CJSAC

CRIMINAL JUSTICE STATISTICAL ANALYSIS CENTER

Division of Criminal Justice Services
Department of Military Affairs and Public Safety
State of West Virginia

Adult Transfer Law Study

March 1999

West Virginia Code section 49-5-10 specifies the circumstances whereby serious juvenile offenders can be transferred to adult criminal jurisdiction. In the past, transfers were made at the discretion of the court for juveniles 16 and over. In July of 1995, the law was amended, making certain transfers mandatory and lowering the age from 16 to 14 for transfers. Table 1 outlines the types of offenses which are transferable and the conditions under which a transfer is mandatory and discretionary.

In July of 1997 the availability of an interlocutory appeal was restricted to prevent the abuses of court delay for those who desire to appeal. Previously, all juveniles who had been transferred to criminal jurisdiction had the right to directly appeal the order of transfer to the Supreme Court of Appeals. Now only those juveniles who are transferred at the court's discretion have the right to an interlocutory appeal of an order of transfer to the Supreme Court.

A study has been conducted by the Criminal Justice Statistical Analysis Center concerning the impact of this law on juveniles as well as juvenile justice practitioners. The first part of the study involved a sample of juveniles who committed transferable offenses either before or after the law change. Information was collected on these juveniles, including demographics, social and environmental factors, types of offenses, and prior history.

The second part of the study was a survey of juvenile justice practitioners to determine their opinions of the law. A random sample of circuit judges, magistrates, juvenile referees, prosecuting attorneys, public defenders, WV state police, sheriffs, local police, probation officers, juvenile shelter, detention, and correction workers, and DHHR protective services workers were asked to complete the survey. Demographic data and information providing insight into the law were collected.

Table 1

Adult Transfer Law (§49-5-10)

Offense	Transfer is Mandatory if Juvenile is:	Transfer is Discretionary if Juvenile is:
Treason, Murder, Robbery involving the use or presenting of firearms or other deadly weapons, Kidnapping, 1st Degree Arson, or 1st Degree Sexual Assault.	At least 14 years of age. §49-5-10(d)(1)	Younger than 14 years of age. §49-5-10(e)
An Offense of Violence to the Person which would be a felony for an adult.	At least 14 years of age and previously adjudged delinquent for the commission of the same. §49-5-10(d)(2)	At least 14 years of age and upon consideration*. §49-5-10(g)(1) Younger than 14 years of age, upon consideration*, and previously adjudged delinquent for the commission of the same. §49-5-10(f)
An Offense which would be a felony for an adult.	At least 14 years of age and twice previously adjudged delinquent for the commission of the same. §49-5-10(d)(3)	At least 14 years of age, upon consideration*, and previously adjudged delinquent for the commission of the same. §49-5-10(g)(2) Younger than 14 years of age, upon consideration*, and twice previously adjudged delinquent for the commission of the same. §49-5-10(f)
Used or presented a firearm or other deadly weapon during the commission of a felony.	Not applicable.	At least 14 years of age and upon consideration*. §49-5-10(g)(3)
A violation of WV Code §60A-4-401 which would be a felony if an adult involving the manufacture, delivery, or possession with intent to deliver a narcotic drug.	Not applicable.	At least 14 years of age or younger than 14 years of age and upon consideration*. §49-5-10(g)(4)

***Court must give consideration to the child's mental and physical condition, maturity, emotional attitude, home or family environment, school experience, and similar personal factors.**

