. Inside the adult system, youth could be subjected to sexual violence and emotional trauma. According to the U.S. Department of Justice Bureau of Justice Statistics (BJS) in 2005 and 2006, 21% and 13% respectively, of victims of inmate-on-inmate sexual violence in jails were youth under the age of 18. Surprisingly, juveniles only make up 1% of the adult prison population. Such physical and emotional damage creates increasing complications to the rehabilitation process of youth. The Campaign for Youth Justice agrees that keeping youth in the adult system deters rehabilitation.<sup>31</sup> If youth are to be kept in the adult facilities, however, “sight and sound” regulations must be vigorously enforced to ensure the safety of waived youth offenders.

## ALTERNATIVES TO DETAINING JUVENILES IN ADULT FACILITIES

We recommend alternatives to keeping juveniles in adult facilities. These options include:

1. Instead of making waived delinquents serve extensive sentences in adult prisons, waived juveniles offenders should be allowed more extensive parole.
2. Blended sentencing should also be considered as an alternative. This type of sentencing would allow for young delinquents to serve time in a juvenile facility until the age of 19, after which they would be moved to adult facilities where they would complete the remainder of their sentences.

Over the next half-decade, thousands of youth will exit the New Jersey juvenile justice system. These juveniles need a transitional program, which eases their return to their communities. The Office of Juvenile Parole and Transitional Services (JP&TS) offers parole supervision to juvenile offenders and helps them transition to home and schools with a steady “step-down” parole procedure. This program holds the youth accountable while also giving them facilitates that include: family reunification, education, and developmental skills. They also enforce and teach a positive goal setting and moral values that will enable the youth to become a member of the community again.

The mission of helping youth reenter into society by the JP&TS is followed by collaboration with the JJC’s Offices of Education, Secure Care, and Community Programs and partnerships with the community. The youth’s family is encouraged to be involved within the re-entry program as well. Throughout New Jersey, there are community-based transitional services, which include day reporting centers, transitional schools, supportive employment opportunities, and short-term transitional living facilities. There are also mentoring and intervention strategies within the community,

which include: gang reduction; family reunification; supporting substance abuse recovery and improving mental and emotional disorders.<sup>32</sup> The same type of system can be used for juveniles in the adult system.

## **THERE IS A NEED FOR SUBSTANCE ABUSE AND EDUCATIONAL SERVICES**

We recommend that vocational/ technical training should be provided to all youth within the adult system. In the adult system, juveniles would not have access to learn vocational skills, which will be useful in re-entry to society. The educational attainment of a youth could determine their progress in society and as an adult. In addition, we recommend that substance abuse programs be available to juveniles in the adult system.

Most youth in jails have not completed their high school education. In the juvenile system, delinquents have access to full-time education staff, while the adult jails have weak educational program. Campaign for Juvenile Justice has also found that, “the educational neglect of youth in adult jails is not only harmful to youth, but it also has consequences for public safety”. In this light, each juvenile should be given the appropriate grade level and the number of hours in school equivalent to public school standards. Teacher-pupil ratios must meet state standards and all individuals that qualify under the Disabilities Education Act (IDEA) should be offered appropriate education. To make this successful, all youth going into the adult system will be screen for educational deficiencies. According to CYJ report, “nearly 30% of all jail inmates under the age of 24 reported having a learning disability”. Youth who qualify for special education programs, but are waived to the adult court, are more than likely not to receive the help they need. Without these services, youth offenders cannot successfully reenter society.<sup>33</sup>

According to a report by the Office of Juvenile Justice and Delinquency Prevention, “drug abuse violations accounted for 203,900 juvenile arrests in the U.S. in 2000.<sup>34</sup> Overall, arrest for substance abuse constitutes 16% of all juvenile arrests. Within the adult system, juveniles lose the opportunity to be fully rehabilitated—from drugs or other illegal substances. Inside the adult system juveniles would lose the right to access substance abuse programs, thus causing greater recidivism amongst drug users. The goal of these services is to equip youth to be productive, “self sufficient and law-abiding citizens after they are released from incarceration, and enabling them to resist re-offending once they have returned to the communities from which they were removed.”<sup>35</sup> Once inside adult jails, youth are no longer guaranteed access to these programs.

## **FAILURE OF REENTRY PROGRAMS RESULTS IN RECIDIVISM**

In light of new research studies and findings, the New Jersey Office of the Attorney General’s Juvenile Justice Commission should revisit its founding commitment to the rehabilitation of juveniles. Current research shows that youth transferred to adult court have higher recidivism rates than their non-transferred peers, meaning that they have a higher likelihood of being rearrested and to re-offend in the years immediately following their release than their non-transferred peers.<sup>36</sup> These were results from a study conducted by Jeffrey Fagan in 1996. Fagan compared

800 juveniles, ages 15 and 16, who had been accused of first- or second-degree robbery or first-degree burglary in New York and New Jersey.<sup>37</sup> Although the states have similar laws for these crimes, 15- and 16-year-old juveniles charged with these crimes were automatically waived to criminal court in New York, whereas the New Jersey youth were adjudicated in juvenile court. Fagan observed that there was no significant effect in the different court processes on burglary offenders. On the other hand, 76 percent of robbery offenders transferred to criminal court were rearrested after their release, but only 67 percent of robbery offenders in juvenile court were arrested. In addition to re-offending sooner after their release, robbery offenders processed in criminal court also had a higher chance of being re-incarcerated (56%) than their adjudicated peers (41%).<sup>38</sup>

Another study conducted in 1996 by Donna Bishop, a Northeastern University researcher, produced similar results. She observed 2,738 juveniles transferred to criminal court in Florida and compared them with a similar cohort of juveniles adjudicated in juvenile court. Bishop found that transferred juveniles were more likely to receive sentences that included incarceration and were incarcerated longer than the adjudicated juveniles. Within two years of transferred juveniles' releases, they re-offended more often and more quickly. They also committed more serious offenses after their release than the adjudicated juveniles.<sup>39</sup>

These studies have shown that public safety has not been improved by the toughening of waiver laws and actually works to reduce community safety by allowing many troubled juveniles to return to their communities without the proper rehabilitative and reentry programs needed to pursue more productive lives in their communities.

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## PART II

### *DISCREPANCIES IN THE MOTION FOR WAIVER ACROSS VICINAGES*

The current Juvenile Waiver Guidelines, issued by former Attorney General John J. Farmer in 2000, remain vague in outlining the factors for a prosecutor's motion to waive. The amendment P.L. 1999, C.373 to statute P.L. 1982, c.77 outlined that the Attorney General should "develop and disseminate to the various county prosecutors guidelines or directives to ensure that the provisions of this section of law are applied uniformly throughout the State."<sup>40</sup>

Our research indicates that the number of waivers granted differs across vicinages, even among those with similar violent crime indices. These discrepancies suggest that current guidelines fail to meet uniform application of the statute.

