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**THE COMPARATIVE IMPACTS OF JUVENILE AND CRIMINAL COURT  
SANCTIONS ON ADOLESCENT FELONY OFFENDERS**

Final Report:  
Grant 87-IJ-CX-0044

National Institute of Justice  
U.S. Department of Justice  
Washington DC

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June 1991

134377

U.S. Department of Justice  
National Institute of Justice

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**THE COMPARATIVE IMPACTS OF JUVENILE AND CRIMINAL COURT  
SANCTIONS ON ADOLESCENT FELONY OFFENDERS**

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#### ACKNOWLEDGEMENTS

Many people made important contributions to this research. The Research Department of the New York City Criminal Justice Agency made available its data base and programming expertise to draw the New York samples. Thanks to Steven Belenko for facilitating our access, and to Gerri Staehs who provided unique programming skill in selecting and stratifying samples from automated court dockets to meet the specifications of the study. Bruce Frederick of the New York State Division of Criminal Justice Services facilitated access to the criminal histories for the New York samples, while Jim Baker provided expert programming help. In New Jersey, Jeannine Pilato organized a small crew of coders who mined the Essex and Passaic County Superior Courts to draw the first New Jersey sample and code the records for their juvenile court histories. Robert Carney, former Director of Statistical Services Division for the Administrative Office of the Courts in New Jersey, facilitated access to the data from the Unit Case Management System to select cases for the second New Jersey sample. Bruce Stout of the Juvenile Delinquency Dispositions Commissions helped us interpret those data at several points along the way. The New Jersey State Police graciously provided access to the criminal histories of the New Jersey samples. At Rutgers University, Erin Brisben pulled together these sometimes ragged and cryptic data sets and made them coherent. David Orden devoted extraordinary efforts in reading and programming the data from diverse systems and in a veritable Babylon of languages. A. Rajendren also provided critical programming help in merging what appeared to be irreconcilable differences. Christopher Maxwell provided important programming help in the latter stages. Martha Schiff was the Captain of the ship, and was heroic in her coordination of an extremely difficult effort. I am indebted to each of these people for their help.

As usual, the opinions in this report are those of the author, and represent the views neither of the participating organizations nor the sponsoring agency.

## ABSTRACT

In the past decade, there has been a vigorous debate on the appropriate forum for the adjudication and disposition of felony offenses committed by juveniles. Critics of the rehabilitative policies of the juvenile justice system suggest that juvenile court sanctions are both inappropriate and disproportionate for serious crimes, and ineffective in reducing subsequent crime. They contend that the criminal court, with its more punitive sanctions, offers greater community protection, more effective deterrence of future crime, and more proportionate, retributive responses to felony crimes. Supporters of the juvenile court argue that juvenile crime is a transitory behavioral pattern which is unlikely to escalate to more serious or persistent behavior, particularly if the adolescent is subjected to rehabilitative intervention. They argue that adolescent offenders can benefit from the treatment services of the juvenile justice system without compromising public safety and avoiding the lasting stigmatization of criminal justice processing.

After a decade of legislative activism, states have used a variety of legislative measures to relocate serious crimes by adolescents from the juvenile to the criminal court. However, few studies have compared the certainty, severity, celerity and effectiveness of sanctions in juvenile versus criminal court for adolescent felony offenders. This research was a natural experiment to determine the comparative effectiveness of sanctions in the juvenile and criminal courts. The severity and effectiveness of juvenile and criminal court sanctions were compared for (N=1,200) adolescent felony offenders, ages 15-16, arrested for robbery and burglary during 1981-82 and 1986-87 in matched counties in adjacent states where their cases are resolved under different jurisprudential philosophies. In New Jersey, these cases were adjudicated and disposed in the juvenile courts. In New York, the Juvenile Offender Law and the low age threshold for criminal court located these cases in the adult (criminal) court. Counties and cases were matched on several variables to control for the effects of social context on sentencing and recidivism.

The results showed that little is gained by locating adolescent crimes in the criminal courts. Sanctions were more certain but no less severe in the juvenile court compared to the criminal court, with significant period effects reflecting exogenous factors that affected both courts. Recidivism rates were lower for adolescents sanctioned in the juvenile court. They were rearrested less often, at a lower rate, and after a longer crime-free interval. Adolescents sanctioned in the criminal court had higher crime rates, suggesting that the criminalization of delinquency may actually have iatrogenic effects with respect to recidivism.

There appears to be little support for policies that encourage criminal court adjudication for adolescent felony crimes. The diverse offender population in the criminal court makes adolescent offenders appear less serious and accordingly receive less serious dispositions. Moreover, the correctional context of the criminal justice system may have negative influence compared to the more proportionate sentences and therapeutic environment accorded in the juvenile court and corrections agencies. Waiver remains an option for adolescents whose offenses exceed the capacity of the juvenile courts for punishment, but stringent criteria should be developed to limit its use to specific offense/offender groups. Waiver criteria should be made more objective and standardized to avoid disparate waiver decisions. Future research should replicate these findings for new cohorts of offenders under similar stringent design parameters to control for contextual and exogenous factors that influence both sentencing and recidivism.

## TABLE OF CONTENTS

Acknowledgements .....	i
Abstract .....	ii
Contents .....	iv
I. Overview .....	1
II. The Evolution of the Modern Jurisdictional Boundaries .....	5
A. Historical Distinctions Juvenile and Criminal Sanctions ...	5
B. Restructuring the Juvenile Court .....	8
C. Comparisons of Juvenile and Criminal Court Sanctions .....	15
III. Hypotheses .....	18
IV. Methods .....	20
A. Study Design .....	20
B. Samples .....	20
C. Variables and Measures .....	32
D. Data Sources .....	36
V. Results .....	37
A. The Certainty and Severity of Sanctions .....	37
B. The Impact of Sanctions on Recidivism .....	45
VI. Conclusions .....	60
VII. References .....	71
Appendices	
A. Statutory Analyses	
B. Survival Tables by Disposition	
C. Offense Classification	

## I. OVERVIEW

In the past decade, there has been a vigorous debate on the appropriate forum for the adjudication and disposition of felony offenses committed by juveniles. Critics of the rehabilitative policies of the juvenile court suggest that juvenile court sanctions for violent crimes are both inappropriate and disproportionate for serious crimes, and ineffective in deterring subsequent crime (Wolfgang, 1982; Feld, 1983). They contend that the criminal court, with its punitive sanctions, is the most appropriate forum for adjudicating violent juvenile offenders. Their offense and behavior patterns mandate lengthy incarceration in secure facilities. Criminal court sanctions are viewed as according greater community protection, more effective deterrence of future crime, and more proportionate, retributive responses to violent behaviors. The seriousness of violent juvenile crimes suggests that these adolescents can be neither controlled nor rehabilitated in the juvenile justice system.

Supporters of the juvenile court argue that violent juvenile crime is a transitory behavioral pattern, and that adolescent crime is unlikely to escalate to more serious or persistent crime (Hamprarian et al., 1978; Shannon, 1985). They argue that adolescent offenders can benefit from the treatment services of the juvenile justice system with minimal threat to public safety and avoidance of the lasting stigmatization of criminal justice processing. Also, many proponents of juvenile justice processing of violent delinquents do not accept the criticisms of rehabilitative programs, arguing instead that weak evaluation research or poor program quality mask the natural strengths of juvenile corrections (Fagan et al., 1984).

Unfortunately, there has been no systematic research to examine the most appropriate age-crime relationship to determine which type of sanction is most effective in avoiding recidivism and safeguarding public safety. Little is known about the relative merits of transferring cases from juvenile to adult court with the expectation of more certain or severe sentencing policies (Farrington, Ohlin and Wilson, 1986). The young offender in the adult court may appear less

threatening to the criminal court than his or her older counterpart with a longer record and possible history of failures in less serious sanctions, inviting a more lenient response from the sentencing judge:

*"It is not at all certain that we gain increased deterrence, retribution, or incapacitation in this way. Youth committed by the adult court to adult prisons might become hardened and more, rather than less likely, to offend again upon release. What is needed is much more careful research following comparable samples of offenders through these different experiences to provide a better understanding and confident policies about the division of jurisdiction between the two courts, the relative effectiveness of the dispositional options they provide, and the efficacy of the criteria used to select offenders for differential processing and disposition"* (Farrington et al., 1986:125, emphasis added).

The literature on sentencing has generally not addressed the structural-contextual effects of court jurisdiction by comparing juvenile and criminal court sanctions. Moreover, the few studies which have compared juvenile offenders in criminal courts have relied on samples which were channeled from juvenile to adult jurisdictions, introducing selection biases into comparisons of the two types of proceedings. Such comparisons cannot be made via experimental designs comparing youth randomly assigned to criminal or juvenile court; they simply are not feasible. Instead, research to compare these alternative sanctioning systems must rely on quasi-experimental research designs to compare similar youth handled in different systems, controlling 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.

This paper examines these issues in a natural experiment to assess key issues in sanctioning policy for adolescent offenders. It compares the severity, certainty and celerity of sanctions for 15- and 16-year old adolescents charged with violent (felony) offenses in juvenile court in New Jersey with identical offenders in matched communities in New York state whose cases are adjudicated in criminal court, and determine the effectiveness of these sanctions in reducing recidivism and



reincarceration. A comparison of the severity and effectiveness of juvenile and criminal court sanctions directly bears on this debate in several ways. First, there is a vigorous policy debate on the appropriate judicial forum to adjudicate violent crimes by adolescents. Since 1978, over 40 states have passed laws to restrict the jurisdiction of the juvenile court (Feld, 1986). Some states have lowered the age of jurisdiction for criminal court, either for all offenders or for selected offense categories. Other states have expanded the basis for transfer of cases from juvenile to criminal jurisdictions, either by expanding the criteria for transfer or shifting the burden of proof from the state to the defendant. Still others have established concurrent jurisdiction for selected offenses or offenders, giving prosecutors broad discretion in electing a judicial forum for the adjudication and sanctioning of adolescent crimes. However, there has been little systematic research to determine if the sanctions in criminal court are in fact harsher and more consistent, and if punishment as an adult results in less recidivism. The resolution of these questions bears on policy and legislation on the age threshold and offense or offender eligibility criteria for criminal court, and continuing efforts to redefine the jurisdiction of the juvenile court.

Second, the comparison of sanctions in juvenile and adult courts provides empirical evidence regarding a "leniency gap" in criminal court for young offenders whose juvenile records are not disclosed in criminal court proceedings (Greenwood et al., 1984). Early research on juveniles prosecuted in criminal courts suggested that juveniles may appear less serious in the "stream of cases" (Emerson, 1969) in criminal court in contrast to older, more experienced offenders. The juvenile usually has had less time to accumulate a record in the criminal justice process (Roysner and Edelman, 1982), and accordingly the most restrictive sentences are reserved for the older, more "dangerous" defendants. Also, the adolescent defendant's age may lead judges to impose less severe sanctions, due in part to the potential dangers of incarceration of youth in prisons.

But the offense-based criminal court also may be inclined to view serious juvenile crime as a threat to public safety and deserving of the

most severe sanctions. Research with chronic violent adolescents adjudicated as adults suggests that they indeed are treated with equal severity and certainty to those who remain in juvenile court (Rudman et al., 1986). Though violent offenders in juvenile court are the most serious cases before the court, the traditional emphasis on rehabilitation, together with administrative and statutory limitations on sanction length or severity, suggests that they may be treated less harshly than similar youth in criminal court. Accordingly, this study will compare the certainty, celerity, and severity of sanctions for adolescents charged with violent crimes and adjudicated in juvenile or adult court.

Third, it examines a critical age-sanction threshold for violent crimes. Few empirical sentencing studies have focused on young offenders and optimal sanctioning patterns to reduce recidivism among this high-rate offender group. Thus, the considerable advances in sentencing research over the past decade may not be generalizable to a new, younger defendant class in criminal courts. Unlike older offenders, criminal court judges must make sentencing decisions without knowledge of critical factors such as prior criminal history, involvement with substances, or other salient social factors. They must rely exclusively on the severity and context of the offense, any mitigating circumstances, and information developed in presentence investigations of defendants' social ties. Moreover, to the extent that judges retain rehabilitative ideals in their sentencing practices, adolescent offenders may receive less severe sanctions so they may benefit from non-custodial interventions to enhance their education, work, and family ties while addressing other problems such as problematic substance use or mental health. Accordingly, this research can inform correctional policy through analyses of the relationship between sanction severity and recidivism and develop base expectancy rates for the new class of juveniles appearing before the criminal courts.

Fourth, comparison of juvenile and criminal court sanctions reflects on the organizational context of legal decision making.<sup>1</sup> In particular, holistic and working group theories (Emerson, 1983; Mather, 1979) of legal decision making suggest that the "going rate" for juvenile crime is not any higher in the criminal justice process than in the juvenile court, and in fact may be lower. But this is contrary to the demands and expectations of the many legislatures who have passed laws relocating adolescent felony offenders to the criminal court. Like many other legal reforms, criminalizing delinquency may have unintended consequences, reflecting the social organization of the courts and processual contexts, rather than legal statute. By analyzing the possible determinants of sentences for juveniles charged with felony offenses in the criminal and juvenile courts, public policy makers can plan more appropriately for legal reform. If bringing juveniles into the criminal court is a symbolic process for deterring crime, then it is important to determine whether these ends are better served in the less formal juvenile court where "they may provide the quickest relief to continuing harm" (Reiss, 1985:26).

## II. THE EVOLUTION OF THE MODERN JURISDICTIONAL BOUNDARIES

### A. Historical Distinctions between Juvenile and Criminal Sanctions

Juvenile offenders have been treated separately and differently since the beginning of English common law in the 12th century (Thomas and Bilchik, 1985). The earliest legal distinctions between juvenile and adult offenders were based on arguments that juveniles lacked the moral development and reasoning capabilities of adults. That is, juveniles were thought to have not reached the spiritual attainment of adults, and accordingly could not distinguish right from wrong.

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1. We regard the process of determining guilt or innocence for the juvenile as secondary to the determination of the appropriateness of punishment in the criminal justice system. This follows the observation of Mather (1979), Emerson (1969), and others who point out that official decisions are not simply made on the basis of guilt or innocence. Rather, they involve a process of negotiation whereby sanctions are set by expectations of what the offender deserves.

Traditional historical accounts reveal a juvenile court motivated by a progressive ideology that stressed "humanitarianism" and positivistic beliefs that behavior was amenable to rehabilitation (Rothman, 1980). In contrast, critical theorists view the creation of the first U.S. juvenile court in 1899 as part of an historical process of the search for new forms of legal and social control in response to increasing rates of crime and delinquency as unfortunate by-products of urbanization, industrialization, and increased immigration to fill the needs for industrial workers (1969).

The social reformers who advocated separate legal settings for juveniles at the turn of the century implicitly recognized the difficulty of convicting and punishing juveniles in the criminal justice process. Since the first juvenile court was established nearly a century ago, society has maintained fundamental distinctions in its legal response to crimes committed by juveniles and adults. The juvenile court "movement" removed juveniles, usually defined as below 18 years of age, from the adult criminal justice and corrections systems to provide them with individualized treatment in a separate system. Earlier in the 19th century, the opening of the House of Refuge in New York was borne not only from benevolent concern for juveniles, but also as a way to make legal controls more palatable to legal officials as well as the public (Pinckett, 1969).

The *parens patriae* philosophy emphasized treatment, supervision, and control, rather than the traditional punitive responses of the criminal law. In separating children from adult offenders, the juvenile court also rejected the jurisprudence and procedural rules of criminal prosecution. Emphasis on the extra-legal factors and mitigating circumstances which contributed to the crime, and discovery of its appropriate treatment, led to informality in both procedure and standards. The court's proceedings were designed to ferret out the underlying causes of youthful misbehavior and to mete out dispositions and treatment to correct them.

This positivist view went hand in hand with a jurisprudential philosophy which stressed informal proceedings, relaxed attention to due process, modified standards of evidence, and a unique socio-legal

context (and social organization) in the courtroom. The quasi-clinical proceedings were antithetical to formal, due process procedures and evidentiary standards. Thus, the nature of the decision criteria themselves gave rise to informal proceedings, since they would not be permissible in a formal legal context (Thomas and Bilchik, 1985). A separate bureaucracy, language, and jurisprudence was developed to concretize the boundaries between juvenile and criminal jurisdiction. The juvenile court eschewed the technical rules of evidence and procedure to ensure that all information about the *offender* was available (Feld, 1986), rather than narrowly focusing on the facts of the case. The hearings were closed and access to records was confidential.

Epistemological and philosophical concerns also guided the development of a separate juvenile justice system. The "Progressives" of the late 19th century thought that the causes of juvenile and adult crime differed. Adolescents were deemed not responsible for their behavior, since they were neither mature or fully developed socially (i.e., skill deficits), morally or intellectually. Others held that juvenile crime was the result of inadequate socialization within families, or other social influences. Such youth were merely in need of moral guidance or social reform in order to resume a normative developmental path. Later on, a "medical" model supplanted these views, where deviant children were deemed "sick" and in need of individual "treatment" (Lerman, 1984). Throughout its history, the juvenile court has maintained a goal of rehabilitation of the individual, and placed custody and punishment as secondary or ancillary goals in the pursuit of "remaking the child's character and lifestyle" (Rothman, 1980).

Thus, the development of a separate juvenile court reflected a fundamental distinction between sanctions based on characteristics of the offender and punishment based on the offense. Juvenile court dispositions were designed to determine why the child was in court, and what could be done to avoid future appearances (Feld, 1986). To further distance the juvenile court approach, juvenile proceedings were defined as civil rather than criminal, and therefore less stigmatizing in intent (Schlossman, 1983). A separate language developed which further

symbolized the separate, benign jurisdiction of the juvenile court. Juveniles were not arrested but were apprehended, adjudicated instead of convicted, found delinquent rather than convicted, and placed instead of sentenced. Moreover, despite the due process reforms of juvenile court procedures pursuant to *Gault*, the Supreme Court in *McKeiver* remained ideologically committed to the traditional "treatment" rationale of the juvenile court (*McKeiver*, 1971:547).

The central justification for the separation of juvenile and adult jurisdiction is the distinction between punishment and treatment. Whereas punishment involves the imposition of burdens (i.e., deprivation of liberty) on an individual, based on past offenses, for purposes of retribution or deterrence, treatment focuses on the present and future well being of the individual rather than the commission of prohibited acts. Disproportionate responses to comparable individuals were tolerated if underlying factors or mitigating circumstances were found. Concerns with punishment, retribution, just deserts, or deterrence were secondary concerns in the origins of the concept of "sanction" in the juvenile court. To prevent contamination of juvenile offenders by adult criminals, youth were detained and treated in separate facilities. The distinctions between juvenile and criminal sanctions thus were not limited to the nature of the proceedings, but to the very distinction between treatment and custody.

#### B. Restructuring the Juvenile Court

The traditional separation of juvenile and criminal jurisdiction established an age threshold at which the young offender was to be held liable for criminal actions. In most states, offenders up to 18 years of age were excluded from criminal liability and were not held responsible for their actions. In effect, this was the statutory definition of childhood for purposes of selecting a judicial forum to adjudicate illegal behaviors. However, from its inception, juvenile court judges could waive young offenders to the criminal courts. Thus, legislators never steadfastly held that all juveniles were not culpable, nor appropriate for the benign ministrations of the juvenile court. Rather, the earliest juvenile court legislation recognized that certain

offenders were not amenable to the rehabilitative dispositions of the juvenile court. However, the criteria or standards for determining the appropriate judicial forum for disposition of young offenders remains inconsistent across states (Hamparian et al., 1982; Rudman et al., 1986; Feld, 1986).

Recent years have brought challenges to the boundary between juvenile and criminal jurisdiction. Two sources of criticism have converged in calling for a restructuring of the juvenile court, with special emphasis on increasing its procedural formality while narrowing its jurisdiction. On one hand, the informality of juvenile court proceedings threatened the due process rights of juveniles. Critics viewed the procedural informality and offender-based decision process as leading to inconsistent and inequitable dispositions. Information and evidence that would be excluded from criminal proceedings under rules of evidence or procedure were admissible if not critical elements in dispositional decisions. On the other hand, proponents of deterrence and incapacitation policies criticized the juvenile court as ineffective at controlling juvenile crime, particularly violent behavior. A series of damaging studies on the apparent weakness of rehabilitation programs negated the rehabilitative purposes of the juvenile court. Moreover, the statutory limitations on punishment in juvenile court were assailed as inappropriate given the public danger from juvenile violence.