Graph 1

Juvenile Sample Distribution

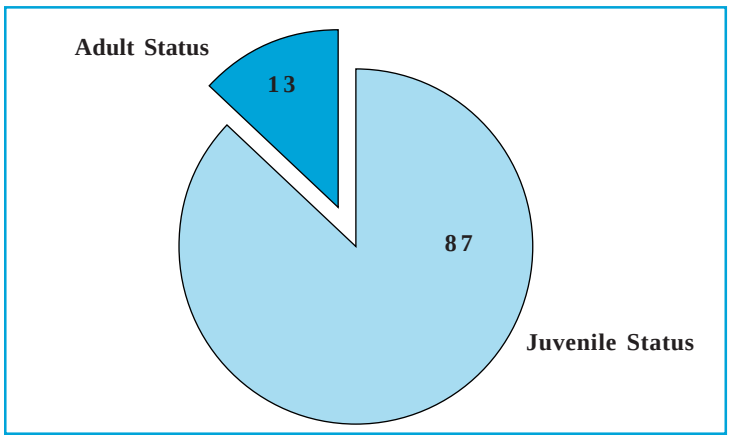


Table 2

Juvenile Sample Timeline

	1/92 - 7/95	7/95 - 12/97
Adult Status	4 (7%)	5 (19%)
Juvenile Status	57 (93%)	22 (81%)
Total	61	27

Juvenile Study

The first part of the adult transfer study involved a target group of juveniles who had committed transferable offenses. The time period of 1992-1997 was selected to allow sufficient time for comparison of adult transfer cases before and after the law change. The existing Juvenile Justice Data Base and Juvenile Detention Data Base were searched and sorted. One hundred juveniles who had committed a transferable offense during the time period were randomly selected. Data were then collected from the juvenile detention centers and correctional facilities.

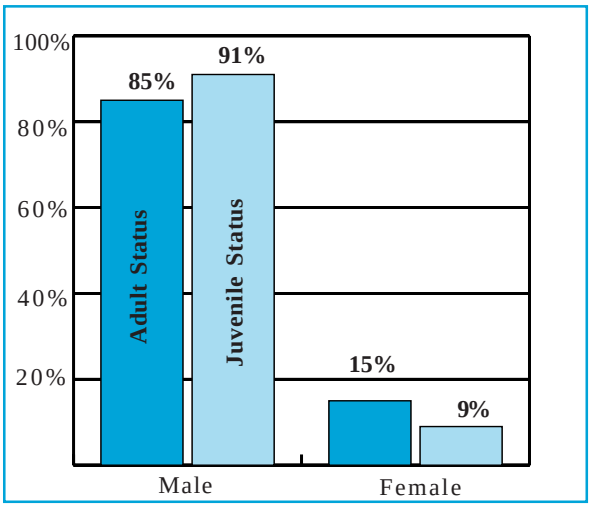
Of the 100 juveniles included in the study sample, 13 were actually transferred to adult criminal jurisdiction while the other 87 remained under juvenile jurisdiction (Graph 1). Twelve of the transfers were mandatory, one was discretionary.

The date of the transferable offense or the date a petition was signed was available for 88 of the 100 juveniles in the study (Table 2). Of these, 61 occurred before July 1995 and 27 occurred during or after July 1995. Before 1995, 4 of the 61 or 7% were transferred to adult status. During or after 1995, 5 of the 27 or 19% were transferred to adult status.