To apply the juvenile waiver statute uniformly, the Office of the Attorney General should:

1. Prioritize each of the seven factors considered for waiver by assigning each a point value.
2. Establish a commission to examine reasons for the lack of uniform application of waiver guidelines.

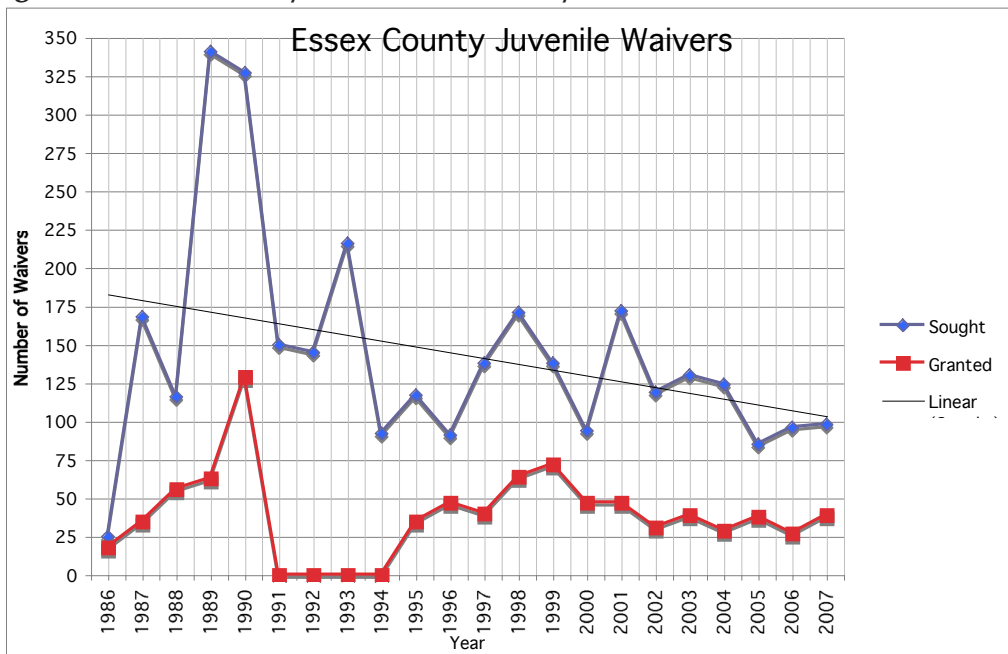
## NUMBER OF JUVENILES PETITIONED TO BE WAIVED VARIES ACROSS VICINAGES

From conversations with multiple actors in the juvenile justice system in New Jersey, we learned that the number of waiver petitions sought by the prosecutor differs across vicinages. These actors mentioned that Camden and Mercer counties tend to seek petitions for waivers in the most severe cases, typically for murder. However, in other counties such as Passaic County, waiver is sought more frequently.

In 2004, Passaic County reported 2,321-petitioned delinquencies and Camden County reported 5,041-petitioned delinquencies.<sup>41</sup> Yet, Passaic County prosecutors sought waivers in 20 more cases than Camden County. Passaic County prosecutors sought waivers in 41 cases and Camden County prosecutors sought waivers in 21 cases. Similar to Passaic, Mercer County reported 2,382-petitioned delinquencies in 2004 and prosecutors sought waivers in 22 cases.<sup>42</sup>

Different counties display different trends in waiver petitions. Essex County, which requests the most petitions, displayed a downward trend in requesting waivers between 1986 and 2007 (see graph below).

**Figure 1: Essex County Waiver Motions by Prosecutors (1986-2007)**

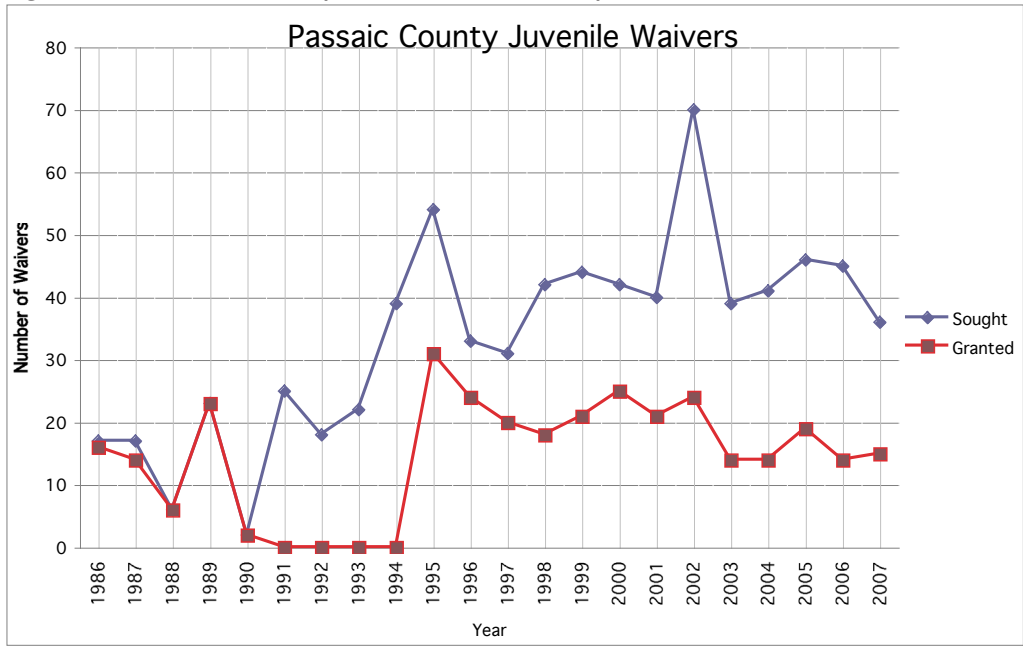


Source: New Jersey Administrative Office of the Courts



Though inconsistent from year to year, the trend is a downward sloping in Essex County. However in Passaic County, we note the following:

**Figure 2: Passaic County Waiver Motions by Prosecutors (1986-2007)**



Source: New Jersey Administrative Office of the Courts

We note the upward sloping trend of Passaic prosecutors’ requests to waive juveniles. Essex County has a higher violent crime index when compared to Passaic County.<sup>43</sup> From 2000-2005, the average FBI’s violent crime index for Essex County was 592 and the average violent crime index for Passaic County was 448.<sup>44</sup> These violent crime indices were based on the arrest rate of people ages 10 to 17, per 100,000 people age 10 to 17 in the county. We see that Essex County has a downward trend in petitions for waivers with a higher violent index rate, while Passaic County has an upward trend of requesting waivers despite its lower violent crime index. These trends represent a lack of uniform application of the statute.

