

Juvenile Court Judges' Attitudes Toward Waiver Decisions in Indiana

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There has been an increase in the number of state laws subjecting juvenile offenders to tougher penalties and reducing the age at which an offender may be waived to criminal court. Indiana is one of the 46 states in which the juvenile court judge maintains the discretion to waive juvenile offenders to criminal court. An instrument was developed to measure judges' perceptions of what factors affect their waiver decisions. A self-administered questionnaire was sent to approximately 200 juvenile court judges, magistrates, and referees. Primary analysis used frequencies, cross-tabulations, and measures of association. No relationships were deemed statistically significant between the gender of the judges and the factors they perceive to be important in determining which offender should be waived to criminal court. Judges' age also was found not to be statistically significant. However, statistically significant relationships were observed between the location of judges' court and their perceptions of factors they consider in their waiver decisions.

Introduction

There is a trend in the United States of treating juvenile offenders like adults. There has been an increase in the number of state laws subjecting juvenile offenders to tougher penalties and reducing the age at which an offender may be waived to criminal court. The laws have also increased the crimes for which offenders may be automatically waived to criminal court (Snyder & Sickmund, 1999 1996; Torbet et al., 1996). The number of juvenile offenders waived to criminal court may well have increased as a result of these changes. Currently, 46 states give juvenile court judges discretion to determine which juvenile offenders are waived to criminal court if the offender did not commit a crime that by law automatically results in waiver to criminal court (Sickmund & Snyder, 1996; Torbet et al., 1996). Indiana is one of the 46 states in which the juvenile court judge maintains the discretion to waive juvenile offenders to criminal court unless the following circumstances are present:

the offender is at least 14 years of age, the act is "heinous or aggravated", child is beyond rehabilitation, best interests of society, or the child is 16 years of age, committed a serious drug offense (IC 35-48-4), and it is in the best interests in society, the child is 10 years of age and committed murder; or the child is 16 and committed a class A or B felony, involuntary manslaughter, reckless homicide and it would be in the best interests of the community and last, the youth committed with a felony and has been previously convicted of a felony or a non-traffic misdemeanor. (IC-30-3-2-6)

If juvenile court judges feel that they need additional information to make their waiver decisions, they may consider other statutory factors such as an offender's age, history of child abuse, familial stability, and education status, among others. An important reason why this particular area of the juvenile justice system is so important is for policy makers to obtain a better picture of what factors judges have deemed important in determining the best manner to deal with juvenile offenders. Who better than judges

themselves to help formulate such policy? Thus, it is important to understand what affects juvenile court judges' waiver decisions.

Waiver decisions may be affected by the juvenile court judges' individual characteristics such as gender, race, age, and/or size of court. For instance, male juvenile court judges might consider different factors in their waiver decisions than female juvenile court judges. Older juvenile court judges may consider different factors in their waiver decisions than young juvenile court judges. This is an exploratory study to see what factors affect juvenile court judges' perceptions in making their waiver decisions.

I administered a survey to juvenile court judges in Indiana, to determine whether their individual characteristics affect their perceptions in their waiver decisions. In other words, do male juvenile court judges consider different factors in their waiver decisions? Do older juvenile court judges consider different factors in their waiver decisions? Do juvenile court judges from urban and rural courts consider different factors in their waiver decisions?

Theory

Attitudinal theory is an appropriate theoretical approach to use to examine the relationships between judges' attitudes and their waiver decisions. Attitudinal theory posits that an individual's attitudes are shaped by his/her beliefs that are formed by his/her life experiences (Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; Fishbein & Ajzen, 1975; Freedman, Carlsmith & Sears, 1974; Pennington, 1986; Penrod, 1986; Segall et al., 1966). Social psychologists have labeled this form of attitudinal theory as basic attitudinal theory.

