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## **Be Careful What You Wish For: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court**

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# Be Careful What You Wish For: Legal Sanctions and Public Safety among Adolescent Felony Offenders in Juvenile and Criminal Court<sup>†</sup>

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## *Abstract*

*Three decades of legislative activism have resulted in a broad expansion of states' authority to transfer adolescent offenders from juvenile to criminal (adult) courts. At the same time that legislatures have broadened the range of statutes and lowered the age thresholds for eligibility for transfer, states also have reallocated discretion away from judges and instituted simplified procedures that permit prosecutors to elect whether adolescents are prosecuted and sentenced in juvenile or criminal court. These developments reflect popular and political concerns that relatively lenient or attenuated punishment in juvenile court violates proportionality principles for serious crimes committed by adolescents, and is ineffective at deterring or controlling future crimes. This legislative activism has reshaped the boundaries of the juvenile court, and animated calls for its elimination. Yet these developments have taken place in a near vacuum of empirical analysis of the efficacy of these measures to increase punishment or reduce crime. Jurisprudential analyses of the fit between the traditional doctrines of immaturity and reduced culpability of juveniles also has lagged far behind the pace of legislative change. The redrawing of the boundaries of the juvenile court also has not reflected new knowledge on adolescent development, the legal socialization of adolescents, and their responsiveness to criminal sanctions. The new boundaries of the juvenile court also threaten to reify and intensify social and racial dimensions of criminal punishment.*

*To address these questions, we conducted a natural experiment to assess whether prosecuting and sentencing adolescent felony offenders in the criminal court leads to*

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*harsher punishment, and whether that harsher punishment translates into improved public safety. We show that serious adolescent offenders prosecuted in the criminal court are likely to be rearrested more quickly and more often for violent, property and weapons offenses, and they are more often and more quickly returned to incarceration. Adolescents prosecuted and punished in the juvenile court are more likely to be rearrested for drug offenses. These results suggest that law and policy facilitating “wholesale waiver” or categorical exclusion of certain groups of adolescents based solely on offense and age, are ineffective at both specific deterrence of serious crime, despite political rhetoric insisting the opposite. Such laws may increase the risk of serious crimes by adolescents and young adults, by heavily mortgaging their possibilities to deflect their criminal behavioral trajectory and enter a path of prosocial human development. Returning to a discretionary, judge-centered transfer policy, rather than “wholesale waiver” or surgical exclusion of entire categories of adolescent offenders, would limit the number of youth subjected to criminal court prosecution and harsh punishment conditions in adult corrections. A policy of discretionary transfer of only the most serious offenders, whose eligibility for transfer would be transparently assessed with full access to evidence and expertise, would ensure proportional punishment for the few adolescents whose severe crimes demand greater punishment than is available in the juvenile court, and whose punishment as juveniles might corrode the legitimacy of the juvenile court.*

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## I. INTRODUCTION

### A. Tensions at the Borders of Juvenile Justice

Since the creation of the juvenile court a century ago, there have been recurring debates on the dimensions of age and criminality that comprised its upper boundary. For the past quarter century, that debate has focused on the most serious offenders in the juvenile court, especially the most violent among them. There has been consistent pressure throughout this period to increase the use of adult court for these adolescents.<sup>1</sup> Over the past decade, nearly every state has simplified and expanded eligibility of adolescent offenders for the adult court.<sup>2</sup> The goal of these efforts is to apply the criminal court's jurisprudence of just deserts, harsh punishments, and social stigmatization to an ever-expanding population of adolescents charged with serious and violent crimes. The rationales vary from state to state from deterrence to incapacitation to retribution.

Within this debate lingers the controversial and contentious question of exactly which violent, serious or chronic young offenders should be sentenced and punished as

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<sup>1</sup> THE CHANGING BORDERS OF JUVENILE JUSTICE (J. Fagan & F.E. Zimring eds., 2000); J.A. Arteaga, *Juvenile InJustice: Congressional Attempts To Abrogate The Procedural Rights Of Juvenile Defendants*, 102 COLUM. L. REV. 1051(2002).

<sup>2</sup> BARRY FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* (1999) [hereinafter FELD, *BAD KIDS*]; FRANKLIN ZIMRING, *AMERICAN YOUTH VIOLENCE* (1998) [hereinafter ZIMRING, *AMERICAN YOUTH*]; PATRICIA TORBET ET AL., U.S. DEP'T OF JUSTICE, *STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME* (1996). A secondary front in this era of legislative activism has focused on the procedures for selection of which juvenile offenders are to be transferred. During this era, and most actively in the past decade, every state has adopted one or more statutory strategies to transfer some chronological juveniles to criminal courts: judicial waiver, legislative exclusion of offenses from juvenile court jurisdiction, or prosecutorial choice of forum between concurrent jurisdictions. ZIMRING, *AMERICAN YOUTH supra*; THE CHANGING BORDERS OF JUVENILE JUSTICE, *supra* note 1; YOUTH IN ADULT COURT (D. Hamparian et al. eds., 1982); B. Feld, *The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. CRIM. L. & CRIMINOLOGY 471 (1987) [hereinafter Feld, *Legislative Changes*]; M. SICKMUND, U.S. DEP'T OF JUSTICE, *HOW JUVENILES GET TO CRIMINAL COURT* (1994). Each method to decide whether a youth is a criminal or a delinquent has supporters and detractors. Proponents of judicial waiver emphasize its consistency with juvenile court sentencing philosophy and contend that individualized judgments provide an appropriate balance of flexibility and severity. J.A. Fagan, *Social and Legal Policy Dimensions of Violent Juvenile Crime*, 17 CRIM. JUST. & BEHAV. 93 (1990); F. Zimring, *The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 267 (1991) [hereinafter Zimring, *Hard Cases*]. Critics object that juvenile court judges lack valid or reliable clinical tools with which to assess "amenability to treatment" or to predict dangerousness, and that the standardless discretion judges exercise results in abuses and inequalities. B. Feld, *Bad Law Makes Hard Cases: Reflections on Teenaged Axe-Murderers, Judicial Activism, and Legislative Default*, 8 J.L. & INEQUALITY 1 (1990) [hereinafter Feld, *Bad Law*]; B. Feld, *Delinquent Careers and Criminal Policy: Just Deserts and the Waiver Decision*, 21 CRIMINOLOGY 195 (1983) [hereinafter Feld, *Delinquent Careers*]; B. Feld, *Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions*, 62 MINN. L. REV. 515 (1978) [hereinafter Feld, *Unanswerable Questions*]. Proponents of legislative waiver endorse "just deserts" retributive sentencing policies, assert that offense exclusion fosters greater consistency, uniformity, and equality among similarly situated offenders, and advocate proportional sanctions based on relatively objective characteristics such as the seriousness of the offense, culpability, or criminal history. Feld, *Delinquent Careers, supra*; B. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965 (1995) [hereinafter Feld, *Public Policy*]. However, critics question whether a legislature practically can remove discretion from waiver decisions without imposing excessive rigidity or substantially increasing the number of youths inappropriately transferred to criminal court. F. Zimring, *Notes Toward a Jurisprudence of Waiver* [hereinafter Zimring, *Jurisprudence of Waiver*], in MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING (J.C. Hall et al. eds., 1981) [hereinafter MAJOR ISSUES]; Zimring, *Hard Cases, supra*.

juveniles or adults. Selecting the criteria to define the boundary between juvenile and criminal court requires a choice between the nominally rehabilitative dispositions of juvenile courts and the explicitly punitive dispositions of criminal courts.<sup>3</sup> But at what age? And for which offenses? Accordingly, choosing the criteria for “adulthood” reflects normative tensions in sentencing policies on the age-specific capacities of adolescents, their maturity and culpability, and the prospects for developmental and behavioral change as they chronologically age. Within these tensions, those electing which jurisdiction must decide, within the context of specific age and offense categories, whether “just deserts” and the seriousness of the offense determine the forum, or if the “real needs” of the individual offender should govern the appropriate disposition?

The utilitarian dimension of the debate about waiver policies addresses the more detailed question of the relative efficacy of juvenile versus criminal court sanctions. Critics of the juvenile court contend that its rehabilitative treatments are ineffective and that individualized discretion fosters invidious discrimination among similarly-situated offenders.<sup>4</sup> Some question whether the juvenile court can either rehabilitate chronic and violent young offenders at all, or simultaneously protect public safety while doing so.<sup>5</sup> Moreover, critics of a separate juvenile court contend that its judicial preoccupation with therapy deprecates the moral seriousness of crimes, offers inadequate retribution for adolescent felony offenders, and fails to deter other offenders.<sup>6</sup> Others contend that criminal court sanctions provide greater community protection, more effectively deter future crime, and dispense more proportional, retributive responses to serious crimes.<sup>7</sup> Others argue that the criminal court with its greater procedural safeguards is the more appropriate forum to adjudicate youths whose serious or chronic criminal behaviors mandate lengthy incarceration in secure facilities.<sup>8</sup>

Supporters of the juvenile court argue that youth violence is a transitory adolescent behavioral pattern that – for most adolescents – is unlikely to escalate into more serious or persistent crime.<sup>9</sup> They argue that adolescent offenders can benefit from the treatment services of the juvenile justice system with minimal threat to public safety while avoiding the lasting stigma of a criminal conviction. Many proponents of juvenile court intervention for violent delinquents do not accept the criticisms of rehabilitative

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<sup>3</sup> F.A. Allen, *Preface to THE CHANGING BORDERS OF JUVENILE JUSTICE*, *supra* note 1; C. Whitebread & R. Batey, *The Role of Waiver in Juvenile Court: Questions of Philosophy and Function*, in MAJOR ISSUES, *supra* note 2, at 502.

<sup>4</sup> MINORITIES IN JUVENILE JUSTICE (K. Kempf-Leonard et al. eds., 1995); B. Feld, *The Juvenile Court Meets the Principle of the Offense: Punishment, Treatment and the Difference that it Makes*, 68 B.U. L. REV. 821 (1988) [hereinafter Feld, *Punishment, Treatment*].

<sup>5</sup> Feld, *Public Policy*, *supra* note 2.

<sup>6</sup> WILLIAM BENNETT ET AL., *BODY COUNT: MORAL POVERTY...AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS* (1996); JAMES Q. WILSON, *Crime and Public Policy*, in CRIME AND PUBLIC POLICY (1983); M. Wolfgang, *Abolish the Juvenile Court System*, CAL. LAW., Nov. 1982, at 12. T. Hirschi and M. Gottfredson, *Rethinking Juvenile Justice*, 39 CRIME AND DELINQUENCY 262 (1993).

<sup>7</sup> Wilson, *supra* note 6; Wolfgang, *supra* note 6, at 12; Hirschi and Gottfredson, *id.*

<sup>8</sup> Feld, *Bad Kids*, *supra* note 2; Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, in 24 CRIME AND JUSTICE 189 (1998) [hereinafter Feld, *Responses to Youth Violence*]; J.E. Ainsworth, *Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083 (1991).

<sup>9</sup> D.M. HAMPARIAN ET AL., *THE VIOLENT FEW* (1978); L.W. Shannon, *The Prediction Problem and Criminal Careers*, 1 J. QUANTITATIVE CRIMINOLOGY 117 (1985); Terrie E. Moffitt, *Life-Course-Persistent and Adolescence-Limited Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOLOGICAL REVIEW 674 (1993); Zimring, *AMERICAN YOUTH*, *supra* note 2.

programs, and argue instead that weak evaluation research or poor program quality mask the natural strengths of juvenile corrections.<sup>10</sup>

## B. Testing the Borders

Between the poles of this argument, legislators have continued to tinker with the boundary between juvenile and adult court with little consideration of empirical evidence of the consequences of waiver policy alternatives in shaping law and policy.<sup>11</sup> Legislators have been incurious about research that links maturation and other dimensions of adolescent development to statutory thresholds of the age criminal responsibility, whether there are offender or offense characteristics that are more responsive to criminal legal sanctions, and if structural changes that shift discretion from judges to prosecutors achieve their crime control goals.

Perhaps legislators are right in ignoring research: a recent review conducted by the Centers for Disease Control confirmed that jurisdictional transfer had iatrogenic effects on youths tried as adults, and that there was no evidence of a general deterrent effect among other adolescents from the threat of transfer.<sup>12</sup> Before that, a National Research Council scientific panel on juvenile crime and juvenile justice concluded that there is insufficient evidence to claim that either crime control or retributive goals of the recent cohort of tougher waiver laws have been realized.<sup>13</sup>

Yet the available evidence suggests that legislative intentions often are not realized. For example, while recent changes to waiver policy often are intended to impose harsher sentences for serious juvenile offenders, this intention may not always be realized.<sup>14</sup> Some research reports a “punishment gap” in which waived felony property offenders receive shorter sentences as adults than they could have received in juvenile court.<sup>15</sup> Increasingly punitive approaches to juvenile offending often are justified on deterrence grounds, yet violent youths sentenced to adult prisons may emerge even more hardened and likely to re-offend.<sup>16</sup>

Conclusive tests of transfer policies are constrained by ethical and practical limits of social experimentation. Ethical and public safety concerns rule out experimental designs where adolescent offenders might be randomly assigned to criminal or juvenile

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<sup>10</sup> T. PALMER, A PROFILE OF CORRECTIONAL EFFECTIVENESS (1994); Jeffrey A. Fagan, *Natural Experiments, in MEASUREMENT ISSUES IN CRIMINOLOGY* 108 (K. Kempf ed., 1990); Jeffrey Fagan & Martin Forst, *Risks, Fixers and Zeal: Treatment Innovation and Implementation for Violent Juvenile Offenders*, 76 PRISON J. 5 (1994); Mark W. Lipsey, *The Effect of Treatment on Juvenile Delinquents: Results from Meta-Analysis*, in PSYCHOLOGY AND LAW: INTERNATIONAL PERSPECTIVES (Friedrich Losel et al. eds., 1992); M.W. Lipsey, *Juvenile Delinquency Treatment: A Meta-Analytic Inquiry into the Variability of Effects*, in META-ANALYSIS FOR EXPLANATION (Thomas D. Cook ed., 1992).

<sup>11</sup> Feld, *Public Policy*, *supra* note 2.

<sup>12</sup> A. McGowan et al., *The Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, 34 AM J PREV MED. S7–S28 (2007). See, also, D. Lee and J. McCrary, Lee, David S. and McCrary, Justin, “Crime, Punishment, and Myopia” (July 2005). NBER Working Paper No. W11491. Available at <http://ssrn.com/abstract=762770>

<sup>13</sup> JUVENILE CRIME, JUVENILE JUSTICE (J. McCord et al. eds., (2001).

<sup>14</sup> See, e.g., S.I. SINGER, RECRIMINALIZING DELINQUENCY (1996).

<sup>15</sup> Feld, *Legislative Changes*, *supra* note 2; Feld, *Public Policy*, *supra* note 2.

<sup>16</sup> J.A. Fagan, *This Will Hurt Me More than It Hurts You: Social and Legal Consequences of Criminalizing Delinquency*, 16 NOTRE DAME J.L. ETHICS & PUB. POL’Y 101 (2002) [hereinafter Fagan, *This Will Hurt*]; D.M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, in 27 CRIME AND JUSTICE 81 (2002).

court. Cross-state comparisons are challenged by variability between states in their age cutoffs, targeted offenses, and selection mechanisms.<sup>17</sup> As crime rates rise and fall over time, studies may produce results that are artifacts of particular eras or cutoffs.<sup>18</sup> Data on the sorting methods by which judges and prosecutors allocate adolescent offenders at the border to either juvenile or adult court often are unavailable.

Natural variation from state to state, however, may create conditions to study waiver policy using alternatives to controlled experiments and complicated state-level panel designs. In this study, we capitalize on a state jurisdictional boundary running through a single large homogeneous metropolitan area to create a natural experiment. The differences in judicial forum and punishment across this divide create the conditions for a natural experiment on the effects of juvenile and criminal jurisdiction on recidivism.

We use a quasi-experimental design to compare similarly situated youths handled in different systems. Adolescent offenders from spanning contiguous states are assigned to juvenile or criminal court based on state laws. On one side of the boundary (in New York), juveniles as young as 13 are charged in the adult court, while on the other side (in New Jersey) equivalent cases are processed in the juvenile court until age 18. In New Jersey, these cases could be adjudicated and disposed of in the juvenile courts or waived to criminal courts (though very few cases are waived – see below). In New York, the Juvenile Offender Law<sup>19</sup> and its low “adult” age threshold places these cases in the criminal court. The nesting of a metropolitan area across two contiguous states with contrasting laws allows us to control for contextual or milieu effects such as urbanism, normative regional attitudes on crime and punishment, weapon availability, the prevalence of contributing or mitigating factors such as drug use, and contemporary statewide political influences from media and popular culture.

The research replicates and extends a prior study by Fagan<sup>20</sup> reporting that adolescents charged and punished as adults were more likely to be arrested, for more serious crimes, more quickly and more often, and be returned to incarceration, compared to a matched sample of juveniles adjudicated and sentenced in the juvenile court. In this replication. This research expands on the previous study by including a broader range of eligible offenses, a larger set of communities in each state, alternative measures of the dependent variable, and alternative statistical tests. As before, we compare the likelihood of rearrest for different offense types and likelihood of subsequent incarceration following prosecution in juvenile and criminal courts.

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<sup>17</sup> See, for example, Steven Levitt, *Juvenile Crime and Punishment*, 106 *J. Pol. Econ.* 1156 (1998).

<sup>18</sup> *Id.* (Explain)

<sup>19</sup> 1978 N.Y. Laws § 481, McKinney's NY-ST-ANN Penal Law § 30.00

<sup>20</sup> J.A. FAGAN, U.S. DEPT. OF JUSTICE, *THE COMPARATIVE IMPACTS OF JUVENILE AND CRIMINAL COURT SANCTIONS ON ADOLESCENT FELONY OFFENDERS* (1991) [hereinafter FAGAN, *COMPARATIVE IMPACTS*]; J.A. Fagan, *The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders*, 18 *L. & POL'Y* 77 (1996) [hereinafter Fagan, *Comparative Advantage*]; J.A. Fagan, *Separating the Men from the Boys: The Comparative Impacts of Juvenile and Criminal Court Sanctions on Recidivism of Adolescent Felony Offenders* [hereinafter Fagan, *Men from the Boys*], in *YOUTH VIOLENCE AND PUBLIC POLICY* (James C. Howell et al. eds., 1995). In that study, Fagan analyzed the severity and effectiveness of juvenile and criminal court sanctions for 1,200 adolescent felony offenders, ages 15-16, arrested for robbery and burglary during 1981-82 and 1986-87<sup>20</sup> in matched (and contiguous) counties in New York and New Jersey where their cases were handled under different statutory regimes.

## II. JURISPRUDENCE AND SOCIAL POLICY ON TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT

### A. The Evolution of the Modern Jurisdictional Boundaries

Since the beginning of English common law, Anglo-American law treated young offenders differently than adults.<sup>21</sup> They were presumed to be less culpable for their crimes, owing to their immaturity in judgment, moral reasoning, social experience, and autonomy.<sup>22</sup> Before the creation of the juvenile court in the U.S., the common law's infancy *mens rea* defense accorded special protections to youths charged with crimes, acknowledged that children lacked the requisite moral capacity or criminal responsibility to make blameworthy choices, and presumptively excused those below the age of 14 from criminal punishment.<sup>23</sup> The juvenile court emerged at the end of the nineteenth century from the reformulation of two ideas: changes in strategies of social control, and changes in the cultural conceptions of children<sup>24</sup> and adolescents.<sup>25</sup>

The juvenile court synthesized the newer formulation of childhood with positivistic assumptions about crime and social control, and designed a specialized, bureaucratic agency to serve the child offender. Positivist criminology characterized deviance as determined rather than chosen, and sought to identify its causes. Progressive reformers "medicalized" delinquency and prescribed the "Rehabilitative Ideal" to treat it.<sup>26</sup> They envisioned that juvenile court professionals would make discretionary, individualized treatment decisions in a quasi-clinical setting, and substitute a scientific, therapeutic preventative approach for the traditional punitive responses of the criminal law.<sup>27</sup> Dispositions were indeterminate, nonproportional, and continued for the duration of minority. The juvenile court detained and treated youth in separate correctional

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<sup>21</sup> B. KRISBERG & J. AUSTIN, REINVENTING JUVENILE JUSTICE (1993); Elizabeth Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547 (2000); C.W. Thomas & S. Bilchik, *Prosecuting Juveniles in Criminal Courts: A Legal and Empirical Analysis*, 76 J. CRIM. L. & CRIMINOLOGY 439 (1985).

<sup>22</sup> Elizabeth Scott & Laurence D. Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799 (2003).

<sup>23</sup> S.J. Fox, *Responsibility in the Juvenile Court*, 11 WM. & MARY L. REV. 659 (1970); Andrew Walkover, *The Infancy Defense in the New Juvenile Court*, 31 UCLA L. REV. 503 (1984).

<sup>24</sup> D.J. ROTHMAN, CONSCIENCE AND CONVENIENCE (1980); J.E. Ainsworth, *Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083 (1991).

<sup>25</sup> Zimring, AMERICAN YOUTH, *supra* note 2; Scott, *supra* note 21; Zimring, *Jurisprudence of Waiver*, *supra* note 2.

<sup>26</sup> F.A. ALLEN, THE DECLINE OF THE REHABILITATIVE IDEAL (1981); P. LERMAN, DEINSTITUTIONALIZATION AND SOCIAL CONTROL (1984).

<sup>27</sup> ROTHMAN, *supra* note 24; B. Feld, *Criminalizing the American Juvenile Court*, in CRIME AND JUSTICE 197 (M. Tonry ed., 1993) [hereinafter Feld, *American Juvenile Court*]; S.J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970). In the ideal juvenile court, an expert judge, assisted by social service personnel and probation officers would investigate the child's background, identify the sources of the child's misconduct, and develop a treatment plan to meet the child's needs. Because their aims were benevolent, their solicitude individualized, and their intervention guided by science, juvenile court judges enjoyed enormous discretion to make dispositions in the "best interests of the child." They attributed minor significance to the specific crime a child committed because it indicated little about a child's "real needs." The misdeeds that brought a child before the court affected neither the intensity nor the duration of intervention because each child differed and no limits could be defined in advance.



facilities to prevent their contamination by adult criminals.<sup>28</sup> Theoretically, juvenile courts subordinated concern for retributive punishment to the individualized rehabilitation of the child.<sup>29</sup>

The formal segregation of juveniles institutionalized the fundamental legal distinctions between children and adults<sup>30</sup>, and implicitly recognized the difficulty of convicting and punishing juveniles in the adult criminal justice system.<sup>31</sup> By separating children, usually defined as those below eighteen years of age, from adults and providing a rehabilitative alternative to punishment, juvenile courts rejected both the criminal law's jurisprudence and its procedural safeguards such as juries and lawyers. Court personnel used informal procedures and a euphemistic vocabulary to eliminate any stigma or implication of a criminal proceeding.<sup>32</sup>

Within this new jurisprudence of adolescent crime, juvenile court judges were given the discretion to deny some young offenders the court's protections and transfer them to adult criminal courts.<sup>33</sup> Although the very existence of the juvenile court embodied the assumption that most youths lacked criminal responsibility, waiver legislation recognized that some young offenders could be culpable and were deserving of adult punishment. The possibility of transfer operated as a "safety valve" to enable the juvenile court to scapegoat occasional serious offenders and simultaneously preserve its broader jurisdiction.<sup>34</sup> The option to transfer some highly visible or serious cases to adult courts also muted political criticism of juvenile courts during its early years.<sup>35</sup>

A series of U.S. Supreme Court cases beginning in the 1960's introduced procedural formality and accountability into juvenile court proceedings. Juveniles facing transfer to the criminal court were accorded substantive and procedural rights in *Kent v. United States*.<sup>36</sup> Historically, all transfer decisions were made by juvenile court judges, either *sui generis* or on motion of the prosecutor; eligibility for transfer was regulated neither by statute nor case law. Over time, eligibility for transfer fell under the regulatory purview of the state legislatures to include only certain types of offenses or offenders.<sup>37</sup> The criteria generally combined factors including age and type of offense, and the decision was not reviewable. The *Kent* Court ruled that waiver was a legal proceeding that was subject to due process protections, and could not be made based solely on the discretion of the judge, and that the court should promote standards to guide the transfer

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<sup>28</sup> ROTHMAN, *supra* note 24; S. Schlossman, *Juvenile Justice: History and Philosophy*, in ENCYCLOPEDIA OF CRIME AND JUSTICE (S.H. Kadish ed., 1983); F. Zimring, *The Common Thread: Diversion in the Jurisprudence of Juvenile Courts*, in A CENTURY OF JUVENILE JUSTICE (M.K. Rosenheim et al. eds., 2002).

<sup>29</sup> ROTHMAN, *supra* note 24.

<sup>30</sup> Ainsworth, *supra* note 24.

<sup>31</sup> T.J. BERNARD, *THE CYCLE OF JUVENILE JUSTICE* (1992).

<sup>32</sup> A. PLATT, *THE CHILD SAVERS* (2d ed. 1977); Feld, *Punishment, Treatment*, *supra* note 4; Schlossman, *supra* note 28.

<sup>33</sup> ROTHMAN, *supra* note 24, at 285; D.S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction*, in A CENTURY OF JUVENILE JUSTICE, *supra* note 28, at 42.

<sup>34</sup> M.A. Bortner, *Traditional Rhetoric, Organizational Realities: Remand of Juveniles to Adult Court*, 32 CRIME & DELINQ. 53 (1986); Feld, *Unanswerable Questions*, *supra* note 2; D.S. Tanenhaus, *The Evolution of Transfer Out of the Juvenile Court*, in THE CHANGING BORDERS OF JUVENILE JUSTICE, *supra* note 1, at 13.

<sup>35</sup> MICHAEL WILRICH, *CITY OF COURTS* (2002).

<sup>36</sup> 383 U.S. 541 (1966).

<sup>37</sup> R.O. Dawson, *Judicial Waiver in Theory and Practice*, in THE CHANGING BORDERS OF JUVENILE JUSTICE, *supra* note 1, at 45.

decision and make it fair and consistent.<sup>38</sup> The Supreme Court declined to state what standards should apply, deferring to the individual states.<sup>39</sup> However, in an Appendix to the decision, the *Kent* Court “suggested” several facts that should be considered by judges when making waiver decisions.<sup>40</sup> In addition to its historic and procedural significance, *Kent* also had substantive implications that we discuss in the next section.