**JUVENILE WAIVER GUIDELINES SHOULD BE REVISED**

The current guidelines provide too much flexibility in the criteria for which prosecutors seek waiver. While the seven factors used today provide a general line of reasoning for all prosecutors, the guidelines fail to state, which factors weigh more heavily. For example, a prosecutor in one vicinage may consider the nature of the offense the most important factor while a prosecutor in a nearby vicinage may place the prior record of the juvenile as more important. The guidelines prevent 16 to 17 year olds from rebutting a motion for waiver because they are unable to show probability of rehabilitation.<sup>45</sup> In addition, the guidelines lack a methodology that produces consistent results. Revised guidelines would provide a rubric to county prosecutors for prioritizing factors used in the decision to waive an offender.

## REVISION OF WAIVER GUIDELINES WON'T BE MET WITH POLITICAL OPPOSITION

Revision of the guidelines would not meet resistance from the state legislature. As previously mentioned, the amendment to Senate Bill 286 explicitly states that the Attorney General's office should draw a set of guidelines so that the statute is "applied uniformly" throughout the state.<sup>46</sup> A revised guideline that prioritizes the seven factors would serve the legislative intent of consistency in the process of seeking waivers among vicinages.

We advise that a revision of waivers be conducted in collaboration with county prosecutors. We have taken into consideration that a revision that excludes county prosecutors may draw opposition from prosecutors.

## CREATE A COMMISSION TO STUDY WAIVER STATISTICS ACROSS VICINAGES

A commission should be created to: 1) identify the reason for discrepancies between vicinages and 2) advise the Attorney General in creating new guidelines.

We were unable to find data that identify the offenses for which Passaic County's prosecutors seek waiver. A breakdown of the number of waivers by offense could explain why Passaic County and other vicinages have higher rates of waiver compared with similarly situated counties. We recommend that this data be collected in order to identify reasons for discrepancies across vicinages.

The commission should consult county prosecutors to create guidelines that advise the Attorney General on specific factors of waivers. We advise that the commission include a liaison from the legislature, the policy consultants or their representatives from the Assembly Judiciary Committee and the Senate Law and Public Safety Committee; two members from juvenile justice organizations; representatives from the Public Defender's Office; representatives from county prosecutors; and representatives from the Attorney General's office. The Attorney General, Director of the Division of Criminal Justice, and the Director of the Juvenile Justice Commission would serve as ex officio members.

The members from the legislature will provide political cover for the commission, defusing concerns that the Attorney General is not executing the statute. The inclusion of members from the juvenile justice advocacy committee provides community organizations an opportunity to shape policy that directly affects their constituents. The representatives from the Attorney General's office should be part of the commission because they are important stakeholders. The number of department members and the process for recruitment has remained undetermined to allow the Attorney General maximum flexibility.

We recognize that the judiciary branch is excluded as a member of the commission. We find that a member of the judiciary on a commission within the executive branch violates principles of

separation of power. Therefore, it would be inappropriate for a judge to present on the commission.

### **INCLUSION OF ALL STAKEHOLDERS WILL MAKE COMMISSION SUCCESSFUL**

With multiple stakeholders included in the process, we foresee little political opposition to the commission. Since the commission exists entirely within the purpose of the statute and the Attorney General's office is represented in the commission, the creation of this commission is the Attorney General's exclusive right.

The ad hoc commission will not impact the bureaucratic structure of the Department of Law and Public Safety permanently. Since the commission reports directly to the Attorney General, the commission will be able to avoid unnecessary bureaucracy.

### **COMMISSION'S ECONOMIC COST**

We foresee minimal fiscal impact on Department of Law and Public Safety. However, the Attorney General should take into consideration the economic cost of high-level officials meeting. Appropriate compensation to the members of the commission is an option. We leave the compensation to be determined by the Attorney General.

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## **PART III**

### ***THE LEGAL IMPLICATIONS OF WAIVER IN NEW JERSEY***

Amended by P.L. 1999, C.373, the current waiver law excludes juveniles 16 years old or older from rebutting a prosecutor's motion to waive. This statutory provision dismisses the juvenile justice system as a judicial institution that grounded in a purpose of rehabilitation for all youth offenders.

The bill removes from the waiver decision in some cases the issue of whether a juvenile may be rehabilitated by the age of 19; the law used to not allow for waiver "in many instances if the probability of rehabilitation outweighs the reasons for a waiver. Under the bill, this probability would not be a deciding factor" when the offense involved certain serious crimes.<sup>47</sup>

We recommend that the Office of the Attorney General engage in a dialogue with the New Jersey Legislature to address the following:

1. Allow juveniles 16 years old or older to challenge a prosecutor's petition to waive; and
2. Raise the standard of proof needed for waiver from probable cause to clear and convincing evidence.

## CHANGE IN STATUTE FAILS TO SERVE ORIGINAL LEGISLATIVE INTENT

Senate Bill 286 (S286) focused on public safety and saving money in waiver trials. The Senate Law and Public Safety Committee indicated: “This bill is intended to enhance public safety by shortening the process by which the cases of juvenile offenders charged with the most serious offenses may be waived from the jurisdiction of the Family Court.”<sup>48</sup> Yet S286 also sought to expedite the process for those juveniles who commit serious crimes. As then-Governor Christine Whitman noted in her veto message of the first print of the bill, the goal of the bill was also to employ “judicial and prosecutorial resources wisely.”<sup>49</sup> Behind the Senate committee’s statement of public safety, the phrase “shortening the process” pushes us towards the conservation of resources suggested by then-Governor Whitman.

## THE JUVENILE JUSTICE SYSTEM’S PURPOSE NEEDS TO BE STRENGTHENED

In balancing the interests of expediting waivers with the goal of rehabilitation, we recommend that the Attorney General work with legislators to reverse S286.

As previously stated, the juvenile justice system’s primary goal is rehabilitation. The juvenile justice system’s purpose is damaged by removing the ability of offenders 16 years old and older to demonstrate his or her capacity for rehabilitation as a reason to not be waived.