The selection of jurisdiction for adjudicating juvenile crime today is one of the most controversial debates in crime control policy, reflecting differences in assumptions about crime etiology, and jurisprudential as well as penal philosophy. For adolescent offenders, especially those whose behaviors may pose particular social danger, critics view the traditional goals of the juvenile court and the "best interests of the child" at odds with public concerns for retribution and incapacitation of criminals. The choice between jurisdictions is a choice between the nominally rehabilitative dispositions of the juvenile court and the explicitly punitive dispositions of the criminal courts (Whitebread and Batey, 1981: 502). It also reflects differences in sentencing policies which assign primary importance to the individual

and those which accord greater significance to the seriousness of the offense committed, and attempts to assign punishment proportionately.

### *1. Redefining the Threshold of Adolescence*

Historically, the boundary between juvenile and adult court presumes that criminal liability can be assigned at 18 years of age. Recent legislation suggests that the age boundary may be mediated by specific behaviors--the 15 year-old offender who commits a violent offense may be held criminally responsible, while his or her cohort remains a juvenile if law violations are confined to misdemeanors. Or, the chronic 15 year old misdemeanant may be remanded to the criminal court, distinguished from others solely on the basis of chronicity of offense. In still other instances, some standardless criterion (for example, "amenability to treatment") may determine criminal responsibility regardless of law-violating behaviors. Thus, recent legislation reducing the age threshold for criminal liability creates an age-behavior gradient for legal definitions of childhood (Conrad, 1981).

The juvenile court views offenders below the threshold age for "adulthood," or criminal liability, as "amenable to treatment," or changes either in the factors which precipitated their offenses, or in the offending behaviors themselves. They are not responsible for their acts, and instead, the state is responsible for ameliorating the antecedent conditions which gave rise to the criminal acts<sup>2</sup>. Juvenile justice "sanctions," accordingly, are designed to remedy the underlying causes of youthful misconduct while retaining the youth under state control (in loco parentis).

Sanctions in the criminal justice system make no such claims. There, depending on the state's legislation and correctional administrators, the intent of sanctions is to provide retribution, deter future crimes, or incapacitate offenders so they cannot commit further crimes. Criminal justice sanctions are not concerned with underlying influences or antecedent conditions. The intent is to inflict

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2. Interestingly, recent efforts to incorporate punishment with treatment are based on the notion that such "social learning" is part of the rehabilitative process. See: Jensen, 1978, for a discussion of the social meaning of sanctions.



punishment through deprivation of liberty in harsh but humane surroundings. And the type and severity of punishment ostensibly is primarily determined by the severity of the crime committed, mediated by the defendant's criminal history as well as mitigating circumstances and background. While there remains in most correctional systems minimal efforts to provide basic social skills to avoid further crime (e.g., education and job training), these are adjuncts to the sanction. In the juvenile system, such services provide much of the substance of the sanction.

## 2. The "Due Process" Revolution

In recent years, there has been rapid movement to both formalize juvenile court procedures and to strengthen the punitive element of juvenile court sanctions. The sources varied but converged to challenge the juvenile justice model which prevailed until the 1960's. First, Supreme Court decisions determined that the informality of the juvenile court threatened the due process guarantees for juveniles. Thus, in *re Gault*, 387 U.S. 1 (1967) asserted for juveniles the rights to receive notice of charges against them, have legal representation, confront and cross-examine witnesses, avoid self-incrimination, and appeal court decisions. The *Kent* decision (383 U.S. 541, 1966) presaged the *Gault* decision by extending to juveniles the principle of due process, while raising questions about the rehabilitative element of juvenile court dispositions. Later decisions, such as in *re Winship* (397 U.S. 358, 1970) and *McKeiver v. Pennsylvania* (408 U.S. 528, 1971), while reaffirming the basic distinction of offender-based dispositions in juvenile court, introduced procedural regularity into delinquency proceedings and elevated the concept of "proof beyond a reasonable doubt" to an equal status with the "best interests of the child." Moreover, these actions initiated questions about the "best interests" philosophy, and whether it in fact substantively benefited juvenile offenders or the public. The result was greater attention to procedural formality, and in turn, to offense-specific dispositions (Feld, 1986).

### 3. *Serious Juvenile Crime and the Failure of Rehabilitation*

The second challenge to the separate juvenile justice system was a consequence of rapid increases in juvenile crime rates in the 1970's, especially violent juvenile crime. Serious and violent juvenile crime rose steadily from 1974-79, and again in 1980-81 (Strasburg, 1984; Weiner and Wolfgang, 1985). Critics of the juvenile court linked these increases to the ineffectiveness of rehabilitative programs, conclusions fueled by key findings which had been consistently appearing since the 1960's (Bailey, 1966; Robison and Smith, 1971; Wright and Dixon, 1975; Lipton et al., 1975; Sechrest et al., 1979). Such findings directly attacked the positivistic foundations of the juvenile court that treatment interventions could curtail further youth offending.

This gave rise in the past 15 years to a different source of dissatisfaction with the justice system, based in part on the public's fear of crime. The increases in juvenile crime rates in the 1970's were noteworthy not only for the volume of offenses, but for their seriousness (Strasburg, 1984). Criticisms of the juvenile court which followed these trends centered on the conflicting goals of *parens patriae* with perceived threats to public safety from adolescents whose behaviors posed social dangers and gave rise to sentiments for retribution and punishment of juvenile offenders. The specific critiques of the juvenile court took three forms:

- o sanctions in juvenile court were less certain or severe (or inappropriately lenient, based on crime severity) than in criminal court, creating a "leniency" gap in punishment and retribution
- o rehabilitative dispositions in juvenile court are ineffective in curtailing further crime and violence
- o juvenile court sanctions posed risks to the public from (inappropriately) shorter terms of incarceration than the lengthy sentences meted out by the criminal courts

Because juvenile courts traditionally assign primary importance to individualized justice and rehabilitative considerations, its dispositions may seem disproportionate when the severity of the offense or harm to the victim is considered. The retributive dimension of justice demands that punishments fit the severity of crimes to provide a normative condemnation and the extraction of a social toll on behalf of

society. Other criticisms address the balance (or tradeoff) between interests of the individual and the community; the punishment options within juvenile court dispositions may provide inadequate social control to protect the community from "dangerous" offenders. Thus, the selection of an appropriate judicial forum to sentence juvenile offenders reflects a choice of the most effective sanctioning mechanism to deter future crimes.

Accordingly, serious and violent juvenile offenders have become the focus of contemporary debates on the efficacy of the juvenile court. Critics of the juvenile court regard its emphasis on rehabilitation and individualized dispositions as inappropriate for certain categories of offenses and offenders, particularly those which threaten the public safety. They point to unacceptably high rates of violent (felony) offenses by juveniles as evidence that juvenile court sanctions are ineffective deterrents to crime. Moreover, the behaviors of violent adolescents suggest that they have attained an age where they may no longer be amenable to the "rehabilitative" ministrations of the juvenile court. The reduction of the age of majority for certain classes of offenses and offenders suggests either that they have attained adulthood (as shown by some aspect of their behaviors), or the risks to the public are too great to not regard them as adults in adjudicating their crimes.

#### *4. Criminalizing Adolescent Violence: Reducing the Jurisdiction of the Juvenile Court*

The perceived weakness of rehabilitation has led to new policies to strengthen the severity and certainty of sanctions for adolescent offenders, especially for violent juvenile offenders. Within the juvenile justice system, proponents of retention of the juvenile justice system have taken steps to blend punishment and retribution with the traditional *parens patriae* philosophy of the juvenile court. Legislatures, juvenile corrections agencies and the courts have responded to concerns over the nature and effectiveness of sanctions by taking steps to strengthen the deterrent effects of dispositions. Several states have strengthened the certainty and severity of sanctions in the juvenile system. From determinate sentencing statutes for

juveniles to administrative guidelines mandating minimum terms of placement in secure care, state legislatures have increased the certainty and severity of sanctions in the juvenile system.

The state of Washington has enacted sweeping legislation mandating specific types and lengths of punishment for juvenile delinquents. Using an elaborate numerical formula, offense history and severity calculations determine the severity and length of placement. Mandatory confinement in secure institutions, often with minimum lengths of stay, has been legislatively enacted in New York, California, Colorado, and several other states. Such laws specify certain classes of offenses (usually violent crimes) or offenders (often persistent offenders) for placement in state corrections agencies for minimum terms. These actions in effect remove the disposition, placement and release authority from "traditional" juvenile justice authorities (i.e., judges, juvenile corrections agencies or parole boards) to a legislative forum. Juvenile corrections agencies have pre-empted legislative authority by developing "classification guidelines" to guide the placement and length of stay decisions. But the underlying intent of legislatures and correctional agencies are quite different. For legislatures, concerns for community protection plus the public's demand for retribution and punishment have spurred actions to increase the certainty and severity of juvenile sanctions. For correctional agencies, anticipating the actions of legislatures and prosecutors' efforts to exclude certain juvenile offender groups, guidelines improve the proportionality of correctional punishment and often increase its certainty and severity.

More common, however, are efforts to remove or exclude "dangerous" or violent offenders from juvenile court jurisdiction. This has occurred in two ways. First, several states have reduced the jurisdiction of the juvenile court, or eliminated juvenile jurisdiction for specific offense/offender categories. A few states have lowered the age of majority for all offenses from 18 to 16 years. More common are reductions in the age of majority specifically for serious, violent, or repeat felony offenders. Adolescent felony offenders have been removed from juvenile jurisdiction in many states (Feld, 1986). For example,

felony offenses for youth 14 or older<sup>3</sup> originate in criminal court under the Juvenile Offender Law in New York.

Second, many states have simplified the procedures and eased the criteria for transfer (waiver, remand) to criminal court jurisdiction. Since 1978, over 41 states have passed legislation to expand the use of transfer. The offense categories have been expanded, age eligibility reduced for some or all offense types, and other criteria (e.g., "heinousness of the offense," "dangerousness to the community," "amenability to treatment") have been simplified or added to facilitate the transfer of juveniles to criminal court for prosecution. New Jersey passed transfer legislation in 1983 explicitly shifting the burden of proof on "amenability" and "dangerous" from prosecutors to defense counsel. That is, defense counsel now must disprove prosecutorial allegations that an adolescent is ineligible for juvenile jurisdiction.

Third, other states have expanded the discretion of prosecutors to elect jurisdiction through the creation of concurrent jurisdiction. In Michigan, Florida, and Massachusetts, for example, prosecutors may elect the court of original jurisdiction for certain categories of adolescent offenses and offenders. Finally, in selected jurisdictions, the systematic application of prosecutorial discretion has relocated certain classes of offenses and offenders from juvenile to criminal court. In Phoenix and Miami, for example, prosecutors routinely file waiver (transfer) motions, most often granted, to transfer specific types of juvenile cases to criminal court. The intent is longer sentences in secure environments. Again, the actions of prosecutors reflects a lack of confidence in the sanctioning certainty (patterns) and conditions in juvenile jurisdiction.

#### C. Comparisons of Sanctions in Juvenile and Criminal Court: A Leniency Gap?

Few studies have compared sanctioning patterns in juvenile and criminal court. The assumptions underlying measures to increase the severity of sanctions for adolescent offenders have not been tested

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3. Also, homicide cases for youths age 13 originate in criminal court under the J.O. Law in New York.

systematically. Not only is the evidence uncertain on sanctioning patterns, but there is little evidence that reductions in the age of majority have had a general deterrent effect on aggregate adolescent crime rates (Singer and McDowall, 1988, for example). And there have been no valid tests of the comparative deterrent or incapacitative effects of juvenile and criminal court sanctions for adolescent felony offenders.

Whether the criminalization of violent juvenile crime has resulted in more certain or severe sanctions is not at all clear. Roysner and Edelman (1982) examined dispositions and placements under the New York Juvenile Offender Law<sup>4</sup>, which relocated original jurisdiction to the Criminal Court for juveniles charged with violent crimes. They found that sanctions were no more severe in criminal court, and in many cases were actually less harsh. But Greenwood et al. (1984) found no evidence of a "leniency gap" for young offenders adjudicated and sentenced in criminal courts. Rudman et al. (1986) found that sanctions in juvenile and criminal court for juveniles charged with violent crimes were equally certain, but juveniles waived to criminal court received harsher sanctions since there was no age limitation on sentence length for adult offenders. Bortner (1986), examining a broader offense range, found that juveniles do not receive longer sentences from the criminal court than they would in juvenile court. She found that the waiver (remand) process was viewed by juvenile court officials as a legal mechanism for staving off criticisms of the entire juvenile justice system (1986:68).

Thomas and Bilchik (1985) argue that juveniles sentenced in criminal court are treated more severely than in the juvenile court. Not only do they find that sanctions are harsher, but case attrition for juveniles in criminal court is actually lower than for adults. However, like other studies, their sample of juveniles in criminal court is selective and skewed toward more serious offenses based on prosecutorial screening (for concurrent jurisdiction cases) and judicial waivers. These processes occur in British courts as well (Home Office, 1983).

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4. 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. See Singer & McDowall (1988), Sobie (1981), and Singer & Ewing (1986).

There, Crown Court judges were reluctant to impose more severe sanctions in remanded cases involving youth ages 15-21 convicted of "indictable" (i.e., felony) offenses.

Also, there has been little research on the factors which influence differences in sanction patterns in juvenile and criminal court. There are theoretical arguments which suggest that in fact sanctions in the criminal court may not be less certain or severe than in the juvenile court for adolescent felony offenders. The "stream of cases" argument suggests that adolescents in criminal court appear "less severe" than older offenders, whereas in juvenile court adolescent felony offenders are the most severe. In sorting cases for prosecution (Mather, 1979), criminal justice officials may adjust the going rate specific to juvenile crime in anticipation of the reaction of judges and possibly juries. The stream of cases should also influence the reactions of officials in the working group environment. The criminal court may produce less stability in processing juveniles because bringing juveniles into criminal court entails a change in standard operating procedures. Jacob (1983) suggests that criminal court participants, particularly prosecutors who possess more information than other courtroom personnel and who have a disproportionate influence over the disposition of cases, will behave inconsistently when faced with a new class of (younger) offenders. Thus, we can expect to see less cohesiveness among the working group members of the criminal court, whose social organization is geared to case attributes of older defendants and less oriented to the special circumstances of adolescent offenders.

In sum, no studies have compared the deterrent effects of sanctions in juvenile and criminal courts for specific, strategic offense and offender groups of adolescent felony offenders. The contribution of juvenile versus criminal court jurisdiction to the deterrent effects of sanctions has yet to be examined. Previous research on waiver has examined sanctioning patterns, but has been limited by sampling bias inherent in the transfer decision. Yet policy decisions and laws governing the age of jurisdiction have been made in the absence of valid empirical evidence that recidivism is better

reduced by punishment in the criminal system. That gap is addressed in this research.

### III. HYPOTHESES

The fundamental jurisprudential distinctions between juvenile and criminal court dispositions, coupled with the statutory limitations on sentence length and placement options in juvenile court, suggest that juveniles will be treated more lightly in juvenile court than criminal court. Specifically, the unique jurisprudential and organizational attributes of the juvenile court suggest hypotheses that there will be significant differences in the sanctioning patterns for adolescent offenders in juvenile and criminal court. On first glance, it is likely that juvenile court defendants will risk lower rates of incarceration, spend shorter terms of confinement in less secure settings, and spend less time in court.

However, other theoretical arguments suggest contrary hypotheses. The structural context of legal decision making, specifically the "stream of cases" and "working group" theories, influence legal decisions in several respects. Emerson (1983) refers to the stream of cases facing officials as the relative attributes and severity of a case, based on the total population of cases. Juveniles in criminal court may appear less serious than older offenders, though their charges are comparable, simply based on the limited opportunities to accumulate a prior record. Second, the relative severity of a case is peculiar to particular stages in the legal process and to specific officials. Thus, a violent juvenile offense may appear more serious to the arresting officer than to a prosecutor who is prioritizing a long list of violent offenses for invoking "last resort" sanctions. In juvenile court, the adolescent charged with a robbery appears more serious at each stage, since juvenile court officials see a wide range of offenses that are substantively less serious than the first degree robbery. Also, the physical stature of the older adolescent appears more imposing next to



his younger cohorts in juvenile court than the older crowd in criminal court.

The working group in criminal court may be disorganized by the emergence of a new class of offenders whose attributes do not coincide with the established "going rates" based on the prevailing offender profiles. The juvenile court is socially organized around a wide range of sanctions, from diversion to incarceration, and decisions weigh a wide range of legal and extra-legal factors in an unpredictable formula which likely varies by jurisdiction (Hassenfeld and Cheung, 1982). In juvenile court, there generally is consensus among officials as to the appropriateness of last resort sanctions (Emerson, 1983). But in the criminal court, where sentences are largely determined by a more limited calculus of offense-offender characteristics, and where case volume plays a role in the calculations, adolescent defendants challenge the actuarial decision schemes. There may not exist such consensus among legal officials concerning the going rate. In other words, the juvenile in criminal court not only appears less serious, but also falls short of the threshold for invoking "last resort" sanctions. This opens the group to the opportunity for consideration of a broader, usually less serious, range of sanctions.

Thus, despite formalization and due process changes in juvenile court proceedings, which on the surface bring it closer in substance and process to the criminal court, the symbolic labelling of juveniles as criminal offenders does not appear to offer meaningful changes in the relative severity of sanctions for adolescent remanded to its custody. Accordingly, the hypotheses specifically suggest that adolescents offenders in criminal court, compared to their counterparts in juvenile court, will:

- o less often be adjudicated guilty of the original charge
- o risk less severe sanctions
- o risk lower rates of incarceration
- o receive shorter sentences in the criminal court, and
- o spend more time in the criminal court process between arrest and sentencing.

#### IV. METHODS

##### A. Study Design

The research design compared sanction severity and recidivism rates for adolescents (ages 15-16) charged in juvenile court with felony robbery and burglary in two northern New Jersey counties, with identical youth in matched counties in southeastern New York state, whose cases originate in the criminal court. These counties are part of a large metropolitan SMSA which shares demographic, economic, social, and cultural commonalities spread across micro-social units in each area. Moreover, as will be shown below, the crime problems among juveniles and young adults are comparable.

The retrospective longitudinal design compared sanctions with court jurisdiction as the independent variable, for both within- and cross-state comparisons. Sanction severity and court jurisdiction then serve as independent variables in a prospective study of the 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 central question of whether legal change bringing juveniles into the criminal court is symbolic or whether it substantively effects change in the risk of "last resort" incarceration sentences, must be addressed with comparative data that controls for the problem of biases either in sample selection or "natural" biases introduced by the legal criteria demarking juvenile and criminal jurisdictions. Prior research comparing sanctions in juvenile and criminal court has been limited by sample selection biases, relying samples which were purposively channeled from juvenile to criminal courts within one or more court jurisdictions. The biases took different forms in different studies. Bortner (1986) and Rudman et al. (1986) both compare youths waived to criminal court with those remaining in juvenile court. But the waiver process itself introduces biases which have proven difficult to understand or interpret in terms of policy or existing legislation

(Eigen, 1981; Fagan et al., 1987; Feld, 1987). The concepts of "amenability to treatment" and "dangerousness" which inform transfer statutes invite disparate interpretation across cases and contexts.

Offender cohorts from comparable if not identical offense/offender profiles are necessary to avoid the selection biases inherent in previous research. The process of assignment to juvenile or criminal court should be independent of any consideration other than legislated jurisdiction. These comparisons cannot be made by experimental designs, since social experiments are simply inconsistent with the mandates of the legal agencies which would be required to implement them. Comparisons of offenders of consecutive ages, where age alone determines jurisdiction, invite distortion on the age threshold issue which is precisely the rationale for demarking the two jurisdictions.