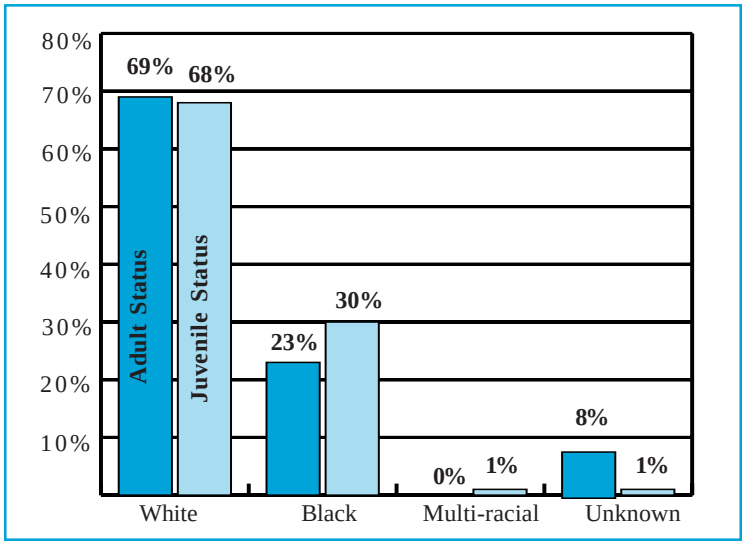
Demographics

Both the adult status group and the juvenile status group were demographically similar. Of the juveniles transferred to adult status, 85% were male and 15% were female. Ninety-one percent of those remaining under juvenile jurisdiction were male and 9% were female (Graph 2). The breakdown by race is shown in Graph 3. The adult status group was 69% white, 23% black, and 8% unknown. The juvenile status group was 68% white, 30% black, 1% multi-racial, and 1% unknown. The average age of both groups was 16.

Graph 2 Juvenile Sample Gender



Graph 3 Juvenile Sample Race



The largest number of juveniles in both groups came from Kanawha County, West Virginia's most populated county, (54% of transfers and 34% of non-transfers). Other counties represented among the adult transfer group included Fayette, Jefferson, Mercer, Mingo, Monongalia, and Wayne (one or 8% each). Among the juvenile status group, Cabell County was second with 14% followed by Berkeley (7%), Mercer (6%), Logan (5%), and Upshur (5%).

Over 50% of the transferred juveniles were reported to live with only their mother (31%) or some other relative (23%). Thirty-eight percent of the adult transfer's parents were never married. Juveniles not transferred were also most likely to reside with only their mother (34%); however, 26% lived with both parents. Thirty-three percent of the parents of those not transferred were divorced.

Public assistance was received by 47% of those remaining under juvenile jurisdiction. Adult transfers received public assistance in 31% of the cases.

Offenses

While all offenses committed by the juveniles in the study sample were transferable, there was a difference in offenses represented among the adult status group and the juvenile status group. Graphs 4 and 5 illustrate the offenses represented by each group. The offenses of those transferred to adult status included first degree murder (54%), aggravated robbery (23%), malicious wounding (8%), first degree sexual assault (8%), and kidnapping (8%). Malicious wounding (13%), first degree sexual assault (9%), aggravated robbery (7%), and first degree murder (3%) were also committed by the juvenile status group. The most often reported offense among those remaining under juvenile jurisdiction however, was a Violation of the Uniform Controlled Substance Act (VUCSA) (22%). Other offenses of this group included burglary (17%), armed robbery (9%), and first degree arson (5%).

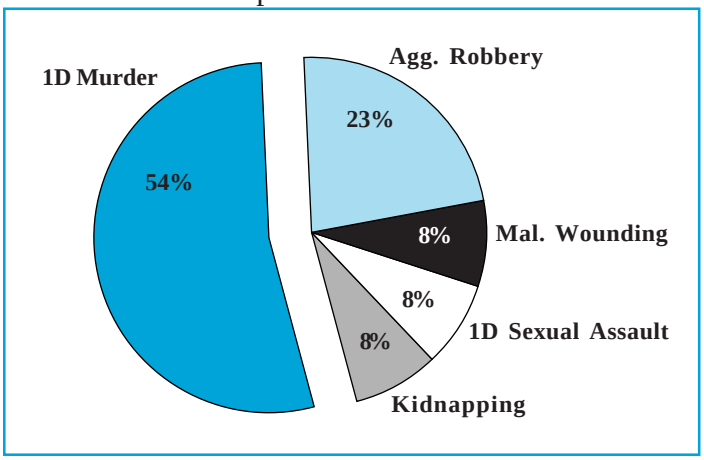
Of the 13 transferred juveniles, 12 (92%) pled guilty to the original charge. One case was missing. Fifty-four (62%) of the 87 juveniles not transferred pled guilty to the original charge. Twenty percent pled guilty to other charges while data on 18% were missing.

Prior to disposition, 54% of the adult status group and 51% of the juvenile status group were held in juvenile detention centers. However, 38% of the adult transfers and 29% of those not transferred had no form of predispositional detention.