Retaining a youth in the juvenile justice system allows them to continue seeking and receiving education and vocational programs offered at New Jersey Training Schools and Juvenile Medium Security Facilities. If these programs can rehabilitate the older juveniles by age 19, we see the short-run cost of keeping the older juveniles in youth facilities as a long-run benefit.

Critics may argue that older juveniles are getting a free pass if legislators were to reverse S286. However, we note that the juvenile must still demonstrate to a judge’s satisfaction that he or she can be rehabilitated. Legislation in favor of restoring judicial discretion for older young people reflects why then-Governor Whitman vetoed the first print of the bill whose purpose was to impose automatic waivers for youth who committed serious crimes regardless of age. Whitman argued: “I am concerned, however, about removing the authority of the family court – a court particularly skilled in dealing with juveniles – to hear evidence regarding a juvenile’s potential for rehabilitation and to have input into the decision to transfer a case to adult court.”<sup>50</sup> Rehabilitation is critical so that juveniles may reenter society as responsible citizens.

## THE BURDEN OF PROOF NEEDS TO BE RAISED

Raising the standard of proof from probable cause to clear and convincing evidence saves money, reflects the higher stakes in the legal process, and mirrors the goal of the juvenile justice system.

In 2007, 47% of waivers sought were granted and 30% of waivers requested by the prosecutor’s office were eventually withdrawn.<sup>51</sup> However, in 1986, 0% of waivers requested were removed

by the prosecutor's office while 79% of waivers requested by the prosecutors were granted. In 1999, the year before S286 came into effect, 21% of waivers requested by prosecutors were withdrawn. In contrast, in 2001, after S286 came into effect, 33% of waivers requested by prosecutors were later withdrawn. Approximately 39% of waivers requested were granted.<sup>52</sup>

Without data broken down by age, it is difficult to assess the impact S286 had on waivers. However, statistical evidence shows 2001 data is different from the 1999 data. This demonstrates that prosecutors are spending more time preparing cases for waiver rather than withdrawing cases. Thus, raising the evidentiary burden of proof to clear and convincing evidence forces prosecutors to consider the likelihood of conviction.

To hold juveniles in adult jails and prisons can cause irreparable damage to the youth because of the proximity to more serious adult offenders and because of increased risk sexual assault and other issues. Given this danger to a juveniles' health, a higher burden of proof fits the legal system's desire for a balancing test of curtailing individual liberties against evidentiary burdens of proof. Waiving a juvenile to an adult court exposes to the juvenile to greater risk. The higher burden of proof appropriately reflects this increased level of risk.

### **CHANGE IN STATUTE MAY DRAW POLITICAL CRITICISM**

Some may criticize the Attorney General's Office of being too lenient on crime if the statute is amended. In response, we advise the Attorney General's Office to evaluate an argument based on the equal protection clause of the Fourteenth Amendment. A juvenile--regardless of the county in which he or she resides--should not face a higher possibility of waiver for a similar crime and similar circumstances because of a difference in geography.

### **CHANGE IN STATUTE IS NECESSARY IN SPITE OF POTENTIAL TO INCREASE COSTS**

Both recommendations may extend the trial time for a candidate for waiver, and would increase the administrative costs. The prosecutor may spend more time in discovery to build a case to meet clear and convincing evidence. While the cost per trial in the juvenile justice system remains undetermined, there would be a rise in cost, which we believe should be taken into consideration.

A balancing test is critical in assessing the fiscal impact of increased trial times and the rehabilitative benefits to a minor. This balancing test is reflected in former Governor Whitman's veto of the first draft of the bill. Then-Governor Whitman noted that effective use of prosecutorial resources was her goal.<sup>53</sup> By raising the burden of proof, we compel prosecutors to weigh carefully their decision to waive a juvenile before presenting a case in front of a family court judge.

## PART IV

### *THE LINK BETWEEN NEUROLOGICAL DEVELOPMENT AND WAIVER DECISIONS*

Scientific studies have shown that adolescent brains are not fully developed; it is thus imperative that prosecutors consider the cognitive capacity of juveniles before waiving juveniles to the adult system. The court should require comprehensive neurological and psychological evaluations of juveniles to determine his/her brain capacity before further judgment can be made in regard to the rehabilitative capacity of the juvenile in question. We recommend the following:

1. Retain psychologists to evaluate each juvenile who is motioned for waiver. Psychologists should review the particulars of criminal allegations, the juvenile's past criminal record, school records, and the effectiveness of the family as a support system for the juvenile to stay out of trouble, and more.
2. Mandate that these psychologists follow through with appropriate treatment for the juvenile.
3. Report the findings of the psychological evaluation to the court and make specific recommendations regarding how psychological treatment can help the juvenile rehabilitate. This information could possibly be used to advocate for keeping the juvenile in the juvenile justice system.

### **SEEK TO UNDERSTAND THE NEUROLOGICAL DEVELOPMENT OF JUVENILES**

Since 2000, many scientists have researched the neurological and psychological differences between juveniles and adults.<sup>54</sup> Research proves that there is a difference between juvenile and adult brain activity before, during, and after committing a criminal offense. These findings have broad implications within the juvenile justice, especially on waiver decisions.

Studies of the juvenile brain demonstrate that many adolescents can be rehabilitated, and that their ability to think concretely about the consequences of their actions is different from that of adults. One of the conclusions is that adolescents, particularly those in their early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Between the ages of seven and fifteen, youth experience rapid growth in their temporal and parietal lobes, in turn affecting their ability to control conduct and to think in long-range terms and consequences. Juveniles are less capable of doing these things than adults.<sup>55</sup>

Additionally, evidence suggests that significant neural maturation takes place during puberty through late adolescence.<sup>56</sup> Since juveniles are neurologically distinct from adults, they should not be treated or tried as adults. The U.S. Supreme Court decision in *Roper v. Simmons* argued that it is unconstitutional to punish individuals with lower brain capacities in the same manner as a capable adult. Neurological distinctions were cited extensively in the case. These references are relevant to those who practice in the juvenile court or who represent juveniles in adult courts. They may also assist lawyers representing youths in making their defense arguments more persuasive.<sup>57</sup>

## RECOGNITION OF CHALLENGES

We are aware that opponents to this recommendation may argue that more details are needed. Clinical practitioners, public defenders, prosecutors and juvenile judges will be key actors in determining the metrics of the evaluations. Further planning on what types of evaluations are appropriate and how they will be carried out is necessary. Overall, there is a need for evaluations to take place and for results to be used in waiver decisions.

