



Assessing the impact of race on the juvenile waiver decision: A systematic review and meta-analysis



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ABSTRACT

Purpose: This paper provides a systematic review of the current state of knowledge about the effect of race on the decision to waive a juvenile defendant to criminal court.

Methods: Following comprehensive search strategies a total of 20 independent studies were identified that met the review's inclusion criteria, eighteen of which could be included in the meta-analysis. Meta-analysis was used to generate weighted mean effect sizes of the effect of race on the waiver decision. Moderator analyses were also performed to explore heterogeneity.

Results: The average effect of race in the included studies was positive but not statistically significant. Analysis also revealed substantial heterogeneity among the studies. Moderator analyses revealed that within several of the subgroups of studies, race was significantly associated with waiver decisions.

Conclusions: Our findings suggest a nuanced and exceedingly complicated story about the role of race in waiver decisions. Most directly, the positive but nonsignificant average effect of race should raise doubts that race impacts waiver decisions in a direct fashion. However, simple claims that race does not matter are also not supported by existing knowledge. The nature of the review facilitates the development of specific recommendations for future research.

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Introduction

Waiver to adult court represents one of the major points of racial disparity in the juvenile justice system (Puzzanchera & Hockenberry, 2015). Even though it occurs prior to judicial disposition, some have argued that waiver represents the “capital punishment of juvenile justice” since it places adolescent offenders in the formal, adult criminal court—and thus opens the doors to more severe punishments than are available in the juvenile court (Zimring, 1981, p. 193; see also Fagan, 2008). Racial disparities in waiver thus reflect a troubling reality: that more black and Hispanic youth are being sent to the criminal justice system, being treated as adults rather than children (Feld, 1999; Jackson & Pabon, 2000; Tatum, 2003). Understanding the cause of these disparities is an important research agenda, yet existing research on the role of race in waiver decisions reveals inconsistent findings and no systematic assessment has been performed to date.

The main aim of this paper is to report on the findings of a systematic review of the current state of knowledge about racial disproportionality

in juvenile waivers to criminal court. A key tool in this systematic review is a meta-analysis of existing studies (see Lipsey & Wilson, 2001), supplemented by a review of some of the key methodological limitations facing work in this area—as well as in DMC research more generally. Moderator analyses are conducted to investigate differences across studies in observed outcomes, including operationalization of race. The nature of the review facilitates the development of specific recommendations for future research.

Waiver to adult court

Juvenile waiver to adult court is a particularly important decision-point at which to examine racial disproportionality. Historically, judicial waiver to adult court was a rare occurrence and a last resort—a “punitive necessity” for the most serious juvenile offenders who pose a danger to other juveniles and do not belong in the juvenile justice system (Zimring, 2000, p. 208).

During the 1980s and 1990s, however, the juvenile justice system experienced what many viewed as a punitive turn—contributing to an increased use of waiver by most states (Feld, 2003a; Zimring, 2010). Broader tough-on-crime reforms indicated a shift in the rationale for transfer that was more consistent with a punitive approach to juvenile

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crime (Kupchik, 2006; Steiner, 2005). Central to this shift was an increased use of alternative forms of waiver: prosecutorial waiver, where the prosecutor decides where to charge a juvenile defendant (i.e., concurrent jurisdiction); and legislative waiver, where cases with certain characteristics are statutorily excluded from juvenile court jurisdiction (Zimring, 2000). These newer forms of waiver reflect a shift in power that has transformed waiver from a decision guided by consideration of the best interests of youth and the juvenile justice system (Mears, 2003) to one guided by the interests of the executive and legislative branches of state governments (Zimring, 2010).

While the use of judicial waiver nationwide has decreased from its peak of >13,000 waived cases in 1994 to approximately 4000 cases in 2013 (Furdella & Puzzanchera, 2015; Hockenberry & Puzzanchera, 2015: 38), this trend underestimates the full impact of waiver. The number of juveniles transferred to adult court by prosecutorial and legislative waiver is unknown because only data on judicial waiver is collected nationally (Griffin, Addie, Adams, & Firestone, 2011). During the 1990s it was estimated that >200,000 juveniles were sent to the adult criminal system for trial, sentencing, or incarceration every year (Woolard, Odgers, Lanza-Kaduce, & Daglis, 2005). Indeed, the increased use of prosecutorial and legislative waiver may account for a large part of the decrease in judicial waiver since the 1990s (Hockenberry & Puzzanchera, 2015).