Note: Other in Graph 5 consists of first degree murder (3%), felonious assault (3%), kidnapping (2%), and eight other offenses with one occurrence (1%) each.

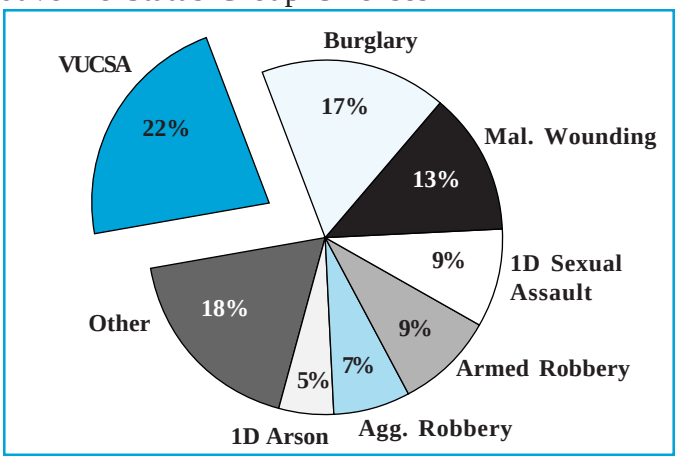
Graph 4

Adult Status Group Offenses



Graph 5

Juvenile Status Group Offenses



Other Characteristics

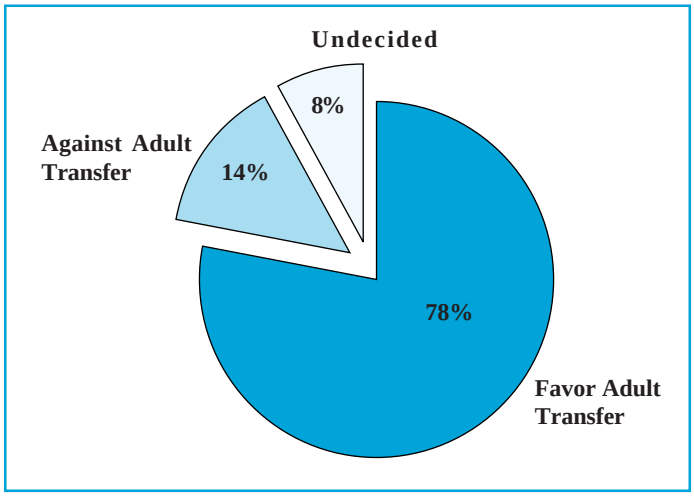
The delinquency status (Graph 6) of the two groups produced an interesting finding. Of those juveniles who were transferred, 46% had no prior delinquency complaints. The largest percentage of the juvenile status group had prior complaints but no adjudication (44%). Transferred juveniles had prior adjudication 31% of the time and prior complaints with no adjudication 23% of the time. The juvenile status group had prior adjudication in 26% of the cases, no prior delinquency complaints in 23% of cases, and 7% were unknown.

In all of the transferred cases, the complainant was law enforcement. The complainant was also law enforcement in 87% of those cases not transferred. However, the victims (6%) and probation officers (2%) were also complainants of the juvenile status group.