## FISCAL IMPLICATIONS OF PSYCHOLOGICAL EVALUATIONS

We understand that using psychologists to conduct psychological evaluations for each juvenile who is motioned for waiver will incur costs for the state. We have not yet been able to attribute a price to the evaluation. We hope the Office of the Attorney General will take initiative and research the cost because psychological evaluations can be a powerful tool to improve the waiver process. It is necessary to use psychological tests to ensure that waivers serve its purpose of prosecuting only those juveniles who cannot be rehabilitated.

## WAIVED JUVENILES SHOULD RECEIVE MENTAL HEALTH TREATMENT

We recommend that all juveniles receive both psychotherapeutic and pharmaceutical treatments in a consistent long-term or short-term plan. Even when juveniles are sentenced to serve time in adult correctional facilities, the juvenile justice system should continue to pursue the goal of juvenile rehabilitation, to the greatest extent possible.

One in every five delinquent youth has a serious mental health condition. In fact, an interview conducted with a group of juvenile offenders by the New Jersey Mental Health Association in 1999 revealed that 20% of the group had an anxiety disorder, 10% had a mood disorder (e.g. bipolarity, depression), and 30% had a disruptive disorder (e.g. ADHD).<sup>58</sup> Although juvenile offenders have higher documented rates of mental health disorders than the general population, research shows that youth mental health needs, particularly among delinquent youth, have long been neglected.

According to a 2003 report by the American Psychiatric Association, there is no systematic mental health screening of youth who enter juvenile justice system, despite the fact that, "as many as 80 percent of youth in the juvenile justice system have a diagnosable mental health disorder."<sup>59</sup> This finding is even more compelling when focusing on juveniles in danger of being waived. Whether this dysfunction is due to a lack of funding, political and public support, or sheer bureaucratic hurdles, there is no way to measure its true impact since there is no national database for rates of mental health disorders and treatment for youth. As a result, current statistics and studies provide only a glimpse into the problem.

Yet, even with the limited statistics available, it is clear that mental health should be a significant concern of the juvenile justice system. Even when a youth is waived, mental health and developmental implications should still be considered in order to fulfill the purpose of waiver, which is to ensure and enhance public safety. Left untreated, mental health disorders quickly progress. Without a proper diagnosis, handing down sentences that merely punish the individual without first assessing his or her psychological stability and needs will only treat the symptoms of and not the root causes of the criminal behavior. Addressing these factors will help avoid placing delinquents in a revolving door between the community and correctional facilities and henceforth decrease rates of recidivism.<sup>60</sup>

### **INSTITUTIONS SHOULD HAVE ACCESS TO MENTAL HEALTH RESOURCES**

We recommend the use of the Regional Substance Abuse and Mental Health Services Program, established by the Juvenile Justice Commission (JJC) in 2008 to equip juvenile and adult institutions with waived juveniles with necessary mental health resources. This program was created to fund programs aiding juveniles in JJC residential centers and secure facilities who have substance abuse and mental health needs.<sup>61</sup> Currently, many institutions, including the Jamesburg juvenile reformatory lack long-term strategies, funding, and professionally trained staff to handle such services. The resources from this fund, which are divided between northern, central, and southern New Jersey, can be extended over to juveniles serving time in the adult correctional system for the aforementioned purposes.<sup>62</sup>

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## **PART V**

### ***DISPROPORTIONATE MINORITY CONTACT IN THE NEW JERSEY WAIVER PROCESS***

We recommend that the Office of the Attorney General:

1. Support the OJJDP Committee in the collection of DMC data.
2. After a year of data collection, the committee should use the data to explain causes of DMC and create effective policies that address DMC.

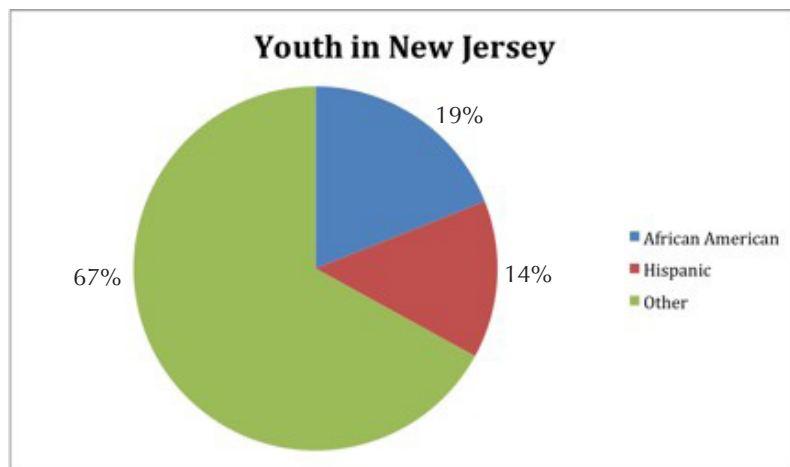
The use of waiver has proven to be unjust because it affects minority populations at an unprecedented rate when compared to the white population. There is speculation that there is an unbalanced majority of Black and Latino juveniles who are waived to adult criminal court in New Jersey every year. This disproportion, referred to as Disproportionate Minority Contact (DMC), is apparent through evidence from other states, anecdotal evidence, and interviews conducted with experts in the field. DMC is ever present in the transfer process due to the nature of crimes that juveniles can be waived for. In the New Jersey juvenile court process, youth 14 years old and over can be waived for crimes that minorities are more prone to be convicted and sentenced for, such as drug and gang related offenses. However, there is no clear data we can use to measure the extent of this disproportion.



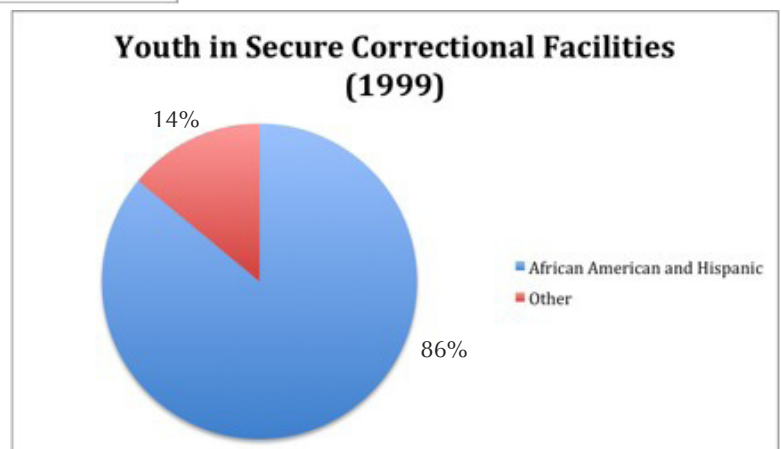
Nonetheless, there is rising concern with recording DMC. This concern has led to the adoption of Relative Rate Index (RRI) matrix to measure DMC. The RRI is a method of comparing the rates of juvenile justice contact experienced by different groups of youth. The RRI compares the arrest rate for white youth to the arrest rate for all racial minorities as a group (and for each racial minority group individually). Typically an arrest rate for a racial group uses a measure of arrests of a group in a year as the numerator and a measure of total population as the denominator.