On the other hand, comparing age-offender groups across jurisdictions, where legal statute determines judicial forum, risks differences in contextual influences from political influences on legal decision makers to normative regional attitudes on crime and punishment. Hagan and Bumiller (1983) explain the importance of controlling for such contextual or aggregative influences, including not only political influences on crime control policies but socio-economic influences on rates of crime commission. One approach is to conduct research on comparative sanctions in a social milieu where a natural division occurs in court jurisdiction, but within a socially and economically homogeneous area. This would control for such factors as economic opportunity, availability of weapons and other criminogenic influences (e.g., drug use, gang influences, physical environment). This study is a natural experiment where identical cases from a homogeneous social area are adjudicated in courts where the jurisprudential forum, and therefore sanctioning system, are the independent variables.

### *1. Selecting States*

The unique legal changes in New York state in the past decade and its location contiguous (and within the same SMSA) to the more "traditional" jurisprudential setting for juveniles in highly urbanized northern New Jersey presents an opportunity to systematically control

for the persistent sample selection biases which have limited previous research. Adolescents ages 15-16 charged with first and second degree robbery and first degree burglary in New York were compared with similar juveniles in New Jersey.<sup>5</sup> 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.

The age of criminal jurisdiction for all offenders in New York is 16, and 14 for selected felony offenders under the Juvenile Offender Law. Thus, cases for 15 year old defendants charged with felonies originate in criminal court and are subject to Juvenile Offender Law provisions for disposition. In New Jersey, the age of jurisdiction remains 18 years of age, though transfer to criminal court is permitted at age 13. In New York, cases alleging felony robbery (first and second degree) and burglary (first degree) charges originate in Criminal Court, while in New Jersey they originate in juvenile court. Appendix A shows the relevant criminal statutes which describe these offenses at the time the cases were sampled in 1981. They share definitions and codified behavioral descriptions regarding injury or loss. Moreover, the statutes in each state permit transfer of jurisdiction, providing opportunities for further comparisons of intra-state disparities. To certify the congruence of statutes, we constructed a template based on the factors which differentiate degrees of charges, such as weapon use and injury components.

## *2. Selecting Counties*

The study counties were matched and selected from ten candidate counties in each state, based on census data on each county. Matching criteria will be developed for socio-economic context and criminal justice system attributes. The region provides a relatively homogeneous socio-economic area in which to compare the court responses. The counties of the region are interrelated economically, in transportation,

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5. Appendix A discusses each state's statutes describing robbery and burglary, and the grading procedures. We assigned priority to armed robberies and more serious grades of burglary, and include robbery 2<sup>o</sup> offenses only where the statutory language invites valid matches for objective factors as weapon use or injury.

media and culture, and in major social institutions such as educational institutions and medical centers.

The crime problems were similar (per capita rates are comparable for major population centers) at the time when cases were sampled, and both states then and now have experienced overcrowding in their adult correctional facilities. Moreover, each county has a local incarceration facility for adults (New York city counties share the Rikers Island facility), and juvenile and adult detention facilities (New York City boroughs share 250 beds in the city's detention system). Each county has a well-developed indigent defender system for juveniles and adults.

Accordingly, we matched individual counties to control for the many micro-social areas in the region, and compare their court responses to adolescent crimes. The matching criteria included demographic, socio-economic, labor force, and housing characteristics. Criminal justice indicators for county matching included each county's percent contributions to state prison commitments (for adults) and juvenile corrections commitments, as well as its base rates for felony arrests (under 18 years of age) per 1000 population. Other indicators for matching counties will include per capita law enforcement expenditures.

Two counties in each state were selected: Essex and Passaic Counties in New Jersey, and Kings (Brooklyn) and Queens Counties in New York. Tables 1-3 illustrates the socio-economic characteristics and crime data for 10 counties per state which were candidates for inclusion in the study sample. Each county represents either an urban or large suburban SMSA. Ideally, selection was planned for the counties within the New York City metropolitan area, to minimize differences in social context as well as data collection logistics. The matching procedure identified counties that differed by no more than 10% on key crime or socio-economic indicators. Selection criteria focused on rates, rather than absolute data, for obvious reasons. The tables show the availability of comparable counties for selection into the sample in terms of contextual characteristics and the magnitude and severity of

TABLE 1

DEMOGRAPHIC & SOCIOECONOMIC CHARACTERISTICS  
OF URBAN AND SUBURBAN COUNTIES (1980)

<u>New York</u>	<u>Total Population</u>	<u>% Black</u>	<u>% Spanish</u>	<u>% Youth</u>	<u>% Female Headed Households</u>	<u>% Below Poverty</u>	<u>Median Income</u>	<u>% Unemployed</u>
Bronx	1,168,972	31.9	33.8	29.2	8.9	24.8	\$10,947	9.1
Brooklyn	2,230,936	32.4	17.6	28.3	7.4	21.0	11,919	10.3
Queens	1,891,325	18.8	13.9	23.1	4.9	9.1	17,028	8.8
Erie	1,015,472	10.2	1.4	26.6	4.3	8.3	17,119	12.3
Monroe	702,238	10.2	2.4	27.3	3.9	6.5	20,194	6.4
Orandaga	463,920	1.5	1.1	27.6	3.9	5.7	17,574	7.6
Orange	259,603	5.0	4.3	30.5	0.4	7.6	18,012	10.7
Nassau	1,321,582	6.8	3.3	25.7	3.0	3.6	26,090	6.0
Suffolk	1,284,231	6.7	4.6	31.6	2.9	5.3	22,359	6.7
Westchester	866,599	12.0	5.3	25.1	4.0	5.6	22,725	5.4
Albany	285,909	6.6	1.0	24.2	4.0	6.4	17,006	6.3
<u>New Jersey</u>								
Essex	851,116	37.2	9.1	28.3	6.7	15.2	\$16,186	9.8
Passaic	447,585	13.2	13.8	27.5	4.9	10.5	17,907	11.0
Mercer	307,863	18.0	3.5	25.5	4.6	7.4	19,659	8.2
Salem	64,676	14.9	1.7	29.6	3.9	9.2	18,017	9.1
Cumberland	132,866	14.9	9.4	30.4	4.7	12.0	15,378	16.4
Camden	471,650	14.3	4.5	29.1	4.7	9.6	18,056	9.0
Middlesex	595,893	6.0	5.7	25.9	3.2	4.7	22,826	8.0
Monmouth	503,173	8.5	2.6	28.6	3.4	6.0	21,061	8.3
Hudson	556,173	12.5	1.0	26.0	6.1	14.7	14,384	13.8
Atlantic	194,119	17.6	3.9	26.3	5.1	9.0	15,752	10.0

REPORTED CRIMES FOR SELECTED FELONIES  
IN NEW YORK AND NEW JERSEY COUNTIES (1980)

<u>New York</u>	<u>Robbery</u>	<u>Assault</u>	<u>Burglary</u>	<u>Rape/Sodomy</u>	<u>Murder</u>
Bronx	16,182	8,262	32,019	677	373
Brooklyn (Kings)	32,452	15,139	70,835	1,223	603
Queens	17,646	7,354	47,919	666	254
Erie	2,220	2,918	14,840	364	81
Monroe	1,343	1,758	13,352	179	40
Orandaga	838	510	8,404	124	18
Orange	309	675	3,400	44	11
Nassau	1,549	1,014	15,687	74	32
Suffolk	1,476	1,819	25,174	203	49
Westchester	1,777	1,084	12,782	127	57
Albany	308	582	3,656	47	6
<u>New Jersey</u>					
Essex	7,720	4,055	19,742	575	163
Passaic	1,589	1,597	9,659	71	42
Mercer	1,171	672	6,695	114	22
Salem	53	77	906	15	2
Cumberland	157	411	3,115	58	13
Camden	2,262	1,732	10,795	198	37
Middlesex	735	1,219	8,153	80	15
Monmouth	625	1,194	7,559	122	13
Hudson	2,314	1,605	13,607	142	65
Atlantic	803	692	4,825	112	108

TABLE 3

## JUVENILE ARRESTS BY COUNTY (1980)

<u>New York</u>	<u>Total Youth Population</u>	<u>Juvenile Arrests ( &lt; 18 years)</u>	<u>Arrests Per 100 Youth</u>
Bronx	341,710	20,407	6.0
Brooklyn	631,515	44,168	7.0
Queens	436,474	18,558	4.3
Erie	270,138	4,262	1.6
Monroe	191,828	9,883	5.2
Orandaga	128,109	5,486	4.3
Orange	79,238	3,981	5.0
Nassau	339,028	6,730	2.0
Suffolk	405,724	12,019	3.0
Westchester	217,456	7,782	3.6
Albany	69,165	3,733	5.4
<u>New Jersey</u>			
Essex	240,42	13,788	5.7
Passaic	122,996	9,131	7.4
Mercer	78,416	5,640	7.2
Salem	19,151	1,016	5.3
Cumberland	40,431	3,018	7.5
Camden	137,437	7,046	5.1
Middlesex	154,336	9,571	6.2
Monmouth	143,921	9,186	6.4
Hudson	144,823	6,803	4.7
Atlantic	51,062	3,722	7.3



adolescent (below 18 years of age) crime incidence. Tables 2-3 also informed county selection decisions based on case sampling volume.

### *3. Selecting Charge Categories*

The offense categories selected were robbery and burglary. These categories reflect the specific offense types which were instrumental in the passage of the New York Juvenile Offender Law (Sobie, 1981; McGarrell, 1985), and represented a majority of the Juvenile Offender arrests in New York state in 1980-82 (DCJS, 1982). They were recurrent criminological events which are paradigm cases representing two faces of the debate in defining juvenile jurisdiction. Robbery events comprise the prototypical violent juvenile crime which has evoked fear of crime as well as legislative action in the past decade.

Burglary, particularly repetitive residential burglary, presents unique problems in sanctioning in the juvenile courts. Since it poses less threat to public safety than other violent crimes, burglary events evoke a lighter sanction, only until several court appearances for burglary have been logged. Then, last resort options, including both waiver to criminal court and incarceration in state (juvenile) training schools, are invoked when prior interventions or sanctions appear ineffective (Hamparian et al., 1982). Thus, while the statutes and policy specifically acknowledge the seriousness of burglary, they tend to be treated quite differently by the courts until the threshold for incarceration is reached.

The selection of robbery, a violent offense, reflected the importance of violence to the debate on juvenile court jurisdiction (Feld, 1987, 1988). Violent juvenile crime has been a focal point of controversies on the future of the juvenile court (Miller and Ohlin, 1984). Juvenile violence was the driving force behind "get tough" legislation in New York in 1976 and again in 1978 (McGarrell, 1985). Critical arguments to restrict the juvenile court have cited persistently high rates juvenile violence as evidence of the failure of rehabilitation (Feld, 1983). The inclusion of burglary addresses the broader and more complex pattern of judicial responses to property crime observed in prior research on juvenile sanctions. Property offenders

comprise a significant proportion of incarcerated juveniles in each state and also those waived to criminal court (Hamparian et al., 1982).

#### *4. Selecting Cases*

Samples were constructed in each county (n=200 per county) for comparison of juvenile and criminal court sanctions and recidivism (1981-1982). Supplementary samples (n=100 per county) were selected from 1986 cases to assess period effects that may have occurred since the earlier sampling period. Cases were selected after charges are filed in the court: at criminal court arraignment in New York, and upon filing of juvenile court petitions in New Jersey. This procedure will avoid sample attrition at the outset from prosecutorial screening or dismissals prior to arraignment. Tables 4a and 4b show the petition rate in New Jersey counties for 1977-85, further illustrating the total case volume for the candidate counties. Previous analyses (Rudman et al., 1986) show that for felony violence offenses, adjudication (conviction) rates in each court exceed 75 percent. In New York City, 79 percent of the 1981 juvenile offender cases resulted in conviction by trial or guilty plea (DCJS, 1982).

The two year periods for the 1981-82 and 1986 also provided sufficient time for a significant proportion of the earlier cohorts to have completed their sentences and accumulate sufficient time at risk to meaningfully analyze the effects of sanctions on recidivism. In New York, over 70 percent of the juvenile offenders convicted and sentenced received probation sentences or prison terms of three years or less, and 75 percent were sentenced to less than four years.<sup>6</sup> Samples constructed

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6. Under the Juvenile Offender Law in New York, Robbery 1<sup>0</sup> and Burglary 1<sup>0</sup> are Class B felonies which carry a maximum prison term of 3-10 years, and a minimum of one-third of the maximum time sentenced. Base sentence rates for juvenile offenders as well as for 16 year old defendants, are 3-7 year sentences. Thus, defendants sentenced to state prison will likely have "real time" served of less than three years. For New Jersey youths committed to the state corrections agency and placed in secure care, juvenile jurisdiction ends at age 19 with parole eligibility after one year. Thus, defendants in New Jersey receiving the maximum punishment in juvenile court will receive no more than three years.

**TABLE 4A**  
**LEAD OFFENSE TYPE FOR ADJUDICATIONS OF DELINQUENCY**  
**WHICH WERE SENTENCED BY COUNTY**  
**JANUARY 1985-JUNE 1985**

County	LEAD OFFENSE TYPE					Total
	Violent Index Offense	Serious Property Index Offense	Other Person Offense	Other Property Offense	Other	
Atlantic	80(22)	113(31)	43(12)	28( 8)	95(27)	359
Bergen	64( 9)	190(28)	68(10)	137(20)	230(33)	689
Burlington	52(15)	149(44)	29( 9)	45(13)	62(18)	337
Camden	130(21)	251(40)	59( 9)	68(11)	124(20)	632
Cape May	6(15)	18(44)	4(10)	6(15)	7(17)	41
Cumberland	39(15)	116(44)	29(11)	33(13)	46(17)	263
Essex	318(28)	276(24)	126(11)	176(16)	236(21)	1,132
Gloucester	10( 6)	77(46)	20(12)	31(19)	28(17)	166
Hudson	83(16)	140(27)	36( 7)	84(16)	175(34)	518
Hunterdon	6(11)	20(36)	7(13)	10(18)	13(23)	56
Mercer	58(11)	199(38)	30( 6)	65(12)	172(33)	524
Middlesex	18( 5)	109(31)	45(13)	65(19)	115(33)	352
Monmouth	89(15)	232(40)	63(11)	76(13)	115(20)	575
Morris	24(15)	61(38)	13( 8)	23(14)	41(25)	162
Ocean	28( 5)	229(48)	57(12)	72(15)	94(20)	480
Passaic	90(18)	137(27)	45( 9)	85(17)	143(29)	500
Salem	4( 8)	18(36)	8(16)	3( 6)	17(34)	50
Somerset	16( 8)	71(35)	19( 9)	38(19)	59(29)	203
Sussex	9( 7)	50(36)	11( 8)	30(21)	40(29)	140
Union	101(15)	212(30)	73(11)	103(15)	206(30)	695
Warren	9( 9)	29(30)	20(20)	7( 7)	33(34)	98
<b>TOTAL</b>	<b>1,234(15)</b>	<b>2,697(34)</b>	<b>805(10)</b>	<b>1,185(15)</b>	<b>2,051(26)</b>	<b>7,972</b>

Source: Stout, 1987--The Impact of the New Jersey Code of Juvenile Justice

**TABLE 4B**  
**JUVENILE ARRESTS FOR INDEX CRIMES IN NEW JERSEY AND**  
**PERCENT CHANGE FROM PREVIOUS YEAR**  
**1977-1984\***

Offense	YEAR							
	1977	1978	1979	1980	1981	1982	1983	1984
Murder	27 -46%	39 +44%	40 +3%	58 +45%	59 +2%	53 -10%	41 -23%	28 -32%
Rape	164 -1%	152 -7%	176 +16%	208 +18%	264 +27%	239 -9%	293 +23%	304 +4%
Robbery	1,416 -15%	1,609 +14%	1,773 +10%	1,971 +11%	2,272 +15%	2,558 +13%	2,996 +17%	2,733 -9%
Aggravated Assault	1,597 +5%	1,715 +7%	1,891 +10%	2,118 +12%	2,242 +6%	2,415 +8%	2,199 -9%	2,416 +9%
Burglary	11,037 +2%	10,477 -5%	9,753 -7%	9,153 -6%	9,138 0%	7,897 -14%	6,801 -14%	6,096 -10%
Larceny/Theft	18,338 +2%	19,342 +5%	19,989 +3%	20,328 +2%	19,257 -5%	17,210 -11%	16,183 -6%	15,533 -4%
Motor Vehicle Theft	1,696 -13%	1,804 +6%	2,250 +25%	1,597 -29%	1,547 -3%	1,363 -12%	1,212 -11%	1,138 -6%

\*Crime In New Jersey, Uniform Crime Reports, 1977-1984.

from 1981-82 cases of 15- and 16-year old offenders reached ages 18-19 within three years, the median sentence length, by 1984-85. In New Jersey, juveniles are released from secure facilities (training schools) at age 19 by statute. During their "street time," the cohorts were 19-21 years of age, providing data during years when either desistance or transitions from juvenile to adult crime are likely to occur (Wolfgang et al., 1972; Hamparian et al., 1985; Shannon, 1985).

Samples in each county were selected based on proportionate samples of offenders within each age/offense group. Sampling parameters, or population estimates, were determined by the total pool for each sample period. Samples were random within counties since counties were matched across states.

#### *5. Temporal Considerations*

Hagan and Bumiller (1983) cited time as well as location as contextual variables. Indeed, New York has had rapid swings in public sentiment regarding control of juvenile crime over the decade from 1975-85 (McGarrell, 1988; Singer and Ewing, 1986), with expected effects on the rates at which sanctions are imposed. New Jersey passed new legislation regarding transfer in 1983 which attempted to increase the rate of remand of adolescents to criminal court [the early results suggest that the effects have been minimal, according to Fisher (1985)].

The inclusion of a second sampling window for 1986 cases permitted analyses of changes over time in the sentencing and punishment of adolescent robbery and burglary offenders in the juvenile and criminal courts. Such changes are likely. For example, the sudden emergence of "crack" cocaine has crowded court dockets and changed the calculus of punishment in the New York City Criminal Courts (Belenko, Fagan & Chin, 1991). At the same time, prison overcrowding in both states has worsened in this period, possibly altering the threshold for invoking "last resort" punishments. Generalized concern over youth substance use elsewhere has elevated its importance in dispositional decision making. Thus, period effects due to such influences can be estimated.

Accordingly, case records were sampled in a second time period in each of the six counties: first degree robbery and burglary cases during

1986. For the two samples, case characteristics and outcomes (sanctions) and recidivism were analyzed to determine the comparative effects of juvenile and criminal court sanctions in deterring future crimes --

### C. Variables and Measures

#### 1. Data Elements

Data elements for each case included:

- o juvenile court history (New Jersey cases only): age at first offense and subsequent offenses, dates and sources of complaints, petitions, charges, adjudications, and prior sanctions
- o social and demographic characteristics: race, gender
- o committing offense information: weapon use, drug or alcohol use involved in offense, "enhancements" (excessive violence)
- o case processing: detention status, case processing time, adjudication by plea or trial, adjudicated charge(s) (if sustained)
- o disposition and sanctions (if petition or complaint is sustained): fine or restitution, supervision, out-of-home placement, DOC commitment (length--minimum/maximum, placement conditions), other sanctions
- o subsequent juvenile and criminal history: arrests, charges, convictions, supervision or other non-incarcerative sanction, incarceration (training school, jail or prison), drug or weapon involvement in subsequent offenses

#### 2. Specific Measurement Issues

In order to model the process of recidivism and its relation to sanctions, independent variables beyond the sentence become relevant. Thus, case and offender background measures become important in explaining differences in recidivism as functions of either sanction severity or some other factor which may influence recidivism. For example, age differences may contribute to recidivism, if time at risk is unevenly distributed across otherwise similar groups. Or, case processing variables may influence recidivism, independent of sanctions. Coates et al. (1978), for example, found that the length of pretrial

detention influenced recidivism of Massachusetts juvenile offenders, regardless of case outcomes and offender background. Similar factors may include the period when offenders were released and differential enforcement patterns prevailing at the time. These factors may also help sort out those factors which influence judges from those which influence recidivism.