In 1967, the Supreme Court in *In re Gault* mandated procedural safeguards in delinquency adjudications, and began to alter juvenile court operations.<sup>41</sup> The Supreme Court subsequently elaborated on the procedural and functional equivalence between criminal and delinquency proceedings. In *In re Winship*, the Court held that juvenile courts must establish delinquency “beyond a reasonable doubt,” rather than by the lower standards of proof in civil trials.<sup>42</sup> Similarly, in *Breed v. Jones* the Court held that the protections of the double jeopardy clause of the Fifth Amendment prohibited adult re-prosecution of a youth previously convicted on the same charges in juvenile court.<sup>43</sup> The Court did not extend to juveniles all the criminal procedural safeguards available to adults. In *McKeiver v. Pennsylvania*, the Court denied to juveniles a constitutional right

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<sup>38</sup> *Kent*, 383 U.S. 541.

<sup>39</sup> *Id.*

<sup>40</sup> The *Kent* Court referred to a 1959 policy memorandum from the U.S. District court suggesting principles to guide judges in making transfer decisions. See *id.* at 565. The memorandum states:

The determinative factors which will be considered by the Judge in deciding whether the Juvenile Court's jurisdiction over such offenses will be waived are the following:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

<sup>41</sup> 387 U.S. 1 (1967). In *Gault*, the Court reviewed the history of the juvenile court and rejected the traditional rationales for denying procedural safeguards to juveniles. The Court observed that “unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure” and concluded that the denial of procedural rights frequently resulted in arbitrariness rather than “careful, compassionate, individualized treatment.” *Id.* at 18—19. The *Gault* Court mandated elementary procedural safeguards because juvenile courts often failed to realize the Progressives’ ideals. These safeguards included the right to advance notice of charges, the right to a fair and impartial hearing, the right to the assistance of counsel, the opportunity to confront and cross-examine witnesses, and the protections of the privilege against self-incrimination. *Id.*

<sup>42</sup> 397 U.S. 358, 368 (1970).

<sup>43</sup> 421 U.S. 519, 531 (1975).

to jury trials in state delinquency proceedings, and halted the extension of full parity with adult criminal defendants.<sup>44</sup>

Despite the Court's reluctance in *McKeiver* to hasten the demise of the juvenile court system, its earlier decisions in *Gault* and *Winship* drastically altered the form and function of the juvenile court. By emphasizing procedural regularity as a prerequisite to a delinquency disposition, the Supreme Court shifted the focus of the juvenile court from the "real needs" of a child to proof of criminal guilt. Those decisions provided the impetus for the continuing procedural and substantive convergence between juvenile and criminal courts.<sup>45</sup> Judicial and legislative changes in recent years have formalized juvenile court procedures and strengthened the punitive element of juvenile court sanctions.<sup>46</sup> The sentences that delinquents receive increasingly reflect the idea of deserved punishments rather than their "real needs." Proportional and determinate sentences based on the current offense and prior record, mandatory minimum terms of confinement, and correctional and parole release guidelines evidence the shift in juvenile court sentencing jurisprudence from treatment to punishment.<sup>47</sup>

Despite the trend toward reconciliation of sentencing logic in juvenile and criminal courts, a clear border between the two courts remained, even after these landmark decisions. Juvenile courts in this era avoided determinacy in dispositions, retained limits on the age of jurisdiction for juvenile corrections, and continued to feature treatment rhetoric in its decision making, all the while drifting toward determinacy and making punishment a more visible and prominent factor in dispositional decision making.<sup>48</sup> These efforts were designed not to alter the interior logic of the juvenile court, for the "toughening" of the juvenile court developed from within, a function perhaps of recurring criticisms of its efficacy and attacks on its organizational boundaries. Whatever the growing similarities in jurisprudence and law-in-action between juvenile and adult court, the stark differences in the conditions of confinement between juvenile and criminal court sharply delineated the institutional expressions of the separate punishment philosophies.<sup>49</sup> Thus, efforts to dissolve or move the border between the two courts were laden with more than symbolic differences. The attack on the juvenile court's boundaries and jurisdiction threatened to catapult large numbers of adolescent offenders toward a far harsher correctional fate. This incremental shrinking of the juvenile court's borders was a long march that began in the 1980s and accelerated through the next two decades.

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<sup>44</sup> 403 U.S. 528, 545 (1971). *McKeiver* held that the due process standard of "fundamental fairness" in juvenile proceedings emphasized "accurate fact-finding," which a judge could provide as readily as a jury. *Id.* at 543. The *McKeiver* Court also expressed concern that to require jury trials would disrupt juvenile court practices, subvert the traditional "treatment" rationale of the juvenile court, and provide support to eliminate juvenile courts. *Id.* at 547.

<sup>45</sup> Feld, *American Juvenile Court*, *supra* note 27.

<sup>46</sup> *Id.*; B. Feld, *The Decision to Seek Criminal Charges: Just Desserts and the Waiver Decision*, CRIM. JUST. ETHICS 27 (1984) [hereinafter Feld, *Just Desserts*]; B. Feld, *Punishment, Treatment*, *supra* note 4.

<sup>47</sup> Ainsworth, *supra* note 24; Feld, *Punishment, Treatment*, *supra* note 4; Feld, *American Juvenile Court*, *supra* note 27; M.R. Podkopacz & B.C. Feld, *The Back-Door to Prison: Waiver Reform, 'Blended Sentencing', and the Law of Unintended Consequences*, 91 J. CRIM. L. & CRIMINOLOGY 997 (2001).

<sup>48</sup> J.A. Fagan, *Punishment or Treatment for Adolescent Offenders? Therapeutic Integrity and the Paradoxical Effects of Punishment*, 18 QUINNIPIAC L. REV. 502 (1999).

## B. Redefining the Boundary between Juvenile and Criminal Jurisdictions

Despite this criminalizing of the juvenile court, however, legislators and policy makers devoted most of their attention not to changes within the juvenile court, but instead to redefine and lower (in age and offense severity) the boundary between the two courts. Rapid increases in juvenile crime rates, especially violent crime, in the 1970s and again in the late 1980s challenged the juvenile court's rationale.<sup>50</sup> Youth violence and the juvenile court's responses to it are especially important bellwethers that inform crime control policies generally and weigh heavily on these legislative deliberations.<sup>51</sup> Recent increases in youth *violence* frighten citizens and politicians even more than do increases in the overall volume of crime,<sup>52</sup> and motivated a steady legislative movement to restrict the scope of the juvenile court.

Legislatures continually redefine the forum in which to adjudicate felony crimes by adolescents. Since 1978, nearly every state has amended its laws to restrict the jurisdiction of the juvenile court and transfer more cases to adult courts.<sup>53</sup> Some states

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<sup>49</sup> Fagan, *This Will Hurt*, *supra* note 14; M.A. Forst et al., *Youth in Prisons and State Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy For Adolescents*, 39 JUV. & FAM. CT. J. 1 (1989).

<sup>50</sup> Criticisms of juvenile court responses to serious youth crime take several forms. Rising rates of violence place the juvenile court's *parens patriae* philosophy in direct conflict with the perceived threats to public safety and social order. Critics of the juvenile court have linked increases in youth crime to evaluation research appearing since the 1960s that consistently reported the ineffectiveness of rehabilitative programs. D. LIPTON ET AL., *THE EFFECTIVENESS OF CORRECTIONAL PROGRAMS* (1975); THE REHABILITATION OF CRIMINAL OFFENDERS (L. Sechrest et al. eds., 1979); W. Bailey, *Correctional Outcome: An Evaluation of 100 Reports*, 57 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 153 (1966); S. Lab & J.T. Whitehead, *An Analysis of Juvenile Correctional Treatment*, 34 CRIME & DELINQ. 60 (1988); J.O. Robison & G.W. Smith, *The Effectiveness of Correctional Programs*, 17 CRIME & DELINQ. 67 (1971); W. Wright & M. Dixon, *Community Treatment of Juvenile Delinquency: A Review of Evaluation Studies*, 19 J. RES. CRIME & DELINQ. 35 (1975). These negative findings undermined the juvenile court's positivistic assumptions that treatment could curtail further offending.

<sup>51</sup> J.A. Fagan, *Social and Legal Policy Dimensions of Violent Juvenile Crime*, 17 CRIM. JUST. & BEHAV. 93 (1990); Feld, *Public Policy*, *supra* note 2; Zimring, *AMERICAN YOUTH*, *supra* note 2; Franklin E. Zimring & Jeffrey Fagan, *Transfer Policy and Law Reform*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE*, *supra* note 1, at 407. Some argue that juvenile courts sentence youth convicted of serious crimes inconsistently and too leniently. That is, the statutory limitations on punishment in juvenile court have been assailed as inappropriate given the public danger from juvenile violence. Compared with the lengthy sentences imposed in criminal courts, short-term juvenile court sanctions may inappropriately increase the risks to public safety by quickly releasing youths from secure incarceration. By failing to curtail further crime and violence, rehabilitative dispositions in the juvenile court appear to provide weak social controls, fail to protect the community from "dangerous" offenders and thereby threaten public safety, disregard the harm to the victim, and deprecate the normative condemnation of serious crime. However, punishing some juveniles as adults to protect public safety is tantamount to the quarantine of persons with deadly and easily transmitted diseases. P. Robinson, *Hybrid Principles for the Distribution of Criminal Sanctions*, 82 NW. U. L. REV. 19 (1987); A. von Hirsch, *Hybrid Principles in Allocating Sanctions: A Reply to Professor Robinson*, 82 NW. U. L. REV. 64 (1987). We tolerate quarantines to limit harms to others, and safety concerns in this example are paramount to justice. However, the prediction of future crimes by those waived rests, like other predictions, on shaky grounds. A. von Hirsch, *Selective Incapacitation Reexamined: The National Academy of Sciences' Report on Criminal Careers and "Career Criminals,"* 7 CRIM. JUST. ETHICS 19 (1988).

<sup>52</sup> FELD, *BAD KIDS*, *supra* note 2; A. Blumstein, *Youth Violence, Guns, and the Illicit-Drug Industry*, 82 J. CRIM. L. & CRIMINOLOGY 10 (1995); P. Strasburg, *Recent Trends in Serious Juvenile Crime*, in *OP. CIT.* (R. Mathias et al. eds., 1984).

<sup>53</sup> H.N. SNYDER & M. SICKMUND, *JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT* (1999); TORBET ET AL., *supra* note 2; Feld, *Legislative Changes*, *supra* note 2; Richard E. Redding, *The Effects of Adjudicating and Sentencing Juveniles as Adults*, 1 YOUTH VIOLENCE & JUV. JUST. 128 (2003); Feld, *Abolish the Juvenile Court*, *supra* note 19.

have lowered the age of jurisdiction for criminal court either for all offenders or for selected offense categories.<sup>54</sup> Other states have expanded the bases to transfer of cases from juvenile to criminal court jurisdictions either by redefining or expanding the criteria for transfer, or shifting the burden of proof from the state to the defendant.<sup>55</sup> Still others have established concurrent jurisdiction for selected offenses or offenders and given prosecutors broad discretion to select the forum in which to adjudicate and sanction adolescent offenders.<sup>56</sup>

Historically, most states subjected youth to criminal liability at eighteen years of age<sup>57</sup> and exempted offenders below the age of majority from criminal responsibility. However, the criteria or standards to determine the appropriate judicial forum to sanction young offenders varied considerably from state to state.<sup>58</sup> States vary in their generic definition of the age of criminal court jurisdiction – eighteen, seventeen, or sixteen. Moreover, recent legislative changes reflect broader sentencing policy trends as legislators use “just deserts” and the principle of the offense to excise serious crimes from juvenile court jurisdiction.<sup>59</sup> Perhaps the most extreme example is New York, where youths fourteen or older charged with any of seventeen felony offenses are prosecuted in criminal court under the Juvenile Offender Law, as are youths as young as thirteen charged with murder. Some states, including New York, allow for “reverse waiver” of adolescents from criminal court back to juvenile court. Accordingly, the reduction of the age of majority for certain classes of offenses or offenders creates an age-behavior gradient for legal definitions of childhood.<sup>60</sup>

However, this distinction between punishment and treatment provides one of two fundamental justifications for separate juvenile and criminal systems.<sup>61</sup> This interventionist rationale translated into a philosophy of forceful intrusion into children’s

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<sup>54</sup> SNYDER & SICKMUND, *supra* note 53.

<sup>55</sup> Feld, *Public Policy*, *supra* note 2.

<sup>56</sup> Thomas & Bilchik, *supra* note 21; D.M. Bishop et. al., *Prosecutorial Waiver: Case Study of a Questionable Reform*, 35 CRIME & DELINQ. 179 (1989); D. Bishop & C. Frazier, *Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver*, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 281 (1991).

<sup>57</sup> Zimring, *Jurisprudence of Waiver*, *supra* note 2.

<sup>58</sup> YOUTH IN ADULT COURT, *supra* note 2; SICKMUND, *supra* note 2; Feld, *American Juvenile Court*, *supra* note 27; C.J. Rudman et al., *Violent Youth in Adult Court: Process and Punishment*, 32 CRIME & DELINQ. 75 (1986).

<sup>59</sup> FELD, BAD KIDS, *supra* note 2; Feld, *Legislative Changes*, *supra* note 2. For example, legislation in many states set an age boundary that is mediated by specific crimes -- the 16 year-old offender who commits a violent offense may be prosecuted criminally. SICKMUND, *supra* note 2. Nearly one-third of the states have redefined juvenile court jurisdiction to exclude certain offenses or offense-offender categories and thereby confer “automatic adulthood” on youths charged with these crimes. Feld, *Abolish the Juvenile Court*, *supra* note 19; Feld, *Legislative Changes*, *supra* note 2; Feld, *American Juvenile Court*, *supra* note 27.

<sup>60</sup> J.P. Conrad, *Crime and the Child*, in MAJOR ISSUES, *supra* note 2, at 179.

<sup>61</sup> Feld, *Punishment, Treatment*, *supra* note 4. Because the juvenile court views offenders below the threshold age for “adulthood,” or criminal liability, as “amenable to treatment” and not responsible for their crimes, it intervenes to ameliorate the antecedent conditions which gave rise to youthful misconduct and retain state control. Criminal justice sanctions, by contrast, attempt to deter future crimes, incapacitate offenders to prevent further crimes, or simply impose retribution. The type and severity of punishment ostensibly is determined primarily by the seriousness of the crime committed, moderated by the defendant’s criminal history, mitigating circumstances and background. While most adult correctional systems make some efforts to provide basic social skills, e.g., education and job training, to forestall further crime, these are adjuncts to the punishment. In the juvenile system, by contrast, the delivery of services theoretically constitutes the substance of the legal sanction.

and their families' lives to resolve the underlying factors thought to cause delinquency.<sup>62</sup> The broad definition of delinquency allowed the Juvenile Court to reach broadly and exercise a wide range of powers. This tradition was intrinsic to the jurisprudence of the juvenile court for nearly a century, a jurisprudence that tolerates, indeed encourages, differential responses to similarly situated offenders because their underlying factors, social conditions, or mitigating circumstances differ.<sup>63</sup> The retributive and deterrent emphases of the criminal court encourage exactly the opposite, and directly challenge the politically naïve and materially arrogant ideal of "rehabilitation."

A second justification was the avoidance of stigma. This diversionary justification for the modern juvenile court was always the more important of the two, and evidence of the adverse effects of transfer suggests that it remains so today.<sup>64</sup> In the early days of the juvenile court, this rationale was more widely accepted than the interventionist vision.<sup>65</sup> Avoidance of the stigma of criminal conviction (as an adult) was designed to keep young offenders separated physically to prevent their abuse and exploitation, psychologically to avoid their corrupting influence. The process itself was thought by early reformers to be harmful, with young offenders feared by reformers such as Judge Tuthill to become internally branded as criminals.<sup>66</sup> Given "room to reform,"<sup>67</sup> the preferred punishment for adolescents was in the juvenile court, where they could avoid the "disfiguring" punishments of the adult courts. The diversionary rationale also avoids the stigma of a felony conviction whose consequences may interfere with entry into the workforce and lower wages over the lifecourse.<sup>68</sup> In addition to economic disenfranchisement, a felon is disqualified from jury service,<sup>69</sup> the right to vote,<sup>70</sup> and the right to hold elective office.<sup>71</sup>

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<sup>62</sup> Tanenhaus, *Evolution of Early Juvenile Courts*, *supra* note 33. Intervention took several forms, including ordering a minimum standard of hygiene and appearance. Thus, at times, courts ordered children to bathe and to wear clean clothes.

<sup>63</sup> ALLEN, *supra* note 26; Allen, *supra* note 3.

<sup>64</sup> See, Bishop, *Juvenile Offenders in the Criminal Justice System*, *supra* note 14; Fagan, *This Will Hurt*, *supra* note 14.

<sup>65</sup> F. E. Zimring, *The Common Thread*, *supra* note 28.

<sup>66</sup> Zimring, *The Common Thread*, *id.* See, also, Richard S. Tuthill, *History of the Children's Court in Chicago*, in CHILDREN'S COURTS IN THE U.S.: THEIR ORIGINS, DEVELOPMENT AND RESULTS, Jane Addams (ed.) (1904).

<sup>67</sup> There is overwhelming evidence that most adolescents are unlikely to sustain juvenile crime beyond their teenage years given opportunities for change via natural maturation or through the benefits of effective intervention programs. See e.g. FRANKLIN E. ZIMRING, *THE CHANGING LEGAL WORLD OF ADOLESCENCE* (1981); Franklin E. Zimring, *The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 267 (1991); ZIMRING, *AMERICAN YOUTH*, *supra* note 2, at 69-87.

<sup>68</sup> Richard B. Freeman, *Crime and the Economic Status of Disadvantaged Young Men*, in URBAN LABOR MARKETS AND JOB OPPORTUNITY 215-226 (George E. Peterson & Wayne Vroman eds., 1992); John Hagan, *The Social Embeddedness of Crime and Unemployment*, 31 CRIMINOLOGY 465 (1993).

<sup>69</sup> See, e.g., ARIZ. REV. STAT. ANN. § 21-201 (West Supp. 1998); CAL. CIV. PROC. CODE § 203 (West 1999); N.Y. JUD. CT. ACTS LAW § 510 (McKinney 1999); N.M. STAT. § 38-5-1; TEX. STAT. § 62-102

<sup>70</sup> See e.g., FLA. CONST. ART. VI, § 4; ARIZ. REV. STAT. ANN. §13-904

<sup>71</sup> See e.g., FLA. CONST. ART. VI, § 4; MINN. CONST. ART. VII, §§ 1, 6; N.C. CONST. ART. VI, § 8

### C. The Limited Research on the Consequences of Waiver

For nearly three decades, legislative activism to narrow or eliminate juvenile court jurisdiction over adolescent felony offenders has continued, yet there has been little systematic research to determine if youth receive more severe or consistent sanctions in criminal court, or if their punishment as adults reduces their recidivism. Thus, a social experiment that each year affects at least 200,000 adolescents below the age of 18<sup>72</sup> has gone largely unevaluated. The few studies that have been completed thus far find little empirical support for the policy rationales or goals of contemporary transfer policies.

#### 1. *Impacts on Punishment: Closing the Leniency Gap*

Whether the criminalization of adolescent felony crime has resulted in more certain or severe sanctions is not at all clear and seems contingent on type of offense.<sup>73</sup> With all of the varied legislative responses to youth crime, few studies have compared sanctioning patterns in juvenile and criminal court. Because of the difficulty of avoiding selection bias,<sup>74</sup> there have been few valid tests of the comparative certainty or severity of sanctions, or of the deterrent or incapacitative effects of juvenile and criminal court sanctions for adolescent felony offenders. There also is little evidence that reducing the age of majority has had a general deterrent effect on aggregate adolescent crime rates.<sup>75</sup>

For example, Roysher and Edelman<sup>76</sup> examined dispositions and placements under the New York Juvenile Offender Law,<sup>77</sup> which relocates original jurisdiction to the criminal court for many first and second degree felony offenses committed by youths fourteen or fifteen years of age (and thirteen for homicide). They found that sanctions were no more severe in criminal court, and in many cases were actually less harsh.<sup>78</sup> But other studies report that juveniles sentenced in criminal court are treated more severely

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<sup>72</sup> See H.N. SNYDER & M. SICKMUND, *JUVENILE OFFENDERS AND VICTIMS*, *supra* note 53; TORBET ET AL., *supra* note 2; Feld, *Legislative Changes*, *supra* note 2; Richard E. Redding, *The Effects of Adjudicating and Sentencing Juveniles as Adults*, *supra* note 53.

<sup>73</sup> See D.M. Bishop et al., *The Transfer of Juveniles to Criminal Court: Does it Make a Difference?*, 42 *CRIME & DELINQ.* 171 (1996); Fagan, *This Will Hurt*, *supra* note 14; A. Kupchik et al., *Punishment, Proportionality and Jurisdictional Transfer of Adolescent Offenders: A Test of the Leniency Gap Hypotheses*, 14 *STAN. L. & POL'Y REV.* 57 (2003).

<sup>74</sup> FAGAN, *COMPARATIVE IMPACTS*, *supra* note 17; Fagan, *Comparative Advantage*, *supra* note 17.

<sup>75</sup> See, e.g., SINGER, *supra* note 12; E.L. Jensen & L.K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 *CRIME & DELINQ.* 96 (1994); E. Risler et al., *Evaluating the Georgia Legislative Waiver's Effectiveness in Deterring Juvenile Crime*, 8 *RES. SOC. WORK PRAC.* 657 (1998); S.I. Singer & D. McDowall, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, 22 *LAW & SOC'Y REV.* 521 (1988).

<sup>76</sup> M. Roysher & P. Edelman, *Treating Juveniles as Adults in New York: What Does it Mean and How is it Working?*, in *MAJOR ISSUES*, *supra* note 2.

<sup>77</sup> In 1978, New York State enacted legislation that placed original jurisdiction to the criminal court for specific felony offenses committed by youths below 16 years of age. This statute was known as the Juvenile Offender Law, and the offenders it covered were called "JOs." See S.I. Singer & C.P. Ewing, *Juvenile Justice Reform in New York State: The Juvenile Offender Law*, 8 *LAW & POL'Y* 457 (1986); Singer & McDowall, *supra* note 65; M. Sobie, *The Juvenile Offender Act: Effectiveness and Impact on New York's Criminal Justice System*, 26 *N.Y.L. SCH. L. REV.* 677 (1981).

<sup>78</sup> See also *YOUTH IN ADULT COURT*, *supra* note 2; Bortner, *supra* note 34; Feld, *Legislative Changes*, *supra* note 2; L.K. Gillespie & M.D. Norman, *Does Certification Mean Prison? Some Preliminary Findings From Utah*, 35 *JUV. & FAM. CT. J.* 23 (1984).

than are their counterparts in juvenile court, via relatively harsh sanctions and low case attrition.<sup>79</sup>

There are several explanations for a possible “leniency gap,” in which adolescents might face harsher sanctions in juvenile court than in criminal court.<sup>80</sup> Young offenders in criminal court may appear less threatening than their older counterparts with longer records. Qualitative differences between juveniles’ and adults’ offenses, a lack of integration between juvenile and adult criminal records, and differences between juvenile court waiver criteria and criminal court sentencing practices contribute to this anomalous gap in social control.<sup>81</sup> In many jurisdictions, criminal courts rely primarily on the seriousness of a young adult’s present offense and prior adult criminal history when imposing sentences. The juvenile component of offenders’ criminal history often is not available because of the confidentiality of juvenile court records, the functional and physical separation of juvenile and criminal court staffs who must compile and combine these records, and sheer bureaucratic ineptitude.<sup>82</sup>

Yet there is consistent evidence that adolescents charged with and waived for *violent* crimes receive substantial sentences as adults.<sup>83</sup> For example, Rudman et al., looking only at adolescents charged with violent crimes, found that the criminal court was more punitive.<sup>84</sup> Sanctions were equally certain in juvenile and criminal court, but juveniles waived to criminal court received harsher sanctions since there was no age limitation on sentence length for adult offenders. Forst, Fagan, and Vivona found that compared to youths in training schools, juveniles sentenced and incarcerated as adults were more likely to be sexually and physically assaulted while incarcerated, and less likely to receive basic education and job training services.<sup>85</sup> If increased retributivism was the policy goal of waiver proponents, they got far more than they ever could have wished for.<sup>86</sup>

Thus, the age-offense relationship apparently produces a peculiar disjunction in the sentences of juveniles as adults. The highly discretionary nature of individualized waiver decisions and the inconsistency between the criteria for transfers from juvenile court and criminal court sentencing practices produce a “lack of fit.” When sentenced as adults, young property offenders may receive shorter sentences than do their juvenile counterparts, though youth waived for violent offenses may receive dramatically longer sentences and under more punitive conditions than do their juvenile counterparts.<sup>87</sup>

## **2. Impacts on Recidivism**

There has been little systematic research comparing the deterrent effects of juvenile and criminal court sanctions on recidivism of adolescent offenders. Even so, the

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<sup>79</sup> E.g., M. Houghtalin & G.L. Mays, *Criminal Dispositions of New Mexico Juveniles Transferred to Adult Court*, 37 CRIME & DELINQ. 393 (1991); Thomas & Bilchik, *supra* note 21.

<sup>80</sup> P.W. GREENWOOD ET AL., FACTORS AFFECTING SENTENCING SEVERITY FOR YOUNG ADULT OFFENDERS (1984).

<sup>81</sup> Feld, *Legislative Changes*, *supra* note 2; Feld, *Bad Law*, *supra* note 2.

<sup>82</sup> Feld, *Legislative Changes*, *supra* note 2; Feld, *Public Policy*, *supra* note 2.

<sup>83</sup> See SICKMUND, *supra* note 2; SNYDER & SICKMUND, *supra* note 53; Feld, *Public Policy*, *supra* note 2.

<sup>84</sup> Rudman et al., *supra* note 58.

<sup>85</sup> M.A. Forst et al., *Youth in Prisons and State Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy for Adolescents*, 39 JUV. & FAM. CT. J. 1 (1989).

<sup>86</sup> Fagan, *This Will Hurt*, *supra* note 14.