Several research initiatives on juvenile waiver have emerged in recent years. One finds that juveniles transferred to adult court may experience more punitive treatment than similarly situated young adult offenders, a so-called “juvenile penalty” (Johnson & Kurlychek, 2012; Kurlychek & Johnson, 2004, 2010; Steiner, 2009; but see Jordan, 2014; Kupchik, 2006). Another line of research finds that juveniles in criminal court may be at higher risk of future offending, although these findings are mixed (McGowan et al., 2007). For a variety of reasons, then, waiver appears to have potentially serious, negative consequences for transferred youth. Given the racial disparity that exists at the waiver decision, it stands to reason that the expansion of waiver has had a disparate impact on minority youth. Even more troubling is the possibility that this expansion—part of the so-called

“punitive turn”—has been motivated by racial bias (Jackson & Pabon, 2000; see also Feld, 1999, 2001, 2003a,b).

DMC in the juvenile justice system

As Fig. 1 shows, the most recent national data (2013) evidences disproportionate minority contact (DMC) between black and white youth at every major point of the juvenile justice system except for adjudication.

The relative rate index (RRI) is the measure of racial disparity used by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a ratio of the proportion of minority youth (relative to their population) to the proportion of white youth (relative to their population) at each stage of juvenile justice processing. A relative rate above 1 for black (or minority) youth indicates DMC. Fig. 1 shows that black youth are more likely than white youth to be waived to adult court ($RRI = 1.3$), relative to their respective populations. Although this national data on waiver disparities is limited to *judicial* waiver, there is no evidence to suggest that DMC does not also extend to other modes of waiver.

While it is clear that racial disparity exists at the point of waiver, the explanation is not clear. In fact, the possible interpretations for these disparities reflect conflicting perspectives of the relationship between race and the juvenile justice system and society at large. As one recent review of racial disparities in criminal sentencing notes, “At one extreme, they could reflect racial differences in criminal participation and no bias in the application of criminal law; at the other, they could reflect racial equality in the prevalence, incidence, and nature of offending, yet significant racial bias in how the law is applied to those who engage in criminal activity” (Baumer, 2013, p. 236). These two extremes are often referred to as the “differential offending” and “differential treatment” hypotheses, respectively (Piquero, 2008).

First, the disparity may reflect that minority groups offend at higher levels (Tillyer & Engel, 2012). Indeed, there do appear to be racial differences in offending for the kinds of violent crimes most likely to lead to criminal justice involvement (Blumstein, 2009; Felson & Kreager, 2015; Steiner & Wooldredge, 2015) as well as racial differences

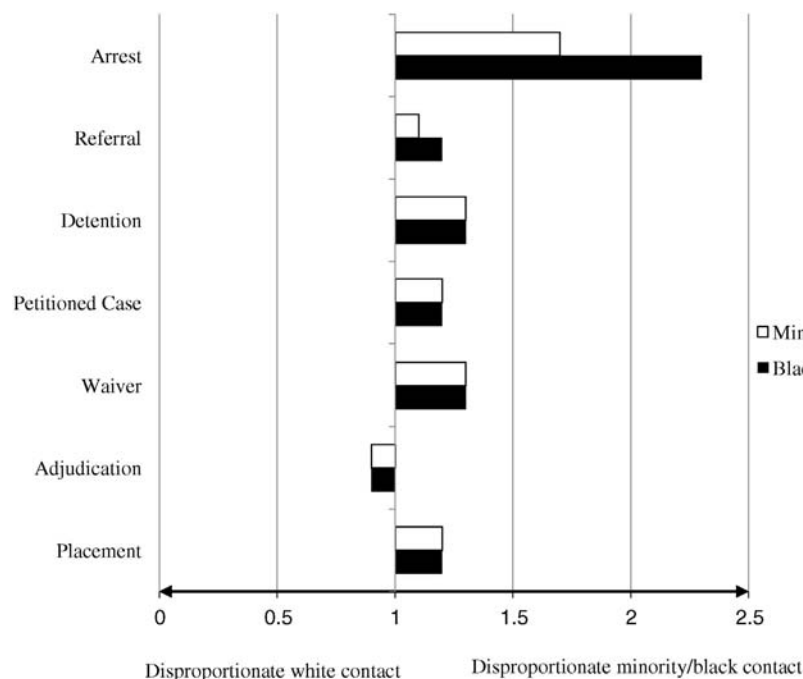


Fig. 1. National relative rate indices of criminal justice contact, 2013.
Source: Puzzanchera and Hockenberry (2015).

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