**Sanction Severity.** Sentencing research has operationalized sanction severity in a variety of ways, from simple binary divisions of incarceration-no incarceration through complex scalar representations of different forms of deprivation of liberty. Though most researchers agree that sentences can be ordered in terms of severity, strategies to locate sanctions on a continuum (or scale) of severity have varied extensively. A major problem in sanction measurement, in both juvenile and criminal courts, is establishing the exchange rates for the equivalence of different forms of punishment--e.g., how many weeks of residential treatment are accurately compared to some months of intensive supervision or some term of incarceration? And when the conditions of imprisonment are considered (security level), further complications arise.

To measure sanction severity in a manner which can be reconciled across court jurisdictions, an approximation of a continuous variable for sanction severity was used. Relating non-custodial sentences to length of incarceration is addressed by the NAS sentencing panel (Blumstein et al., 1983) as well as Hagan and Bumiller (1983). They suggest a two-stage process, with type of sentence first, and then length of sentence within equivalent groups (e.g., probation, jail, prison) as a second stage.

Table 5 illustrates the juvenile court dispositions and sanctions, ranked by severity order, which are used in the New Jersey data base for juvenile offenses. Short-term (45 day) commitments to a county detention facility are a new dispositional category created in the 1983 Juvenile Code revision, and are not evident in the 1981-82 cohorts. This scheme was used for ordering sanction severity in the courts, and to establish an "exchange rate" for sanction severity in the two states.

**TABLE 5**  
**LEAD DISPOSITION CATEGORIES IN RANK**  
**ORDER OF SEVERITY**

Incarceration/Department of Corrections

Short-Term/Detention Facility

Residential Program/Department of Corrections

DYFS Residential

Department of Mental Health/Commitment

Other Residential:

work program; outdoor program; drug/alcohol program; vocational program;  
 academic program; counseling program; other/custodial.

Non-Residential Program/Department of Corrections

DYFS Non-Residential

Division of Mental Retardation

Other Remedial/Non-Residential:

non-residential program with intensive services; work program; outdoor program;  
 drug/alcohol program; vocational program; academic program; counseling program;  
 other/custodial.

DYFS Unspecified

Suspended Sentence—Department of Corrections

Probation:

probation; probation with restitution; probation with community service.

Restitution

Community Service

Fine

Formal Continuance

Other/Conditional:

driving privilege; transfer custody; supervision of parents; other/nominal.

Continue Prior Disposition (with or without changes)

Other



We examined time served as a percentage of the maximum term, to further determine differences between states relative to state base rates. In New Jersey, commitments to juvenile corrections facilities generally are indeterminate to a maximum of 36 months. For this research, we estimated time served as one third of the commitment. This estimate was based on aggregate data on length of stay to Department of Corrections juvenile facilities for 1981-83. In New York, sentences to either Department of Corrections facilities or commitments to Division for Youth facilities (as Youthful Offenders) were stated with minimum and maximum terms. To calculate sentence length, we used the minimum sentence. This again was based on length of stay information provided by the New York State Department of Corrections for inmates received in 1981-83 who were less than 19 years of age. Additionally, sentences were standardized within the sample for both maximum time and time served, providing a correction for inter-state differences in paroling and early release practices.

Recidivism. Controversies in measuring recidivism include both data sources (evidence of recidivism) and analytic strategies to maximize its validity. Official records, particularly juvenile records, suffer from various sources of inaccuracy or poor validity (Sherman and Glick, 1984). Also, should arrests, convictions, or reincarcerations be used from official records? And, for purposes of assessing the deterrent effects of sanctions, which measures of recidivism retain sufficient sensitivity to determine incremental changes (e.g., changes in crime severity or rate)?

Criticisms of official records suggest that they underreport crime. While undetected crimes may skew predictive models of criminal behavior, official records are guilty more often of false negatives (Type II errors) than false positives. Also, the importance of temporal information on the occurrence of crime is a behavioral measure difficult to obtain accurately with self-reports.

The measurement of recidivism included multiple measures of officially recorded contacts with the law: decay rate, frequency of arrest and conviction, severity of arrest charge, and justice system penetration. This strategy reduces potential error within official

records from gross recidivism measures was reduced. The failure rates as a function of release status (e.g., failure from parole, failure from probation) formed release-recidivism pairs for comparison of juvenile and criminal court sanctions (see, Maltz, 1984, for a further discussion of release-recidivism "splits").

The measurement of recidivism also separately compared proportionate hazard rates for rearrests, and models for different forms of failure: time to first rearrest, time to first violent offense, time to reincarceration. The calculation of hazard (at risk) time was a central element in the analyses and data reduction activities. Those receiving more severe sanctions will have less time at risk.

#### D. Data Sources

For each subject, sample case data were collected from juvenile or criminal court records, and state records supplied adult criminal histories. In New Jersey, data collection for juvenile records (both for the sample cases and subsequent juvenile cases) was completed from juvenile court records in each courtroom. Automated sources for criminal court histories and case outcomes were obtained from the state police Offender-Based Transactions Criminal History (SAC) data base. Since the study cohorts will reach 18 years by 1983, the majority of subsequent criminal activity is likely to be located in these extensive criminal histories.

New York data were collected from comparable records systems in the counties. Sample cases were recorded from the records of the New York City Criminal Justice Agency, the pretrial services agency. They maintain records of all cases that are arraigned in the lower courts, regardless of eventual disposition. These records also contain demographic information used to make recommendations for pretrial release. For case outcome and sentencing data, Office of Court Administration (OCA) records were obtained. For criminal histories to calculate recidivism rates, Division of Criminal Justice Services (DCJS) records were analyzed via tape. These records include case outcome data otherwise sealed by statute, but available for research purposes after the unique identifiers are concealed.

## V. RESULTS

### A. The Certainty and Severity of Sanctions

#### 1. Case Outcomes

Table 6 shows the likelihood of a finding of guilt, or a sustained petition in the juvenile court, by charge and period.<sup>7</sup> For 1981-82 cases, the base rate of conviction was higher for burglary cases than for robbery cases. Regardless of court jurisdiction, nearly two in three burglary cases resulted in a guilty plea or conviction (finding), compared to about half the robbery cases. Robbery cases in juvenile court were less likely to result in conviction than robbery cases in the criminal court (Chi-square = 16.78,  $p=.000$ ). Even when waiver is considered, the rate of dismissal in juvenile court for robbery was significantly lower than in the criminal court.

However, the trends were quite different for 1986-87 cases. Base rates of conviction for burglary cases were lower in 1986-87 than base rates for robbery, and far lower than burglary cases from five years earlier. The conviction rate for burglary cases in juvenile court was 27.8%, less than half the rate from the previous period and far lower than the 48.0 % conviction rate for burglary cases in criminal court. Convictions for robbery cases again were more likely in criminal court (45.9%) than juvenile court (41.9%). The significant results, however, are due to waiver dispositions in the juvenile court. When waiver cases are considered, with their greater likelihood of conviction and incarceration in criminal court (Rudman et al., 1986; Feld, 1987), there appears to be little differences in robbery dispositions between juvenile and criminal court.

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7. In addition to findings of guilt, a small percentage of "miscellaneous" outcomes also were noted in the criminal courts. These included transfers to probate courts for mental health hearings, suspensions and continuances, etc. For this analysis, these were included broadly as "not guilty" findings. In later analyses of recidivism, they are treated separately.

TABLE 6. CASE OUTCOMES, BY CHARGE, COURT AND YEAR (Percent)

OFFENSE TYPE				
1981-1982:				
Case Outcome	Robbery		Burglary	
	Juvenile Court	Criminal Court	Juvenile Court	Criminal Court
Not Guilty	50.7	43.5	34.4	36.8
Guilty	46.0	56.5	65.6	63.2
Waived	3.3	0	0	0
N	367	340	32	68

Statistics:

Chi-square	16.78	0.05
p	.000	.812

OFFENSE TYPE				
1986-87:				
Case Outcome	Robbery		Burglary	
	Juvenile Court	Criminal Court	Juvenile Court	Criminal Court
Not Guilty	54.5	54.9	72.2	52.0
Guilty	41.9	45.1	27.8	48.0
Waived	3.6	0	0	0
N	167	175	18	25

Statistics:

Chi-square	6.49	1.79
p	.039	.181

## 2. Sanction Probability

Table 7 compares *sanction certainty* by period and offense type for juvenile and criminal courts.<sup>8</sup> In 1981-82, nearly half the defendants in criminal court convicted of either charge type were sentenced to incarceration, either in jail, adult prisons, or juvenile corrections facilities. The incarceration rates for robbery cases were significantly greater in criminal court than juvenile court: fewer than one in five (18.3%) juvenile court defendants were committed to the Department of Corrections for placement in a training school or residential facility. In criminal court, nearly half (46.4%) of those convicted were sentenced to either state prison, secure youth corrections facilities, or local jails (Chi-square = 36.1,  $p=.000$ ).

For burglary convictions in 1981-82, incarceration rates for juveniles were slightly higher (23.8%) than for robbery cases, but still were lower than the criminal court rate for burglaries (46.5%). Incarceration rates in criminal courts were similar for burglary and robbery cases (about 46.5%). For both types of charges, most juvenile court defendants received probation sentences (nearly six in ten), while fewer than half the criminal court defendants received probation commitments.<sup>9</sup> Suspended sentences or continuances (of previous probation sentences) were more likely in the juvenile than criminal court.

By 1986-87, the trends in incarceration had changed sharply for both charge types. Robbery cases were significantly more likely to result in incarceration in the juvenile court (57.1%) than in the criminal court (26.6%). In the criminal court, more cases were suspended or continued than in the juvenile court. Probation sentences were given to nearly half the defendants, while the rate for burglaries

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8. Cases waived from juvenile to the criminal court were excluded from these analyses. Once again, there were quite different results for the two periods.

9. Split sentences including both incarceration and other punishments (e.g., probation, fines or community treatment) were classified as incarceration sentences. Sentences to time served (with no additional time) or suspended sentences were not classified as incarceration sentences. Nearly all these cases were placed on probation, and were classified as such.

TABLE 7. SANCTION SEVERITY BY CHARGE, COURT AND PERIOD (PERCENT)

1981/82:

## OFFENSE TYPE

	Robbery		Burglary	
	Juvenile Court	Criminal Court	Juvenile Court	Criminal Court
Disposition				
Incarceration	18.3	46.4	23.8	46.5
Probation	61.5	41.8	57.1	48.8
Restitution	0.6			
Other Supervision	0.6		4.8	0
Suspended/Continued	18.9	9.9	14.3	4.7
N	176	192	21	43

## Statistics:

Chi-square	36.10	5.77
p	.000	.123

1986/87:

## OFFENSE TYPE

	Robbery		Burglary	
	Juvenile	Criminal	Juvenile	Criminal
Disposition				
Incarceration	57.1	26.6	60.0	50.0
Probation	35.7	49.4	0	33.3
Other Supervision		1.3		
Suspended/Continued	7.2	22.72	40.0	16.7
N	85	79	5	12

## Statistics:

Chi-square	16.85	2.55
p	.001	.279

remained the same. Although incarceration rates in juvenile court cases rose dramatically for robbery, they declined were rose only slightly for burglary. The use of suspended sentences and continuances rose sharply in the criminal courts in 1986-87 for both robbery and burglary.

Accordingly, increased sanction probabilities in the juvenile court were evident in 1986-87 for both robberies and burglaries. The incarceration rates in juvenile court for robbery rose over the five-year interval to a level comparable to burglaries. At the same time, incarceration rates in the criminal court declined sharply, and by 1986-87, were less than half the rate for robbery cases sentenced (disposed) in juvenile court. For burglaries, the probability of incarceration was consistently higher in the criminal courts for both years.

### 3. *Sanction Severity*

Table 8 examines *sanction severity*, as measured by sentence length. For those incarcerated, the minimum and maximum sentences are shown. For jail cases, the minimum and maximum terms were considered the same, although some defendants are released at various times before their sentence. For commitments to juvenile corrections facilities in New Jersey, the minimum term was computed as either one year (for indeterminate three-year commitments) or one-third of the term for indeterminate commitments to the youth's nineteenth birthday). This is the interval when youths committed to the juvenile division of the state's Department of Corrections have their first parole eligibility. It also approximates the average length of stay at youth corrections facilities in New Jersey for all commitments during 1981-83 (Juvenile Dispositions Commission, 198\_). For criminal court sentences to prison, both minimum terms are given at sentencing.

Table 8 shows analysis of variance (ANOVA) results for both charge and court types in each period. Sentence lengths were relatively unchanged for both offense types across the two periods. There were no significant differences in sentence length for the 1981-82 period, by either charge type or court jurisdiction. The absence of significant interaction effects shows that the patterns were constant across charge

TABLE 8. SENTENCE LENGTH BY CHARGE, COURT AND YEAR (MEAN NUMBER OF MONTHS)\*

1981/82:

OFFENSE TYPE

	Robbery		Burglary	
	Juvenile Court	Criminal Court	Juvenile Court	Criminal Court
Maximum	34.35	31.74	33.60	30.72
Minimum	11.45	11.07	11.20	10.61

Significance: p(F)	Maximum	Minimum
Charge	.870	.827
Court	.596	.797
Charge X court	.985	.964

1986/87:

OFFENSE TYPE

	Robbery		Burglary	
	Juvenile Court	Criminal Court	Juvenile Court	Criminal Court
Maximum	34.92	27.00	36.00	42.00
Minimum	15.00	9.76	12.50	14.00

Significance: p(F)	Maximum	Minimum
Charge	.787	.644
Court	.371	.000
Charge x Court	.916	.925

\* Excluding cases with suspended sentences where no maximum or minimum terms were recorded.



types by court jurisdiction. Similar results were obtained for maximum terms in 1986-87. However, minimum sentences were greater for juvenile court cases in this period ( $p \leq .000$ ). The effect seems to be driven by the greater minimum sentences for robbery convictions in juvenile court -- a small number ( $N=9$ ) of burglary cases received incarceration sentences in 1986-87. Interaction terms were not significant for either maximum or minimum sentences.

#### *4. Divergent Patterns: The Importance Exogenous Factors in the Legal Context*

What happened in the two periods to explain the divergent patterns of case outcome and sanction severity? The context that informed judicial and legal decision making in the two eras for both juvenile and criminal court cases differed dramatically, and trends reflected divergent historical and political atmospheres. Two trends in particular had salient effects on the normative consensus within courts and eras. Throughout the 1980s, juvenile courts became more punishment-oriented in both philosophical orientation and statutory provisions for punishment (Feld, 1987), especially for violent offenses such as robbery. Whether to ward off criticisms of the juvenile court itself as unresponsive to community safety and perceived danger (Fagan, 1990) or to reflect changing normative attitudes about adolescent crime (Feld, 1991), sanction severity (but not length) for robbery offenses increased in the juvenile court.

In New Jersey, such changing attitudes were embodied in the revision of the juvenile codes that went into effect in September 1983. These code revisions expanded options for placement of juveniles in state training schools, made possible (in some counties) the incarceration of juveniles in local detention centers, and expanded the types of offenses eligible for waiver to the criminal court (Fisher, 1985). The increased probability of an incarceration sanction for robbery offenders certainly reflected these and perhaps commensurate trends in practices within other domains of the juvenile justice system. For example, disposition patterns may have reflected also changes in the grading of robbery charges to increase their salience for punishment.

Despite the move toward increasing the certainty of punishment, commitment lengths rose only slightly for juveniles while conviction rates and sentencing practices changed significantly. These minimal changes in sanction severity may reflect a number of pressures and contingencies that bear on juvenile court dispositions, such as judicial fealty to the rehabilitative ideal, aggressive defense counsel, or compromises within legislation to expand the punitive component of court dispositions but not their severity. Some have called this *symbolic reform*, where legislative activism constrains only some dimensions of sentencing while leaving others untouched (Myers, 1989).

In the criminal courts in New York, 1981-82 was an era that followed shortly the passage of the Juvenile Offender Law in 1978, arguably the nation's "toughest" juvenile law. The J.O. Law was intended to stiffen punishments accorded to juveniles charged with serious felonies such as robberies, although punishments for those shielded from the full force of criminal punishment as "youthful offenders" conformed with guidelines prevalent for delinquency cases. The higher incarceration rates for criminal court cases in that era occurred during the continuing legislative and judicial activism concerning the J.O. law that made violent charges against adolescents particularly salient cases.

By 1986-87, popular concerns about crime had changed dramatically. This later era was a time of rapid expansion in the prevalence of drug cases in the courts, and their increasing salience for punishment led to harsher decisions at all decision making points in the criminal justice system (Belenko, Fagan and Chin, 1991). The "war on drugs" dramatically changed the "mix" of defendants, the pressures on court calendars (and the tendency to negotiate pleas), and also the burdens on the system for allocating punishments. In turn, more cases were bargained (presumably to lower punishments), while the threshold for incarceration in the criminal court for an adolescent charged with robbery may have increased when they competed with drug sellers for the scarce prison spaces.<sup>10</sup>

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10. In 1987, drug offenders became the most prevalent offender group in New York State Prisons, surpassing robbery and burglary offenders (Division of Criminal Justice Services, 1988).

Young robbery defendants were a low base rate group and also perhaps a group perceived as less serious (with shorter prior records) than older drug defendants who were at the center of political and legal mobilization (Myers, 1989), and whose behaviors were popularly associated with more dangerous violent crimes (Fagan and Chin, 1989; Fagan, 1991). Accordingly, the likelihood of incarceration for adolescents charged with robbery decreased in New York's criminal courts in 1986-87 as the size and mix of criminal court populations changed dramatically.

#### B. The Impact of Sanctions on Recidivism

Recidivism analyses were conducted for the 1981-82 cohorts to allow for a sufficient "window" in which to examine the trajectory of their criminal careers. Recidivism analyses were conducted on four dependent variables: rearrest and reincarceration prevalence, re-offending rates for active offenders (those with one or more rearrests), time to first arrest. For the latter, analyses of failure rates and overall survival (failure) functions for each cohort are presented. Analyses controlled for court jurisdiction and the severity of sanctions within each. The results are presented first for overall effects of court jurisdiction, followed by controls for the effects of specific sanctions.

##### *1. The Effects of Court Jurisdiction*

Recidivism measures are compared for juvenile and criminal court cohorts for each offense type. Table 9 shows analyses of recidivism rates, reincarceration rates, failure rates (time to first rearrest), and offending rates. The prevalence of rearrest was quite high for the sample, with nearly 75% rearrested at some time within the follow-up period. Base rates of rearrest were higher for burglary offenders (over 80%) than robbery offenders (about 70%). For robbery offenders, rearrest rates were higher for cases adjudicated in the criminal courts (Chi-square=6.757,  $p=.009$ ). However, rearrest rates did not differ for burglary offenders by court jurisdiction.

TABLE 9. RECIDIVISM BY COURT JURISDICTION AND TYPE OF CHARGE

	OFFENSE TYPE			
	ROBBERY		BURGLARY	
	Juvenile Court	Criminal Court	Juvenile Court	Criminal Court
<hr/>				
N				
Percent Rearrested	67.0	75.9	81.3	80.9
Chi-Square	6.757		.002	
p	.009		.965	
Percent Reincarcerated	40.9	56.2	65.6	55.9
Chi-Square	16.557		.854	
p	.000		.355	
Time to first Rearrest <sup>a</sup>	553.0	456.5	337.7	501.1
F	4.662		2.066	
p	.031		.155	
Rearrest Rate <sup>b</sup>	1.67	2.85	2.27	2.73
F	11.241		.790	
p	.001		.377	

a. Days from release to street following court outcome and sanction.

b. Rate based on arrests per year of street time for offenders with at least one rearrest.

Reincarceration rates also were high, higher than reincarceration rates for the sample arrests. The results mirrored the rearrest patterns. Robbery defendants were reincarcerated at a lower overall rate (48.4%) than burglary offenders (60.2%). There were significant differences for court jurisdiction for robbery cases but not for burglary. Robbery cases in the criminal court cohort were reincarcerated more often (56.2%) than the juvenile court robbery cohort (40.9%) (Chi-square=16.557,  $p=.000$ ).