<sup>87</sup> Feld, *Responses to Youth Violence*, *supra* note 8.



few studies comparing the effects on public safety of waiver to criminal court versus retention in juvenile court point in the same direction.<sup>88</sup>

Typically, these studies compare samples of youths transferred from juvenile to adult jurisdiction within a single jurisdiction, introducing sample selection biases that confound comparisons of the two types of proceedings and sanctions. Others compare offenders from different jurisdictions, introducing important contextual influences that interact with the deterrent effects of punishment.<sup>89</sup> Only three studies have systematically compared recidivism rates for adolescents sentenced as juveniles or adults, addressing the methodological problems in earlier studies. Despite these limitations, in the Minnesota study, 58% of the transferred youths committed new offenses within two years of conviction, compared to 42% of the youths retained in the juvenile court, a statistically significant difference.<sup>90</sup> Offenses were more serious among the waived sample: over 85% were convicted of felony offenses against persons or property, compared to 63% of the waived sample. The frequency of new offenses was higher for the waived sample as well. The analysis did not control for the sorting process used by prosecutors to refer juveniles for transfer to the adult court. Accordingly, the transferred population had substantively different and more serious prior incarceration records compared to the retained youths, in terms of both prior offenses and failures in prior treatment efforts.<sup>91</sup> Thus, prosecutorial selection in this case may serve as a proxy for criminal propensity, and the differences between the samples may reflect more about that propensity than the differential effects of court jurisdiction. But two other possible explanations are offered for the elevated recidivism rates of the criminal court population: socialization to criminal norms and learning criminal skills in adult correctional institutions, and therapeutic returns of juvenile corrections interventions. This explanation is consistent with other studies that illustrate differences in substantive punishment between juvenile and adult corrections.<sup>92</sup>

The Florida study shows a similar pattern of higher offending rates for youths transferred to the adult court.<sup>93</sup> This study used a case matching procedure to control for the selection and sorting processes that allocate adolescents to the juvenile or adult court. Cases were matched on seven criteria: (1) most serious offense for which the transfer was made, (2) the number of counts included in the bill of information for the committing offense, (3) the number of prior referrals to the juvenile court, (4) the most serious prior offense, (5) age at the time of the committing offense, (6) gender, and (7) race (coded dichotomously as white or non-white). The matching process is critical to the validity of statistical inferences of sample differences that exclude selection bias.<sup>94</sup> Matches were successful for the first six variables, but transfers including matches for race were less

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<sup>88</sup> See, McGowan et al., *Effects of Violence Laws and Policies*, supra note 11.

<sup>89</sup> John C. Hagan & Kristin Bumiller, *Making Sense of Sentencing: A Review and Critique of Sentencing Research*, in RESEARCH ON SENTENCING: THE SEARCH FOR REFORM (Alfred Blumstien et al. eds., 1983); see also CHARLES R. TITTLE, SANCTIONS AND SOCIAL DEVIANCE: THE QUESTION OF DETERRENCE (1980); Charles R. Tittle, *Evaluating the Deterrent Effects of Criminal Sanctions*, in HANDBOOK OF CRIMINAL JUSTICE EVALUATION 381 (Malcolm Klein & Kathie Teilmann eds., 1980).

<sup>90</sup> See Podkapacz & Feld, *End of the Line*, supra note 85, at 490.

<sup>91</sup> *Id.* at 491.

<sup>92</sup> Cf. Forst, supra note 95.

<sup>93</sup> See Bishop et al., supra note 83, at 182.

<sup>94</sup> Jeffrey A. Fagan, *Natural Experiments*, in MEASUREMENT ISSUES IN CRIMINOLOGY 108 (Kimberly L. Kempf ed., 1990).

successful. Only two-thirds of the white transfers could be matched to white nontransfers, and only about half of the non-white transfers could be matched to non-white nontransfers.<sup>95</sup> When the race criterion was relaxed, successful matches were obtained in 92% of the cases.

Recidivism rates were far higher for transferred cases within the first three years following conviction: 30% of the transferred youths were rearrested, compared to 19% of the juvenile court sample.<sup>96</sup> But in a seven year follow-up, rearrest rates were comparable for the two groups: 42% of the transfers were rearrested, compared to 43% of the juvenile court sample.<sup>97</sup> The difference in long-term recidivism rates was not significant. However, differences for specific offense types were evident. Recidivism rates were higher for nontransferred felony property offenders; there were no differences for cases involving felony violence. For all other crime categories, rearrest rates were higher over the longer follow-up period for transferred cases.<sup>98</sup> Using multivariate analysis to control for the matching criteria, there was a weak but statistically significant effect of transfer on rearrest: after controlling for offense and offender characteristics, transferred cases were 1.59 times more likely to be rearrested over the follow-up period.<sup>99</sup>

Analyses of time to first rearrest showed that rearrest risks were higher for transferred cases during the first 1,500 days of the follow-up period, but the risks were no different thereafter.<sup>100</sup> Using survival analysis to characterize differences in the time to rearrest, and controlling for offense types, transferred cases were more likely to be rearrested over the follow-up period for all offense types except property offenses. The authors conclude that, similar to the short-term follow-up, this longer-term follow-up showed that “transfer was more likely to aggravate recidivism than to stem it.”<sup>101</sup>

The natural experiment comparing adolescents from New York and New Jersey produced similar results.<sup>102</sup> In this study, recidivism rates were computed for adolescent felony offenders adjudicated in juvenile court in New Jersey with matched cases sentenced in the adult court in New York. For robbery offenders, rearrest rates were higher for cases adjudicated in the criminal courts (chi-square = 6.757,  $p < .009$ ).<sup>103</sup> However, rearrest rates did not differ for burglary offenders by court jurisdiction. The pattern for reincarceration was similar. Robbery cases in the criminal court cohort were reincarcerated more often (56.2%) than the juvenile court robbery cohort (40.9%) (chi-square = 16.56,  $p < .001$ ).<sup>104</sup> There were no significant differences in reincarceration rates for burglary offenders.

The annualized rate of rearrest offending was computed for offenders with at least one rearrest (for a new criminal violation).<sup>105</sup> Differences between juvenile and criminal

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95. Lawrence Winner et al., *The Transfer of Juveniles To Criminal Court: Reexamining Recidivism Over the Long Term*, 43 CRIME & DELINQUENCY 548, 550 (1997) [hereinafter Winner et al., *Reexamining Recidivism*].

96. See Bishop et al., *supra* note 83, at 182.

97. See Winner et al., *supra* note 114, at 551.

98. *Id.* at 552.

99. *Id.* at 553.

100. *Id.* at 556.

101. *Id.* at 558.

102. See Fagan, *supra* note 31.

103. *Id.* at 92.

104. *Id.* at 93.

105. The re-offending rearrest rates were calculated by annualizing total arrests over the time at risk during the

court cases mirrored the patterns observed for other crime indicators. There were significant differences in rearrest rates for robbery offenders in criminal court compared to robbery offenders in juvenile court (2.85 rearrests per year at risk versus 1.67 rearrests per year at risk) ( $F=11.24$ ,  $p < .001$ ). There were no significant differences in the rates for burglary offenders by court jurisdiction.<sup>106</sup>

Another comparison examined the number of days until rearrest. This measure, called failure time or survival analysis,<sup>107</sup> showed that for robbery offenders in the criminal court, rearrests occurred at an average of 457 days after first release to the street, compared to 553 days for robbery offenders in the juvenile court ( $F=4.662$ ,  $p < .05$ ). For burglary offenders, there was no significant difference between juvenile and criminal court cases. A Cox regression model was used to assess the effects of court jurisdiction and sentence length on the hazard of rearrest within three years of street time, controlling for the effects of case (offense and offender) characteristics.<sup>108</sup> The parameters showed that the hazard of (or risk of) rearrest was 29% lower for adolescents sentenced in the juvenile court compared to criminal court cases, after controlling for sentence length.<sup>109</sup> When specific types of rearrest were considered, the same comparative advantage was observed for juvenile court sanctions for violent offenses, for other felony offenses, and for misdemeanors. Only for drug offenses did the model show a comparative advantage for criminal court punishment.<sup>110</sup> Finally, tests of interactions of sentence length by court jurisdiction yielded no significant effects.<sup>111</sup>

Thus, the comparative advantage of juvenile court sanctions in controlling crime among adolescent felony offenders seems to reflect its unique correctional context, and is independent of the length of punishment. The substantive dimensions of punishment in adult correctional facilities offers an important clue to explaining the increase in crime propensity among adolescents that follows punishment as an adult and with adults. Increasing the length of confinement offers no return to crime control for this population. Moreover, punishment in the adult correctional system seems to raise the risk of rearrest, an iatrogenic effect that contradicts the predictions of deterrence theory. There is a consistent pattern of higher rates of criminal offending among adolescents punished as adults compared to adolescents punished as juveniles.<sup>112</sup> These results were obtained

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follow-up period. Time reincarcerated was excluded from the re-offending "window." Incarceration times for subsequent convictions were determined using the same procedures for calculating minimum sentences. Suspended sentences were not included in the calculation of subsequent incarceration times. Sentences to time served were estimated by computing the interval between the rearrest date and the sentencing date for the rearrest event. *Id.* at nn.15–16.

106. See Fagan, *supra* note 31, at 93.

107. PETER SCHMIDT & ANNE DRYDEN WITTE, PREDICTING RECIDIVISM USING SURVIVAL MODELS (1989).

108. Hazard models estimate the probability that an individual will fail during a given time period. Hazard analyses simultaneously estimate the likelihood of two dimensions of recidivism: its prevalence during a given time period, and the interval until rearrest occurs. The Cox procedure permits testing of specific hypotheses by including covariates in the model and testing for their significance against a model with no predictors. See David R. Cox, *Regression Models and Life Tables*, 34 J. OF THE ROYAL STAT. SOC'Y 187 (1972); PAUL D. ALLISON, EVENT HISTORY ANALYSIS: REGRESSION FOR LONGITUDINAL DATA (1984); WILLIAM R. GREENE, ECONOMETRIC ANALYSIS (1990).

109. The percent reduction in hazard of rearrest is based on the exponentiated coefficient [Exp ( $B$ )]. An Exp ( $B$ ) is computed for each independent variable. It indicates the percentage change in the hazards of rearrest associated with a unit change in that independent variable.

110. See Fagan, *supra* note 31, at 96–98.

111. *Id.* at 99.

112. Criminological research cites several noteworthy examples of iatrogenic effects of criminal sanctions. Assailants in misdemeanor domestic violence cases who are arrested are rearrested more often and more quickly than a randomly assigned control group who were warned and released by police. The effect was specific to offenders with

across a range of sampling and measurement conditions, and the effects were identified using different analytic methods. Whatever the symbolic gains from sentencing adolescents as adults, these gains are discounted, if not reversed, by the increased public safety risks of substantive punishment of juveniles as adults.

#### D. Summary

Two decades of legislative activism have sharply increased the number of juveniles prosecuted as adults and sentenced to adult criminal punishments. According to Bishop, these studies showed that many of them are below the age of 17, had no history of violence that would pose a public safety threat, and were convicted of nonviolent or misdemeanor crimes. The increase in transfer has disproportionately affected minority youths, well in excess of their contribution to the population of adolescent offenders.

Reviewing two decades of research on transfer, Bishop condemns the “recent and substantial expansion of transfer” as harmful and ineffective,<sup>113</sup> while Redding says that “[t]he short-term benefits gained from transfer and imprisonment may be outweighed by the longer-term costs of (increased) criminal justice system processing” from higher recidivism rates.<sup>114</sup> The convergence in this body of research, despite differences in sampling, measurement and analytic methods among the studies, suggests that policies promoting transfer adolescents from juvenile to criminal court often fail at deterring crime among the affected individuals, and may actually worsen public safety risks. The weight of empirical evidence strongly suggests that there are no general deterrent effects of increasing the scope of transfer on the incidence generally of serious juvenile crime.<sup>115</sup> Nor are there marginal specific deterrent effects on offending rates of youths transferred to and sentenced in the adult court. In fact, Bishop shows that in two studies, juveniles prosecuted as adults had higher rates of rearrest for serious felony crimes such as robbery and assault, were rearrested more quickly, and were more often returned to incarceration.<sup>116</sup>

The broad reach of new transfer laws and policies captures both those whose crimes and reoffending risks may merit harsher punishment, but also many more who are neither chronic nor serious offenders, pose little risk of future offending, and who seem to be damaged by their exposure to the adult court. Whatever the gains of short-term

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“low stakes in conformity,” as measured by their employment (unemployed) and marital (unmarried, cohabitating) status. See LAWRENCE SHERMAN, *POLICING DOMESTIC VIOLENCE* (1992); Lawrence Sherman et al., *From Initial Deterrence to Long-term Escalation: Short Custody Arrest for Poverty Ghetto Domestic Violence*, 29 *CRIMINOLOGY* 821 (1991). Misdemeanor domestic violence assailants who received temporary restraining orders were rearrested more often compared to a matched sample who were given no such orders. See Adelle Harrell et al., *Court Processing and the Effects of Restraining Orders for Domestic Violence Victims*, Grant 90-12L-E-089 (State Justice Institute May 1993) (final report). Drug offenders receiving prison sentences were more likely to be rearrested and were rearrested sooner, compared to a matched sample of drug offenders who received non-custodial sentences, controlling for characteristics of the offense and offender. See Jeffrey Fagan, *Do Criminal Sanctions Deter Drug Offenders?*, in *DRUGS AND CRIMINAL JUSTICE: EVALUATING PUBLIC POLICY INITIATIVES* 188 (Doris MacKenzie & Craig Uchida eds., 1994).

<sup>113</sup>D. Bishop & C. Frazier, *Consequences of Transfer*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE*, *supra* note 1; Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, in 27 *CRIME & JUSTICE* 81 (2000).

<sup>114</sup> Redding, *supra* note 53, at 143.

<sup>115</sup> But see S. Levitt, *Juvenile Crime and Punishment*, 106 *J. POL. ECON.* 1156 (1998).

<sup>116</sup> Bishop, *supra* note 84.

incapacitation, they may be more than offset by the iatrogenic and toxic effects of adult punishment for the larger group of adolescent offenders.

To test these questions, we conducted a natural experiment comparing sanctions and recidivism of youths prosecuted in juvenile versus criminal court. By sampling across two states, the current research project avoids many of the sample selection problems inherent to working within a single state. Rather than drawing samples from populations that have been sorted by decision-makers on a case-by-case basis, or that are processed during different time periods, we compare similar cases across jurisdictions with disparate boundaries between criminal and juvenile courts. We compared the outcomes of adolescent offenders arrested and charged with the same offenses in the criminal court than in juvenile court. We hypothesize that these serious adolescent offenders will receive more a punitive response in the criminal court, taking longer in the court process between arrest and sentencing, being detained more often, more often adjudicated guilty of the original charge, more often incarcerated, and incarcerated for longer periods.

### III. RESEARCH METHODS

#### A. Study Design

This research compares case outcomes and criminal histories for adolescents (ages 15-16) charged in 1992-93 in juvenile courts or in criminal courts with felony robbery, assault and burglary. The juvenile court cases are sampled from three northern New Jersey counties, and the criminal court cases from matched counties in New York City. This study utilizes a natural experiment where equivalent cases from a homogeneous social area are adjudicated in courts where the jurisprudential forum, and therefore sanctioning system, is the primary independent variable. That is, the counties are part of a large metropolitan area (a single Census Metropolitan Statistical Area) that shares demographic, economic, social, and cultural commonalities. Moreover, the crime problems among juveniles and young adults in these communities are comparable and are part of a redistributive process within a regional informal and illicit economy.<sup>117</sup> Because no decision maker sorts cases into the two systems, many of the sample selection problems inherent in a single-jurisdiction study are removed. The longitudinal design compares sanctions with court jurisdiction as the independent variable for both cross-state comparisons. We use sanction severity and court jurisdiction as independent variables to study the specific deterrent effects of juvenile and criminal court sanctions. The study years and cohort ages allow for sufficient time-at-risk to discern patterns of recidivism and sanction effects.

#### B. Samples

The design is a natural experiment in that the allocation of subjects to conditions reflects only patterns of residence that are independent from either the interventions or the outcome measures. By matching counties within states and limiting the sampling

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<sup>117</sup> M. Sullivan, *Crime and the Social Fabric*, in DUAL CITY (J. Mollenkopf & M. Castells eds., 1991).

area to adjacent Metropolitan Statistical Areas (MSAs) within a single and integrated urban region, we control for such factors as economic opportunity, availability of weapons and other criminogenic influences (e.g., drug use, gang influences, illegal markets, physical environment). Comparing offender cohorts from similar if not identical offense and offender profiles further mitigates selection biases inherent in previous research relying on matches across disparate social areas. We also introduce analytic strategies to further address the potential for selection effects in the sampling procedures.

### 1. Selecting States

The states were selected because of the large age range where natural comparisons would be available, and because of the ready contrast in their statutory responses to adolescent crime. In New York, cases alleging the most serious degrees of robbery (1<sup>o</sup> and 2<sup>o</sup>), assault (1<sup>o</sup> and 2<sup>o</sup>) and burglary (1<sup>o</sup>) originate in criminal court, while in New Jersey, comparable cases originate in juvenile court.

a. *New York Statutory Analysis.* The age of criminal jurisdiction for all offenders in New York is 16, and 13, 14 or 15 for selected felony offenders under the “Juvenile Offender Law” (hereafter, the JO Law).<sup>118</sup> The 1978 Act creating the category of juvenile offender lowered the age of criminal responsibility and excluded from Family Court jurisdiction the “designated felony” list of crimes – robbery, burglary, assault, rape, and kidnapping – by fourteen and fifteen year old youths and murder by youths thirteen years of age or older.<sup>119</sup> Because the legislative definition excludes these ages and offenses from Family Court jurisdiction, those cases originate in adult criminal court and include criminal procedural safeguards such as indictment, bail and public hearings, and jury trials. Youths sentenced as Juvenile Offenders, or JO’s, can receive determinate sentences with mandatory minimum terms in secure facilities and for periods substantially longer than the five year maximum term for juvenile “designated felons.” Cases with 15-year-old defendants charged with felonies originate in criminal court and are subject to JO Law provisions for disposition.

However, provisions exist for prosecutors and criminal court judges to “remove” or “remand” these JO cases to Family Court prior to indictment, before trial, or for

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<sup>118</sup> The Juvenile Offender Law, enacted in 1978, mandates that 14 and 15 year olds indicted for any one of 17 felony offenses, and 13 year olds indicted for homicide, are excluded from family court and processed in criminal court.

<sup>119</sup> 1978 N.Y. Laws, ch. 478, § 2. Section 30.00 of the New York Penal Law provides:

1. Except as provided in subdivision two of this section, a person less than sixteen years old is not criminally responsible for conduct.
2. A person thirteen, fourteen or fifteen years of age is criminal responsible for acts constituting murder in the second degree . . . ; and a person fourteen or fifteen years of age is criminally responsible for acts constituting the crimes . . . [of] kidnapping in the first degree; . . . arson in the first degree; . . . assault in the first degree; . . . manslaughter in the first degree; . . . rape in the first degree; . . . sodomy in the first degree; . . . aggravated sexual abuse; . . . burglary in the first degree; . . . burglary in the second degree; . . . arson in the second degree; . . . robbery in the first degree; . . . robbery in the second degree . . . ; or . . . an attempt to commit murder in the second degree or kidnapping in the first degree.

N.Y. PENAL LAW § 30.00 (McKinney 1998).

sentencing following criminal conviction.<sup>120</sup> If a JO is not removed to Family Court, the judge may sentence him under the “youthful offender” provision rather than impose the determinate, mandatory minimum sentence provided.<sup>121</sup> Only if the court does not “remove” a youth to Family Court and also declines to impose a “youthful offender” sentence does a JO receive the determinate and mandatory minimum sentence authorized. Because prosecutors, grand juries, and judges screen out large numbers of youths at successive stages of the proceeding, only about ten percent of youths arrested for “designated felony” offenses ultimately are tried, convicted, and sentenced as Juvenile Offenders.<sup>122</sup>

**b. *New Jersey Statutory Analysis.*** In New Jersey, the age of jurisdiction remains 18 years of age, though transfer to criminal court is permitted at age 13. The age of jurisdiction for correctional confinement of juveniles is 21. The most recent revisions to the New Jersey Juvenile Code were effective on September 1, 1983.<sup>123</sup> The revised code included “tougher” delinquency sentencing and waiver provisions, and new dispositional alternatives including fines, restitution, and community service.<sup>124</sup> The new code also authorized the use of short-term incarceration, not to exceed sixty days.<sup>125</sup> The new code created a presumption for confinement for youths charged with certain serious crimes such as murder, rape, and robbery, and presumption for non-incarceration for those youths convicted of less serious offenses and who have no prior record.<sup>126</sup> The state legislature instructed juvenile courts to consider the characteristics of an offense and the

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<sup>120</sup> N.Y. PENAL LAW § 60.10 (McKinney 1998). At the various stages of the proceeding, the district attorney plays a pivotal role in deciding whether a child under the age of sixteen will be prosecuted and sentenced as a delinquent or a Juvenile Offender with much harsher, adult consequences. Initially, the prosecutor decides whether to file a complaint alleging an offense for which a juvenile may be held criminally responsible. Following arraignment, the complaint may be referred to a grand jury to determine if probable cause exists to believe that the youth committed the excluded offense and for indictment as a Juvenile Offender. However, prior to indictment the district attorney may request removal to Family Court in the “interests of justice.” [statutory criteria] Even if the grand jury indicts a youth as a Juvenile Offender and prior to trial, the child may be remanded to Family Court after arraignment on the indictment on motion of the court or any party “in the interests of justice” or with the consent of the district attorney if the indictment charges certain felonies and certain mitigating factors are present. Youths indicted for murder, first-degree rape, sodomy or robbery, may be receive a formal “reverse waiver” hearing to determine their appropriate for treatment as juveniles based upon “mitigating circumstances that bear directly upon the manner in which the crime was committed; . . . the defendant’s participation was relatively minor . . . ; or possible deficiencies in the proof of the crime.” 1978 N.Y. Laws, ch. 481. For youths charged with less serious, excluded offenses, such as robbery and assault, the criminal court judge enjoys even great “transfer back” discretion based on consideration of the seriousness and circumstances of the offense, the extent of harm caused, the history and character of the defendant, the impact of transfer to Family Court on the welfare and safety of the community, and the utility of imposing a criminal sentence on the youth. *Id.* Even if a youth is tried in criminal court as a Juvenile Offender, the case may be removed to Family Court is he is convicted of a lesser included offense for which he cannot be found to be criminally responsible, or if the judge deems the application of adult criminal sanctions inappropriate and the district attorney consents to the removal and agrees to set aside the verdict. N.Y. CRIM. PROC. LAW § 220.10(5)(g)(iii) (McKinney Supp. 2003).

<sup>121</sup> N.Y. PENAL LAW § 60.10.

<sup>122</sup> SINGER, *supra* note 12; Sobie, *supra* note 67; S.I. Singer, J. Fagan, and A. Liberman, *The Reproduction of Juvenile Justice in Criminal Court: A Case Study of New York’s Juvenile Offender Law*, in THE CHANGING BORDERS OF JUVENILE JUSTICE, *supra* note 1, at 353.

<sup>123</sup> N.J. Assembly Bills Nos. 641-45 (Jan. 19, 1982).

<sup>124</sup> N.J. STAT. ANN. § 2A:4-24 (b) (West 1987).

<sup>125</sup> *Id.* § 2A:4-24 (c) .

<sup>126</sup> *Id.* § 2A:4-25.

criminal history of the offender when sentencing and provided for enhanced sentences for certain serious or repeat offenders.<sup>127</sup>

Despite retaining the structure of the juvenile court, the new code included new provisions to shape dispositional decisions in a jurisprudence not dissimilar from the criminal court. Although the juvenile court judge retained discretion over the commitment decision under the new code, she must base her decision on legislatively prescribed offense-based criteria.<sup>128</sup> The New Jersey code also listed “aggravating and mitigating factors” to guide the court’s decision whether or not to incarcerate a youth.<sup>129</sup> The code authorized substantial sentences for the most serious crimes and proportionally shorter sentences for less serious offenses,<sup>130</sup> and periods of incarceration beyond the statutory maximum for the most serious juvenile offenders.<sup>131</sup>

Because the new code substantially strengthened the delinquency sentencing options, the legislature anticipated that reliance on waiver might decrease.<sup>132</sup> At the same time, the code substantially revised the waiver provisions by creating a presumption for waiver for youths charged with certain serious offenses – e.g., homicide, robbery and arson – and putting the burden of proof on them to demonstrate their amenability to

<sup>127</sup> *Id.* §§ 2A:4A-43(a), -44(a), (d). New Jersey’s code revisions reflect a desire to promote uniform terms in sentencing and to judge delinquent acts similarly based on their characteristics. *Id.* § 2A:4A-20 section 25 (containing Senate Judiciary Committee Statement).

<sup>128</sup> Section 2A:4A-43(a) of the New Jersey statutory code provides in part:

In determining the appropriate disposition for a juvenile adjudicated delinquent the court shall weigh the following factors:

- (1) The nature and circumstances of the offense;
- (2) The degree of injury to persons or damage to property caused by the juvenile's offense;
- (3) The juvenile's age, previous record, prior social service received and out-of-home placement history.

*Id.* § 2A:4A-43(a).

<sup>129</sup> *Id.* § 2A:4A-44(a), (b). Aggravating factors included the circumstances of the crime, the injury to or special vulnerability of the victim, the juvenile’s prior record and its seriousness and whether the youth was paid for committing the crime. The mitigating factors included youthfulness, lack of serious harm, provocation, restitution for damage, the absence of prior offenses, and likely responsiveness to non-incarcerative dispositions.

*Id.*

<sup>130</sup> *Id.* § 2A:4A-44(d)(1). The New Jersey juvenile code includes a table for sentences:

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|--|----------|
| (a) Murder [first or second degree] . . . . .    | 20 years |
| (b) Murder [other] . . . . .                     | 10 years |
| (c) Crime of the first degree, except murder . . | 4 years  |
| (d) Crime of the second degree . . . . .         | 3 years  |
| (e) Crime of the third degree . . . . .          | 2 years  |
| (f) Crime of the fourth degree . . . . .         | 1 year   |
| (g) Disorderly persons offense . . . . .         | 6 months |

<sup>131</sup> *Id.* § 2A:4A-44(3). That is, periods of incarceration may be extended if a juvenile is convicted of first, second, or third degree crime, has two prior convictions of crimes of the first or second degree, and has been committed previously to a correctional facility. Youths with prior convictions who are convicted of murder may have their 20-year term extended by five years. Youths with prior records who are convicted of other crimes of the first, second, or third degree may have their maximum sentence extended by an additional two years. *Id.* The release of juveniles on parole prior to the completion of at least one-third of their sentence requires the approval of the sentencing court. *Id.* § 2A:4A-44(d)(2).