Basic attitudinal theory suggests that an individual's beliefs, values, and attitudes give rise to an individual's intention that will then determine an individual's behavior (Fishbein & Ajzen, 1975). For example, an individual who is prejudiced against African-Americans may treat such individuals in an unfair manner. Thus, social psychologists argue that attitudes are extremely important because they are the key component in developing a complete understanding of an individual's behavior (Eiser, 1986; Pennington, 1986). Scholars suggest that society is constantly bombarded with advertisements by the media that promote a positive attitude toward a particular product so that consumers will purchase such items. (Berkowitz, 1972; Brigham & Wrightsman, 1982; Brown, 1965; Doob, 1952; Eiser, 1986; Freedman, Carlsmith & Sears, 1974; Lambert & Lambert, 1973; Pennington, 1986; Penrod, 1986). Similarly, those juvenile court judges who are provided with numerous articles containing information suggesting various factors that affect an offender's involvement in delinquency may use this information to make their waiver decisions.

There are several studies that were conducted beginning in the mid-1930s using basic attitudinal theory that tried to show that individuals' behaviors could be predicted based on their attitudes (Brigham & Wrightsman, 1982; Pennington, 1986). However, the majority of the findings did not find any correlation between individuals' attitudes in predicting their behavior (Berkowitz, 1972; DeFleur & Westie, 1958; LaPiere, 1934; Wicker, 1969). Scholars suggest that the negative findings may have been a result of methodological problems. For instance, basic attitudinal theory does not take into consideration extraneous factors such as an individual's demographic characteristics (Berkowitz, 1972). Men and women, for instance, often have different attitudes toward the death penalty (Bohm, Clark, & Aveni, 1991; Gallop &

Newport, 1991). Taking the example one step further, male and females may favor different political candidates based on his/her platform position on the death penalty. Thus, an individual's attitude based on his/her gender may predict who he/she will vote for in an election (Berkowitz, 1972). Similarly, male and female judges may have differing attitudes toward which factors should be considered in waiver decisions.

Literature Review

A review of the judicial waiver literature reveals that it is not as well developed as the juvenile justice sentencing literature. For example, research has examined factors related to sentencing decisions within the juvenile justice system have explored such wide ranging topics as offense seriousness (Bishop, Frazier, & Henretta, 1989; Fagan & Deschenes, 1990; Fagan, Forst, & Vivona, 1987; Osburn & Rode, 1984), prior record (Bishop, Frazier, & Henretta, 1989; Fagan & Deschenes, 1990), race (Bailey & Peterson, 1981; Bortner & Reed, 1985; Fagan, Slaughter, & Hartstone, 1987; Horwitz & Wasserman, 1980; Tittle & Curan, 1988), sex (Champion & Mays, 1991; Chesney-Lind, 1988; Edwards, 1989; Johnson & Scheubles, 1991; Nagel & Hagan, 1983; Steffensmeier et al., 1993), education status (Bartollas & Miller, 2001; Cox et al., 2003; Jackson & Knepper, 2003; Sanborn, Jr., 1996; Schaefer & Polk, 1972; Siegel & Welsh, 2005; Thornberry et al., 1985), family structure (Hagan, Hewitt, & Alwin, 1979; Sanborn, 1996; Scarpitti & Stephenson, 1971; Steinberg, 2000; Thornberry, Smith, Rivera, Huizinga, & Stouthamer-Loeber, 1999; Thomas, 1977) location of residence (Poulos & Orchowsky, 1994; Sanborn, 1996), socio-economic status (Carter, 1979; Carter & Clelland, 1979; Cohen, 1975; Scarpitti & Stephenson, 1971; Thomas & Cage, 1977; Thornberry, 1973), the influence of probation officers (Cromwell, Alarid, & Carmen, 2005; Norman & Wadman, 2000; Sanborn & Salerno, 2005; Steven, 2006) and the internal dynamics of the courtroom itself (Bender & Leone, 1991; Clark & Koche, 1980; Hasenfeld & Cheung, 1985; McCarthy, 1987; Peterson, 1988; Puritz, Burrell, Schwartz, Soler, & Warboys, 1995; Scheingold & Gressett, 1987; Streib, 1987; Ulmer, 1994; Wooldredge & Gordon, 1997). Hence, it seems relevant to include such factors as variables that judges may consider in their waiver decision.