Re-offending rates were computed for offenders with at least one rearrest (for a new criminal violation).<sup>11</sup> The re-offending rearrest rates were calculated by annualizing total arrests over the time at risk during the follow-up period. Time reincarcerated was excluded from the re-offending "window."<sup>12</sup> Once again, the patterns for rearrest and reincarceration prevalence are mirrored for re-offending rates. Table 9 shows that rearrest rates were higher overall for burglary than robbery offenders. However, there were significant differences in rearrests for robbery offenders in juvenile court. Robbery offenders in criminal court had re-offending (rearrest) rates over 50% higher than robbery offenders in juvenile court (2.85 vs. 1.67 arrests per year at risk) ( $F=11.24$ ,  $p=.001$ ). But there were no significant differences in the rates for burglary offenders by court jurisdiction.

Failure rates present a similar trend for robbery offenders. In the juvenile court, the time to first rearrest for robbery offenders was significantly longer (553 days) compared to those in criminal court (456.5 days) ( $F=4.662$ ,  $p=.031$ ). For burglary offenders, there was no significant difference between juvenile and criminal court cases (the large disparity in the means is not significant due to the small  $N$ s and large within-group variances).

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11. Excluding traffic violations.

12. Incarceration times 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.

The results present a consistent trend where the deterrent effects of sanctions on recidivism are greater for robbery cases in the juvenile court. For burglary offenders, the recidivism indicators are unaffected by court jurisdiction. There is no marginal gain in recidivism reduction for burglary cases disposed and sentenced in the criminal court. For robbery cases, the results at first glance suggest that recidivism is lower for cases disposed in the juvenile court.

## *2. The Effects of Specific Sanctions*

Rearrest indicators are disaggregated by specific sanctions in Table 10. Reincarceration rates are not included due to the small Ns for many of the sanctions. Since there were no significant differences in length of incarceration, these analyses did not control for sanction severity.

*Rearrest Prevalence.* There were significant differences in rearrest prevalence only for robbery cases sentenced either to probation or incarceration terms. Nearly all those incarcerated in the criminal court for robbery charges were rearrested (90.5%), compared to fewer than three in four sentenced in juvenile court (73.0%) ( $p[\text{Chi-square}] = .013$ ). Fewer robbery offenders sentenced to probation in the juvenile court were rearrested (64.4%) than in those sentenced in the criminal court (81.2%) ( $p[\text{Chi-square}] = .011$ ). There were no significant differences in rearrest prevalence by court jurisdiction for cases suspended or dismissed, and no significant differences for burglary offenders for any sanction.

*Time to First Rearrest.* Failure times in general were faster for burglary than robbery offenders, regardless of court jurisdiction. Similar to analyses of rearrest prevalence, failure rates (time to first rearrest) differed significantly only for robbery offenders who were incarcerated.<sup>13</sup> The time to first rearrest for robbery offenders who were sentenced to incarceration in juvenile court was over 50% greater than robbery offenders sentenced in criminal court (631 vs. 392 days)

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13. Failure times were calculated as the interval from sentencing on the sample charge to the date of first rearrest, excluding time served (minimum sentences).

TABLE 10. REARREST RATES, REARREST FREQUENCIES AND FAILURE TIMES BY SANCTION SEVERITY, ARREST CHARGE AND COURT JURISDICTION

	OFFENSE TYPE					
	Robbery			Burglary		
	Juvenile Court	Criminal Court	p <sup>a</sup>	Juvenile Court	Criminal Court	p <sup>a</sup>
<hr/>						
N						
Percent Rearrest						
Incarceration	73.0	90.5	.013	80.0	89.5	.569
Probation	64.4	81.2	.011	91.7	95.5	.654
Suspended	65.7	68.4	.840	b	b	.221
Dismissed	67.0	65.8	.811	81.8	60.0	.067
Days to First Rearrest						
Incarceration	631.3	391.7	.002	381.3	465.2	.686
Probation	624.9	517.9	.247	281.9	353.9	.564
Suspended	397.5	322.1	.557	b	b	
Dismissed	527.5	480.9	.535	410.9	649.0	.335
Rearrest Rate <sup>c</sup>						
Incarceration	5.46	4.17	.578	6.25	3.37	.024
Probation	1.21	1.99	.000	1.41	1.90	.387
Suspended	1.45	3.77	.002	b	b	b
Dismissed	1.23	2.27	.000	1.61	2.98	.123

- a. Statistics: Percent Rearrested - p(Chi-square)  
Time to rearrest - p(F)  
Rearrest rate - p(F).
- b. Cell size less than 5, analyses were unstable.
- c. Active offender only.

( $p[F]=.002$ ). There were no significant differences for any other charge-court jurisdiction analysis.

*Rearrest Rates.* Results for annual rearrest rates differed from the other recidivism indicators. For robbery offenders, rearrest rates did not differ for those sentenced to incarceration. But for other sentence types, rearrest rates were consistently lower for robbery offenders sentenced in the juvenile court. The results were significant and substantively large. Annual rearrest rates for robbery offenders sentenced in criminal court were more than 75% greater than those sentenced in juvenile court. Only for burglary offenders who were incarcerated were rearrest rates lower for offenders sentenced in criminal court (3.37 rearrests/year vs. 6.25) ( $p[F]=.024$ ). Other rearrests rates for burglary offenders did not differ significantly by type of sanction.

*Survival Rates.* Survival analyses were conducted to compare the overall failure times of the samples. Survival analysis computes the percent of the sample that has not had a "terminal event" (in this case, a rearrest) at specified intervals from the time that they were at risk. Survival computes the group centroids (juvenile vs. adult) for the dependent variable for each interval for cases whose terminal events fall within that interval. For these analyses, intervals were set at 90 days. The average of the centroids for each group across all intervals is reported. The Lee-Desu statistic (1972) establishes the significance of the differences.<sup>14</sup> The results are shown in Table 11 and Figure 1.

Table 11 shows the comparison for the sample overall and disaggregated by sanction. Where the centroid means are negative, the percentage of that group that has survived within the intervals is lower. That is, more cases have experienced the terminal event. The results show that overall, survival rates were higher for juvenile court cases. That is, fewer cases had been rearrested across the follow-up "window" (Lee-Desu=8.57,  $p=.003$ ). Figure 1 displays the survival rates for the two populations across the complete recidivism period.

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14. See, also, Chung, Schmidt, and Witte (1991).



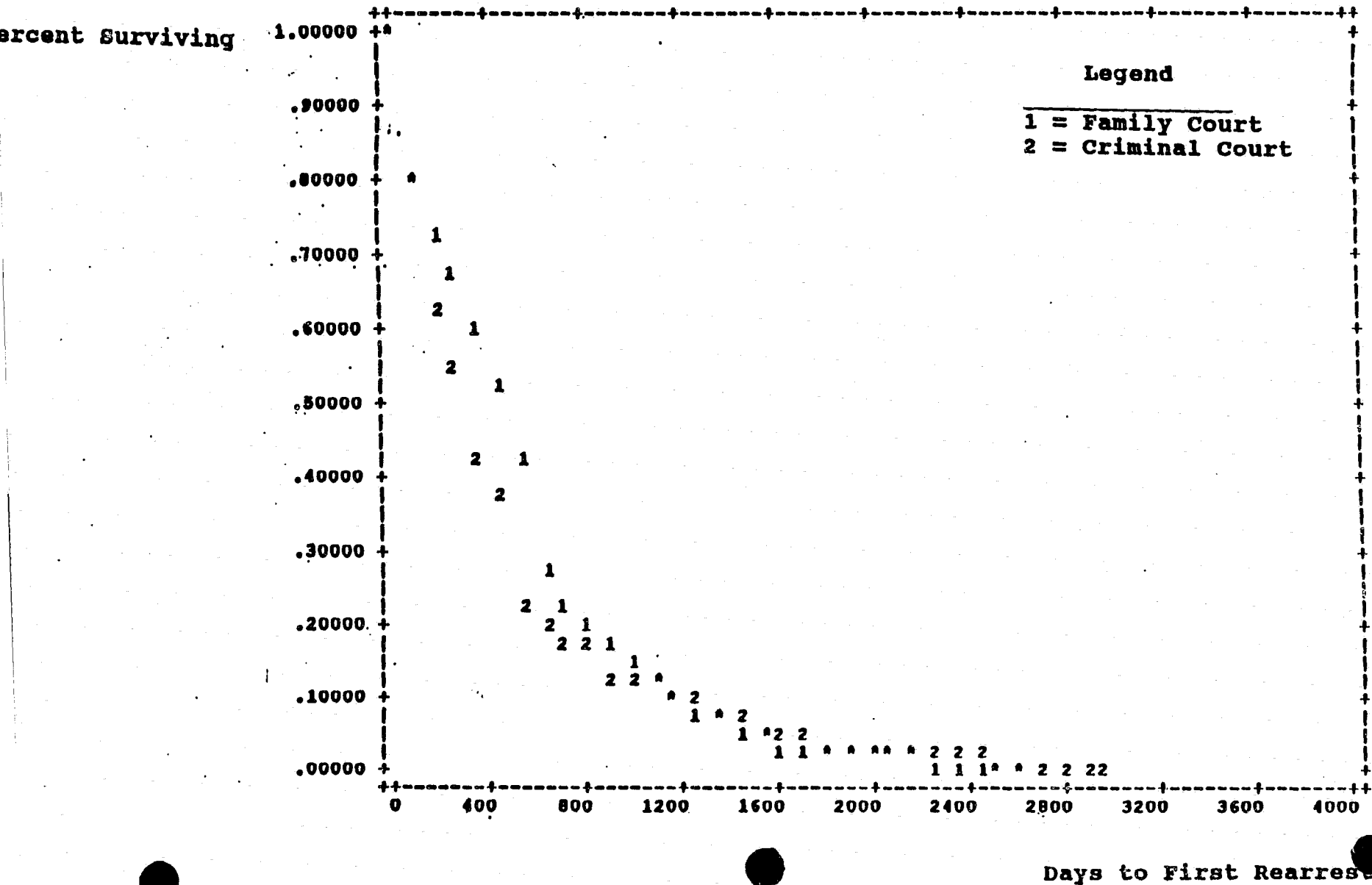
**TABLE 11. SURVIVAL FUNCTIONS FOR REARREST BY COURT JURISDICTION**  
**(Distances From Mean For Pooled Groups Within Time Intervals)**

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	Juvenile Court	Criminal Court	<u>Statistics</u>	
			Lee-Desu	p
All Dispositions	43.75	-38.44	8.57	.003
Survival Rates By Type of Sanction				
Incarceration	44.74	-14.91	16.14	.000
Probation	11.87	-10.42	2.19	.139
Suspended/Continued	-1.22	2.20	.19	.664
Dismissed	10.22	-11.82	1.46	.228

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**FIGURE 1. SURVIVAL FUNCTION FOR TIME TO FIRST REARREST BY COURT JURISDICTION FOR ALL OFFENDERS WITH ONE OR MORE REARRESTS.**



After controlling for type of sanction, significant differences remained only for those sentenced to incarceration. The differences are substantively greatest for this comparison (Lee-Desu=16.14,  $p=.000$ ). Offenders sentenced to incarceration in criminal court were more likely to have been rearrested at any time in the recidivism period. Survival functions disaggregated for each sanction type are shown in Appendix \_\_. Accordingly, offenders sentenced to incarceration in juvenile court delayed their rearrest longer than did their counterparts sentenced in criminal court.

### *3. Effects of Sanctions on Reoffending Rates by Type of Crime*

To examine the differential effects of sanctions on prevalence rates and annual frequency of reoffending for specific crime types, rearrest charges were sorted into seven categories. This procedure assessed whether deterrent effects were greater for more serious crime types that are central to the debate on appropriate court jurisdiction for adolescent felony offenders. The classification scheme for offense types included: violent felonies (Part I Offenses), other property crimes (Part II Offenses), other violent crimes (non-index violent crimes), other felonies (all other non-drug felonies), drug selling (including intent to sell), drug possession, and misdemeanor charges (see Appendix C). Prevalence rates were established for rearrest within crime types. That is, among those rearrested for any offense, rearrest prevalence was computed for each specific crime type. An overall offending rate also was calculated. Analysis of covariance (ANCOVA) routines were used to assess the effects of court jurisdiction and sanction, with sentence length (for incarceration sentences) and age as covariates. The results are shown in Table 12.

When the type of offense is considered, the deterrent effects of court sanctions vary by court jurisdiction. Evidently, the relative efficacy of juvenile or criminal court sanctions in reducing recidivism depends on the type of re-offending. Prevalence and reoffending rates followed similar patterns. Significant main effects were found for court jurisdiction for all offense types other than "other felonies." However, significant effects for sanction type were found only for

TABLE 12. RECIDIVISM PREVALENCE AND REOFFENDING RATES BY SANCTION SEVERITY AND COURT JURISDICTION (Lambda, %)

		OFFENSE TYPE							
		Violent Felony	Felony Property	Other Violent	Other Felony	Drug Poss'n	Drug Sales	Misde- meanors	All Offenses
N		L %	L %	L %	L %	L %	L %	L %	L %
<b>Incarceration</b>									
Juvenile	31	1.34 (68)	.42 (42)	.05 (10)	1.14 (64)	1.04 (40)	.25 (29)	1.21 (58)	5.46 (100)
Criminal	93	.07 (22)	.01 ( 2)	.58 (75)	.79 (67)	.07 (14)	.07 (17)	2.59 (98)	4.17 (100)
<b>Probation</b>									
Juvenile	79	.30 (77)	.09 (32)	.02 ( 9)	.30 (73)	.25 (43)	.06 (27)	.20 (56)	1.21 (100)
Criminal	90	.03 (14)	.01 ( 2)	.25 (60)	.28 (71)	.04 (19)	.03 (19)	1.35 (100)	1.99 (100)
<b>Suspended/Other</b>									
Juvenile	27	.34 (82)	.12 (48)	.02 ( 7)	.45 (67)	.23 (47)	.06 (26)	.24 (70)	1.45 (100)
Criminal	15	.07 (33)	.00 --	.31 (80)	.58 (80)	.05 (12)	.05 (13)	2.71 (100)	3.77 (100)
<b>Dismissed</b>									
Juvenile	133	.29 (77)	.12 (41)	.01 ( 7)	.30 (68)	.24 (40)	.08 (33)	.20 (54)	1.23 (100)
Criminal	115	.05 (24)	.01 ( 2)	.34 (73)	.37 (73)	.04 (16)	.04 (19)	1.43 (98)	2.27 (100)
<b>ANOVA Statistics</b>									
<b>Main Effects:</b>									
Court		.000	.000	.000	.766	.000	.000	.000	.037
Sanction		.089	.029	.668	.327	.111	.826	.190	.077
Court x Sanction		.000	.000	.062	.572	.000	.003	.269	.021
<b>Covariates:</b>									
Age		.349	.511	.186	.234	.341	.509	.051	.188
Sentence Length <sup>a</sup>		.000	.028	.000	.000	.000	.000	.000	.000

a. Sentence Length = 0 for all sanctions other than incarceration

felony property crimes. More important, significant interaction effects were found for all offense types except other felonies and misdemeanors.

For Part I and II felony offenses and felony drug offenses, rearrest prevalence and offending rates were significantly higher for offenders in juvenile court, regardless of the severity of the sanction. For less serious violent offenses (e.g., non-injury assaults) and misdemeanors, annualized rearrest rates were higher for offenders sentenced in the criminal court. For "other felony" offenses (e.g., weapons offenses, threats), there were no significant main or interaction effects. The length of incarceration (minimum terms) was a significant covariate for offending rates for all offense types, but age was a significant covariate for none of the offense types. We shall examine the effects of sentence length in the next section.

Compared to summary recidivism measures, these patterns reveal a somewhat different picture of the comparative impacts of juvenile and criminal court sanctions on recidivism among adolescents. Recall that overall rates suggested that recidivism was greater for the criminal court cohort. Although youths sentenced in the juvenile court were arrested less often and at lower rates, their rates and prevalence of serious offending were far higher. If the data are valid, then we might conclude that youths sentenced in juvenile court are particularly selective in the severity of their offenses -- when they are bad (which is not that often), they evidently are *really* bad.

However, the data seem to suggest differences in charging patterns that may influence these trends. For example, when we combine the Violent Index and Other Violent categories, the prevalence and frequency rates reflect the overall trends for the two cohorts: more frequent reoffending among the criminal court cohort. A similar result occurs when Felony Property and Other Felony crimes are aggregated. Accordingly, the patterns for disaggregated offense types may reveal important distinctions about the legal context where charging and prosecution decisions are made, distinctions that on the surface suggest behavioral differences.

Accordingly, it is not at all clear if these results accurately portray vastly different offending patterns, or if they reflect

anomalies in police and prosecutorial charging decisions or systemic processes that affect the "at risk" intervals. For example, since incarceration sanctions were greater for the criminal court cohort, juvenile court offenders were more likely to be at risk during years of peak violent offending in late adolescence (Greenberg, 1985). Charging practices also may have been more formal for juvenile offenders in New Jersey in the aftermath of the 1983 juvenile code revisions that took a harder line toward juvenile crime. Normative practices in police enforcement may also result in greater knowledge of less serious offenses due to more aggressive patrol and response practices. This is particularly true in New York beginning in 1983 with Operation Pressure Point (Zimmer, 1987) and the rapid expansion of street-level patrols to interdict drug trafficking.

Accordingly, systemic and contextual factors in legal decision making may have contributed to the anomalous findings for disaggregated crime types. When grosser categories are used (violence, property, drug, misdemeanor offenses), the criminal court cohort continues to have higher offending rates for all crime types except drug offenses.

#### *4. The Effects of Sentence Length on Reoffending Rates and Prevalence*

Table 12 showed that sentence length (for incarcerated offenders) was a significant covariate in reoffending rates. The contributions of sentence length, independent of type of sanction, were analyzed both for the rearrest prevalence and offending rates. Rather than introduce interaction terms to control for court jurisdiction, separate models were analyzed for the juvenile and criminal court cohorts. Table 13 shows the results of logistic regression analyses (Maddala, 1983; Aldrich and Nelson, 1984) for rearrest prevalence for each cohort. Independent variables included sentence length, age at rearrest, sanction type, and a dummy variable for the relatively small group of burglary offenders. Rather than censor cases that were not sentenced to incarceration, sentence length was set to 0 for cases receiving non-incarcerative dispositions.

TABLE 13. LOGISTIC REGRESSION FOR REARREST PREVALENCE BY SANCTION  
AND SENTENCE LENGTH, CONTROLLING FOR COURT JURISDICTION  
(Unstandardized coefficients, standard error)

	Juvenile Court		Criminal Court	
	B	SE	B	SE
Constant	2.47	(3.61)	3.29	(4.59)
Sentence Length	.008	(.03)	.02	(.03)
Sanction	-.005	(.08)	-.34	(.09)***
Burglary	.74	(.47)	.22	(.35)
Age	-.11	(.23)	-.06	(.29)
Model Statistics				
-2 Log likelihood	492.1***		413.6	
Goodness of Fit	396.3		406.9	
Classification (%)	68.18		76.72	

\*\*\* p(Chi-square)=.000

Both models were poor, as indicated by their high Goodness of Fit scores. The overall classification scores overall were relatively weak, and the marginal classification scores (for rearrest within each group) were extremely poor -- less than 5% (data not shown). The model for juvenile court was significant, indicating that this model differed from the actual model, and did not approximate the process of rearrest. Neither sentence length nor other variables were significantly associated with avoidance of rearrest. For the criminal court cohort, the model is not significant, suggesting that these variables more closely approximate the actual predictors of rearrest. Sanction was significantly associated with rearrest, but not sentence length. This suggests that a sentence of incarceration was more likely to deter offenders sentenced in criminal court from rearrest. However, recall that over 90% of the criminal court cohort was rearrested at least once following their sample case. Accordingly, these results suggest that the effects of incarceration, but not sentence length, are evident only for a small group of offenders.

Similar analyses were conducted for rearrest rates, using two offense types: violent felony offenses (Part I offenses), and total arrest rates. OLS regression models were used to analyze the effects of sanction severity and sentence length for rearrest rates within each court cohort. Once again, separate models were constructed for criminal and juvenile court cohorts to compare the contributions of the independent variables within each cohort. All offenders with at least one rearrest (regardless of offense type) were included in the model. The results are shown in Table 14.