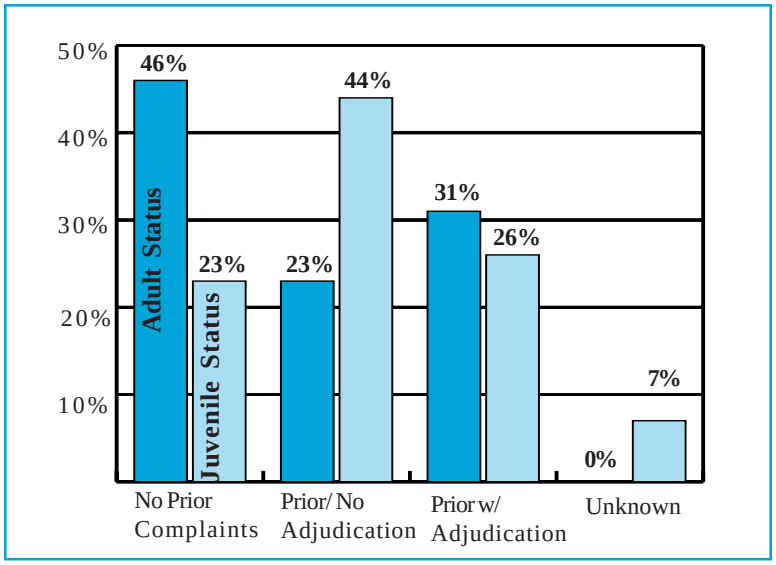
The number of previous placements (ranging from 1 to 8) was provided for 15 of the juveniles in the sample. The majority (67%) had one previous placement. One of the juveniles that was not a transfer had 8 previous placements. Two of the adult transfers had 3 previous placements each. The type of placement was known for 7 of the juveniles. One was for drug treatment and the other 6 were for behavioral disorder treatment.

Substance abuse was reported for 3 of the 13 adult transfers (23%) and 16 of the 87 not transferred (18%). Behavioral problems were reported for 4 of the 13 adult transfers (31%) and 16 of the 87 remaining under juvenile jurisdiction (18%).

Graph 7 Practitioners Votes



Graph 6
Delinquency Status



Practitioners Survey

In the second part of the adult transfer study approximately 30% of the total West Virginia juvenile justice practitioners were randomly selected to participate in a survey to determine their opinion of the law. Responses were received from 142 or 48% of the randomly selected practitioners, the majority of whom were familiar with the law. Only 6 of the respondents indicated no contact with or opinions concerning the law. Seventy-eight percent of all respondents were in favor of the adult transfer law, 14% were against it, and 8% were undecided (Graph 7). The responses came primarily from probation officers (28), DHHR protective services workers (23), magistrates (22), and local police officers (21). Table 3 shows the complete list of respondents in relation to the size of the sample.

Table 3
Distribution of Practitioner Respondents

	Responses	Sample	%
DHHR Protective Services Workers	23	35	66
Probation Officers	28	43	65
WV State Police	12	19	63
Juvenile Referees	1	2	50
Magistrates	22	46	48
Prosecutors	8	17	47
Sheriffs	7	17	41
Local Police	21	51	41
Juvenile Shelters	4	11	36
Public Defenders	10	30	33
Judges	5	19	26
Juvenile Detention & Corrections	1	7	14
Total	**142**	**297**	**48**

practitioners years of experience in the justice system. The percentage of respondents in favor of the law increases with experience.

Of those practitioners involved in more than 10 adult transfer cases, 67% were against the law. The respondents most in favor of the law (84%) were those who indicated no direct involvement with adult transfer cases. The percentage of practitioners against the law increases as case involvement increases (Graph 10).

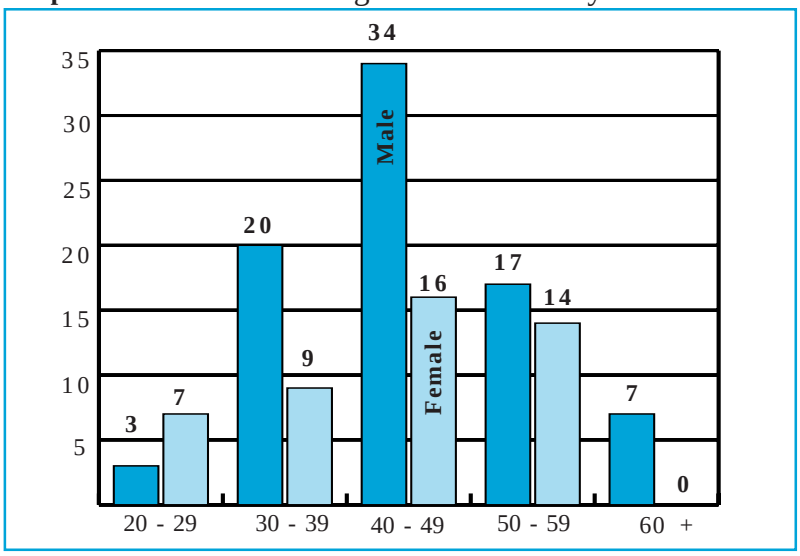
Note: Some percentages do not add to 100 due to missing responses.