Within the state of New Jersey, finding data connecting DMC to juvenile justice waivers is nearly impossible. Since data on this relationship has not been collected, there is no definitive way to state that DMC exist within the New Jersey juvenile waiver process. However, about 6-8 week ago, the OJJDP Committee agreed to fund the collection of this data. The data will measure the race of juveniles who are petitioned to and/or waived to the adult system.

By establishing a committee to measure DMC, OJJDP made a progressive step towards change. If OJJDP verifies that DMC does exist within the waiver context (as it has already been proven in other states), the state of New Jersey must proactively strategize to address this problem. Besides measuring rates of DMC in relation to waiver, the fund should also be used to collect data on the main reasons for which minorities are waived. This data may help to explain the prevalence of DMC within the waiver system.<sup>63</sup>



Source: "Building Blocks for Youth."  
<<http://www.buildingblocksforyouth.org/statebystate/njdmc.html>>



## CONCLUSION

Through this report, the 2008 PPIA Junior Summer Institute students who participated in the domestic policy workshop on juvenile justice have sought to highlight how waivers in the New Jersey juvenile justice system are failing to accomplish their original goals. The founding belief that waivers protect society by promoting deterrence and public safety has proven to be fallacious, as evidenced by constant recidivism and other unintended consequences.

Moreover, we critiqued waivers procedurally and in practice. We developed our analysis after examining the discontinuity among proportions of youth waived in similarly situated New Jersey vicinages, the shortage of effective social services to rehabilitate juvenile offenders, and the lack of advanced neurological research that proves that juvenile offenders are mature enough to be waived. This report has also taken into account the possibility that our recommendations may require additional time and financial resources from the New Jersey attorney general's office. Yet, we firmly believe that the benefits of our recommendations outweigh the costs. We ask that the Office of the Attorney General seriously consider the implementation of our recommendations. We believe our effort can serve as a significant step toward correcting the current problems youth offenders face in the New Jersey juvenile and criminal justice systems.

## PART VI: APPENDICES

### *ISSUES RELATED TO THE LARGER CONTEXT OF JUVENILE JUSTICE*

#### **Appendix A: Gangs**

#### **Appendix B: Poverty**

## APPENDIX A: GANGS AND JUVENILE JUSTICE

The following are recommendations to address the problem of juveniles in gangs:

1. Craft programs to address the creative needs of youth gangs in correctional facilities as well as in detention facilities.
2. Implement curriculum that educate youth on the dangers of gang involvement, and establish a program like GREAT to target students early in development and avoid future delinquency.

### YOUTH AND GANGS BACKGROUND

Prolonged gang involvement is likely to take a heavy toll on youths' social development and life-course experiences. Gangs act as "a powerful social networks" in constraining the behavior of members by limiting access to pro-social networks and cutting individuals off from conventional pursuits. Gang involvement tend to produce precocious, off-time, and unsuccessful transitions that bring disorder to life course in a cascading series of difficulties, including school dropout, early parenthood, and unstable employment. For some gang members, the end result of this foreclosure of future opportunities is continued involvement in criminal activity throughout adolescence and into adulthood.<sup>64</sup>

Even though there is a pssssopular belief among youth that joining a gang will afford protection, gang involvement causes more problems. Youth are far more likely to be violently victimized while in a gang. Furthermore, studies have shown that involvement in gang fights more than doubled or tripled the odds of serious injury.

### GANG INVOLVEMENT AND WAIVERS IN NEW JERSEY

Youth involved in gangs is an urgent problem in New Jersey communities. The proportion of gang presence in state municipalities has increased during the last five years.<sup>65</sup> A 2007 Gang Survey found that the top three most prevalent gangs across all counties are the Bloods, MS-13, and Neta. In New Jersey, most gang members are young people of color who live in disadvantaged communities. When evaluating the crimes youth commit that make them eligible for waiver, it is important to consider the link between criminal behaviors that are related to gang membership.

Studies show that gangs act as "a powerful social network," which provide youth a sense of belonging. Since gangs vary across geography, groups, and ideologies there is no definite interpretation of the term. However, there are four components of gang activity and structure widely accepted: criminal behavior, group organization, continuing interaction among members, and identifiable leadership.<sup>66</sup> Our focus is to analyze the criminal behavior that is central to the fabric of gang activity juxtaposing that alongside the crimes youth commit that make them eligible for waiver. After the incarcerated are released, they are faced with returning to their gang infested communities. Since these community members have limited access to jobs it becomes fairly easy to fall back to old gang affiliated social networks to jumpstart economic and social ties.<sup>67</sup> After incarceration, gangs step in for failed social services by offering a sense of community and jobs, often in the form of illegal drug trafficking.

## APPENDIX B: POVERTY AND JUVENILE JUSTICE

The following are recommendations to address the effects of poverty on juveniles:

1. Push for higher cash assistance levels for welfare programs.
2. Establish job-training programs that will assist impoverished citizens become self-sustainable.

### THE CONNECTION BETWEEN POVERTY AND JUVENILE DELINQUENCY

The lack of informal social control or ties with ones family, friends, neighbors, and community contributes to a rise in youth delinquency. Formal networks fall within the legal and bureaucratic system. Criminologists have researched the association between informal social control and juvenile delinquency and have found that with the decline of social control there is a rise in delinquent behavior. Informal social control declines due to the need for family, friends, neighbors, and community to provide for their family or themselves.

### U.S. SUPPORT SYSTEM

The US has a weak support system that does not address the underlying issues of poverty and crime. The lack of social capital in impoverished communities has contributed to the link of poverty and violence. Social capital has the ability to keep families connected to their community while at the same time crafting personal relationships. This is beneficial in keeping youth off the streets. If youth had the ability to be part of voluntary associations, they would be less likely to be involved in deviant behavior.

### POVERTY IN NEW JERSEY

The 2008 Poverty Benchmark report for New Jersey assesses the progress of poverty reduction in the state. Unfortunately, 2008 showed no change in poverty rates in New Jersey. Since 2005, the child poverty rate also remained unchanged. The poverty gap or mean family income deficit has widened. This gap measures the amount of income needed to pull a family out of poverty. The poverty gap has increased by \$147 since 2005. This poverty gap in New Jersey is highest among the surrounding northeast states and more than \$200 higher than the U.S. average.