<sup>132</sup> The Committee stated in its report that “[p]ractically, this presumption [for juvenile imprisonment for serious offenses], may encourage less dependency on waiver of a juvenile to adult court, because of some assurance that the juvenile committing a serious crime would possibly receive a more appropriate disposition in the juvenile system.” *Id.* § 2A:4A-20 (containing Senate Judiciary Committee Statement).



treatment within the juvenile system by the age of nineteen, rather than the previous dispositional maximum of age 21.<sup>133</sup>

Despite the “toughening” of the juvenile code, New Jersey juvenile courts have remained more faithful to the model and theory of the traditional juvenile courts than nearly every other state. An evaluation of the impact of those changes on juvenile dispositions reported relatively low overall use of incarceration sentences and very low rates of waiver.<sup>134</sup> The Commission found that juvenile court judges only imposed incarceration sentences in approximately six percent of delinquency dispositions. The Commission reported “the new Code does, in fact, provide longer terms for a limited class of offenses (e.g. first degree) but equal or lesser terms for the larger group of offenses (second and third degree offenses).”<sup>135</sup> However, the Commission reported that post-Code juveniles are actually serving a greater proportion of their total sentence, suggesting that “present parole policy has toughened despite the less punitive provisions in the Code.”<sup>136</sup> Finally, very few youths are transferred.<sup>137</sup> Fagan, in the previous research on comparative sanctions and recidivism among adolescents in New York and New Jersey, reported a waiver rate of below three percent for cases charged originally with the most serious grades of robbery or burglary.<sup>138</sup>

*c. Correctional Contexts.* The two states differ also in the correctional placements accorded those who are sentenced to confinement. Juveniles convicted in adult court in New York as JO’s initially are sent to juvenile facilities of the Office of Children and Family Services (OCFS). At age 16, they can be transferred to adult DOCS (Department of Correctional Services) facilities by a judge (e.g., if they are already 16 years old by the time of sentencing), or at age 18 by the OCFS facility administration. Defendants whose crimes were committed between 16 and 19 years of age may apply for Youthful Offender status,<sup>139</sup> which provides for placements in OCFS facilities until age

<sup>133</sup> N.J. STAT. ANN. § 2A:4.

<sup>134</sup> BRUCE STOUT, THE IMPACT OF THE NEW JERSEY CODE OF JUVENILE JUSTICE 33 (1987); W.S. Fisher & L. Teichman, *Juvenile Waivers to Adult Court: A Report to the New Jersey Legislature*, 9 CRIM. JUST. Q. 68, 70--72 (1986).

<sup>135</sup> STOUT, *supra* note 115, at 85-86.

<sup>136</sup> *Id.* at 88.

<sup>137</sup> *Id.* at 33, 85-86; Fisher & Teichman, *supra* note 115, at 70--72. In order to prevent any sample bias resulting from the transfer of cases, we have included all cases in our analysis; this includes those in New York transferred to the juvenile court and those in New Jersey transferred to the criminal court.

<sup>138</sup> FAGAN, COMPARATIVE IMPACTS, *supra* note 17; Fagan, *Comparative Advantages*, *supra* note 17.

<sup>139</sup> Section 720.10 of the New York Penal Law provides:

As used in this article, the following terms have the following meanings:

1. "Youth" means a person charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

2. "Eligible youth" means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, sodomy in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or

(b) such youth has previously been convicted and sentenced for a felony, or

(c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen

21, and a discounted sentence equivalent of a sentence for a Class E felony,<sup>140</sup> or four years.<sup>141</sup> Inmates must be transferred to adult DOCS facilities by age 21.

In contrast, all New Jersey juveniles whose cases are disposed in the juvenile court (for crimes committed before the defendant has reached 18 years of age) are sent to juvenile corrections facilities operated by the New Jersey Juvenile Justice Commission for a term whose length is scheduled based on the final disposition charge.<sup>142</sup> The incarceration term may be extended, based on petition from the prosecutor to the Court for up to five years based on the seriousness of the crime,<sup>143</sup> or for up to two years if the defendant has three or more prior juvenile court delinquency findings.<sup>144</sup>

hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in N.Y. Family Court Act § 301.2.

3. Notwithstanding the provisions of subdivision two, a youth who has been convicted of an armed felony offense or of rape in the first degree, sodomy in the first degree, or aggravated sexual abuse is an eligible youth if the court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.

4. "Youthful offender finding" means a finding, substituted for the conviction of an eligible youth, pursuant to a determination that the eligible youth is a youthful offender.

5. "Youthful offender sentence" means the sentence imposed upon a youthful offender finding.

6. "Youthful offender adjudication". A youthful offender adjudication is comprised of a youthful offender finding and the youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.

N.Y. PENAL LAW § 720.10 (McKinney 1998).

<sup>140</sup> Section 60.02 of the New York Penal Law provides:

When a person is to be sentenced upon a youthful offender finding, the court must impose a sentence as follows:

(1) If the sentence is to be imposed upon a youthful offender finding which has been substituted for a conviction of an offense other than a felony, the court must impose a sentence authorized for the offense for which the youthful offender finding was substituted, except that if the youthful offender finding was entered pursuant to paragraph (b) of subdivision one of section 720.20 of the criminal procedure law, the court must not impose a definite or intermittent sentence of imprisonment with a term of more than six months; or

(2) If the sentence is to be imposed upon a youthful offender finding which has been substituted for a conviction for any felony, the court must impose a sentence authorized to be imposed upon a person convicted of a class E felony provided, however, that the court must not impose a sentence of conditional discharge or unconditional discharge if the youthful offender finding was substituted for a conviction of a felony defined in article two hundred twenty of this chapter.

*Id.* § 60.02.

<sup>141</sup> "For a class E felony, the term shall be fixed by the court, and shall not exceed four years." *Id.* § 70.00(2)(e). For offenses classified as "violent felonies," a minimum sentence of one and one-half years is mandated. *Id.* § 70.02(3)(d).

<sup>142</sup> N.J.S.A. §2A:4A-44 (d)(1), *supra* n. 101.

<sup>143</sup> N.J.S.A. §2A:4A-44(d)(3): "Upon application by the prosecutor, the court may sentence a juvenile who has been convicted of a crime of the first, second, or third degree if committed by an adult, to an extended term of incarceration beyond the maximum set forth in paragraph (1) of this subsection, if it finds that the juvenile was adjudged delinquent on at least two separate occasions, for offenses which, if committed by an adult, would constitute a crime of the first or second degree, and was previously committed to an adult or

## 2. Selecting Counties

In New Jersey, we sampled cases from Essex, Hudson and Passaic Counties. In New York, we sample from Brooklyn (Kings), Bronx and Queens Counties<sup>145</sup>. The study counties were selected because of their location within the New York metropolitan SMSA. The matching criteria included demographic, socio-economic, labor force, and housing characteristics, as well as the crime problem of each county. The region provides a relatively homogeneous socio-economic area in which to compare court responses. The counties of the region are interrelated economically, in transportation, media and culture, and in major social institutions such as educational institutions and medical centers. Additionally, according to 1990 census data, these counties are well matched regarding rates of unemployment, poverty, female-headed households, and residential mobility. The counties' crime problems are comparable, as well, relative to their positions in their respective states.<sup>146</sup> Throughout the 1980s and into this decade, each county was among the top five counties in each state regarding their contributions to the states' prison population and the states' homicide fatalities. At the time of case selection for this study, each state was experiencing over-crowding in its adult correctional facilities. Each county has a local incarceration facility for adults (New York City counties share the Rikers Island facility), and local juvenile and adult detention facilities (New York City boroughs share beds in the city's juvenile detention system). Each has a well-developed indigent defender system for juveniles and adults.

## 3. Selecting Charge Categories

The offense categories are robbery (1<sup>o</sup> and 2<sup>o</sup>), burglary (1<sup>o</sup>) and assault (1<sup>o</sup> and 2<sup>o</sup>). These three types of crimes are recurrent criminological events which are paradigm cases representing two faces of the debate in defining juvenile jurisdiction. Robbery and assault events comprise the prototypical violent juvenile crimes which have evoked fear of crime as well as legislative action in the past decade.<sup>147</sup> Adolescent burglary offenses encompass a broader, more complex and persistent pattern of crimes that are recurring challenges to judicial responses to juvenile crime. Property offenders comprise a large proportion of incarcerated juveniles in each state and also those waived to criminal court.<sup>148</sup> Appendix A analyzes the elements of the crimes enumerated in these statutes and demonstrates their internal consistency across the states.

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juvenile facility. The extended term shall not exceed five additional years for an act which would constitute murder and shall not exceed two additional years for all other crimes of the first degree or second degree, if committed by an adult, and one additional year for a crime of the third degree, if committed by an adult."

<sup>144</sup> N.J.S.A. §2A:4A-44.d.(4): Upon application by the prosecutor, when a juvenile is before the court at one time for disposition of three or more unrelated offenses which, if committed by an adult, would constitute crimes of the first, second or third degree and which are not part of the same transaction, the court may sentence the juvenile to an extended term of incarceration not to exceed the maximum of the permissible term for the most serious offense for which the juvenile has been adjudicated plus two additional years.

<sup>145</sup> We have added two counties to Fagan's initial research, see Fagan, *Men from the Boys*, *supra* note 17, and Fagan, *Comparative Advantages*, *supra* note 17: Hudson County, New Jersey, and Bronx County, New York.

<sup>146</sup> FAGAN, *COMPARATIVE IMPACTS*, *supra* note 17; Fagan, *Comparative Advantages*, *supra* note 17.

<sup>147</sup> Feld, *Public Policy*, *supra* note 2; A. Miller & L. Ohlin, *The Politics of Secure Care*, in *VIOLENT JUVENILE OFFENDERS* (R. Mathias et al. eds., 1984).

<sup>148</sup> *YOUTH IN ADULT COURT*, *supra* note 2; Feld, *American Juvenile Court*, *supra* note 27.

#### **4. Selecting Cases**

A multi-stage stratified random sampling procedure yielded a sample of N= 2382 adolescents aged 15-16 and charged with the specified penal code violations. Cases were selected after charges were filed in court: at Supreme Court indictment (the felony court in New York), and upon filing of juvenile court petitions in New Jersey. In each court, this selection procedure insured that only cases which have passed a probable cause determination (i.e., a legal sufficiency determination) in each court are included in the sample. Juvenile Offender cases in New York are originally heard in the Criminal Court (the lower court) in New York. They are arraigned there and, if indicted, they are arraigned again in the Supreme Court, the felony jurisdiction for New York, and adjudicated there. In New Jersey, court intake officers screen petitions at the time they are filed, and simultaneously with prosecutorial screening for legal sufficiency. This procedure avoided sample attrition at the outset from prosecutorial screening or dismissals prior to arraignment.

#### **5. Data Sources**

The New Jersey Administrative Office of Courts provided New Jersey data for Hudson County in automated format. For the other two New Jersey counties, data were manually collected at the county courthouses from case files of sampled individuals. Adult records provided by the New Jersey State Police supplemented these data. New York data were provided by the New York City Criminal Justice Agency, the city's pretrial services agency, which collects and stores data on all New York City criminal defendants. The New York data were supplemented by data from the New York Department of Criminal Justice Services, including data concerning cases waived from the criminal court down to New York family court and case information on defendants' prior juvenile court case histories. The data were sampled in a two-stage process: first a population of eligible cases, based on the above sampling criteria, was established for each county. Then cases were sampled based on their representation by age, sex and offense within each county.

#### **6. Time-at-risk**

Each sampled individual was tracked through December 1999, thus allowing a minimum seven year follow-up period for measuring time-at-risk. This provided sufficient time for almost all sampled individuals to have completed their sentences and accumulate at least two years time-at-risk to meaningfully analyze the effects of sanctions on recidivism. Only 14 cases of the nearly 2,400 were censored from the analyses due to an inadequate time-at-risk period.

To determine time-at-risk, we calculated the number of days following sentencing on the sampled case that each individual was not in custody. For cases that did not result in incarceration, the time-at-risk began on the day of sentencing. For cases that did result in incarceration, time-at-risk began upon release from custodial institution. To determine this date among New Jersey cases, we obtained actual release dates from the records of the New Jersey Juvenile Justice Commission. To determine this date among New York cases, we estimated sentence length as 2/3 of the maximum sentence. This estimate was

used on advice of staff at the New York City Criminal Justice Agency, by whom the sentencing data were supplied.<sup>149</sup>

### 7. Sample Description

Table 1 displays demographic information for the individuals included in our entire sample and in each of the two jurisdictions that comprise the sample, New Jersey and New York. Though the two sub-samples are very similar to one another, there are some important differences between the sampled individuals in New York and in New Jersey. In New York, there is a larger proportion of 16-year-olds (as opposed to 15-year-olds), a slightly larger proportion of males, and a greater proportion of racial minorities than in the New Jersey sub-sample.

**Table 1. Sample Demographics by State**

	New Jersey (n=1061) %	New York (n=1321) %
<b>Age</b>		
15	46.9	30.8
16	53.1	69.2
<b>Sex</b>		
Female	17.1	11.8
Male	82.9	88.2
<b>Race and Ethnicity</b>		
White	13.3	4.9
African-American	54.8	58.0
Hispanic	26.1	32.2
Asian	0.2	1.4
Other and Unknown	5.6	3.5

Table 2 provides information on the sampled cases in the entire sample and each sub-sample. Again, though they are mostly similar, some important differences exist between the two sub-samples. Perhaps most importantly, there is a much larger proportion of robbery cases in New York, and correspondingly smaller numbers of aggravated assault and burglary cases. This preponderance of robbery cases is a result of the charge distribution of JO cases in New York City, which has been confirmed by other research efforts.<sup>150</sup> Other, less important differences between cases sampled in each state

<sup>149</sup> See M. PHILLIPS ET AL., ESTIMATING DISPLACEMENT FOR ALTERNATIVE-TO-INCARCERATION PROGRAMS IN NEW YORK CITY (2002).

<sup>150</sup> E.g., A. Liberman & L. Winterfield, Case Processing of Juvenile Arrests in New York City's Adult and Juvenile Courts During Fiscal Year 1992 (1996); A. Liberman et al., Specialized Court Parts for Juvenile Offenders in New York City's Adult Felony Courts: Case Processing in 1994-1995 and 1995-1996 (2000). See also Akiva Liberman & William Raleigh, Specialized Court Parts for Juvenile Offenders in New York City's

exist as well. The New York cases are more likely to have been detained by the courts prior to adjudication and more likely to have an associated weapon charge. However, arrest warrants were ordered more often during case processing of New Jersey cases; in addition, the New Jersey individuals were more likely to have been arrested prior to this case, to have more extensive arrest histories (among only those with any prior arrests), and more likely to be arrested while the sampled case was being processed.

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Adult Felony Courts: Case Processing in 1994-1995 and 1995-1996 (May 1, 1998) (unpublished paper presented at 1998 Annual Conference of the American Society of Criminology, on file with the author) (finding that the criminal court was more punitive than the juvenile court over its entire caseload). Liberman and Raleigh restricted juvenile court cases to those comparable to the criminal court cases on age and charge (i.e., fourteen- and fifteen-year-olds arrested on Juvenile-Offender-eligible charges), and also examined robbery cases alone, which comprise more than half of the criminal court caseload. A higher proportion of cases were formally prosecuted (filed) in the criminal court than in the juvenile court system (88% versus 50% overall, or 88% versus 48% for robberies alone, respectively), and the criminal court detained more cases pretrial than the juvenile court (48% versus 18% overall, or 41% versus 15% for robberies alone, respectively); however, these within-jurisdictional results were more ambiguous at conviction and sentencing.

**Table 2. Current Case Information by State**

Charge	New Jersey	New York
	(n=1061)	(n=1321)
% Robbery	24.4	80.3
% Aggravated Assault	43.4	15.2
% Burglary	31.1	4.5
<b>% Ever Detained by Court</b>	41.4	47.0
<b>% Warrant Ordered by Court</b>	18.6	7.9
<b>% With Associated Weapon Charge</b>	34.9	41.4
<b>% With Prior Arrest Record</b>	67.0	45.0
Mean Number of Prior Arrests	5.6	2.4
Mean Number of Prior Convictions	3.1	1.1
<b>% Previously Incarcerated</b>	4.1	14.4
<b>% Rearrested During Case Processing</b>	37.1	16.3
Mean Number of Rearrests During Case Processing	1.9	1.3
Mean Case Length (days – for cases without bench warrants)	140.7	132.6

These differences among sub-samples stem from our strategy, discussed above, of sampling according to the characteristics of the populations of eligible cases in each state jurisdiction. Thus, sample differences result from variation between the two populations sampled. All demographic and case variables are included in the following analyses as control variables, in order to hold these values constant as we compare jurisdictional differences. With regard to the disparity among top arrest charges, it should be noted that because we selected very specific charge codes in each state, the included charges are all of approximately equal severity within each state.

### C. Independent Variables

The range of independent variables in our dataset was limited by data availability and similarity of available data across all data sources. We only include in our analyses variables that are similarly measured across states, yet this resulted in a collection of independent variables that matches or exceeds the lists of variables found in much of the existing research on recidivism. Means and standard deviations for these variables are shown in Appendix B1. We include the following variables:

#### *Demographics*

- age – measured as a continuous variable, from 15.0 to 16.9
- sex – included as a dummy variable denoting female
- ethnicity – white, Hispanic American, African American, or other ethnicity

#### *Current Case*

- Top arrest charge at indictment or at time of either indictment in criminal court or filing of delinquency petition in juvenile court– either robbery, burglary or aggravated assault
- Weapon -- whether a weapon charge was associated with this arrest – binary<sup>151</sup>
- Bench Warrant Issued during Case Processing – binary
- Detention during Case Processing – binary
- Concurrent Arrests – the number of concurrent arrests during case processing (this variable is labeled *concurrent arrests*) – logged.
- Case Length – time from arrest to final disposition – logged
- Adjudication – a variable measuring a finding of guilt (or a sustained delinquency petition), including both formal conviction or adjudication as well as informal diversion corresponding to a supervision sanction – binary<sup>152</sup>
- The number of months incarcerated, if the defendant was given a custodial sentence – we use the natural logarithm of the number of months

#### *Criminal History*

- The number of prior arrests – logged
- Whether the defendant had been previously incarcerated – binary
- Age at first arrest

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<sup>151</sup> We use this as the most reliable and consistent measure of weapon use available in the study. Investigation reports are inconsistent with respect to mentions of the presence of a weapon. However, practice is more consistent with respect to including a weapons charge in the indictment or juvenile court petition, particularly for firearms. The inclusion of this indicator also creates a distinction between robberies, assaults and burglaries committed with weapons and those committed without them.

<sup>152</sup> Because of differences in how such diversion is handled in the two systems, this “court action outcome” is a more comparable outcome across systems than formal conviction is an official definition of “conviction.” We discuss this distinction further below.



***Adult vs. Juvenile Jurisdiction***

- State – New York or New Jersey
- We include three interaction terms
  - a) the interaction between state and the (logged) number of prior arrests
  - b) the interaction between state and length (in months, logged) of custodial sentences
  - c) the interaction between state and the dummy variable indicating any court action (analogous to conviction)

***Censored Cases***

- Censor – the predicted value from a logistic regression equation to predict censoring of cases that were unavailable for analysis due to inadequate time-at-risk (n=14 cases).

***Selection***

- Selection – the predicted value from a logistic regression equation to estimate sample differences between the states.

**D. Dependent Variables**

Case outcomes included certainty, severity, and celerity of sanctions across the two jurisdictions. These measures were compared across states to estimate differences in the sanctioning rates between criminal court and juvenile court.<sup>153</sup> Then, we use official arrest records to construct several measures based on officially recorded contacts with the law: failure times and rates, frequency of arrest and conviction, severity of arrest charge, offending rates (per unit of time at risk), and subsequent incarceration. We also computed offense-specific recidivism measures that collapse numerous penal code offense categories into five homogeneous dimensions of criminality:

- Violence: homicide, manslaughter, felony assault, robbery, rape, kidnap, and arson.
- Property: grand larceny, auto theft, and burglary.
- Weapons: unlawful possession of firearms, cutting instruments, or other weapons
- Misdemeanors: all other penal code violations except drug offenses.
- Drugs: Sale or possession of controlled substances, sale or possession of marijuana, possession of drug paraphernalia.

Appendix B2 shows the correlation matrix of the prevalence measures of recidivism and the offense, offender and sanction variables that are used in the model estimation routines.

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<sup>153</sup> See, Kupchik et al., *Punishment, Proportionality and Jurisdictional Transfer of Adolescent Offenders: A Test of the Leniency Gap Hypotheses*, *supra* note 63.

## **E. Data Analysis**

The analytic goal of this study is to determine the relationship between court jurisdiction, sanction severity and recidivism, controlling for offense and offender characteristics. We first examine first whether there is a “leniency gap” between juvenile and criminal courts, and then examine the effects of court jurisdiction on recidivism, while accounting for differential sanctions.

### **1. Analysis of Case Processing and Sanctions**

We first analyze differences between court jurisdictions in the certainty, severity, and celerity of sanctions. To measure certainty and severity, we compare the likelihood of conviction across states and the sentences received by defendants in each state. To measure celerity of punishment, we compare case processing times among cases in each court system.

### **2. Recidivism: Descriptive Results**

To begin measuring the effects of court jurisdiction and sanction severity on recidivism, we first present descriptive results of recidivism by state. We then stratify by each of several variables which seem to have general associations with recidivism, and which differ somewhat between the NY and NJ samples. By stratifying, one can see whether the overall pattern of results persists, or whether the overall pattern has been influenced by other differences between the two samples. We present recidivism results stratified by arrest charge on the sampled case, history of prior arrest, and sex. Because disposition and sentencing differs between NY and NJ, we also stratify by the disposition and sentence imposed on the sampled case. Of course, these descriptive results are only suggestive because they control for only one possible confounding variable at a time, and also fail to control for many others.

### **3. Analyses of Recidivism: Multivariate Analyses**

We then turn to more definitive multivariate analyses of recidivism. These analyze the effect of court jurisdiction on recidivism, while simultaneously controlling for the sampled charge, disposition and sanction on the sampled case, as well as controlling for demographic variables (age, sex, ethnicity), other case variables (e.g., detention, concurrent cases), and criminal history variables (prior arrests, prior incarceration, and age of first arrest).

We use two different types of multivariate procedures. First, we use hazard models to examine the likelihood of, and time to, recidivism. Because in hazard models each defendant can only fail (i.e., recidivate) once, we estimate different hazard models to explore alternative types of recidivism. Model 1 uses the first rearrest as the measure of recidivism, Models 2 through 13 estimates the timing of first rearrests for specific types of offenses, and Model 14 estimates subsequent incarceration as the measure of recidivism. The essence of these models is to compare whether NY defendants (most

under adult court jurisdiction) are more or less likely to be rearrested than NJ defendants (most under juvenile court jurisdiction), taking into account time until recidivism.

We use Cox proportional hazard models<sup>154</sup> to assess both the probability and the timing of rearrest. The proportional hazards model allows us to specify the hazards (or probability) and timing of rearrest as a function of court jurisdiction and sanction severity, while controlling for additional offender, offense, and case processing factors. The Cox multivariate procedure permits testing of specific hypotheses by including covariates in the model and testing for their significance against a model with no predictors.<sup>155</sup> The Cox model maximizes a partial likelihood based only on ranked non-censored cases.<sup>156</sup> In the multivariate case of Cox regression, partial likelihood provides the proportional hazards model with unbiased and efficient estimates of the relative risk of rearrest associated with changes in the independent variables.<sup>157</sup> Cox regression is well suited to the more difficult case of continuous data, mainly because estimates of the hazard function are derived through integration, and because it adapts to progressive as well as simple censoring.<sup>158</sup>

We also use a *competing risks* hazard model to establish a hierarchy of severity of rearrest offenses. In this variant of proportional hazard models, the occurrence of one type of event removes the individual from the risk of other event types.<sup>159</sup> That is, the person is censored from the analysis of a second type of event at the point in time when

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<sup>154</sup> D. R. Cox, *Regression Models and Life Tables*, 34 J. ROYAL STAT. SOC. 187 (1972). See also P.D. ALLISON, *EVENT HISTORY ANALYSIS: REGRESSION FOR LONGITUDINAL EVENT DATA* (1984) [hereinafter ALLISON, *EVENT HISTORY ANALYSIS*]; P. D. ALLISON, *SURVIVAL ANALYSIS USING THE SAS SYSTEM: A PRACTICAL GUIDE* (1995) [hereinafter ALLISON, *SURVIVAL ANALYSIS*]; W. GREENE, *ECONOMETRIC METHODS* (1990); B. Efron, *The Efficiency of Cox's Likelihood Functions for Censored Data*, 72 J. AM. STAT. ASS'N 557 (1977); C.A. Visher & R.L. Linster, *Survival Models of Pretrial Failure*, 6 J. QUANT. CRIMINOLOGY 153 (1990).

<sup>155</sup> In the special case of the proportional hazards model, the time function is neither specified nor estimated thanks to the partial likelihood estimation procedure. The model assumes that the risks for all cases are simple multiples of the baseline function, and the coefficients thus represent the change in the relative risks of failure (in our case rearrest) associated with a unit change in the independent variable in question. The partial likelihood test used in Cox regression constructs a likelihood function depending upon the unknown parameters and the observed data, Cox, *supra* note 125, and then finds parameter values that maximize this function based only on those cases that are uncensored. ALLISON, *EVENT HISTORY ANALYSIS*, *supra* note 125.

<sup>156</sup> Cox, *supra* note 125.

<sup>157</sup> See GREENE, *supra* note 125; J. Lee et al., *Covariance Adjustment of Survival Curves Based on Cox's Proportional Hazards Regression Model*, 8 *COMPUTER APPLICATIONS IN THE BIOSCIENCES* 23-27 (1992); see also Efron, *supra* note 125, as cited in ALLISON, *EVENT HISTORY ANALYSIS*, *supra* note 125. The hazard index is estimated as:

$$\log_e (h_i(t)/h_0(t)) = B_1x_1 + \dots + B_p(x_p)$$

where  $h_0(t)$  is the baseline hazard function (when all independent variables take on their mean values), and  $h_i(t)$  is the hazard function of cases with that particular combination of values for the covariates.

<sup>158</sup> For example, in a study of the recidivism of prison releasees, data are simply (or singly) censored if, for a two year follow-up period, it is known only that 50% of the cases were rearrested/ convicted/ returned to prison etc.. Data are progressively censored if some cases leave the jurisdiction before the end of the follow-up period, if some cases die, etc. Because of these cases, the actual sample size changes as a function of time, and the exact proportions failing and surviving during each interval cannot be known. As a result, the hazard function cannot be calculated, but must instead be estimated. While Cox models are not as well suited for discrete data as are transition rate models such Markov renewal, semi-Markov, see ALLISON, *EVENT HISTORY ANALYSIS*, *supra* note 125, logit or probit models, Markov-type models are not easily adapted to progressive censoring.

<sup>159</sup> ALLISON, *EVENT HISTORY ANALYSIS*, *supra* note \_\_\_\_.

the first event occurs. Each event type is analyzed separately and has its own hazard function.<sup>160</sup> The overall hazard function,  $h(t)$  is simply the sum of all the type-specific hazard functions.<sup>161</sup> This procedure also allows for estimating different types of models for different types of risk, or to separate models where the occurrence of each type of event may have a different causal structure. We also use Cox models to estimate the probability of return to incarceration.

