

## AFFIDAVIT OF DONNA M. BISHOP

### I. Professional Background

I am a Professor in the College of Criminal Justice at Northeastern University, Boston, Massachusetts.

I hold a Ph.D. (with distinction) in criminal justice from the School of Criminal Justice at the State University of New York at Albany (1982).

I have been a full professor at Northeastern University since 1999. Prior to joining the faculty at Northeastern University, I taught for 18 years in the state university system in Florida, including 13 years at the University of Florida Center for Studies in Criminology and Law, and 5 years at the University of Central Florida Department of Criminal Justice and Legal Studies.

I have been the Principal Investigator or Co-Principal Investigator on approximately 20 externally funded research projects, supported by federal and state agencies, and private foundation. The total amount of funded support is \$1.3 million. I am a juvenile justice specialist and the bulk of my research has focused on the prosecution and punishment of youths in the adult criminal justice system.

I am the former editor of *Justice Quarterly*, one of the two leading peer-reviewed publications in the field of criminal justice (and the official journal of the Academy of Criminal Justice Sciences). I have served on the editorial boards of *Law and Society Review* and the *Journal of Crime and Justice*. I am an editorial reviewer for several

other publications, including *Criminology*, *Journal of Research in Crime and Delinquency*, *Crime & Delinquency*, and the *Journal of Criminal Law and Criminology*.

I am a member of the executive board of the American Society of Criminology (elected). This organization is an international association dedicated to the development of scholarly, scientific, and professional knowledge concerning the etiology, prevention, control and treatment of crime and delinquency. I have served this organization in numerous capacities (member and chair of various committees) since the early 1980s.

I am a current and former consultant to the National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention. I have also served as a consultant to the National Science Foundation; the Supreme Court of Minnesota; the Supreme Court of Florida; the National Academy of Sciences; the University of Baltimore; the National Council on Crime and Delinquency; the Ohio State University; the Annie E. Casey Foundation; and the John D. And Catherine T. MacArthur Foundation's Research Network on Juvenile Justice.

I am the author of more than fifty articles, book chapters, and books, including the following, which are most relevant to the issues in this case:

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## II. Research and Findings

Based on my research and my familiarity with the research of others, if called to testify I would swear to the truth of the following:

There have been five major studies to date on the consequences of transferring youth to the criminal courts for prosecution and punishment as adults. I was a Principal Investigator on three of them. Professor Jeffrey Fagan from Columbia Law School was the Principal Investigator on the other two.

There are two other studies on the same topic, one conducted by Professor Barry Feld at the University of Minnesota, the other conducted by Professor David Myers at Pennsylvania State University. These two studies are not as scientifically rigorous as the five mentioned in the previous paragraph. But their findings and conclusions are the same as those of the more rigorous studies.

In my initial study, I and my colleagues compared the recidivism of 2,378 youths who were transferred to the criminal courts in Florida, and a matched sample of 2,378 youths who were retained in Florida's juvenile justice system. (The breadth of Florida's prosecutorial waiver statute permitted the identification of "matched pairs" of youths who had been prosecuted in each system.) The 2,378 pairs were matched in terms of 1) the most serious transfer offense; 2) the number of counts; 3) the number of prior referrals to the courts; 4) the most serious prior offense; 5) age; 6) gender; and 7) race. Controlling for time at risk during a follow-up period of three years, we found that:

§ A significantly higher proportion of the transferred youth reoffended (31% versus 19% of youths retained in the juvenile system).

§ Those retained in the juvenile system took significantly longer to reoffend (227 days versus 137 days for those transferred).

§ The frequency of reoffending was higher among the transferred youth.

§ Among those who reoffended, transfers were significantly more likely to be arrested for a serious felony crime.

In the second study, we followed this same group of subjects for a follow-up period of seven years. Again, controlling for time at risk, we found that:

§ Transferred offenders were more likely to reoffend in 6 out of 7 offense categories.

§ The negative effects of transfer were especially pronounced for those who had been initially prosecuted for violent crimes.

§ Only for property offenders was the difference across groups not significant. However, even for property offenders, the frequency of reoffending was significantly higher among those who were transferred.

§ Time-to-reoffense was significantly shorter among the transferred youth. (Transferred youth reoffended more quickly than those retained in the juvenile system.)

In our third and final study, we responded to concerns expressed by prosecutors and judges, who suggested that perhaps we found higher recidivism among transferred youth because they were really more serious offenders to begin with. We had not been able to match the pairs on ALL the factors that go into the transfer decision. So we conducted interviews with prosecutors and judges around the state to find out what factors they DID consider beyond those for which we had already controlled. Then we went into the police and court records in four Florida circuits to find more precise matches. We matched transferred youth and youth retained in the juvenile system on

the following characteristics, in addition to the characteristics mentioned earlier: 1) arrest charge; 2) legal problems during processing (e.g., failure to appear); 3) gang involvement; 4) adult co-defendants; 5) amount of victim injury; 6) weapon use; 7) property damage or loss; 8) aggravating and mitigating factors (e.g., substance use, academic or school problems, learning disability). These were the additional factors on which judges and prosecutors said they based transfer decisions. Using this procedure, we generated 630 “best matches,” 315 transfers and 315 precisely matched youths who were retained in the juvenile system. We measured reoffending in terms of a felony arrest or a commitment to the Department of Corrections beginning at age 18.