For rearrest rates for Violent Felonies, the model for the juvenile court cohort was stronger ( $F=13.02$ ,  $p=.000$ ), and explained variance greater ( $R^2=.153$ ) than the model for criminal court ( $F=1.34$ ,  $p=ns$ ,  $R^2=.004$ ). Sentence length was a significant contributor to rearrest rates, but the coefficient signs suggest that longer sentences were associated with higher rearrest rates. No other independent variables were significant contributors for the juvenile court model, and none were significant for the criminal court model. Evidently, factors other



**TABLE 14. OLS REGRESSION OF OFFENDING RATES BY SANCTION AND CHARGE, CONTROLLING FOR COURT JURISDICTION (UNSTANDARDIZED COEFFICIENTS, STANDARD ERROR)**

	OFFENSE TYPE							
	Violent Felony				All Offenses			
	Juvenile Court		Criminal Court		Juvenile Court		Criminal Court	
	B	SE	B	SE	B	SE	B	SE
Constant	-1.03	(1.61)	.09	(.31)	-5.38	(4.24)	-2.11	(10.52)
Sentence Length	.08	(.01)***	.002	(.001)	.31	(.04)***	.15	(.04)***
Sanction	-.02	(.03)	.003	(.005)	-.11	(.09)	-.03	(.18)
Burglary	.06	(.17)	-.03	(.02)	.15	(.44)	-.13	(.68)
Age	.09	(.10)	-.007	(.02)	.45	(.27)	.29	(.66)
Model Statistics								
Adjusted R <sup>2</sup>	.153		.004		.286		.040	
F	13.02***		1.34		27.69***		4.48**	
p(F): *	p = .05 p = .01 p = .001							

than these seem to account for rearrest rates for violent felonies for either cohort.

For total rearrest rates, the model for the juvenile court cohort was strong and significant ( $F=27.69$ ,  $p=.000$ ,  $R^2=.286$ ). The criminal court model again was poor ( $F=4.48$ ,  $p=.009$ ,  $R^2=.040$ ). Sentence length was the only significant contributor to either model, but the signs suggest that lengthier sentences were associated with higher rearrest rates. The data are inconclusive as to whether longer sentences are iatrogenic with respect to reoffending rates, or if incarceration sentences were given to offenders with a greater likelihood of reoffending.

The results suggest that punishment variables can only weakly account for rearrest rates. There is little evidence to suggest that punishment alone, nor other legal factors, can account for within-group differences in rearrest rates, nor that they differentially influence rearrest rates between the two cohorts. The finding remains that rearrest prevalence and offending rates are lower for adolescent felony offenders in whose cases are adjudicated and disposed in juvenile court compared to those adjudicated in the criminal court. In the next section, we discuss the implications of these findings for the jurisprudence of adolescent felony crimes and the future of the juvenile court.

## VI. CONCLUSIONS

Since 1975, legal and social institutions throughout the United States have mobilized to strengthen the punitive element of legal sanctions for adolescent offenders. Two widely held perceptions fueled these legislative efforts: that rehabilitation is ineffective, undermining the *sine qua non* of the juvenile court, and that punishment was discounted in the juvenile court setting. States have applied a variety of statutory mechanisms to "criminalize" adolescent crimes by bringing them under the jurisdiction of the criminal courts. These efforts have included expanded use of judicial waiver as well as

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The trend to remove juvenile cases to the criminal court represents a legislative and societal rejection of the *parens patriae* philosophy of the juvenile court and its emphasis on rehabilitation and individualized justice. Despite increasing emphasis in the juvenile court on the punitive dimensions of dispositions, especially for violent offenders (Fagan, 1990; Feld, 1987), efforts to relocate adolescent crimes have been fueled by the expectation of greater accountability (more certain and proportionate ~~crimes~~ <sup>punishment</sup>) and lengthier ~~punishment~~ <sup>sentences</sup> in the criminal court.

#### A. By What Standard Should Jurisdiction be Defined?

Implicit in these trends is the stubborn perception that juvenile court dispositions are more lenient, less certain, fail to rehabilitate, are ineffective deterrents to future crime, and accordingly increase threats to community safety. In this view, not only does the criminalization of delinquency afford greater retribution and proportionality in punishment, but also more effective punishment that will better deter future criminal behavior.<sup>1</sup> That is, the shift of

1. Of course, the juvenile court has always used its option for waiver as a political weapon to maintain its discretionary powers inherent in the *parens patriae* philosophy (Bortner, 1986). By jettisoning its most intractable and serious offenders, who symbolize the perceived failures of the juvenile justice system, waiver provides an important symbolic act that demonstrates the court's wise use of its discretion to invoke punishment where necessary. This outlet also allows the court to maintain its legal and social boundaries and preserve its limited rehabilitative resources for youths whose crimes pose less threat to the community.

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The trend to remove juvenile cases to the criminal court represents a legislative and societal rejection of the *parens patriae* philosophy of the juvenile court, its emphasis on rehabilitation and individualized justice, and the effectiveness of its dispositions in controlling the recurrence crime or its initiation. Despite increasing emphasis in the juvenile court on the punitive dimensions of dispositions, especially for violent offenders (Fagan, 1990; Feld, 1987), efforts to relocate adolescent crimes have been fueled by the expectation of greater accountability (more certain and proportionate crimes) and lengthier punishment in the criminal court. For many proponents of the criminalization of delinquency, these efforts also promised more effective punishment, and lower recidivism rates.

The results of this study suggest that none of these promises have been fulfilled. Earlier efforts examining the relative likelihood of punishment in juvenile versus adult courts (Greenwood et al. 1984; Roysner and Edelman, 1981) concluded much the same. This effort went two significant steps further, to examine sentence lengths and recidivism. If more certain, swifter and effective punishments are not forthcoming for adolescents punished in the adult criminal courts, new questions are raised concerning efforts over the past decades to narrow the jurisdiction of the juvenile court. These issues are discussed below.

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cases by whatever mechanism to the criminal court carries with it the expectation that punishment will be swifter, more certain and severe, and more effective as a crime control strategy.

Even those who acknowledge the uncertain deterrent effects of criminal court sanctions suggest that removing adolescent crimes to the adult courts avoids the counterdeterrent effects of weak sanctions of the juvenile court. The symbolic component of strong rhetoric surrounding the criminalization of juvenile crime also implied a general deterrent component designed to persuade juveniles that to commit crimes risked severe legal responses, including lengthy terms of incarceration (Singer and McDowall, 1988).

Unstated in this debate on the appropriate jurisprudential forum for adolescent crime are decision standards to assess the wisdom and efficacy of the criminalization of delinquency. Dimensions of the debate such as due process and equal protection gaps between juvenile and criminal court, are side shows to the central controversy of crime control strategy. Nor is this debate about rehabilitation vs. punishment, for there is nothing inherently at odds in the modern juvenile court between treatment and accountability or punishment (Feld, 1987; Weisheit and Alexander, 1986).

Rather, the debate has unfolded in terms of punishment, community protection, and its effectiveness as crime control strategies (Fagan, 1990; Feld, 1988). If the impetus for removal of adolescent felony offenders is to close the "leniency gap," criteria for evaluating court reform would include the certainty and severity of punishment. If juveniles have been relocated to criminal court to enhance the deterrent effects of legal responses to juvenile crime, or to reduce the risks to the community from adolescent crime, then recidivism rates are a more appropriate standard.

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the *parens patriae* philosophy (Bortner, 1986). By jettisoning its most intractable and serious offenders, who symbolize the perceived failures of the juvenile justice system, waiver provides an important symbolic act that demonstrates the court's wise use of its discretion to invoke punishment where necessary. This outlet also allows the court to maintain its legal and social boundaries and preserve its limited rehabilitative resources for youths whose crimes pose less threat to the community.

Standards also are unstated with respect to specific versus general deterrence of crime. Certainly, the rhetoric and symbolism of these "reforms" has been directed at deterring adolescents as a class from crime commission by raising the perceived certainty and severity of punishment (Bortner, 1986; Singer and McDowall, 1988). Yet criminal court punishments for adolescents, like their older cohorts, are accorded to individuals, usually within a discretionary sentencing scheme with broad boundaries that govern the upper and lower limits of confinement. For example, waiver statutes rarely achieve more than a symbolic role in reform, limited from larger impacts by their low base rate and uncertain outcomes in the criminal court (Champion, 1989; Fagan and Deschenes, 1990). Accordingly, despite the widespread publicity to "get tough" measures targeted at adolescent offenders, their effects are difficult to measure at the aggregate level, and their application within a system of individualized justice suggests that they be assessed by their specific deterrent effects.

#### B. What is Gained and Lost in Criminalization

The comparison of closely matched states and offender cohorts in juvenile and criminal courts suggests that there may be less overall accountability gained from criminalizing adolescent crime. The effects on case outcomes may actually be quite the opposite from what was intended, and subject to exogenous factors that influence the makeup of court caseloads and salience of classes of offenses. Accountability for adolescent offenders in criminal courts was no greater than in the juvenile court, and depending on the social and legal context surrounding the court, appeared to be weaker. Nor was criminal court punishment a more effective strategy for crime control. Quite possibly, more harm than good resulted from the effort to criminalize adolescent crimes.

Convictions were no more likely in the criminal court for the 1981-82 cohorts, and less likely in 1986 as drug crimes paralyzed the criminal courts in New York (Belenko et al., 1991). Punishment was less swift (100 days to sentencing in juvenile court, compared to 145 days in criminal court). The likelihood of a severe sanction (deprivation of

liberty through incarceration) initially was greater in the criminal court, but declined again as the composition of court cases changed dramatically. By 1986, the likelihood of a sentence of incarceration was greater in the juvenile court. Instead of the relatively swift half-life of juvenile court cases, criminal court cases took months longer to resolve. Neither retributive nor incapacitative effects were greater in the criminal court: for those sentenced to incarceration, sentence lengths were nearly identical. Long sentences were rare for both the juvenile and criminal court cohorts in this study.

Comparing overall crime rates for the 1981-82 cohorts, recidivism rates appeared to be higher for criminal court cases, their rearrests occurred more quickly, and their return to jail more likely. Recidivism among the juvenile court cohort also appeared to be no more serious than the criminal court cohort. Rather than affording greater community protection, the higher recidivism rates for the criminal court cohort suggests that public safety was in fact were compromised by adjudication in the criminal court. Moreover, the data hint that increasing the severity of criminal court sanctions may actually enhance the likelihood of recidivism.

By neither public safety nor punishment (or just deserts) standards can claims be made that the criminal justice system affords greater accountability for adolescent felony offenders or protection for the public. If criminalization is intended to instill accountability, its effects are diluted by the lengthier case processing time. If it is intended to protect the public by making incarceration more certain and terms lengthier, it fails also on this count. While these processes may have symbolic value to the public, they seem to offer little substantive advantage in the legal response to adolescent crimes. It is only for the earlier accumulation of a criminal record, leading to lengthier terms and more severe punishments for subsequent offenses, that there is a marginal gain in the relocation of adolescent crimes to the criminal court.

### C. Adolescent Offenders in the Criminal Court: The Importance of Contexts of Sentencing and Corrections

Earlier, the importance of the social context of the court was discussed. We hypothesized that juveniles in adult court would receive less serious sentences since they appear less serious in comparison to their older counterparts, and because there was less consensus among members of the working group in the criminal court regarding the "going rate" of punishment for younger offenders. In contrast, we hypothesized that there would be a high degree of consensus in the juvenile court on the going rates of punishment for felony offenders and greater cohesion among working group members to bring about normative sanctions. The more serious and certain sanctions in the juvenile court bear out these hypotheses.

The shift in the likelihood of incarceration from the 1981-82 to 1986-87 cohorts suggests that the seriousness of adolescent felony offenses has been acknowledged in the going rates of punishment in the juvenile courts. Judgements about the seriousness of cases and the appropriate punishments are relative to a set of other cases. Compared to the "stream of cases" in the criminal court, felony offenders appear more serious in the juvenile court than older offenders with lengthier records in the criminal court. By 1986, base rates of incarceration in the juvenile court reflected this reality. The ability to invoke last resort punishments (such as incarceration) requires a degree of stability in the court environment that is less likely in the criminal court where proceedings are open to the public, participants (e.g., judges, defense counsel and prosecutors) often are a shifting group, and new case types often emerge that challenge normative thresholds for punishment.

The more stable context of the juvenile court allows for the emergence of a consensus on punishment. But a mixed group of cases may produce either dissent or confusion in the discerning the going rate of a particular group of cases. The juvenile court remains more insulated from larger crime problems, such as the ongoing drug crises in the adult court that scrambled the going rates of punishment that threw together new actors in a strained court management and case processing



environment, and created demands for punishment options that far exceeded the system's capacity. When considered together with older offenders, it is not surprising that punishment rates for adult courts had declined by 1986-87. The results in this study suggest that the more stable legal context of the juvenile court is more likely to produce stable and higher rates of punishment, as well as more effective interventions.

The results also suggest that the context of correctional intervention may make a difference. Residential and secure placements for juvenile offenders provide treatment emphases that are not evident in adult facilities (Forst et al., 1989), and also avoid the physical dangers posed by adult correctional facilities.<sup>16</sup> This study suggests that these differences in correctional context may influence recidivism outcomes. Controlling for severity of sanction, and looking at offenders sentenced either to incarceration or probation, the overall recidivism indicators suggest that there are beneficial aspects within the correctional context of the juvenile court.

However, we did not control for these contextual effects, and this may be an important shortcoming of this effort. For example, we aggregated data on recidivism outcomes for those sentenced to jail from the adult court with others in sentenced to juvenile corrections facilities as "youthful offenders" in the criminal court, despite the profoundly different environments for these facilities. Nevertheless, sentences both to jail or "YO" facilities are likely among a cohort of adolescent offenders in the criminal court, especially when plea bargaining may reduce the severity of charges at conviction. This in turn reduces the sentencing options for judges and results in jail sentences for many cases.

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16. Comparing juveniles who were placed in juvenile corrections facilities with adolescents waived to the criminal court and sentenced to adult correctional facilities, Forst et al. (1989) found that waived adolescents were more likely to be victims of violent crimes. The juvenile offenders also rated the treatment orientation of their facilities significantly higher than did adolescents sentenced as adults.

Accordingly, the comparison of aggregate rates for the incarcerated groups reveals trends and differences that important given the likely distribution of sanctions. It also suggests that youths sentenced as adults versus juveniles will encounter correctional environments that differ significantly in their therapeutic orientation. Thus, the jurisprudential philosophy and jurisdiction in which they are sentenced may in turn expose them to interventions that are salient factors in their rates of reoffending.

#### D. Policy Implications

The results suggest that efforts to criminalize adolescent offending, or to narrow the scope of the juvenile court to exclude these offenses, may not produce the desired results and may in fact be counterproductive. Accordingly, two primary policy implications are derived from this research. First, there should continue to be both a special jurisprudence for adolescent crimes and a separate jurisdiction for juvenile offenders. Second, the current trajectory of juvenile court reforms should continue. These reforms have increased the emphasis on proportionate and certain of punishment while attending to due process considerations of offenders who now are liable for significant intervals of punishment.

##### *1. Maintain a Special Jurisprudence of Adolescence*

This research offers no empirical support for claims that adolescent felony offenses should be removed from the jurisdiction of the juvenile court. In fact, there are other reasons not to do so. For example, Freeman's (1991) survey of adolescent males in Boston suggests that involvement of adolescents in the criminal court, with its public records and lasting stigmatization, severely limits their future labor market participation. Moreover, the uncertainties of criminal court responses may have a counterdeterrent effect on offending behavior. The emerging model of the juvenile court offers a jurisprudential arena that matches the expectations of proponents of the criminal court model while retaining the advantages of the separation of juvenile crimes and the

shield for those juveniles whose criminality desists as they approach adulthood.

Transfer, or waiver, from juvenile to criminal court remains as a viable option for specific types of cases that require a response beyond the limits of juvenile justice or juvenile corrections. However, transfer is a process that itself is uncertain and unevenly applied (Fagan and Deschenes, 1990; Feld, 1988; Champion, 1989; Lemmon et al., 1991), and that in fact may provide less accountability than retention in the juvenile court. To make transfer an effective outlet for cases that exceed the boundaries of juvenile court responses, important reforms are needed to reduce disparity in the use of transfer (Forst et al. 1987) and to establish legal standards and criteria for transfer decision-making (Grisso et al., 1988) that avoid the vague terminology of "amenability" and "dangerousness."

## *2. Maintain the Current Trajectory of Juvenile Court Reforms*

Efforts to narrow the jurisdiction of the criminal court reflected criticisms not only of its ineffectiveness, but also of the constitutionality of its proceedings. Both equal protection and due process concerns were addressed in U.S. Supreme Court decisions that formalized juvenile court proceedings. Other concerns reflected doubts about the juvenile court as an institution of social control. The evolution of the juvenile court over the past decade attempted to strengthen the juvenile court response to adolescent crimes by making punishment both more certain and severe. The quest for more proportionate punishment to reflect the severity of crimes and perceived threats to public safety from serious juvenile offenders led to changes in the going rates of punishment in the juvenile court.

The results are reflected in the changes in the rates and types of punishment in the juvenile court samples from 1981-82 to 1986-87. This research, coupled with the results suggesting lower recidivism for juveniles sanctioned as adults, argues for continuation and stabilization of these reforms. As discussed earlier, research on waiver decisions and statutes suggests informality and vagueness that challenges the commitment to fairness and equal protection. Waiver is

an area where continued legislative attention is needed, not only to the boundaries and conditions for transfer of jurisdiction, but to the operational definitions and statutory criteria that inform these decisions. Proportionality of punishment also is an area where continued refinement can address both constitutional and conceptual issues in the legal response to juvenile crimes. The convergence of social learning and deterrence theories (Akers, 1990) suggest that punishment in the juvenile court should reflect both proportionality and certainty while maintaining the separation of juvenile jurisdiction and the continuation of a therapeutic and reintegrative component to juvenile court interventions.

#### F. Some Cautions and an Agenda for Future Research

The limitations of this research suggest directions for future efforts to clarify these issues. Our study was a natural experiment using a quasi-experimental design comparing two jurisdictions using matched counties and cohorts, and suggests that these issues are amenable to empirical inquiry. Obviously, replications of this effort are needed, both within the study sites and in other sites. The sites for this study were chosen because of their proximity in area and the contrasts in jurisprudential boundaries. But the New York example represents a unique and in some ways an extreme example of statutory approaches to separate the jurisprudential boundaries. Also, the unique contributions of the drug crises of the 1980s in New York (Fagan and Chin, 1990) to offending opportunities and rates further complicates the comparisons of offending propensities.

However, the strengths of the study also address limitations of previous research. Comparisons of waived and retained juveniles reflect systematic biases inherent in the waiver decision. Comparisons across jurisdictions that are non-adjacent reflect regional and contextual differences in crime problems and normative attitudes on justice and punishment. Comparative research that does not control for age risks introducing biases inherent in differing age-offense distributions. But an age range that is too narrow (e.g., examining only one age) risks Type II errors from failing to consider adjacent age categories with

different developmental sensitivities and thresholds for punishment. Comparative research based on within-state law changes risks both period effects and covariation with legal socialization processes accompanying the law change.

Accordingly, although replications of this effort require experimental conditions that are difficult to establish, this design may be optimal for comparing the effects of sanctioning context on recidivism.<sup>17</sup> Failure to control for location and composition of the offender cohorts, while creating the independent variable of jurisdictional differences, introduces unacceptable biases or constraints on the results. To strengthen the results of this study, it should be replicated with current offender cohorts that have been exposed to different contexts of offending, court contexts, and correctional settings. Replications across jurisdiction must carefully control not only for the context of legal decision making but also for the social contexts that influence crime opportunities and offending rates.

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17. An experimental design, with random assignment of offenders to criminal and juvenile jurisdiction, is not feasible. Nor are sentencing experiments feasible where offenders are randomly assigned to punishments in juvenile versus adult corrections systems. These comparisons may also have weak face validity, since the sentencing decision often reflects an intrinsic judgement where the context of reception for corrections influences the salience of the sentencing option.