Other factors also excluded from the judicial waiver literature but are examined in the delinquency literature are gang membership (Huff, 1998; Rochester Youth Development Study, 1999; Sampson, 1986), history of child abuse (DeHart, 2004; McCormack, Janus & Burgess, 1986; Phelps, 1982; Sanborn, 1996), use of a weapon (Fagan et. al., 1987; Lizotte & Sheppard, 2001; Rochester Youth Study, 1999; Scales & Baker, 2000), presence of co-participants (Fagan & Deschenes, 1990; Lynch, 2002; Sanborn & Salerno, 2005), and illegal drug and alcohol use (Elrod & Ryder, 2005; Sanborn & Salerno, 2005). The literature suggests that there is a relationship between such factors and youths involvement in delinquency. Hence, if such factors affect a youth's involvement in delinquency, judges may consider such factors as important in making their waiver decisions.

Judicial research has primarily examined how legal factors (e.g. offense seriousness and prior record) influence judges' waiver decisions. For example, a number of studies have found that youth who commit violent crimes, especially with a prior record, are more likely to be waived to criminal court (Clarke & Koch, 1980; Henretta et al., 1986; McCarthy & Smith, 1986; Rudman et al., 1986; Thornberry, 1973; Tittle & Curan, 1988). Similarly, Fagan and Deschenes (1990) found that a prior record and seriousness of the offense increases the likelihood of being waived to criminal court.

Historically, age has acted as a mitigating factor in determining how youth should be processed in the juvenile justice system (Champion & Mays, 1991; Snyder & Sickmund, 1999). This practice appears to continue as several studies have found that the closer a juvenile offender is to the age of adulthood, the more likely she/he will be tried as an adult (Barton, 1976; Champion & Mays, 1991; Fagan & Deschenes, 1990; Houghtalin & Mays, 1991; Peterson, 1988; Pope & Feyerherm, 1981; Sanborn, 1996). Research also reveals that racial and ethnic minorities are sometimes more likely to be waived to criminal court (Arnold, 1971; Black, 1971; Champion & Mays, 1991; Ericson, 1982; Fagan & Deschenes, 1990; Fisher, 1985; Friedrich, 1977; Hays & Solnay, 1972; Joseph, 1995; Lundman, 1979, 1974; Pope & Snyder, 2003; Smith, 1987; Smith & Klein, 1984; Fagan et al, 1987; Stahl, 2003; Steven, 2006).

Attitudinal theory suggests that individual characteristics of decision makers affect the factors they consider in their waiver decisions (Ajzen & Fishbein, 1977; Brigham & Wrightsman, 1982; Pennington, 1986; Penrod, 1986). Basic attitudinal theory would suggest that men and women's attitudes differ (Pennington, 1986). The majority of research in the criminal justice field has found that the most statistically significant relationship is between the gender of the judge and the gender of the offender (Gruhl et al., 1981; Johnson & Sheuble, 1991; Kritzer & Uhlman, 1977). Gruhl et al. (1981) found, for example, that female offenders are less likely to be convicted by male judges. Scholars suggest that male judges are trying to protect female offenders from the cruelties of prison. Another study found that both male and female attorneys believe that male attorneys are more likely to permit their attitudes to affect their behavior (Stepnick & Orcutt, 1996). Some research has found, however, gender is not related to men and women's decisions (Constantini & Craik, 1972; Kirkpatrick, 1974).