### ANTI-POVERTY PROGRAMS IN NEW JERSEY

Cash assistance levels provided by state government to households on welfare have not increased since 1987; they have fallen to less than one-third of the federal poverty threshold income in 2006.

### CHILDHOOD POVERTY

Child welfare reform efforts include two family support services to assist families in accessing resources that can improve the impacts of poverty. Family support centers and Differential Response Initiative have been established to address childhood poverty. While these programs are a step forward, funding is limited and not all areas of the state are covered.<sup>68</sup>

## REFERENCES

1. Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045 (U.S. Supreme Court 1966).
2. In re Gault, 387 U.S. 1, 87 S.Ct. 1428 (U.S. Supreme Court 1967).
3. In re Winship, 397 U.S. 358, 90 S.Ct. 1068 (U. S. Supreme Court 1970).
4. Austin, J.F.; Krisberg, B. (1993). Reinventing Juvenile Justice. Thousand Oaks, California: Sage Publications.
5. Howell, J. C. (1997). Juvenile Justice and Youth Violence. Thousand Oaks, California: SAGE Publications, Inc.
6. Ibid.
7. Snyder, H. N., & Sickmund, M. (2006). Juvenile Offenders and Victims: 2006 National Report. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
8. Ibid.
9. Ibid.
10. Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045 (U.S. Supreme Court 1966).
11. Ibid.
12. Ibid.
13. Macallair, D. (2002). The Will of the People: The Public's Opinion of the Violent and Repeat Juvenile Offender Act of 1997. San Francisco, California: Center on Juvenile and Criminal Justice.
14. Ibid.
15. Gray, J. (1997, May 9). House Passes Bill to Combat Juvenile Crime. The New York Times.
16. Macallair, D. (2002). The Will of the People: The Public's Opinion of the Violent and Repeat Juvenile Offender Act of 1997. San Francisco, California: Center on Juvenile and Criminal Justice.
17. Shiraldi, V. ; Soler, M. (1998). The Will of the People: The Public's Opinion on Violent and Repeat Juvenile Offender Act of 1997. Washington, D.C.: The Justice Policy Institute.
18. State of New Jersey Juvenile Justice Commission (2008). Office of the Attorney General. Retrieved July 15, 2008, from <http://www.state.nj.us/lps/summaries.htm>.
19. Ibid.
20. Anderson, D. P. (2000, January 24). Ease conditions for trial of certain juvenile offenders as adults. Administrative Office of the Courts, State of New Jersey.
21. Ibid.
22. Ibid.
23. Campaign for Youth Justice. (2007). The consequences aren't minor: The impact of trying youth as adults. Retrieved July 14, 2008, from <http://sentencing.nj.gov/downloads/pdf/articles/2007/Apr2007/document01.2.pdf>.
24. Jeffrey, B., Mitchell, O. (2000). Brick by brick: Dismantling the border between juvenile and adult justice. Urban Institute. Retrieved July 14, 2008 from [http://www.urban.org/UploadedPDF/1000234\\_brick-by-brick.pdf](http://www.urban.org/UploadedPDF/1000234_brick-by-brick.pdf).
25. Ibid.
26. Ibid.
27. Juvenile Waivers. ( 2005). University of Colorado.
28. Ibid.
29. Campaign for Youth Justice. (2007). The consequences aren't minor: The impact of trying youth as adults. Retrieved July 14, 2008, from <http://sentencing.nj.gov/downloads/pdf/articles/2007/Apr2007/document01.2.pdf>.
30. Ibid.
31. Ibid.
32. Campaign for Youth Justice. (2007). The consequences aren't minor: The impact of trying youth as adults. Retrieved July 14, 2008, from <http://sentencing.nj.gov/downloads/pdf/articles/2007/Apr2007/document01.2.pdf>.
33. Ibid.
34. Office of Juvenile Justice and Delinquency Prevention. 2000.
35. Ibid.

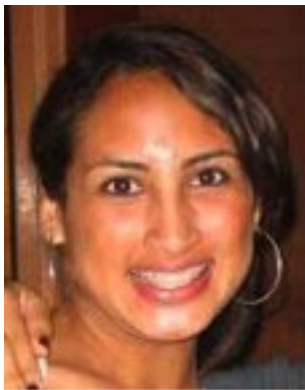
36. Jeffrey, B. & Mitchell, O. (2000). Brick by brick: Dismantling the border between juvenile and adult justice. Urban Institute. Retrieved July 14, 2008 from [http://www.urban.org/UploadedPDF/1000234\\_brick-by-brick.pdf](http://www.urban.org/UploadedPDF/1000234_brick-by-brick.pdf).
37. Ibid.
38. PBS. (2001). Juvenile justice: Does treating kids like adults make a difference?. Retrieved on July 13, 2008 from <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/kidslikeadults.html>.
39. Ibid.
40. Statement to Senate Bill 286 (Girgenti and Kosco), adopted March 19, 1998.
41. Stahl, A., Livsey, S., and Kang, W. Easy Access to State and County Juvenile Court Case Court Case Counts, 2004. Retrieved June 20, 2008 from, <http://www.ojjdp.ncjrs.gov/ojstatbb/ezaco>. (2007).
42. Administrative Office of the Courts.
43. Puzanchera, C., Adams, B., Snyder, H., and Kang, W. Easy Access to FBI Arrest Statistics 1994-2005. Retrieved June 20, 2008 from <http://ojjdp.ncjrs.gov/ojstatbb/ezaucr> (2007).
44. Ibid.
45. Farmer, J. (2000, March 14). Scope of the Guidelines. Attorney General Juvenile Waiver Guidelines, March 14, 2000
46. Statement to Senate Bill 286, adopted March 19, 1998.
47. Statement to Senate, No. 286, Senate Law and Public Safety Committee, February 23, 1998.
48. Ibid.
49. Christine Whitman, Governor's Veto Message to S286.
50. Ibid.
51. Administrative Office of the Courts.
52. Ibid.
53. Christine Whitman, Governor's Veto Message to S286
54. Benoit, M.D., Marilyn B., (2006, May 5). Brain Development and Adolescent Mental Health: Implications for Juvenile Justice. Coalition for Juvenile Justice.
55. Shepherd, Jr., Robert E. The Relevance of Brain Research to Juvenile Defense. American Bar Association. 2005.
56. Benoit, M.D., Marilyn B., (2006, May 5). Brain Development and Adolescent Mental Health: Implications for Juvenile Justice. Coalition for Juvenile Justice.
57. Shepherd, R. E. (2005) The Relevance of Brain Research to Juvenile Defense. American Bar Association.
58. Ibid.
59. Ibid.
60. New Jersey Mental Health Association. (1999). The Community Assessment Project: A Look at Mental Health and Substance Abuse Treatment Needs.
61. Juvenile Justice Commission. (11 June 2008). Notice of Availability of Funds: Regional Substance Abuse and Mental Health Services.
62. American Psychiatric Association. (2003). Mental Health Advocates Hope Outreach Benefits Youth on Probation. Retrieved from Psychiatry Online: <http://pn.psychiatryonline.org/cgi/content/full/38/15/10>.
63. National DMC Databook. Office of Juvenile Justice and Delinquency Prevention. Retrieved June 20, 2008 from, <http://ojjdp.ncjrs.gov/ojstatbb/dmcdab/asp/whatis.asp>.
64. Reentry and Gangs Briefing Paper. (2007). New Jersey Institute for Social Justice. Retrieved June 20, 2008 from, <http://www.google.com/search?q=New+Jersey+Institute+for+Social+Justice+Reentry+and+Gangs+Briefing+Paper&btnG=Search>.
65. Ibid.
66. Ibid.
67. Ibid.
68. Legal Services of New Jersey Poverty Research Institute. (2008). Poverty Bench Marks 2008: Assessing New Jersey's Progress in Addressing Problems of Inadequate Income.

