

Maynard, Justice, concurring:

I wholeheartedly concur with the result in this case. It is perfectly proper for circuit judges to exercise ultimate discretion on transfer questions, including so-called “nondiscretionary” transfers. What I do not like about the majority opinion is the suggestion that prosecutors would be biased and prejudiced in making decisions regarding juvenile transfers. In their opinion, the majority says “[t]he scope for prosecutor stereotypes, prejudices and biases of all kinds is simply too great. . . . The challenged statute [unconstitutionally] permits prosecutors to treat different offenders accused of the same criminal offense differently.” Prosecuting attorneys are quasi-judicial officers and there is simply no reason to believe, and no justification for this Court to state in this opinion, that prosecutors would permit “stereotypes, prejudices and biases” to influence prosecutorial decisions.

I would have preferred that the majority base this decision solely on the provisions of W.Va. Code § 49-5-13 (1995) which clearly gives circuit courts power to return a child to juvenile jurisdiction. The majority could have reached this same result without making unwarranted suggestions that any West Virginia prosecuting attorney would allow biases or prejudices to influence any prosecutor's decision in any criminal case.