Based on attitudinal theory individuals accumulate life experiences as they age (Eiser, 1986; Pennington, 1986). Research has shown that aging affects an individual's decisions (Cook, 1973; Goldman, 1975; Myers, 1988; Spohn, 1990). Some research has shown that young police officers are more aggressive but the opposite relationship exists regarding punishment (e.g., older police officers are more punitive than younger police officers) (Brooks, 1993). Schwartz et al. (1993) found that once individuals turn 50 their support for punitive penalties increase. Some studies have found a different effect. Myers (1988) for example, found that as judges age they impose lighter sentences. Older individuals may have different attitudes compared to younger individuals. A study conducted by Manning, Carroll, and Carp (2004) found that age of a judge makes a significant difference in their decision making process. In particular, the primary difference revolved around the youngest and the oldest judges. Still, others have examined the relationship between age and attitude toward punishment and did not obtain conclusive results (Danigelis & Cutler, 1991; Zeisel & Gallup, 1989).

Basic attitudinal theory suggests that different cultures in urban and rural areas may explain waiver decisions of juvenile court judges (Dunne, 1980). An individual's beliefs are shaped by his/her life experiences. For example, Davis et al. (1993) found that an individual's beliefs and personality characteristics, in addition to his/her demographic characteristics, affect his/her feelings toward punishment severity. Life experiences are likely to differ according to where an individual resides. Thus, individuals from urban and rural areas are likely to maintain different beliefs and attitudes (Berkowitz, 1972). Johnson and Scheuble (1991) found that female offenders were less likely to be dismissed in rural areas than in urban areas. However, they also found that all courts seem to be heading toward a less punitive approach

(Johnson & Scheuble, 1991). On the other hand, Barry Feld (1991) suggests that urban area courts follow formal procedures that are associated with tougher penalty practices whereas rural courts are less formal resulting in lighter sentences. He found that urban courts sentence twice as many offenders as suburban/rural courts (Feld, 1991). Myers and Talarico (1986) also found that the social contexts of urban courts lead to more punitive penalties. The geographical location of courts may or may not have an impact on waiver decisions of juvenile court judges. The conflicting results suggest that the location of a judge's court may influence the factors he/she perceives to be relevant in determining which juvenile offenders should be waived to criminal court.

Research Design and Methodology

The sample for this study was drawn from a complete list of Indiana juvenile court judges from the Indiana Judicial Center. The Center provided a list of 201 names and addresses of Juvenile Court Judges. Of the 201 names, 80 names were excluded because they do not hear waiver cases, 5 were returned unopened leaving a sample of 121.

The researcher conducted a pre-test before administering the actual instrument. Based on individual responses obtained during the pre-test, additional questions were included in the survey. A post card was sent in February, 2006 indicating that a packet of material containing a questionnaire would be arriving in approximately one week. Included in the initial mailing package sent in February, 2006 was a cover letter, which indicated support from the Juvenile Court Judges Improvement Committee, which guaranteed confidentially, an agreement form, a self-addressed stamped envelope, and the questionnaire. At approximately one week later, an additional questionnaire was sent combined with a follow-up letter to the individuals who had yet to respond. A final follow-up letter was sent in August, 2006 to the remainder of the sample. The overall response rate for this study (completed responses) is 56% (n=68). Although we hope for a response rate much closer to 70+%, given that the findings will be generalized to Indiana juvenile court judges a 56% response rate is acceptable.

Of all the respondents 81% are male and 19% are female. The plurality (43%) of the judges are between 56 and 65 years of age. However, 21% are between 35 and 45, 29% are 46-55 and 7% are 66 years of age or older. Ninety-seven percent (65) of the judges are white. Hence, race was not examined in this study. The majority (70%) reported that they work in rural courts, where as 17% reported they work in suburban/small urban courts and 14% work in urban courts.

Measurement of the Dependent Variable

The dependent variable is based on a Likert item indicating the level to which a juvenile court judge agrees a particular variable affects his/her waiver decision. The dependent variable was measured with a Likert scale using 7 response categories: completely agree, strongly agree, agree, unsure, disagree, strongly disagree, completely disagree. For example, at what level do you agree or disagree with the following statement: juvenile offenders who are represented by public defenders are more likely to be waived to criminal court than offenders represented by private counsel.

Independent Variables

The independent variables include the demographic characteristics of judges, their gender, age, and size of court. Race was not included in the analysis for lack of non-white judges and attitude toward punishment was not included because it was heavily one-sided.