Demographics

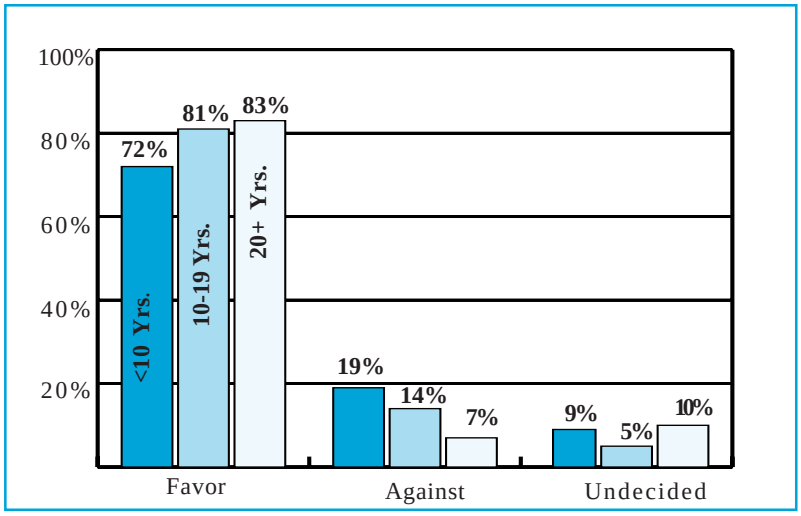
Sixty-four percent of the practitioners responding were male, while 33% were female. The majority of all respondents (35%) were between 40 and 49 years of age. Graph 8 shows the distribution of the respondents age by gender. Only the 20 to 29 age bracket had more females (7) responding than males (3). The distribution by race of the practitioners indicated 89% white, 4% black, 1% Asian, and 1% multi-racial. Practitioners reported working in all counties except Hampshire. Forty percent of the respondents had been associated with 1 to 5 cases involving adult transfers. Experience in the criminal justice system ranged from 0 to 30 years with an average of 12 years.

Data for responding practitioners indicated that how they would vote on the law was related to both their years of experience in the criminal justice system and the number of adult transfer cases with which they had been involved. Graph 9 shows voting responses in relation to the