To examine offending rates, or the frequency of rearrest per unit of time not incarcerated, we use negative binomial regression models.<sup>162</sup> Negative binomial models are well-suited to analyses predicting *counts* of events, such as rearrests or convictions.<sup>163</sup> The models generate maximum likelihood estimates of the relationship of the discrete dependent variable to a set of explanatory or predictive variables, including both chi-square tests and log likelihood statistics to assess model fit. These models (Models 15 to 19) are estimated separately by type of rearrest offenses.

#### 4. Charge Effects

To insure that the analyses are not biased by differences in the composition of offenders in the sample charge categories between NY and NJ, we estimated two additional model specifications for all models for which the initial competing hazard results showed a significant effect of state. First, we estimated models that include interaction terms of the dummy variable indicating robbery charge and each other independent variable (robbery x age, robbery x sex, etc.). This controls for any differential effect of being charged with robbery and still allows us to estimate the effect of jurisdiction on recidivism. Second, we estimated robbery-specific models, in which we excluded aggravated assault and burglary cases from both states, to include only cases of the same arrest charge.

#### 5. Estimating the Effects of Sample Differences across States

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<sup>160</sup> The type-specific hazard rate is defined as:

$$h_j(t) = \lim_{s > 0} P_j(t, t + s) / s$$

where there are  $m$  different types of events and  $j=1, \dots, m$ .

Let  $P_j(t, t + s)$  be the probability that event type  $j$  occurs in the interval between  $t$  and  $t+s$ , given that the individual is at risk at time  $t$ . In this model, continuous time methods are most appropriate since the exact date of the rearrest is known.

<sup>161</sup> ALLISON, *EVENT HISTORY ANALYSIS*, *supra* note \_\_, at 46.

<sup>162</sup> We compared these results with analyses using an overdispersed Poisson regression. Even with the correction, there was too much overdispersion to justify using the Poisson results. Our experience is consistent with what has been reported in other studies using count models of recidivism or criminal events. *See, e.g.,* C. Kenneth et al., *A Comparison of Poisson, Negative Binomial, and Semiparametric Mixed Regression Models with Empirical Applications to Criminal Careers Data*, 24 *SOC. METHODS & RES.* 387 (1996). Moreover, there is criticism of the implicit assumption in Poisson models that the variance equals the mean, an assumption we are unwilling to make. *See, e.g.,* P. McCULLAGH & J. NELDER, *GENERALIZED LINEAR MODELS* (2d ed. 1989).

<sup>163</sup> GREENE, *supra* note 125; P. SCHMIDT & A. WITTE, *AN ECONOMIC ANALYSIS OF CRIME AND JUSTICE* (1984).

We applied several sampling strategies to ensure homogeneity in offense and offender characteristics in each state (treatment condition). Nevertheless, the possibility remains that sanction effects are under-identified due to state differences, and that selection may influence these results. We addressed the threat of selection that is inherent in case control designs such as this in several ways. First, we matched offenses across penal laws in the two states to ensure narrative consistency in the meanings of the charge categories, including factors such as injury and weapon use that are components of each statute. Second, we estimated a selection parameter, or propensity score, to identify systemic differences in the two samples using both legal (charge, prior record, drug or weapon use) and social (demographic) characteristics of cases and offenders.<sup>164</sup> Propensity scores were estimated using a logistic regression with court jurisdiction as the binary outcome. Following Bang and Robins<sup>165</sup> and Indurkha, Mitra and Schrag,<sup>166</sup> we use the inverse logit of the predicted probability or propensity score to control for selection effects between the two states.

We then estimated recidivism and re-incarceration models both with and without the effects of selection and compared the results. There was no change in the significance of either state (court) or sanctions (incarceration) when the propensity score was included in the models. Third, we included as predictors in the recidivism and re-incarceration models those characteristics that reflect judicial and prosecutorial assessments of risk: associated weapons charges, detention, and concurrent cases, and criminal history variables. These risk assessments may influence both judicial decisions regarding sanctions and also may predict re-offending. We estimated models that control for these characteristics. Accordingly, the results incorporate methods to account and adjust for selection, and therefore are close approximations to experimental results.<sup>167</sup>

We also took additional measures to insure that the differing charge compositions between the NY and NJ samples did not bias our results. In particular, many more of the NY cases were charged with robbery.<sup>168</sup> We estimated two additional model specifications for all hazard models which initially showed a significant effect of state. First, we estimated models that include interaction terms of the dummy variable indicating robbery charge and each other independent variable (robbery x age, robbery x sex, etc.). This controls for any differential effect of being charged with robbery and still allows us to estimate the effect of jurisdiction on recidivism. Second, we estimated

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<sup>164</sup> See, e.g., Donald B. Rubin, *Estimating Causal Effects from Large Data Sets Using Propensity Scores*, 127 ANNALS INTERNAL MED. 757 (1997). Following Berk (Berk, Li and Hickman 2005) and Rosenbaum and Rubin (1983), we use propensity scores to adjust for this problem. In short, propensity scores are the estimated probability of membership in each of the treatment groups that account for confounding variables between the outcome of interest (prior record) and the selection into juvenile or adult court. See, R. Berk, A. Li, and L. Hickman, *Statistical Difficulties in Determining the Role of Race in Capital Cases: A Re-analysis of Data from the State of Maryland*, 21 J. QUANT. CRIM. 365 (2005); P.R. Rosenbaum and D.R. Rubin, *The Central Role of Propensity Scores in Observational Studies of Causal Effects*, 70 BIOMETRIKA 41 (1983).

<sup>165</sup> Heejung Bang and James M. Robins, *Doubly Robust Estimation in Missing Data and Causal Inference Models*, 61 BIOMETRICS 962 (2005).

<sup>166</sup> A. Indurkha, N. Mitra, and Deborah Schrag, *Using Propensity Scores to Estimate the Cost-Effectiveness of Medical Therapies*, 25 STATISTICS IN MEDICINE 1561 (2006).

<sup>167</sup> See, Rubin, supra note \_\_\_\_.

<sup>168</sup> See, *infra* Table \_\_\_\_.

robbery-specific models, in which we excluded aggravated assault and burglary cases from both states, to include only cases of the same arrest charge.

Finally, we used initial rather than final jurisdiction in the analyses presented below. That is, all New York cases are treated as in the adult criminal court, and all New Jersey cases in the juvenile court. In actuality, some New Jersey cases were waived to criminal court, while some New York cases were transferred to the Family Court (see Table 2, below). Analyses by their original jurisdiction, therefore, should lead to overly conservative estimates of the effect of jurisdiction.<sup>169</sup> However, we also reanalyzed the data using final court jurisdiction (of sentencing), rather than original court jurisdiction, as our key predictor. In addition, because where the age of majority in New York is 16, so that the cases of 16-year-old arrested cannot be transferred to the Family Court, we also reestimated these models with the sample limited to arrestees who were 16 at the time of offense., Results were substantively the same with both of these reanalyses.

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<sup>169</sup> This is analogous to analyzing intent-to-treat rather than treatment-as-delivered in program evaluation, in the case of program dropouts and crossovers.

## IV. RESULTS

### A. Analysis of Case Processing and Sanctions

#### 1. Certainty and Severity of Sanctions

Table 3 shows the adjudication and sentence rates in each state. As displayed in the top row, conviction was more likely in New Jersey than in New York (61.3% vs. 52.0%). This trend is consistent for all included offense types: robbery, assault and burglary. However, each state has a middle-ground disposition, called “adjourned disposition” in New Jersey and “adjourned in contemplation of dismissal” in New York. An admission of guilt is required to receive this disposition in New Jersey, but not so in New York. Thus they have different meanings regarding their official legal status, yet they are very similar in practice; with both dispositions, cases are reconsidered after a specified period of time and dropped from consideration of further sanction if no new infractions have occurred. Thus, some of the convictions in NY are comparable to non-convicted “adjourned in contemplation of dismissals” in NJ. If we add these “adjourned” dispositions to the official convictions, then we find that that NY actually “convicts” at a similar rate (61.3% in NJ vs. 59.2% in NY). In multivariate analyses of recidivism in which disposition and sentencing are controlled for statistically, we do not use the official “conviction” disposition. Instead, we use an “any court action” variable which is equivalent across the two systems, and which treats both formal conviction/adjudication as well as this diversion as a court action.<sup>170</sup>

An interesting comparison regarding case outcomes is the percentages of cases in each state that were transferred to juvenile or criminal court. In New Jersey, cases can be transferred from juvenile to criminal court, in New York cases can be transferred from criminal court down to juvenile court. As Table 3 demonstrates, jurisdictional transfer up to criminal court is less common in New Jersey (1.2% of all cases) than transfer down to juvenile (family) court is in New York (11.1% of total sample; 35.9% of 15-year-olds). Table 3 also displays the most severe sentences given to convicted defendants in each state. Informal sanctions, including community service and mandated treatment programs, are given more often in New Jersey than in New York (26.0% vs. 19.4%). Monetary fines as the most severe sanction are shown separately. Though fines often are levied in conjunction with other sentences, it is very rare in both states for them to be the most severe sentence (0.2% in New Jersey, 1.2% in New York).

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<sup>170</sup> See discussion *infra* Part II.C.

**Table 3. Adjudication and Sentences by Arrest Charge and State**

	New Jersey				New York			
	Robbery	Aggravated Assault	Burglary	<b>Total</b>	Robbery	Aggravated Assault	Burglary	<b>Total</b>
% Convicted	58.7	57.3	69.0	<b>61.3</b>	53.3	44.0	55.9	<b>52.0</b>
% Adjourned in contemplation of dismissal, and not convicted	0.0	0.0	0.0	<b>0.0</b>	6.2	11.0	11.9	<b>7.2</b>
% Transferred to other Jurisdiction	3.3	0.2	0.9	<b>1.2</b>	12.3	5.5	6.8	<b>11.1</b>
<b><u>Sanction if convicted</u></b>								
% Given Informal Sanction	29.2	25.8	24.0	<b>26.0</b>	15.0	46.6	21.2	<b>19.4</b>
% Given Probation	27.8	33.1	44.4	<b>35.8</b>	41.5	29.5	36.4	<b>39.7</b>
% Given Fine / Restitution	0.0	0.0	0.4	<b>0.2</b>	0.7	4.5	0.0	<b>1.2</b>
% Given Suspended Sentence	20.3	15.6	21.3	<b>18.7</b>	0.0	0.0	0.0	<b>0.0</b>
% Incarcerated	13.3	13.7	5.3	<b>10.7</b>	42.6	19.3	42.4	<b>32.6</b>
% Missing	9.5	11.8	4.4	<b>8.7</b>	0.2	0.0	0.0	<b>0.1</b>
Mean Incarceration Length (mos.)	31.0	8.0	19.5	<b>18.5</b>	27.5	15.0	26.2	<b>26.6</b>



More convicted New York cases (39.7%) than New Jersey cases (35.8%) are sentenced to probation, but this figure is misleading due to similarity of probation and suspended sentences in New Jersey, a sentencing category that is unused in New York. Suspended sentences are probationary sentences with an added threat that a rearrest will lead to incarceration. We include them here because they are a separate and important sentencing category in New Jersey, although similar in practice to sentences of probation. If the categories of probation and suspended sentence are combined, then far more cases receive probation in New Jersey than New York (54.5% vs. 39.7%).

The easiest comparison to make between the two states is of the use of incarceration. Though conditions of incarceration may be very different, incarceration is a less ambiguous category than conviction or any other sentencing category. The difference in the use of incarceration in New York and New Jersey is very clear – 10.7% of convicted New Jersey cases are incarcerated as opposed to 39.6% of New York cases. This trend is consistent across the three arrest charges in our sample. Furthermore, among those sentenced to incarceration, New York cases receive average sentences of 26.6 months compared to only 18.5 months in New Jersey.

In response to our research question of whether a punishment gap exists, these results clearly indicate that criminal courts do indeed provide more severe punishment than juvenile courts. Although the New Jersey cases face a greater likelihood of conviction (as defined officially), once convicted they face more lenient sanctions. This is confirmed by the vastly greater use of incarceration in New York than in New Jersey, and by the greater sentence lengths for cases that are incarcerated. If we ask what percentage of the arrest sample (rather than the convicted subsample) are convicted, we find that the rate is much higher in NY (17% vs. 7%).

## **2. Celerity of Sanctions**

Table 4 shows the length of time between incident and final disposition for each case, for cases in which bench warrants were not issued. The disposition date is considered to be the date of adjudication for cases not convicted, or date of sentencing for cases that were convicted. Overall, time to disposition is slightly greater in New Jersey (141 days) than in New York (133 days). However, when considering convicted and not-convicted cases separately, some differences appear. New York courts take an average of 61 days longer to reach sentencing on convicted cases than do New Jersey courts. But, New York courts are far quicker to dispose of cases that do not result in conviction – 92 days on average compared to 154 days on average in New Jersey. In fact, New York courts dispose of non-convicted cases in approximately half the time, on average, than convicted cases. Yet New Jersey takes an average of thirty days longer to dispose of non-convicted cases than convicted cases.

**Table 4. Case Processing Time by State and Conviction Status**  
(Mean number of days)

	New Jersey	New York
<b>Convicted cases</b>	123.2 (n=366)	184.1 (n=538)
<b>Non-convicted cases</b>	153.8 (n=489)	91.8 (n=678)
<b>All cases</b>	140.7 (n=855)	132.6 (n=1216)

## B. Recidivism – Descriptive Results

We turn now to our primary research question concerning the effects of prosecution in criminal versus juvenile court on recidivism. We begin with descriptive results, shown in Table 5. We find that rearrest effects seem to vary by type of rearrest. Overall, rearrest is slightly more common in New Jersey than New York (72.4% vs. 69.0%)<sup>171</sup> and is also somewhat earlier in New Jersey on average (365 vs. 538 days). However, this effect depends on the type of rearrest. There is a greater likelihood of rearrest for violent offenses in NY than in New Jersey (41.8% vs. 29.9%), but no apparent difference in the timing of violent rearrest. Rearrest for property offenses is also somewhat more likely in NY (33.5% vs. 30.9%), albeit somewhat slower. In contrast, drug rearrests are more common in New Jersey than NY (44.2% vs. 34.7%). The percentage incarcerated following any rearrest are virtually equivalent in both states<sup>172</sup>.

<sup>171</sup> In comparing rearrest we excluded from consideration arrests for technical probation or parole violations. We did so to avoid introducing measurement bias, due to different reporting procedures in the two states. In New York, technical violations are not recorded as new arrests, but rather as continuations of the previous cases. Conversely in New Jersey technical violations are recorded as new cases. Violations stemming from commission of an actual offense (other than a technical violation, such as not reporting to probation) were included in all analyses.

<sup>172</sup> As referred to above, these figures include all cases transferred to criminal court in New Jersey (n=13) and down to juvenile court in New York (n=146). All individuals transferred to criminal court in New Jersey were rearrested, and 63% of the New York cases transferred down to juvenile court were rearrested. Thus including these cases leads to a conservative estimate of the difference between the two states, and helps avoid a selection bias that might result from excluding them.

**Table 5. Recidivism by State** (Percent rearrested, and time to first rearrest in parentheses)

	<u>New Jersey</u>	<u>New York</u>	<u>Odds Ratio</u>
<b>Any Rearrest</b>	72.4 (378.4)	69.0 (507.5)	0.85
<b>Violent Rearrest</b>	29.9 (641.1)	41.8 (641.8)	1.68
<b>Property Rearrest</b>	30.9 (528.5)	33.5 (645.8)	1.13
<b>Drug Rearrest</b>	44.2 (600.2)	34.7 (863.8)	0.67
<b>Weapons Rearrest</b>	9.7 (716.8)	10.1 (752.2)	1.05
<b>Subsequent Incarceration</b>	34.7	35.4	1.03

Next, we stratify our samples on each of several variables. Although these are merely descriptive results, they illustrate the effect of controlling these variables in our multivariate analyses. Table 6 show the results when stratified by the sampled arrest charge, which is important in light of the different charge distributions in the two states. Generally, if we look at the rearrest rates, the overall pattern of results persist so that we find greater likelihood of rearrest in New York on violent or property offenses, but greater likelihood of rearrest in New Jersey for drug offenses, although the magnitudes of these recidivism differences fluctuate somewhat by arrest charge (e.g., the greater violent rearrest in New York is considerable for robbery cases, but much smaller or assault cases). One exception is that more burglary offenders are rearrested for property offenses in NY than in New Jersey. We also see some state differences in rates of subsequent incarceration, but these vary with the sampled arrest charge; the likelihood of subsequent incarceration is greater in New Jersey for those initially sampled on assault or robbery cases, but greater in New York for burglary cases.

Table 6 shows that the state effect on rearrest rates sometimes is in one direction, while the effect on time to rearrest may be in the opposite direction. For example, we again see that burglary offenders are more likely to be rearrested on property offenses in New Jersey than in New York. At the same time, they are slower to be rearrested in New Jersey.

Table 7 shows recidivism stratified by prior arrest records. Controlling for prior arrest is important because those with prior arrest records generally are more likely to be

rearrested, and yet more of the New Jersey sample had prior arrest records.<sup>173</sup> Figures 2a and 2b show these results graphically. Even casual examination reveals that recidivism rates in the two states are higher for those with prior arrest records. Looking at those individuals with prior arrest records, results are very similar to the overall results reported above.

However, for those without prior arrest records, we see that the New York cases show even higher recidivism rates relative to New Jersey cases, for violent and property rearrest. At the same time, the difference in drug rearrest previously seen disappears. In combination, these lead to an overall higher rearrest rate in New York for those without prior arrests. These results highlight the importance of analytic procedures that simultaneously examine both the likelihood of rearrest and time to rearrest, while also controlling for time-at-risk.

Table 8 stratifies by the disposition and sentence received on the sampled case. Taking account of the disposition and sentence alters some of the apparent recidivism effects. Cases sentenced to probation or not convicted show the same general patterns of recidivism already seen, with more New York youth rearrested on violent or property charges, but more New Jersey youth rearrested on drug charges. However, among cases sentenced to other (community) sentences or sentenced to incarceration, the violent and property rearrest effects are diminished, while the drug rearrest effect persists.

Table 9 shows rates of recidivism stratified by sex. Recidivism is far higher for males than females. Nevertheless, both males and females show the same basic patterns already seen, of greater prevalence of rearrest for violence in New York but more rearrests for drugs in New Jersey. The greater propensity for property offenses in New York, however, seems limited to females.

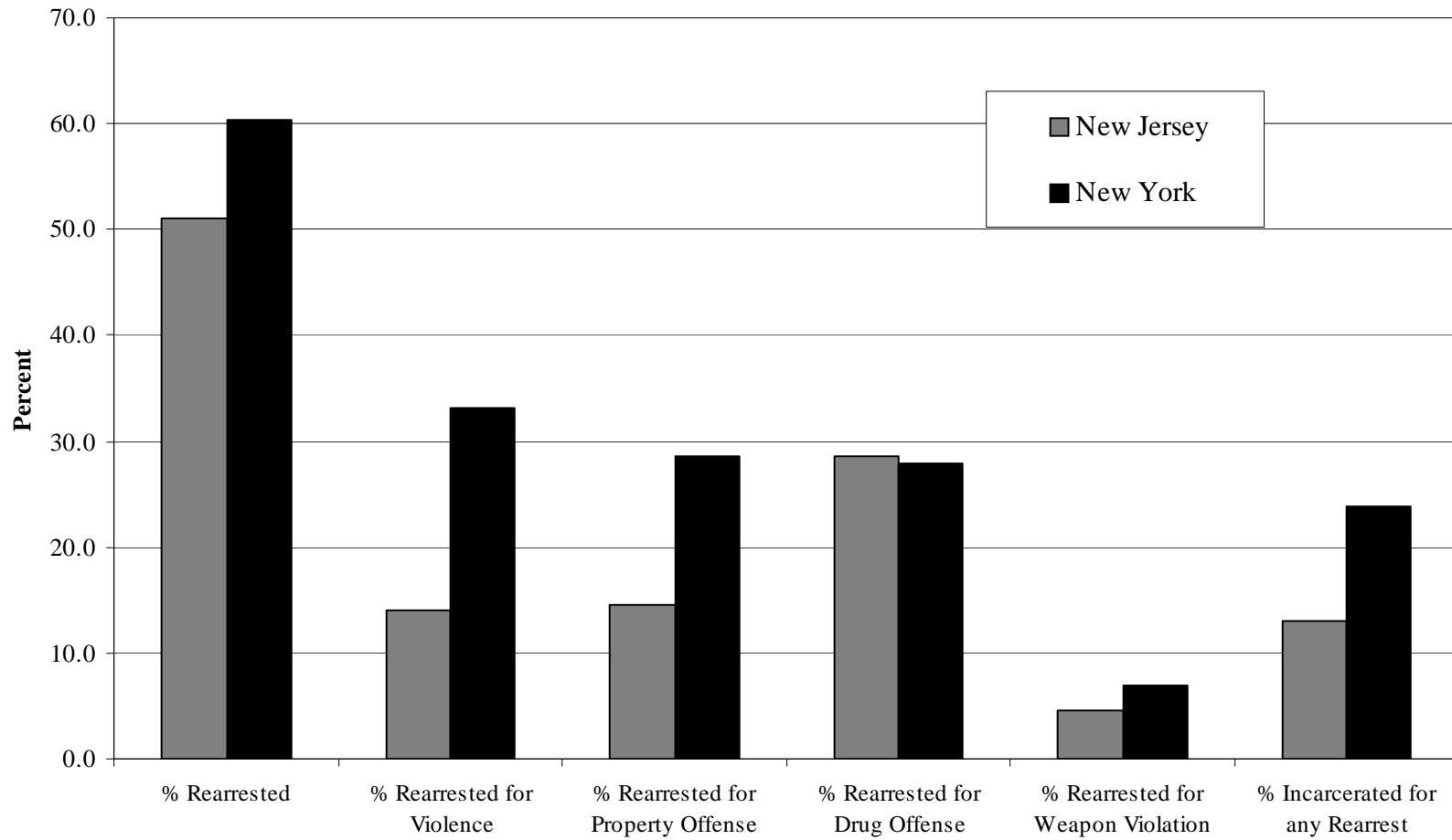
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<sup>173</sup> See Table 1. The inclusion of prior juvenile arrest history for our NY adult court sample is an important advance of this study, over the previous study. FAGAN, COMPARATIVE IMPACTS, *supra* note 17; Fagan, *Men from Boys*, *supra* note 17; Fagan, *Comparative Advantage*, *supra* note 17. The more extensive arrest histories in NJ suggest that police in that state are more active, which would be expected to bias our recidivism results opposite the direction of the main results found. To insure that differential reporting of prior arrests between states could not bias our multivariate recidivism findings, we re-estimated those models in two ways: (a) using prior convictions rather than prior arrests, (b) excluding criminal history from the models. Our substantive findings were unaffected.