Research Questions

The demographic characteristics (gender and age) and location of court affect judges' perceptions of the factors they believe should be used in their waiver decisions. The first research question addressed is: are male judges more likely than female judges to have different attitudes toward which factors should be considered in determining which juvenile offenders should be waived to criminal court? Second, do older juvenile court judges' attitudes differ from younger juvenile court judges in determining which factors to consider in their waiver decisions? Third, does the location of a juvenile court make a difference in judges' attitudes toward waivers? Are juvenile court judges' attitudes in rural courts different from juvenile court judges' attitudes in urban areas? If so, do their attitudes differ in waiver decisions?

Results

The first three research questions examined whether the demographic characteristics (gender and age) and the location of court affected the perceptions of the factors they consider in their waiver decisions. No relationships were deemed statistically significant between the gender of the judges and the factors they perceive to be important in determining which offender should be waived to criminal court. A reason for this lack of significance could be a result of the overall small sample size. In addition, of the judges who responded 81% (55) were male and only 19% (13) were female. Hence, the small number of female respondents may have led to this particular finding. On the other hand, prior research produced mixed results (Constantini & Craik, 1972; Kirkpatrick, 1974), thereby, male and female judges may simply not differ in their attitudes toward which factors should be considered in waiver decisions.

Judges' age also was found not to be statistically significant. Hence, the age of judges does not seem to affect their perception of the factors they consider in their waiver decisions. This result too may be a factor of the small sample size. On the other hand, the research surrounding the effect age has on different decisions was mixed (Cook, 1973; Goldman, 1975; Myers, 1988; Spohn, 1990), leaving no clear picture as to how age may affect judges' attitudes toward waiver. It may be simply then, that age of judges does not affect their attitude toward waiver.

However, statistically significant relationships were observed between the location of judges' court and their perceptions of factors they consider in their waiver decisions. The first statistically significant relationship ($p < .05$) is between size of court and a juvenile's prior history of violent offenses. Of the judges who agreed that prior history of violent offenses increases an offender's chances of being waived to criminal court, 91% were rural judges versus 90% were urban judges. The literature clearly showed that prior history affects not only judges' sentencing decisions but also their waiver decisions (Bishop, Frazier, & Henretta, 1989; Clarke & Koch, 1980; Fagan & Deschenes, 1990; Henretta et al., 1986; McCarthy & Smith, 1985; Rudman et al., 1986; Thornberry, 1973; Tittle & Curan, 1988). However, the value of Cramer's V (.3) is suggestive of a mild relationship between the two variables. Yet, we can still say that judges from both

urban and rural locations perceive that having a prior history of violent offenses should affect whether or not an individual is waived to criminal court.

Table 1
Location of Judges' Court and Their Perceptions of What Factors Affect Their Waiver Decisions

Response Categories	Location of court		Total	χ^2
	Urban	Rural		
<i>Prior History of Violent Offense</i>				
Agree	90%	91%	91%	6.34
Unsure	10%	0%	3%	p<.05
Disagree	0%	9%	6%	
Cramer's V	.3			
<i>Gang Membership</i>				
Agree	45%	76%	66%	6.02
Unsure	35%	18%	23%	p<.05
Disagree	20%	7%	11%	
Cramer's V	.3			
<i>Public Defender Representation</i>				
Agree	0%	11%	7.7%	6.12
Unsure	5%	22%	17%	p<.05
Disagree	95%	67%	75%	
Cramer's V	.3			
<i>Pretrial Detention</i>				
Agree	15%	49%	39%	7.18
Unsure	25%	20%	22%	p<.05
Disagree	60%	31%	40%	
Cramer's V	.3			
<i>Alcohol Use</i>				
Agree	0%	11%	7.6%	6.18
Unsure	30%	50%	44%	p<.05
Disagree	70%	39%	49%	
Cramer's V	.3			

The second statistically significant relationship ($p < .05$) was found regarding gang membership. Of the 43 respondents who agreed that gang membership increases offenders' chances of being waived to criminal court, 76% were from rural courts and only 45% were from urban courts. Moreover, of the judges who were unsure of whether or not gang membership affects waiver decisions, 35% were urban judges and 18% were rural judges. The delinquency literature clearly demonstrates that juveniles who are involved in gangs are much more likely to be involved in delinquency and violent behavior (Browning, Thornberry, Porter, 1999; Huff, 1998; Sampson, 1986). Judges being aware of this literature may perceive that this factor too should affect their waiver decisions. Still, the value of Cramer's V (.3) suggests that this relationship although statistically significant is mild.