Graph 8 Practitioners Age Distribution by Gender

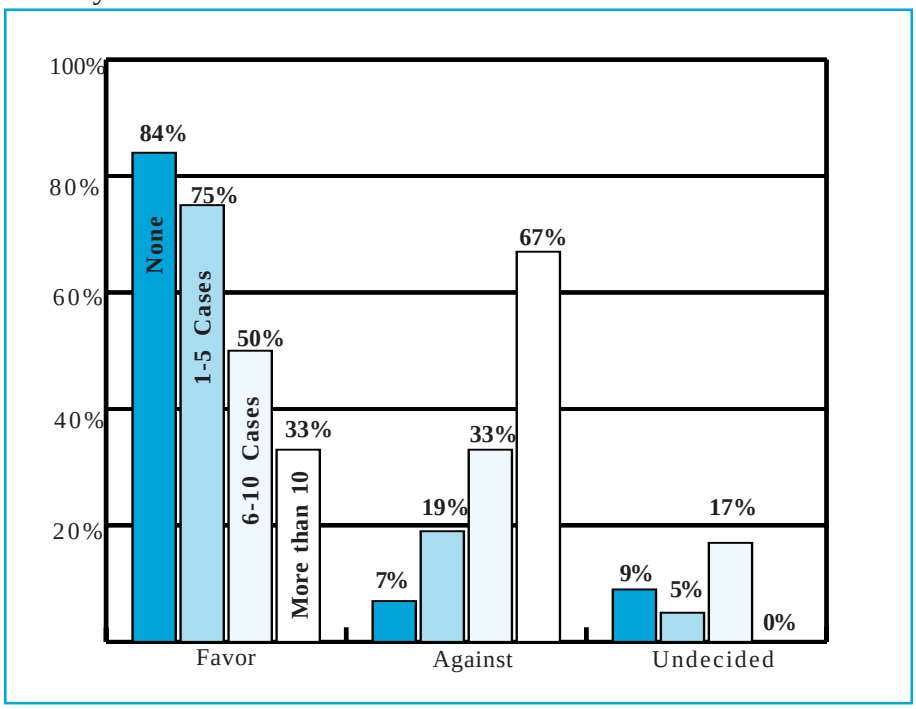


Graph 9 Vote by Years of Experience



Graph 10

Vote by Number of Cases



Practitioners Views of Adult Transfer

Overall

The practitioner survey was used to collect views on various aspects of the adult transfer law. Fifteen statements were given and respondents were asked to indicate on a scale of 1 to 10 their level of agreement. Table 4 shows the survey items and average response overall and by position.

The statements most strongly agreed to by all practitioners were that the adult transfer law was a positive step in dealing with serious juvenile offenders and that it will help the justice system hold juveniles accountable for their criminal activity. However, they were slightly less agreeable to statements that the law had been effective in dealing with serious juvenile offenders or that it had an impact on this group. The majority of practitioners believed that the law had resulted in more severe sentences for those transferred to adult status.

The responding practitioners did not agree that the courts regularly implement the law, nor did they feel that the law had an impact on their jobs or workloads.

They did believe that it was appropriate for juveniles between the ages of 14 and 16 to be transferred to adult status. The law is being implemented for appropriate cases in the opinion of those responding.

Practitioners do not feel that adequate resources are available for transfers. Finding detention placement has also been made more difficult by the adult transfer law.

By Position

Of the 4 responses from juvenile shelters, 2 were against the adult transfer law and 2 were undecided. Of the other groups, only public defenders were more likely to be against (90%) than in favor of the law. Probation officers made up the largest percentage of those in favor, 23%. The 28 local police and sheriffs departments were unanimously in favor of the law.

Public defenders and shelters were the only groups that did not believe that the adult transfer law was a positive step in dealing with serious juvenile offenders, nor did they feel that it would help the justice system hold juveniles accountable for their criminal activity. They were also the only groups agreeing that juveniles between the ages of 14 and 16 should not be transferred.

Even though the average response for all practitioners indicated that the adult transfer law had not had an impact on their jobs, there was some discrepancy by position. Shelters, public defenders, detention centers, judges, and prosecutors did agree to some impact on their jobs.

Overall practitioners showed some agreement to both expanding the number of offenses mandating transfer and leaving the decision to transfer solely to the discretion of the judge. Looking at these two items by position shows that local police, state police, sheriffs, and prosecutors were more in favor of mandatory transfers. Public defenders, probation officers, shelters, and judges prefer discretionary transfers.