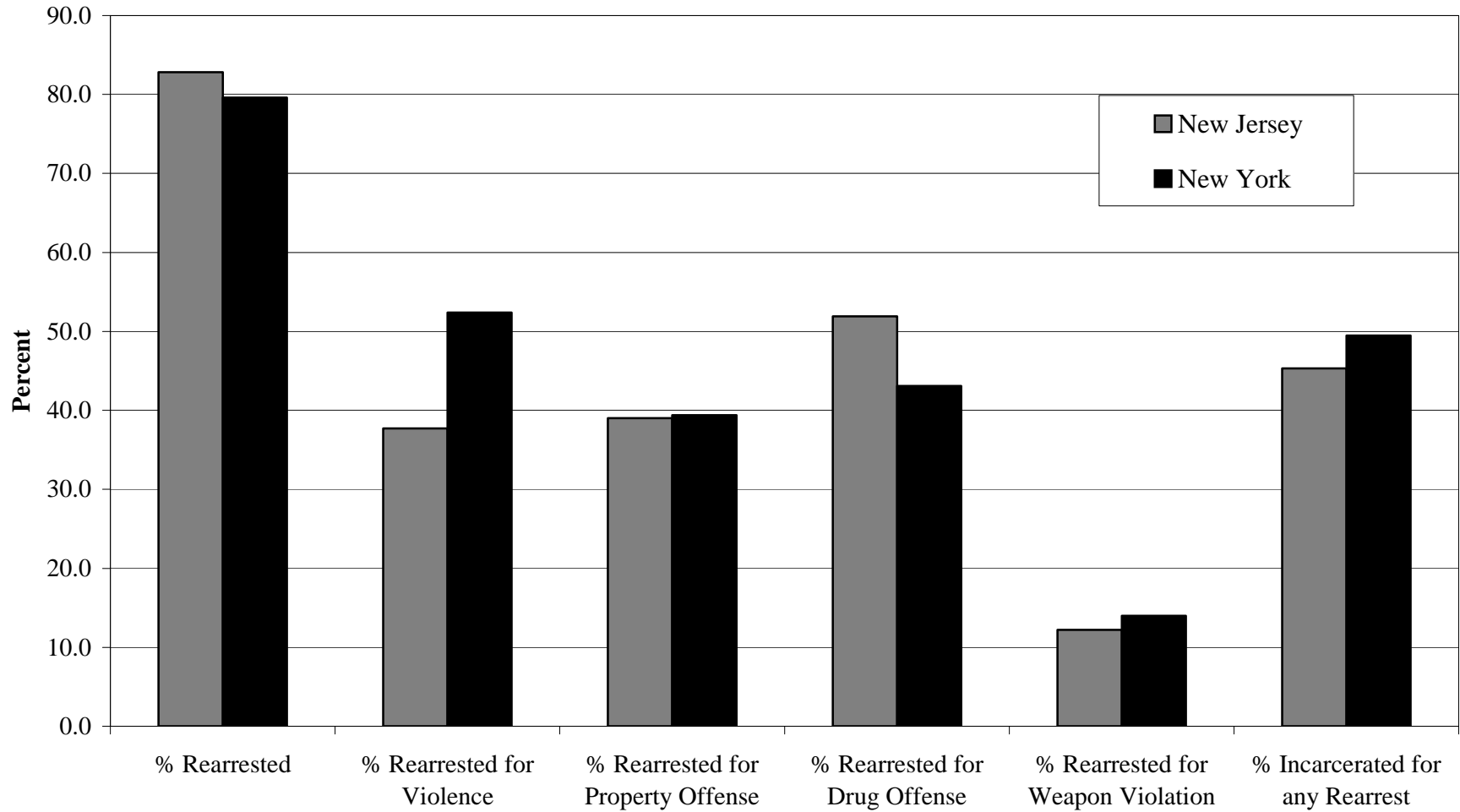
**Table 6. Recidivism Stratified by Sample Arrest Charge**  
**(Percent rearrested, and mean time to first rearrest in parentheses)**

	<u>Robbery</u>		<u>Assault</u>		<u>Burglary</u>	
	<u>NJ</u>	<u>NY</u>	<u>NJ</u>	<u>NY</u>	<u>NJ</u>	<u>NY</u>
<b>Any Rearrest</b>	75.2	70.8	71.6	60.7	71.2	66.1
	(346.4)	(495.3)	(396.4)	(605.3)	(380.9)	(436.0)
<b>Violent Rearrest</b>	35.2	43.0	32.5	35.8	21.8	40.7
	(672.4)	(651.0)	(671.2)	(615.4)	(537.1)	(544.8)
<b>Property Rearrest</b>	32.2	34.8	26.0	28.4	36.7	27.1
	(498.6)	(651.8)	(604.3)	(689.3)	(474.9)	(353.7)
<b>Drug Rearrest</b>	48.1	36.6	43.4	26.9	42.1	28.8
	(545.4)	(863.1)	(616.2)	(972.3)	(628.3)	(535.5)
<b>Weapons Rearrest</b>	10.4	10.0	10.6	9.0	7.9	15.3
	(793.6)	(771.0)	(754.0)	(674.4)	(563.8)	(687.4)
<b>Subsequent Incarceration</b>	40.7	36.6	29.7	27.4	36.7	40.7

**Figure 2a. Recidivism Measures for Cases Without Prior Arrest Records, by State**



**Figure 2b. Recidivism Measures for Cases With Prior Arrest Records, by State**



**Table 7. Recidivism Stratified by Presence of Prior Arrest Record**  
 (Percent rearrested, and mean time to first rearrest in parentheses)

	<u>No Prior Record</u>		<u>Prior Record</u>	
	<u>NJ</u>	<u>NY</u>	<u>NJ</u>	<u>NY</u>
<b>Any Rearrest</b>	51.1 (522.9)	60.4 (600.6)	82.8 (334.6)	79.6 (421.0)
<b>Violent Rearrest</b>	14.0 (868.6)	33.1 (704.4)	37.7 (599.5)	52.4 (593.2)
<b>Property Rearrest</b>	14.6 (680.0)	28.6 (742.6)	39.0 (500.6)	39.4 (559.8)
<b>Drug Rearrest</b>	28.6 (734.9)	27.9 (955.6)	51.9 (563.7)	43.1 (791.0)
<b>Weapons Rearrest</b>	4.6 (719.6)	6.9 (863.5)	12.2 (716.2)	14.0 (685.2)
<b>Subsequent Incarceration</b>	13.1	23.8	45.3	49.5



**Table 8. Recidivism Stratified by Disposition and Sentence on Sample Case (Percent rearrested, and mean time to first rearrest in parentheses)**

	<u>Not Convicted</u>		<u>Other Sentence</u>		<u>Probation</u>		<u>Incarcerated</u>	
	NJ	NY	NJ	NY	NJ	NY	NJ	NY
	(n=452)	(n=596)	(n=175)	(n=142)	(n=355)	(n=299)	(n=79)	(n=284)
<b>Any Rearrest</b>	64.4	63.9	73.6	59.2	80.8	77.6	88.6	75.7
	(434.1)	(605.2)	(391.2)	(658.4)	(346.7)	(572.8)	(193.2)	(204.7)
<b>Violent Rearrest</b>	25.4	38.6	31.8	33.1	32.1	45.8	41.8	48.6
	(718.4)	(733.5)	(656.0)	(731.6)	(601.3)	(690.6)	(420.3)	(409.9)
<b>Property Rearrest</b>	24.3	30.5	33.8	31.7	36.3	38.1	41.8	35.6
	(573.0)	(799.0)	(538.9)	(781.2)	(538.0)	(585.3)	(324.5)	(377.9)
<b>Drug Rearrest</b>	39.2	33.2	45.3	30.3	49.1	35.5	54.4	39.4
	(609.5)	(984.3)	(696.1)	(971.8)	(622.0)	(947.8)	(311.2)	(530.0)
<b>Weapons Rearrest</b>	5.8	10.4	11.5	7.7	14.1	9.7	12.7	10.9
	(607.3)	(917.0)	(988.9)	(574.6)	(723.3)	(631.2)	(506.0)	(599.0)
<b>Subsequent Incarceration</b>	27.4	27.8	32.8	27.5	39.3	40.1	69.6	50.0

**Table 9. Recidivism Stratified by Sex (Percent rearrested, and mean time to first rearrest in parentheses)**

	<u>Female</u>		<u>Male</u>	
	<u>NJ</u>	<u>NY</u>	<u>NJ</u>	<u>NY</u>
<b>Any Rearrest</b>	49.2 (1382.6)	42.9 (1650.4)	77.2 (794.2)	72.5 (944.7)
<b>Violent Rearrest</b>	18.8 (1966.3)	23.7 (2005.1)	32.2 (1754.7)	44.2 (1495.2)
<b>Property Rearrest</b>	10.5 (2055.7)	18.6 (2061.0)	35.1 (1667.5)	35.5 (1627.9)
<b>Drug Rearrest</b>	14.4 (644.0)	9.6 (901.3)	50.3 (597.6)	38.1 (862.6)
<b>Weapons Rearrest</b>	2.8 (551.8)	1.9 (1542.7)	11.1 (725.2)	11.2 (734.0)
<b>Subsequent Incarceration</b>	7.7	7.7	40.2	39.1

### C. Recidivism—Probability of Rearrest by Offense Type

#### 1. Overview

We estimated proportionate hazard models using Cox regression procedures to determine the probability of rearrest over time following sanction and return to the community, and to see if the probability is affected by court jurisdiction. The first proportional hazard model (Model 1) examines the effect of adult court jurisdiction on time to rearrest for any crime. We then examine rearrest separately for four more specific types of crimes: violent crimes, property crimes, weapons-related offenses, and drug crimes.<sup>174</sup> Each of these four crimes is examined in three different ways. In the first set of models (Models 2-5), we simply analyze time to the first rearrest for a specific type of crime, ignoring any earlier or later rearrests for other types of crime. The models estimate likelihood and time until rearrest on either violent offenses (Model 2), property offenses (Model 3), weapons offenses (Model 4), or drug offenses (Model 5).

One drawback to this first set of models is that the first rearrest for a specific type of offense (e.g., a property offense) is considered the “failure,” even when it has been

<sup>174</sup> Violent crimes included homicide, manslaughter, felony assaults, robbery, rape, kidnap, and arson. Weapons offenses are measured as an independent category. Property crimes included grand larceny, auto theft, and burglary. Misdemeanors included all other penal code violations except drug offenses. Drug offenses included sale and possession.

preceded by a more serious rearrest (e.g., a violent offense). The second and third sets of models address this issue in two alternative ways. The second set of models (Models 6-9) considers each individual's most serious rearrest. These models each limit the set of cases to those defendants who are rearrested, but exclude those rearrested for a more serious type of offense. Our seriousness hierarchy orders offenses in the following structure: violence, property, weapons, drugs, and misdemeanors. As we have already examined the effect of adult court jurisdiction on rearrest in general (Model 1), these models examine the effects on the seriousness of recidivism among those rearrested. Model 6 estimates the likelihood of violent rearrest, only among those who are rearrested. Model 7 estimates rearrest for a property offense among those rearrested but not for violence. Model 8 estimates rearrest for a weapon offense among those rearrested, but excluding those rearrested for violence or property crimes. Model 9 estimates rearrest for drugs among those rearrested, but not for violence, property, or weapons offenses. The limitation in these models is that some persons may be rearrested for a lesser crime (e.g., a misdemeanor compared to a felony property crime), but these models estimate only the hazard for that person of the time to the first rearrest on the felony property offense.

The third set of models are competing risk hazard models. This set of models examines only each defendant's first rearrest, and compares the relative risk of rearrest at each level of the offense-severity hierarchy for those remaining in the subsequent models. Accordingly, Model 10 estimates whether that first rearrest was for a violent offense. Model 11 analyzes whether the first rearrest is on a property crime, excluding those whose first rearrest was for a violent offense. Models 12 and 13 do the same for weapon offenses and drug offenses, respectively. At each stage, we estimate the probability of rearrest over time for each level of severity, for those remaining after the previous analysis. Finally, we include another proportional hazard model (Model 14) that operationalizes recidivism as incarceration for any subsequent offense. This allows us to examine more serious penetration into the criminal justice system.

In the discussions below, we first discuss the results of the central policy variable – juvenile versus adult court jurisdiction. We turn later to discussion of other factors that may interact or covary with court jurisdiction to influence recidivism rates.

## **2. Any Rearrest**

The first hazard model is Model 1 in Table 10a examines the effect of criminal court jurisdiction (i.e., state) on rearrest in general, without distinguishing among different rearrest offense types. This is the most global but often-cited recidivism dimension by which crime control policies are measured, in both the popular and scientific literatures. As can be seen in Table 10a, after controlling for offender and offense characteristics, there is no significant effect of adult court jurisdiction on recidivism. Among the offense and offender covariates, the probability of rearrest is greater for males and lower for adolescents of any ethnicity other than African-American. Adolescent offenders with greater numbers of prior arrests and rearrests during case processing (concurrent arrests) also are more likely to be rearrested. In addition, conviction (court action) on the current case and longer custodial sentence lengths both significantly predict rearrest, while longer cases are negatively associated with rearrest.

### 3. Offense-Specific Models

The first of the offense-specific analyses is shown in Models 2-5 in Tables 10a and 10b. These models estimate the likelihood of rearrest only for specific offenses, regardless of any earlier or later rearrests for each person for any other offenses. Rearrest probability is higher for cases adjudicated and sentenced in the adult court in New York for both violent and property offenses, after controlling for offense, offender, and sanction variables (Models 2 and 3, respectively). The opposite effect occurs for models estimating probability of rearrest for drug offenses (Model 5).

The second set of offense-specific models examines the likelihood of each individual's most serious offense, but only for those rearrested for any offense. The results are shown in Models 6-9 in Tables 11a and 11b. The basic finding from the first set of models is replicated, with offenders under New York's adult court jurisdiction significantly more likely to be rearrested for violent and property offenses, compared to less serious offenses (Models 6 and 7). And, again, New Jersey offenders are significantly more likely to be rearrested for drug offenses (Model 9).

The third set of offense-specific models limit consideration to each individual's first rearrest, separately for each offense type. These are competing risk hazard models. These results are shown in Models 10-13 in Tables 12a and 12b. Here, too, New York offenders are more likely to be rearrested *first* for violent and property offenses (Models 10 and 11). Additionally, New York adolescents are significantly more likely than New Jersey adolescents to be rearrested for a weapon offense as a first rearrest (Model 12). The effect of state on likelihood of rearrest for drug offenses in the previous models drops here, with no significant effect of state in Model 13.

The convergence of these findings using three conceptualizations of risk suggests a robust conclusion: adolescents felony offenders whose cases are relocated to the adult court are more likely to be arrested for violence and property offenses, and they are more likely to be rearrested sooner. These results are adjusted for sanction severity, offense and offender characteristics, and case processing. The consistency of the findings for drug offenses suggests another robust conclusion.

**Table 10a. Proportionate Hazard Models of Rearrest for Specific Offenses**

	Model 1		Model 2		Model 3	
	Any rearrest		Rearrest for violence		Rearrest for property offenses	
	B	Exp(B)	B	Exp(B)	B	Exp(B)
<u>Demographic</u>						
Age	0.060	1.062	-0.082	0.921	-0.097	0.907
Female	-0.769***	0.463	-0.625***	0.535	-0.859***	0.424
Ethnicity (Contrast=African American)						
White	-0.321**	0.726	-0.648***	0.523	-0.152	0.859
Hispanic American	-0.134*	0.874	-0.172*	0.842	-0.006	0.994
Other Ethnicity	-0.515***	0.598	-0.461*	0.631	-0.618**	0.539
<u>Current Case</u>						
Current Charge (Contrast=Robbery)						
Aggravated Assault	-0.081	0.922	-0.049	0.952	-0.266*	0.766
Burglary	-0.093	0.911	-0.420**	0.657	0.098	1.103
Associated Weapon Charge	0.091	1.095	0.008	1.008	0.139	1.149
Bench Warrant	-0.080	0.923	-0.036	0.965	-0.132	0.876
Detained	0.061	1.063	0.006	1.006	0.139	1.149
# Concurrent Arrests (logged)	0.378***	1.460	0.407***	1.502	0.363***	1.437
Case Length (days, logged)	-0.079**	0.924	-0.099**	0.906	-0.074	0.928
Any Court Action	0.216***	1.241	0.214**	1.238	0.288**	1.334
Custodial Sentence (months, logged)	0.119***	1.127	0.005	1.005	-0.056	0.946
<u>Criminal History</u>						
# Prior Arrests (logged)	0.325***	1.384	0.425***	1.530	0.397***	1.487
Age at First Arrest	-0.045	0.956	0.012	1.012	0.009	1.009
History of Incarceration	-0.118	0.889	0.076	1.079	-0.085	0.919
Censor	0.550	1.733	-0.762	0.467	-1.654	0.191
<u>Criminal vs. Juvenile Jurisdiction</u>						
State (Contrast=New Jersey)	-0.011	0.989	0.680***	1.974	0.386***	1.471
State x Prior Arrests	0.040	1.041	-0.104	0.901	-0.079	0.924
State x Incarceration Length	0.071	1.074	0.107	1.113	-0.004	0.996
State x Any Court Action	0.224	1.251	0.267	1.306	0.303	1.354
Log Likelihood	23645.835		12684.672		11335.283	
Chi-Square	612.749		303.806		221.858	
p(Chi-Square)	0.000		0.000		0.000	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

**Table 10b. Proportionate Hazard Models of Rearrest for Specific Offenses  
(continued)**

	<b>Model 4</b>		<b>Model 5</b>	
	<b>Rearrest for weapon offenses</b>		<b>Rearrest for drug offenses</b>	
	<b>B</b>	<b>Exp(B)</b>	<b>B</b>	<b>Exp(B)</b>
<u>Demographic</u>				
Age	0.026	1.026	0.082	1.085
Female	-1.500***	0.223	-1.520***	0.219
Ethnicity (Contrast=African American)				
White	-0.864*	0.422	-0.586***	0.557
Hispanic American	-0.275	0.760	-0.205**	0.814
Other Ethnicity	-0.841*	0.431	-0.594**	0.552
<u>Current Case</u>				
Current Charge (Contrast=Robbery)				
Aggravated Assault	0.066	1.068	-0.158	0.854
Burglary	-0.132	0.876	-0.171	0.843
Associated Weapon Charge	0.111	1.117	0.176*	1.193
Bench Warrant	-0.204	0.815	0.113	1.119
Detained	-0.052	0.950	0.040	1.041
# Concurrent Arrests (logged)	0.730***	2.074	0.120	1.127
Case Length (days, logged)	-0.262***	0.769	-0.042	0.959
Any Court Action	0.465**	1.592	0.062	1.064
Custodial Sentence (months, logged)	-0.127	0.881	0.085*	1.089
<u>Criminal History</u>				
# Prior Arrests (logged)	0.219	1.245	0.259***	1.296
Age at First Arrest	-0.035	0.966	-0.053	0.948
History of Incarceration	0.326	1.386	-0.161	0.851
Censor	-2.044	0.130	-0.695	0.499
<u>Criminal vs. Juvenile Jurisdiction</u>				
State (Contrast=New Jersey)	0.297	1.346	-0.367***	0.692
State x Prior Arrests	0.253	1.288	0.131	1.140
State x Incarceration Length	0.145	1.156	0.086	1.090
State x Any Court Action	-0.321	0.725	0.100	1.106
Log Likelihood	3500.178		13465.137	
Chi-Square	110.681		316.345	
p(Chi-Square)	0.000		0.000	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

**Table 11a. Offense-Specific Proportionate Hazard Models of Rearrest by Most Serious Rearrest**

	<b>Model 6</b>		<b>Model 7</b>	
	<b>Violent offense (most serious) rearrest vs. any less serious rearrest</b>		<b>Property offense (most serious) rearrest vs. any less serious rearrest</b>	
	<b>B</b>	<b>Exp(B)</b>	<b>B</b>	<b>Exp(B)</b>
<u>Demographic</u>				
Age	-0.088	0.915	-0.022	0.978
Female	-0.145	0.865	-0.131	0.877
Ethnicity (Contrast=African American)				
White	-0.515**	0.597	-0.048	0.953
Hispanic American	-0.094	0.911	0.056	1.058
Other Ethnicity	-0.003	0.997	0.199	1.221
<u>Current Case</u>				
Current Charge (Contrast=Robbery)				
Aggravated Assault	0.024	1.024	-0.198	0.820
Burglary	-0.386**	0.680	0.153	1.165
Associated Weapon Charge	-0.059	0.943	-0.005	0.995
Bench Warrant	-0.023	0.978	-0.051	0.950
Detained	-0.022	0.978	0.167	1.181
# Concurrent Arrests (logged)	0.246**	1.278	0.204	1.226
Case Length (days, logged)	-0.048	0.953	-0.089	0.914
Any Court Action	0.063	1.065	0.148	1.159
Custodial Sentence (months, logged)	0.053	1.054	0.083	1.087
<u>Criminal History</u>				
# Prior Arrests (logged)	0.279***	1.322	0.177	1.194
Age at First Arrest	0.029	1.030	-0.006	0.994
History of Incarceration	0.103	1.108	-0.138	0.871
Censor	-0.148	0.863	-0.397	0.673
<u>Criminal vs. Juvenile Jurisdiction</u>				
State (Contrast=New Jersey)	0.701***	2.015	0.384*	1.468
State x Prior Arrests	-0.199*	0.820	-0.160	0.852
State x Incarceration Length	0.096	1.101	-0.035	0.965
State x Any Court Action	0.060	1.062	0.122	1.130
Log Likelihood	12049.212		4383.519	
Chi-Square	158.436		46.894	
p(Chi-Square)	0.000		0.002	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

**Table 11b. Offense-Specific Proportionate Hazard Models of Rearrest by Most Serious Rearrest (continued)**

	Model 8		Model 9	
	Weapon offense (most serious) rearrest vs. any less serious rearrest <sup>1</sup>		Drug offense (most serious) rearrest vs. any less serious rearrest	
	B	Exp(B)	B	Exp(B)
<u>Demographic</u>				
Age	0.670*	1.953	0.049	1.050
Female	-0.612	0.542	-0.951***	0.387
Ethnicity (Contrast=African American)				
White	0.093	1.098	-0.653**	0.521
Hispanic American	0.181	1.198	-0.114	0.893
Other Ethnicity	0.586	1.797	-0.337	0.714
<u>Current Case</u>				
Current Charge (Contrast=Robbery)				
Aggravated Assault	0.219	1.245	-0.487*	0.614
Burglary	-0.161	0.851	-0.312	0.732
Associated Weapon Charge	0.092	1.097	0.217	1.243
Bench Warrant	-0.594	0.552	0.112	1.118
Detained	0.447	1.563	-0.028	0.973
# Concurrent Arrests (logged)	1.179***	3.252	0.139	1.149
Case Length (days, logged)	-0.200	0.818	-0.063	0.939
Any Court Action	0.101	1.106	0.161	1.174
Custodial Sentence (months, logged)	-2.537	0.079	0.297***	1.346
<u>Criminal History</u>				
# Prior Arrests (logged)	-0.854*	0.426	-0.029	0.971
Age at First Arrest	-0.317**	0.728	0.079	1.083
History of Incarceration	0.783	2.188	-0.045	0.956
Censor	-0.394	0.674	-0.950	0.387
<u>Criminal vs. Juvenile Jurisdiction</u>				
State (Contrast=New Jersey)	2.689	14.723	-0.419*	0.658
State x Prior Arrests	-0.145	0.865	-0.079	0.924
State x Incarceration Length	6.363	579.722	0.241	1.273
State x Any Court Action	-0.992	0.371	0.102	1.108
Log Likelihood	729.616		2813.770	
Chi-Square	48.414		90.661	
p(Chi-Square)	0.001		0.000	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

<sup>1</sup> Coefficients in this model did not converge; results should be interpreted with caution.



**Table 12a. Competing Risk Hazard Models: Proportionate Hazard Model of First Rearrest by Offense Severity**

	Model 10		Model 11	
	First rearrest for violence vs. any less serious first rearrest		First rearrest for property vs. any less serious first rearrest	
	B	Exp(B)	B	Exp(B)
<u>Demographic</u>				
Age	-0.005	0.995	0.006	1.006
Female	0.210	1.234	-0.044	0.957
Ethnicity (Contrast=African American)				
White	-0.365	0.695	-0.072	0.931
Hispanic American	-0.180	0.835	0.125	1.133
Other Ethnicity	0.325	1.385	-0.113	0.893
<u>Current Case</u>				
Current Charge (Contrast=Robbery)				
Aggravated Assault	0.128	1.137	-0.063	0.939
Burglary	-0.331	0.719	0.184	1.202
Associated Weapon Charge	-0.154	0.857	0.072	1.075
Bench Warrant	-0.362	0.696	0.091	1.095
Detained	-0.018	0.983	0.124	1.132
# Concurrent Arrests (logged)	0.250	1.284	0.001	1.001
Case Length (days, logged)	0.033	1.033	0.006	1.006
Any Court Action	0.036	1.037	0.180	1.197
Custodial Sentence (months - logged)	-0.005	0.995	0.082	1.086
<u>Criminal History</u>				
# Prior Arrests (logged)	0.113	1.120	0.028	1.028
Age at First Arrest	0.031	1.031	-0.021	0.979
History of Incarceration	0.094	1.098	-0.076	0.927
Censor	-1.318	0.268	-2.924	0.054
<u>Criminal vs. Juvenile Jurisdiction</u>				
State (Contrast=New Jersey)	1.227***	3.410	0.493**	1.637
State x Prior Arrests	-0.248	0.780	-0.009	0.991
State x Incarceration Length	0.274	1.315	-0.113	0.893
State x Any Court Action	0.114	1.121	0.084	1.087
Log Likelihood	5265.776		5203.936	
Chi-Square	118.120		29.871	
p(Chi-Square)	0.000		0.122	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

**Table 12b. Competing Risk Hazard Models: Proportionate Hazard Model of First Rearrest by Offense Severity (continued)**

	Model 12		Model 13	
	First rearrest for weapons vs. any less serious first rearrest		First rearrest for drugs vs. any less serious first rearrest	
	B	Exp(B)	B	Exp(B)
<u>Demographic</u>				
Age	0.738**	2.092	0.253*	1.287
Female	-0.443	0.642	-1.020***	0.360
Ethnicity (Contrast=African American)				
White	-1.915	0.147	-0.506*	0.603
Hispanic	0.071	1.074	-0.160	0.852
Other Ethnicity	0.219	1.245	-0.264	0.768
<u>Current Case</u>				
Current Charge (Contrast=Robbery)				
Aggravated Assault	0.471	1.602	-0.082	0.922
Burglary	-0.038	0.962	-0.125	0.882
Associated Weapon Charge	-0.349	0.705	0.105	1.111
Bench Warrant	-0.948	0.387	0.079	1.083
Detained	-0.218	0.804	0.054	1.056
# Concurrent Arrests (logged)	0.819*	2.269	0.141	1.151
Case Length (days, logged)	-0.271*	0.763	0.040	1.040
Any Court Action	0.259	1.295	-0.228	0.796
Custodial Sentence (months, logged)	0.312	1.366	0.393***	1.481
<u>Criminal History</u>				
# Prior Arrests (logged)	-0.705*	0.494	-0.307**	0.736
Age at First Arrest	-0.260*	0.771	-0.049	0.952
History of Incarceration	0.125	1.133	-0.072	0.931
Censor	0.624	1.867	-3.732	0.024
<u>Criminal vs. Juvenile Jurisdiction</u>				
State (Contrast=New Jersey)	1.004**	2.729	0.069	1.072
State x Prior Arrests	0.655	1.926	0.036	1.036
State x Incarceration Length	-0.152	0.859	-0.088	0.916
State x Any Court Action	-0.077	0.926	0.411	1.509
Log Likelihood	923.279		4774.812	
Chi-Square	66.524		132.862	
p(Chi-Square)	0.000		0.000	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

#### 4. Return to Incarceration

Model 14 (in Table 13) estimates the likelihood of being re-incarcerated on any subsequent offense. Consistent with the above models, the results of Model 14 suggest that prosecution in New York leads to an increased likelihood of subsequent incarceration relative to prosecution in New Jersey.

#### 5. Sanction-Specific Effects

A secondary analysis examined whether the effects of adult court jurisdiction are conditional upon the types and severity of punishments handed out by the respective courts. Given the harsher conditions of incarceration in the adult correctional system,<sup>175</sup> it is reasonable to hypothesize that there are iatrogenic effects of punishment in the adult system that might elevate the risk of recidivism. We examined the effects of sanctions through two methods. First, we included the main effect of incarceration sentence length in the models, and we include a state x sentence length interaction to further specify the effects of punishment in juvenile versus adult correctional contexts.

Sentence length is a significant predictor of offense-specific rearrest in four of these 14 models (Models 1, 5, 9 and 13); however, three of these are drug rearrest models, suggesting that sentence length has a consistent counter-deterrent effect with regard to subsequent drug offending activity. The fourth model demonstrating a significant effect of sentence length is Model 1, which predicts the likelihood of rearrest for any offense. But, this model of global recidivism is heavily weighted by rearrests for less serious offenses. Accordingly, sentence length is positively related to likelihood of rearrest for less serious offenses, specifically drug offenses. The interaction of sentence length with State was not significant in any of these models, implying that the criminogenic effect of adult court jurisdiction for violent and property rearrests does not vary as a function of sentence length.

Second, we included a variable indicating any court action, which is analogous to conviction in either jurisdiction, and again we include an interaction with state. Court actions significantly predict a greater likelihood of rearrest in four of the 14 models, controlling for all other factors. Again, we found that this effect is not conditional upon jurisdiction; the interaction term of any court action by state is not significant in any model. We discuss later some of the theoretical implications of an adult court conviction that might explain its iatrogenic effect on recidivism rates.

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<sup>175</sup> LONN LANZA-KADUCE ET AL., JUVENILE TRANSFER TO CRIMINAL COURT STUDY: FINAL REPORT (Jan. 8, 2002), available at <http://www.djj.state.fl.us/statsresearch/contractreports/juveniletransfers.pdf>; Forst et al., *supra* note 49.