There was also a significant ($p < .05$) difference found between judges' size of court and their perception of the importance of having a public defender as your lawyer. Of all the judges who agreed having a public defender increases an offender's likelihood of waiver to criminal court, 11% were rural and 0% were urban judges. The literature has demonstrated that juveniles who have a private attorney are more likely to receive a lighter sentence or treated more leniently (Johnson & Scheuble, 1990). Rural judges seem to have less faith in public defenders than urban judges. As Barry Feld (1991) stated, the structure of the courts in rural and urban courts differ which may explain the difference between urban and rural judges' attitudes. Again, however, we must be careful with this finding because the value of Cramer's V (.3) suggests a mild relationship between the two variables.

Another notable significant ($p < .05$) difference can be observed with pretrial detention. Thirty-one percent of rural judges disagreed that being held in pre-trial detention increases an offender's chances in being waived to criminal court whereas 60% of urban judges disagreed. Rural judges then, were over three times as likely to agree that pre-trial detention influenced waiver decisions. A natural assumption is that those individuals held in pre-trial detention are the worst of the worst offenders (Sanborn & Salerno, 2005). However, this is not necessarily true. Some offenders are likely to be held in pre-trial detention because they lack the familial support to go back home (Hagan, Hewitt, & Alwin, 1979; Sanborn, 1996; Sanborn & Salerno, 2005; Scarpitti & Stephenson, 1971; Steinberg, 2000). Therefore, they are held in pre-trial detention. The value of Cramer's V (.3) also serves as an indication that we must be guarded with this finding.

Last, 11% of rural juvenile court judges agreed that juvenile offenders who use alcohol at the time of the offense are more likely to be waived to criminal court compared to 0% of urban judges. The limited research does illustrate that (Elrod & Ryder, 2005; Sanborn & Salerno, 2005) juvenile offenders who used an illegal drug and/or alcohol at the time of the offense are more likely to be involved in delinquency. Judges may be aware of the limited literature and, therefore, perceive that it should not have an influence in waiver decisions. Hence, the overwhelming majority of judges believe that the use of alcohol at the time of the offense does not increase an offender's likelihood of being waived to criminal court. However, although the relationship is statistically significant at the $p < .05$ level, Cramer's V (.3) suggests once again that the strength of the relationship is mild. Still, it does appear that judges from urban and rural areas tend to have similar attitudes toward alcohol use as it relates to criminal behavior.

Summary

The literature suggested that the results may show differences between male and female judges, young, and older judges, and judges from urban and rural courts. The only significant relationship observed is between the size of a judge's court and severity of prior offenses, gang membership, public defender, use of an illegal drug or alcohol and pre-trial detention. Hence, the results from this study partially confirmed the research questions and previous research. The mixed findings, however, should not be surprising given the complex picture presented by the literature. For instance, some literature suggested that there are differences between male and female's attitudes (Pennington, 1986) while other literature did not (Constantini & Craik, 1972; Kirkpatrick, 1974). Similarly, there is literature that suggests that older and younger judges may have different attitudes toward making waiver decisions (Myers, 1988; Schwartz et al., 1993) while other literature did not support such a conclusion (Danigelis & Cutler, 1991; Zeisel & Gallup, 1989). On the other hand, this may be purely a consequence of the sample size (n=68). Yet, at the same time, the results are positive in respect that we do not want judges' waiver decisions to differ based on gender or age. Hence, this is a positive finding.

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