We found that:

- § Transfers were more likely to reoffend (49%, versus 37% of those retained in the juvenile system).
- § Those transferred for violent offenses were especially likely to reoffend.
- § Where both the transferred youth and the youth retained in the juvenile system reoffended, the transferred youth was significantly more likely subsequently to commit a more serious violent felony crime.

I am also very familiar with two studies carried out by Professor Jeffrey Fagan at Columbia University. He conducted a “natural experiment” involving 15- and 16-year-old first degree robbers and first degree burglars in two counties in New York and two neighboring counties in New Jersey. On the New York side of the Hudson River, these youths were handled as adults under that state’s legislative exclusion statute. On the New Jersey side of the river, identical youths were processed in the juvenile courts. His sample consisted of 800 youths (200 robbers, 200 burglars, in each of the two states.) His follow-up period was sufficient to allow a significant portion of each group to complete their sentences and accumulate at least 4 years of “street time” at risk.

He found that:

- § Reoffense rates did not differ for the burglars.

- § Among the robbery offenders, those who were prosecuted in criminal court were much more likely to be rearrested (76%, versus 67% of those processed in juvenile court).
- § The differences were especially pronounced among robbers who were sentenced to adult incarceration (90% rearrested) compared to those sentenced to juvenile incarceration (73% rearrested).
- § Robbery offenders in criminal court had rearrest rates that were 50% higher than those for robbery offenders in juvenile courts (2.85 arrests per year, compared to 1.67 arrests per year).
- § Robbery offenders in criminal court reoffended more quickly than robbery offenders in juvenile court.
- § Rather than affording greater community protection, the higher recidivism among robbers adjudicated in criminal court suggests that public safety was compromised by criminal court processing.

More recently, Jeffrey Fagan and his colleagues have conducted a second study in New York and New Jersey, this time including robbers, burglars, and those charged with assault. They examined recidivism during a followup period that ranged from two years (for those incarcerated) to seven years (for those who received probation). As in all of the previous studies mentioned above, rates of recidivism were adjusted for time at risk. After controlling for prior record and other background variables, they found that:

- § Youths prosecuted in the adult system were twice as likely to be rearrested for a violent crime.
- § Processing in criminal court increased the risk of being arrested for a property crime by 67%.
- § Processing in criminal court increased the risk of being arrested for a weapons offense by nearly 80%.

§ As before, youth in criminal court reoffended more quickly than those processed in juvenile court.

In sum, there have been five scientifically sound studies to date, using different research designs, different time periods, and different locations. Yet the results are consistent and unequivocal, which is quite unusual in social science research. All point to the conclusion that transfer increases the risk to public safety. The only exception applies to youth who are convicted of very serious offenses and who are incarcerated into middle age or later: For these youths, significant incapacitative gains can be realized. For youths incarcerated for shorter periods, however, the gains in public safety achieved during a period of incarceration are quickly offset by the higher rate of reoffending once the offender is released.

There are a number of reasons for these results, about which I will also be prepared to testify based on my own research, which involved interviewing young offenders in adult prisons and juvenile institutions.

1. Prisons are more dangerous places than juvenile institutions. Youths are exposed to an inmate social system that rewards violence and exploitation of others. The modeling of violence increases the risk of reoffending upon release.
2. Youth in adult prison are routinely exposed to more experienced, seasoned offenders, who frequently boast about their criminal expertise. Consequently, young offenders are much more likely to be exposed to “criminal socialization” in prison compared to youths who are confined in juvenile facilities. The comparatively large size of adult institutions (compared to juvenile ones) makes staff monitoring more difficult and facilitates negative inmate-inmate communication.
3. Compared to adult prisons, juvenile facilities tend to be more rehabilitative in practice and intent. Research shows that offenders benefit from cognitive-behavioral programs

designed to improve their social skills and to manage negative emotions. Such programs are rarely found in adult prisons, which tend to “warehouse” offenders until their release.

4. Line staff in juvenile correctional facilities typically communicate messages of hope to incarcerated offenders. Correctional officers in adult facilities are more negative in orientation. The “positive life scripts” so essential to “going straight” upon release are very difficult to develop in the face of staff opposition.

5. Youth leave the adult system with a criminal record which they must report on employment applications, and with the stigma of a criminal conviction. Consequently, it is more difficult for them to reintegrate into conventional society (e.g., to obtain jobs, to make “good” friends, to date stable and loving partners) than is the case with youth who have only a delinquency record.

6. My own research, and that of Forst, Fagan, and Vivona, reveals that young offenders exit the juvenile system with substantially more positive expectations for the future than do comparable young offenders held in the adult system.

### **III. Summary**

Based upon my knowledge and experience as a professor, researcher, consultant, and author, it is my opinion that the empirical research to date supports the conclusion that transferring juvenile offenders to adult court increases juvenile violence and crime by increasing the likelihood that these juveniles will reoffend, and that these future crimes will be more serious violent felonies than those committed by similarly situated juveniles who were not transferred out of the juvenile system.

I am prepared to testify to the foregoing should I be called upon to do so.

Signed under the pains and penalties of perjury on April 3, 2006.

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Donna M. Bishop