Table 4
Practitioners Survey Average Responses

1 Indicates Strong Disagreement
10 Indicates Strong Agreement

	Overall	Judges	Magistrates	Juvenile Referees	Prosecutors	Public Defenders	WVSP	Sheriffs	Police	Probation	Shelters	Detention Centers	DHHR
I am familiar with the West Virginia Adult Transfer Law regarding the transfer of juveniles to adult status.	**7**	**9**	**6**	**10**	**8**	**9**	**7**	**7**	**6**	**8**	**7**	**9**	**6**
WV Courts regularly implement the Adult Transfer Law for juvenile offenders.	**4**	**6**	**4**	**10**	**6**	**5**	**2**	**6**	**4**	**5**	**6**	**7**	**4**
The Adult Transfer Law has had an impact on my job.	**4**	**6**	**2**	**2**	**6**	**7**	**4**	**4**	**3**	**5**	**7**	**7**	**3**
The Adult Transfer Law has had an impact on juveniles charged with transferable crimes.	**6**	**7**	**5**	**9**	**6**	**8**	**6**	**5**	**6**	**7**	**5**	**7**	**5**
The Adult Transfer Law is implemented for appropriate juvenile cases.	**7**	**9**	**6**	**7**	**6**	**6**	**5**	**5**	**7**	**8**	**5**	**7**	**7**
The Adult Transfer Law was a positive step in dealing with serious juvenile offenders.	**7**	**10**	**8**	**6**	**7**	**4**	**7**	**7**	**8**	**9**	**4**	**9**	**7**
The Adult Transfer Law has been effective in dealing with serious juvenile offenders.	**6**	**7**	**6**	**6**	**5**	**4**	**6**	**7**	**6**	**8**	**5**	**9**	**6**
Juveniles between the ages of 14 and 16 should not be transferred to adult status.	**3**	**2**	**2**	**4**	**2**	**9**	**2**	**5**	**2**	**3**	**7**	**4**	**4**
West Virginia's Adult Transfer Law will help the justice system hold juveniles accountable for their criminal activity.	**7**	**8**	**8**	**6**	**6**	**4**	**8**	**8**	**8**	**8**	**5**	**6**	**8**
The number of offenses which mandate the transfer of a juvenile to adult status should be expanded.	**6**	**4**	**7**	**1**	**6**	**1**	**8**	**7**	**8**	**5**	**2**	**4**	**5**
The transfer of a juvenile to adult status should be left solely to the discretion of the judge.	**6**	**6**	**7**	**6**	**5**	**6**	**3**	**4**	**5**	**6**	**6**	**4**	**5**
Once a juvenile has been transferred to adult status, adequate resources are available to meet the needs of the youthful offender.	**3**	**4**	**3**	**1**	**3**	**1**	**4**	**4**	**6**	**4**	**2**	**4**	**2**
The Adult Transfer Law has increased my workload.	**3**	**6**	**1**	**1**	**2**	**5**	**1**	**3**	**2**	**3**	**4**	**4**	**2**
For juveniles transferred to adult status, the Adult Transfer Law has resulted in more severe sentences.	**6**	**7**	**5**	**10**	**6**	**7**	**5**	**5**	**6**	**7**	**5**	**4**	**6**
The Adult Transfer Law has not created more difficulty in finding detention placement for transferred youth.	**4**	**4**	**5**	**0**	**2**	**4**	**4**	**5**	**4**	**5**	**4**	**8**	**4**

Comments

Responding practitioners were also given the opportunity to express any other comments or concerns they had with regard to the adult transfer law. The most frequently reported concerns involved the available resources and detention placement. Respondents believe that a separate facility is needed for transfers. Practitioners would also like to see more publicity for the law and transfer cases. They believe that this would serve as a deterrent for other juveniles if they knew that the possibility of severe punishment existed.

The comments from those against the law indicated opposition not to the transfer to adult criminal jurisdiction in general, but to the lack of any allowance for mitigating circumstances. One practitioner stated, *"Dictating that every juvenile regardless of circumstances, maturity, and development shall be treated as an adult if he/she commits one of the enumerated offenses is shortsighted and simplistic. The mandatory nature of the law is its greatest detriment. Discretion should be placed in the hands of the judges who hear the case to make the ultimate decision on the issue of transfer to adult jurisdiction."*

The majority of comments from those in favor of the law concerned responsibility and accountability. It was stated that juveniles in the system are well aware of how it works and that little will be done to them while underage. *"Being charged as an adult is a real wake up call for would be career juvenile offenders,"* said one practitioner. Other advantages of the law mentioned by the respondents included protection for the community from serious juvenile offenders and increased public confidence in the ability of the criminal justice system to deal with this group. Adult transfer makes more severe penalties available for those who commit serious offenses.

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