**Table 13. Proportional Hazard Model: Subsequent Incarceration**

	<b>Model 14</b>	
	<b>B</b>	<b>Exp(B)</b>
<u>Demographic</u>		
Age	-0.010	0.990
Female	-0.599**	0.549
Ethnicity (Contrast=African American)		
White	-0.019	0.981
Hispanic	-0.022	0.978
Other Ethnicity	-0.247	0.781
<u>Current Case</u>		
Current Charge (Contrast=Robbery)		
Aggravated Assault	-0.117	0.890
Burglary	0.305*	1.357
Associated Weapon Charge	0.004	1.004
Bench Warrant	0.010	1.010
Detained	0.298***	1.347
# Concurrent Arrests (logged)	0.412***	1.510
Case Length (days, logged)	0.074	1.077
Any Court Action	0.106	1.112
Custodial Sentence (months - logged)	-0.035	0.966
<u>Criminal History</u>		
# Prior Arrests (logged)	0.097	1.102
Age at First Arrest	-0.001	0.999
History of Incarceration	0.101	1.107
Censor	-0.713	0.490
<u>Criminal vs. Juvenile Jurisdiction</u>		
State (Contrast=New Jersey)	0.227*	1.255
State x Prior Arrests	-0.229*	0.795
State x Incarceration Length	-0.077	0.925
State x Any Court Action	0.258	1.294
Log Likelihood	9437.366	
Chi-Square	133.546	
p(Chi-Square)	0.000	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

The preceding models examine the effects of state on recidivism while controlling for the effects of incarceration and conviction. The state effect found was thus not mediated by the different rates of conviction or incarceration in the two states. To identify the mediating effects of incarceration and sanction on the primary state effects on recidivism rates, we also re-estimated these models without controlling for conviction or incarceration. Once again, we found no differences in the model results: removing the variables for conviction and for sentence length failed to alter the results for state in any of the models.<sup>176</sup> In other words, we used a hierarchical model to estimate the effects of court jurisdiction with and without sanction effects, and found no difference in the effects of court jurisdiction. Because the state effects were not increased, we find no evidence of an adult court effect that is mediated or conditioned by its differing rates of conviction or incarceration. Thus, the increased violent and property recidivism that follows adult court processing is not attributable to the court's greater use of incarceration. Nor is this increased recidivism attributed to qualitative differences in the incarceration regime, because no significant interactions were found between state and either conviction (any court action) or incarceration length.<sup>177</sup>

Although the use of incarceration distinguishes the sanction severity between the states, we also tested for the effects of sanctions other than incarceration. We constructed ordinal variables of sanction severity based on the ordering of sanctions shown in Table 3. We constructed a four-level ordinal variable, with levels including no sanction, fine/restitution/community service, probation/suspended sentence,<sup>178</sup> and incarceration. We estimated models using this ordinal variable to contrast levels of sanction severity on recidivism, and also as a linear predictor of sanction severity. In the latter models, we included interaction terms of state x sanction to see if there were state-specific sanction effects. The effects of state (court jurisdiction) were substantively the same in these models as in Models 1-14, although there were slight differences in the coefficients and exponentiated coefficients.<sup>179</sup>

Finally, the basic policy test in this study is the effects of laws that place specific age-offense groups in juvenile versus adult court for adjudication and sentencing. Accordingly, these analyses examined the effects of original court jurisdiction on recidivism. But there were within-state transfers in each state, including waiver to criminal court in New Jersey, and transfer to the Family Court in New York. To further test the effects of court jurisdiction, we re-analyzed the data with final court jurisdiction (of sentencing) as the key predictor. Once again, the results were substantively the same, with minor differences in the coefficients but no differences in significance or direction of effects.<sup>180</sup> As a final check on these results, we re-estimated these models with only the cases of persons age 16 at the time of offense. In New York, these cases originate in criminal court, and cannot be transferred back to the Family Court. The results were

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<sup>176</sup> Results not shown, available from authors.

<sup>177</sup> Also, the fact that the interaction terms of state by any court action and state by sentence length were insignificant in each model reinforces the conclusion that the effect of sanction is neither conditioned nor mediated by the effect of state in our models.

<sup>178</sup> Most suspended incarceration sentences included terms of probation supervision.

<sup>179</sup> Results not shown, available from authors.

<sup>180</sup> Results not shown, available from authors.

substantively the same as the models shown, although with minor differences in the coefficients.<sup>181</sup>

## 6. Offense and Offender Factors in Recidivism

The potential importance of specific offense or offender categories for assessing waiver policy lies in the opportunity to identify subgroups for which transfer to the adult court might have particularly salient effects on recidivism. Several offense and offender characteristics were significant predictors of recidivism in these models. Although these effects are consistent in their direction, there is less consistency in their statistical significance or the effect sizes across the models. We summarize only general directional trends here, and readers can identify meaningful specific factors from the tables.

Among offender demographic characteristics, males generally demonstrate a greater hazard of rearrest than females, especially on drug offenses, though less clearly for violent offenses (only 1 of 3 models predicting violent rearrest). The models also consistently find that Whites were rearrested less often than minorities, particularly African-American defendants. Age is significant in only two models, and is positively related to likelihood of rearrest.

Several of the current case and criminal history characteristics are related to likelihood of recidivism across the models. Compared to cases sampled on robbery charges, burglary cases are associated with somewhat less violent recidivism. Having an associated weapon charge on the sampled case helps predict recidivism in only one of the fourteen models. Lengthier prior arrest records, and more concurrent arrests are both associated with greater recidivism. Longer cases also are associated with lower recidivism. Age at first arrest is negatively associated with rearrest in two models, and pretrial detention is associated only with likelihood of subsequent incarceration. Finally, the interaction of prior arrest record and state is significant in only two of the proportional hazard models.

## 7. Controlling for Selection

We re-estimated each of these models with the addition of a selection parameter to control for the potential effects of state differences in the samples. This selection parameter is predicted value or propensity score from an equation predicting membership in the New York sample.<sup>182</sup> The selection model was a logistic regression that included offense and offender characteristics, such as charge, prior record, age at first offense, and demographic characteristics. We used the predicted value from this model to control for sample differences between the states. The results of the models including selection parameters were unchanged. Selection did not alter the significance or effect sizes of the state or sanction variables, nor of the offense or offender characteristics. We do not show the results of these additional models, but the model results are available from the authors.

A second strategy to control for selection was to analyze offense-specific models. We re-estimated the models to insure that they were not biased by the differing charge

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<sup>181</sup> Results not shown, available from authors.

<sup>182</sup> See Rubin, *supra* note \_\_\_ and accompanying text.

distributions in the two states. We re-estimated each of the competing hazard models demonstrating statistically significant ( $p < 0.05$ ) effects for state jurisdiction using two methods to search for a charge distribution bias: using only robbery cases, and including interaction terms of robbery charge with each other variable. We specified robbery both because of its salience as a paradigm juvenile crime category, and also because of the strong consistency between states in the statutory language and severity grading of the offenses. This led to the re-estimation of 20 models, ten of each method.<sup>183</sup>

Nine of the ten re-estimations using interaction terms of robbery by each other independent variable (other than assault and burglary) produce congruent estimates for the state variable as the previous models. That is, the coefficient for the state variable is still significant in 9 of the 10 models in which it was significant without the interaction terms. The only model in which state became not a significant predictor of rearrest is the model on subsequent incarceration, which before had demonstrated the weakest state effect of any significant model.

When restricting the analyses to only robbery cases, half of the re-estimated models still produced a significant coefficient for state. The models that fail to produce a significant estimate for state include the model predicting subsequent incarceration (which had demonstrated the weakest state effect of any model), the model predicting rearrest for weapon offenses (which failed to converge on a best estimate and is thus not reliable), the model predicting a property offense as the most serious rearrest, and two models predicting drug rearrests. These two drug rearrest models are the only models showing greater prevalence of rearrest in New Jersey. Thus, because of the overall similarities between our initial results and the results of these correction models, we can have greater confidence in the reliability of our findings.

## 8. Effect Sizes

The effect sizes for each of the hazard models are summarized in Table 14. The exponentiated coefficients can be interpreted as odds ratios, the relative odds of re-offending for offenders in each court. An odds ratio of 1.0 indicates that there is no difference in the odds of rearrest. An odds ratio of 2.0 indicates that the odds double, and an odds ratio of .5 means that the odds are halved. Unfortunately, translating odds ratios to effects on the probability or likelihood of rearrest is not straightforward. To help interpretation of these effect sizes we provide the comparable odds ratios associated with the bivariate effects for violent, property, and drug rearrest. In each case, the effects associated with the hazard models are larger than those apparent from the bivariate results (shown earlier in Table 5).

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<sup>183</sup> Results not shown.

**Table 14. Summary of Exponentiated Coefficients and Significance Tests for Court, Sanction and Interaction Effects on Hazard Rates for Rearrest and Reincarceration**

Model	<i>Main Effects</i>			<i>State Interactions</i>		
	State (Court)		Sentence Length	Priors	Sentence Length	Conviction
<b>Recidivism</b>						
<b>Offense-Specific Hazard</b>						
Any Offense	.989		1.127	1.041	1.074	1.251
Violent	1.974	***	1.005	.901	1.113	1.306
Property	1.471	***	.946	.924	.996	1.354
Weapons	1.345		.881	1.228	1.156	.725
Drug Offenses	.692	***	1.081	1.140	1.090	1.106
<b>Most Serious Rearrest</b>						
Violent	2.015	***	1.054	.820	1.101	1.062
Property	1.468	*	1.087	.852	.965	1.130
Weapons	14.723		1.079	.865	5.975	.371
Drug Offenses	.658	*	1.346	***	.924	1.108
<b>First Rearrest</b>						
Violent	3.4510	***	.995	.780	1.315	1.121
Property	1.637	*	1.086	.991	.893	1.087
Weapons	2.729	*	1.366	1.926	.859	.926
Drug Offenses	1.072		1.481	1.036	.916	1.509
<b>Incarceration</b>	1.255	*	.966	.795	*	.925

\* p<.05, \*\* p<.01, \*\*\* p<.001

In the models when state is a significant predictor of recidivism, effect sizes vary between offense types, but are consistent within offense types. For the three violent offense comparisons, adolescents adjudicated and sentenced in the criminal court had odds of rearrest were two to three times higher over the follow-up period than youth sanctioned in the juvenile court. For comparison, these are larger effects than appear in the bivariate results, which showed 30% of the juvenile court sample compared to 42% of the criminal court sample were rearrested for a violent crime. The odds ratio for this bivariate difference equals 1.68. After controlling for time to rearrest, and a variety of statistical controls, we find the effect actually increased to nearly 2.0, or twice as likely.

Similarly for property rearrests, where 30.9% of the NJ offenders were rearrested, compared to 33.5% of NY offenders. At the bivariate level, this generates a 13% increase in the odds of rearrest. However, in our multivariate hazard models, criminal court processing increases the odds of rearrest by 47% to 64%. For weapons rearrests, only



one of three comparisons was significant, and in that model, youths sanctioned in the criminal court had higher odds of rearrest 2.7. For drug rearrests, bivariate results found 44% of juvenile court youth rearrested compared to 35% of criminal court youth, for a 33% decrease in odds of rearrest. The hazard models show comparable effects.

Youths adjudicated and sanctioned in the criminal court had far higher odds of reincarceration – 25.5% higher – over the course of the follow-up period. Almost none of the other comparisons of the punishment variables were significant.

Again, the consistent results across models suggests that there is a significant risks of increases in arrests for felony violence and felony property crimes when adolescent felony offenders are adjudicated in the criminal court. One model suggest that weapons offenses are likely to increase for youths sentenced in the criminal court. Drug offenses are more likely to recur when youths are sanctioned in the juvenile court.

#### **D. Recidivism: Offending Rates**

The above hazard models analyze likelihood of re-offending as a function of time but do not take into account the number of times individuals are rearrested. We computed the number of rearrests for each individual following their court sentence, and controlled for their time at risk, or the time when they were returned to the community with the opportunity to commit new crimes. To determine the comparative impacts of court jurisdiction on rearrest counts, we estimated both offense-general and offense-specific negative binomial regression models. Tables 15a and 15b show the results of these analyses.

Overall, the results of the negative binomial models (Models 15-19) are similar to the hazard model results reported above. In two of the five models – models measuring rearrest for violent offenses and for property offenses – prosecution in New York is associated with a significantly higher frequency of rearrest. And, prosecution in New Jersey is associated with a significantly higher frequency of rearrest for drug offenses.

Tables 15a and 15b show that that sanctions (case outcome) is positively related to number of overall rearrests and property offense rearrests. However, the results concerning sentence length diverge from our previous tests. Unlike the proportional hazard models of rearrest prevalence over time, the negative binomial models suggest that longer custodial sentence lengths have a deterrent effect on number of rearrests. Each model other than the drug offense model (Model 19) demonstrates a negative and significant effect of custodial sentence length. Mirroring the previous results, we find no significant effects from any of the interaction terms in any negative binomial models.

Among other variables, the most consistent predictors of rearrest in these models are number of prior arrests (which is significant and positively related in every model other than Model 18) and number of concurrent arrests (significant and positively related in two of the models). The length of case processing is negatively related to the number of all rearrest types other than drug offenses. We find no robust effect for either variable indicating burglary or arrest charges, relative to robbery cases.

**Table 15a. Negative Binomial Regression of Number of Offense-Specific Rearrests**

	Model 15		Model 16		Model 17	
	All Rearrests		Violent Offenses		Property Offenses	
	<i>B</i>	<i>t</i>	<i>B</i>	<i>t</i>	<i>B</i>	<i>t</i>
<u>Demographic</u>						
Age	-0.164	-3.461**	-0.222	-3.670***	-0.242	-3.394**
Female	-0.911	-13.395***	-0.426	-4.680***	-0.755	-6.680***
Ethnicity (Contrast=African American)						
White	-0.426	-4.791***	-0.439	-3.422**	-0.051	-0.372
Hispanic American	-0.086	-1.688	-0.120	-1.813	0.111	1.414
Other Ethnicity	-0.371	-3.789***	-0.275	-1.906	-0.292	-1.885
<u>Current Case</u>						
Current Charge (Contrast=Robbery)						
Aggravated Assault	-0.102	-1.543	0.096	1.201	-0.212	-1.991*
Burglary	-0.079	-1.031	-0.352	-3.446**	0.193	1.585
Associated Weapon Charge	0.040	0.789	-0.057	-0.858	0.024	0.298
Bench Warrant	0.002	0.848	0.001	0.401	0.004	0.484
Detained	0.038	0.752	-0.044	-0.658	0.148	1.896
# Concurrent Arrests (logged)	0.002	2.721**	0.001	0.573	0.000	0.243
Case Length (days, logged)	-0.107	-4.383***	-0.068	-2.204*	-0.131	-3.465**
Any Court Action	0.127	2.492*	0.013	0.192	0.212	2.581*
Custodial Sentence (mos., logged)	-0.130	-3.731***	-0.096	-2.393*	-0.170	-3.325**
<u>Criminal History</u>						
# Prior Arrests (logged)	0.408	7.809***	0.433	6.852***	0.420	5.423***
Age at First Arrest	-0.006	-0.240	0.014	0.482	0.008	0.232
History of Incarceration	-0.097	-0.984	-0.039	-0.354	-0.121	-0.802
<u>Criminal vs. Juvenile Jurisdiction</u>						
State (Contrast=New Jersey)	-0.026	-0.406	0.317	3.975***	0.356	3.303**
State x Prior Arrests	0.032	0.451	-0.057	-0.686	-0.089	-0.822
State x Incarceration Length	-0.058	-0.851	0.011	0.138	-0.180	-1.812
State x Any Court Action	0.136	1.300	0.109	0.798	0.095	0.583
Constant	4.676	7.036***	3.992	4.605***	4.376	4.159***
Time-at-risk	0.000	-5.755***	0.000	-6.850***	0.000	-3.432**
Dispersion Parameter	0.741	18.327***	0.593	8.369***	1.386	13.422***
Predictor of Censor	1.655	1.538	1.693	1.599	2.304	1.604
Log likelihood function	-4990.08		-2762.784		-2843.061	
Chi-squared	1713.40		171.46		726.98	
p(Chi-Square)	0.000		0.000		0.000	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

**Table 15b. Negative Binomial Regression of Number of Offense Specific Rearrests**

	Model 18		Model 19	
	Weapon Offenses		Drug Offenses	
	<i>B</i>	<i>t</i>	<i>B</i>	<i>t</i>
<u>Demographic</u>				
Age	-0.004	-0.028	-0.036	-0.484
Female	-1.429	-4.293***	-1.747	-12.099***
Ethnicity (Contrast=African American)				
White	-0.960	-2.810**	-0.752	-5.366***
Hispanic American	-0.442	-2.629**	-0.220	-2.548*
Other Ethnicity	-0.798	-1.963*	-0.505	-3.163**
<u>Current Case</u>				
Current Charge (Contrast=Robbery)				
Aggravated Assault	0.097	0.485	-0.216	-2.154*
Burglary	-0.064	-0.274	-0.129	-1.061
Associated Weapon Charge	0.094	0.607	0.203	2.558*
Bench Warrant	0.001	0.070	0.004	0.426
Detained	-0.014	-0.093	0.027	0.318
# Concurrent Arrests (logged)	-0.001	-0.622	0.001	0.441
Case Length (in days, logged)	-0.193	-2.793**	-0.043	-1.118
Any Court Action	0.293	1.803	0.042	0.519
Custodial Sentence Length (months, logged)	-0.226	-2.052*	-0.039	-0.819
<u>Criminal History</u>				
# Prior Arrests	0.221	1.552	0.366	4.405***
Age at First Arrest	-0.055	-0.877	-0.009	-0.214
History of Incarceration	0.344	1.390	-0.250	-1.703
<u>Criminal vs. Juvenile Jurisdiction</u>				
State (Contrast=New Jersey)	0.238	1.145	-0.365	-3.757***
State x Prior Arrests	0.142	0.752	0.162	1.479
State x Incarceration Length	0.121	0.545	-0.092	-1.004
State x Any Court Action	-0.553	-1.637	0.217	1.291
Constant	0.100	0.049	1.007	1.087
Time-at-risk	0.000	-1.857	0.000	1.022
Dispersion Parameter	1.250	3.005**	1.487	13.702***
Censor	-0.267	-0.089	0.050	0.041
<hr/>				
Log likelihood function	-853.900		-2970.610	
Chi-squared	22.990		868.790	
p(Chi-Square)	0.000		0.000	

\*p&lt;.05, \*\*p&lt;.01, \*\*\*p&lt;.001

Several offender characteristics are significantly related to arrest counts as well. The variable for age is significant and negatively related to overall, violent and property offense arrests. Males are more likely than females to have greater numbers of rearrests in each model. Overall, with regard to ethnicity, African-Americans are more likely than other groups to be rearrested a greater number of times. This effect is significant relative to each other ethnic group for any rearrest (Model 15), weapon offense rearrests (Model 18), and drug offense rearrests (Model 19), and significant relative to whites for violent offense rearrests (Model 16).

In sum, we find that the number of rearrests is conditioned by jurisdiction – prosecution in New York is related to higher rates for violent and property offenses, though prosecution in New Jersey is related to higher rates of drug offenses. This mirrors our results from the hazard rate analyses and adds to our confidence in these results. With regard to the effect of court outcomes on recidivism, we find mixed results. We find that conviction is related to greater numbers of rearrests, but that custodial sentence length is related to fewer rearrests.

To test for selection effects on these results, we computed a selection parameter to estimate the effects of sample differences on these models. We used the same selection parameter used in the hazard models of recidivism prevalence and reincarceration. This selection parameter is predicted value or propensity score from an equation predicting membership in the New York sample.<sup>184</sup> We then include this parameter when re-estimating each negative binomial model (shown above in Tables 15a and 15b as Models 15 to 19). Table 16 summarizes the results of the negative binomial models by listing the coefficients for state and their significance in each model, both with<sup>185</sup> and without this selection parameter. As Table 16 demonstrates, including this selection parameter does not alter the coefficient for state in any of the negative binomial models. As a result, we are confident that we adequately control for differences between cases in New York and New Jersey in our analyses, and that our results are free from sample selection bias that might arise from such differences.

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<sup>184</sup> See Rubin, *supra* note 135.

<sup>185</sup> The first column of coefficients for state in Table 15 is taken from Models 15 to 19 in Tables 15a and 15b.

**Table 16. Summary of Negative Binomial Regression Results for State Effects for Various Models, With and Without State Selection Parameter**

<i>Model</i>	Unadjusted State Effects			Adjusted State Effects		
	<i>Estimate</i>	<i>t</i>	<i>p(t)</i>	<i>Estimate</i>	<i>t</i>	<i>p(t)</i>
All Rearrests	-0.026	-0.406		-0.029	-0.436	
Rearrests for Violent Offenses	0.317	3.975	***	0.305	3.802	***
Rearrests for Property Offenses	0.356	3.303	**	0.336	2.991	**
Rearrests for Weapon Offenses	0.238	1.145		0.257	1.230	
Rearrests for Drug Offenses	-0.365	-3.757	***	-0.337	-3.438	**

\*p<.05, \*\*p<.01, \*\*\*p<.001

### E. Summary of Results Across Models

Several trends are apparent across the models discussed above. First, it appears that jurisdiction does have an impact on recidivism, but this effect varies based on offense type measured. Net of all other factors, prosecution in New York consistently leads to greater likelihood of rearrest for violent and property offenses, and of subsequent incarceration. These offense categories were focal concerns in the legislative activism to increase the use of criminal courts for sentencing and punishment of adolescent felony offenders. The evidence here of increases in offending rates for these crime types is particularly ironic in light of the emphasis in these social and legal policies on serious and violent crime. This is especially true for defendants with no prior records, some of whom are incarcerated under sentences that are structured by law.

Transfer policies often are justified by policy-makers as effective resources for deterring violent crimes among adolescents.<sup>186</sup> This seems not to be true in this study, nor in others examining this policy question. We conclude that the counter-deterrence of criminal court is not due to the increased prison time served by adolescents prosecuted in criminal court compared to their juvenile court counterparts, because our state effects were found in models that controlled for the effect of sentence length. (Nor did the state effects increase in models which left sentence length uncontrolled.) We also fail to find evidence that the equivalent incarceration length has a different effect in the two states. Whatever qualitative differences there may be in the incarceration experience, it does not seem to be responsible for the criminogenic effect of adult court processing. What, then, explains the distinction in recidivism we find between New York and New Jersey? There are several possible explanations for this discrepancy, including police preferences for arrest and the closer supervision of adolescents on juvenile probation caseloads, or the

<sup>186</sup> SINGER, *supra* note 12; Zimring & Fagan, *Transfer Policy and Law Reform*, *supra* note 51.

iatrogenic effects of adult court participation on adolescent offenders. These theories await further research.

Second, we find variable effects of court sanctions on recidivism— regardless of whether the sanctions are expressed by the juvenile or adult court. Sanction, or court action – analogous to conviction – also is a consistent predictor of a heightened risk of recidivism. This suggests that adolescents are less likely to re-offend if their cases are diverted from court or dismissed. Oddly, custodial sentence length is a significant predictor of a *heightened* risk of recidivism in two of the proportional hazard models, yet a significant predictor of a *lowered* risk of recidivism in several of the negative binomial models. The lack of significant results from the interaction term of state by sentence length suggest that these results are not due to an interaction effect between sentence length and court type – in other words, incarceration does not have an effect that is specific to either court jurisdiction. Given that the proportional hazard models estimate the likelihood only of a first rearrest, yet the negative binomial models estimate the overall number of rearrests, this distinction might be due to different short-term and long-term consequences of imprisonment. That is, perhaps prison sentences have a negative, counter-deterrent short-term effect, but a positive, deterrent long-term effect. This should be explored through further research.

Third, we find that overall, previous behavior is a good indicator of future behavior. The variables we include for prior arrest record and rearrests during case processing are fairly consistent predictors (though with some exceptions) of greater likelihood of rearrest, especially when measuring rearrest for more serious offenses. Age at first arrest also significantly predicts recidivism in two models; though this finding is not robust, it suggests that beginning a criminal record at a younger age may be related to persistence of a criminal career.

Fourth, we find that arrest charge on the sampled case is not a very good predictor of recidivism. This is an important result, for it helps demonstrate that the abundance of robbery cases in the New York sub-sample does not bias our results. Moreover, we re-estimate several models to ensure that the differing arrest charge distributions between New York and New Jersey do not bias our results; the results of each of these tests confirms that our data are sound.

Finally, we find that several demographic variables are significant predictors of recidivism. Both sex and ethnicity have significant effects in several of our competing hazard models. This suggests that the likelihood of rearrest is greater for males than females and for African Americans relative to adolescents of other ethnicities. We are unable to determine based on our data if these results are due to disparate behavioral patterns or to different policing along these demographic boundaries.



## V. CONCLUSIONS

Prior research has strongly suggested that prosecuting adolescents as adults leads to more, not less, crime. This is true for almost all studies asking this question, regardless of methodology. Our results add to what now is a consistent series of empirical studies showing that adolescents prosecuted and sentenced in criminal court are at significantly greater risk of rearrest for violent and felony property offenses, their risks accrue more quickly, and they are more likely to be subsequently incarcerated than matched samples of adolescents prosecuted in juvenile courts. That these results appear in studies that reflect a range of sampling and measurement conditions, as well as statutory and social structural contexts, suggests a robustness in these findings that demands policy attention. Despite repeated promises by politicians that being tough on crime by prosecuting children as adults will decrease crime and protect the community,<sup>187</sup> we find that transfer to criminal court actually may increase the risk of violent and other serious crime by adolescents and young adults, increasing public safety risks for citizens while heavily mortgaging the possibility of reformation or prosocial development for many transferred offenders. The results suggest that policies facilitating “wholesale waiver,” or categorical exclusion of certain groups of adolescents based solely on offense and age, are ineffective at specific deterrence of serious crime, despite political rhetoric insisting the opposite, and invite avoidable public safety risks. We are confident that these results reflect systematic differences and are not the product of selection: the matching procedures used to construct this natural experiment and the inclusion of selection parameters in the analyses leave us confident that these results are valid and real.

### A. Jurisprudential Implications

Given that the interaction between custodial sentence length and state does not help predict violent or property offense rearrests, we conclude that the counter-deterrence of criminal court is not due to the increased prison time served by adolescents prosecuted in criminal court compared to their juvenile court counterparts. What, then, explains the distinction in recidivism we find between New York and New Jersey?