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## **APPENDICES**

**A. Statutory Analyses**

**B. Survival Functions by Disposition**

**C. Offense Classifications**

**APPENDIX A. ANALYSIS OF STATUTES FOR ROBBERY AND BURGLARY  
IN NEW YORK AND NEW JERSEY**

Date: December 28, 1987

To: Jeff Fagan

From: Martha Schiff *MS*

Re: New York and New Jersey Statutes for Robbery 1 and Burglary 2

The following is a brief description of the similarities and differences between the New York and New Jersey Penal Law statutes for Robbery in the first degree and Burglary in the second degree.

#### I. ROBBERY 1

In both New York and New Jersey a person is guilty of Robbery in the first degree when, in the course of committing a theft, or in the immediate flight therefrom, he inflicts or threatens to inflict serious bodily injury, or uses force upon another person (in New York "causes" is substituted for "inflicts"). A person may also be found guilty of Robbery 1 when, in the course of committing a theft or in the immediate flight therefrom, he is either armed with a deadly weapon, or uses, or threatens to use, a dangerous instrument. In New Jersey, it is also provided that a person may be guilty of Robbery 1 if he attempts to kill anyone, or when he commits, or threatens to commit, any other "crime of the first or second degree". In other words, a person can be found guilty of Robbery 1 if he commits an act which would otherwise meet the statutory requirements of Robbery 2 or 3, but who, in the course of perpetration, commits or threatens to commit another crime which is considered of the first degree (such as

assault or rape). In New York, provision is made for displaying what appears to be a pistol, revolver, shotgun, machine gun or other firearm, unless such weapon "was not a loaded weapon from which a shot, readily capable of producing death or other serious bodily injury, could be discharged". The New York Penal code also states that prosecution for Robbery 1 shall not provide defense to a prosecution for, or preclude a conviction of, Robbery 2 or Robbery 3 or any other crime. I suspect this is intended to ensure that prosecution for Robbery 1 and another offense arising from the same incident and committed by the same person is not defended on grounds of violation of the double jeopardy principle, which states that a person cannot be punished twice for the same crime.

## II. BURGLARY 2

The Burglary statutes in New York and New Jersey are most similar in their definitions of Burglary in the second degree. Unlike New York, New Jersey does not have a provision for Burglary 1. A person is guilty of Burglary 2 in both states, if, with the purpose to commit an offense therein, he enters or remains unlawfully in a building, and when he inflicts, or threatens to inflict, physical injury on anyone. In New York, this wording reads "causes" rather than "inflicts" (as in the burglary statute), and physical injury must be caused to anyone who "is not a participant in the crime". In New Jersey, the words "purposely, knowingly or recklessly" are added immediately prior to "inflicts". In both states, a person is guilty of Burglary 2 if, in addition to entering or remaining unlawfully in a



Building with the intent to commit an offense therein, he is armed with, or displays, a deadly weapon. In New Jersey, provision is explicitly extended to explosives. In New York, the use or threat of immediate use of a dangerous instrument while in a building unlawfully, or in the immediate flight therefrom, also constitutes a violation of Burglary 2. Finally, in New York, if the building involved is a dwelling, irrespective of any of the above mentioned conditions addressing the use or threatened use of force, a person may be found guilty of Burglary in the second degree.

NOTE: In New York, the conditions of Burglary in the first degree are satisfied if force, or the threat of force, is involved and the building is a dwelling.

ROBBERY 1

NJ

NY<sup>1</sup>

BOTH

A person is guilty of Robbery 1 when,  
in the course of committing a theft,  
or in the immediate flight therefrom,  
he:

- |   |   |                |
|---|---|----------------|
| 1. inflicts (or causes serious) bodily injury, or uses force;               |   | x <sup>2</sup> |
| 2. threatens with, or puts another in fear of immediate bodily injury;      | X |                |
| 3. is armed with a deadly weapon;   |   | X              |
| 4. uses or threatens use of a dangerous instrument;                         |   | X              |
| 5. displays what appears to be a firearm;                                   |   | x <sup>3</sup> |
| 6. Commits, or threatens to commit any crime of the first or second degree; | X |                |

---

<sup>1</sup>N.Y. includes a provision that prosecution for Robbery 1 does not constitute defense for, or preclude prosecution for Robbery 2, Robbery 3, or any other crime.

<sup>2</sup>In N.Y., a provision is added "to any person who is not a participant in the crime", says "causes serious" rather than "inflicts".

<sup>3</sup>However, in N.Y. the fact that such firearm is not loaded and can not cause "death or serious injury" is an "affirmative defense".

BURGLARY 2

NJ

NY<sup>1</sup>

BOTH

A person is guilty of Burglary 2 if, with purpose to commit an offense therein, he enters or remains unlawfully in a building and when (he):

1. purposely, knowingly, or recklessly inflicts (or causes) or threatens to inflict (or cause) physical injury on anyone (who is not a participant in the crime;

X

2. is armed with explosives or a deadly weapon;

X

3. displays what appears to be a firearm;

X

4. uses, or threatens to use a dangerous instrument;

X

- or -

5. the building is a dwelling.

X

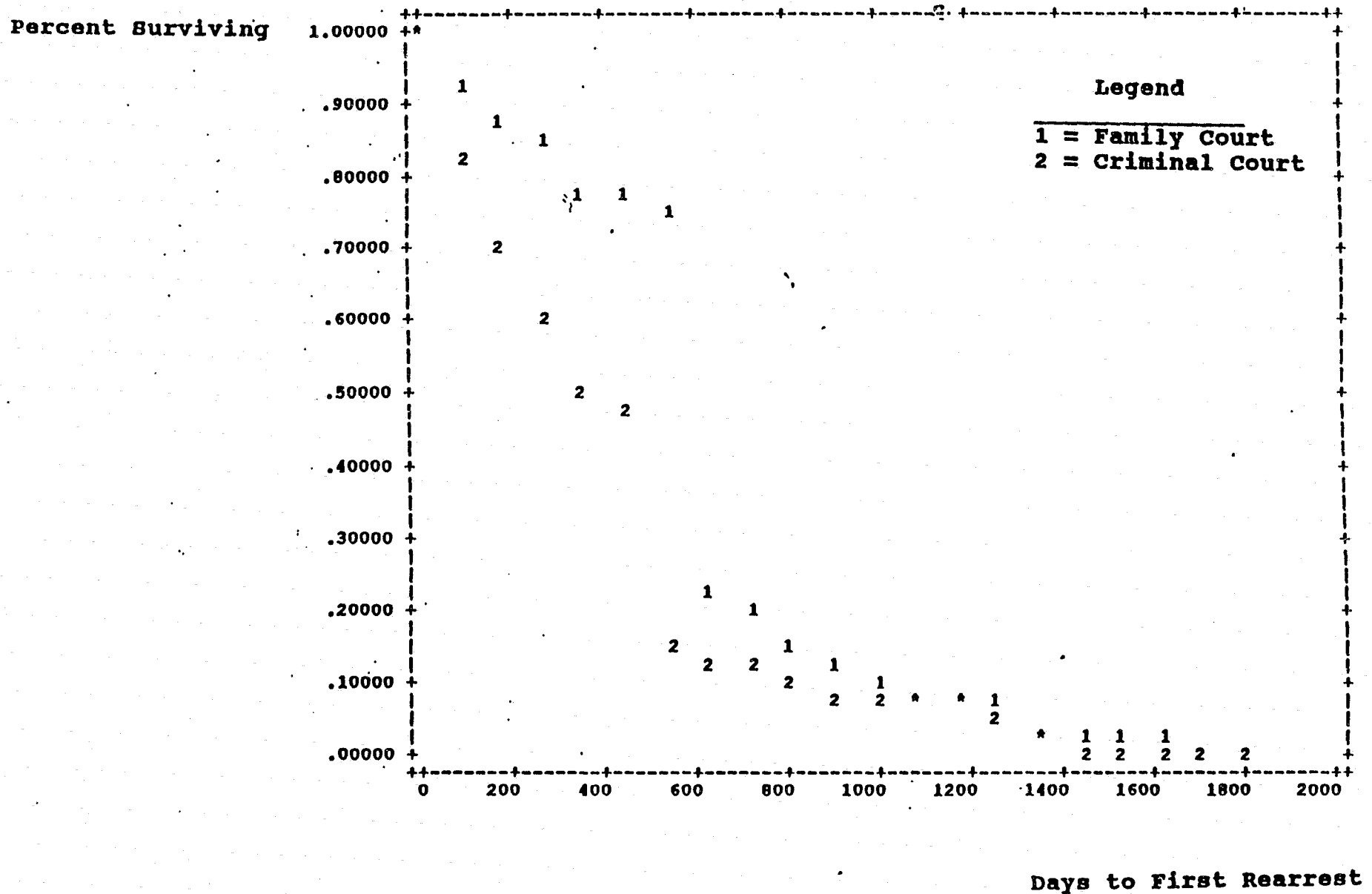
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<sup>1</sup>The N.Y. statute on Burglary 1 is virtually the same as that for Burglary 2, except for the provision stating "it is an affirmative defense that such...firearm was not a loaded weapon...capable of producing death or other serious physical injury".

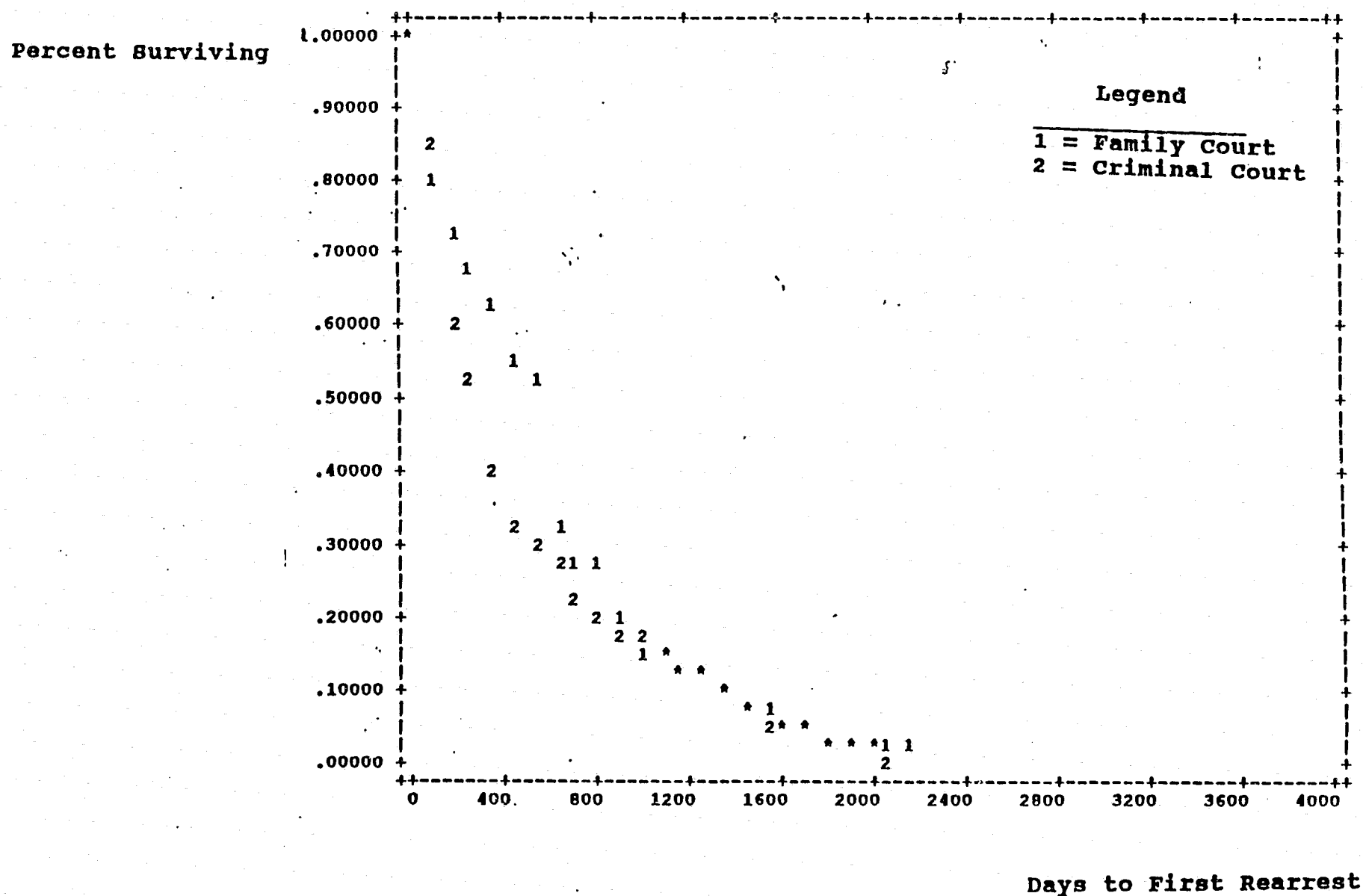
Also, in N.Y. the difference between Burglary 1 and Burglary 2 is where the event takes place. For Burglary 2, the conditions listed above must be met or the event must occur in a dwelling. For Burglary 1, the conditions listed above must be met and the event must occur in a dwelling.

**APPENDIX B. SURVIVAL ANALYSES FOR TIME TO FIRST REARREST BY  
COURT JURISDICTION AND DISPOSITION TYPE**

APPENDIX A1. SURVIVAL FUNCTION FOR TIME TO FIRST REARREST BY COURT JURISDICTION FOR OFFENDERS SENTENCED TO INCARCERATION.

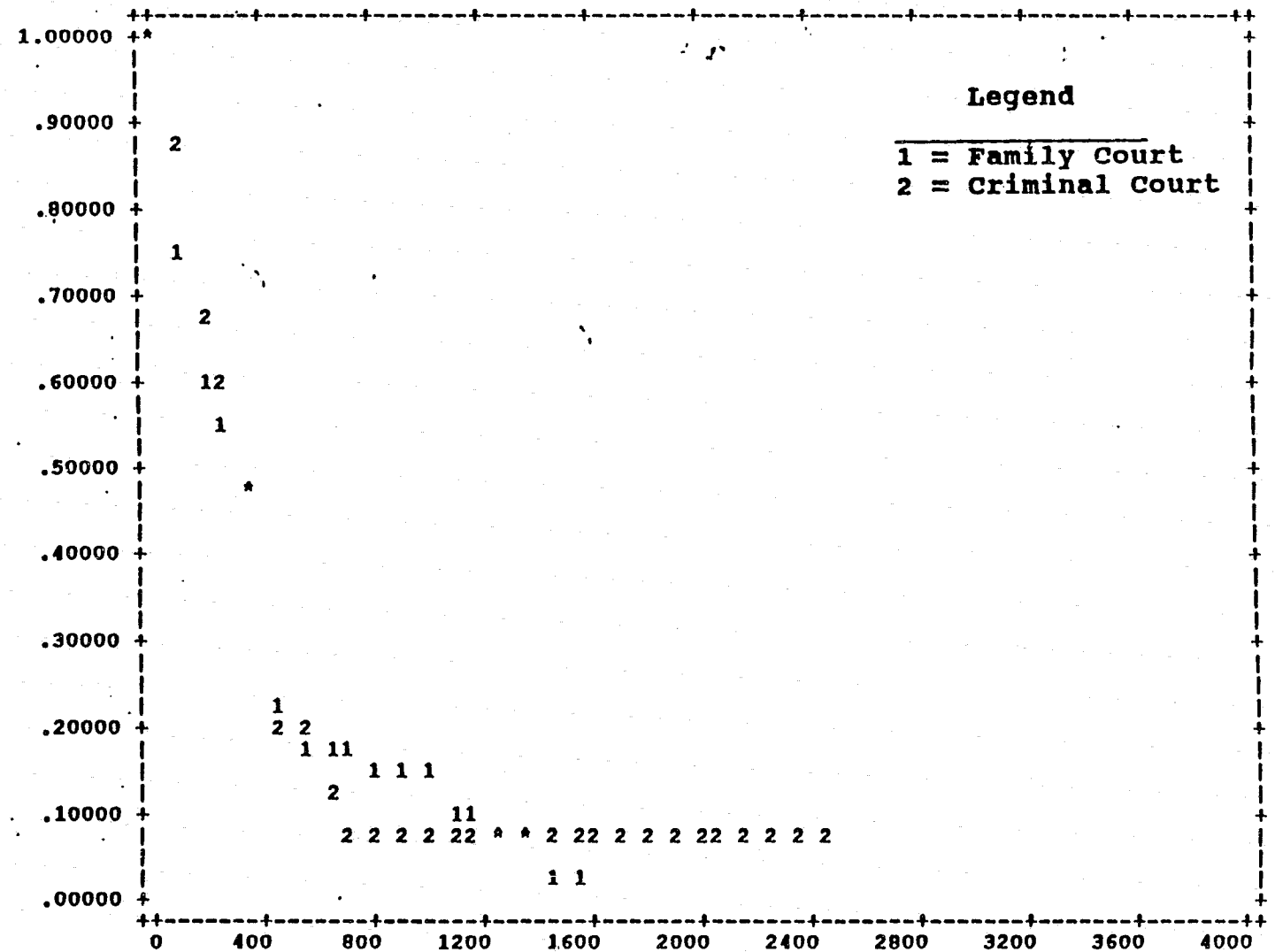


APPENDIX A2. SURVIVAL FUNCTION FOR TIME TO FIRST REARREST BY COURT JURISDICTION FOR OFFENDERS SENTENCED TO PROBATION.



APPENDIX A3. SURVIVAL FUNCTION FOR TIME TO FIRST REARREST BY COURT JURISDICTION FOR OFFENDERS WITH SUSPENDED SENTENCES OR CONTINUANCES.

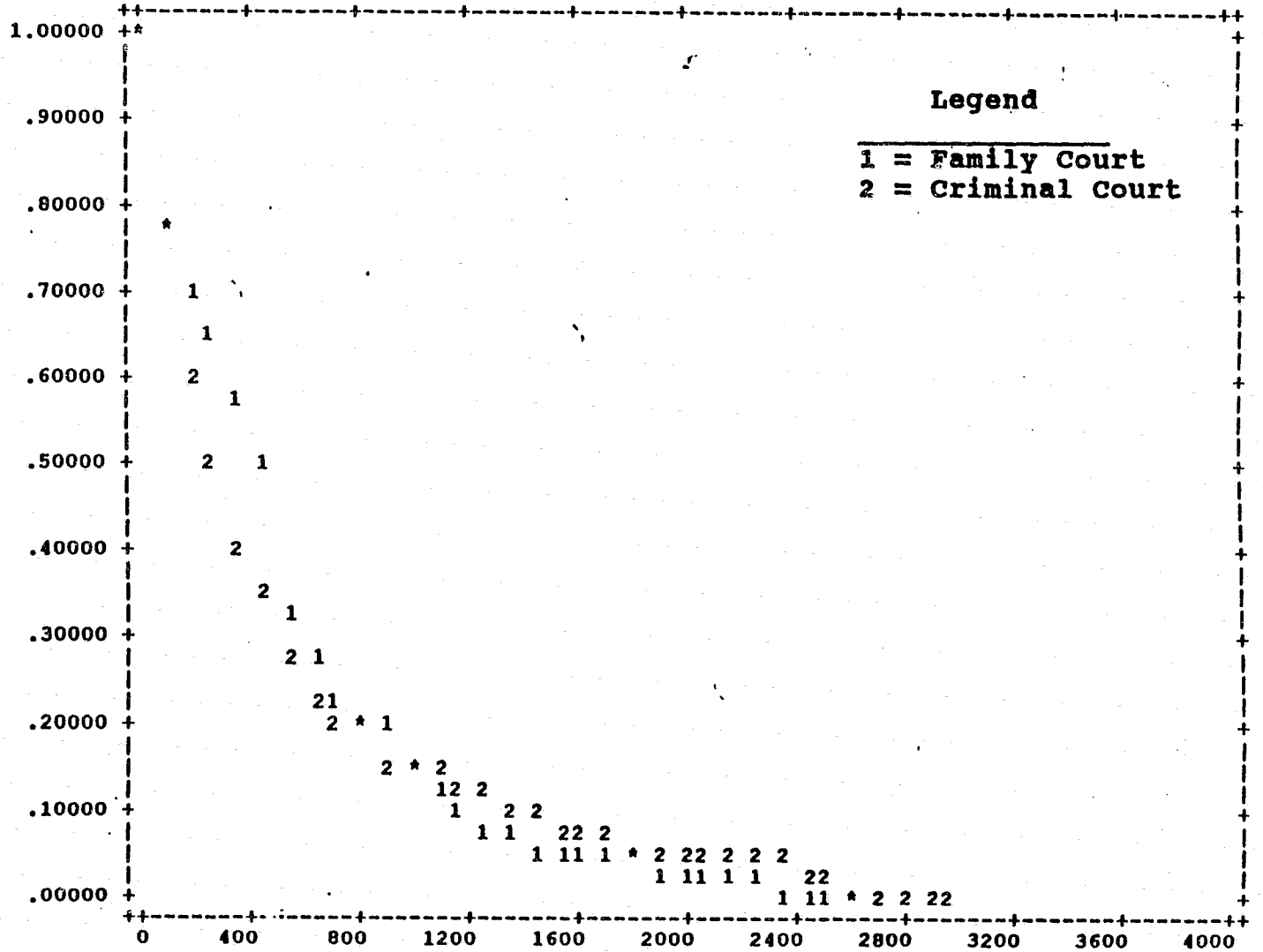
Percent Surviving



Days to First Rearrest

APPENDIX A4. SURVIVAL FUNCTION FOR TIME TO FIRST REARREST BY COURT JURISDICTION FOR OFFENDERS WHOSE SAMPLE CASES WERE DISMISSED.