## CONTRIBUTORS



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Selena is interested in both international and domestic issues, particularly those that affect disadvantaged communities. She participated in an intensive six-week program at East China Normal University. She has interned with an assemblyman in the NYS legislature and in the Dutchess County Courtrooms, as well as attended the PPLC conference at Harvard University. Selena intends to pursue a Ph.D in Public Policy and use her expertise to help better society and fulfill her commitment to public service.



**Drea Chicas**  
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Drea is committed to improving the quality of life for inner city youth. She will pursue a public policy degree after she graduates next spring from Occidental College in Los Angeles, CA. But first she must get some work experience in the field! While she has found that quantitative skills are critical tools to master in the public policy realm, another thing she deems absolutely necessary is passion. A lover, a humanist, and an idealist, she will dedicate her lifework to service with the expectation of change.



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William is a senior at the University of California, Berkeley. He is the co-founder of the HIV Youth Project to combat HIV/AIDS stigma among youth, queer-identified, women, differently-abled people, and communities of color. He also serves as advocacy co-chair of the National Asian American Student Conference board. William is passionate about queer, violence and mental health issues, especially within communities of color.



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Curtis is an advocate for equal education for lower-income urban students. He has interned with the Council for Opportunity in Education, where he tracked federal policy concerning the Upper Bound Program, and served in a leadership position for the National Student Leadership Congress. He has also helped further the cause of urban students in the academic world by presenting at the National Conference of Race and Ethnicity (NCORE) and the New Jersey Association for College Admissions and Counseling.





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Seyron will be studying at Fudan University in Fall 2008. Currently, he works at the War Crimes Studies Center, examining the prosecution of crimes of sexual violence in the context of genocide and crimes against humanity. Seyron was also a Platinum Fellow for Assemblymember Wilmer Amina Carter. At the State Assembly, he worked on transportation policy for goods movement. Seyron will pursue a MPA and hopes to serve the United Nations as a political affairs officer.



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Kimberly intends to pursue an MPA with a concentration in criminal justice or social welfare policy. She looks forward to working in the U.S. Department of Justice, a state department of corrections, or a nonprofit organization dedicated to social justice. She would also like to travel the world to study the best practices of countries with progressive criminal justice and social welfare systems.



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LaShunda has a deep passion for working with at-risk youth. During her time in undergrad she has had the pleasure of working with young people through the Upward Bound program, Many Faces program, and an internship with her local juvenile court. Following graduation from UTC, LaShunda plans to pursue a joint MPA/JD with an emphasis in urban policy and planning and public interest law.



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During her junior year she was a Public Service Scholar intern at the United Way. She worked with the Strengthening NYC Nonprofits and Grant Making divisions to help nonprofits tackle root causes of poverty. She co-founded the Coalition for the Revitalization of Asian American Studies at Hunter (CRAASH)—a student advocacy group striving to improve Asian American Studies programs. In the fall, she will be traveling to India, South Africa and Argentina to study urban policy.

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Javier has participated in the Undergraduate Apprenticeship Program and assisted professors with their research in Political Science and Sociology. He has interned for Mayor Gavin Newsom's office and assisted in the Youth Court program. He has also been a member of the Psychology club, Psi Beta National honor Society, and UCB Model United Nations. He volunteers as a tutor for elementary and middle-school children and participates in events that encourage them to develop a love for learning.



**Natalia Ospina**  
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Natalia has participated in organizations serving immigrant and under-represented communities in New York City. She has worked for the city's Spanish language newspaper, El Diario la Prensa, and the Mayor's Office of Immigrant Affairs. She has also volunteered as a counselor at The Door and has been an active leader in NYU's student organization, L.U.C.H.A (Latinos United with Honor and Friendship). As co-founder of an alternative school newsletter, RAICES: Educate, Motivate, Ignite, it has been her goal to help provide an open discussion forum for students of color.



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Sarah was selected as a 2008 Harry S. Truman Scholar on the basis of her commitment to public service, specifically in alleviating problems related to poverty and inequality. She was born and raised in Memphis, TN and plans to pursue both a law degree and an MPA. Her interests are in urban community development, corporate social responsibility, working as an Assistant District Attorney, and running for public office in Tennessee.



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Kim recently finished her honors thesis and book, *Things Happen for a Reason: Even Foster Care and Adoption*. She also works as a teaching assistant at UCI and an instructional aid for special education students at the Early Childhood Learning Center. She was an Americorps member for Jumpstart for America, where she devoted 300 hours to serve low-income pre-school children for one year. She plans to open her own non-profit and become an active policy maker to improve the foster care system.



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Karla volunteers at the Nashville Ronald McDonald House and as a Girl Scout Troop Leader at Cora Howe, a local elementary school in Nashville. She plans to pursue a joint JD/ MPA or MPP. Karla has been elected to serve on the Executive Board of the Student Government Association as Miss Fisk University 2008-2009. As the official ambassador to the university, she will honor its historical roots and improve the Fisk experience by encouraging the university to journey along the uncharted paths.

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