We look to two potential explanations that might identify the dynamics that produce higher recidivism rates for adolescents in criminal court. First, systematic differences in the court and correctional experiences of adolescents in the criminal courts may expose them to harsh punishments at one end of the sanction continuum, or to ineffective and diffuse supervision for those sentenced to probation. Second, the effects of felony conviction on subsequent employment<sup>188</sup> or citizenship<sup>189</sup> or entry to other

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<sup>187</sup> See SINGER, *supra* note 12; Sara Raymond, *From Playpens to Prisons: What the Gang Violence and Juvenile Crime Prevention Act of 1998 Does to California's Juvenile Justice System and Reasons to Repeal It*, 30 GOLDEN GATE U. L. REV. 233, 258-289 (2000). The criteria for transfer include an offense that would be punishable by death or life imprisonment if committed by an adult; the use of a firearm in committing a felony; or an accusation that the youth committed any crime in conjunction with a street gang, for the purpose of interfering with a victim's constitutional rights, or against a victim sixty-five-years-old or older. *Id.*; P. Wilson, *How is Juvenile Justice Served?*, S.F. CHRON., Feb. 27, 2000.

<sup>188</sup> J. Fagan & R. Freeman, *Crime and Work*, in 25 CRIME AND JUSTICE 225 (1999)

<sup>189</sup> Christopher Uggen & Jeff Manza, *Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOC. REV. 777 (2002).



prosocial adult roles<sup>190</sup> suggest that some aspects of adolescent development are heavily mortgaged when adolescents are tried as adults, complicating their transition from adolescence to adulthood. Third, juvenile courts may be able to reduce recidivism through methods that are less visible and less measurable, such as through a complex array of counseling and treatment programs that we do not account for in our analyses.

Another possibility stems from a symbolic interaction, or labeling, perspective.<sup>191</sup> Perhaps prosecution in criminal court symbolically communicates to adolescents that they are unsalvageable, or that they are adult offenders rather than juvenile delinquents, and these messages in turn produce inflated offending activity via a self-fulfilling prophecy. Future research should examine these very real possibilities of secondary deviance, or classical labeling theory, as an explanation for the elevated rates of recidivism among transferred adolescents.

An equally important research agenda should assess the perceived deterrent effects of sanction experiences in each court. Applying an integrative theory of deterrence can refocus the effects of court sanctions on the assessments of the costs and rewards both of offending and punishment. We urge that research consider that the iatrogenic effects of criminal court may result from the domains of both distributive and procedural justice that distinguish the two court contexts. Within this framework, future research should reflect the developmental stage of adolescents and the processes of legal socialization that are animated by their court experiences.

Future research also should consider our finding that prosecution in New Jersey juvenile courts is a significant predictor of drug offense recidivism. This conclusion is consistent with the claims of the juvenile court's critics who argue that juvenile courts are net-widening institutions.<sup>192</sup> It is possible that prosecution in New Jersey's juvenile courts alerts local law enforcement that certain youth are "trouble-makers" and deserve greater scrutiny than other adolescents. Thus by including youth under a *parens patriae* mandate the juvenile court makes adolescents more susceptible than other adolescents to arrest for petty crimes. Alternatively, transfer to criminal court may partially achieve its intended effect of reducing crime, though only for drug offenses. These possibilities deserve further consideration through continued research.

## B. Implications for Law and Policy

Overall, based on our research and on previous studies it seems clear that policies facilitating "wholesale waiver," or transfer to criminal court of large groups of adolescents based solely on offense and age, fail to deter serious and violent crime. This failure occurs despite the political rhetoric insisting the opposite. However, we understand the necessity of transferring some adolescents to criminal court – this is necessitated by the principle of penal proportionality, which would be violated by all violent adolescents receiving punishment through the traditionally more lenient juvenile court.<sup>193</sup> Thus the community must be protected from predatory youth who are unlikely

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<sup>190</sup> R.J. SAMPSON & J.H. LAUB, *CRIME IN THE MAKING* (1993)

<sup>191</sup> See E. SCHUR, *INTERPRETING DEVIANCE* (1979).

<sup>192</sup> FELD, *BAD KIDS*, *supra* note 2; E. LEMERT, *SOCIAL ACTION AND LEGAL CHANGE* (1970).

<sup>193</sup> F. Zimring, *The Punitive Necessity of Waiver*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE*, *supra* note 1.

to be helped by treatment-oriented or supervisory sanctions, but delinquent youth also must be protected from the overreach of wholesale waiver.

In practice, the normative and empirical tension in setting these boundaries poses a challenge to lawmakers that is simply ignored when legislators retreat to the simplistic overreach of legislative exclusion and its “wholesale waiver” policies. There are competing risks in the development of waiver policy, and calibration of the threshold itself and also the mechanism for crossing it, are complex questions. Some transfer mechanisms may invite higher error rates than others, regardless of where the boundary is actually set. The prediction of seriousness and risk cannot occur without entertaining two types of error, both those over-predicted to re-offend and those whose recidivism risks are underestimated. The two predictions are linked, and the evaluation of waiver or transfer as public policy requires that both types of risk be considered. Such is the dilemma and ethical responsibility of the regulator.<sup>194</sup> Given the necessity of transferring some adolescents to criminal court, policy-makers should adopt methods of risk prediction that – as shown in this study – offer more accurate predictions of public safety risk in determining which offenders are expelled from the juvenile court.

Returning to discretionary transfer rather than “wholesale waiver” would limit the number of youth subjected to criminal court prosecution, and better screen out youth who may be amenable to treatment in the juvenile court. Yet this method would also ensure proportional punishment for adolescents whose crimes are too serious to maintain the legitimacy of adjudication in the juvenile court.

Of course, suggesting a return to discretionary transfer begs the question of how youth should be selected for transfer. Volumes of prior research suggest that past attempts to select youth for transfer often are unsuccessful at selecting the most serious offenders,<sup>195</sup> and reinforce racial discrimination in the selection process.<sup>196</sup> Therefore, a more careful screening process for selecting youth to be prosecuted as adults is crucial. Such a system must minimize both false negatives and false positives.

False negatives, or failing to select youth who are likely to re-offend, clearly are the main concern of policy makers who facilitate the transfer of youths to criminal court. The fear that predatory children are treated with “kid gloves” in the juvenile court is the reason for the recent erosion of the juvenile court’s jurisdiction through transfer laws.<sup>197</sup> We agree that some youth should be transferred to criminal court, but we need methods that are less inclusive for selecting transfer candidates and subject fewer children to the stigmatization and punishment liability of criminal court.

Indeed, current over-inclusive transfer laws minimize the chance of false negatives, but in doing so they maximize the likelihood of false positives. That is, by transferring so many youths to criminal court, transfer policies subject many adolescents who would benefit from a juvenile court’s rehabilitative services to criminal court punishment. Our research – as well as other studies before us – find a significant risk to

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<sup>194</sup> C. CRANOR, *THE REGULATION OF TOXIC SUBSTANCES* (1993).

<sup>195</sup> See Bishop, *supra* note 84.

<sup>196</sup> See M.A. Bortner et al., *Race and Transfer: Empirical Research and Social Context*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE*, *supra* note 1.

<sup>197</sup> E.g., SINGER, *supra* note 12; L.J. Collier, *Adult Crime, Adult Time: Outdated Juvenile Laws Thwart Justice*, WASH. POST, Mar. 29, 1998; Wilson, *supra* note 154.

individual adolescents and to the community of increasing the number of false negative cases.

A more sensible system for jurisdictional transfer would return the discretion to juvenile court judges to select juveniles based on more criteria than age and instant offense. We recommend that this function return to judges, whose decisions are less influenced by the politics of crime and the electoral pressures to avoid risks while exacting retribution.<sup>198</sup> Judges should be able to decide which adolescents should be transferred, within an open and transparent forum and using *Kent*-like criteria and social scientific knowledge of adolescent development. Our hope is that such a system could simultaneously protect vulnerable youth who are amenable to rehabilitation, and protect the community from those most likely to re-offend. A jurisprudence of discretionary decision making on transfer would also promote two ancillary goals: it would promote accountability for decision makers that is diffused in a statutory context where legislators surgically remove entire classes of offenders from the juvenile court. A regime of individualized decision making would take seriously the responsibility for mistakes on both sides of the decision threshold.

A now extensive *oeuvre* of empirical research suggest that past attempts to individually select youth for transfer often are unsuccessful at selecting the most serious offenders,<sup>199</sup> and reinforce racial discrimination in the selection process.<sup>200</sup> These processes are correctable by regulatory mechanisms that can anticipate these trends and offer corrective interventions. Accordingly, we suggest that more careful screening processes for selecting youth to be prosecuted as adults are crucial, and that transparency and constant assessment can calibrate where the borders should be set and measure the performance of those making transfer decisions. Such a system will take seriously the risks both false negatives and false positives, risks that are inherent in modern juvenile and criminal justice. As a regulatory question, the nation's recurring social experiment to criminalize delinquency has unfolded with limited research and little analysis. The declines in juvenile crime present an opportunity for experimentation on waiver and transfer as a public policy question. Opening the transfer process to regulation and deliberation can lay the foundation for more effective and principled policies.

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<sup>198</sup> K. BECKETT, *MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS* (1997)

<sup>199</sup> See Bishop, *supra* note 84; Fagan, *Comparative Advantage*, *supra* note 17.

<sup>200</sup> See Bortner et al., *supra* note 163.

**APPENDIX A.**

**STATUTORY COMPARISONS  
AND CITATIONS**

<i>Appendix A1. Target Charges Statutory Comparison: Robbery</i>			
Common Definition of Charge		New York Elements of Charge	New Jersey Elements of Charge
<p><b>Robbery:</b></p> <p>Physically attacking, injuring or threatening a person with or without a deadly weapon, while stealing property from that person</p>	<p><i>More Severe</i></p> <p>NY: 160.15, B Felony</p> <p>NJ: 2C:15-1, 1st<sup>o</sup></p>	<p>In the course of stealing property or in flight from the crime, he:</p> <ol style="list-style-type: none"> <li>1. Causes serious physical injury to any person who is not a participant in the crime; or</li> <li>2. Is armed with a deadly weapon; or</li> <li>3. Uses or threatens the immediate use of a dangerous instrument; or</li> <li>4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.</li> </ol>	<p>Robbery is a crime of the first degree if in the course of committing the theft the actor:</p> <ol style="list-style-type: none"> <li>1. Attempts to kill anyone, or</li> <li>2. Purposely inflicts or attempts to inflict serious bodily injury, or</li> <li>3. Is armed with, or uses or threatens the immediate use of a deadly weapon.</li> </ol>
	<p><i>Less Severe</i></p> <p>NY: 160.10, C Felony</p> <p>NJ: 2C:15-1, 2<sup>nd</sup> o</p>	<p>Forcibly stealing property and when:</p> <ol style="list-style-type: none"> <li>1. He is aided by another person actually present; or</li> <li>2. In the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:               <ol style="list-style-type: none"> <li>(a) Causes physical injury to any person who is not a participant in the crime; or</li> <li>(b) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or</li> </ol> </li> <li>3. The property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law.</li> </ol>	<p>A person is guilty of robbery if, in the course of committing a theft, he:</p> <ol style="list-style-type: none"> <li>1. Inflicts bodily injury or uses force upon another; or</li> <li>2. Threatens another with or purposely puts him in fear of immediate bodily injury; or</li> <li>3. Commits or threatens immediately to commit any crime of the first or second degree.</li> </ol>

<i>Appendix A2. Target Charges Statutory Comparison: Assault</i>			
<b>Common Definition of Charge</b>		<b>New York Elements of Charge</b>	<b>New Jersey Elements of Charge</b>
<p><b>Assault:</b></p> <p>Physically attacking, injuring or threatening a person with or without a deadly weapon, or attempting to cause injury with or without a deadly weapon</p>	<p><i>More Severe</i>            NY: 120.10,            1<sup>st</sup> ° B            Felony</p> <p>NJ: 2C:12-1(b), 2<sup>nd</sup> °</p>	<p>A person is guilty of aggravated assault if he:</p> <ol style="list-style-type: none"> <li>1. Intentionally causes serious physical injury to another person or a third person by means of a deadly weapon or a dangerous instrument; or</li> <li>2. Intentionally disfigures, amputates or disables permanently a member or body organ; or</li> <li>3. Evinces a depraved indifference to human life, recklessly engages in conduct which creates a grave risk of death to another person</li> <li>4. Causes serious physical injury to a person other than one of the participants.in the course of an assault, or of immediate flight therefrom</li> </ol>	<p>A person is guilty of aggravated assault if he:</p> <ol style="list-style-type: none"> <li>1. Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or</li> <li>2. Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer, or during an auto or other vehicle theft</li> </ol>
	<p><i>Less Severe</i>            NY: 120.05,            2<sup>nd</sup> °,            C Felony</p> <p>NJ: 2C:12-1(b), 3<sup>rd</sup> °</p>		<p>A person is guilty of aggravated assault if he:</p> <ol style="list-style-type: none"> <li>1. Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or</li> <li>2. Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury; or</li> <li>3. Knowingly, under circumstances manifesting extreme indifference to the value of human life, points or displays a firearm</li> <li>4. Same as 3, at a law enforcement officer</li> </ol>

<i>Appendix A3. Target Charges Statutory Comparison: Burglary</i>		
<b>Common Definition of Charge</b>	<b>New York Elements of Charge</b>	<b>New Jersey Elements of Charge</b>
<p><b>Burglary:</b></p> <p>Unlawfully entering a dwelling or structure with intentions to commit a crime, with or without a weapon physically injuring a person</p>	<p><i>More Severe</i>            NY: 140.30,            2<sup>nd</sup> o.,            B Felony</p> <p>NJ: 2C:18-2b,            2<sup>nd</sup> o</p> <p>A person is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime:</p> <ol style="list-style-type: none"> <li>1. Is armed with explosives or a deadly weapon; or</li> <li>2. Causes physical injury to any person who is not a participant in the crime; or</li> <li>3. Uses or threatens the immediate use of a dangerous instrument; or</li> <li>4. Displays what <i>appears</i> to be a pistol, revolver, rifle, shotgun, machine gun or other firearm (but only if not operable);</li> </ol>	<p>A person is guilty of burglary if he enters a research facility, structure, or a separately secured or occupied portion thereof, unless the structure was at the time open to the public or the actor is licensed or privileged to enter, and</p> <ol style="list-style-type: none"> <li>1. Purposely, knowingly or recklessly inflicts, attempts to inflict or threatens to inflict bodily injury on anyone; or</li> <li>2. Is armed with or displays what appear to be explosives or a deadly weapon</li> </ol>
	<p><i>Less Severe</i>            NY: 120.05,            2<sup>nd</sup> o,            C Felony</p> <p>NJ: 2C:18-2a,            3<sup>rd</sup> o</p> <p>A person is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime:</p> <ol style="list-style-type: none"> <li>5. Is armed with explosives or a deadly weapon; or</li> <li>6. Causes physical injury to any person who is not a participant in the crime; or</li> <li>7. Uses or threatens the immediate use of a dangerous instrument; or</li> <li>8. Displays what <i>appears</i> to be a pistol, revolver, rifle, shotgun, machine gun or other firearm (but only if not operable)</li> </ol>	<p>A person is guilty of burglary if he enters a research facility, structure, or a separately secured or occupied portion thereof, unless the structure was at the time open to the public or the actor is licensed or privileged to enter,</p>

*Appendix A4. Statutory Citations and Language***I. New York Penal Laws****A) § 160.15; Robbery in the first degree**

A person is guilty of robbery in the first degree when he forcibly steals property and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:

1. Causes serious physical injury to any person who is not a participant in the crime; or
2. Is armed with a deadly weapon; or
3. Uses or threatens the immediate use of a dangerous instrument; or
4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, robbery in the second degree, robbery in the third degree or any other crime.

Robbery in the first degree is a class B felony.

**B) § 160.10; Robbery in the second degree**

A person is guilty of robbery in the second degree when he forcibly steals property and when:

1. He is aided by another person actually present; or
2. In the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:
  - (a) Causes physical injury to any person who is not a participant in the crime; or
  - (b) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
3. The property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law.

Robbery in the second degree is a class C felony.

**C) § 120.10; Assault in the first degree**

A person is guilty of assault in the first degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or
3. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or
4. In the course of and in furtherance of the commission or attempted commission of a felony or of



immediate flight therefrom, he, or another participant if there be any, causes serious physical injury to a person other than one of the participants.  
Assault in the first degree is a class B felony.

**D) § 120.05; Assault in the second degree**

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or
2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
3. With intent to prevent a peace officer, police officer, a fireman, including a fireman acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such fireman, an emergency medical service paramedic or emergency medical service technician, or medical or related personnel in a hospital emergency department, from performing a lawful duty, by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such peace officer, police officer, fireman, paramedic or technician, he causes physical injury to such peace officer, police officer, fireman, paramedic, technician or medical or related personnel in a hospital emergency department; or
4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same; or
6. In the course of and in furtherance of the commission or attempted commission of a felony, other than a felony defined in article one hundred thirty which requires corroboration for conviction, or of immediate flight therefrom, he, or another participant if there be any, causes physical injury to a person other than one of the participants; or
7. Having been charged with or convicted of a crime and while confined in a correctional facility, as defined in subdivision three of section forty of the correction law, pursuant to such charge or conviction, with intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
8. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly causes serious physical injury to such person; or
9. Being eighteen years old or more and with intent to cause physical injury to a person less than seven years old, the defendant causes such injury to such person; or
10. Acting at a place the person knows, or reasonably should know, is on school grounds and with intent to cause physical injury, he or she:

(a) causes such injury to an employee of a school or public school district; or  
(b) not being a student of such school or public school district, causes physical injury to another, and such other person is a student of such school who is attending or present for educational purposes.  
For purposes of this subdivision the term "school grounds" shall have the meaning set forth in subdivision fourteen of section 220.00 of this chapter. Assault in the second degree is a class D felony.

11. With intent to cause physical injury to a train operator, ticket inspector, conductor or bus operator employed by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions, he or she causes physical injury to such train operator, ticket inspector, conductor or bus operator while such employee is performing an assigned duty on, or directly related to, the operation of a train or bus.

**E) § 140.30; Burglary in the first degree**

A person is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime:

1. Is armed with explosives or a deadly weapon; or
2. Causes physical injury to any person who is not a participant in the crime; or
3. Uses or threatens the immediate use of a dangerous instrument; or
4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged.

Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, burglary in the second degree, burglary in the third degree or any other crime. Burglary in the first degree is a class B felony.

## **II. New Jersey Penal Laws**

**A) NJ ST 2C:15-1; First- & Second-Degree Robbery**

Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:

- (1) Inflicts bodily injury or uses force upon another; or
- (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
- (3) Commits or threatens immediately to commit any crime of the first or second degree.

An act shall be deemed to be included in the phrase "in the course of committing a theft" if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.

b. Grading. Robbery is a crime of the second degree, except that it is a crime of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with, or uses or threatens the immediate use of a deadly weapon.

**B) NJ ST 2C:12-1; Assault (First-, Second-, Third-, and Fourth-Degree)**

a. Simple assault. A person is guilty of assault if he:

- (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
- (2) Negligently causes bodily injury to another with a deadly weapon; oR
- (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. Aggravated assault. A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or
- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Recklessly causes bodily injury to another with a deadly weapon; or
- (4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or
- (5) Commits a simple assault as defined in subsection a. (1), (2) or (3) of this section upon:

- (a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority or because of his status as a law enforcement officer; or
- (b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or
- (c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or
- (d) Any school board member, school administrator, teacher, school bus driver or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board or any school bus driver employed by an operator under contract to a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a school bus driver; or
- (e) Any employee of the Division of Youth and Family Services while clearly identifiable as being engaged in the performance of his duties or because of his status as an employee of the division; or
- (f) Any justice of the Supreme Court, judge of the Superior Court, judge of the Tax Court or municipal judge while clearly identifiable as being engaged in the performance of judicial duties or because of his status as a member of the judiciary; or
- (g) Any operator of a motorbus or the operator's supervisor or any employee of a rail passenger service while clearly identifiable as being engaged in the performance of his duties or because of his status as an operator of a motorbus or as the operator's supervisor or as an employee of a rail passenger service; or

(6) Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of [N.J.S.2C:29-2](#) or while operating a motor vehicle in violation of subsection c. of [N.J.S.2C:20-10](#). Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this subsection upon proof of a violation of subsection b. of [N.J.S.2C:29-2](#) or while operating a motor vehicle in violation of subsection c. of [N.J.S.2C:20-10](#) which resulted in bodily injury to another person; or

(7) Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury; or

(8) Causes bodily injury by knowingly or purposely starting a fire or causing an explosion in violation of [N.J.S.2C:17-1](#) which results in bodily injury to any emergency services personnel involved in fire suppression activities, rendering emergency medical services resulting from the fire or explosion or rescue operations, or rendering any necessary assistance at the scene of the fire or explosion, including any bodily injury sustained while responding to the scene of a reported fire or explosion. For purposes of this subsection, "emergency services personnel" shall include, but not be limited to, any paid or volunteer fireman, any person engaged in emergency first-aid or medical services and any law enforcement officer. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this paragraph upon proof of a violation of [N.J.S.2C:17-1](#) which resulted in bodily injury to any emergency services personnel; or

(9) Knowingly, under circumstances manifesting extreme indifference to the value of human life, points or displays a firearm, as defined in subsection f. of [N.J.S.2C:39-1](#), at or in the direction of a law enforcement officer; or

(10) Knowingly points, displays or uses an imitation firearm, as defined in subsection f. of [N.J.S.2C:39-1](#), at or in the direction of a law enforcement officer with the purpose to intimidate, threaten or attempt to put the officer in fear of bodily injury or for any unlawful purpose; or

(11) Uses or activates a laser sighting system or device, or a system or device which, in the manner used, would cause a reasonable person to believe that it is a laser sighting system or device, against a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. As used in this paragraph, "laser sighting system or device" means any system or device that is integrated with or affixed to a firearm and emits a laser light beam that is used to assist in the sight alignment or aiming of the firearm.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsections b. (2), b. (7), b. (9) and b. (10) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree. Aggravated assault under subsection b.(8) is a crime of the third degree if the victim suffers bodily injury; if the victim suffers significant bodily injury or serious bodily injury it is a crime of the second degree. Aggravated assault under subsection b.(11) is a crime of the third degree.

### **C) NJ ST 2C: 18-2; Burglary**

a. Burglary defined. A person is guilty of burglary if, with purpose to commit an offense therein he:

- (1) Enters a research facility, structure, or a separately secured or occupied portion thereof unless the structure was at the time open to the public or the actor is licensed or privileged to enter; or
- (2) Surreptitiously remains in a research facility, structure, or a separately secured or occupied portion thereof knowing that he is not licensed or privileged to do so.

b. Grading. Burglary is a crime of the second degree if in the course of committing the offense, the actor:

- (1) Purposely, knowingly or recklessly inflicts, attempts to inflict or threatens to inflict bodily injury on anyone; or
- (2) Is armed with or displays what appear to be explosives or a deadly weapon.

Otherwise burglary is a crime of the third degree. An act shall be deemed "in the course of committing" an offense if it occurs in an attempt to commit an offense or in immediate flight after the attempt or commission.

**APPENDIX B.**  
**DESCRIPTIVE STATISTICS**

**Appendix B1. Sample Characteristics: Means and Standard Deviations**

	New York		New Jersey		Total Sample	
	Mean	Std. Dev.	Mean	Std. Dev.	Mean	Std. Dev.
<b>Demographics</b>						
Age	16.21	0.55	16.04	0.56	16.13	0.56
Sex (0=female; 1=male)	0.88	0.32	0.83	0.38	0.86	0.35
Race Variables:						
African-American	0.58	0.49	0.55	0.50	0.57	0.50
Hispanic	0.32	0.47	0.26	0.44	0.30	0.46
White	0.05	0.22	0.13	0.34	0.09	0.28
Other	0.05	0.21	0.06	0.23	0.05	0.22
<b>Legal Variables</b>						
Current Offense:						
Robbery	0.80	0.40	0.25	0.44	0.56	0.50
Aggravated Assault	0.15	0.36	0.43	0.50	0.28	0.45
Burglary	0.04	0.21	0.31	0.46	0.16	0.37
Associated Weapon Charge	0.41	0.49	0.35	0.48	0.39	0.49
Detained by Court	0.47	0.50	0.41	0.49	0.45	0.50
Warrant Ordered by Court	0.08	0.27	0.19	0.39	0.13	0.33
Prior Arrests (logged)	0.49	0.63	1.06	0.97	0.75	0.85
Concurrent Arrests (logged)	0.13	0.31	0.37	0.53	0.24	0.44
Age at First Arrest	15.55	1.23	14.58	1.74	15.12	1.55
Previously Incarcerated	0.14	0.35	0.04	0.20	0.10	0.30
Case Length (days logged)	140.71	145.38	204.63	320.01	169.18	241.49
Conviction	0.55	0.50	0.57	0.49	0.56	0.50
Custodial Sentence Length	0.58	1.26	0.19	0.70	0.40	1.06

**Appendix B2. Pearson Correlation Coefficients (Two-tailed) of Predictor Variables and Recidivism Prevalence Measures\***

	Any Rearrest	Rearrest for Violence	Rearrest for Property Offense	Rearrest for Weapon Offense	Rearrest for Drug Offense
Age	0.01	0.02	0.00	0.01	0.00
Sex	<b>0.22</b>	<b>0.13</b>	<b>0.16</b>	<b>0.10</b>	<b>0.22</b>
African American	0.08	0.09	0.02	0.07	0.07
Hispanic	-0.02	-0.01	0.02	-0.02	-0.01
White	-0.04	<b>-0.11</b>	-0.02	-0.05	-0.06
Other Ethnicity	-0.10	-0.05	-0.06	-0.04	-0.06
Robbery	0.03	0.12	0.05	0.01	0.00
Aggravated Assault	-0.03	-0.04	-0.07	0.00	-0.01
Burglary	0.00	-0.11	0.03	-0.01	0.01
Weapon Charge	0.05	0.04	0.01	0.01	0.04
Detained	<b>0.15</b>	<b>0.12</b>	<b>0.12</b>	0.05	0.10
Warrant	0.00	0.00	-0.02	-0.01	0.02
Prior Arrests	<b>0.27</b>	<b>0.18</b>	<b>0.19</b>	<b>0.10</b>	<b>0.21</b>
Concurrent Arrests	0.14	0.07	0.09	0.07	0.08
Age at First Arrest	<b>-0.21</b>	<b>-0.12</b>	<b>-0.13</b>	-0.08	<b>-0.17</b>
Previously Incarcerated	0.09	0.13	0.06	0.07	0.04
Case Length	-0.11	-0.10	-0.08	-0.07	-0.07
Conviction	0.12	0.07	0.09	0.04	0.06
Custodial Sentence Length	0.04	0.04	-0.01	-0.03	0.02
State	-0.04	0.12	0.03	0.01	-0.10

\* p < .05 shown in **bold**