Percent Surviving



Days to First Rearrest



**APPENDIX C. CLASSIFICATION OF REARREST CHARGES**

**APPENDIX C. CLASSIFICATION OF REARREST CHARGES**

**Violent Felony Offenses**

Manslaughter  
Homicide  
Armed Robbery  
Aggravated Assault  
Aggravated Sexual Assault, Rape,  
Sodomy  
Aggravated Sexual Abuse (1° or  
2°)  
Arson 1°  
Kidnap  
Attempts of any of the above

**Felony Property Offenses**

Burglary 1° or 2°  
Grand Theft, Larceny 1° or 2°  
Auto Theft  
Attempts of any of the above

**Other Violent Offenses**

Weapons offenses (1° or 2°)  
False Imprisonment or Kidnap 3°  
Terroristic Threats  
Assault 3°  
Robbery 3°  
Sexual Abuse 3°  
Escape

**Other Felony Offenses**

Burglary 3°  
Theft, Larceny 3° or 4°  
Attempted Theft  
Weapons Offenses 3°  
False Reports 1° or 2°  
Attempts of any of the above

**Drug Possession**

Possession/ Controlled Substance  
Possession/ Marijuana

**Drug Sales**

Distribution / Controlled  
Substance  
Sales / Controlled Substance  
Possession of Controlled  
Substance with Intent to Sell

**Misdemeanor Offenses**

Simple Assault  
Shoplifting  
Criminal Mischief  
Possession of Burglary Tools  
Theft of Services  
Resisting Arrest  
Trespass  
Disorderly Conduct  
Violation of Curfew  
Loitering

**REVIEWER COMMENTS ON:**

**"The Comparative Impacts of Juvenile  
and Criminal Court Sanctions on  
Adolescent Felony Offenders"**

**by Jeffrey Fagan**

**NIJ Grant #87-IJ-CX-4044**

Review of "The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders" final report for NIJ grant 87-IJ-CX-0044.

This report explores two questions. Do sanctions for juvenile offenders differ depending on whether their cases are processed in juvenile or circuit courts? Is the decision to process youthful offenders in juvenile or circuit court related to the youths' future offending? The research involves a comparison of 15-16 year olds charged with violent felonies in two New Jersey counties with allegedly similar juveniles whose cases are processed in the Circuit courts in two counties in New York State.

The issues addressed in this research appear to have significant policy relevance. The introductory sections which describe the significance of the work are crisp and on point. The author is clearly knowledgeable in the subject area and skillfully presents the central issues.

Most of my concerns with the actual research involve the question of whether processing cases in juvenile or adult courts effects recidivism. The pivotal issue in drawing meaningful conclusions from this research is the degree to which the offenders in the four counties have comparable likelihood of future offending. Unfortunately, the material presented in this report raises several doubts in my mind regarding whether the groups of juveniles are in fact comparable.

As I understand the research, two counties in northern New Jersey (Essex and Passaic) and two counties in New York (Queens and Brooklyn) were selected as the sites for this research. In New Jersey cases of first degree robbery are processed in juvenile court (although they can be waived to circuit court)

while in New York similar cases are handled in the Adult system as a result of the Juvenile Offender Law. Since, as the report notes, it is simply not feasible to implement a randomized experiment regarding which court (juvenile or adult) will have jurisdiction over a case, the basic design of selecting comparable cases from similar counties in states which use different courts to process these cases is sound and about the only option available. Thus, I have no real objection to the theory of the design used in this research. I am concerned with its execution along the following dimensions.

First, the researchers wanted to select two counties in each state that provided similar contexts for recidivism. To accomplish this they selected counties that were similar on several demographic measures and crime rates. The rationale here is that youths in the samples should be exposed during the follow-up period to similar circumstances and opportunities to commit new crimes. Unless I am mistaken in my calculations, the counties selected for the study have very different crime rates for serious offenses such as robbery. Using the data provided in Tables 1 and 2, Brooklyn has a robbery rate of 1,454 per 100,000 population. The rates for Queens, Essex, and Passaic counties respectively are 933, 907 and 355. Thus, one of the New York counties has a very high robbery rate while one of the New Jersey counties has a relatively low robbery rate. To the degree that crime rates for serious offenses such as robbery reflect opportunities for recidivism as the report implies, then one would expect higher recidivism rates among persons processed in New York regardless of whether the type of court (juvenile or adult) has any bearing upon future offending. It is worth noting that in New York robbery recidivism was substantially greater than in New Jersey. Whether this can be attributed to the fact that youthful offenders were handled in New York circuit courts or the higher robbery rates in the New York counties is

somewhat ambiguous.

More problematic is whether the critical issue identified on page 20 of the report is met. Specifically, the report correctly notes that "offender cohorts from comparable if not identical offense/offender profiles are necessary to avoid the selection bias inherent in previous research." My reading of the recidivism literature is that offender attributes are more strongly related to future offending than the current offense and thus are it is more critical to establish comparability of offenders. On this point the research is unconvincing to me. For example, the best indicator of future offending is the degree of one's past criminal activity. There is no data on how the youth from New Jersey and New York compare on this factor. This, in my mind, is a serious limitation. Readers are not provided with any real data that may be used to assess whether the offenders in these samples (NY and NJ) are in fact comparable beyond the fact that they are charged with similar offenses. I would have more confidence in the reports conclusions if the research could demonstrate comparability and not simply claim that it exists.

The importance of this point is amplified by the stage at which cases were selected for inclusion in the study. On page 28 of the report we are told that "cases were selected after charges are filed in the court: at criminal court in New York, and upon filing of juvenile court petitions in New Jersey." As I understand the logic of the sampling design, selection of cases with nearly identical charges should result in relatively comparable groups of offenders. This depends on whether the charging process is influenced by the same factors in New York and New Jersey. For example, it would be relevant to know if the selection of cases charged with first degree robbery produces samples that are equally representative of the populations of youth arrested for first degree robbery. It is important to know whether the probability

that a youth who is arrested for a first degree robbery offense in New York will in fact be charged with first degree robbery is equal to the probability that a youth arrested in New Jersey for a first degree robbery offense will be charged with first degree robbery. Since the case in New York would be processed in the criminal court while the case in New Jersey would be processed in the juvenile court, is it plausible that the youth arrested in New York might have a higher likelihood of being charged with a lesser offense than his/her counterpart in New Jersey. I do not know the answer to this question. When I asked three colleagues if they thought the above mentioned probabilities would be equal each said they doubted it and thought that there would be a greater tendency to under charge in New York and retain jurisdiction of the case in juvenile court. Any information the authors of the report could supply on this point would be very useful to assessing whether the offenders in New York are comparable to offenders in New Jersey with regard to variables related to future offending.

The above noted points are my major concerns with the research as it now stands. Some additional issues/observations follow.

If "supporters of the juvenile court argue that violent juvenile crime is a transitory behavioral pattern" does the relative high rates of recidivism found in this research challenge this position?

On page 28 (middle) I was not able to find the cited figures in the Rudman et al., 1986 reference and would rework the sentence since that paper did not deal with the four counties used in the current research.

On page 31 second paragraph it states that samples were selected based on "proportionate samples of offenders within each age/offense group". I did not know what this meant or what its specific relevance was. Please clarify.

Last sentence on page 31. Should six counties be four counties?

Bottom of page 32. The Coates study did not control for selection bias in detention decisions. The results are presented here without mention of that point while at other times in this report the issue of possible selection bias is used to question findings from certain studies. Is there some reason to believe the Coates study is immune to the same problem? If not be more consistent about whether selection bias is or is not a problem.

Is it not possible to determine release dates for persons incarcerated? If not and you use the 1/3 rule did you check to see if anyone had a rearrest before their estimated release date (1/3 of the sentence).

I am a little uncomfortable about the decision to exclude cases waived from juvenile to criminal court in New Jersey from some of the analysis. Admittedly these are few cases but is it possible to determine whether they differ from nonwaiver cases?

The number of cases used to calculate the figures in Table 8 was not clear.

On Table 9 is the data on the time until first arrest calculated only for those persons who have a rearrest? I think it should be so as to not confound whether there is an arrest with the timing of recidivism.

The conclusion on the first sentence of page 48 is much too strong given the lingering questions regarding comparability.

On page 56 the decision to assign cases that were not incarcerated a sentence length of 0 makes the corresponding analyses using sentence length such as table 12 meaningless.

Some of the survival curves show sharp discontinuities which deserve some comment.

In sum, the objectives of this study are very worthwhile. I think the jury is still out on the degree of confidence that can be placed on the



reports findings until more conclusive evidence can be provided regarding the comparability questions raised above - especially with respect to variables that are known correlates of recidivism. I believe the burden of proof is on the authors of this report to demonstrate reasonable comparability between New York and New Jersey cases on such things as prior criminal activity and that this burden has not been met.

## REVIEW

### The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders

Final Report, Grant 87-IJ-CX-0044 [National Institute of  
Justice]

by Jeffrey Fagan  
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#### STANDARD REVIEW QUESTIONS

##### I. Editorial Quality and Format

- (1) Does the full report adequately cover the technical aspects of the project? Is the content of each section presented clearly, completely, and at the appropriate level of detail.

The full report adequately covers the technical aspects of the project, and each section is presented clearly, completely and at the appropriate level of detail. To be specific, the report presents (1) the social problem, (2) the research issue, (3) a literature review, (4) research hypotheses, (5) data sources, (6) analysis and results, and (7) conclusions. With two possible errors or omissions of some significance, discussed in II. (2) below, and a few typographical errors and minor writing lapses, listed in I. (2) below, each of these major components is specified clearly and fully and with a high level of competence.

- (2) Is the report well-written and well-organized? Are the chapters and sections consistent in their approach and prepared in a logical progression?

Yes.

Listed below are typographical errors or unclear passages encountered by the reviewer.

page 10, second complete paragraph, first sentence, reads:

The juvenile court views offenders below the threshold age for "adulthood," or criminal liability, as "amenable to treatment," or changes either in the factors which precipitated their offenses, or in the offending behaviors themselves.

This sentence is unclear. Perhaps something has been left out.

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page 20, 7 lines from the bottom: ". . . relying samples . . ." should read ". . . relying on samples . . ."

\*\*\*\*\*

page 21 second complete paragraph, first sentence, while meaningful upon the second reading, is awkward and slightly ambiguous. The ambiguity stems from the fact that the two examples of differences in contextual influences are stated as a range ( . . . from . . . to . . . ). Are the two examples exhaustive of all contextual influences?

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page 22, 4 lines from bottom (excluding footnote): ". . . criteria will be developed . . . " should read ". . . criteria were developed . . . "

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page 23, second complete paragraph, last line: ". . . counties will include . . . " should read ". . . counties include . . . "

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pages 25, 26, Orandaga should be Onandaga.

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page 31, last line: ". . . six counties:" should be ". . . four counties: . . . "

\*\*\*\*\*

pages 35-36, last/first sentence: writing error; eliminate last two words.

\*\*\*\*\*

page 37, last sentence. Is this sentence substantively correct? The literature noted on pp. 16-19 of this manuscript report conflicting evidence on the severity of sanctioning in criminal and juvenile courts. Is the author's conclusion in this sentence based on an examination of the NJ cases that was not displayed in a table, or is it a guess?

\*\*\*\*\*

page 38

Although it is not essential, in the Tables that follow, the author may consider adding (NY) to Criminal Court and (NJ) to Juvenile Court to remind readers that the jurisdictional difference lies in the states as well as in types of court.

\*\*\*\*\*

page 41, second line, writing error: ". . . they declined were rose . . . "

\*\*\*\*\*

page 41, bottom of second complete paragraph: Commission report not in References, insert correct date.

\*\*\*\*\*

page 43, line 3: typo in reporting the probability and F statistic?

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Page 46, Table 9 and page 47, 6 lines from bottom (excluding footnotes): should "time to first rearrest" read "mean time to first rearrest"?

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page 47, first sentence: Obscure. What are the " . . . reincarceration rates for the sample arrests" ?

\*\*\*\*\*

page 50, first complete paragraph, second sentence. It might be more precise to say that differences in rearrest rates for those sentenced to incarceration were not significant.

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page 52, legend: for the sake of consistency, use "juvenile court" rather than "family court."

\*\*\*\*\*

page 59, Table 14: designate probability levels with double and triple asterisks in the note section at the foot of the table.

\*\*\*\*\*

page 60, second complete paragraph, line 7: ". . . offenders in whose . . . " should read ". . . offenders whose . . . "

page 67, second line: ". . . that important . . . " should read ". . . that are important . . . "

\*\*\*\*\*

page 68, second complete paragraph, line 1: "Efforts to narrow the jurisdiction of the criminal court . . . " should read "Efforts to narrow the jurisdiction of the juvenile court . . . "

(3) How well does the executive summary reflect the content of the full report?

No executive summary was included. It may be useful to place a short (one to two pages) summary of results of Part V at the beginning of Part VI.

## II. Substantive Quality

(1) Does the report reflect a knowledge of relevant literature and other related research?

Yes. Because the studies noted on page 16 are relied on later in the report, it may be useful to add a bit more detail about their findings.

Is there a clear and complete background statement of the problem investigated?

Yes.

Are the overall research goals and objectives clearly and thoroughly discussed?

Yes.

Are they integrated with the problem statement to provide an adequate justification of the project?

Yes.

- (2) Are the techniques of data collection and analysis appropriate to the research question or hypotheses? Do they reflect the model accurately?

On the whole, the report presents a well thought-out research strategy to capitalize on the so-called "natural experiment" and provide stronger evidence than heretofore available on the important policy issue of juvenile waivers. The particulars of data collection and statistical analysis appear to be appropriate. The selection of two time periods and the recidivism study provide strong evidence of court functioning over time and answer important issues of effectiveness.

Nevertheless, I have some concerns about the research that should be addressed.

Concern #1. Sample selection bias.

On page 20, the author refers to one kind of sample selection bias, generated by channelling cases from juvenile to adult court. It seems that this study suffers from another kind. On page 28, the author reports that the sample of 600 cases (400 in the 1981/82 period, 200 from the 1986/87 period) after charges are filed. Thus, the sampling point fails to capture a critical prosecutorial decision, the decision to charge. There is no doubt that the charging decision is substantively important, and more to the point, can influence subsequent outcomes. The rationale given at this point in the study, that the procedure avoids case attrition, is a weak one in the face of this very damaging impact on the overall findings that results from sample selection bias. This lapse affects the interpretation of the case outcomes reported in Tables 6, 7, and 8. and makes conclusions suspect. It seems to me that the failure to sample at intake and evaluate the prosecutor's decision has less or little effect on the recidivism findings.

I suggest that the author address this question.

Concern #2. Matchability of jurisdictions.

I agree with the author that the existence of similar counties in the same SMSA but in different legal jurisdictions/states offers a unique opportunity for comparative research. Nevertheless, despite the demographic and cultural similarity of the counties (pp. 22-27) and the closeness of the substantive crimes (Appendix A), one can never assume that courts are fungible. This research would have been substantially advanced if the researchers were able to examine the courts

qualitatively and qualitatively in the manner of Eisenstein and Jacob (1977) or Eisenstein, Flemming, and Nardulli (1988).

The researchers rely on general accounts of the flood of drug cases in the criminal court (NY) and allude to the greater "stability" of juvenile courts (p. 65) apparently fostered by secrecy among other variables to help to explain the counterintuitive finding of greater leniency in criminal court. The explanation is quite plausible. Nevertheless, interview of court personnel, even post hoc, could shed much light on the way in which such factors affected the thinking of the key decision makers.

Again, while this cannot be remedied, I suggest that the author address this question.

### Concern #3. Sample of offenders.

It is not clear whether comparable robbery and burglary offenders were adjudicated in the New York juvenile courts. The assumption that I draw from the report, given that felony offenses originate in criminal court (p. 15), is that none or very few were. If a substantial number of New York robbery and burglary defendants ages 15 and 16 were transferred to and tried in New York juvenile courts, they should have been included in the study as a third jurisdiction. If my assumption is correct, the point should be stated more positively in the text or in a footnote.

- (3) Are the findings of the research adequately interpreted, and expressed in the context of the project's objectives.

The concerns raised in the previous section do not detract from the overall quality of the main body of the research report. A close reading of parts V and VI of the report leads me to conclude that the findings are clear, relevant and appropriate in terms of the goals and design of the project and adequately and appropriately discussed.

### III. Significance and Utility

- (1) How does the report contribute to the state-of-knowledge in the subject area?

I agree with the author that the "natural experiment" setting has provided significant information to illuminate the "leniency gap" issue. Here, the researcher exploited an unusual situation of the same socio-cultural area utilizing two methods of disposition of juvenile offenders. The findings thus allow a direct comparison of court processing while controlling for

social and cultural differences. The recidivism portion of the study contributes directly to an assessment of the utilitarian rationales for restricting juvenile court jurisdiction.

**Areas of further research. Are they adequately discussed?**

Replications of the comparative study may not be possible in other locations because of the unique feature of a similar SMSA and different court approaches. If different methods of adjudication apply in places such as Chicago and Gary, Ind., it may be possible to provide replications. On the other hand, there should be replications of the recidivism study. This and other limitations on replication are noted by the author.

- (2) Will practitioners or policy makers find the research useful? In what way? Can the research results be immediately applied? If not, what steps need to be taken before this occurs?

The findings should be of value to policy makers. Given the political salience and emotional content of the topic, it is difficult to assess whether the findings will be applied to avoid the egregious and excessive nature of the New York approach. As the author suggests, the New York transfer of juvenile felony adjudication to the criminal courts is quite extreme, apparently in sync with the draconian punishment atmosphere in that state since the 1970s. Thus, while the fact that the study involved an extreme jurisdiction may be seen as a rationale for non-applicability, it seems to me that the study offers a strong caution against precipitous action by other states.

#### IV. Recommendations

- (1) Major revisions.

None are recommended except for the suggestions in Part II (2) above that certain methodological issues be mentioned. I am not recommending that the authors undertake a large scale interview study of court personnel, although if they have such information at hand, it may be useful in drawing conclusions about the results regarding the sanctioning of cases in criminal and juvenile courts.

- (2) Executive Summary

I do not see the need for an executive summary. The report



is short and can easily be read by researchers in a sitting. An abstract of the report will be useful to policy makers.

(3) and (4)      **Publication; Audience; Methods.**

The report in full should be published by the NIJ. A Research-in-Brief Bulletin should also be published. I assume that the author will publish the results in the form of an article in a scholarly journal such as Criminology. I can see value in an article aimed at court policy makers in Judicature or a similar journal for juvenile court judges; publication of an article in a journal aimed at state government/legislative policy makers would also be quite useful.

#### REFERENCES

Eisenstein, James and Herbert Jacob (1977) Felony Justice: An Organizational Analysis of Criminal Courts. Boston: Little, Brown.

Eisenstein, James, Roy Flemming and Peter Nardulli (1988) The Contours of Justice: Communities and Their Courts. Boston: Little, Brown.